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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

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

MOTION TO COMPEL PRODUCTION OF DOCUMENTS REQUESTED
IN SCRIPPS HOWARD BROADCASTING, INC.'S MOTION
FOR PRODUCTION OF DOCUMENTS

Scripps Howard Broadcasting Company ("Scripps Howard"), by counsel and pursuant to Section 1.325(a)(2) of the Commission's Rules hereby moves that Four Jacks Broadcasting, Inc. ("Four Jacks") be compelled to produce all documents requested in Scripps Howard's Motion for Production of Documents on the Misrepresentation Issue pending against Four Jacks Broadcasting, Inc., filed March 28, 1994 (the "Motion"). The documents sought by the Motion are within the scope of discovery permitted by the Presiding Judge. Furthermore, the documents

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List A B C D E

requested are relevant or likely to lead to the discovery of admissible evidence relating to the misrepresentation issue pending against Four Jacks.¹

1. In its Opposition to Motion for Production of Documents, filed April 7, 1994 ("Opposition"), Four Jacks contends that no documents should be produced because the misrepresentation issue pending against it "should never have been designated." Opposition at ¶ 1. Four Jacks' position in this regard is, however, totally without merit and has been explicitly rejected by the Presiding Judge. See Memorandum and Order, 94M-246 (released April 11, 1994) ("Order"). Order, ¶¶ 6, 18.²

2. Furthermore, Four Jacks' Opposition is premised upon an overly narrow view of the misrepresentation issue pending against

¹ Pursuant to the Commission's Rules, Scripps Howard's Motion and Four Jacks' Opposition are attached as Exhibits 1 and 2 to this Motion to Compel. 47 C.F.R. § 1.325(a)(2) (a motion to compel must be accompanied by a copy of the original request and the responding party's objection or claim of privilege).

² In his most recent order, the Presiding Judge found that there were unresolved material issues of fact regarding whether Four Jacks misrepresented or lacked candor before the Commission concerning its integration commitment to resign the then-current employment of the Four Jacks principals:

Four Jacks makes lengthy argument that the Presiding Judge was misled by Scripps Howard or failed to understand the facts in setting the issue. As the presiding Judge stated at the prehearing conference (Tr.1421) and as the Bureau stated in its Comment, Four Jacks is seeking reconsideration of the ruling which added the issue. To the contrary, because of the facially conflicting statements made to the FCC and to the SEC regarding the three principals' continuing roles at Sinclair, there are genuine issues of material fact that remain unresolved.

Id., at ¶ 6.

it. In opposing the production of any documents, Four Jacks contends that all the documents in the record "say what they say" and thus "no additional documents" are relevant to the misrepresentation issue. Opposition, at ¶ 3. Four Jacks' position is, however, contrary to the Presiding Judge's conclusion that there are material facts in dispute that remain unresolved, see e.g., Order, ¶ 6, and that these unresolved issues require the supplementing of the record and cross-examination at hearing. Id. at ¶ 8.

3. Four Jacks' assertion that "[n]one of the documents sought in these requests have anything to do with Four Jacks' written integration pledges in this case, or with the questioned statements" in the SEC filings by Sinclair Broadcast Group, Inc. ("Sinclair") is patently incorrect. See Opposition, at ¶ 6. As the Presiding Judge has explicitly noted, benefits received by a corporate officer such as salary, bonuses, and health insurance are relevant to whether that person should be considered an employee. Order, ¶ 8. The Presiding Judge has also recognized that the manner in which the corporation treats these operating expenses on the company's books for accounting and tax purposes is also relevant. Id. Accordingly, the Presiding Judge has concluded that "[t]hese characteristics of the status of employee should be made a matter of record and explored on cross-examination as germane to the genuine issues of material fact." Id.

