

DOCKET FILE COPY
ORIGINAL
FCC 93M-146

31231

FOUR JACKS BROADCASTING

APR 3 2 01 PM '93

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Applications of)	MM DOCKET NO. 93-94
)	
SCRIPPS HOWARD BROADCASTING COMPANY)	File No. BRCT-910603KX
)	
For Renewal of License of Station WMAR-TV)	
Baltimore, Maryland)	
)	
and)	
)	
FOUR JACKS BROADCASTING, INC.)	File No. BPCT-910903KE
)	
For a Construction Permit for a New)	
Television Facility on Channel 2)	
at Baltimore, Maryland)	

PREHEARING CONFERENCE ORDER

Issued: April 2, 1993;

Released: April 6, 1993

A prehearing conference is scheduled for June 3, 1993, commencing at 9:00 a.m., at which counsel shall be prepared to discuss designated and proposed issues, the evidentiary scope of this proceeding, discovery needed, and the estimated time required to complete all discovery and to try this case.

Counsel shall be prepared at this conference to address the following specific matters:

1. Appearance and Publication

Each counsel shall be prepared to show compliance with 47 C.F.R. §1.221(c) (written notice of appearance) and 47 C.F.R. §73.3594(g) (publication of notice hearing).

2. Integration and Diversification Statement¹

¹ Any failure to exchange integration proposals on the designated date may result in the loss of integration credits. See Northland Communications, et al., 100 F.C.C. 2d 914 (Rev. Bd. 1985), aff'd ___ F.C.C. 2d ___, 60 Radio Reg. 2d (P&F) 776 1986). The parties must state specifically their hourly integration commitments and their definitive intentions to leave their current employment and other business positions and ventures (service on boards of directors, ownership of businesses). Failure to do so may result in denial or may diminish the credit sought for integration. See Kennebec Valley Television, Inc., 2 F.C.C. Rcd 1240 (1987). Part-time integration will be weighed under the Hirschman-Herfindahl Index ("HHI"). See Omaha TV 15, Inc., et al., 4 F.C.C. Rcd

(a) Integration

On or before **May 7, 1993**, counsel for the applicants shall file with the Secretary and serve upon each other, Mass Media Bureau counsel and the Presiding Judge a full, complete and definitive statement of their respective integration proposals, identifying the principals proposed to be integrated into the day-to-day operation of the proposed station, the number of hours per week such principals propose to work at the station, the positions to be held, a brief statement of the duties to be performed, and their intentions to leave current employment. The Statement must also describe in full any qualitative enhancement credits sought. Claimed gender or racial enhancement also must be disclosed, with a specific factual basis presented for any credit sought for Native American heritage. This statement shall also set forth the names of all principals (voting and non-voting shareholders or general and limited partners), the percentage of each principal's ownership interest, the percentage of any contemplated future shareholder or partner (including non-voting principals) and, in the case of a corporation, offices and directorships held or to be held. This statement must be signed by a principal of the applicant. ²

(b) Diversification

Each applicant shall review its application to ensure that all information relevant to the diversification criteria has been fully reported. Possible future media interests also must be included. The applicant will then state, as a separate part of the statement, that its diversification showing is complete, accurate and current. ³

730, Slip Op. FCC 88-371, released December 19, 1988 at 1013, 65 Radio Reg. 2d (P&F) 1019 (Comm'n 1988).

²Any failure to exchange integration proposals on the designated date may result in the loss of integration credits. See Northland Communications, et al., 100 F.C.C. 2d 914 (Rev. Bd 1985), aff'd ___ F.C.C. 2d ___, 60 Radio Reg. 2d (P&F) 776 (1986). Also, the parties must state specifically their hourly integration commitments and their definitive intentions to leave their current employment and/or business. Failure to do so may result in denial or may diminish the credit sought for integration. See Kennebec Valley Television, Inc., 2 F.C.C. Rcd 1240 (1987).

