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Letter
FEB 19 1992

WASHINGTON SQUARE, SUITE 1100 • 1050 CONNECTICUT AVENUE, N.W. • WASHINGTON, D.C. 20036 • 202/861-1590
FAX 202/861-0783 • TELEX 2357275
WRITERS DIRECT DIAL NUMBER (202)

861-1590

February 19, 1992

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Re: FCC File No. BPH-911206IF

Dear Ms. Searcy:

This letter is submitted on behalf of Scripps Howard Broadcasting Company ("Scripps Howard") in opposition to the February 11, 1992 letter of Cunningham Communications, Inc. ("Cunningham") (copy enclosed) requesting that the Federal Communications Commission ("FCC" or "Commission") dismiss the above-referenced application of Nationwide Communications Inc. ("Nationwide"). In accord with Section 73.1690(b)(1) of the Commission's rules, Nationwide's application simply reports that the tower on which Nationwide's antenna rests has been reduced in height by forty feet and is now only 1209 feet above mean sea level.

Scripps Howard is interested in this matter because Cunningham's principals have filed a competing application against Scripps Howard's application for renewal of license for Station WMAR-TV in Baltimore. This competing application, filed under the name of Four Jacks Broadcasting Inc. ("Four Jacks"), proposes to utilize the tower whose height is the subject of the Nationwide filing. Cunningham/Four Jacks falsely claims in this competing application that the tower currently is 1249 feet above mean sea level, and the dismissal of Nationwide's application to correct this figure in the FCC's records would perhaps permit Four Jacks to continue to argue its false claim that it does not propose to change the tower's height.

Cunningham's February 11, 1992 letter contains misleading misstatements and crucial omissions with respect to Cunningham's past rule violations and its principals' present improper motive. Scripps Howard herein describes these failings and urges the

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Commission not to permit Cunningham's principals to benefit from their misconduct. Indeed, as shown below, sound agency practice requires that Nationwide's application be granted so that Cunningham's principals will not be permitted to escape appropriate administrative scrutiny of the Four Jacks application's proposal to add forty feet in height to an existing tower.

The first misstatement in Cunningham's letter is the claim that Nationwide, an FCC licensee, had no authority to correct erroneous information about its antenna tower's height. In fact, the FCC expressly requires its licensees to ensure that tower height data be kept accurate. See 47 C.F.R. §§ 73.1690(b) 1 and 17.7. Nationwide's application, which was filed contemporaneously with its notification to the FAA of the same facts, is the means specified by Section 73.1690(b)(1) for maintaining the accuracy of the FCC's antenna height records.

Cunningham's second misstatement is its false and dangerous suggestion that the FCC need not be advised of tower height reductions. No source is identified for the unsubstantiated claim in the February 11th letter that Cunningham was so "advised." In any event, the experienced communications counsel who filed Cunningham's letter is surely aware:

(1) that FCC and FAA rules make no distinction between height increases and decreases with respect to licensees' plans

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or to the National Ocean Service as required by FCC and FAA rules so that the tower's actual height would be accurately reflected in these agencies' databases and in the aeronautical charts based on these databases. This failure to keep the appropriate governmental bodies informed is a significant breach in Cunningham's owners' public interest responsibility: (1) as the sponsor of the height change, see 14 C.F.R. 77.13(a)(1), and (2) as a Commission licensee, see 47 C.F.R. § 73.1690(b)(1) and § 17.57 (a rule whose express purpose is to protect "the interest of safety in air navigation").

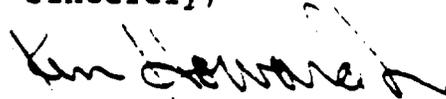
Finally, Cunningham's February 11th letter misleadingly omits to disclose Cunningham's principals' true, improper purpose for seeking to have Nationwide's correction of the record dismissed. As noted above, it is Cunningham's owners themselves that are the undisclosed parties who filed the application (BPCT-910903KE) referenced in Cunningham's letter, the application on which their letter would have the FCC rely to find that no notification is required. Cunningham/Four Jacks thus is actually seeking to benefit from Cunningham's principals wrongful failure to report the change in tower height. By falsely claiming in its application that it would not raise the tower's height, Four Jacks seeks to

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location. This fact is simply incontrovertible, and the tower's existing height must be accurately recorded in the FCC and FAA records so that proper procedures will be followed in processing Four Jacks' application. Scripps Howard is separately arguing in a Petition to Deny that Four Jacks' continuing pattern of misconduct in concealing the true height of this tower, inter alia, warrants the dismissal of its application.