4. Thus, Scripps Howard's requests for, inter alia, the Four Jacks principals' tax returns and documents relating to their salary, bonuses, and health insurance are directly relevant to whether the Four Jacks' principals are employees of Sinclair. See e.g. Motion, Requests 1-16. Since the Presiding Judge has concluded that such matters should be made part of the record, such matters are appropriate for discovery.³

5. Similarly, requests for documents that may reveal information about whether the Four Jacks' principals viewed themselves as employees of Sinclair are appropriate. These documents would include, inter alia, credit applications filed by the Four Jacks' principals. See Motion, Request 7. In fact, Four Jacks has conceded the relevance of such documents by admitting that the state of mind of the Four Jacks principals is relevant to whether there was an intent to deceive the Commission.⁴

³ In its Motion, Scripps Howard specifically noted that it was requesting documents relating to whether the Four Jacks principals possess, to use the Presiding Judge's words, "characteristics of the status of employee[s]" of Sinclair: Requests 1 through 16 seek information relating to the Principals' positions at Sinclair and are relevant to whether the Principals are employees of Sinclair. The Documents requested are likely to reveal information regarding whether Sinclair treated the Principals as employees or whether the Principals consider themselves employees of Sinclair.
Motion, Good Cause for Production, ¶ 2.

⁴ Scripps Howard does not agree with Four Jacks' contention that the state of mind of the Four Jacks principals must be discerned solely by taking the deposition of the Four Jacks principals. See Opposition, at ¶ 3. Circumstantial evidence, together with the inconsistencies already existing on the record,

6. As to the remaining requests, the evolution of the disclosures made in Sinclair's SEC filings toward gradually revealing more and more of the Four Jacks principals' plan to remain at Sinclair demonstrates that relevant information may be discovered in connection with the revisions of these SEC documents. Furthermore, the Presiding Judge has specifically noted that relevant discovery might include depositions of "non-government attorneys who were responsible for the transactional legal services in connection with the SEC filings." Order, ¶ 16, n.8. Accordingly, Scripps Howard's requests for documents relating to the SEC filings that were prepared by or for Sinclair's SEC counsel are within the scope of discovery and relevant to the pending misrepresentation issue.⁵

7. Finally, Four Jacks' objects to producing documents on the grounds that Scripps Howard seeks confidential and

would be sufficient for a finding of misrepresentation or lack of candor against the Four Jacks principals. See Harte-Hanks Communications, Inc. v. Connaughton, 491 U.S. 657, 668 (1989) (state of mind can be proven by circumstantial evidence). Such circumstantial evidence might include, inter alia, documentary evidence currently in the record and other evidence specified by the Presiding Judge and requested by Scripps Howard.

⁵ In its Motion, Scripps Howard specifically noted that certain documents were requested because they relate to representations made by the Four Jacks principals' in Sinclair's SEC filings:

Requests 17 though 21 seek information relating to the meaning and scope of the Principals' integration pledge to resign from their then-current employment and representations made in Sinclair Registration Statements regarding the Principals' intent to remain at Sinclair.

Motion, Good Cause for Production, ¶ 3.

proprietary business information. See Opposition, at ¶ 6. Discoverable documents sometimes contain confidential and proprietary information, and confidentiality reasons alone cannot defeat a request for discoverable documents. Scripps Howard is not, however, seeking documents for their confidential and proprietary nature and would not object to an appropriate protective order limiting the use of these materials to this case. In the alternative, Scripps Howard would not object to a mutually acceptable procedure for redaction of information that is neither relevant nor likely to lead to information relevant to the designated misrepresentation issue; such a procedure should include a provision for in camera review by the Presiding Judge to determine whether an unredacted version must be produced.⁶

⁶ In connection with the misrepresentation issue pending against Four Jacks, the Presiding Judge has noted that Four Jacks has represented that its principals would be "fully integrated managers in carrying out their respective day-to-day managerial roles" and that "[t]o conceal a contrary intent to manage Channel 2 through Sinclair's committee method could be a significant act of misrepresentation and/or a lack of candor." Order, ¶ 17. In that regard, Scripps Howard notes that its Motion for Production of Documents on the Standard Comparative Issue, filed June 11, 1993, requested, inter alia:

[a]ny and all Documents constituting, describing, or explaining any agreements or understandings, oral or written, regarding the proposed management of the Proposed Station, including the proposed formation of a management committee."

Motion for Production of Documents on the Standard Comparative Issue, Request 18 (filed June 11, 1993). This request is continuing in nature. Id., Instruction 2.

WHEREFORE, for the reasons stated above, Scripps Howard Broadcasting Company moves that Four Jacks Broadcasting Group, Inc. be compelled to produce all documents responsive to Scripps Howard's Motion for Production of Documents on the Misrepresentation Issue pending against Four Jacks Broadcasting, inc., filed March 28, 1994.

