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Norma G. Blacklaw*

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TRANSCRIPT OF PROCEEDINGS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554 **FEDERAL COMMUNICATIONS COMMISSION**
OFFICE OF THE SECRETARY

SEP 29 1993

In Re Applications of:

SCRIPPS HOWARD BROADCASTING COMPANY
and
FOUR JACKS BROADCASTING, INC.

MM DOCKET NO. 93-94

Baltimore, Maryland

DATE OF CONFERENCE: September 17, 1993

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FREE STATE REPORTING, INC.
Court Reporting Depositions
D.C. Area (301) 261-1902
Balt. & Annap. (410) 974-0947

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Before the
FEDERAL COMMUNICATIONS COMMISSION
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In the matter of:
SCRIPPS HOWARD BROADCASTING COMPANY
and
FOUR JACKS BROADCASTING, INC.
Baltimore, Maryland

MM DOCKET NO. 93-94

The above-entitled matter come on for pre-hearing conference pursuant to Notice before Judge Richard L. Sippel, Administrative Law Judge, at 2000 L Street, N.W., Washington, D.C., in Courtroom No. 4, on Friday, September 17, 1993, at 9:40 a.m.

APPEARANCES:

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On behalf of the Mass Media Bureau:

ROBERT ZAUNER, Esquire
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I N D E X

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| 25 | Conference Began: 9:40 a.m. | Conference Ended: 10:30 a.m. |

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P R O C E E D I N G S

1
2 JUDGE SIPPEL: We're on the record. It's 20 minutes
3 of 10:00 by the clock in the back of the room. I came in at
4 9:30. All counsel was present and the reporter wasn't
5 prepared to go forward. I want, I want that noted for the
6 record. We are here this morning to try and clean up some --
7 in anticipation of the admissions session on October 5, and
8 also to, to rule on a pending motion striking a witness'
9 statement. I assume all the counsel have given their names to
10 the reporter, so I'm prepared to go forward right now. Mr.
11 Zauner, Mr. Goldstein I know is not going to be able to be
12 here today. He's already informed me of that. I have
13 reviewed the copies of the exchanged exhibits, those which
14 were submitted on September 13th to be ruled on on October
15 5th, and I'm going to reserve my comments on that until after
16 I get all of these because I think I'm going to have more
17 specific documents.

18 I want to start with the -- a Motion to Strike.
19 Four Jacks filed a Motion to Strike the supplemental public
20 witness statement of Scripps Howard and, at my direction,
21 Scripps Howard's filed an opposition yesterday so that I would
22 -- and I understand that you've -- Ms. Schmeltzer, you have
23 received a copy of that?

24 MS. SCHMELTZER: We just received it yesterday, yes.

25 JUDGE SIPPEL: So you're prepared to go forward on

1 that?

2 MS. SCHMELTZER: As far as following with what?

3 JUDGE SIPPEL: No. As far, as far as presenting
4 your position today.

5 MS. SCHMELTZER: Right.

6 JUDGE SIPPEL: It's in, it's in your motion --

7 MS. SCHMELTZER: I would say, Your Honor, that in
8 the opposition Scripps Howard referred to the fact that they
9 intend to file a further clarification to the -- what we
10 consider to be the frozen written testimony of this witness.

11 JUDGE SIPPEL: All right. I hear you and I saw that
12 myself, too. I'm going to ask -- maybe I can ask Mr. Howard.
13 I've got some -- I have some specific questions on this, but I
14 want the record to reflect that this is what I am addressing
15 now is the Motion to Strike the additional supplemental
16 statement of Dr. Hooks. The letter of Dr. Hooks is dated the
17 3rd of September and it wasn't submitted to me and I take it
18 it was not even exchanged until the 13th of September. Why
19 was there a ten day lag even there?

20 MR. HOWARD: It was submitted the date it was
21 received by us, Your Honor.

22 JUDGE SIPPEL: But he, he signed it on the 3rd and
23 you, you received it on the 13th?

24 MR. HOWARD: I don't know the date, sir.

25 JUDGE SIPPEL: Well, that's what it says. Well, let

1 me look at the -- it's --

2 MR. HOWARD: He signed it -- all I know is what's in
3 the document.

4 JUDGE SIPPEL: It's underneath and it has -- this
5 is, this is a one paragraph letter to Ms. Barr, to Emily Barr,
6 and it's signed by Benjamin L. Hooks and it's dated underneath
7 September 3, 1993.