Please contact the undersigned if you require any additional information.

Sincerely,



Kenneth C. Howard, Jr.
Counsel to Scripps Howard
Broadcasting Company

0749:2789
9911091008
Attachment

cc: Chief, Mass Media Bureau, FCC
Chief, Video Services Division, FCC
Chief, Television Branch, FCC
Chief, Field Operations Bureau, FCC
Chief, Public Service Division, FCC
Chief, Antenna Survey Branch, FCC
Mr. Harold Becker, FAA
Mr. Frank Jordan, FAA
Martin R. Leader, Esq.

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WRITER'S DIRECT DIAL NUMBER (202) 861-1580

November 20, 1992

Mr. Clay Pendarvis, Chief
Television Branch
Video Services Division
Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

Re: Application of Four Jacks Broadcasting, Inc.
FCC File No. BPCT-910903KE

Dear Mr. Pendarvis:

Scripps Howard Broadcasting Company ("Scripps Howard") hereby submits the attached materials to ensure that a full record is before the staff of the TV Branch as it considers Scripps Howard's January 28, 1992 petition to deny the above-captioned application. These materials address further the issue raised in Scripps Howard's petition concerning the representation of Four Jacks Broadcasting, Inc. ("Four Jacks") as to the existing height of the structure on which it proposes to construct in the above-referenced application.

Attached are:

- (1) a Form 301 application for minor change filed by Nationwide Communications Inc. ("Nationwide"), licensee of FM Station WPOC, Baltimore, MD (File No. BPH-911204IF) "to report a decrease in height of [the WPOC] antenna supporting structure" to 369 meters above mean sea level;
- (2) a February 11, 1992 letter from the owner of the WPOC tower, Cunningham Communications, Inc. (an entity wholly owned and controlled by Four Jacks' principals), seeking dismissal of Nationwide's application;
- (3) Nationwide's February 18, 1992 letter explaining its intent in filing the application;
- (4) Scripps Howard's February 19, 1992 letter (a) explaining that WPOC's tower is the same tower that is proposed in the above-captioned Four Jacks' application where the tower's height is an issue, and (b) supporting the processing and grant of Nationwide's application;
- (5) Nationwide's February 27, 1992 letter further explaining the various parties' status and interests;

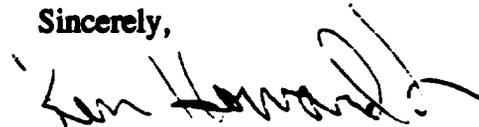
November 20, 1992

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- (6) a September 10, 1992 letter from the Chief, FM Branch to Nationwide noting the "12 meter discrepancy" in tower heights and requiring Nationwide to substantiate its application with "a statement from a licensed surveyor verifying the tower's overall height";
- (7) Nationwide's September 22, 1992 responsive amendment to its application utilizing the licensed surveyor's statement contained in Scripps Howard's petition to deny in the above-captioned proceeding;
- (8) Cunningham's October 6, 1992 letter which *inter alia* (a) states that this surveyor's statement was "strongly contested" in the above-captioned proceeding; (b) contests the accuracy and reliability of the surveyor's statement; and (c) contests the credentials of the surveyor; and
- (9) Nationwide's October 13, 1992 letter responding to Cunningham's charges and repeating that its application reports "the present height of the tower," as required by the Commission's rules.

Scripps Howard will forward to your office any additional information received with respect to this ongoing matter. Please contact the undersigned if you require any additional information.

Sincerely,



Kenneth C. Howard, Jr.
Counsel to Scripps Howard
Broadcasting Co.

Attachments

cc: w/o attachments
Roy J. Stewart, Chief, Mass Media Bureau
Dennis Williams, Chief, FM Branch
Robert D. Greenburg, FM Branch
Chief, Antenna Survey Branch
Chief, Field Operations Bureau
Martin R. Leader, Esq.
Edward W. Hummers, Jr., Esq.

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FAX (202) 661-1282 • TELEX 238727B
WRITER'S DIRECT DIAL NUMBER (202) 661-1624

February 21, 1992

VIA TELECOPIER

Mr. John Bezold
Systems Manager
Network Services
7230 Parkway Drive
Hanover, MD 21076

Dear John:

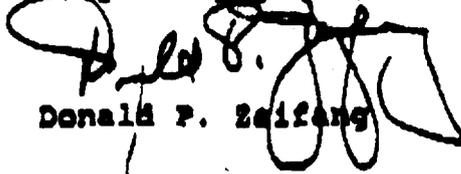
We represent Scripps Howard Broadcasting Company, licensee of television station WMAR-TV, Channel 2 Baltimore, MD. A competing application for Channel 2 has been filed by Four Jacks Broadcasting, Inc., proposing to use the tower at 1200 North Rolling Road, Catonsville, MD.

