

JAN - 5 1994

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554  
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

**CONSOLIDATED REPLY TO FOUR JACKS BROADCASTING, INC.'S  
AND MASS MEDIA BUREAU'S OPPOSITIONS TO MOTION TO ENLARGE  
ISSUES AND TO REOPEN THE RECORD**

Scripps Howard Broadcasting Company ("Scripps Howard"), through counsel, hereby replies to Four Jacks Broadcasting, Inc.'s ("Four Jacks") and the Federal Communications Commission's Mass Media Bureau's ("Mass Media Bureau") Oppositions to Scripps Howard's Motion to Enlarge Issues and to Reopen the Record ("Motion to Enlarge"). As set forth previously in Scripps Howard's Motion to Enlarge, the record in this case demonstrates that the principals of Four Jacks made misrepresentations and lacked candor before this tribunal in promising to resign from their then-current employment as part of their integration

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commitment. Furthermore, the arguments presented in the Oppositions are wholly inadequate to explain the inconsistencies between the representations of the Four Jacks principals in their direct case and their testimony on cross examination when compared with the information contained in filings made by Sinclair Broadcast Group, Inc. ("Sinclair") with the Securities and Exchange Commission ("SEC").

1. Four Jacks maintains that David, Robert and Frederick Smith's pledges to resign from their then-current employment if their application for Channel 2 is successful "was never intended to encompass" their executive positions at Sinclair. See Four Jacks Opposition at ¶ 8. This argument necessarily boils down to one proposition: that David, Robert and Frederick Smith are not currently employed at Sinclair. See also Four Jacks Opposition at ¶ 9 (arguing that Four Jacks' principals' testimony did not establish they were "employed" at Sinclair). Such a proposition is not supportable given the facts in the record.

2. First, Four Jacks' claim that David, Robert and Frederick Smith are not employed at Sinclair is repeatedly refuted by their own application as well as by their testimony. Four Jacks' application for Channel 2 notes that "in mid-1988, [Robert Smith] became a full-time employee of Channel 45's parent, Sinclair Broadcast Group, Inc." and that Frederick Smith "became a full-time employee of Sinclair Broadcast Group, Inc. on July 1, 1991." Four Jacks Application at Exhibit 6 (Integration Statement), at 2-3; see also Scripps Howard Exhibit 34 at 57 (SEC

filing referring to Frederick Smith's joining his brothers in "full-time" employment at Sinclair in 1991); Motion to Enlarge at ¶¶ 4, 10 (noting testimony that each brother is employed full time at Sinclair and has regular business hours from approximately 9:00 a.m. to 5:00 p.m.). Furthermore, in its Opposition Four Jacks concedes that "the roles of David, Robert, and Frederick Smith as owners and executive officers of [Sinclair] are what they do every day" and that they are paid executive salaries from Sinclair. See Four Jacks Opposition at ¶ 10. Thus, under any definition of the term employment,<sup>1</sup> the Smiths' current employment is with Sinclair, and the pledge to resign from their then-current employment is at odds with their recently revealed intention to continue "to perform all of [their] current duties" at Sinclair after taking over Channel 2. See Scripps Howard Exhibit 34 at 19.

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<sup>1</sup> The American Heritage Dictionary defines the word "employment" as:

- 1.a. The act of employing; a putting to use or work.
- b. The state of being employed.
2. The work in which one is engaged; business; profession.
3. An activity to which one devotes time.

American Heritage Dictionary of the English Language at 428 (1978).

3. Second, Four Jacks' argument that David, Robert, and Frederick Smith's status as "owners" and "bosses" of Sinclair somehow makes them other than employed at Sinclair is completely without merit. See Four Jacks Opposition at ¶ 8. Scripps Howard has never suggested--and does not now suggest--that the Four Jacks principals have pledged or are required to pledge that they will give up their ownership interests in Sinclair. These ownership interests, in and of themselves, are not relevant to David, Robert, and Frederick Smith's pledges to each spend full time, forty hours a week at Channel 2.<sup>2</sup> However, whether Four Jacks' principals will continue their current employment at Sinclair is certainly relevant to their integration pledges. Accordingly, the Four Jacks pleadings' repeated attempts to blur the difference between having an executive employment position with Sinclair and simply possessing an ownership interest ignores a critical distinction. It is, in fact, a further example of Four Jacks' principals' obfuscation and lack of candor. See Four Jacks Opposition at ¶¶ 1, 5, 6, 7, 8.

