

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

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IN RE:)
)
SCRIPPS HOWARD BROADCASTING COMPANY)
and)
FOUR JACKS BROADCASTING, INC.)
)
Baltimore, Maryland)
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MM DOCKET NO. 93-94

The above-entitled matter came on for an admissions session pursuant for Notice before Judge Richard B. Sippel, Administrative Law Judge, at 2000 L Street, N.W. Washington, D.C., in Courtroom No. 4, on Wednesday, October 6, 1993, at 9:30 a.m.

APPEARANCES:

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I N D E X

E X H I B I T S

<u>Scripps Howard</u>	<u>Identified</u>	<u>Received</u>	<u>Rejected</u>
Exhibit No. 25	273	274	
Exhibit No. 3		382	
Exhibit No. 3A	326	382	
Exhibits No. 4-25	388	388	
<u>Four Jacks</u>			
Exhibit No. 1	390	392	
Exhibit No. 2	390	402	
Exhibit No. 3	390	403	
Exhibit No. 4	390	403	
Session Began: 9:30 a.m.		Session Ended: 2:40 p.m.	
Lunch Began: 12:15 p.m.		Lunch Ended: 1:30 p.m.	

P R O C E E D I N G S

1
2 JUDGE SIPPEL: I've got a couple of preliminary
3 matters before we pick up where we left off yesterday. First
4 of all, I want to again go back over what stipulations are
5 due. One is the stipulation on Scripps' diversification. Is
6 that still being worked on?

7 MR. HOWARD: That's ready to be --

8 JUDGE SIPPEL: That's ready to be submitted?

9 MR. HOWARD: Yes, sir.

10 JUDGE SIPPEL: All right. Do we want to do that
11 now?

12 MR. HOWARD: Are we ready?

13 JUDGE SIPPEL: And another stipulation to the --
14 well, a stipulation agreeing that the Today show is, in fact,
15 a news program. Is that being worked on?

16 MR. HOWARD: That's being worked on, Your Honor.

17 MS. SCHMELTZER: I don't know whether we'll be able
18 to stipulate to that or not.

19 JUDGE SIPPEL: All right. Well, then if --

20 MR. HOWARD: Your Honor, may I suggest in the case
21 if there's just some case precedent rather than preparing the
22 stipulation, I think -- also perhaps Ms. Schmeltzer to those
23 cases of what they believe is appropriate precedent. That
24 would be helpful.

25 JUDGE SIPPEL: Well, that would be -- certainly

1 whatever you can again provide to other counsel to get -- to
2 guide them in this -- in your direction. And if you're unable
3 to reach any kind of a conclusion and it's important enough to
4 you, you can file a motion. I'll consider it on a motion
5 basis or official notice or for recognition of your condition
6 is a matter of law. I'll consider it that way if you can't
7 reach a stipulation.

8 MS. SCHMELTZER: We ask if Your Honor would do that
9 before the hearing, but if you want a stipulation tomorrow,
10 that might be a little more of a problem. Okay.

11 JUDGE SIPPEL: That's -- no. Anytime between --
12 really anytime before the record closes in the case. These
13 are the things that can get more excitable, maybe not by you,
14 by me.

15 MR. HOWARD: Your Honor, to clarify the record in my
16 mind, is there an objection to that part of the testimony at
17 this point when they've described that he included as part of
18 the news calculation? I don't think it had -- I think the
19 question was raised, but I don't think there was an objection.

20 MS. SCHMELTZER: Well, I believe there was an
21 objection.

22 UNIDENTIFIED SPEAKER: I'm going to -- judgement
23 based on your representation.

24 MR. HOWARD: It never really got resolved. I mean,
25 it wouldn't -- it's going to come up again at the hearing in

1 cross-examination. If you don't have a stipulation at that
2 point it may be addressed in a different context. This is
3 going to be -- it's -- there's nothing definitive that will --

4 MR. GOLDSTEIN: We'll do it -- at the break, Your
5 Honor, and hopefully it will be resolved.

6 JUDGE SIPPEL: All right. Well, as I said, this
7 doesn't have to be resolved today or tomorrow, but I'm
8 satisfied that counsel are attending to it. I have also
9 received -- this again is a -- this is another preliminary
10 matter. I received yesterday a statement for the record from
11 Scripps Howard which I'm viewing as really a motion requesting
12 that I take judicial notice of certain facts regarding
13 diversification of Four Jacks principals and also a request to
14 expand the cross-examination on diversification. That's
15 essentially the, the relief that you're asking for I believe,
16 Mr. Howard.