As you told me, the tower is currently fully loaded, according to studies recently conducted.

We would appreciate a copy of these studies. Please send them to me at the above address at your earliest convenience.

Thank you for your cooperation.

Very truly yours,



Donald P. Zeifang

DPS/gp

cc: Donald Everist

cc: 018:00110:01000100010.107



MOTOROLA

Communications and Electronics Inc.

Address Reply to:
7230 Parkway Drive
Hanover, MD 21076
(301) 796-6200

Baker & Hostetler
Counsellors At Law
Washington Square Suite 1100
1050 Connecticut Avenue NW
Washington, DC 20036

February 28, 1992

Dear Mr. Ziefang:

I am in receipt of your February 21st letter that followed our conversation of the same day. I feel that either the wrong message was conveyed or you misunderstood me in regards to the present antenna lead on the tower at 1200 North Rolling Road in Catonsville, Maryland.

As I thought it was communicated, for the past few years, anytime that Motorola expressed an interest in adding or changing an antenna on the tower, it was necessary for a tower structural analysis to be performed. To date, there have been no circumstances in which a completed analysis prohibited my company from adding or changing what was proposed. Thus, I feel that the line in your letter stating that the tower is currently full is not entirely true. I do not doubt that it is becoming full, but at this time, I have no evidence to base an opinion that the tower is fully loaded.

As a matter of courtesy, anytime that a study is performed on a tower that belongs to another party, a copy of that study is forwarded to the owners. This pertains in the case of the tower at Rolling Road. Any copies of such test should be obtained directly from Channel 45.

I am returning your copy of the pleading filed by Scripps Howard Broadcasting Company as this pertains to business between your client and Channel 45 not Motorola, Inc.

Sincerely,

John Besold
Territory Business Manager
Motorola, Inc.

Baltimore County Government
Department of Permits and Licenses

Baltimore County Government
Department of Permits and Licenses



111 West Chesapeake Avenue
Towson, MD 21204

887-3610

March 6, 1992

Mr. Steven A. Thomas, Esq.
Thomas and Libowitz
5th Floor
300 N. Charles Street
Baltimore, Maryland 21201

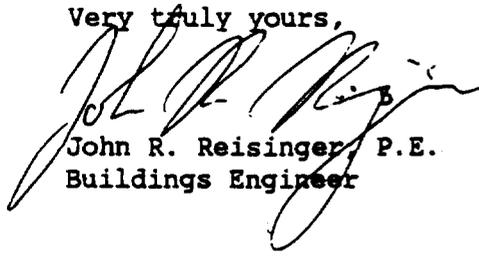
Re: Tower at 1200 North Rolling Road
Four Jacks Broadcasting

Gentlemen:

In response to my letter of February 20, 1992, you submitted engineering information from Neubauer/Sohn Consulting Engineers, Inc., as well as survey results from NDE Consultation Services, Inc.

I have had a chance to review this information, and I am satisfied that it indicates that the tower in its present condition and configuration is in compliance with the Building Code standards. Therefore, there is no need for any further involvement of my office.

Very truly yours,


John R. Reisinger, P.E.
Buildings Engineer

JRR/nmg

cc: Mr. Stephen J. Nolan, Esq.
correspondence

CERTIFICATE OF SERVICE

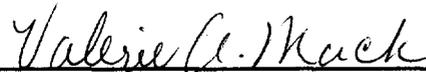
I, Valerie A. Mack, a secretary in the law firm of Fisher, Wayland, Cooper and Leader, do hereby certify that true copies of the foregoing "PETITION TO ENLARGE ISSUES AGAINST SCRIPPS HOWARD BROADCASTING COMPANY" were sent this 13th day of May, 1993, by first class United States mail, postage prepaid, to the following:

* The Honorable Richard L. Sippel
Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W., Room 214
Washington, D.C. 20554

* Norman Goldstein, Esq.
Robert Zauner, Esq.
Hearing Branch
Enforcement Division
Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W., Room 7212
Washington, D.C. 20554

Kenneth C. Howard, Jr., Esq.
David N. Roberts, Esq.
Baker & Hostetler
1050 Connecticut Avenue, N.W.
Suite 1100
Washington, D.C. 20036
Counsel for Scripps Howard Broadcasting Co.

* By Hand



Valerie A. Mack