Respectfully submitted,

Scripps Howard
Broadcasting Company

By: Sean H. Lane
Kenneth C. Howard, Jr.
Leonard C. Greenebaum
Sean H. Lane

BAKER & HOSTETLER
1050 Connecticut Avenue, N.W.
Suite 1100
Washington, D.C. 20036
(202) 861-1500

Dated: April 14, 1994

Certificate of Service

I, Shirley Moore, a secretary in the law offices of Baker & Hostetler, hereby certify that I have caused copies of the foregoing "Motion to Compel Production of Documents Requested in Scripps Howard Broadcasting, Inc.'s Motion for Production of Documents" to be sent this 14th day of April, 1994, via United States First Class Mail, postage prepaid, to the following:

The Honorable Richard L. Sippel*
Presiding Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W.
Room 218
Washington, DC 20554

Martin R. Leader, Esq.
Kathryn R. Schmeltzer, Esq.
Gregory L. Masters, Esq.
Fisher, Wayland, Cooper, Leader
& Zaragoza
2001 Pennsylvania Avenue, N.W.
Suite 400
Washington, D.C. 20006
Counsel to Four Jacks
Broadcasting, Inc.

Robert Zauner, Esq.*
Hearing Branch-Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W.
Room 7212
Washington, DC 20554


Shirley Moore

* By Hand

EXHIBIT 1

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&
Return

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MAR 28 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
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Scripps Howard Broadcasting Company)	FCC File No. BRCT-910603KX
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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)	

MOTION FOR PRODUCTION OF DOCUMENTS ON THE MISREPRESENTATION ISSUE PENDING AGAINST FOUR JACKS BROADCASTING, INC.

Pursuant to Section 1.325 of the Commission's Rules and the Presiding Judge's Order, FCC 94M-81 (released Feb. 18, 1994), Scripps Howard Broadcasting Company hereby requests that Four Jacks Broadcasting, Inc. ("Four Jacks") produce the documents described herein relating to the misrepresentation/ lack of candor issue pending against Four Jacks. The documents specified in this Motion for Production of Documents on the Misrepresentation Issue Pending Against Four Jacks Broadcasting, Inc. ("Motion") shall be produced at the offices of Baker & Hostetler, 1100 Washington Square, 1050 Connecticut Avenue, N.W., Washington, D.C. 20036 on April 7, 1994 at 4:00 p.m. or at such

earlier time or at such place as the parties may agree. Scripps Howard Broadcasting Company reserves the right to supplement this Motion.

Definitions

1. The term "Document" as used herein, means the original, or if the original is unavailable, any true copy thereof, together with any differing version of the original of all written, typed, or otherwise stored graphically, electronically, magnetically or optically, and including but not limited to: correspondence, letters, memoranda, notes, reports, papers, notices, files, books, records, contracts, agreements, telegrams and other communications sent or received; applications, instructions or guidelines, print-outs, diary entries and calendars, drafts, tables, compilations, tabulations, charts, graphs, blueprints, recommendations, accounts, worksheets, logs, lists, workpapers; minutes, notes, summaries, agendas and other written records or recordings of or relating to any conferences, meetings, visits, interviews or telephone conversations; bills, statements, invoices, and other records of obligations or expenditures; cancelled checks, vouchers, receipts and other records of payment; financial and statistical data; analyses, surveys; audio and video tapes and transcripts thereof; testimony, statements, interviews and conversations; affidavits, printed matter (including published articles, speeches and newspaper clippings), press releases, photographs, film, tapes, leases, financial documents or any information.

2. The term "Application" as used herein, means the application of Four Jacks Broadcasting, Inc. for a construction permit for a new television facility on Channel 2 at Baltimore, Maryland, FCC File No. BPCT-910903KE.

3. The term "Applicant" as used herein, means Four Jacks Broadcasting, Inc.

4. The term "Principal" as used herein, means the shareholders, subscribers of stock, officers and directors of Four Jacks Broadcasting, Inc., whether past, present or proposed, including the shareholders, officers and directors who propose to be integrated, and those who do not propose to be integrated, into the management of the station that is the subject of the Application.

5. The words "Person" or "Persons" mean, without limitation, individuals, associations, partnerships and their partners, corporations and other legal entities, governments or governmental bodies, commissions, boards, agencies or entities.

