

CORRESPONDENCE
FILE

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

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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)	

**OBJECTIONS TO MOTION FOR PRODUCTION OF DOCUMENTS
REQUESTED BY FOUR JACKS BROADCASTING, INC.**

Scripps Howard Broadcasting Company ("Scripps Howard"), by counsel and pursuant to Section 1.325 of the Commission's Rules and the Presiding Judge's Order, FCC 94M-177 (released March 18, 1994), hereby asserts its objections to the Motion for Production of Documents by Scripps Howard Broadcasting Company ("Motion") filed by Four Jacks Broadcasting, Inc. ("Four Jacks") on March 25, 1994. Counsel for Four Jacks has agreed to an April 14, 1994, date for the production of relevant documents not subject to objection.

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General Objections

1. Scripps Howard objects to the Motion to the extent that it requests documents that fall within the attorney work product and attorney client privilege. Such documents are not within the scope of discovery permitted by the Presiding Judge. See Order 94M-177, ¶ 11 (released March 18, 1994) (ruling that "there is no basis for the discovery of any of Scripps Howard's attorneys."). Accordingly, Scripps Howard objects, on relevance grounds, to the scheduling, identification, or production of documents covered by the attorney work product and attorney client privilege. See also discussion infra ¶¶ 6, 10.

2. Scripps Howard objects to the Motion to the extent that it calls for the production of documents at the offices of Fisher, Wayland, Cooper, Leader & Zaragoza, counsel for Four Jacks. Motion at 1. Scripps Howard does not object to making documents available for inspection at the offices of its counsel, Baker & Hostetler, or to delivering copies of such documents to Four Jacks and the Mass Media Bureau.

Objections to Definitions

3. Scripps Howard objects to Four Jacks definition of "Scripps Howard" as:

Scripps Howard Broadcasting Company and all parent companies, subsidiaries and affiliates, as well as all shareholders, officers, directors, principals, employees (past and present), agents, accountants, attorneys, independent contractors or other representatives of Scripps Howard Broadcasting Company and any person or entity under the control of any of the above.

Motion, Definitions at ¶ 1. Scripps Howard objects to this definition in so far as it seeks documents outside the possession, custody or control of Scripps Howard. Section 1.325(a) of the Commission's Rules limits requests for production of documents to those documents in a party's "possession, custody or control." 47 C.F.R. § 1.325(a) (1992). Documents held by individuals no longer employed by Scripps Howard, including but not limited to Janet Covington, are not within Scripps Howard's "possession, custody or control."¹

4. Scripps Howard further objects to Four Jacks' definition of "Scripps Howard" on the grounds that it is overbroad and unduly burdensome to the extent that it would cause a document request to include production of documents by "all parent companies, subsidiaries and affiliates." Motion, Definitions at ¶ 1. Scripps Howard Broadcasting Company is a subsidiary of a large, diversified media company. This larger company has a number of other subsidiaries that are unrelated to

¹ In fact, the Presiding Judge has addressed these objections before. Four Jacks' definition of Scripps Howard is similar in scope to the definition used in its prior Motion for Production of Documents filed on June 11, 1993, to which Scripps Howard objected on June 16, 1993. By Order, 93M-400 (released June 24, 1993), the Presiding Judge resolved this issue by ruling that "Scripps Howard is required to produce only documents which relate to the business of Scripps Howard and that are in the possession or control of Scripps Howard." Id., at 1.

Furthermore, the Presiding Judge has made it clear that evidence not in the possession, custody or control of Scripps Howard must be sought by means of subpoena. See Order, 94M-177, ¶ 10 (released March 18, 1994) (noting that in the event that Four Jacks desires to depose Ms. Covington, a third party witness, "it will be necessary for Four Jacks to apply for a subpoena.").

Scripps Howard Broadcasting Company's broadcasting activities. Four Jacks' request is unduly burdensome since it has not made any showing that documents that are relevant to Scripps Howard's claim of renewal expectancy or that are reasonably calculated to lead to the discovery of relevant evidence are likely to be held by affiliated companies. Furthermore, Scripps Howard has no reason to believe that affiliated companies would possess documents that are relevant to any of Four Jacks' requests.

5. Scripps Howard also objects to Four Jacks' definition of "Scripps Howard" on the grounds that it is overbroad and unduly burdensome to the extent that it would cause a document request to include production of documents from "all shareholders, officers, directors, [and] principals." Motion, Definitions at ¶ 1. Four Jacks has not made any showing that individuals who are not involved in the operations and programming decisions of WMAR-TV would possess any documents that are relevant to Four Jacks' requests or that are likely to lead to relevant evidence. In addition, Scripps Howard does not believe that such individuals would possess documents responsive to any of Four Jacks' requests. Accordingly, Scripps Howard objects to Four Jacks' Motion to the extent that it requires compliance with the Motion by anyone other than those actively involved in the operations and programming decisions of WMAR-TV or in preparing WMAR-TV's renewal expectancy showing.

6. Scripps Howard also objects to Four Jacks' definition of "Scripps Howard" to the extent that it would cause

a document request to include the production of documents that are covered by the attorney-client privilege and the attorney work-product doctrine. Communications between a client and an attorney are covered by the attorney-client privilege. RKO General, Inc., 97 F.C.C.2d 423, 427 (1984). Furthermore, materials prepared by counsel or at the direction of counsel in anticipation of litigation are protected by the attorney work-product doctrine. William F. Peel, Jr., 6 F.C.C. Rcd 5388, 5389 (Rev. Bd. 1991); Raveesh K. Kumra, 5 F.C.C. Rcd 5607, 5608 (Rev. Bd. 1990).

