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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Applications of	)	MM Docket No. 93-94
Scripps Howard Broadcasting Company	)	FCC File No. BRCT-910603KX
For Renewal of License of Station WMAR-TV, Baltimore, Maryland	)	
and	)	
Four Jacks Broadcasting, Inc.	)	FCC File No. BPCT-910903KE
For a Construction Permit For a New Television Facility on Channel 2 in Baltimore, Maryland	)	

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

OPPOSITION TO PETITION TO REOPEN THE RECORD  
AND ENLARGE THE ISSUES

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## SUMMARY

Four Jacks Petition to Reopen the Record and Enlarge the Issues has no basis in fact or law. The Commission has made it clear that a petition to reopen the record must be supported by newly discovered evidence; that the facts relied upon must show that the petitioner could not with due diligence have known or discovered such facts at the time of hearing; and that the new evidence would, if true, affect the decision. See *The News Sun Broadcasting Co.*, 27 F.C.C.2d 61 (1971). None of these requirements was established by Four Jacks.

In support of its Petition, Four Jacks cited a series of documents and events between July 13, 1993 and November 9, 1993. The hearing, however, did not conclude until November 16, 1993. Consequently, all of the facts on which Four Jacks' relies were known at the time of the hearing, and none were "newly discovered." As a result, there can be no question that Four Jacks has failed to establish the first two elements of the test for reopening the record and adding an issue.

Moreover, Four Jacks also failed to establish the third requirement. To reopen the record and add an issue, Four Jacks needed to present some support for its claim that Scripps Howard had made misrepresentation of fact or lacked candor. Yet, the full record shows that Scripps Howard, in general, and Ms. Barr, in particular, were completely candid throughout the proceeding. Under firmly established Commission policy and precedent, Four Jacks Petition should be denied.

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

OPPOSITION TO PETITION TO REOPEN  
THE RECORD AND ENLARGE THE ISSUES

Scripps Howard Broadcasting Company ("Scripps Howard"), through counsel, hereby opposes Four Jacks Broadcasting, Inc.'s ("Four Jacks") Petition to Reopen the Record and Enlarge the Issues ("Petition") filed on December 8, 1993. Scripps Howard opposes the Petition on the grounds that it does not meet the test for reopening the record and enlarging the issues, and that the facts cited therein are a distorted and selective representation of the record.

## I. INTRODUCTION

1. Four Jacks' Petition seeks to add two issues against Scripps Howard, both of which are dependent upon finding some support for its unproven claim that Scripps Howard has "made misrepresentations of fact and/or lacked candor in connection with this proceeding." See Petition at 1.

2. The facts contained in the Petition, however, demonstrate that Four Jacks' request does not meet the test for reopening the record and adding an issue. In Four Jacks' own words, "[t]he Commission has consistently held that a petition to reopen the record must be supported by newly discovered evidence; that the facts relied upon must show that the petitioner could not with due diligence have known or discovered such facts at the time of hearing; and that the new evidence would, if true, affect the decision. See The News Sun Broadcasting Co., 27 F.C.C.2d 61 (1971)." Petition at ¶ 2 (emphasis added). Not a single one of these criteria exists in this case.

## II. FOUR JACKS CITED NO FACTS THAT WERE "NEWLY DISCOVERED" OR UNAVAILABLE "AT THE TIME OF HEARING."

3. Four Jacks' Petition appears to rely on the baseless hypothesis that after the hearings concluded on November 16, 1993 Four Jacks "discovered" that Ms. Barr had made material misrepresentations in her testimony. The facts do not bear out any part of Four Jacks' theory.

4. In ten pages of factual discussion and quotations purporting to show that it now has "evidence" that was not known at the time of the hearing, Four Jacks cites the following:

- a **July 13, 1993** letter from Scripps Howard's counsel to Four Jacks' counsel, Petition at ¶ 14;
- the **July 16, 1993** deposition of Emily Barr, Petition at ¶¶ 5-7;
- the **September 13, 1993** exchange of direct case testimony, Petition at ¶ 15;
- an **October 26, 1993** pleading filed by Scripps Howard, Petition at ¶ 9;
- the **October 27, 1993** pre-hearing conference, Petition at ¶ 10;
- the **November 8, 1993** hearing testimony of Emily Barr, Petition at ¶ 16; and
- the **November 9, 1993** hearing testimony of Emily Barr, Petition at ¶¶ 11, 13, 17.

