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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)	MM Docket No. <u>93-94</u>
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

MOTION FOR SUMMARY DECISION

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SUMMARY

Scripps Howard Broadcasting Company ("Scripps Howard"), pursuant to Section 1.251 of the Rules hereby seeks summary decision on the misrepresentation/lack of candor issues that have been designated against it. Summary decision is warranted because once a plain misrepresentation of a fact already in the record is corrected, no material issues remain for resolution through hearing.

The designated issues are premised on whether Scripps Howard misrepresented or lacked candor in describing or producing two sets of documents. As the Designation Order correctly and repeatedly emphasizes, any Scripps Howard obligation to identify or produce these documents flowed from its responsibility to comply with the document production request of Four Jacks Broadcasting, Inc. ("Four Jacks").

The record is clear that the two key sets of documents--1992 NBC facsimile correspondence and notes created by Janet Covington in 1992--were not created until the summer of 1992. **Four Jacks' document production request, however, when read in full, is expressly limited by its terms to request only documents that were already in existence in 1991.** Moreover, Four Jacks, in its reply pleading on this matter--to which Scripps Howard had no opportunity to respond--misquoted its own document production request to support its false claim that the key 1992 documents fell within that request.

Once it is recognized that Scripps Howard in fact had no duty under any party's document production request to identify or produce the 1992 documents in controversy, any alleged delay in producing or identifying these documents is necessarily rendered immaterial to any issue in this case.

Further, all the significant questions raised in the Designation Order are resolved by the fact that Scripps Howard never breached its duty to comply with document production. The 1992 NBC facsimile correspondence, for example, was produced as soon as Scripps Howard was asked for it, and as soon as it was found. It is not evidence of misrepresentation that Ms. Barr erroneously believed at the time of her deposition that this immaterial document was unavailable.

Any questions that may remain--perhaps such as why Scripps Howard referred to Janet Covington's 1991 ascertainment materials as "notes" in its July 13, 1992 letter rather than as a "calendar" or "diary"--likewise simply cannot rise to materiality absent a breach of some duty to reveal the 1992 notes. It was revealed in a timely manner that there were at one time relevant materials created by Janet Covington during the license term and that Janet Covington could not locate these materials. Four Jacks then had months to ask whether additional documents had been prepared from these lost documents, and Four Jacks had over a month after the exchange of exhibits and before the hearing--after it saw Attachment E--to raise a question about that attachment's preparation. Four Jacks never did so.

Relatedly, Scripps Howard had absolutely no motive to mislead Four Jacks or the tribunal about these 1992 documents. Ms. Barr precisely described the NBC correspondence at her deposition and the 1992 Janet Covington notes buttress, not hinder, the reliability of the Janet Covington section of the Attachment E.

Importantly to the appropriateness of summary decision, the designated issues necessarily implicate the role of Scripps Howard's counsel in the alleged misconduct, and thus a hearing on these matters would require both the intrusion into privileged communications and the testimony of counsel. Such a burden should not be imposed on a party absent good cause and the existence of questions of material fact.

Finally, Four Jacks engaged in obvious and basic misconduct before the tribunal in alleging a false claim and supporting it with a false citation to the record. Four Jacks should not be permitted to gain the benefit of additional discovery and delay or to disrupt Scripps Howard's privileged relationship to its counsel, as described above, based on its own blatant misconduct.

In sum, it appears certain that the Designation Order was premised on the basic mistake of fact that Scripps Howard has breached a duty that it had incurred under Four Jacks' document production request. In the plain absence of any such breach, there is no issue of material fact to explore through hearing.

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

MOTION FOR SUMMARY DECISION

Introduction

Scripps Howard Broadcasting Company ("Scripps Howard"), through counsel and pursuant to Section 1.251 of the rules, hereby moves for summary decision on the issues raised in the Memorandum Opinion and Order ("Designation Order"), FCC 94M-50 (released February 1, 1994). Summary decision is warranted because "there is no genuine issue of material fact for determination at the hearing" with respect to the designated issues. 47 C.F.R. § 1.251 (1992).

