

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)	
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)	

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To: The Honorable Richard L. Sippel
Administrative Law Judge

OPPOSITION TO MOTION TO STRIKE

Four Jacks Broadcasting, Inc. ("Four Jacks"), by its attorneys and in accordance with the Presiding Judge's Order, FCC 94M-393 (released June 6, 1994), hereby opposes the Motion to Strike ("Motion") filed by Scripps Howard Broadcasting Company ("Scripps Howard") on June 1, 1994. Scripps Howard seeks to strike Four Jacks' May 20, 1994 Comments on "Motion for Acceptance of Amendment" ("Comments"). As set forth below, there is no basis for striking Four Jacks' pleading.

1. Four Jacks' Comments concerned a "Motion for Acceptance of Amendment" filed by Scripps Howard on May 11, 1994. Therein, Scripps Howard reported the April 11, 1994 issuance of a California state court finding that Sacramento Cable Television ("SCT") -- a cable operator controlled by Scripps Howard -- had

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engaged in violations of California statutes designed to prevent anticompetitive activity. Four Jacks' Comments noted that this state court decision marks just another in a long line of anticompetitive conduct engaged in by Scripps Howard-controlled media companies, and is the second adjudicated finding of such misconduct since 1987. Pointing out that it had demonstrated this lengthy history of anticompetitive misconduct in prior pleadings in this proceeding, including a May 13, 1993 Petition to Enlarge Issues, Four Jacks suggested that, in light of this latest adjudicated finding, the Presiding Judge revisit the question of whether a hearing should be held to determine the effect of this course of anticompetitive activity on Scripps Howard's qualifications to be the licensee of WMAR-TV.

2. Scripps Howard's claim that Four Jacks' Comments are unauthorized is wrong. Scripps Howard's "Motion for Acceptance of Amendment" is clearly an interlocutory motion. Four Jacks was entitled to, and did, file a timely response. Cf. 47 C.F.R. § 1.294(a) and (b) (any party to a hearing may file an opposition to an interlocutory request within 4 days after the original pleading is filed). Since Four Jacks did not oppose the relief sought in the motion -- i.e., acceptance of Scripps Howard's amendment -- it did not style its pleading an "opposition." Nonetheless, Four Jacks clearly was entitled, within the time period for filing a response, to express its views on the substantive matters raised by Scripps Howard's amendment.

3. Scripps Howard also claims that Four Jacks' Comments are an improper request for the Presiding Judge to revisit his

ruling on Four Jacks' May 1993 motion to enlarge issues, and that it is an improper attempt to enlarge the issues without filing a motion to enlarge. Neither argument has merit. First, to the extent Four Jacks' Comments suggested that the Judge revisit the question of whether issues should be added to examine Scripps Howard's anticompetitive activity, there is clearly nothing improper in doing so, given a new adjudicated finding of misconduct that did not exist when Four Jacks filed its motion to enlarge. Second, Four Jacks' Comments do not formally seek the addition of issues against Scripps Howard. It is not necessary for Four Jacks to do so, because Four Jacks already has placed before the Presiding Judge the long history of anticompetitive misconduct by Scripps Howard media companies. All that Four Jacks' Comments suggest is that, in light of another recent adjudicated finding of such misconduct, the Presiding Judge consider whether the now-expanded body of evidence warrants a hearing on Scripps Howard's licensee qualifications. See 47 C.F.R. § 0.341(b) ("Any question which would be acted upon by the administrative law judge if it were raised by the parties to the proceeding may be raised and acted upon by the administrative law judge on his own motion.").

4. Finally, Scripps Howard baldly claims that "Four Jacks' Pleading contains substantive mistakes of fact and law," and offers to elaborate only if the Presiding Judge so requests. This sort of "teaser" advocacy has no place in this or any other proceeding. Either Scripps Howard should explain what the alleged "mistakes" are, or retract its allegation. Nothing is

accomplished by Scripps Howard making a cryptic and patently unsupported statement while pledging to explain only if asked to do so. Moreover, Four Jacks' Comments were based on the information that Scripps Howard itself provided in its amendment. Thus, if there are any "mistakes" in Four Jacks' Comments, they are of Scripps Howard's own making.

5. In sum, Scripps Howard has requested the Judge to accept an amendment reporting what, in Four Jacks' view, is a very significant development affecting Scripps Howard's qualifications. It was entirely permissible for Four Jacks, within the time period specified for responding to such a request for relief, to state its views on the matters reported in the amendment. There is no basis for striking Four Jacks' Comments, and Scripps Howard's Motion must therefore be denied.

Respectfully submitted,

FOUR JACKS BROADCASTING, INC.

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Dated: June 9, 1994

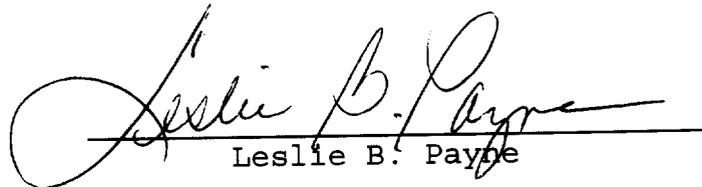
CERTIFICATE OF SERVICE

I, Leslie B. Payne, a secretary in the law firm of Fisher Wayland Cooper Leader & Zaragoza, L.L.P., do hereby certify that true copies of the foregoing "OPPOSITION TO MOTION TO STRIKE" were sent this 9th day of June, 1994, by hand delivery, to the following:

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