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

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In re Applications of	)	MM DOCKET NO. 93-99
	)	
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	)	

ORDER

Issued: June 23, 1993 ; Released: June 24, 1993

Background

This is a discovery ruling on a Motion For Production Of Documents On The Standard Comparative Issue filed by Scripps Howard Broadcasting Company ("Scripps Howard") on June 11, 1993. A Partial Opposition was filed by Four Jacks Broadcasting, Inc. ("Four Jacks") on June 16, 1993.

Unless the context of a request indicates otherwise, the relevant time period for responsive documents is from the date that Four Jacks decided to file its application to the present. There must be broad compliance with relevant document requests. Parties who fail to produce requested relevant documents at discovery will be precluded from offering such documents as evidence at the hearing and adverse inferences may be drawn against the party.

Instructions and procedures for claims of privilege are contained in the Prehearing Conference Order, FCC 93M-146, released April 6, 1993, at Para. 6.

Copies of documents ordered to be produced must be delivered to counsel for Scripps Howard. But inspection of original documents will be at the offices of counsel for Four Jacks. The parties will pay the costs of copying their own documents, unless there is an extraordinary expense (e.g. tapes).

Rulings

The rulings on the Specifications are as follows:

Specification 1. No objection. All documents must be produced.

Specification 2. The request is too broad and compliance would be burdensome. Four Jacks will be required to produce only documents that were written or seen by any or all of the Four Jacks principals that relate to Four Jacks' decision to file the application. Of that universe of documents, Four Jacks must only produce those that are dated September 30, 1991,[1] or earlier, and only those documents that are not being produced pursuant to the more narrowly drafted Specifications 8 and/or 19.

Specification 3. No objection. All documents must be produced.

Specification 4. No objection. All documents must be produced.

Specification 5. There need be no documents produced under this specification. There is no financial issue against Four Jacks and therefore the request for documents pertaining to pledges, mortgages or security interests are not relevant to the issues in this case. It cannot be determined what relevant documents would be responsive to a request for "future interests."

Specification 6. There need be no documents produced under this specification. The documents sought by Scripps Howard would be relevant to a financial issue and the "reasonable assurance" of Four Jacks' financing is not in issue.[2]

Specification 7. There need be no documents produced under this specification because Four Jacks owns the site on which the antenna is proposed to be placed. But Four Jacks must disclose any documents which might suggest the unavailability of that site such as any potential objection by an adjoining landowner or any potential zoning or other land use issue. Scripps Howard may ask reasonable questions at depositions on the existence of any negative documents with respect to the site.

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[1] Although the application was filed on September 1, 1991, there may be some overlap of relevant decisional documents. Therefore, the relevant date for documents that are responsive to this specification is extended for a reasonable period of time. If a privilege is claimed, the document must be identified in accordance with the Prehearing Conference Order, supra.

[2] The phrase "financing documents" which is defined and used by Scripps Howard is a term used in a Commission discovery rule which is limited only to cases that involve new facilities. 47 C.F.R. §§1. 325(c)(1)(v). It will confuse rather than expedite document production by cross referencing discovery rules which by express Commission exclusion do not apply to renewal cases. See Proposals To Reform the Commission's Comparative Hearing Process, 6 F.C.C. Rcd 157 (Comm'n 1990)(new procedures for selecting qualified applicants for "new broadcast facilities"). Therefore, while references to the standard document production are considered in these discovery rulings, standard document discovery is not the measure of relevance to be applied in this case.

Specification 8. No objection. See Prehearing Conference Order, supra. with respect to any assertion of a privilege.

Specification 9. No objection. All documents must be produced.

Specification 10. Documents that are relevant to possible conflicting integration pledges are required to be produced with a modified instruction to produce such documents relating to integration pledges (prior, present or contemplated) made or contemplated to be made only by the principals of Four Jacks who propose to integrate into the management of the station at issue.

Specification 11. Four Jacks may limit the production of documents that are relevant to qualitative integration credit to only the documents which are representative of any claim for enhancements for local residence, civic participation, broadcast experience auxiliary power, AM daytimer or minority preference. But production must include the documents that will be probative of those points and also the documents which Four Jacks now intends to offer in evidence to prove the respective enhancements.

Specification 12. The commitment to divest must be unconditional. Therefore, Four Jacks must produce documents which relate to negotiations, commitments, contracts, pledges or options for the divestiture of a media interest because they are deemed to be documents which relate to "commitments to divest other media interests." However, such documents need only be produced which are relevant to a commitment to divest in this case. Four Jacks need not produce documents relating to contemplated divestments before there was any decision on the part of Four Jacks to file the application for the station at issue here.

Specification 13. No objection. Four Jacks notes that the principals of the applicant own the site. A representative document must be produced by Four Jacks that establishes ownership and the effective date of such ownership. There is no relevance for information about the retention of counsel and engineers. Also, it is noted that Four Jacks has voluntarily furnished the information that counsel and the engineer were on retention when the application was filed.

Specification 14. Scripps Howard is entitled to receive relevant documentation not prepared for the purpose of litigation which explain the business reason(s) for the Four Jacks application. The documents may be representative but they must provide explanations of the business reasons for filing the Four Jacks application. Such evidence is relevant to establishing the bona fides of the application.

Specification 15. No objection. All documents must be produced.

Specification 16. These documents all pertain to the financial qualification of Four Jacks. There is no financial issue in the case. Therefore, the specification will be denied on grounds of an absence of relevancy.

Specification 17. No objection. All documents must be produced.

Specification 18. No objection. All documents must be produced.

Specification 19. No objection. All documents must be produced.

Specification 20. No objection. All documents must be produced.

Specification 21. No objection. All documents must be produced.

Specification 22. No objection (except insofar as the request is duplicative of the request in Specification 5).

Specification 23. This request is substantially duplicative of the request of Specification 16 which is determined to be irrelevant. It also is an attempt to obtain speculative evidence of an undisclosed principal. Four Jacks is not required to produce documents responsive to this specification.

Specification 24. The request for bank authorization documentation is relevant to the bona fides of the Four Jacks proposal and the scope of the request is not burdensome. But Four Jacks need not produce documents showing the identity of persons making deposits because such evidence is not relevant.

Specification 25. This request is unfocused, repetitive in part, and too burdensome due to its indefiniteness. Four Jacks need not produce any documents under this specification.

Specification 26. No objection. All documents must be produced.

Specification 27. No objection. All documents must be produced.

Specification 28. There is no programming issue relating to Four Jacks and therefore there is no requirement that Four Jacks produce evidence on programming. Four Jacks is willing to and must produce documents that show the identity of persons who will ascertain community needs and who will determine the programming to be broadcast.

Specification 29. The request for documents related to commitments to terminate employment is repetitious of the documents that will be produced under Specification 9 above.

Specification 30. There is no relevance shown for documents which reflect the advancement of funds to or on behalf of the applicant Four Jacks. There is no requirement to respond to this Specification.

Specification 31. Four Jacks represent that they own their antenna site and proof of that fact has been ordered to be produced. Therefore, there is no requirement to produce documents relating to locating and arranging for the Four Jacks site.

Specification 32. This request is duplicative of the request for documents under Specification 3 above.

Order

IT IS ORDERED that copies of the documents will be produced by Four Jacks to the Washington, D.C. offices of counsel for Scripps Howard in accordance with the above rulings by 4:00 p.m. on June 28, 1993.

FEDERAL COMMUNICATIONS COMMISSION

Richard L. Sippel

Richard L. Sippel
Administrative Law Judge