In brief, in response to a Petition to Reopen the Record and Enlarge the Issues ("Petition") filed by Four Jacks Broadcasting,

Inc. ("Four Jacks")--and in response to Four Jacks' Consolidated Reply to Oppositions to Petition to Reopen the Record and Enlarge the Issues ("Reply")--the Presiding Judge added misrepresentation and lack of candor issues concerning:

- Whether Scripps Howard misrepresented or lacked candor "in connection with deposition testimony and/or pleadings and/or delayed production and discovery relating to NBC documents;" and
- Whether Scripps Howard misrepresented or lacked candor "in connection with deposition testimony and/or pleadings and/or correspondence served on the Commission relating to the status of Janet Covington's diary of 1991 and/or Janet Covington's notes of 1992."

In designating these issues, however, the Designation Order relied repeatedly on an incorrect factual premise: that Four Jacks' document production request had asked Scripps Howard to identify and produce a category of documents that would include the 1992 correspondence with NBC or the 1992 Janet Covington notes used to prepare Scripps Howard's ascertainment exhibit. This false factual premise was first presented in Four Jacks Reply, a document to which Scripps Howard had no opportunity to respond under the rules. Further, in support of its false premise, Four Jacks misleadingly misquoted its own document production request by twice omitting a key phrase which showed that the request's scope was necessarily limited to documents from 1991. Since the Designation Order is expressly premised

upon the "totality of circumstances" surrounding both issues, see Designation Order at ¶¶ 12 & 13, and since the Designation Order is permeated throughout with citations to the Four Jacks document production request's alleged encompassing of the above-noted 1992 materials (see infra at ¶¶ 9 & 10), summary decision in favor of Scripps Howard is warranted as a matter of law.

Stated differently, once it is recognized that Scripps Howard in fact had no obligation to identify or produce these 1992 documents to Four Jacks because Four Jacks never asked for them, any issues concerning lack of clarity about their disclosure or any delay in producing them necessarily are rendered immaterial.

A. The Four Jacks Document Production Requests Cited in the Designation Order Could Not Possibly Apply to Documents Created in 1992.

Scripps Howard's motion for summary decision depends on three sets of facts. Two of these are not in dispute, and the third cannot be seriously disputed.

1. First, there is no question from the record (1) that Scripps Howard in its initial document production provided copies of all the NBC materials that counsel had received from Emily Barr, (2) the produced documents were all of the records of NBC programming that was broadcast on WMAR-TV that WMAR-TV had received, and (3) the produced documents constituted all the NBC materials which Emily Barr possessed in connection with the NBC programming exhibits, except for the NBC facsimile correspondence from 1992 contained in Four Jacks' Exhibit 19.

2. Second, there is no dispute that in its July 13, 1993 letter to Four Jacks' counsel which accompanied the production of some additional documents, Scripps Howard revealed to Four Jacks and the Mass Media Bureau ("Bureau") that contemporaneous 1991 Janet Covington materials which "recorded various ascertainment meetings in which she participated during the relevant period . . . were not retained in any files at WMAR-TV," were no longer in Ms. Covington's possession, and thus could not be produced. See Scripps Howard's July 13 letter (copy attached to Four Jacks' Petition, Appendix D at 2).

3. The third fact is that Four Jacks' document production request, by its express terms, did not seek any post-1991 documents relating to program lists or ascertainment. That is, **Four Jacks' Reply baldly misstated a crucial fact before this tribunal by claiming--and offering false citations for the claim--that the 1992 NBC facsimile correspondence and Janet Covington's 1992 notes were covered by its June 11, 1993 motion for production of documents.**

4. Four Jacks' statements of fact are plainly false because its document request (b) is not, as Four Jacks blusteringly represented, a broad request for all documents "describing the conduct and results of ascertainment efforts" or "reflecting the compilation of responsive programming lists." See Reply at 6 & 10 n. 8.