No other facts are cited by Four Jacks in its Petition.

5. The hearing, of course, did not conclude, and the record did not close, until **November 16, 1993**, a full week after the last "new" fact cited by Four Jacks. See Transcript of Proceedings ("Tr."), pertinent parts of which are attached hereto as Exhibit A, at 1279, 1379.<sup>1</sup> Consequently, it is clear from the Petition itself that all of the facts on which it is based not only were discoverable "with due diligence" at the time of the hearing, but

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<sup>1</sup> In fact, Scripps Howard did not even finish presenting its case until November 12, 1993.

also were in fact known by Four Jacks at the time of the hearing. See The Sun News Broadcasting Co., 27 F.C.C.2d at 62.<sup>2</sup>

6. Even if Four Jacks' previous knowledge is not obvious from the dates of the facts it cites, in the Petition, Four Jacks quotes numerous portions of the hearing transcript that amply show that, like in Omaha TV 15, Inc., 4 F.C.C. Rcd. 730, 731 ¶ 7 (1988), "[n]ot only could matters now raised by [petitioner] have been considered during the hearing in this proceeding, they indeed were." See Petition at ¶¶ 11, 16, 17 (questioning of Ms. Barr regarding the disposition of the documents at issue). In addition, during the November 9, 1993 hearing, the Presiding Judge confirmed that Four Jacks already "had [its] opportunity [during the November 8 hearing] and [] had many more opportunities starting with July 13th" to explore the issues it is now attempting to raise in its Petition. Tr. at 683-84; see also Tr. at 670-71.<sup>3</sup> Four Jacks, therefore, has failed to establish the threshold element necessary to reopen the record -- that there is at least some "newly

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<sup>2</sup> In contrast, the basis for Scripps Howard's Motion to Enlarge Issues and to Reopen the Record was a document filed with the Securities Exchange Commission on December 2, 1993, over a week after the hearing concluded and the record was closed.

<sup>3</sup> Four Jacks seeks to cure this fatal flaw in its petition by improperly relying on 47 C.F.R. § 1.229. This creative approach also must fail, however, because that Rule does not eliminate the requirement that there be some new evidence to reopen the record. Here, all of the relevant facts were available, at the latest, during the October 27, 1993 pre-hearing conference. The subject of that conference was NBC correspondence, the first basis on which Four Jacks' misrepresentation theory rests, and Four Jacks' counsel specifically inquired about Ms. Covington's notes, the second basis on which Four Jacks' misrepresentation theory rests, during that conference. See Tr. at 407-08, 416-17.

discovered" support for its claim warranting this step. See The Sun News Broadcasting Co., 27 F.C.C.2d at 62; Omaha TV 15, Inc., 4 F.C.C. Rcd. at 731.

III. FOUR JACKS CITED NO FACTS WHICH WOULD AFFECT THE OUTCOME OF THE HEARING.

7. Four Jacks also failed to prove an additional requirement for reopening the record and adding an issue -- that there are at least some facts suggesting that Scripps Howard "has made misrepresentations of fact and/or lacked candor in connection with this proceeding." See Petition at 1.

A. The NBC Correspondence

8. Four Jacks' first alleged misrepresentation relates to correspondence between Emily Barr, Director of Broadcast Operations for WMAR-TV during the License Term, and the National Broadcasting Company ("NBC"), with which WMAR-TV is affiliated ("NBC correspondence"). As a threshold matter, it should be noted that Four Jacks never asked Scripps Howard to produce the NBC correspondence. It did not fall within Four Jacks' discovery requests or the Presiding Judge's June 24, 1993 discovery order.<sup>4</sup>

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<sup>4</sup> During the October 27, 1993 hearing, counsel for Four Jacks indicated that the NBC correspondence was sought to establish "how Scripps Howard went about doing its ascertainment." Tr. at 408. Neither during that hearing nor in its Petition did Four Jacks explain how correspondence requesting records in 1992 could have anything whatsoever to do with 1991 ascertainment.

