

ORIGINAL *MA*

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

FCC 93M-427  
31874

In re Applications of )  
)  
SCRIPPS HOWARD BROADCASTING COMPANY )  
)  
For Renewal of License of Station WMAR-TV )  
Baltimore, Maryland )  
)  
and )  
)  
FOUR JACKS BROADCASTING, INC. )  
)  
For a Construction Permit for a New )  
Television Facility on Channel 2 )  
at Baltimore, Maryland )

MM DOCKET NO. 93-94 ✓

File No. BRCT-910603KX

File No. BPC-910902KE

DISPATCHED BY  
JUN 30 3 59 PM '93  
FCC MAIL SECTION

MEMORANDUM OPINION AND ORDER

Issued: June 28, 1993 ; Released: June 29, 1993

1. This is a ruling on a Motion To Enlarge Issues To Add An Issue Considering Use Of Professional Management that was filed on May 13, 1993, by Scripps Howard Broadcasting Company ("Scripps Howard"). An Opposition was filed by Four Jacks Broadcasting, Inc. ("Four Jacks") on May 26, 1993. On June 8, 1993, Scripps Howard filed its Reply. On June 24, 1993, Scripps Howard filed a Statement For The Record which contains information that is relevant to the Motion.

2. One primary objective for comparative determination in the comparative hearing process is "the best practicable service to the public." Policy Statement On Comparative Broadcast Hearings, 1 F.C.C. 2d 393, 394 (1965). In furtherance of that objective, Scripps Howard would have the Commission consider whether Scripps Howard would merit a comparative preference for the utilization of "professional management." Scripps Howard specifically pleads:

Upon the addition of the issue, Scripps Howard will demonstrate its practice of selecting qualified professionals for station management positions and will seek enhancement of the weight given to this issue in this proceeding by demonstrating the exceptional record of Station WMAR-TV's professional manager, Scripps Howard Vice President Arnold J. Kleiner.

Scripps Howard also asks that the weight accorded its evidence on the added issue be the same as the weight that is accorded an applicant proposing 100% integration.

3. Scripps Howard relies on recent court decisions in support of its assertion that the Commission cannot continue to apply its integration policy

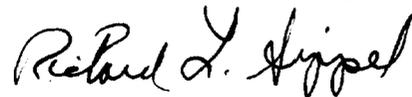
in the face of challenges to the policy's validity. The cases relied on for that position are Bechtel v. F.C.C., 957 F.2d 873 ( D.C. Cir. 1992 ) and Flagstaff Broadcasting Foundation v. F.C.C., 979 F.2d 1566 (D.C. Cir. 1992 ). The Commission has commenced a rulemaking proceeding to examine its comparative criteria in response to the Bechtel and Flagstaff remands. See Reexamination of the Policy Statement on Comparative Broadcast Hearings, 7 F.C.C. Rcd 2664 (1992). Any changes will probably be prospective. Anchor Broadcasting Limited Partnership, 7 F.C.C. Rcd 4566 (Comm'n 1992). Therefore, the Presiding Judge would have no jurisdiction to apply a new comparative criteria in this case unless specifically authorized or directed to do so by the Commission.

4. In their Opposition, Four Jacks argues that the Presiding Judge and the Review Board are without authority to anticipate the outcome of the Commission's rulemaking. Four Jacks is correct on the law. See Para. 3, supra. Moreover, we now learn from Scripps Howard's Statement For The Record that Arnold J. Kleiner has resigned as a Scripps Howard vice president effective July 16, 1993. Scripps Howard was relying on Mr. Kleiner's record in Baltimore at Station WMAR-TV to support the professional management issue which it seeks. This loss of a substantial underpinning to an assertion of a special expertise that would depend upon Mr. Kleiner's future participation with WMAR-TV moots the substantive issue even if it were added.

#### Ruling

Accordingly, for the foregoing reasons, IT IS ORDERED that the Motion To Enlarge Issues To Add An Issue Considering Use Of Professional Management that was filed on My 13, 1993, by Scripps Howard Broadcasting, Inc. IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Richard L. Sippel  
Administrative Law Judge