5. Request (b) instead reads in full:

All Documents relating to the preparation of the above Issues/Programs Lists, including

Documents describing the conduct and results of ascertainment efforts, general public surveys (if any) and Documents reflecting the compilation of responsive programming lists.

See Motion for Production of Documents by Scripps Howard Broadcasting Company at 5 (emphasis added) (a copy of this motion is attached as an exhibit to Scripps Howard's Opposition to Petition to Reopen the Record and Enlarge the Issues ("Opposition"), filed December 22, 1993 at Exhibit B (thereto)).

6. The Four Jacks document production request thus is limited by its own terms to documents "relating to the preparation of" the 1991 issues/programs lists. No other reading is possible. The word "including" dictates that the phrases which follow only request materials to the extent that they are included in the category of documents "relating to the preparation of" the relevant issues/programs lists described in Four Jacks request (a), i.e., those issues/programs lists "covering the relevant period." See id.

7. It is an uncontested fact in the record that WMAR-TV's issues/programs lists were prepared and inserted in the public file as required by rule in a timely fashion in the summer and fall of 1991. Transcript of Proceedings ("Tr.") at 612-14; see also Reply at ¶ 4. It is also uncontested that both the NBC facsimile correspondence and the 1992 Covington notes were not created until the summer of 1992. Tr. at 224-25, 407, 577-78, 603; Four Jacks' Request for Permission to File An Appeal of the Order Denying the Request for Issuance of Subpoena Duces Tecum, at ¶ 3; see also Reply at ¶ 4. Accordingly, the 1992 NBC

facsimile correspondence and the 1992 Janet Covington notes could not possibly relate "to the preparation of the above Issues/Programs Lists," and they therefore could not possibly be covered by Four Jacks' document production request.¹

8. It appears certain that the Designation Order placed decisional significance upon Scripps Howard's alleged duty, in response to Four Jacks' document production request, (1) to have produced the 1992 NBC facsimile correspondence and (2) to have identified in document production the notes prepared by Janet Covington in 1992 that Emily Barr utilized in preparing Attachment E to her testimony. The Designation Order at ¶ 6, for example, erroneously concludes that the 1992 NBC correspondence falls under the Four Jacks' motions' category, "documents reflecting the compilation of responsive programming lists." The Designation Order at ¶ 11 erroneously concludes that the 1992 Janet Covington notes which had been discarded by Ms. Barr were covered by the Four Jacks request for "documents describing the

¹ While the Presiding Judge's order responding to Scripps Howard's objections to the Four Jacks document production request did direct Scripps Howard to produce "copies of all documents relating to the above Issues\Programs lists," see Document Production Order, FCC 93M-400 released June 24, 1993, as quoted in the instant Designation Order at ¶ 11, and arguably these 1992 documents could be deemed to be "related" to the lists, they could not be related to the lists' 1991 "preparation." The Document Production Order did not purport to expand the documents subject to discovery beyond those requested by Four Jacks. Indeed, it expressly rejected Four Jacks' final overbroad request for all documents "that Scripps Howard considers relevant to its claim for a renewal expectancy." See Document Production Order at 3 & n.4. That order ruled instead, "[t]he way to obtain those documents in discovery is through discrete specifications that have an intrinsic characteristic of good cause." Id. No such request ever issued.

conduct and results of ascertainment efforts." These conclusions rely on precisely the misquotes offered in Four Jacks' misleading and false Reply.