Even if there was some logic to Four Jacks' expressed reasoning, the fact remains that the NBC correspondence was not within Four Jacks' discovery requests. The Motion for Production of Documents filed by Four Jacks, and attached hereto as Exhibit B, sought, among other things, documents relating to preparation of the issues/programs list and to how news, PSAs and public affairs programming was selected, presumably for purposes of obtaining

Thus, Four Jacks was never entitled to copies of the NBC correspondence in the first place. Nonetheless, Scripps Howard produced a copy to Four Jacks on October 27, 1993.

9. Moreover, in its Petition, Four Jacks completely mischaracterized Ms. Barr's testimony relating to the NBC correspondence. First, Four Jacks incorrectly stated without citation or support that:

[I]n the summer of 1992, Emily Barr . . . commenced a massive effort to construct a showing as to how Scripps Howard ascertained community problems, needs and interests between May 30 and September 3, 1991. Those efforts included (a) contacting NBC to determine the programs the network aired that might have been responsive to the 1991 problems, needs and interests of Baltimore . . . .

Petition at ¶ 4. In fact, as she testified, Ms. Barr did not contact NBC to "construct" a showing of ascertainment. Ms. Barr contacted NBC for the sole purpose of obtaining records of the NBC network programs that WMAR-TV had broadcast during the Renewal Period because WMAR-TV did not itself keep such records in the ordinary course of business. Tr. at 730-31, 737-38.

10. Second, Four Jacks implies that Ms. Barr lied in her deposition regarding whether she requested the information from NBC by telephone or in writing. In paragraphs 5 and 6 of the Petition, Four Jacks juxtaposes Ms. Barr's response regarding how she

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information on ascertainment. See Exhibit B at Requests (b) and (e). But the NBC correspondence, prepared in 1992, unquestionably does not relate to preparation of the issues/program list or to the selection of news and public affairs programming for the Renewal Period, both of which were done in 1991. The citation and quotation of Ms. Barr's deposition in ¶ 7 of the Petition is, therefore, misleading, at best.

originally requested information from NBC -- by telephone -- with her response regarding how she subsequently provided NBC with a list of issues after the network responded to her telephone inquiry -- by sending the NBC correspondence via facsimile several days later -- to unfairly paint Ms. Barr as lacking candor. See Tr. at 733-34; Deposition of Emily Barr ("Barr Dep."), attached as Appendix A to the Petition, at pp. 105-09.

11. Then, Four Jacks argues that Ms. Barr's precise testimony shows that Scripps Howard "deliberately hid" its communications with NBC because in her deposition Ms. Barr did not "admit[]" that she wrote NBC until after Four Jacks' counsel asked her the proper question. See Petition at ¶ 18. Yet, when Ms. Barr was asked to describe the NBC correspondence in her deposition, she did so fully and accurately. Barr Dep. at 106-09. It is difficult to see how Ms. Barr's deposition testimony constitutes deliberate hiding when Ms. Barr provided Four Jacks with a complete description of the contents of the correspondence during the deposition.

12. Third, Four Jacks improperly accuses Ms. Barr of lying at her deposition regarding the existence of the NBC correspondence. In her deposition, Ms. Barr testified as she was required -- to the best of her knowledge and ability at the time. Four Jacks never asked Ms. Barr to search for the correspondence, which was not within any discovery request. Thus, Scripps Howard had no reason to search for the NBC correspondence until over three months later, when Four Jacks sought to appeal denial of its request for a

subpoena from NBC.<sup>5</sup> Until the appeal prompted Ms. Barr to undertake another examination of the trial preparation files seeking the correspondence, she believed that it did not exist at WMAR-TV. See Tr. at 410, 771.

13. Finally, Four Jacks claims that Scripps Howard's lack of candor is shown by an October 26, 1993 pleading filed to oppose Four Jacks' request for an interlocutory appeal of the Presiding Judge's denial of Four Jacks' request for a subpoena to NBC. But, again, Four Jacks has offered no support for its bare supposition that Scripps Howard was aware that the NBC correspondence existed at the time the pleading was filed. Further, that pleading can hardly be the basis for re-opening the record to add an issue for lack of candor when counsel for Scripps Howard voluntarily corrected the record without prompting less than twenty-four hours after the pleading was filed. Tr. at 410.