8 MR. HOWARD: Yes, and I have not discussed the
9 matter with Dr. Hooks. I have no information --

10 JUDGE SIPPEL: Does anybody else on your side have
11 any information on it?

12 MR. HOWARD: No. I would --

13 JUDGE SIPPEL: Because I -- it's, it's late enough
14 as it is. It was supposed to be exchanged on the 20th of
15 August and apparently he signed it on the 3rd of September and
16 then it doesn't come in until the 13th of September and it
17 looks like it's been -- there's just been a considerable
18 amount of slippage here. You say that it's offered for
19 clarification under your opposition you --

20 MR. HOWARD: I'm sorry, Your Honor, but I have a
21 copy of our submissions to the -- Martin Leader dated
22 September 7th of this supplemental testimony.

23 JUDGE SIPPEL: Is that correct? I didn't -- somehow
24 or other I was reading in the papers that it had come in on
25 the 13th.

1 MR. SCHMELTZER: No. I think Scripps Howard said
2 they were filing -- they were opposing our Motion to Strike
3 which was filed on the 13th.

4 MR. HOWARD: It came in on the 7th.

5 MS. SCHMELTZER: Our Motion to Strike was filed on
6 the 13th, Your Honor.

7 JUDGE SIPPEL: All right. So you did have it
8 shortly after he had executed it? It was proffered on
9 September 7th, right?

10 MR. HOWARD: -- motion, Your Honor.

11 JUDGE SIPPEL: On your Motion to Strike, now I'm
12 going back to Four Jacks -- your Motion to Strike was filed
13 September 13th. You do make reference in the first paragraph
14 to the, to the Benjamin Hooks letter and that was proffered on
15 September 7th.

16 MS. SCHMELTZER: That's right.

17 JUDGE SIPPEL: All right. I stand corrected.

18 MR. HOWARD: I'm sorry, Your Honor. I now see the
19 source of the confusion that was in our statement. We did say
20 it was exchanged formally on the 13th. We included it with
21 our other testimony.

22 JUDGE SIPPEL: That's what I was picking up on.

23 MR. HOWARD: I'm sorry for the confusion.

24 JUDGE SIPPEL: But now I have a recollection that a
25 courtesy copy came to me at the same time that it was

1 | exchanged with Four Jacks. All right. Now, you said also in
2 | your argument in your opposition to the motion that it's
3 | common knowledge that Dr. Hooks is Executive Director of NAACP
4 | and that -- it adds his testimony -- his statement, his
5 | supplemental statement would add no new element to his
6 | testimony. It's offered only for clarification. That's what
7 | I want to focus on. It's your representation that it's
8 | offered only for clarification and that it adds no new element
9 | to his testimony and I'm saying if that is true, then why is
10 | it relevant? Why is it even worthy of consideration?

11 | MR. HOWARD: To insure that it's clear to everyone
12 | including the people who are not from Baltimore who might not
13 | have that information that he was a resident. So in viewing
14 | what was submitted and in discussions with Mass Media counsel
15 | the question came up as to whether he was a resident of
16 | Baltimore at the relevant time, and I just wanted an
17 | understanding that if there was any confusion about that at
18 | all, I decided to make the record as clear as possible.

19 | MS. SCHMELTZER: It sounds to me, Your Honor, as
20 | though this statement would not have been filed but for the
21 | fact that Mass Media Bureau counsel raised a question and, no,
22 | I don't think that that's a, a reason for embellishing direct
23 | written frozen testimony.

24 | MR. ZAUNER: Your Honor, I'll tell you, we did
25 | request that, that Scripps Howard clarify this matter and we

1 are probably the reason why the supplement statement was
2 filed. We don't see this as altering the basic testimony
3 whatsoever. All it does is provide a little bit of background
4 on Benjamin Hooks. I mean, if Benjamin Hooks were called to
5 testify in this proceeding the first question you'd ask him is
6 about his address and this provides no real substantive change
7 in the basis of his testimony which goes to the -- his view of
8 the station. I, I think that what we have here really is a
9 tempest in a teapot. This is a -- really a minor modification
10 that hasn't prejudiced anyone and I can see no reason for even
11 discussing this any further. It seems to me that this is of
12 such de minimus matter.

13 JUDGE SIPPEL: Well, whether it's -- whether that
14 characterization is accurate or not, the point is that, that
15 there are decisions being made about evidence without me being
16 in the loop. And there's a way of doing it.