9. Most importantly, to find that candor issues were raised by Scripps Howard's alleged failure to sufficiently identify or produce these documents, the Designation Order repeatedly relies upon factual conclusions that the 1992 documents had been requested. See, e.g., Designation Order at ¶¶ 6 & 7 (stating that NBC documents "were not readily produced" and that the document production request was continuing in nature but that no more documents were produced after deposition); at ¶ 8 (ruling that the NBC facsimile correspondence was "discoverable evidence" and that thus "questions of fact [exist] about whether Scripps Howard was being forthright in responding to Four Jacks' document discovery motion of July 11, 1993"); at ¶ 9 (citing the date of the Four Jacks motions to produce and noting Scripps Howard's claim that the 1992 Janet Covington notes lay outside that request); at ¶ 11 (offering a detailed discussion of the issue which makes clear that it is Scripps Howard's alleged lack of clarity in its counsel's July 13, 1993 letter with respect to revealing the 1992 Janet Covington notes in response to the Four Jacks document production motion which may have indicated an absence of candor); at ¶ 12 (stating that the NBC correspondence "was responsive to a motion to produce that was filed on June 11, 1993" and relying on the "totality of the circumstances" including the "failure to timely produce the documents in

response to the motion to produce" in order to add the NBC correspondence issue); and ¶ 13 (stating that "the later [Covington] notes were subject to a document request of June 11, 1993"; plus relying on "the totality of the circumstance" with respect to adding the Janet Covington notes issue).

10. Further, the Designation Order section citing legal authority for adding the issues references the duty "to supplement discovery responses known to be inaccurate or incomplete," and the cases cited as authority involve either the failure to respond to a discovery request or to a question fairly raised by a separate party. See Designation Order at ¶ 14. Finally, the Designation Order at ¶ 15 concludes the discussion section by noting that the designation of these issues focuses on whether candor was lacking in communications "relating to documents which pertain to the preparation of the renewal expectancy exhibit of Scripps Howard"--preparations that the record shows did not commence until 1992 and thus were outside Four Jacks' discovery requests.

11. In sum, the Designation Order could hardly be more permeated with recitations of and reliance upon the premise that Scripps Howard had an obligation under Four Jacks' document production request to identify and/or produce the two identified 1992 documents. Since this premise is flatly and completely

wrong, hearings on these issues are unwarranted as a matter of law.²

12. Further, Scripps Howard has consistently and vigorously defended the correct position that these 1992 documents did not lie within the scope any Four Jacks discovery request. See, e.g., Tr. at 410-13, 601-02. Thus, it would be both unfair and highly prejudicial to Scripps Howard to require that Scripps Howard be subjected to the expense and inconvenience of additional discovery and hearings on these issues. Among the very substantial hardships which would be caused to Scripps Howard by requiring it to defend against these issues--under the express threat of disqualification as Channel 2's licensee--are the effectively forced revelation of its privileged communications with counsel and the forced presentation of evidence by Scripps Howard's counsel.³ Such burdensome intrusions between attorney and client should not be permitted to occur absent good cause and on genuine issues of material fact.

13. It is likewise very relevant that Four Jacks should not be permitted to gain the benefit of being allowed to conduct

² It is noted in this regard that, with respect to both issues, the Designation Order makes express reference to the "totality of the circumstances." See id. at ¶¶ 12 & 13. Accordingly, the fact that the most key circumstance affecting these issues was wrong appears to require summary resolution of these issues in favor of Scripps Howard.

³ The Designation Order cites pleadings filed by counsel and counsel's correspondence as being possibly misleading. Since the Designation Order also places all burdens on Scripps Howard, Scripps Howard apparently has no choice but to defend itself vigorously with all the relevant evidence, including counsel's testimony.

additional discovery from Scripps Howard where that benefit would accrue as a direct result of its own extremely serious misconduct. In addition to the fact that such procedures are unfairly burdensome to Scripps Howard, Four Jacks would gain the opportunity to conduct fishing expeditions in discovery in an effort to gain yet something else that it could perhaps twist into the appearance of an issue. Its conduct here plainly demonstrates that propensity on Four Jacks' part. No benefit, however unlikely of ultimate success, should accrue to Four Jacks as a result of its having misrepresented the key fact underlying its position through false claims and false record citations in its Reply.