14. If anything, Scripps Howard's conduct relating to the NBC correspondence shows complete candor. Four Jacks' attempt to use this episode to add an issue against Scripps Howard for misrepresentation appears to be an act of desperation. At best, the effort is simply frivolous.

15. All of the facts relating to Scripps Howard's supposed misrepresentation and lack of candor regarding the NBC

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<sup>5</sup> Of course, Four Jacks never asked Scripps Howard to produce the correspondence and Scripps Howard never received a copy of Four Jacks original request for a subpoena to NBC, so Scripps Howard was not aware that Four Jacks sought the NBC correspondence until Four Jacks filed a request for an interlocutory appeal of the Presiding Judge's denial of the request for a subpoena. See Tr. at 771.

correspondence already are in the record, and in fact were there by the October 27, 1993 pre-hearing conference, when the correspondence was produced by Scripps Howard. And, as the Presiding Judge has recognized, the record shows that there was no improper conduct by Scripps Howard. Specifically, during the November 9, 1993 hearing, the Presiding Judge stated:

Well, I think we explored this sufficiently yesterday and you certainly had an opportunity between July 13th depositions and the admissions session in October to, to raise this as an interlocutory matter if you felt that you were -- you seem to be feeling that that evidence is being intentionally withheld from you. I don't see anything to indicate that and I gave you considerable leeway yesterday.

Tr. at 670-71 (emphasis added). As a result, reopening the record and adding an issue would serve only to cause unnecessary delay, without affecting the outcome of the proceeding.

B. The Janet Covington Notes

16. Four Jacks' arguments regarding the notes of Janet Covington are equally flawed. When Four Jacks' "evidence" regarding the notes is examined, it becomes clear that all that has been proven is that Four Jacks is completely confused about Ms. Covington's notes. It is apparent from the record that there are two types of notes that Ms. Covington made relating to ascertainment: (1) those on her calendar, which were made in 1991, and (2) those made in 1992 at the request of counsel, through Ms. Barr, for use in preparing exhibits for this proceeding. Tr. at 577-78. Instead of recognizing the vital distinction between the two types of notes, however, Four Jacks muddled them together to create a false image of misrepresentation.

17. With respect to the first type of notes -- those on the calendar -- the evidence unambiguously shows that WMAR-TV informed Four Jacks by letter dated July 13, 1993 that the notes existed at one time but were not retained by WMAR-TV or Ms. Covington. See Tr. at 666. Four Jacks was obviously fully aware of the notes during the October 27, 1993 status conference because counsel for Four Jacks inquired during that conference as to whether the notes had been located. See Tr. at 416-17. Significantly, this conference occurred after Four Jacks was aware that the notes had been used to prepare Attachment E to Ms. Barr's testimony.

18. With respect to the second type of notes, they did not fall within the confines of Four Jacks' discovery requests or the Presiding Judge's discovery order. See Exhibit B. Thus, Scripps Howard was under no obligation to disclose their existence or to produce them. Moreover, those notes are classic work-product, and thus would be privileged from disclosure to Four Jacks even if they did exist. They were prepared by Ms. Covington, who was an employee of the station during the Renewal Period, nearly a year after the end of the Renewal Period at the request of counsel (through Ms. Covington's supervisor at the station, Ms. Barr) for purposes of preparing an exhibit to be used in the hearing. Tr. at 584-85.

19. With respect to the "evidence" of misrepresentation in Four Jacks' Petition, it is pure absurdity. Four Jacks claims that the July 16, 1993 statement of Scripps Howard's counsel that "the notes were not retained in any files at WMAR" is an "outright

misrepresentation" in light of Ms. Barr's testimony, which is quoted in ¶ 17 of the Petition. Yet, notwithstanding Four Jacks' efforts to confuse the facts, it is obvious from Ms. Barr's testimony that the statement in the letter refers to the notes on Ms. Covington's calendar, which fell within the scope of discovery, while Ms. Barr's testimony during the hearing refers to the work product notes from outside the Renewal Period. Four Jacks is comparing apples and oranges.