17 MR. ZAUNER: There --

18 JUDGE SIPPEL: Wait, Just let me finish. There's a
19 way of doing it. If you want to just stipulate -- if
20 everybody agrees that he should supplement for clarification,
21 that's one thing I have no problem with. But there should
22 have been an effort to get Mr. Leader and Ms. Schmeltzer to
23 get in on this when there's conversations like this going on.
24 I mean, that's just plain wrong and you all know that.

25 MR. ZAUNER: Why is it wrong?

1 JUDGE SIPPEL: Because it's -- for the very reason
2 why we have a motion here this morning. The other -- the
3 party who was most -- could be most affected by this
4 modification to test-- private testimony wasn't consulted
5 about it until, until it was filed. That's what I'm saying.

6 MR. ZAUNER: But why is that wrong? Why do I have
7 to consult with Kathy Schmeltzer on, on a matter that I have a
8 question on an exhibit submitted by a party? I don't have to
9 -- I don't really have to, to do anything.

10 MS. SCHMELTZER: Because we were making a
11 determination as to whether or not to depose these witnesses
12 based on the frozen written testimony that we received and I
13 think it's fundamentally unfair to have us make that decision
14 and then have Scripps Howard be able to supplement their
15 frozen written testimony. Now, if Scripps Howard had
16 submitted a letter from John Smith who lived in California on
17 behalf of some national organization I don't think we would
18 have any duty to depose or cross that person because there's
19 no connection with Baltimore.

20 JUDGE SIPPEL: Well, that's, that's another point,
21 but as I say I want -- I'm just in -- I am concerned about a
22 process like this that goes to whether or not testimony is
23 complete and I know that the argument is well, it really is --
24 this is really a de minimus point. But I want to alert all
25 counsel to be very cautious about that because really these

1 are the kinds of questions, even though you may think it be de
2 minimus, I don't know how other counsel is going to react to
3 it and it really should be something that should be aired when
4 we're all together at the admissions session or a conference
5 like this. But I'm not, I'm not saying, I'm not saying that
6 anybody really acted of order. I understand. You did not
7 submit the supplement. You simply raised a question. But
8 that kind of a -- this kind of a procedure just shouldn't be
9 filed in terms of making a decision as to whether or not a
10 supplement's going to be filed like this. But, in any event,
11 the issue has been framed and I've got a motion now to decide
12 as to whether or not to receive the supplement. Let me --
13 what I did for my own purposes is I went and I looked at the,
14 at the August 20 statement, the one that was submitted on
15 August 20th, and it seems that the, the thing that Dr. Hooks
16 was really narrowly focused on was a program that he appeared
17 on, and this is your, this is your Tab 8 Exhibit -- it was
18 the, the Public Affair programing which discussed the
19 nomination of Justice Thomas, Justice Clarence Thomas, which
20 strikes me as a -- as more of a national issue than a local
21 issue. I mean, it's -- I'm not saying that it's not relevant
22 to what -- supporting what you're have in Dr. Hooks testify
23 to, but in light of the fact that he seems to be testifying on
24 a national level, the fact that he is or is not a resident of
25 -- technically was a resident of Baltimore doesn't seem to

1 have -- to me it doesn't strike me as having any significance
2 as it would have if he were down testifying to things that he
3 was doing in the community. This office of Executive Director
4 of the NAACP, you're suggesting that I should take cognizance
5 of certain aspects of it and one thing that I would take
6 cognizance of is that it's a national office. That takes him
7 far and wide in terms of what his responsibilities would be.
8 In fact, even internationally. It's a very important job,
9 particularly -- so I'm -- I agree with what Mr. Zauner says.
10 It is a de minimus decision. However, if his testimony were
11 given it might not be that de minimus. So with that caveat
12 I'm going to, I'm going to deny the motion and let it -- and
13 let the supplement be offered at the admissions session on
14 October 5. However, there also is a reference in the
15 opposition that, as Ms. Schmeltzer points out, that there may
16 be yet another supplement, Mr. Howard, and the problem, the
17 bind that this placed me in, you see, is if I go down this
18 problem with you there's going to be another day for the other
19 side and it might be something that's more important and we're
20 going to have to get into that, too. I don't know that for a
21 fact, of course, but I'm saying that this is not -- this is
22 why we like to have the evidence frozen in a case. Can you
23 give me some idea of what it is that you have in mind?