14. Given (1) the lack of a legal basis for the issues, under the cases cited in the Designation Order, (2) the uncontestable factual error at the very foundation of the Designation Order, (3) the substantial and unfair burden which trying the issue would place on Scripps Howard, and (4) the fact that the apparent root cause of these issues' addition is blatant misconduct by Four Jacks, summary decision resolving each of the issues in Scripps Howard's favor should be issued forthwith as a matter of law.

B. Absent any Duty on Scripps Howard to Produce the 1992 Documents in Discovery, Any Remaining Ambiguity in the Record Is Plainly De Minimis

15. The NBC Correspondence. Absent any duty to produce the 1992 documents, the evidence already in the record shows that Scripps Howard bent over backwards to ensure that all documents

within the scope of the Four Jacks production request were identified and, where possible, produced. For example, Scripps Howard's production of the NBC correspondence within 24 hours after it had mistakenly told the Presiding Judge that it did not have such documents serves as evidence of this affirmative effort, not as evidence of a willingness to conceal information. As a matter of law, the production of documents, whether at a hearing or earlier, cannot logically be used at all as evidence of a lack of candor. Producing documents, whenever it may occur, simply has to be viewed as what it is, evidence of an applicant's effort to comply with full disclosure.

16. Further, it strains credibility to suggest that Scripps Howard could have known it had the NBC facsimile document on October 26 and, while knowing that a prehearing conference on the matter was scheduled for October 27, then filed a false pleading the day before the conference (at the Presiding Judge's request) stating that it did not have the document, but then produced the document on October 27. What conceivable bad motive could underlie that conduct? The only plausible explanation for such conduct is the one offered by Ms. Barr at hearing--she found the NBC facsimile correspondence document which she had thought she did not have and sent it to counsel--who then obviously produced it the next day.⁴ See Tr. at 771-72. Thus, the Designation

⁴ It should be noted in this regard that Ms. Barr would have had an original or a copy of her memorandum in her file at WMAR-TV, not a facsimile. The copy of the correspondence to NBC from Emily Barr which was produced on October 27, however, is itself obviously a copy of a facsimile. See Four Jacks

Order's suggestions at ¶¶ 7 and 12 that the production of the documents so soon after the filing of an inconsistent pleading may raise a question cannot--at least absent any document production request for the documents at issue--be any evidence that a question of candor exists.

17. The Designation Order also suggests that candor may have been lacking based on the statement in the October 26 pleading that a search for the NBC facsimile correspondence might delay the hearing. See Designation Order at ¶ 7. It should be kept in mind that the Four Jacks subpoena and the Scripps Howard pleading requested by the Presiding Judge addressed a potential search for the document by NBC, not by Scripps Howard. The brevity of any search by Scripps Howard for this document could not be at all relevant to the issue addressed in the pleading.

18. Again, Scripps Howard still had not been asked to search its files or to provide the NBC correspondence. Scripps Howard likewise was never asked to contact NBC to see if that company had retained copies of the correspondence. Indeed, Scripps Howard was never asked for the correspondence until after Scripps Howard informed the Presiding Judge at the October 27 Prehearing Conference that it had located copies of the correspondence. While Scripps Howard did state on October 26,

Exhibit 19. This fact suggests the explanation for how the material was received from Ms. Barr by counsel in time for production relatively early the next day. Conditioned on the parties' agreeing that the revelation of two documents would not constitute a broad waiver of attorney-client privilege, Scripps Howard is prepared immediately to offer documentary evidence on this limited question.

that it did not have the document, applicants are not presumed to lack candor when they make a mistake--particularly a mistake about a matter that was not material to Four Jacks' case as Four Jacks itself had then defined it to Scripps Howard. Scripps Howard thus should not be accused--wholly without evidence--of having denied having the document on October 26, 1993, while knowing that the document was in its files. A lack of candor question simply cannot follow from these events.

