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Federal Communications Commission

WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION OFFICE OF THE SECRETARY

In re Applications of)
SCRIPPS HOWARD BROADCASTING)
COMPANY)

MM Docket No. 93-94

File No. BRCT-910603KY

For Renewal of License of)
Station WMAR-TV,)
Baltimore, Maryland)

and)

FOUR JACKS BROADCASTING, INC.)

File No. BPCT-910903KE

For a Construction Permit for)
Television Facility on)
Channel 2 at)
Baltimore, Maryland)

To: The Honorable Richard L. Sippel
Administrative Law Judge

**OPPOSITION TO MOTION
FOR PRETRIAL RULING THAT "TODAY"
QUALIFIES AS NEWS PROGRAMMING**

Four Jacks Broadcasting, Inc. ("Four Jacks"), by its attorneys, and pursuant to the Judge's Order, FCC 93M-648, released October 8, 1993, hereby opposes the "Motion for Pretrial Ruling that 'Today' Qualifies As News Programming," filed by Scripps Howard Broadcasting Company ("Scripps Howard") on October 25, 1993. As demonstrated herein, there is no Commission case precedent holding that the entire "Today" show should be counted as "news" programming in a comparative license renewal proceeding. Cases in the comparative renewal area mandate a denial of the requested pre-trial ruling.

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I. **THE SECTION 315 AND PERSONAL ATTACK RULINGS
RELIED UPON BY SCRIPPS HOWARD ARE INAPPOSITE**

1. In its Motion, Scripps Howard contends that "[t]he Commission has held repeatedly that NBC's 'Today' show is a news program" (Motion, p. 1). In support of this broad statement, Scripps Howard proceeds to cite a number of declaratory rulings concerning specific fact situations involving Section 315 of the Communications Act and the personal attack rule. None of these cases support the broad proposition Scripps Howard asks the Judge to adopt. Obviously, in Section 315 cases, the FCC would take a very broad interpretation of what is news in order to provide for increased political coverage.

2. Scripps Howard's chief argument is that, in the context of the political broadcasting rules, the Commission found "Today" to be a bona fide news program for purposes of Section 315(a) of the Communications Act, and thus that appearances on the program by legally qualified candidates for public office are not subject to equal opportunities by opposing political candidates under 47 U.S.C. §315(a). The problem with this argument, however, is that the cases cannot be read as broadly as Scripps Howard desires. Nor do any of these cases apply to comparative renewal situations. When it amended Section 315 of the Communications Act in 1959, Congress sought to remove the inhibiting effect of the equal opportunities obligation upon bona fide news programming to encourage increased news coverage of political campaign activity. Congress did not precisely define what it meant by news, instead leaving the Commission with the task of interpreting the scope of each exemption from the equal

opportunities provisions.^{1/} See Request for Declaratory Ruling by Fox Television Stations, Inc., 6 FCC Rcd 7120 (1991).

3. In a series of rulings, most of them in the context of a request for declaratory ruling, the Commission has addressed specific requests as to whether the appearance of political candidates on certain programs should be considered to fall within the Section 315(a) exemptions. Thus, in Lar Daly, 40 FCC 314 (1960), the Commission ruled that an appearance by Senator Stuart Symington on NBC's "Today" program fell within the news program exemption of Section 315(a). The telegram sent to Lar Daly specifically noted that the "Today program has been regularly scheduled network program [sic] containing different features and emphasizing news coverage, news interviews, news documentaries and on-the-spot coverage of news events."

(Emphasis added). A series of declaratory rulings followed the Lar Daly ruling. In Rev. Donald L. Lanier, 37 FCC 2d 952 (Chief, Broadcast Bureau 1972), the Bureau granted the request of a religious programmer to exempt, as a bona fide newscast, a program called "The Church Today," which reported exclusively upon religious news. In American Broadcasting Cos., Inc., 46 R.R.2d 1205 (1980), the Commission granted a request for a declaratory ruling that appearances of political candidates on the "Good Morning America" program were exempt from the "equal opportunities" requirement of Section 315. In In re Request by

1/ Congress exempted the following four categories of bona fide news programming from the equal opportunities provision: (1) bona fide newscasts, (2) bona fide news interviews, (3) bona fide news documentaries if the candidate's appearance is incidental, and (4) on-the-spot coverage of bona fide news events.

