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BEFORE THE

# Federal Communications Commission

WASHINGTON, D.C.

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In re Applications of	)	MM Docket No. 93-9	FEDERAL COMMUNICATIONS COMMISSION
	)		OFFICE OF THE SECRETARY
SCRIPPS HOWARD	)	File No. BRCT-910603KX	
BROADCASTING COMPANY	)		
	)		
For Renewal of License of	)		
WMAR-TV, Baltimore, Maryland	)		
	)		
and	)		
	)		
FOUR JACKS BROADCASTING, INC.	)	File No. BRCT-910903KE	
	)		
For Construction Permit for a	)		
New Television Facility on	)		
on Channel 2 at	)		
Baltimore, Maryland	)		

To: The Honorable Richard L. Sippel  
Administrative Law Judge

**MOTION FOR PARTIAL RECONSIDERATION AND/OR CLARIFICATION**

Four Jacks Broadcasting, Inc., by its attorneys, hereby requests the Presiding Judge to partially reconsider and/or clarify his Memorandum Opinion and Order, FCC 94M-246 (released April 11, 1994) ("MO&O"). While Four Jacks is mindful that petitions for reconsideration of interlocutory rulings in hearing proceedings are not normally entertained, Four Jacks urges the Judge to consider this Motion, for as shown below, it would serve the interests of the public, the parties and the Commission for the Judge to avoid the wasteful taking of evidence that not only would be duplicative, but would be barred by legal precedent from consideration.

1. The MO&O denies Four Jacks' Motion for Summary Decision in its favor on the issues added against it by Memorandum Opinion

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and Order, FCC 94M-51 (released February 1, 1994). These issues seek to determine

whether Four Jacks Broadcasting, Inc. misrepresented or lacked candor before the Commission in its application, pleadings, documents and/or testimony regarding its integration commitment to resign then current employment positions of David D. Smith, Robert E. Smith, and/or Frederick G. Smith[;]

and the effect of this issue on Four Jacks' qualifications to receive a license for Channel 2 in Baltimore, Maryland. Four Jacks continues to believe that this issue is not warranted.<sup>1/</sup> Nonetheless, Four Jacks is prepared to proceed to hearing, where it is confident that it will obtain a favorable resolution of the added issues.

2. The issues added against Four Jacks concern alleged misrepresentation or lack of candor. However, the MO&O also suggests inquiry beyond the misrepresentation/lack of candor issue at bar into areas solely pertaining to the "integration" criterion of the standard comparative issue. For example, at paragraph 19, the MO&O states that "[a] corollary fact issue to be determined . . . is whether the duties of the principals at Sinclair would interfere with the carrying out of the integration pledges made with respect to Four Jacks."

3. The question of whether a principal's integration commitment can be accommodated with the principal's other business activities, however, is purely a question affecting integration credit under the standard comparative issue, which

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<sup>1/</sup> The Mass Media Bureau has also commented that the Presiding Judge should reconsider whether the issue should have been added.

was the subject of the Phase I hearing last year. It is not a misrepresentation/lack of candor question. Indeed, the Commission has held that even where the facts establish that an applicant's integration proposal is entirely unreliable and undeserving of any credit, that fact alone does not establish misrepresentation by the applicant. See Evansville Skywave, Inc., 7 FCC Rcd 1699 (1992). In all of the cases cited in the MO&O for the proposition that an applicant must show a "specific credible plan for accommodating existing interests with integration plans,"<sup>2/</sup> the applicant merely suffered a reduction or elimination of its quantitative integration credit -- not disqualification for misrepresentation or lack of candor.

4. Furthermore, the MO&O suggests that the hearing on the added issues against Four Jacks should entail an inquiry as to whether Four Jacks' integrated principals will in fact work in day-to-day managerial roles at the proposed Channel 2 station. This question was fully delved into at the Phase I hearing, and there is no indication that Four Jacks' integrated principals will not work in managerial positions at the proposed station. Moreover, this question again is purely and solely relevant to the integration criterion. See, e.g., Doylan Forney, 5 FCC Rcd 5423, 5426 (1990) (applicant denied integration credit, but not disqualified on misrepresentation/lack of candor grounds, where

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<sup>2/</sup> See MO&O, ¶ 5 (citing Radio Naguabo Broadcasting Co., 6 FCC Rcd 4879, 4880 (1991)); id. at ¶ 12 & n.6 (citing Gloria Bell Byrd, 8 FCC Rcd 7124 (1993); Lowrey Communications, L.P., 8 FCC Rcd 6721 (1993)).

shareholders would not fill sufficiently managerial positions at station).<sup>3/</sup>

5. It is one thing to explore, under the added issues, the question of whether Four Jacks' integrated principals have been truthful in pledging to work full-time in the management of Four Jacks' proposed Channel 2 station. Whether those principals are capable of accommodating their proposals with their positions as executives and owners of Sinclair and whether Four Jacks' integrated principals will play sufficiently "managerial" roles at the proposed station, however, are entirely separate questions relevant only to the integration credit due Four Jacks. Scripps Howard had a full opportunity to explore these questions during the Phase I hearing. Even more importantly, however, consideration of these questions is barred by the D.C. Circuit's holding in Bechtel v. FCC, 10 F.3d 875 (D.C. Cir. 1993), and by the Commission's Public Notice, "FCC Freezes Comparative Proceedings," FCC 94-41 (released February 25, 1994) ("Comparative Freeze Order"), which freezes all hearing proceedings involving consideration of the standard comparative issue.

6. In sum, the Judge has added a misrepresentation issue against Four Jacks, and Four Jacks is prepared to proceed to

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<sup>3/</sup> The apparent reason for the Judge's desire to inquire into the "managerial role" question is his speculation that Four Jacks' principals have "conceal[ed] a contrary true intent to manage Channel 2 through Sinclair's committee method," and do not intend to occupy their specified managerial roles at the proposed station. MO&O, ¶ 17. However, there is absolutely no suggestion in the record of such an intent, and not even Scripps Howard's pleadings suggest as much.

hearing on that issue. However, the questions of whether Four Jacks' integrated principals will be able to accommodate their integration proposals with their positions at Sinclair, and whether they will work at the Channel 2 station in sufficiently managerial roles, are purely questions of integration credit due. As such, these questions (i) have already had a full opportunity for development in the Phase I hearing; and (ii) are irrelevant and barred from consideration by Bechtel and the Comparative Freeze Order. Evidence on these points, therefore, would be needlessly duplicative, and would only burden the record with information on a comparative criterion that the courts have held arbitrary and capricious. For these reasons, Four Jacks respectfully requests the Judge to reconsider and/or clarify his MO&O so as to make clear that the Phase II hearing does not encompass matters related to the now-discredited "integration" criterion.

Respectfully submitted,

**FOUR JACKS BROADCASTING, INC.**

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Dated: April 18, 1994

CERTIFICATE OF SERVICE

I, Sybil R. Briggs, a secretary in the law firm of Fisher, Wayland, Cooper, Leader, & Zaragoza, do hereby certify that true copies of the foregoing **"MOTION FOR PARTIAL RECONSIDERATION AND/OR CLARIFICATION"** were sent this 18th day of April, 1994, by first class United States mail, postage prepaid, to the following:

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