17 MR. HOWARD: It was intended to give notice that we
18 would seek cross-examination on those matters and to insure
19 that there was no question of surprise at the, at the
20 proceeding when the issue was raised, Your Honor.

21 JUDGE SIPPEL: All right. Well, that is most
22 appropriate but, as I say, I'm going to treat it as a motion
23 at this point because it does -- it could raise issues which
24 could expand the time and the record in this case perhaps
25 unnecessarily, so I'm going to give Ms. Schmeltzer until the

1 13th to file an opposition or a responsive pleading to it and
2 the Bureau, if it cares to, can comment on the 14th.

3 MR. GOLDSTEIN: I think that we will not because
4 it's inappropriate to, to weave in and out on the straight
5 comparative case, so I don't think it's appropriate for us to
6 take a position on this aspect --

7 JUDGE SIPPEL: Well, I say -- for me anyway, it's a
8 novel issue of -- perhaps a novel issue of law with respect to
9 programming rights vis-a-vis an attribution of ownership and
10 so I'd say it's -- I'll leave the record open through the 14th
11 if you care to comment. If not, so be it.

12 MS. SCHMELTZER: Can we file our opposition on the
13 14th?

14 JUDGE SIPPEL: I thought I gave you to the 13th so
15 that then the Bureau will be able to see your opposition
16 before they decide whether or not they want to comment.

17 MS. SCHMELTZER: Oh, is that the -- okay.

18 JUDGE SIPPEL: That gives you -- yeah, that gives
19 you sufficient time. It would normally be four days under the
20 rules, I believe. Is that correct?

21 MS. SCHMELTZER: Well, I think Scripps had said to
22 us that they would be happy to give us the mailing dates if we
23 needed them, yesterday.

24 MR. HOWARD: We just made that informal --

25 MS. SCHMELTZER: Right.

1 MR. HOWARD: -- statement after -- as we were
2 delivering it to her in case this had presented a problem with
3 --

4 JUDGE SIPPEL: Well, I can -- that's all right. I
5 mean, as I say, it's not that rushed -- I'll give you the 14th
6 --

7 MS. SCHMELTZER: Can I have the 14th?

8 JUDGE SIPPEL: -- and the Bureau the 15th.

9 MS. SCHMELTZER: That will be fine. Thank you.

10 JUDGE SIPPEL: All right. Now, we left off
11 yesterday that counsel were going to get together and see if
12 they could iron out some of these discrepancies or
13 misunderstandings really in the tenses of the description,
14 what was being described in Ms. Barr's exhibit. Who wants to
15 -- Mr. Howard, you want to give me a update on that?

16 MR. HOWARD: Yes, Your Honor. Yesterday evening or
17 -- I'm not sure of the time. I faxed suggested changes -- was
18 able to get in touch with Emily Barr, the witness, and
19 reviewed with her the changes and faxed those to Ms.
20 Schmeltzer.

21 JUDGE SIPPEL: Okay. Ms. Schmeltzer?

22 MS. SCHMELTZER: Your Honor, you know, for the most
23 part the changes are fine. We did have a few additions to
24 them.

25 JUDGE SIPPEL: All right. I'm going to try and move

1 this along this morning. If it doesn't move along, I'm going
2 to -- I don't intend to submit it -- this on a sentence by
3 sentence basis because you do have the right to cross-examine
4 this witness and I may just be to the point where I'm going to
5 cut this off and just rely on cross-examination, but we'll
6 make it -- the Court's a little more -- perhaps may make your
7 cross-examination of this far more extensive and you may want
8 to give her some advance notice on that.