4. The fact is that Sinclair "bosses" David, Robert, and Frederick Smith have made representations to the SEC and to investors that they will continue to perform all their employment

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<sup>2</sup> Similarly and contrary to Four Jacks' Opposition's argument at ¶ 5, Four Jacks' direct case statements that notwithstanding Sinclair's other media interests, each principal is able and committed to carrying out his pledge to manage on a full time basis Channel 2 in no way purports to qualify or limit each integrated principal's clear pledge to "resign my then-current employment."

duties at Sinclair even if they should undertake the management of Channel 2. See Scripps Howard Exhibit 34 at 19. Thus, their present intent to continue their current employment at Sinclair is firmly set out in the record, and they cannot rely on their positions as "owners" or "bosses" to claim unfettered discretion over their Sinclair employment status.<sup>3</sup>

5. Separately, Four Jacks remarkably and incorrectly asserts that the Four Jacks principals have repeatedly made it clear throughout this proceeding that they intend to retain their current duties and executive positions at Sinclair. See Four Jacks Opposition at ¶ 2. This claim lacks any support whatsoever. Nowhere in the record was such a representation made. On the contrary, David Smith's testimony on cross examination indicates exactly the opposite. See Motion to Enlarge at ¶ 12 (David Smith testifying that investors were put on notice that he was going to resign from Sinclair). Similarly, the Mass Media Bureau's contention that the "basic facts" that are the basis of Scripps Howard's motion were known and explored at the Hearing is erroneous. See Mass Media Bureau Opposition at ¶ 4. Scripps Howard would agree that prior to the December 1993

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<sup>3</sup> With respect to the time they now devote to Sinclair matters, Four Jacks' assertion that David, Robert, and Frederick Smith set their own hours, see Four Jacks' Opposition at ¶ 8, is belied, inter alia, by testimony that they each have regular, full time office hours. See Motion to Enlarge at ¶ 10. Even if David, Robert, and Frederick Smith can set their own office hours, their ability to do so does not mean that they do not have an obligation to make themselves available as may be necessary on a full-time basis to address Sinclair's unpredictable needs. Id.

SEC amendments there was no indication of how Four Jacks' integrated principals' duties at Sinclair were to be reassigned. However, it was only after the record herein was closed that the SEC filings were amended to reveal (1) that these principals did not intend to reassign their Sinclair responsibilities at all (e.g., to Duncan Smith) and (2) instead that each intends to continue all his current employment duties at Sinclair if Four Jacks should acquire Channel 2.

6. Four Jacks also argues that the integration pledge made by the Four Jacks principals to resign their then-current employment was intended "to convey that David, Robert, and Frederick Smith would give up any future employment that they might have at the time of the Four Jacks grant" of Channel 2. Four Jacks Opposition at ¶ 8 (emphasis added). It is incredible to suggest, however, that a plain pledge to resign from their "then-current employment" would not include a promise to resign their present employment at Sinclair provided that this employment should continue up to the time of a grant of their Channel 2 application. Furthermore, given their high positions and salaries at Sinclair, it is implausible to suggest that the Smiths could have meant this pledge to address the possibility that they might take on some new job for another employer while this proceeding is pending and while they were actively seeking

to more than double the number of television stations owned or programmed and administered by Sinclair.<sup>4 5</sup>

7. The Mass Media Bureau contends that the information contained in Sinclair's SEC filings is not contradictory with David, Robert, and Frederick Smith's pledge to resign from their then-current employment because there is no evidence that "their commitment to Sinclair and their commitment to Four Jacks are necessarily mutually exclusive." Mass Media Bureau Opposition at ¶ 5. Even if the flawed factual premise of this statement is accepted, the logic is not sound. Whether David, Robert, or Frederick Smith could conceivably maintain a full time commitment to Four Jacks while continuing to perform "all of his current duties" with Sinclair is not relevant to determining whether each has made contradictory representations to the SEC and the FCC about continuing his employment as an executive officer of

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<sup>4</sup> During this proceeding, Sinclair has effected a \$200,000,000 offering of notes in part to help it acquire additional television stations and enter into a variety of Programming Services Agreements. See Scripps Howard Exhibits 26, 31, 33, 34. Under these circumstances, David, Robert, and Frederick Smith's planned time commitments as Sinclair's executive officers would appear unavoidably to be growing with these new planned responsibilities.

