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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

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: The Commission

MASS MEDIA BUREAU'S OPPOSITION TO PETITION FOR EXPEDITED ORDER AUTHORIZING DEPOSITION OF COMMISSION EMPLOYEE

1. On April 26, 1994, Four Jacks Broadcasting, Inc. ("Four Jacks") filed a petition for an expedited order authorizing Four Jacks to take the deposition of Commission employee, David Roberts. The Mass Media Bureau hereby opposes Four Jacks' petition.

2. Roberts is currently employed in the Commission's Cable Services Bureau. From June 29, 1992, through November 24, 1993, Roberts was employed by the law firm of Baker & Hostetler, which represents Scripps Howard Broadcasting Company ("Scripps Howard") in this proceeding. During his employment with Baker & Hostetler, Roberts assisted in the firm's representation of Scripps Howard.

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3. Four Jacks seeks to depose Roberts on issues specified against Scripps Howard in Memorandum Opinion and Order, FCC 94M-50, released February 1, 1994 (MO&O). The added issues seek to determine whether Scripps Howard misrepresented facts or lacked candor with regard to its production of documents that had been requested by Four Jacks. On February 15, 1994, in connection with a motion for summary decision which Scripps Howard had filed on February 10, 1994, Scripps Howard submitted a "Declaration" by Roberts. In his declaration, Roberts explains that he had placed certain documents, which have been argued to be within the scope of Four Jacks' document request, in a box with other original documents that were not to be produced.[1]

4. In support of its request to depose Roberts, Four Jacks cites extensively to the Judge's MO&O specifying issues against Scripps Howard, but conveniently ignores the Judge's subsequent orders in which he discusses the scope of the evidence he believes to be relevant to those issues. In his subsequent Memorandum Opinion and Order, FCC 94M-177, released March 18, 1994, denying Scripps Howard's motion for summary decision, the

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[1] At footnote 2 to his Memorandum Opinion and Order, FCC 94M-177, released March 18, 1994, denying Scripps Howard's motion for summary decision, the Presiding Judge recognized that a fair reading of Four Jacks' discovery request could lead to the conclusion that the documents which are the subject of the added issue did not have to produced by Scripps Howard. This suggests that what the Judge is really concerned with is not the failure to produce the documents in question, but, rather, testimony proffered by a Scripps Howard employee concerning the documents. See footnote 3, infra.

Presiding Judge made clear that legal advice provided by counsel to Scripps Howard on the scope of Four Jacks' discovery request will not be attributed to Scripps Howard to support a finding of lack of candor. This being the case, the Presiding Judge specifically concluded (at para. 11), "there is no basis for the discovery of any of Scripps Howard's attorneys." This rationale applies not only to Scripps Howard's present counsel, but also to any counsel who may have represented Scripps Howard during the relevant time period. Moreover, when he was subsequently confronted with a notice of deposition directed to Roberts by Four Jacks, the Presiding Judge affirmed his prior holding that there was no basis for the discovery of Scripps Howard's attorneys and stated that, "that ruling was based on a conclusion reached after considering an affidavit of Mr. Roberts so that the Presiding Judge could make an informed decision." (footnote deleted) Memorandum Opinion and Order, FCC 94M-268, released April 15, 1994.[2] Thus, the Judge who added the issues, after considering Roberts' affidavit, concluded that the testimony of Roberts is not necessary to the resolution of those

[2] The Presiding Judge also found that discovery of Roberts through written interrogatories served on the Bureau Chief would be "oppressive" and instructed Four Jacks not to utilize that remedy. (Id.) at footnote 2.

issues.[3] This should end the matter.

6. In sum, the Bureau opposes the taking of Roberts' deposition.

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

Charles E. Dziedzic
Chief, Hearing Branch

Robert A. Zauner
Attorney
Mass Media Bureau

Federal Communications Commission
2025 M Street, N.W.
Suite 7212
Washington, D.C. 20554
(202) 632-6402

May 6, 1994

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[3] The Presiding Judge, in his Memorandum Opinion and Order denying Scripps Howard's motion for summary decision, notes that the issues go beyond discovery compliance to include certain apparent conflicts in testimony by a Scripps Howard employee. To the extent that the Presiding Judge denied Scripps Howard's request for summary decision based on this employee's testimony, what remains to be decided is totally unrelated to Roberts' or Scripps Howard's failure to produce the documents in question.

CERTIFICATE OF SERVICE

Michelle C. Mebane, a secretary in the Hearing Branch, Mass Media Bureau, certifies that she has on this 6th day of May, 1994, sent by regular United States mail, U.S. Government frank, copies of the foregoing "**Mass Media Bureau's Opposition to Petition for Expedited Order Authorizing Deposition of Commission Employee**" 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