24 MR. HOWARD: Certainly, Your Honor. And as I sought
25 through the voluminous public documents on Dr. Hooks'

1 background, I realized that he had undertaken the position of
2 Executive Director of the NAACP sometime before that
3 organization relocated to Baltimore. I've been unable to talk
4 to him about his testimony on the issue that he was a resident
5 of Baltimore throughout his tenure. And given that I -- there
6 may be -- he may have meant by that throughout his tenure
7 while the NAACP's headquarters were located in Baltimore, I
8 thought it best to make sure that it was noted on the record
9 now that the -- that possibility exists.

10 JUDGE SIPPEL: Well, I certainly think that -- I
11 want to hear from Ms. Schmeltzer on this, of course, but I
12 think that if we're going to let the supplement come in, and I
13 have ruled on that, that the supplement should be clarified to
14 give dates certain on that and you're really cutting -- what
15 you're disclosing really cuts against you anyway, so I don't
16 think that you'd have any opposition to that, Mr. Howard.

17 MS. SCHMELTZER: It sounds to me like at this point
18 in time the supplement can't be accepted because it's unclear
19 what the situation is.

20 JUDGE SIPPEL: Well, it's always -- I'll receive it
21 subject to -- and, again, technically I'm not receiving it
22 into evidence.

23 MS. SCHMELTZER: That will be addressed at the
24 admissions session.

25 JUDGE SIPPEL: At the admissions session. That's

1 correct. One of the reasons -- the main reason I called this
2 conference today was because I thought a procedure that had
3 been agreed to with respect to the public witnesses would
4 eliminate the need to have pretty much of an admissions
5 session on the public witness testimony, but now that has
6 changed since you've waived your right to depose him. Now,
7 we're kind of in a different posture, it's important that I
8 know what's going on. All right, well, as I said, that's what
9 I will do. Subject against your -- to whatever objection you
10 might have at the admissions session. I am prepared to accept
11 a statement as supplemental. The clari-- the only other
12 additional clarification I would receive is the one that
13 you've indicated to me and as I understand it, and let me just
14 say -- I will again volunteer my observation because I have
15 spent time on this obviously, going back to his statement of
16 August 18 -- the context of that statement is substantive of
17 what he is being asked to testify to, I don't think it would
18 have made any difference whether or not he lived in Baltimore
19 or that he lived in the suburbs of Washington, D.C. I mean,
20 that's not why we received him as a, as a, as a public
21 witness. But, having said that, I remain to be convinced
22 otherwise, of course, when the evidence comes in and, and you
23 make your arguments. But let me ask you this, Ms. Schmeltzer,
24 do you intend to call him for cross-examination? You haven't
25 deposed him.

1 MS. SCHMELTZER: Your Honor, based on the frozen
2 written testimony that we received on August 20th we decided
3 not to depose any of these witnesses and, of course, it will
4 depend on your rulings at the admissions session, but it is
5 not our intention to cross-examine them.

6 JUDGE SIPPEL: All right. Well, I don't want
7 decisions on cross-examine -- I mean, if you're going to elect
8 to cross-examine any of these public witnesses, I mean that
9 decision is going to have to be made in advance of the, of the
10 session. In fact, today's the date for an exchange of the, of
11 the party witnesses that are noted for cross, right?

12 MS. SCHMELTZER: That's correct.

13 JUDGE SIPPEL: All right. Since there has been this
14 shift in the procedures and, again, I'm not being critical
15 about this, but what, what I had contemplated was going to
16 happen was that there would be an admissions day which would
17 have the statements coming in with a deposition or, or maybe a
18 statement or maybe a deposition without a statement. In any
19 event, I thought it was going to be resolved at that point.
20 Now, we still have open the question of cross-examination.
21 You've not -- you've filed with me a statement saying that you
22 don't want to depose any of these witnesses.

23 MS. SCHMELTZER: That's correct.

24 JUDGE SIPPEL: And I assume from that that means
25 that you don't want to call them for cross-examination --you

1 just want to let statements come in.