CBS, Inc., 2 FCC Rcd 4377 (Chief, Fairness/Political Programming Branch 1987), the staff ruled that the news interview segments of CBS's "The Morning Program" could be classified as bona fide news interviews. A subsequent staff ruling in 1988 held that appearances by legally qualified candidates on "Entertainment Tonight" and "Entertainment This Week" could be considered exempt from the "equal opportunities" requirement of Section 315. In re Request for Declaratory Ruling by Paramount Pictures Corporation, 3 FCC Rcd 245 (Chief, Fairness/Political Programming Branch 1988). The staff observed that its function was to further Congress' intent to enhance news coverage of the political area.^{2/}

4. It is readily evident that these political rulings have no widespread applicability. They were made to enhance political news coverage. The personal attack ruling which Scripps Howard relies on Roger Langley, 45 R.R.2d 1679 (1979), falls into a similar category -- it is also unrelated to the comparative renewal situation.^{3/}

2/ Similar staff rulings were reached in In re Request for Declaratory Ruling by Paramount Communications, Inc., 5 FCC Rcd 4625 (Chief, Fairness/Political Programming Branch, July 19, 1990) concerning "Hard Copy" and in In re Request for Declaratory Ruling by Fox Television Stations, Inc., 6 FCC Rcd 7120 (Chief, Fairness/Political Programming Branch, December 2, 1991).

3/ Service Broadcasting Corp., 46 RR2d 413 (1979), which is cited by Scripps Howard, in no way supports a pre-trial ruling that the entire "Today" show is news. Service involved a petition to deny a license renewal application filed by the National Black Media Coalition ("NBMC") which argued that the little hard news presented by the licensee was distorted and slanted. To the extent that NBMC also contended that the stations presented entertainment within logged newscasts, it is noteworthy that the Commission found
(continued...)

**II. CASE PRECEDENT ON COMPARATIVE LICENSE RENEWALS
COMPELS DENIAL OF SCRIPPS HOWARD'S MOTION**

5. Significantly, none of the cases that Scripps Howard cites are comparative license renewal decisions. Case precedent in that area reflects that Scripps Howard's argument is erroneous. In Tri-State Broadcasting Co., Inc., 3 FCC Rcd 4874 (ALJ 1988), the Presiding Judge stated as follows with respect to the licensee's representations concerning the "news" its stations carried:

During the first half of the license term, from October 1, 1980 to January 1982, news on the stations included syndicated prerecorded programs which Tri-State news director viewed as entertainment. The programs, which were called "Hot News," "Earth News," "Future File" and "Off the Record," did not generally have news content. They were short two or three minute segments of which half to one-third of the time was spent on commercials. Tri-State never differentiated in logging those programs between information that amounted to discussions of lifestyle, "futuristic subjects" and musical styles, which was admittedly entertainment, and that which was news. Nor did it exclude commercials when it logged the time spent on news.

Id. at 4925.

Here, Scripps Howard is seeking credit for the entire "Today" show including discussions of "lifestyle" and other non-news topics and even including commercials.

6. The comparative renewal case of Kaye-Smith Enterprises, 98 FCC2d 688 (Assistant Chief ALJ 1983) also makes it clear that

3/(...continued)

that the licensee's practice of presenting "music specials" (five minute mini-concerts) which completely subsumed the logged newscasts amounted to mislogging of the programming.

credit given for newscasts does not include commercial matter. Id. at 699 n.10. The comparative renewal case of Cowles Florida Broadcasting, Inc., 78 FCC2d 500 (ALJ 1973) indicates that it is only appropriate to consider "news segments" in the morning network news. Id. at 545, n. 25.

CONCLUSION

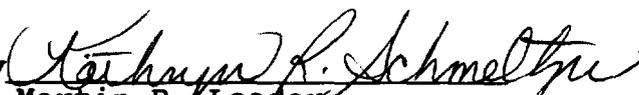
In sum, Scripps Howard has failed to support its argument that the entire "Today" show should be considered "news." The line of rulings dealing with the equal opportunities provision of Section 315 of the Communications Act and the personal attack rule is inapposite. The Commission has never held in a comparative renewal proceeding that the entire "Today" show should be considered news. Case precedent in the comparative renewal area reflects that only news segments of such shows should be considered news and all commercials should be excluded.

Clearly, this matter cannot be resolved through a pre-trial ruling. Four Jacks respectfully submits that the parties should address this issue in Proposed Findings and argue the law in their Proposed Conclusions.

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Respectfully submitted,

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Date: November 4th, 1993

CERTIFICATE OF SERVICE

I, Sybil Briggs, a secretary in the law firm of Fisher, Wayland, Cooper and Leader, do hereby certify that true copies of the foregoing "OPPOSITION TO MOTION FOR PRETRIAL RULING THAT "TODAY" QUALIFIES AS NEWS PROGRAMMING" were sent this 4th day of November 1993, by hand delivery to the following:

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