6. The word "or" is used in its inclusive sense, as an equivalent to "and/or."

7. The singular number includes the plural number and vice-versa.

8. "Producing Party" means the Applicant or any other Persons who have possession, custody or control of a requested Document.

9. A Document "relating to" any given subject means any document that constitutes, constrains, embodies, reflects,

identifies, states, refers to, deals with, or is in any way pertinent to that subject, including without limitation, documents concerning the preparation of other documents.

10. "Representative" or "Agent" includes, but is not limited to, present or former legal counsel, engineering and all other consultants, accountants, employees, representatives or agents.

11. "Interest" means any form of ownership, whether direct or indirect, beneficial or legal, actual or contingent, including but not limited to ownership through a corporation, joint tenancy, partnership, association, investment company, bank or other entity, or any other form of office or other position in any business entity.

12. "Control" means that the Applicant or any of its Principals, Representatives or Agents thereof, either has the Documents or the right to obtain the Documents from the Person(s) or entity(ies) currently having possession of the Documents.

13. "Registration Statement" means any Form S-1 Registration Statement, Prospectus, or like Document filed pursuant to the Securities Act of 1933, including but not limited to any Amendments thereto, and any and all exhibits or attachments.

14. "Sinclair" means Sinclair Broadcast Group, Inc.

Instructions

1. The Documents are to be produced in the manner in which they are kept in the normal course of business and to be identified by the particular request to which they are responsive.

2. Each request shall be deemed to be continuing in nature. Applicant should update or revise, and otherwise keep current any information provided in response to these requests for production of Documents as facts or circumstances become known or changed.

3. If Documents are not readily available in a form suitable for copying and inspection (e.g., word processor or computer stored information), the Applicant shall, in advance of the date of production, inform its counsel of that fact so a suitable method of examining and/or copying can be arranged.

4. Should a claim be made on behalf of a party that any requested Document or information is not subject to discovery by reason of privilege or otherwise, the party is requested to describe each such Document by date, identity of author, identity of addressee (if applicable), identity of distributee, and subject matter, and to set forth the nature of the claimed privilege and the grounds for refusal to disclose.

5. All Documents in the possession, custody, or control of the Applicant, or any of its Principals, Representatives or Agents that are responsive to or relate to the descriptions set forth herein shall be produced.

6. In the event that any Document responsive to or related

to the descriptions herein is known to the Applicant, or any of its Principals, Representatives or Agents, to have existed but no longer exists, or to have been in the possession or control of the Applicant, any of its Principals, Representatives or Agents but is not now in their control, identify any such Documents and:

a. state the last known date for existence or of the Applicant's, its Principals', Representatives' or Agents' possession or control;

b. identify the Person or entity having possession or custody on the last known date of existence or the last known date of possession, custody or control by the Applicant, any of its Principals, Representatives or Agents;

c. state the length of any such Document;

d. state the reasons why the Document was destroyed, no longer is in the possession, custody or control of the Applicant, any of its Principals, Representatives or Agents;

e. describe the contents of any such Document and the Person or entity that today has possession, custody or control.

7. In reading and interpreting the requests for Documents set forth herein, the Applicant, its Principals, Representatives and Agents are to give words their normal meanings and to assume the normal breadth of interpretation and definition rather than applying narrow, technical definitions.

8. If any Document responsive to or related to the descriptions set forth herein, which would have been produced on the date set for production, had it existed or been in the

Applicant's, any of its Principals', Representatives' or Agents' possession, custody or control, later comes into existence or into the possession, custody or control of the Applicant, any of its Principals, Representatives or Agents, counsel for Scripps Howard should be notified immediately and any such Document is to be produced to counsel for Scripps Howard at the earliest possible date.

9. Documents previously produced or submitted to the Commission need only be identified and not produced, except that if a Producing Party claims that a Document is available at the FCC and the Document is not in fact available at the FCC, Applicant shall produce the Document.

Good Cause for Production

1. Pursuant to Section 1.325 of the Commission's Rules, good cause is shown for the production of the Documents requested herein. The requested Documents are in the sole possession of the Applicant, its Principals, Representatives or Agents. Scripps Howard has no other practical means by which to acquire these Documents. The Documents requested herein are admissible as evidence, or are reasonably calculated to lead to discovery of admissible evidence relating to the misrepresentation/ lack of candor issue pending against the Applicant.