9 MR. HOWARD: Yes, Your Honor.

10 JUDGE SIPPEL: But one way or the other we're going
11 to get this done. Before we begin why don't we address -- if
12 you have your documents ready on the stipulation, does the
13 reporter have them at this time?

14 MR. HOWARD: Yes, Your Honor.

15 JUDGE SIPPEL: And those would be pre-marked. This
16 should be based -- you're coming in with something in addition
17 on Dr. Hooks, so my count would make this exhibit, this
18 stipulation exhibit Scripps Howard's Exhibit No. 26.

19 MR. HOWARD: Your Honor, that would include the Dr.
20 Hooks exhibit before that.

21 JUDGE SIPPEL: That's correct. Dr. Hooks is --

22 MR. HOWARD: We would propose to withdraw the, the
23 clarification that was offered in September 3rd and substitute
24 the, the clarification that's now present with respect to his
25 residence because it really is, I think, burdening of the

1 record to have the additional information in there. There is
2 no additional information. This subsumes the, the offer of
3 testimony from the September 3rd statement.

4 JUDGE SIPPEL: Let's see if there's any objection to
5 that.

6 MS. SCHMELTZER: I'd just as soon have both of them
7 come in and then we will reach this question when we get to
8 the public witness statement.

9 JUDGE SIPPEL: Well -- or we can treat this as --

10 MR. GOLDSTEIN: Your Honor, since they haven't been
11 offered yet, I don't see what --

12 MR. HOWARD: I was going to raise that point.

13 MR. GOLDSTEIN: They're not even offered. They can
14 withdraw them or whatever they want since they haven't offered
15 it.

16 JUDGE SIPPEL: Well, that's true. That's true. You
17 can -- yeah, you certainly will have the -- well, we're not
18 going to get into cross-examination with this witness. All
19 right. I will, I will permit you then to withdraw Exhibit 24
20 and substitute the Exhibit 24 that you prepared to submit
21 today. Be sure that the -- be sure that this is very clear to
22 the reporter, but we -- again, that's -- I keep losing sight
23 of the fact that the reporter hasn't even come into play with
24 these documents yet on the public witnesses. All right. Then
25 25 will be the stipulation. That's the order of business

1 right now. Does the reporter have two copies?

2 MR. HOWARD: Yes, Your Honor.

3 REPORTER: Yes.

4 JUDGE SIPPEL: Okay. It's marked for identification
5 then as Scripps Howard's Exhibit No. 25.

6 (The document that was referred to as
7 Scripps Howard Exhibit No. 25 was
8 marked for identification.)

9 MR. GOLDSTEIN: Your Honor, just for the purposes of
10 keeping our files up to date, could we please have one?

11 MS. SCHMELTZER: (INAUDIBLE)

12 MR. GOLDSTEIN: Stipulation?

13 JUDGE SIPPEL: I should have one, too. Let's go off
14 the record so counsel can --

15 (Off the record.)

16 JUDGE SIPPEL: This -- Exhibit 25 for identification
17 is a six page document. It purports to be the -- an inclusive
18 listing of all the media ownerships that would count towards
19 diversification, and it's been agreed to by counsel for both
20 side -- or both parties have agreed to it, the applicant
21 parties, that is. Does the Bureau have any comment or
22 objection to this?

23 MR. GOLDSTEIN: No, Your Honor, just what we said a
24 few minutes ago.

25 JUDGE SIPPEL: Then it's received in evidence at

1 another procedure that you anticipated?

2 MR. HOWARD: Well, we've got the -- we've got copies
3 that we could give the people to -- that they could look at,
4 but then it wouldn't be on the written record, but it would be
5 in the exhibit. I don't know if we need to have it in the --
6 in the spoken record, but I don't know that that's necessary
7 if the exhibits are amended to effect it.

8 JUDGE SIPPEL: Well, we've got to be sure that this
9 witness is going to be cross-examined on the exhibit as it
10 appears in the record, so make sure.

11 MS. SCHMELTZER: Do you have a -- well, I guess --

12 MR. HOWARD: We could make copies of the materials
13 that I've faxed to you which I believe are -- why don't we
14 give everybody a copy and then it could be -- I think that
15 would be faster.