20. Four Jacks also claims that the statement in footnote 6 of Ms. Barr's direct testimony that Ms. Covington kept her notes in her possession when she left the station is a misrepresentation because it is contradicted by Ms. Barr's testimony during cross-examination. Again, however, the statement in her direct testimony was referring to the notes on Ms. Covington's calendar and the statement during cross-examination was referring to the work product notes from outside the Renewal Period. Although 20/20 hindsight may suggest that the footnote could have been more clear, ambiguous testimony, as a matter of law, does not constitute a misrepresentation. See Omaha TV 15, Inc., 4 F.C.C. Rcd. at 731 (bad faith or deceit must be shown). At most, disposal of the work product may show a lack of sophistication regarding legal proceedings on the part of Ms. Barr. But it certainly does not, as Four Jacks argues, constitute "an outright misrepresentation."

21. In the end, the record shows that Scripps Howard timely and accurately informed Four Jacks that Ms. Covington at one time had notes responsive to discovery requests that she took with her

when she left the station, and that those notes were no longer available at the time Scripps Howard responded to discovery. The record also shows that additional notes not within the discovery request were made by Ms. Covington in 1992 for use in preparing the attachments to Ms. Barr's testimony and that Ms. Barr threw those notes away after she was finished using them.

22. Any prejudice caused by Ms. Barr's inadvertent disposal of the work product notes was, of course, cured during the hearing when the Presiding Judge ordered Scripps Howard to produce the "next step" in the chain between those notes and Attachment E to Ms. Barr's testimony, which also is work product. See Tr. at 593. The Presiding Judge invited Four Jacks to cross-examine Ms. Barr regarding that work product and present any portion of it that contradicts Attachment E. Tr. at 681. Four Jacks found no contradictions. See Tr. at 692, 701.

23. As with the NBC correspondence, all of the facts about the purported misrepresentation relating to Ms. Covington's notes already are in the record. And those facts show that there was no lack of candor and no misrepresentation.

#### IV. CONCLUSION

24. Finally, Four Jacks' arguments are wholly dependent on accepting its strained assertion that Emily Barr was deliberately lying. Such an assertion is contradicted by Ms. Barr's honest and forthright testimony during the hearing. Reopening the record and adding an issue against Scripps Howard at this time, therefore, is entirely inappropriate. See Frank Digesu, Sr., 7 F.C.C. Rcd. 5459,

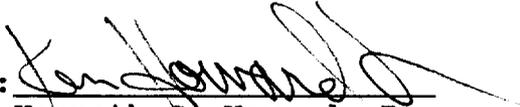
5460 ¶ 14 (1992) (there must be a "substantial and material" question as to whether a party intentionally deceived the Commission before misrepresentation and lack of candor issues will be added); The News Sun Broadcasting Co., 27 F.C.C.2d at 62 (to reopen record, new evidence must affect decision).

25. Overall, the record amply demonstrates that Four Jacks' Petition has no basis in fact or law.

WHEREFORE, Scripps Howard Broadcasting Company respectfully requests that Four Jacks' Petition to Reopen the Record and Enlarge the Issues be denied.

Respectfully submitted,

Scripps Howard  
Broadcasting Company

By:   
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Date: December 22, 1993

**EXHIBIT A**

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**TRANSCRIPT OF PROCEEDINGS**

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

**IN THE MATTER OF: DOCKET NO. 93-94**  
**SCRIPPS HOWARD BROADCASTING COMPANY**  
**and**  
**FOUR JACKS BROADCASTING, INC.**  
**Baltimore, Maryland**

**DATE OF CONFERENCE: October 27, 1993 VOLUME: 6**  
**PLACE OF CONFERENCE: Washington, D.C. PAGES: 405-420**

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

## P R O C E E D I N G S

1  
2 JUDGE SIPPEL: Good morning. This conference is  
3 pursuant to my order to address a request that's been made by  
4 Four Jacks that I certify a discovery issue for an  
5 interlocutory appeal to the Review Board. I want to say right  
6 up front that I don't want to spend too much time talking  
7 about the legal standards with respect to the certification of  
8 these questions.

9 The standard is clear that there has to be a new or  
10 novel question of law or policy and that the ruling is such  
11 that error would likely require a remand and I don't see this  
12 to be in the context of a new or novel question of law or  
13 policy that I'm involved with here.