³This up-date of diversification data is solely to facilitate the parties' preparations for hearing. There will be no post "B" upgrade as a result of this disclosure. Daytona Broadcasting Co., Inc., 97 F.C.C. 2d 212, 214-17 (Review

3. Pending and Contemplated Issues

All questions raised by any pending motions or pleadings insofar as they relate to procedures governing the future course of this hearing and any pending perfecting amendments shall be discussed at the prehearing conference with a view towards facilitating their resolution. Also, there will be discussion on the status of the air hazard issue set against Four Jacks.

4. Discovery

The parties are required to meet by **May 21, 1993**, to agree on places and dates for depositions. The parties also shall agree on a Joint Document Production Request on the standard comparative issue which will apply to all parties.⁴ Document discovery specifically related to the renewal applicant (e.g. renewal expectancy) or other specific requests for documents shall be separately made by motion that may be filed after the Prehearing Conference, unless the parties stipulate to the scope and conditions of such discovery. And there shall be no interrogatories without first obtaining leave from the Presiding Judge.

5. Renewal Expectancy

Scripps Howard Broadcasting Company is entitled to assert a claim for a renewal expectancy. If it intends to do so, a statement of intent must be filed by **May 7, 1993**, with a specification of the relevant renewal period and an estimate of the approximate number of witnesses expected to testify. The parties are encouraged to agree to utilize the sworn written testimony of each proposed witness expected to testify. Unless a specific showing of cause is made, there will be no deposing of renewal expectancy witnesses if their testimony will be exchanged in advance of trial and counsel will have ample time to argue relevancy at the admission session. Rebuttal witnesses will not be allowed without a specific showing of need after a witness has finished testifying.

6. Protective Order

Bd 1984).

⁴Unforeseen discovery needs, such as possible undisclosed principals whose identities are learned through document discovery or through depositions of proposed integrated principals, or discovery required by a failure to fully comply with document production, may be pursued in a second-wave of discovery.

The following protections are afforded to documents which are produced in this proceeding, whether the production is voluntary or pursuant to order.

- (a) Documents which are responsive but which are on file with the Commission in this proceeding need only be identified. Although copies of such documents need not be furnished, counsel are encouraged to cooperate if the request is reasonable.
- (b) A party need not produce documents which are privileged lawyer-client communications or attorney work product documents.
- (c) Documents containing materials which are claimed in part to be privileged must be produced initially with the claimed privileged matter masked. If protection is sought, an unmasked copy must be submitted simultaneously to the Presiding Judge with points and authorities for determination in camera of the availability of a privilege. The statement for the basis for the privilege asserted must be sufficiently precise to enable the discovering party to evaluate its merits. Metroplex Communications, Inc., 2 F.C.C. Rcd 4513 (Review Bd 1987).
- (d) Documents which are claimed to be privileged in their entirety shall be described for the requesting counsel by date, sender, receiver and subject matter and the precise basis for the privilege asserted and points and authorities must be set forth. See Metroplex, supra. The producing party may thereafter request in camera inspection if the documents appear to be relevant and the requesting party persists in seeking production.
- (e) Any party opposing the privilege shall file and submit a written opposition in **4 business days** and shall serve other counsel by hand or fax to out-of-town counsel.

7. Voluntary Discovery Effort

Cooperative discovery is to be fully explored after the exchange of integration statements. See Para.4, supra. A written report of that meeting, the status of discovery, a preliminary schedule of depositions to be taken, and agreement reached on the exchange of documentary evidence, shall be filed and submitted to the Presiding Judge on **May 28, 1993**.

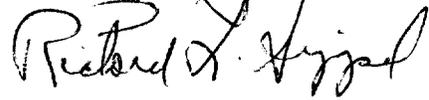
8. Procedural Dates

Procedural dates shall be set at the conference for the following: completion of discovery; exchange of exhibits; exchange of frozen sworn written testimony if the procedure is agreed to by the

parties; and the date for an admission session. The date for the commencement of the hearing in Washington, D.C. has been set for **September 8, 1993**. Date(s) for later testimony of non-party witness on renewal expectancy and the place for hearing such testimony shall be set at the conference.

SO ORDERED.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read "Richard L. Sippel", written in a cursive style.

Richard L. Sippel
Administrative Law Judge