2. Requests 1 through 16 seek information relating to the Principals' positions at Sinclair and are relevant to whether the Principals are employees of Sinclair. The Documents requested are likely to reveal information regarding whether Sinclair

treated the Principals as employees or whether the Principals consider themselves employees of Sinclair. Requests 1 through 7 seek records from the Principals while requests 8 through 16 seek Documents from the Principals' wholly owned company Sinclair. Requests 1 and 8, requesting tax information of the Principals and Sinclair, are directly relevant to whether the Principals are considered employees of Sinclair for tax purposes.

3. Requests 17 through 21 seek information relating to the meaning and scope of the Principals' integration pledge to resign from their then-current employment and representations made in Sinclair Registration Statements regarding the Principals' intent to remain at Sinclair.

Documents Requested

1. All federal and state tax or withholding reports, including but not limited to W-2 statements, along with any attachments and supporting documentation, for each Principal for the following tax years: 1993, 1992, 1991, and 1990.

2. Any and all Documents relating to any loans taken by the Principals from Sinclair at any time, including but not limited to any loans under Sinclair's employee loan program referred to in any Registration Statement filed by Sinclair with the Securities and Exchange Commission. Such Documents should include but are not limited to any Documents setting forth the terms of the loan such as a contract or promissory note.

3. Any and all Documents relating to the payment of any kind of bonus by Sinclair to any of the Principals, including but

not limited to any bonus referred to in any Registration Statement filed by Sinclair with the Securities and Exchange Commission.

4. Any and all Documents relating to any pension benefit or retirement program provided by Sinclair for any of the Principals, including but not limited to any pension benefit or retirement programs referred to in any Registration Statement filed by Sinclair with the Securities and Exchange Commission.

5. Any and all Documents relating to any health, life, disability, or other insurance provided by Sinclair to any of the Principals.

6. Any and all Documents relating to any compensation of any kind paid by Sinclair to any of the Principals at any time since 1990, not covered by requests 2, 3, 4, or 5.

7. Any and all applications for credit filed by any Principal individually since January 1, 1990.

8. All federal and state tax or withholding reports of Sinclair for its employees, officers, or directors, including but not limited to W-2 and W-4 statements, together with any and all attachments or supporting documentation, for each of the following tax years: 1993, 1992, 1991, 1990.

9. Any and all Documents relating to any bonus program provided by Sinclair now or in the past to its employees, officers or directors, including but not limited to any employee bonus program referred to in any Registration Statement filed by Sinclair with the Securities and Exchange Commission.

10. Any and all Documents relating to any loan program provided by Sinclair now or in the past to its employees, officers or directors, including but not limited to any employee loan program referred to in any Registration Statement filed by Sinclair with the Securities and Exchange Commission.

11. Any and all Documents relating to any pension benefit or retirement program provided by Sinclair now or in the past to its employees, officers, or directors, including but not limited to any pension benefit or retirement program referred to in any Registration Statement filed by Sinclair with the Securities and Exchange Commission.

12. Any and all Documents relating to any health, life, disability or other insurance provided by Sinclair to its employees, officers, or directors.

13. Any and all Documents relating to any form of compensation paid by Sinclair to any of the Principals solely due to the Principals' Interest in Sinclair.

14. Any and all Documents regarding any compensation paid by Sinclair since 1990 to any of its employees, officers, directors not covered by requests 9, 10, 11, 12, or 13.

15. Any and all Documents relating to any employment reports prepared by Sinclair, including but not limited to any reports filed with any state, federal, or municipal agency or maintained in company records. Such Documents should include but are not limited to any Documents relating to Sinclair's employees prepared by Sinclair in accordance with the reporting

requirements of the Equal Employment Opportunity Commission, the Federal Communications Commission, the Immigration and Naturalization Service, or any other state, federal or municipal agency.

16. Any and all Documents relating to the organization and structure of Sinclair, including but not limited to any organizational charts.

17. Any and all Documents that identify any Persons who were involved in the drafting of any Registration Statement filed by Sinclair with the Securities and Exchange Commission.

18. Any and all Documents that identify any Persons who were involved in the drafting of the Principals' direct case statements (Four Jacks' Exhibits 2, 3, and 4) that were filed in support of the Application.

