ORIGINAL

BAKER & HOSTETLER

COUNSELLORS AT LAW

DOCKET FILE COPY ORIGINAL

WASHINGTON SQUARE, SUITE 1100 • 1050 CONNECTICUT AVENUE, N.W. • WASHINGTON, D.C. 20036-5304 • (202) 861-1500
FAX (202) 861-1783 • TELEX 2357276
WRITER'S DIRECT DIAL NUMBER (202) 861-1580

RECEIVED
OCT 26 1993
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

October 26, 1993

BY HAND

William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, NW
Room 222
Washington, DC 20554

Re: Scripps Howard Broadcasting Company
MM Docket 93-94

Dear Mr. Caton:

Transmitted herewith, on behalf of Scripps Howard Broadcasting Company, licensee of Station WMAR-TV, Baltimore, Maryland, and an applicant for renewal of license in the above referenced proceeding, is an original and six (6) copies of Scripps Howard's Opposition to Request for Permission to File an Appeal to the Order Denying the Request for Issuance of a Subpoena Duces Tecum.

If you have any questions regarding the above matter, please contact the undersigned.

Very truly yours,

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

cc: The Honorable Richard L. Sippel (by hand)(with enclosures)

No. of Copies rec'd 0+6
List A B C D E

ORIGINAL

DOCKET FILE COPY ORIGINAL

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, DC 20554

In re Application of	)	MM Docket No. 93-94
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	)	

RECEIVED

OCT 26 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Honorable Richard L. Sippel
Presiding Administrative Law Judge

OPPOSITION TO REQUEST FOR PERMISSION TO FILE AN APPEAL OF THE ORDER DENYING THE REQUEST FOR ISSUANCE OF A SUBPOENA DUCES TECUM

1. Less than three weeks before the hearing in this matter is scheduled to commence, Four Jacks Broadcasting, Inc. ("Four Jacks") requested that the Presiding Judge issue a subpoena duces tecum requiring National Broadcasting Company ("NBC") to produce documents that Four Jacks became aware of no later than July 16, 1993. The Presiding Judge appropriately denied this last-minute request because, among other things, Four Jacks could have sought the subpoena three months ago, and issuing it now could cause disruption and delay. Similarly, permitting an appeal to the Commission less than two weeks before the hearing is scheduled to commence would be even more likely to cause disruption and delay.

Four Jacks' Request for Permission to File an Appeal of the Order Denying the Request for Issuance of Subpoena Duces Tecum ("Request for Permission to File and Appeal"), therefore, should be denied.

2. According to Four Jacks, the basis for its subpoena request is the testimony of the Acting General Manager of WMAR-TV, Emily Barr, in her July 16, 1993 deposition. At that time, Ms. Barr testified that she contacted NBC for its records relating to certain programming that was broadcast on WMAR-TV during the license term. Ms. Barr also testified on July 16 that she did not retain copies of her written request to NBC. See Deposition of Emily Barr, excerpts of which are attached to Four Jacks' Request for Issuance of Subpoena Duces Tecum, at 108-09.[1]

3. Four Jacks, therefore, was aware of the possible existence of the documents sought by the subpoena and that those documents were not in the possession of WMAR-TV over three months ago (and prior to the close of discovery in this matter on July 30, 1993). Yet, Four Jacks offered no explanation, either in its Request for Issuance of Subpoena Duces Tecum or in its Request for Permission to File an Appeal, as to why it waited until the eve of the hearing before requesting this subpoena.

4. Furthermore, an appeal at this time would likely delay resolution of this matter and, therefore, prejudice WMAR-TV. First, as the Presiding Judge pointed out in his Order denying Four

---

[1] Four Jacks statement in ¶ 2 of its Request for Permission to File an Appeal that it has been told that "many documents relevant to this proceeding that should have been in Scripps' files . . . were either missing or destroyed" is entirely uncalled for and has no relevance to the pending issue.

Jacks' subpoena request, if a subpoena is issued to NBC, there may be a motion to quash that subpoena. This alone could disrupt the proceedings and cause significant delay. Second, as the Presiding Judge also noted, Four Jacks' subpoena seeks documents for a broad time period that may or may not exist. Even if the subpoena were issued, a search for the documents is likely to take some time and cause delay. Finally, the process of appealing to the Commission is itself time consuming, and is highly unlikely to conclude before the hearing in this matter is scheduled to commence. In fact, there is no way to be certain about the length of the delay that would be caused by granting Four Jacks' Request for an Appeal because the Rules do not prescribe a time limit within which the Commission must make a decision. In light of these factors, it is difficult to see how an appeal to the Commission would not, despite Four Jacks' claim, delay the proceedings.

5. Consequently, if Four Jacks' Request for Permission to File an Appeal were granted, the distraction and likely delay would significantly prejudice WMAR-TV in this proceeding.

WHEREFORE, Scripps Howard Broadcasting Company respectfully requests that the Request for Permission to File an Appeal of the Order Denying the Request for Issuance of Subpoena Duces Tecum filed by Four Jacks Broadcasting, Inc. be denied.

Respectfully submitted,

Scripps Howard
Broadcasting Company

By: _____
Kenneth C. Howard, Jr.
Leonard C. Greenebaum
David N. Roberts
Stephanie S. Abrutyn

Its Attorneys

BAKER & HOSTETLER
1050 Connecticut Avenue, N.W.
Suite 1100
Washington, D.C. 20036
(202) 861-1500

Dated: October 26, 1993

Certificate of Service

I, Ruth Omonijo, a secretary in the law of offices of Baker & Hostetler, hereby certify that I have caused copies of the foregoing "Opposition to Request for Permission to File an Appeal to the Order Denying the Request for Issuance of a Subpoena Duces Tecum" to be hand-delivered this 26th day of October, 1993 to the following:

The Honorable
Richard L. Sippel
Presiding Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W.
Room 218
Washington, DC 20554

Martin R. Leader, Esq.
Fisher Wayland Cooper & Leader
1255 23rd Street, N.W.
Suite 800
Washington, DC 20037
Counsel to Four Jacks
Broadcasting, Inc.

Norman Goldstein
Hearing Branch-Mass Media Bureau
Federal Communications Commission
2025 M Street, NW
Room 7212
Washington, DC 20554

Robert Zauner
Hearing Branch-Mass Media Bureau
Federal Communications Commission
2025 M Street, NW
Room 7212
Washington, DC 20554

Ruth Omonijo

Ruth Omonijo