16 MS. SCHMELTZER: That's fine. That's fine.

17 JUDGE SIPPEL: Please.

18 MR. HOWARD: I think I've placed a check in the
19 margin by each change.

20 MS. SCHMELTZER: Do you have something --

21 JUDGE SIPPEL: Why don't we go off the --

22 MS. SCHMELTZER: -- a hard copy for us in place of a
23 fax copy?

24 MR. HOWARD: Yes.

25 JUDGE SIPPEL: Let me go off the record for a

1 minute.

2 (Off the record.)

3 JUDGE SIPPEL: Mr. Howard has distributed to counsel
4 miscellaneous copies of the pages of Exhibit 3, that is the
5 testimony of Emily Barr which counsel have been working on
6 since, since we recessed yesterday at approximately 3:00.
7 What I'm instructing counsel to do is before we close the
8 record here today will be to take these copies of these
9 changes, put a cover sheet on them and offer them into
10 evidence as Scripps Howard's Exhibit 3A which would be the
11 supplemented testimony of Emily Barr. And Ms. Schmeltzer has
12 a copy of these changes. I also have a copy of the changes.
13 These -- this Exhibit 3A would be made available, of course,
14 to your witness, Emily Barr, when she takes the stand for
15 cross-examination, and I think we're ready to go forward.

16 MR. GOLDSTEIN: Just for the record, Your Honor, the
17 Bureau has also been furnished with a copy.

18 JUDGE SIPPEL: The Bureau is furnished with a copy
19 also, so you all were furnished with a copy. I have a copy.
20 Are you prepared to go forward now, Ms. Schmeltzer?

21 MS. SCHMELTZER: Yes.

22 MR. HOWARD: Your Honor, may I ask another
23 preliminary question on that?

24 JUDGE SIPPEL: Certainly.

25 MR. HOWARD: The changes that I've suggested in this

1 do extend through to the rest of her testimony in the same
2 places and, thus -- but are not -- but I've only exchanged
3 copies at this point of selected pages. I just want to, to
4 make sure that it's -- only this -- those, those pages that
5 have changes on them are the only ones that I copied and
6 exchanged with everyone, so it's -- well, for the latter part
7 is it because you did not have copies. The -- so the going
8 back and forth to -- with -- between 3A and 3 does give me
9 some pause as to the -- how that, how that may work with
10 respect to others, and I'm wondering if, if we shouldn't use a
11 -- if we couldn't use -- and just from point, from point
12 Scripps Howard 3, Exhibit 10 through the remainder of Volume I
13 perhaps make that 3A and then everything would be -- it would
14 be clear in the record that we went to 3A after that point.

15 MR. GOLDSTEIN: Your Honor, may I make a suggestion
16 that counsel for Scripps Howard get a copy of your exhibit and
17 two copies of the court records and make the amendments right
18 on Exhibit 3 and be done with it, and that way this --

19 MR. HOWARD: -- doing everything --

20 MR. GOLDSTEIN: -- and Ms. Schmeltzer's corrections
21 all on the same document. I don't believe you like the part
22 of going back and forth, back and forth.

23 MR. HOWARD: My --

24 MR. GOLDSTEIN: We're trying to do it now it's not
25 an easy, --

1 MR. HOWARD: Exactly.

2 MR. GOLDSTEIN: -- not an easy task.

3 MR. HOWARD: There are some changes that have
4 already been made in these sections of the testimony in
5 response to the --

6 JUDGE SIPPEL: Exhibit 3?

7 MR. HOWARD: With Exhibit 3 and the parts that we're
8 now turning to.

9 JUDGE SIPPEL: I've got those marked on my --

10 MR. GOLDSTEIN: We'll be happy to make the
11 corrections for ours and I don't know whether Ms. Schmeltzer
12 wants to do hers, but I think that it would be -- for the
13 court, the fi--, the court copies, the record copies and your
14 copies.

15 JUDGE SIPPEL: So what you're suggesting is is that
16 we just stay with Exhibit 3 and we make our own respective
17 editorial changes?