19. Any and all Documents or correspondence relating to any Sinclair Registration Statement.

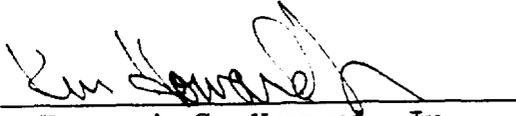
20. Any and all drafts of any Sinclair Registration Statement.

21. Any and all drafts of the Principals' direct case statements (Four Jacks' Exhibits 2, 3, and 4).

WHEREFORE, for the reasons stated above, Scripps Howard Broadcasting Company requests that Four Jacks Broadcasting, Inc. produce the above described Documents at the time and place specified herein.

Respectfully submitted,

Scripps Howard
Broadcasting Company

By: 

Kenneth C. Howard, Jr.
Leonard C. Greenebaum
Sean H. Lane

BAKER & HOSTETLER
1050 Connecticut Avenue, N.W.
Suite 1100
Washington, D.C. 20036
(202) 861-1500

Dated: March 28, 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 "Motion for Production of Documents on the Misrepresentation Issue Pending Against Four Jacks Broadcasting, Inc." to be sent this 28th day of March, 1994, via United States First Class Mail, postage prepaid, to the following:

The Honorable Richard L. Sippel*
Presiding Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W.
Room 218
Washington, DC 20554

Martin R. Leader, Esq.
Kathryn R. Schmeltzer, Esq.
Gregory L. Masters, Esq.
Fisher, Wayland, Cooper and Leader
2001 Pennsylvania Avenue, N.W.
Suite 400
Washington, DC 20006
Counsel to Four Jacks
Broadcasting, Inc.

Robert Zauner, Esq.*
Hearing Branch-Mass Media Bureau
Federal Communications Commission
2025 M Street, NW
Room 7212
Washington, DC 20554


Ruth E. Omonijo

* By Hand.

EXHIBIT 2

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C.

In re Applications of)	MM Docket No. 93-94
)	
SCRIPPS HOWARD)	File No. BRCT-910603KX
BROADCASTING COMPANY)	
)	
For Renewal of License of)	
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: The Honorable Richard L. Sippel
Administrative Law Judge

OPPOSITION TO MOTION FOR PRODUCTION OF DOCUMENTS

Four Jacks Broadcasting, Inc. ("Four Jacks"), by its attorneys and pursuant to Section 1.325(a)(2) of the Commission's Rules, hereby opposes, in toto, the "Motion for Production of Documents on the Misrepresentation Issue Pending Against Four Jacks Broadcasting, Inc." ("Motion") filed by Scripps Howard Broadcasting Company ("Scripps Howard") on March 28, 1994. As set forth below, the Motion is absurdly broad and intrusive, seeking documents that are irrelevant, proprietary, and/or privileged.

1. Four Jacks has consistently maintained that the issues added by Memorandum Opinion and Order, FCC 94M-51 (released February 1, 1994) ("MO&O"), should never have been designated.

4-7-94

As detailed in Four Jacks' pending Motion for Summary Decision in its favor on the issues, those issues for the most part were added as a result of Scripps Howard's misreadings and misinterpretations of statements made by Four Jacks' integrated principals -- David, Robert, and Frederick Smith -- before the Commission and the Securities and Exchange Commission ("SEC"). The evidence on which the issues were added comes nowhere close to establishing that David, Robert, or Frederick Smith misrepresented facts or lacked candor concerning their integration pledges in connection with Four Jacks' proposed Channel 2 station -- let alone that they did so willfully. Indeed, the Mass Media Bureau has suggested that the Presiding Judge "consider whether the misrepresentation issue specified against Four Jacks is warranted in light of all the facts." Mass Media Bureau's Comments on Motion for Summary Decision (filed March 14, 1994), at 5.

2. Even if, notwithstanding these facts, the Presiding Judge believes that the misrepresentation issue against Four Jacks should still be tried, it is clear that the issue is exceedingly narrow and far from complex. The MO&O is based on what the Judge perceived to be contradictions in (i) statements made by Four Jacks' integrated principals in Four Jacks' written direct case exhibits in this case, to the effect that each would resign his "then-current employment" upon a grant of Four Jacks' application; and (ii) certain statements in an S-1 Registration Statement and a Prospectus filed in December 1993 by Sinclair Broadcast Group, Inc. ("Sinclair"), of which David, Robert, and