2 MS. SCHMELTZER: That's correct. But, Your Honor, I
3 will say that if Scripps is going to keep filing supplements
4 or clarifications, then I will have to reserve --

5 JUDGE SIPPEL: I understand that.

6 MS. SCHMELTZER: -- some right to --

7 JUDGE SIPPEL: I understand what you're saying, but
8 I'm saying based on the way the record sits now --

9 MS. SCHMELTZER: Right.

10 JUDGE SIPPEL: -- or what's been proffered now, --

11 MS. SCHMELTZER: That's right.

12 JUDGE SIPPEL: -- even with the Benjamin Hooks
13 supplement, --

14 MS. SCHMELTZER: That's correct.

15 JUDGE SIPPEL: -- you're prepared -- you're
16 representing that there will be -- none of these witnesses
17 will have to come down from Baltimore to appear for cross-
18 examination?

19 MS. SCHMELTZER: That's correct.

20 JUDGE SIPPEL: All right. Does the Bureau have any
21 other news on that?

22 MR. ZAUNER: No. That's fine.

23 JUDGE SIPPEL: All right. Then as far as I'm
24 concerned then the only thing that we're going to do on the
25 5th is we're going to rule on each of these 20 public exhibits

1 and they're going to come in the way they're written or if
2 there's an objection to some sentence or paragraph, we'll go
3 through that process, but the witnesses will not have to be
4 here on the 5th of October and, unless I order otherwise --
5 unless there's a specific showing of a specific need based on
6 a cause that we can't anticipate here today, none of those
7 public witnesses will have to appear here in the courtroom
8 even when we go to hearing on the 8th of November. Mr.
9 Howard?

10 MR. HOWARD: That's very clear, Your Honor. Perhaps
11 it would be appropriate for me to note that, just in the
12 unlikely event that there should be a ruling that cross-
13 examination of the public witnesses is necessary, I would at
14 that time move that the hearing be moved to Baltimore for the
15 -- to make it easier for the witnesses.

16 JUDGE SIPPEL: I anticipated that, Mr. Howard. You
17 have to make those motions to the Chief Judge. He's the one
18 that decides on the logistics, but he has set this down for
19 Washington, D.C. and I think -- you know, you're free to make
20 the motion, of course, but I think with the proximity between
21 Washington and the -- and there's a lot of Orioles fans coming
22 up there from Washington, that I -- I mean, he's going to make
23 the call, but I -- it would be a Chief Judge call. And I'm
24 anticipating -- based -- I am really relying upon what I'm
25 hearing here this morning. It's going to take a, a major

1 significant change in events to, to get me to order a public
2 witness to come down here now for cross-examination.

3 MR. HOWARD: Given the length of time between the
4 admissions session and the hearing, I would think there would
5 be an opportunity for me to make that motion to the Chief
6 Judge after the admissions sessions.

7 JUDGE SIPPEL: If it's necessary, --

8 MR. HOWARD: If it's necessary.

9 JUDGE SIPPEL: -- absolutely, absolutely, and I'm
10 sure you'll get a prompt ruling on that. I mean, even if --
11 whichever way it goes, if we have to handle the testimony of
12 public witnesses, the closer it gets to the hearing the more
13 that I'm prepared to accommodate those public witnesses. This
14 is what we're trying to do is anticipate anything that's going
15 to bring them into the process so that we can give them as
16 much advance notice as possible. But I reiterate what I say,
17 I am not expecting to see a public witness up here for cross-
18 examination whether it's here or Baltimore. Okay. I just
19 want to say a word on the rebuttal witnesses, and yet I
20 believe that I have really covered that. That was with some
21 -- with enough detail in my, my procedure and file date order
22 was 93M-337 down at footnote 5. And you've res-- I know, Ms.
23 Schmeltzer, you've reserved this right in some of your filings
24 about rebuttal witnesses and I've read that to mean rebuttal
25 witnesses in the context of the public witnesses.

1 MS. SCHMELTZER: Well, I mean, we reserve the right
2 to put on a rebuttal case. I don't anticipate anything
3 lengthy, Your Honor, but after the admissions session and
4 cross examination --

5 JUDGE SIPPEL: All right. But let me -- I'm trying
6 to again stay focused on the public witnesses because I've
7 read through the proffered testimony and it's hard for me to
8 find anything there that -- based on, again I'm backing up a
9 bit -- based on what you've agreed to today and what I've
10 ruled on today, this is going to be the scope of their
11 testimony, what's been proffered here by Mr. Howard. And
12 based on my perusal of this testimony, I can't see anything in
13 there that would call for rebuttal. I mean, it just -- to
14 justify a rebuttal you have to make some kind of a showing
15 that somebody was, you know, flat out lying or wasn't there to
16 see what they say they saw, not somebody who's going to
17 disagree with their perception. And I'd like to try and get
18 that nailed down this morning, and I'm not, I'm not ruling on
19 rebuttal witnesses right now, but the way I'm going on this is
20 I don't expect to see any rebuttal witnesses with respect to
21 the public witnesses based on how you, how we intend to
22 proceed here. I wonder if you -- can you offer anything in
23 response to what my observation is?