18 MR. GOLDSTEIN: That's correct. I think it will be
19 easier to stick with one copy.

20 JUDGE SIPPEL: Or use these as we see fit and then
21 it will be up to Mr. Howard to get the court reporter set and
22 make the editorial changes on hers.

23 MR. GOLDSTEIN: She can use yours as far as I'm
24 concerned. That's up to you.

25 JUDGE SIPPEL: Well, it's got to be clear. The

1 record has got to be clear.

2 MR. GOLDSTEIN: Well, that's why I think there
3 should only be one document with Ms. Barr's testimony.
4 However you want to do it. Do you want to -- I'm reluctant to
5 switch it over to 3A now because we've made corrections on 3
6 as it stands based upon the --

7 MS. SCHMELTZER: If 3A is going to include from page
8 10 to the end of her exhibit, I don't think it's a problem.

9 JUDGE SIPPEL: See, but she would, she would be
10 cross-examined. She would be cross-examined on Exhibits 1
11 through 9 based on Exhibit 3, and then 3A would pick up from
12 10 thereafter.

13 MS. SCHMELTZER: Right.

14 MR. HOWARD: As long as we make sure that Exhibit 3A
15 also includes the changes that were made where you struck
16 parts of, of 3, that would be -- that will be fine. I think
17 the Bureau's counsel's problem is that the -- as we have
18 described the procedure before, some of these other changes
19 might not be picked up.

20 MS. SCHMELTZER: But my understanding was 3A will
21 begin on page 10.

22 MR. GOLDSTEIN: Yeah, that's right and then run --

23 MR. HOWARD: Right, right.

24 JUDGE SIPPEL: Does that make sense?

25 MR. HOWARD: It will basically be a substitute for

1 | page 10 from --

2 | JUDGE SIPPEL: So from 10 on forward we'll be using
3 | 3A and from 1 to 10 will be 3.

4 | MS. SCHMELTZER: Yeah. Right.

5 | MR. HOWARD: And we'll take the burden of making
6 | sure that that's -- I've made marks of the, the prior
7 | objections.

8 | MR. GREENEBAUM: We can do that.

9 | MR. GOLDSTEIN: For the purposes of proceeding today
10 | what constitutes 3A?

11 | JUDGE SIPPEL: What we're just handed.

12 | MR. GOLDSTEIN: Is that it in total?

13 | MR. HOWARD: No. That would only be -- that's only
14 | the changes.

15 | MR. GOLDSTEIN: That's my problem, Your Honor. He's
16 | not objecting to the final result, he's objecting to the --
17 | so for today's purposes we should start with page -- I assume
18 | that there's a 3A starting at page 10. We can't make that
19 | assumption because it doesn't exist.

20 | MR. GREENEBAUM: How long would it take us to do
21 | that?

22 | JUDGE SIPPEL: Why don't we do this? Why don't we
23 | move to the public witnesses while you get this straightened
24 | out. Go off the record. Go off the record.

25 | (Off the record.)

1 MS. SCHMELTZER: Attachment A we don't have an
2 objection to.

3 JUDGE SIPPEL: Now, let's focus where we are, Ms.
4 Schmeltzer. We're now on the, on the attachments to the Emily
5 Barr testimony.

6 MS. SCHMELTZER: Correct.

7 JUDGE SIPPEL: And the Emily Barr testimony is now
8 being recast for Exhibit 3A.

9 MS. SCHMELTZER: Correct.

10 MS. SCHMELTZER: All right. Now, which tab do you
11 want to start with?

12 MS. SCHMELTZER: Attachment A.

13 JUDGE SIPPEL: Attachment A.

14 MS. SCHMELTZER: We have no objection.

15 JUDGE SIPPEL: Attachment B?

16 MS. SCHMELTZER: Attachment B, Attachment B purports
17 to be material related to the expansion of WMAR-TV's morning
18 news program. Beginning with SH3-0189 I have an objection to,
19 I have an objection to that exhibit because there's no
20 sponsor, and then SH3-0190 through -- excuse me a minute. I
21 don't have an objection to SH3-0190, but SH3-0192 through 96,
22 undated so we can't tell when they were prepared -- SH3-0197
23 is dated in September of '91 after our competing application
24 was filed. And, frankly, I can't tell when SH3-0204 was
25 prepared. If it's on there, I just can't read the date.

