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Before the FCC MAIL SECTION
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554
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FCC 93M-456
31958

In re Applications of)	MM DOCKET NO. 93-94 ✓
)	DISPATCHED BY
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: July 9, 1993; Released: July 12, 1993

This is a ruling on a Motion For Leave To Amend And Amendment To Scripps Howard's List Of Party Witnesses On Renewal Expectancy ("Witness Motion") that was filed by Scripps Howard Broadcasting Company ("Scripps Howard") on June 28, 1993. An Opposition to the Witness Motion was filed on July 2, 1993, by Four Jacks Broadcasting, Inc. ("Four Jacks").

Under procedures established by the Presiding Judge, Scripps Howard was required to provide Four Jacks with a list of its party witnesses who are expected to testify on renewal expectancy. See Order FCC 93M-337, released June 7, 1993. The exchange was to take place on June 18, 1993. On that date, Scripps Howard filed its list of Party Witnesses On Renewal Expectancy. The persons identified were Terry H. Schroeder, Vice-President; and Arnold J. Kleiner, Vice-President and General Manager. Thereafter, on June 24, 1993, Scripps Howard filed a Statement For The Record wherein it was disclosed that Mr. Kleiner was leaving his employment with Scripps Howard as of July 16, 1993, to take another position on the west coast. The Witness Motion, filed shortly thereafter on June 28, would supplement Mr. Kleiner's testimony with the testimony of Emily Barr, Assistant General Manager.

A comparison of the descriptions of their respective testimony reflects that Mr. Kleiner and Ms. Barr will testify to the same subject matters. In view of the importance of the testimony and the change in the employment relationship of Mr. Kleiner, it is reasonable to permit Scripps Howard to adduce similar testimony from Ms. Barr. Four Jacks has been efficient in noticing Ms. Barr for a contingent deposition and therefore the trial preparation and the procedural dates will not be affected by permitting Ms. Barr's testimony. It is recognized that Four Jacks does not concede any justification for granting this relief. But this is discovery and there has

been a material intervening event with Mr. Kleiner no longer serving as the General Manager. Four Jacks will have the right to object to the testimony of either of these witnesses at the Admissions Session on the grounds of undue repetition. But Scripps Howard is entitled to have its most energetic manager-witness testify on behalf of renewal and by October 1993, Mr. Kleiner may not be that best witness.

Scripps Howard also states in its initial Witness List of June 18 that:

In the event that Scripps Howard determines that other witnesses will be needed to testify concerning renewal expectancy or to sponsor documents, it will promptly notify the Presiding Judge and the parties.

Four Jacks takes exception to any open-ended right to change witnesses. The Presiding Judge will not permit new witnesses to be added beyond those exchanged on June 18 without a showing of cause. The more significant the testimony the greater will be the burden of persuasion on the moving party. But the Presiding Judge sees nothing untoward in Scripps Howard's specific reservation of a right that all parties have to seek appropriate pretrial relief.

Also, there is a distinction recognized between Four Jacks and its claim for integration and Scripps Howard which does not claim an integration credit but relies on the renewal expectancy. Four Jacks cannot change witnesses without a risk of losing integration credit. Scripps Howard is not so restricted. But Scripps Howard was required to make a final decision by June 18, 1993, on who would testify for the renewal expectancy and Scripps Howard is expected to stay with its choices.

Ruling

Accordingly, for the foregoing reasons, the Witness Motion filed by Scripps Howard Broadcasting Company on June 28, 1993, IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION



Richard L. Sippel
Administrative Law Judge