24 MS. SCHMELTZER: It's possible there might be some
25 rebuttal public witnesses, but I can't say at this time until

1 the evidence and the testimony has come in.

2 JUDGE SIPPEL: Well, you know what the testimony
3 looks like. I mean, this is how it's going to come in. We
4 know that --

5 MS. SCHMELTZER: But there is cross-examination.

6 JUDGE SIPPEL: -- with the exception of some
7 there'll be -- yes. There'll be objections, linear
8 objections, paragraph objections.

9 MS. SCHMELTZER: Correct.

10 JUDGE SIPPEL: Are you telling me that if some of
11 these paragraphs stay the way that they are that you may be
12 calling or seeking to call a rebuttal witness?

13 MS. SCHMELTZER: It's possible.

14 JUDGE SIPPEL: Well, I'm going to be -- I'm going to
15 come down very hard in terms of ruling on them and I'm
16 alerting you to that right now. Certainly you can ask for it
17 and you can make the record, but I'm very much disinclined
18 because of the nature of the testimony.

19 MS. SCHMELTZER: We would -- you know, we, of
20 course, will make the requisite showing, Your Honor.

21 JUDGE SIPPEL: And do you -- you are familiar with
22 my instruction in footnote 5 about you do have an obligation
23 -- if you're going to request a rebuttal witness, you have an
24 obligation to alert me to that fact --

25 MS. SCHMELTZER: Right.

1 JUDGE SIPPEL: -- at the admissions session?

2 MS. SCHMELTZER: That's correct.

3 JUDGE SIPPEL: All right. Anything from your side
4 on that, Mr. Howard?

5 MR. HOWARD: No, Your Honor.

6 JUDGE SIPPEL: What I'm trying to accomplish here
7 obviously is to streamline this case as well as I possibly
8 can. I'm not trying to tell you how to try your case, so
9 that's why -- you know, the day of reckoning is really going
10 to be the admissions day.

11 MS. SCHMELTZER: Right.

12 JUDGE SIPPEL: The last item that I have on my
13 agenda is the bulky business document representation by
14 Scripps Howard and, fortunately, on the 13th of September I
15 was provided with a copy of what's been exchanged and I must
16 say they do meet the qualification of a bulky business
17 document I think in terms of what's -- what I suspect is
18 behind these exhibits. I have -- my questions are with
19 respect to Volumes 2, 3 and 4 of Emily Barr's testimony, and
20 let me tell you what I've done. I mean, I've briefly -- I've
21 looked at Emily Barr's narrative testimony. She's the Acting
22 General Manager and she's giving a lot of the nuts and bolts
23 of what's at that station, as I understand it. Correct?

24 MR. HOWARD: Yes, Your Honor.

25 JUDGE SIPPEL: Okay. Now, I don't see in her

1 testimony where she gives an explanation as to what the tabs
2 are in the business records of 2, 3 and 4. And what I want is
3 a -- for my own purposes really, is a summary description of
4 each of those sets of records, just a broad description that
5 these represent --Bpp--, you know, and they have been
6 excerpted from whatever is in the business record or these are
7 the actual business records. And, as I say, these can be
8 general descriptions, but I want, I want to be focused on
9 where these documents come from as business records.

10 MR. HOWARD: I'm sorry, Your Honor. Are you -- 2, 3
11 and 4, is that of the footnotes, 2, 3 and 4?

12 JUDGE SIPPEL: No. I'm sorry. These are Volumes 2,
13 3 and 4. Emily --

14 MR. HOWARD: Volumes 2, 3 and 4, right.

15 JUDGE SIPPEL: Emily Barr had four volumes.

16 MR. HOWARD: Yes, sir.

17 JUDGE SIPPEL: And the first volume is a narrative.
18 Okay. Now, let me give you -- well, can you have that for me
19 you think the early part of next week?