14 However, having said that up front, I do want to get  
15 into the facts of what's involved -- exactly what is involved  
16 here. Would you explain to me, Ms. Schmeltzer, what exhibit  
17 of Ms. Barr does -- this documentation that you're seeking  
18 from NBC, does it -- do you feel that it's relevant to?

19 MS. SCHMELTZER: Let me give you just a little  
20 background, Your Honor. The renewal application, as you know,  
21 was filed in 1991. We filed our competing application on  
22 September 3, 1991. In the fall of 1992, a year later  
23 according to Ms. Barr's deposition, she communicated with NBC  
24 to ask them about what programming might have been responsive  
25 to Baltimore issues.

1           It's those communications that we seek to get  
2 because we feel that this is very relevant to how Scripps  
3 Howard went about doing its ascertainment and so it relates to  
4 several of the attachments and it also relates to the  
5 testimony of Ms. Barr. Now, I do think that this meets the  
6 second standard that you just discussed and that is whether  
7 this -- if we don't get this material and such, that it would  
8 require a remand.

9           Scripps does not contest that the documents would be  
10 material and relevant. Their only objection is a question of  
11 timeliness. Now, they tried to assert a claim of timeliness  
12 on behalf of NBC saying NBC might want to quash the subpoena.  
13 We have no indication that NBC would want to quash the  
14 subpoena. As far as we're concerned, NBC has been very  
15 cooperative. They've provided us with the name of the person  
16 at NBC to whom the subpoena should be directed and when we  
17 obtained that name, we put it on the subpoena request that you  
18 were delivered.

19           So we really feel that timeliness is not an issue in  
20 this case. The question is whether NBC has the document and  
21 when we get the document. We contend that this document is  
22 material and relevant, regardless of when we get it. This is  
23 a document that could come in as a business record after the  
24 record is closed. Obviously we hope to get the material  
25 sooner so that we will have it no later than the rebuttal

1 the documents that we're seeking here. We're seeking  
2 documents related to ascertainment. But those documents are  
3 records that we believe NBC may have. Certainly if Scripps  
4 Howard had the documents, they would be relevant and  
5 producible. We received documents from Scripps Howard  
6 throughout the summer and early fall of this year, long past  
7 the document production date, but we never received the  
8 communications with NBC and so now we're seeking to get those  
9 and obviously we want to get them on a timely and efficient  
10 basis. But we contend that no matter when we get them, they  
11 are relevant.

12 JUDGE SIPPPEL: Well, there's several things that I  
13 want to go back on with you. First of all -- and I'm going to  
14 hear from Mr. Howard -- well, let me take Mr. Howard now. Go  
15 ahead, sir.

16 MR. HOWARD: I just wanted to note, Your Honor, on a  
17 related matter, that Scripps Howard has not been asked to  
18 produce these documents by Four Jacks and that the -- in doing  
19 a search of trial preparation materials, Scripps Howard has  
20 located correspondence between NBC and WMAR that would be  
21 responsive to the subpoena request. But they have not been --  
22 Four Jacks has never asked Scripps -- I just want it to get  
23 noted that Four Jacks has not asked Scripps Howard for those  
24 documents.

25 MS. SCHMELTZER: No, I -- well, I -- A, we think it

1 right now for the time being, up to counsel and somebody come  
2 back to me and tell me what's going to be going on. Otherwise  
3 I'll issue an order with respect to a schedule, a briefing  
4 schedule. I mean, what I'd like is to get some kind of a  
5 bench memo in advance on it.

6 MR. HOWARD: We won't be introducing the documents.  
7 It'll be Four Jacks -- so will you let us know if you intend  
8 to --

9 MR. LEADER: Well, we have to receive them first.

10 MS. SCHMELTZER: Receive --

11 JUDGE SIPPEL: That answers --

12 MR. GREENBAUM: Tell me --

13 JUDGE SIPPEL: They may just hand them back and say  
14 these are no good. All right, that --

15 MR. LEADER: I'm sorry I asked for them.

16 JUDGE SIPPEL: I'm sorry I asked -- Well put, Mr.  
17 Leader. Then as far as I'm concerned then, we really don't  
18 have an issue to resolve here today. The request for the  
19 interlocutory appeal is moot.

