

MAR 14 1994

FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)	MM Docket No. 93-94
)	
SCRIPPS HOWARD BROADCASTING COMPANY)	File No. BRCT-910603KX
)	
For Renewal of License)	
Station WMAR-TV)	
Baltimore, Maryland)	
)	
and)	
)	
FOUR JACKS BROADCASTING, INC.)	File No. BPCT-910903KE
)	
For Construction Permit for a)	
New Television Facility on)	
Channel 2 at Baltimore,)	
Maryland)	
)	
To: Administrative Law Judge Richard L. Sippel		

MASS MEDIA BUREAU'S COMMENTS
ON MOTION FOR SUMMARY DECISION

1. On February 28, 1994, Four Jacks Broadcasting, Inc. (Four Jacks) filed a motion for summary decision in its favor of the misrepresentation issue specified against Four Jacks in Memorandum Opinion and Order, FCC 94M-51, released February 1, 1994. The Mass Media Bureau hereby offers its comments on Four Jack's motion.

2. In its sworn direct case exhibits, Four Jacks principals David Smith, Robert Smith and Frederick Smith represented that in the event of a grant of Four Jacks' application, each would resign his then current employment and limit or terminate any other activities which might interfere with his integration commitment. All three Four Jacks principals are officers and

No. of Copies rec'd
List ABCDE

DTG

shareholders of Sinclair Broadcast Group, Inc. (Sinclair), a holding company which operates three independent UHF stations. In a December 6, 1993, filing with the Securities & Exchange Commission (SEC), made in connection with a debt offer by Sinclair, Sinclair stated that it did not believe that the three Smiths' FCC commitment to resign their then current employment requires them to resign as officers or directors of Sinclair or to dispose of their ownership interest in the company. In prior filings, Sinclair stated that the loss of any of its present officers may have a material adverse effect on the operations of the company.

3. In its motion, Four Jacks claims that the Presiding Judge was misled into adding the misrepresentation issue by misstatements and omissions contained in enlargement and reply pleadings filed by Scripps Howard Broadcasting Company (Scripps Howard). Specifically, Four Jacks contends that Scripps Howard omitted and distorted key facts in characterizing Four Jacks three principals as employees of Sinclair. The omitted fact appears to be the disclosure by Sinclair, contained in an amended S-1 registration statement, that none of its officers has an employment contract with Sinclair. (see page 11 of Four Jacks' motion). Four Jacks also claims that Scripps Howard's attorney "stuck the word 'employment' in Frederick Smith's mouth..." and used the term "employment when examining the other Smiths. They are not employees, says Four Jacks, they are "'executives,'

'managers,' 'bosses.'" Finally, Four Jacks contends that it is not guilty of misrepresentation because its integration proposal has remained consistent.

4. In the Bureau's opinion, Four Jacks' motion is more in the nature of a petition for reconsideration than it is a motion for summary decision. Four Jacks cites no new facts. Rather Four Jacks quibbles with characterizations and argues about facts which were already fully plead in the petition to enlarge and related pleadings. For example, the fact that none of the Smiths had contracts with Sinclair was known to Four Jacks when it filed its opposition to Scripps Howard's motion to enlarge. In any case, whether the Smiths had such contracts does not appear to be relevant to the claim that the Smiths' integration proposals in this proceeding are contrary to representations made by Sinclair concerning their employment to the SEC.

5. Four Jacks' claim that Scripps Howard's attorney "stuck" the word "employee" in the mouth of Frederick Smith is, to use a word favored by Four Jacks, ridiculous. Frederick Smith accepted counsel's characterization of his relationship with Sinclair as "employment". Similarly, Robert Smith was asked, "What is your present employment?" He responded, "My present employment? I'm the vice president and treasurer of the Sinclair Group, Inc." (Tr. 1239-40). Four Jacks' claim that Robert Smith was questioning counsel's characterization of him as an employee

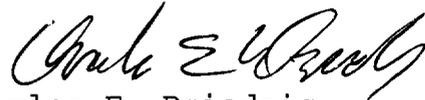
when he asked, "My present employment," is contrary to human experience. It is obvious that Smith, by his question, was confirming his understanding of counsel's question. If anything, Smiths' question underscores the fact that Smith understood the question and considered himself an employee of Sinclair. Four Jacks' further claim that its principals cannot be considered employees because they are "executives," "managers" and "bosses," ignores the fact that persons holding these titles can still be employees of a corporation. In other words, corporations employ "executives," "managers" and "bosses."

6. The Bureau submits that the issue here has been confused by semantics. In the Bureau's opinion, the real question here is not whether the Smiths characterized themselves or should be characterized by others as "employees" of Sinclair, but whether the duties they would perform for Sinclair if the Four Jacks application were granted, are of such a nature that they would interfere with the integration commitment in this proceeding. In this regard, each of the Smiths has agreed, in addition to resigning his current employment, to "limit or terminate any other activities that might interfere with my integration commitment." Clearly, the Smiths, as officers, directors and shareholders of Sinclair, are not in the usual category of employees who are required to work eight hours a day at their jobs for their pay. Indeed, Frederick Smith, in addition to the duties he performs for Sinclair, is a parttime dentist. (Tr.

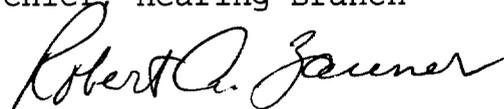
1296-1303). To the extent that his duties as a dentist would interfere with his duties to Four Jacks, Frederick Smith has agreed to terminate his dental practice. (Tr. 1378).

8. In sum, the Bureau believes that the motion for summary decision should be denied, but that the Presiding Judge may wish to use the opportunity of its filing to consider whether the misrepresentation issue specified against Four Jacks is warranted in light of all the facts.

Respectfully submitted,
Roy J. Stewart
Chief, Mass Media Bureau



Charles E. Dziejcz
Chief, Hearing Branch



Robert A. Zauner
Attorney
Mass Media Bureau

Federal Communications Commission
2025 M Street, N.W.
Suite 7212
Washington, D.C. 20554

March 14, 1994

CERTIFICATE OF SERVICE

Michelle C. Mebane, a secretary in the Hearing Branch, Mass Media Bureau, certifies that she has on this 14th day of March, 1994, sent by regular United States mail, U.S. Government frank, copies of the foregoing "**Mass Media Bureau's Comments on Motion for Summary Decision**" to:

Kenneth C. Howard, Esq.
Baker & Hostetler
1050 Connecticut Avenue, N.W.
Suite 1100
Washington, D.C. 20036

Kathryn R. Schmeltzer, Esq.
Fisher, Wayland, Cooper
and Leader
2001 Pennsylvania Ave., N.W.
Suite 400
Washington, D.C. 20006-1851

Michelle C. Mebane
Michelle C. Mebane