7. Scripps Howard objects to Four Jacks' definition of the term "principal" as overbroad to the extent that it would cause a document request to include the production of documents from individuals who do not hold an attributable interest in Scripps Howard and who are not involved in the operations or programming decisions of WMAR-TV. Motion, Definitions at ¶ 2. Four Jacks has not made any showing that any such individuals would possess any documents that are relevant to Four Jacks' requests or that are likely to lead to relevant evidence.

8. Scripps Howard objects to Four Jacks' definition of the terms "representative or agent" to the extent that it requests the production of documents prepared by, inter alia, consultants for Scripps Howard in anticipation of litigation. Documents prepared by an outside engineer, consultant, accountant, employee or agent at the direction of counsel in

anticipation of litigation are protected by the work-product doctrine. WWOR-TV, Inc., 5 F.C.C. Rcd 6261, 6263 (1990).

Objections to Instructions

9. Scripps Howard objects to Four Jacks' instructions as overbroad and unduly burdensome in that they call for the production of "all documents in the possession, custody or control of Scripps Howard." Motion, Instructions at ¶ 1. The instruction would only be appropriate if it were limited to "all documents described in this motion in the possession, custody or control of Scripps Howard."

10. Scripps Howard also objects to Four Jacks' instruction that any document not produced pursuant to a claim of privilege must be submitted to the Presiding Judge for an in camera inspection. Motion, Instructions at ¶ 4(b). Such an instruction is unnecessary given that the Presiding Judge has determined that documents within the work product doctrine and the attorney client privilege are not within the scope of the discovery which has been authorized on this issue. See supra ¶ 1. Such an instruction is also premature until such time as the Presiding Judge rules that such documents may be within the scope of discovery, at which time Scripps Howard will schedule such documents and submit them for in camera review as required by order of the Presiding Judge.

11. Scripps Howard objects to Four Jacks instruction 8, which states that:

Scripps Howard will be deemed to have represented, on a continuing basis, that no other documents responsive to

this request exist other than those which have been produced or otherwise identified to this request.

Motion, Instructions at ¶ 8. Scripps Howard objects to such an instruction as overbroad as it relates to documents not in the possession, custody and control of Scripps Howard.

12. Scripps Howard also objects to instruction 8 as it pertains to documents that might be produced at a later date as part of a supplemental response to Four Jacks' Motion. While Scripps Howard will continue to make every effort to comply with document production, it objects to being placed in the position that its location and production of responsive documents after the initial production would, under this instruction, constitute being "deemed" previously to have made a false representation. No such inference is warranted with respect to document production.

Objections to Documents Requested

13. Scripps Howard objects to Four Jacks' request 1 in so far as it requests the production to Four Jacks' possession of the original Covington notes. Scripps Howard does not object to making this original document available for inspection at the offices of its counsel, Baker & Hostetler or for independent analysis upon a specific showing of need. Scripps Howard also does not object to supplying a copy of the Covington notes to Four Jacks and has already done so. See letter of Kenneth C. Howard, Jr. to Martin Leader, dated February 10, 1994. It is unreasonable, however, to ask Scripps Howard to turn over an

original document to the control of Four Jacks' counsel.² As to the remaining documents sought pursuant to request 1, Scripps Howard will produce any such documents by April 14, 1994 to the extent that this request calls for documents not subject to attorney-client or work-product privilege.

14. To the extent that Four Jacks' request 2 seeks documents not subject to the attorney-client or work-product privilege, Scripps Howard will produce any such documents by April 14, 1994.

15. To the extent that Four Jacks' request 3 seeks documents not subject to the attorney-client or work-product privilege, Scripps Howard will produce any such documents by April 14, 1994.

16. Scripps Howard objects to Four Jacks' request 4(a) as irrelevant insofar as the "creation" of the Covington calendar is irrelevant to the issue pending before the Presiding Judge and is not reasonably calculated to lead to the discovery of admissible evidence. To the extent that request 4 otherwise seeks documents not subject to attorney-client or work-product privilege, Scripps Howard will produce any such documents by April 14, 1994.

² The Presiding Judge has also resolved this issue previously in favor of Scripps Howard by ruling that the "inspection of original documents will be at the office of counsel for Scripps Howard." Order 93M-400, at 1 (released June 24, 1993).

17. To the extent that request 5 seeks documents not subject to attorney-client or work-product privilege, Scripps Howard will produce any such documents by April 14, 1994.

18. To the extent that request 6 seeks documents not subject to attorney-client or work-product privilege, Scripps Howard will produce any such documents by April 14, 1994.

19. To the extent that request 7 seeks documents not subject to attorney-client or work-product privilege, Scripps Howard will produce any such documents by April 14, 1994.

WHEREFORE, for the reasons stated above, Scripps Howard Broadcasting Company objects to the Motion for Production of Documents by Scripps Howard Broadcasting Company, filed by Four Jacks Broadcasting, Inc. on March 25, 1994.

Respectfully submitted,

Scripps Howard
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Dated: April 4, 1994

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 "Objections to Motion for Production of Documents Requested by Four Jacks Broadcasting, Inc." to be sent this 4th day of April, 1994, via United States First Class Mail, postage prepaid, to the following:

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