20 MS. SCHMELTZER: May I just inquire though as to  
21 whether Scripps Howard has discovered any other documents  
22 since the deposition?

23 JUDGE SIPPEL: On what, on anything in general?

24 MS. SCHMELTZER: Well, specifically on the documents  
25 that had disappeared from 1992.

1 MR. HOWARD: You're referring to the matters -- to  
2 Janet Covington's notes?

3 MS. SCHMELTZER: Right.

4 MR. HOWARD: No.

5 JUDGE SIPPEL: What I would suggest that you do if  
6 there -- because these -- sometimes these little sidebar  
7 requests get a little bit lost in the shuffle. I would  
8 suggest that you put together a letter to Mr. Howard and you  
9 go down a list of things that you think may have -- that may  
10 be something that was not looked for or that was left open on  
11 the record in some way. Do you know what I mean?

12 MS. SCHMELTZER: Yeah. I don't have any reason to  
13 believe anything was left open.

14 MR. LEADER: Except when we hear the -- you know,  
15 they didn't have this and now that they have it, we just  
16 question what else do they have that --

17 MR. HOWARD: Your Honor, I think that's an unfair --

18 JUDGE SIPPEL: No, I -- perhaps I'm letting this go  
19 longer than I need to. I think I've said everything that I  
20 need to say, but I do need a date certain on which Ms.  
21 Schmeltzer will let me know whether or not they intend to use  
22 -- you intend to use this evidence and if you get it today --  
23 I did not bring my calendar with me this morning. But if you  
24 get it today -- this is Wednesday. Certainly by next  
25 Wednesday, I expect to hear from you as to whether or not you

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**TRANSCRIPT OF PROCEEDINGS**

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

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

DATE OF HEARING: November 8, 1993 VOLUME: 7  
PLACE OF HEARING: Washington, D.C. PAGES: 421-639

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1 four-month-and-two-day period.

2 Q Well, who did you talk to?

3 A I spoke to Arnie Kleiner, Maria Velleggia, Janet  
4 Covington, and I, I believe I spoke to Howard Zeiden, although  
5 I didn't really get any information 'cause he had since left  
6 the employ of WMAR and did not have his calendar at that time.

7 Q Did you speak to anyone -- any of these other people  
8 that may have conducted interviews?

9 A I, I, I, I put a -- I spoke to all of the department  
10 heads and informed them of what I was doing and asked them if  
11 they had information to please forward it to me so that I  
12 could put it in this compilation.

13 Q And did they forward you information?

14 A They forwarded me what they had, which, which for  
15 those other individuals was nothing.

16 Q So the only people that had any information were  
17 Mr. Kleiner, yourself, Maria Velleggia, and Ms. Covington. Is  
18 that accurate?

19 A That's correct.

20 Q And you looked at the calendars of yourself,  
21 Mr. Kleiner, and Ms. Velleggia. Did you look at Ms.  
22 Covington's calendar?

23 A I looked -- Ms. Covington at that point had left the  
24 employ of WMAR. So what I asked her to do was if she could  
25 find her calendar. I did not know at that time that I would

1 need the actual calendar. What, what Ms. Covington did was  
2 she wrote down for me in longhand the meetings that she had  
3 held, who they were with, the dates that they were on, and  
4 what was discussed in general in those meetings. So I never  
5 actually saw her calendar.

6 Q You never actually saw her calendar, but she gave  
7 you some notes in longhand?

8 A That's correct.

9 Q When did she give you those notes?

10 A It was sometime during the summer of 1992 when I was  
11 asked to compile this document.

12 Q Did you -- Other than the calendars and the notes  
13 and recollections, was there anything else that you looked at  
14 in compiling your material? Are you looking at Attachment E?

15 A No, I don't believe so. I don't believe so.

16 Q Are you looking at Attachment E?

17 A Yeah. I was just looking at -- Yeah.

18 Q Attachment E is the product of the work that you did  
19 in 1992?

20 A That's correct.

21 Q This was a year after the license term ended?

22 A Um-hum.

23 Q When did you actually draft this exhibit? Was it  
24 drafted in '92?

25 A Yes, I -- it was compiled during the summer of 1992.