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Before the FCC MAIL SECTION
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FCC 94M-399

In re Applications of)	MM DOCKET NO. 93-94 ✓
SCRIPPS HOWARD BROADCASTING COMPANY)	File No. BRCT-910603KX
For Renewal of License of Station WMAR-TV)	
Baltimore, Maryland)	
and)	
FOUR JACKS BROADCASTING, INC.)	File No. BPCT-910903KE
For a Construction Permit for a New)	
Television Facility on Channel 2)	
at Baltimore, Maryland)	

ORDER

Issued: June 09, 1994 ; Released: June 13, 1994

This is a ruling on Motion To Compel Supplemental Production Of Documents that was filed by Scripps Howard on June 01, 1994.¹ Four Jacks filed an Opposition on June 07, 1994.²

The parties agree that the documentary evidence sought by Scripps Howard would be probative of the manner in which Sinclair's business records reflect the status of the Four Jacks' principals as employees. Therefore, it would appear that the parties, through their counsel, could agree on a Stipulation that would establish the categories of Sinclair records that reflect that information (e.g. federal tax forms, state tax forms, payroll deduction records, enrollment records in company sponsored life, health, disability and retirement programs, company sponsored loans). The Stipulation should also reflect whether social security and medicare taxes are being withheld for the principals which would appear on their W-2 forms. Representative documents which are probative of each category could be made available by Four Jacks for inspection by Scripps Howard before it agrees to the Stipulation. The Stipulation method of proof to show what the business records reflect would be the most efficient method of proof.³ Therefore, by June 30, 1994, the parties should be able to reach a Stipulation.

¹ The additional documents were first sought by Scripps Howard's letter request of May 23, 1994 which Four Jacks responded to by letter dated May 27, 1994. The efforts to resolve this discovery dispute informally were not successful.

² The Presiding Judge ordered hand-delivery and a shortened time for an Opposition because of the closeness of a hearing date. It now appears that the hearing date will be postponed.

³ It will be first necessary for Four Jacks to make clear to Scripps Howard the documents which would be probative of employment that do not exist. For example, if Sinclair pays no state unemployment insurance taxes for any of the principals that fact must be disclosed to Scripps Howard.

Absent a Stipulation, Scripps Howard is entitled to receive copies of the business documents of Sinclair for each of the Four Jacks principals that show the payments of unemployment insurance tax; inclusion on Sinclair's payroll registers; inclusion on federal and state tax or withholding reports (W-2 and W-4 forms and comparable state documents); Form 5500 tax forms or other business records that reflect whether the principals participated as employees in Sinclair's benefit plans; Forms 1099 which would reflect other payments by Sinclair to the principals; payments made by Sinclair for the benefit of the principals (e.g. social security, medicaid, payroll taxes); and documents which establish that the principals participate in Sinclair's employee health benefit plan (e.g. copies of enrollment cards with i.d. numbers redacted and a confirmation from the carrier that the principal is covered under the Sinclair employee plan should suffice).⁴

Rulings

Accordingly, IT IS ORDERED that by June 30, 1994, Four Jacks and Scripps Howard must attempt to stipulate to the universe of business records of Sinclair Broadcast Group, Inc. that reflect the employment status of the Four Jacks' principals as employees at Sinclair.⁵

IT IS FURTHER ORDERED that if there is no Stipulation filed, Four Jacks will deliver to Scripps Howard the documents described above by July 01, 1994 at 4:00 p.m.

IT IS FURTHER ORDERED that in accordance with the foregoing the Motion To Compel Supplemental Production Of Documents that was filed by Scripps Howard on June 01, 1994, IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION



Richard L. Sippel
Administrative Law Judge

⁴ There need be no production of copies of claims submitted for payment. It is not necessary to show that the principals used the plan. (That question can be asked at deposition.) It is sufficient to show by documentation only that they are enrolled.

⁵ It is understood that Four Jacks argues against the relevance of such evidence to the misrepresentation issue. There will be testimony on the issue in the next phase by Four Jacks' principals before findings are made.