1 JUDGE SIPPEL: All right. Are there -- is there
2 anything else with respect to that Tab B?

3 MR. GOLDSTEIN: Did Ms. Schmeltzer comment on 0188?

4 MS. SCHMELTZER: Well, that's outside the renewal
5 period, too. But -- I don't have an objection to that
6 document coming in.

7 JUDGE SIPPEL: This is 0188, you mean?

8 MS. SCHMELTZER: Right. And your objections are to
9 the ones that you've just indicated, identified rather, 92 to
10 96 as undated --

11 MS. SCHMELTZER: Actually I'm sorry. I do have an
12 objection to that document coming in, SH3-0188.

13 JUDGE SIPPEL: As outside the --

14 MS. SCHMELTZER: Outside the renewal period.

15 REPORTER: Mr. Zauner, would you please take it off
16 the microphone, please.

17 MR. ZAUNER: I'm sorry. What is the date on this
18 thing?

19 MR. HOWARD: The 188 is down at the bottom right.

20 MR. ZAUNER: 4/15/91.

21 MR. HOWARD: Yes.

22 JUDGE SIPPEL: All right. Is that it for Tab B?

23 MS. SCHMELTZER: Yes.

24 JUDGE SIPPEL: Mr. Howard, you want to respond?

25 MR. HOWARD: We can all respond individually. With

1 respect to 0188, it was offered to show -- to support the
2 testimony that this had been something that Arnold Kleiner had
3 wanted to do, but had been unable to do and then when Scripps
4 Howard took over the station he was able to complete it.
5 Right. That's exactly just what he says. It is prior to the
6 -- and he states that. This is what we wanted to do last
7 summer -- we still do, but the -- it is prior to the, to the
8 renewal period. It's just indicative of the fact that he
9 couldn't do it under the -- until Scripps Howard took
10 possession.

11 JUDGE SIPPEL: All right. I'm going to rule -- let
12 me have all of your comments -- points and then I want to hear
13 from the Bureau and then I'll rule with respect to 0189, Emily
14 Barr's sponsor -- as the record is kept in the ordinary
15 business demonstrative that this was planned prior to the --
16 September 3.

17 MR. HOWARD: There wasn't a --

18 JUDGE SIPPEL: I think there was there an objection
19 for 190?

20 MR. HOWARD: Was there an objection to 89?

21 MS. SCHMELTZER: Yes. There's no sponsoring
22 witness.

23 JUDGE SIPPEL: I see.

24 MR. HOWARD: 190 I believe did not have an
25 objection?

1 MS. SCHMELTZER: Right.

2 MR. HOWARD: And 91 is part of that. I believe -- I
3 cannot state about 92 through 94 and 95. There may have been
4 an attachment to the -- and 96, but Emily Barr will be
5 available to testify as to that on cross-examination -- as
6 with Arnie Kleiner who would have knowledge about that.

7 MS. SCHMELTZER: I -- there's -- excuse me. Are you
8 saying 0192 through 0195 are an attachment to 0196?

9 MR. HOWARD: I don't know. I'm saying I don't know
10 whether they are or not.

11 MS. SCHMELTZER: But there's no --

12 MR. HOWARD: Attachment to 0190.

13 MS. SCHMELTZER: But there's no indication that
14 Emily Barr or Arnie Kleiner had anything to do with these
15 documents.

16 MR. HOWARD: Well, they were materials that were
17 located with respect to the planning of the, of the news --

18 MR. GOLDSTEIN: Right now we're just engaged in
19 total speculation. Wait until Ms. Barr gets here.

20 JUDGE SIPPEL: I'm going to, I'm going to permit
21 these -- all these points to be raised directly with Ms. Barr
22 with the exception of the first one, 0188. I'm satisfied
23 there's explanation enough to bring that in, but you're --
24 again, all of this is subject to cross-examination. So
25 subject to -- well, I'm not -- I'm just going to keep moving.