19. Thus, both as a matter of law (as well as sound policy), absolutely no adverse inference should be drawn from Scripps Howard's conduct in producing the NBC correspondence at the prehearing conference. Indeed, given the facts discussed above that the NBC facsimile correspondence was never within the scope of Four Jacks' document production request, that Four Jacks had never requested Scripps Howard to search for or produce this correspondence, and that the Presiding Judge gave Scripps Howard only the briefest of time periods (less than 28 hours) to prepare and file its October 26 pleading,⁵ it is actually far from surprising that Scripps Howard's discovery of the documents must have occurred on the very eve of the pre-hearing conference.

20. The Janet Covington Notes. While no material issue can remain after correcting the record as to Scripps Howard's lack of any obligation to disclose the 1992 Janet Covington notes under Four Jacks' document production request, this may not wholly

⁵ See Order issued October 25, 1993 (FCC 93-678) (requiring Scripps Howard to hand-deliver and file its responsive pleading to Four Jacks' Reply by noon on October 26, 1993).

resolve every question raised in the Designation Order. Both the July 13 letter and Emily Barr's testimony use the term "notes," and that term may not seem as appropriate in hindsight as "calendar" or "diary," when compared with Ms. Barr's testimony on cross-examination. Still, Scripps Howard's July 13, 1993 letter unquestionably conveyed to Four Jacks that there had been contemporaneous writings that were within the scope of its request which no longer existed, and the letter gave notice that such writings were relevant to the proceeding. Four Jacks was entitled to no more than this at the pre-deposition stage in light of the limited scope of its discovery inquiries.

21. Further, to the extent that Four Jacks could claim entitlement to see the 1992 notes under the next-link-in-the-chain work product reasoning applied at the hearing, see Tr. at 642-644, Four Jacks' failure to ask for any descriptions of ascertainment efforts (except as related to preparing the 1991 issues/programs lists) precludes applying such an argument here. Scripps Howard cannot be faulted for not revealing its trial preparations or seeking in camera review of its work product absent any request that might reasonably raise an issue as to the opposing party's right to review it.

22. Nevertheless, applying a detailed work product analysis shows that, in fact, no apparent harm resulted to Four Jacks from the delay in disclosure of Scripps Howard's exhibit preparation process. Four Jacks had Attachment E to Emily Barr's testimony--citing Janet Covington's ascertainment contacts--

almost one month before the hearing, and yet Four Jacks asked no questions about the attachment's preparation in the interim, despite an express invitation from the Judge to pursue the matter of Janet Covington's notes or other missing evidence if it felt that evidence was being withheld. Tr. at 417. There was plenty of time for interrogatories about the attachment's source materials even though such a request had never before issued. The attachment itself invited such inquiries, because Emily Barr's Direct Case Testimony at n.6 states that Attachment E was prepared using notes and "discussions with" Janet Covington. Nothing prevented Four Jacks from pursuing the next-link-in-the-chain argument itself in September or October, well in advance of the hearing. Four Jacks chose not to do so either before or, for that matter, during the hearing.

23. Examination of Four Jacks' incentives suggests one reason why it did not pursue this line of inquiry. Four Jacks has never offered any evidence or even any argument, alleging that the key information contained in Attachment E may not be reliable. The attachment, after all, consists of descriptions of contacts with named community leaders, and nothing prevented Four Jacks from contacting these leaders to test the attachment's reliability. Instead, Four Jacks has consistently attacked the attachment principally on the grounds that it was not prepared contemporaneously with the License Term, that Four Jacks did not understand the identified issues therein, or on other grounds internal to the document. Four Jacks' ability to make any of

these arguments was not handicapped in the slightest by alleged lack of information about the availability of the contemporaneous Janet Covington materials. Indeed, because Scripps Howard has always maintained that Attachment E was prepared in crucial part with the aid of conversations with non-witnesses that occurred in 1992, Four Jacks' hearsay argument for the exclusion of this attachment did not need any extra support from an earlier disclosure of Emily Barr's use of 1992 notes.⁶

