

MAY 26 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

To: Administrative Law Judge
Richard L. Sippel

MASS MEDIA BUREAU'S OPPOSITION TO
MOTION TO ENLARGE ISSUES
RELATED TO TOWER SITE

1. On May 13, 1993, Scripps Howard Broadcasting Company (Scripps Howard), filed a motion to enlarge issues against Four Jacks Broadcasting, Inc. (Four Jacks). Scripps Howard seeks the specification of seven issues against Four Jacks. Each of the requested issues relates to Four Jacks' specified tower site. The Mass Media Bureau opposes specification of any of the requested issues.

1. Site Suitability Issue

2. Four Jacks owns its proposed antenna site. Despite this fact, Scripps Howard contends that the site may not be available to Four Jacks because Four Jacks has not obtained assurance from

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a tenant on the tower (WPOC(FM)) that it would consent to a relocation of its antenna. Scripps Howard contends that the relocation is essential to Four Jack's proposed use of the site. In support of the requested issue, Scripps Howard provides a "Declaration" from Don E. Watkins, Vice President-Engineering of the licensee of WPOC(FM) in which he states that WPOC(FM)'s lease does not contain a provision which would require WPOC(FM) to move its antenna. Scripps Howard also contends that in order for Four Jacks to locate its antenna on its proposed tower, over 80 other licensees would have to move their antennae.

3. Section 1.229(d) of the Commission's Rules requires that petitions to enlarge issues be based on "specific allegations of fact sufficient to support the action requested." Here, Scripps Howard has failed to meet this requirement. The fact that WPOC(FM)'s lease may not contain a provision requiring WPOC(FM) to move its antenna, is not dispositive of whether Four Jacks may compel WPOC(FM) to relocate. For example, Four Jacks may have the right to terminate its lease with WPOC(FM) or may take action to evict WPOC(FM) if it is unwilling to move. Moreover, because Four Jacks owns the tower site, it may just elect to construct a new tower on its property. Under these circumstances, the fact that WPOC(FM)'s lease may not require it to relocate its antenna is irrelevant. Finally, the claim that over 80 other licensees may have to move their antennae, does not mean that they could not or would not do so to accommodate Four Jack's proposal.

2. Zoning Issue

4. Four Jacks proposes to add 40 feet to its 666 foot existing tower structure to accommodate its proposed Channel 2 antenna. Four Jacks' principals own Four Jacks' proposed antenna site through a separate corporation, Cunningham Communications, Inc. (Cunningham). Scripps Howard contends that an issue is required to determine whether Cunningham will be able to obtain zoning board approval to increase its tower's height by 40 feet. Scripps Howard notes that the land on which the tower is located is currently zoned residential. When Cunningham requested that the site be zoned commercial, its request was turned down. This initial determination by the zoning board, Scripps Howard contends, makes it highly unlikely that Four Jacks will be able to obtain the necessary authority to increase its antenna height. Scripps Howard recognizes that the Commission ordinarily assumes that an applicant will be able to obtain zoning authority for its tower, citing Teton Broadcasting Limited Partnership, 1 FCC Rcd 518, 519 (1986). Scripps Howard, however, contends that this assumption is rebutted where, as here, there has been an adverse initial decision by the zoning board, citing J. Sherwood, Inc., 63 FCC 2d 151, 156 (Rev. Bd. 1976).

5. Scripps Howard's request for a zoning issue is without merit. As Scripps Howard notes, the Commission assumes that, absent an adverse decision by the zoning board, applicants will

obtain zoning approval for their proposals. Here the fact that the board denied a request to zone the tower site commercial is not an adverse determination by the board on a request by Four Jacks to raise its tower height by 40 feet. Moreover, as Scripps Howard also notes, Four Jacks already has received zoning board authority to increase its tower height to 850 feet. There is no evidence that this authority has expired. Exhibit F to Scripps Howard's petition is a letter from a Baltimore County "Zoning Coordinator." In his letter he states only that Four Jacks' authority may have expired if certain conditions have not been met. No where is it established that those conditions have not been met. Moreover, he does not say that Four Jacks could not get authority to increase its tower height by another 40 feet if its current authority has expired. What he does say is that, "should the Building Engineer or State or Federal agency confirm the safety hazards of the existing 666 foot tower, this office would not approve any additional height without the benefit of another zoning hearing even though the original plan allowed 850 feet." Clearly, even assuming that Four Jacks authorization for 850 feet has expired, there has been no showing by Scripps Howard that Four Jacks is unlikely to receive authorization to increase its antenna by 40 feet to accommodate the Channel 2 antenna.

3. Four Jack's Antenna is not Adequate

6. Scripps Howard contends that the Cunningham tower is not structurally capable of supporting Four Jacks' Channel 2

antenna. In support of this contention, Scripps Howard provides a report by its consulting engineer who observed the tower "(albeit from a distance)." Based on his observations, 30 years engineering experience, certain assumptions and a computer program designed to analyze towers, this expert concludes that the tower "must not be used for the installation of the Channel 2

9. There is no basis for addition of the requested issue. While Four Jacks does indicate in its application that no increase in the height of an existing structure would take place if its application is granted,¹ this appears to be because up until 1987, Four Jack's tower had another antenna on it which increased its tower's height to 381 meters. This is the height.

is noted in the HDO. Thus it does not appear that Four Jacks made any misrepresentation in its application which requires amendment of its application.

7. Financial Qualifications Issue

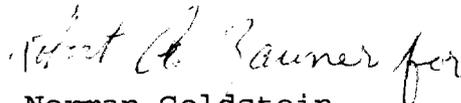
11. Scripps Howard contends that a financial certification issue should be specified against Four Jacks because Four Jacks failed to include in its cost estimates the cost of finding another tower site or constructing a new tower when it certified to its financial qualifications. In light of the fact that Scripps Howard has failed to establish that either action would be necessary, the requested issue should be denied.

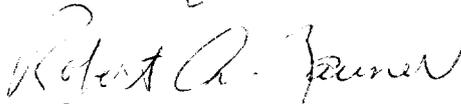
Conclusion

12. In conclusion, the Bureau opposes specification of any of the issues requested by Scripps Howard.

Respectfully submitted,
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May 26, 1993

CERTIFICATE OF SERVICE

Michelle C. Mebane, a secretary in the Hearing Branch, Mass Media Bureau, certifies that she has on this 26th day of May 1993, sent by regular United States mail, U.S. Government frank, copies of the foregoing **"Mass Media Bureau's Opposition to Motion to Enlarge Issues Related to Tower Site"** to:

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