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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In re Applications of)
Scripps Howard)
Broadcasting Company)
For Renewal of License of)
Station WMAR-TV,)
Baltimore, Maryland)
and)
Four Jacks)
Broadcasting, Inc.)
For a Construction Permit for)
a New Television Facility on)
Channel 2 at Baltimore, Maryland)

MM Docket 93-94

File No. BRCT-910603KX

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

File No. BPCT-910903KE

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

OPPOSITION TO REQUEST
FOR PERMISSION TO FILE APPEAL

Scripps Howard Broadcasting Company ("Scripps Howard") hereby opposes Four Jacks Broadcasting, Inc.'s ("Four Jacks") request for an appeal of the Presiding Judge's Order released on November 16, 1993 ("the Order"). Scripps Howard opposes the Request on the grounds that the Order is amply supported by law and that Four Jacks' Request does not meet the criteria for granting an interlocutory appeal under the Commission's Rules. See 47 C.F.R. § 1.301(b).

1. As an examination of the letters themselves shows, the Presiding Judge was correct to exclude them. Specifically, the letters are generally irrelevant to the renewal criteria set forth in Fox Television Stations, Inc., F.C.C. 93R-9, MM Docket No. 90-375, at ¶ 7 (Rev. Bd. March 10, 1993). Four Jacks' position

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seems to be that any disagreement with programming decisions expressed by the writers of these letters is "negative" to renewal expectancy. See Request at ¶ 1 ("even a cursory reading of these letters reveals they are not 'complimentary' . . ."). As the Presiding Judge recognized, however, Four Jacks' position is erroneous as a matter of law. A viewer's disagreement with a programming decision is not necessarily negative to any factor bearing on a station's renewal expectancy. Yet, it is only the renewal expectancy criteria that are relevant to this proceeding and to which the Presiding Judge obviously was referring in the statement from the Order attacked by Four Jacks.¹

2. Further, Four Jacks made no effort to support the conclusion that the letters are "negative." In fact, as the Presiding Judge pointed out, examination of the letters reveals the

¹ Four Jacks' lament about the wholesale admission of Scripps Howard Exhibit 3, Attachment J also misses the mark. Four Jacks only objection to this Attachment, which contains letters of praise for WMAR from the community, was that it did not contain the complete universe of letters received by the station. Four Jacks never objected to the content of the letters in Attachment J and, therefore, Four Jacks' objections on this score have been waived.

Similarly, in contrast to the introduction of Attachment J to Scripps Howard Exhibit 3, the presentation of Four Jacks' Exhibit 5 was procedurally deficient as a matter of law. Four Jacks attempted to introduce that Exhibit without the required sponsor, and neglected to voir dire any of Scripps Howard's witnesses about the contents of the Exhibit. Thus, when Four Jacks moved for admission of Exhibit 5, there was no evidence in the record relating to the origin, authenticity, or relevance of the letters contained in the Exhibit. Yet, Four Jacks had ample opportunity to cure this basic procedural deficiency in its proposal of a documentary exhibit, because the Presiding Judge ruled prior to the close of Scripps Howard's case that Four Jacks' Exhibit 5 would not be admitted. Consequently, on procedural grounds alone, the Order was proper.

difficulty of making such a showing. For example, over half of the letters relate to WMAR's decision to cancel a soap opera, "Santa Barbara," and to instead broadcast an informational talk-show hosted by an African-American man, "The Montel Williams Show." See Four Jacks Proposed Exhibit 5 at 32, 34, 35, 36, 38, 40, 41, 42, 43, 45, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 58, 60, 61, 62, 64, 67, 68, 69, 70, 74, 75, 76, 77, 79, 82, 83, 84, 85, 86, 88, 89, 90, 93, 100, 101, 104, 105, 106.

3. Moreover, a further review of the letters indicates that there are additional reasons, other than those cited by the Presiding Judge in his opinion, that the letters are irrelevant. Most significantly, a substantial number of the letters are not demonstrably from viewers in WMAR's service area. The letter on page 82, for example, is from an individual residing in Texas, and the letter on page 83 is from an individual residing in Kentucky. See also Four Jacks' Proposed Exhibit 5 at 3, 14, 15, 16, 21, 22, 23, 30, 61, 64, 75, 76, 80, 81, 84, 89, 93, 95.²

4. Furthermore, Four Jacks reliance on the public letters referred to in Video 44 and Seattle Public Schools is misplaced for several reasons. First, there is no evidence that the admissibility of public letters was at issue in those cases. Second, the Review Board decisions in Video 44 and Seattle Public Schools do not help define what matters raised in letters from the

² Letters that do not contain a return address have been included in this list because there is no evidence that the writer resides in WMAR's service area. The burden is, of course, on Four Jacks to demonstrate the relevancy of each letter.

public would be relevant to assessing a station's reputation in the community. Third, both the Video 44 and Seattle Public Schools decisions predate the more detailed and authoritative guidance provided by the Commission in the KTTV decision of factors to be considered in a Comparative Renewal. See Fox Television Stations, Inc., F.C.C. 93R-9, MM Docket No. 90-375, at ¶ 7 (Rev. Bd. March 10, 1993).

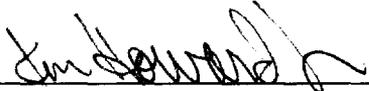
5. In addition, Four Jacks' Request does not meet the criteria for interlocutory appeal set forth in the Commission's Rules. See 47 C.F.R. § 1.301(b). The admissibility and relevance issues concerning Four Jacks' Proposed Exhibit 5 are not new or novel questions of law or policy.

6. Finally, this matter has been pending for over two years since Four Jacks filed its competing application. The hearing has been completed and a schedule for findings and conclusions has been set. The process of appealing to the Commission is time consuming, and there is no time limit in the Rules within which the Commission must make a decision. As a result, the delay in this proceeding that would be caused by an interlocutory appeal would be prejudicial to WMAR.

WHEREFORE, Scripps Howard Broadcasting Company respectfully requests that the Request for Permission to File an Appeal of the Order rejecting Four Jacks' Proposed Exhibit 5 be denied.

Respectfully submitted,

Scripps Howard
Broadcasting Company

By: 
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Date: November 30, 1993

Certificate of Service

I, Ruth Omonijo, a secretary in the law offices of Baker & Hostetler, hereby certify that I have caused copies of the foregoing "Opposition to Request for Permission to File Appeal" to be hand-delivered this 30th day of November, 1993 to the following:

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