24. Finally, because the Janet Covington section of the attachment only offers cumulative support to a broader series of similar evidence offered by Scripps Howard in affirmative support of its renewal expectancy, because the attachment was obviously at risk of not being admitted into evidence because of its fully disclosed oral hearsay elements, and because--if the attachment had presented false information--it would be subject to rebuttal testimony from the interviewed community leaders identified in the attachment, Scripps Howard had no conceivable motive to dissemble with respect to the 1992 notes. These documents were not incriminating evidence like that at issue in the RKO or WWOR proceedings, see Designation Order at 14. They are documents prepared to help the station by a former employee who had

⁶ As this motion was being prepared for filing, Janet Covington's original 1992 notes and a copy thereof were located (on February 10 and 9, 1994, respectively). Scripps Howard is investigating the circumstances and expects to file the notes with explanatory affidavits promptly.

volunteered her time and effort.⁷ To assume that Emily Barr (or Scripps Howard's counsel) participated in some conspiracy to intentionally hide the existence of these 1992 notes in discovery again strains the bounds of common sense. Neither she nor her counsel had any motive to mislead. Accordingly, even if there was a failure of adequate communication whereby 1992 notes were confused with 1991 calendars, the resolution of that question under these circumstances is simply not material to assessing Scripps Howard's renewal expectancy showing, much less to putting into issue its basic qualifications.

Conclusion

In order for the issues in the Designation Order to rise to materiality, it is necessary that the 1992 documents at the heart of these issues be documents that were in a category sought in discovery by some party to the proceeding. Otherwise, it is immaterial what Scripps Howard said or did not say about them. Four Jacks apparently recognized that problem with its Petition, but still chose to pursue the issues by falsely claiming in its Reply that it had sought the documents. Simple review of the underlying Four Jacks document request reveals that Four Jacks made a bald misrepresentation to this tribunal on this crucial matter.

In sum, Scripps Howard had no duty to produce or reveal the documents at any point in discovery due to Four Jacks never

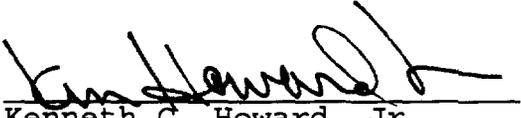
⁷ And correspondingly, Scripps Howard had no motive in this regard to obfuscate the record with respect to its use of the 1992 notes.

having asked for them. The legal precedents cited in the Designation Order plainly contemplate a duty being breached on the part of the party against whom the issue is to be designated, and no such duty existed. Further, Scripps Howard had no plausible motive to mislead the Commission, Four Jacks or the Bureau during discovery with respect to any of these documents, and there is no question that the NBC facsimile correspondence itself and the circumstances surrounding the use of Ms. Covington's 1992 notes were disclosed fully either well before or at the hearing. Scripps Howard would be severely prejudiced by having to defend its and its counsel's conduct in an evidentiary hearing on any remaining non-material questions. And, finally, Four Jacks has filed false statements of fact about the key issue in this matter, and that misconduct should not be rewarded. Therefore, there is no material fact at issue that can possibly affect Scripps Howard's qualifications to be the licensee of Channel 2.

Accordingly, Scripps Howard respectfully requests that this Motion for Summary Decision BE GRANTED and the issues set out in the Designation Order be resolved in Scripps Howard's favor without further hearings.

Respectfully submitted,

SCRIPPS HOWARD BROADCASTING COMPANY

By: 
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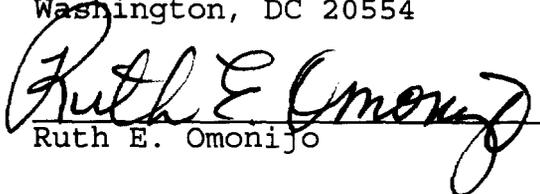
Certificate of Service

I, Ruth E. Omonijo, a secretary in the law offices of Baker & Hostetler, hereby certify that I have caused copies of the foregoing "Motion for Summary Decision" to be hand-delivered this 10th day of February, 1994, to the following:

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