1 Tab C?

2 MS. SCHMELTZER: Oh, I'm sorry. So you've --

3 JUDGE SIPPEL: I'm going to permit cross-examination
4 on these -- on all of these, these areas that you've raised.

5 MS. SCHMELTZER: Okay.

6 JUDGE SIPPEL: But I'm not going to reject the
7 document. Go ahead.

8 MS. SCHMELTZER: Tab C purports to be some sort of a
9 comparison based on -- I'll just read what it purports to be.
10 "A summary of program schedules of commercial television
11 stations licensed to Baltimore during the period from
12 September 23 to September 29. The information contained was
13 compiled from issues of T.V. Guide for the relevant period,"
14 and it goes on a little bit. But -- I mean, first of all,
15 T.V. Guide is not reliable. Programs get changed after they
16 get printed up in T.V. Guide. Secondly, there's no sponsor
17 for this exhibit. There's no indication of who prepared this
18 exhibit. Thirdly, it's way outside the license renewal period
19 and, I mean, there's no one that can say what actually ran on
20 WJZ-TV or the other stations in the market during that period
21 of time and we haven't seen the program logs from those
22 stations, so I just think this is an, an incompetent exhibit.

23 JUDGE SIPPEL: Mr. Howard?

24 MR. HOWARD: Well first, Your Honor, I thought this
25 was covered yesterday when the testimony was -- and the

1 objection wasn't raised. I felt we were going to raise the
2 objections to the exhibits at the time that the testimony came
3 in and the testimony was accepted without objection.

4 JUDGE SIPPEL: Well, she's, she's really contesting
5 the reliability of the exhibit.

6 MS. SCHMELTZER: I don't think the exhibit was
7 received yesterday. There was a question raised about the
8 Today show.

9 MR. HOWARD: I'm happy to respond.

10 JUDGE SIPPEL: Well, the record will -- whatever the
11 record reflects it reflects, but let's see if we can focus on
12 it. Go ahead, Mr. Howard.

13 MR. HOWARD: The T.V. Guide, yes, scheduling changes
14 do occur, but with respect to regularly scheduled programming,
15 T.V. Guide is a very reliable indicator of what the regularly
16 scheduled programming of the station is. It's when there's an
17 exception, a special or something like that, it's not. It's
18 also a self-authenticated document under the federal rules of
19 evidence and their comparison with like stations in the market
20 is certainly relevant, and the -- to the consideration of
21 renewal expectancy. Let's see. Emily Barr is the sponsor of
22 the document. It was prepared under her supervision and --

23 JUDGE SIPPEL: Emily Barr prepared this exhibit?

24 MR. GOLDSTEIN: That's footnote 3 in her testimony,
25 Your Honor.

1 JUDGE SIPPEL: Well then, we can -- if you have
2 questions about -- certainly I'll accept the reliability of
3 the, of the T.V. Guide references. I know that it's, it's in
4 general reliable. There might have been changes, but if you
5 feel that those changes are so substantial, you can prepare a
6 rebuttal document to it.

7 MS. SCHMELTZER: But, Your Honor, I mean, I've been
8 in other cases where there have been analyses done of
9 programming in the market and I've got to say I've never seen
10 anything like this based on T.V. Guide.

11 JUDGE SIPPEL: Well, that goes to the weight of it.
12 I mean, it's not totally something to be rejected. There is
13 some preliminary indicia of reliability.

14 MS. SCHMELTZER: It's also outside the period that's
15 been defined as the renewal period.

16 MR. HOWARD: The only change in the regularly
17 scheduled programming --

18 MS. SCHMELTZER: Mr. Howard, please don't testify.

19 JUDGE SIPPEL: All right. Well, let's -- wait just
20 a moment now. You're objecting to it, Ms. Schmeltzer, because
21 you say that the programming relied upon was out-- so it was
22 programming that was broadcast outside the relevant period of
23 time?

24 MS. SCHMELTZER: After what's been defined as the
25 relevant period, that's right.