20 MR. HOWARD: Yes, Your Honor.

21 JUDGE SIPPEL: Okay. I don't have a calendar handy,
22 but -- I do. Yes, I do. All right. How about next
23 Wednesday, by close of -- by 4:00 next Wednesday and -- with
24 copies, of course, too and, you know, in light of the time
25 here -- time frame, please -- you were -- without my

1 instruction even you hand-delivered your opposition, but
2 please get hand-delivery of this or fax to, to Bureau counsel
3 and to Four Jacks counsel.

4 MR. HOWARD: Yes, sir.

5 JUDGE SIPPEL: Oh, I wanted to just alert Four Jacks
6 and the Bureau counsel of the fact that my office has moved.
7 I'm now up in Suite 18, so if you're going to hand-deliver
8 anything to me it will be at Suite 18, not --

9 MS. SCHMELTZER: Is that this floor?

10 JUDGE SIPPEL: Suite 218. I'm sorry.

11 MS. SCHMELTZER: Okay, 218, but it's this floor?

12 JUDGE SIPPEL: 218. This floor, right -- yes. It's
13 right across from the courtroom here. All right. Okay. I
14 have -- let me back up one more thing -- to one more thing,
15 the video tape. Do you have any idea of what's in that video
16 tape, Ms. Schmeltzer?

17 MS. SCHMELTZER: Yes. We've viewed it, Your Honor.

18 JUDGE SIPPEL: And can somebody just give a me a
19 general representation as to what is in it? What's, what's in
20 that tape?

21 MR. HOWARD: It's excerpts from programming, Public
22 Affairs programming that they were doing in the license term
23 -- equipment that was determined by Scripps Howard to be --
24 during the license term.

25 JUDGE SIPPEL: All right. We have a rule here, a

1 | local rule at the Commission, about -- with respect to, with
2 | respect to mechanically produced evidence, and the contents of
3 | mechanical reproductions must be submitted in writing. That's
4 | 47 C.F.R. 1.357. Does this, does this tape lend itself to
5 | being -- to having a transcript typed?

6 | MR. HOWARD: Yes, sir. A transcript was submitted
7 | as an attachment in -- testimony.

8 | JUDGE SIPPEL: All right. I missed that. Thank
9 | you. Is there going to be any -- anything that you can
10 | anticipate being raised about the video tape?

11 | MS. SCHMELTZER: Yeah. We intend to oppose it.

12 | JUDGE SIPPEL: Okay. That puts me on notice. Can't
13 | ask for more than that. All right. Then we'll wait to rule
14 | on that then on admissions day also. There may be quite a bit
15 | to do on admissions day. I'm anticipating that and let me say
16 | counsel have all acted very diligently in terms of
17 | preparation, so it's -- it should go relatively smoothly from
18 | where I'm sitting, but I'm going to certainly block out two
19 | days and based on what I see thus far, I see no reason for a
20 | witness, authenticating witness, now. Is there -- can you
21 | give me any advance clue on that, Ms. Schmeltzer?

22 | MS. SCHMELTZER: I would think -- it shouldn't be
23 | necessary, Your Honor, to the extent that you might have to
24 | reserve ruling on something here or there. I think that that
25 | would be very limited in scope, so I really don't think that

1 we would need a witness at the admissions session.

2 JUDGE SIPPEL: All right. Then it's up to you, Mr.
3 Howard, as far as what you want to do, but if you don't have
4 an authenticating witness here, we'll clear it up at, at the
5 hearing.

6 MR. HOWARD: Yes, Your Honor. We don't anticipate
7 one.

8 JUDGE SIPPEL: All right. Then we'll just work with
9 the -- just counsel and the documents will be it. All right.
10 That's all that I have.

11 MR. ZAUNER: Your Honor, just a --

12 JUDGE SIPPEL: Mr. Zauner.

13 MR. ZAUNER: This morning I exchanged copies of the
14 Bureau's witness notification letter with opposing counsel.
15 If I may approach the bench I would like to provide you with a
16 copy.

17 JUDGE SIPPEL: Please, Mr. Zauner. Thank you.

18 MR. ZAUNER: Thank you.

19 MS. SCHMELTZER: Your Honor, may we do the same
20 thing right now. We have our witness notification prepared.

21 JUDGE SIPPEL: Hand it up if you have it. It's
22 coming in a bit early because my order said 12:00 noon, but
23 that's -- you won't be prejudiced by this at all. Okay. And
24 I -- as I say, I want to be sure that I'm not -- by my remarks
25 at the beginning about, about how this supplement came about