<sup>5</sup> The other suggestion in ¶ 8 of Four Jacks' Opposition that the resignation pledge was also intended to "make clear that they would cease their full-time presence at WBFF-TV" ignores that the evidence nowhere suggests that these principals had a "full time [employment] presence at WBFF-TV," a station that has its own general manager just like the other Sinclair properties. Also, this is an impossible reading of the pledges because the three principals apparently occupy no positions at WBFF(TV) from which they could resign.

Sinclair if the Four Jacks application for Channel 2 should be successful.

8. Finally, it is noted that Scripps Howard agrees with Four Jacks' observation in note 1 of its Opposition that the Bechtel decision "may render irrelevant" Four Jacks' integration claims.<sup>6</sup> Contrary to Four Jacks' implicit suggestion, however, the Bechtel decision can have no effect on the current motion. It is long settled that it is irrelevant whether the Four Jacks principals can actually benefit from their integration pledges in considering whether they have lacked candor or made misrepresentations regarding those pledges. See, e.g., FCC v. WOKO, Inc., 329 U.S. 223, 227 (1946).

9. In sum, "[t]he fundamental importance of truthfulness and complete candor on the part of applicants, as well as licensees, in their dealings with the Commission is well established." Omaha Channel 54 Broadcasting Group, 3 F.C.C. Rcd 870, 873 (Rev. Bd. 1988) (quoting Lebanon Valley Radio, Inc., 35 F.C.C. 2d 243, 258 (Rev. Bd. 1972), review denied, 39 F.C.C. 2d 1099 (1973), rev'd on other grounds sub nom., Lebanon Valley Radio, Inc. v. FCC, 503 F.2d 196 (D.C. Cir. 1974). In sharp

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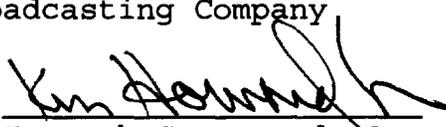
<sup>6</sup> Indeed, it appears that the integration criterion cannot in any way be applied to this proceeding pursuant to this decision. The D.C. Circuit held that the FCC's application of the integration criterion was arbitrary and capricious (in part because it encouraged implausible claims that would never be examined after the grant) and thus the court ordered the FCC to consider any application then properly before it "under standards free of that policy." See Bechtel v. FCC, No. 92-1378 (D.C. Cir. Dec. 17, 1993), slip op. at 5, 23 (emphasis added).

contrast to this fundamental requirement, the record here demonstrates that Four Jacks' principals lacked candor regarding and misrepresented David, Robert, and Frederick Smith's intentions to continue their employment at Sinclair. The facts concerning their plans to continue their employment were never voluntarily revealed,<sup>7</sup> and the contradictions between (1) the various versions of Sinclair's SEC filings and (2) Four Jacks' principals' testimony and pleadings, demonstrate that this applicant must be dragged to the truth if the truth is to be revealed. Protecting the integrity of the Commission's processes requires that this task be undertaken.

WHEREFORE, Scripps Howard Broadcasting Company requests that its Motion to Enlarge Issues and to Reopen the Record be granted.

Respectfully submitted,

Scripps Howard  
Broadcasting Company

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<sup>7</sup> It is relevant to consider that Four Jacks has stated in its Opposition that the latest amendments to Sinclair's SEC filing were made at the request of the SEC. See Four Jacks Opposition at ¶ 2; see also Transcript at 1287. It is these latest SEC amendments that state, for the first time, that David, Robert, and Frederick Smith will retain their positions as officers of Sinclair and will continue to perform all of their current duties. See Scripps Howard Exhibit 33 at 19; Exhibit 34 at 19. If the SEC had not requested this information, Scripps Howard and this tribunal would still not know David, Robert, and Frederick Smith's true intentions with respect to Sinclair.

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Date: January 5, 1994

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 "Consolidated Reply to Four Jacks Broadcasting, Inc. and Mass Media Bureau's Opposition to Motion to Enlarge Issues and to Reopen the Record" to be sent via United States First Class Mail, postage prepaid, on this 5th day of January, 1994 to the following:

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