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

FCC MAIL SECTION

Nov 16 3 42 PM '93

FCC 93M-708

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In re Applications 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)	

MEMORANDUM OPINION & ORDER

Issued: November 15, 1993 ; Released: November 16, 1993

1. This is a ruling on a pending motion which the Presiding Judge has taken under advisement. The motion was made orally by Four Jacks in open court on November 08, 1993, for the introduction of Four Jacks Exh. 5 for ID entitled "Letters of Criticism and Complaint From the Public Regarding WMAR-TV."

2. The Presiding Judge has reviewed forty two of the Exh. 5 letters which are dated during the renewal period.¹ Of these forty two letters, only seven letters are concerned with non-entertainment programming and each of those seven letters is complimentary to Scripps Howard's local non-entertainment programming (sports event preempted in favor of Children's Miracle Network Telethon).² Thus, those letters are not adverse evidence and therefore they are not relevant to negate Scripps Howard's evidence.

3. The following constitutes an identification and brief description of each of the letters considered:

¹ Four Jacks proposed Exh. 5 contains eighty three letters. Of these, there were forty two letters that were dated during the period of May 30, 1991, through September 03, 1991. The letters dated after September 03, 1991, have not been reviewed and will not be considered because they are outside the renewal period and therefore are not relevant.

² See letters dated June 04, 1991 through June 08, 1991, and two subsequent undated letters.

Four Jacks Exhibit 5
(Letters of Criticism and Complaint)

<u>Page</u>	<u>Date</u>	<u>Subject</u>
1	06/04/91	Orioles Telethon preempt Newscast
3	06/04/91	Orioles
4	Undated	NBA Telethon preempt
5	Undated	NBA Telethon preempt
8	06/07/91	NBA Telethon preempt
11	06/08/91	NBA Telethon preempt (Children's Miracle Network Telethon)
12	Undated	NBA Telethon preempt
13	Undated	NBA Telethon preempt
14	Undated	NBA criticism
15	Undated	Sports criticism
16	06/20/91	Sports format
17	06/26/91	C&P technical failures
18	07/03/91	Unreadable
19	07/05/91	Sally's baby
20	Undated	Sally's baby (partly unreadable)
21	07/14/91	Orioles
22	07/17/91	Have a Nice Day
23	07/17/91	Racism alleged but no facts stated

24	07/22/91	Depth Perception Sat. Nite Live
25	07/31/91	Orioles & Baseball
26, 28	08/03/91	Turning off TV (Disagreement)
27	08/02/91	WMAR-TV suggests switching-off
29	08/12/93	"Sunrise Morning" is commended
30	08/18/91	Orioles
32	08/28/93	Wimbledon preempt by Orioles and not enough soaps
34	Undated	Santa Barbara-Martel Williams program change
35	08/29/91	Santa Barbara
36	08/29/91	Santa Barbara
38	08/29/91	Criticism of talk show and sports
40	08/29/91	Santa Barbara
41	08/29/91	Santa Barbara
42	08/29/91	Santa Barbara
43	08/30/91	Santa Barbara
45	Undated	Santa Barbara
47	08/31/91	Santa Barbara
48	09/01/91	Santa Barbara
49	09/02/91	Santa Barbara
50	09/03/91	Santa Barbara
51	09/03/91	Santa Barbara
52	09/03/91	Santa Barbara
53	09/03/91	Santa Barbara
54	09/03/91	Santa Barbara

4. The Presiding Judge has considered authorities relied on by Four Jacks. In the case of Harrisclope of Chicago, Inc., 3 FCC Rcd 3587, 3589 (Review Bd. 1988) it was noted that 25% of letters received over a three year period were critical of a major shift in programming to STV which presents an entirely different case than this one. Here the use of letters is to establish WMAR-TV's reputation in the community for its non-entertainment broadcasting. See Fox TV Stations, Inc., 8 FCC Rcd 2362, 2388 (Review Bd. 1993). Letters sponsored by Scripps Howard, which has the burden of proof on renewal expectancy, appear in general to meet that criteria.³ But letters sponsored by Four Jacks are concerned with cancellation of popular programming and similar dissatisfactions of viewers and such evidence will not be received. Id. at 2388-89 at Para. 33. Cf. Seattle Public Schools, 4 FCC Rcd 625, 636 (Review Bd. 1989) (several listeners' complaints considered but no analysis was presented of the nature of those letters).

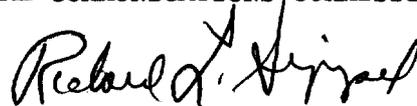
5. The Presiding Judge has determined that he will consider only letters which contain positive or negative comments from the general public that are addressed to non-entertainment programming of WMAR-TV and that are dated within the renewal period. Since all of the forty two letters proffered by Four Jacks as negative comment are either not negative and/or fail to relate to non-entertainment programming and/or do not occur within the renewal period, there will be no further consideration made of the Exh. 5 letters.⁴

Ruling

Accordingly, IT IS ORDERED that for reasons stated above, Four Jacks Exh. 5 for ID IS REJECTED as evidence in this case on grounds of relevancy.

IT IS FURTHER ORDERED that Four Jacks Exh. 5 for ID SHALL REMAIN with the record as a rejected exhibit and a proffer of proof.

FEDERAL COMMUNICATIONS COMMISSION



Richard L. Sippel
Administrative Law Judge

³ Final analysis of the weight of Scripps Howard's letters will be made by the Presiding Judge in the Initial Decision after considering Four Jacks' arguments in its proposed findings and conclusions.

⁴ Scripps Howard has been permitted to introduce renewal evidence that occurred between May 3 and September 30, 1991, but only where the initiating event occurred before September 03, 1991. Scripps Howard's letters which were received in evidence as Scripps Howard's Exh. 3 (R) are not dated after July 12, 1991. In contrast, Four Jacks' letters dated after September 03 are outside the renewal period because the letters were not initiated before September 03, 1991.