

FCC MAIL SECTION

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

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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)	

MEMORANDUM OPINION AND ORDER

Issued: July 18, 1994 ; Released: July 20, 1994

1. This is a ruling on a Motion To Reopen The Record For The Receipt Of New Evidence Relevant To Diversification that was filed on June 27, 1994, by Scripps Howard Broadcasting Company ("Scripps Howard"). An Opposition was filed on July 7, 1994, by Four Jacks Broadcasting, Inc. ("Four Jacks").

2. Scripps Howard seeks to introduce in the record of this case excerpts from a Form 8-K (Current Report) that was filed with the U.S. Securities and Exchange Commission ("SEC") by Sinclair Broadcasting Group, Inc. ("Sinclair") on June 8, 1994.¹ According to the Form 8-K disclosure, Sinclair has recently entered into a Programming Services Agreement ("PSA") by which Sinclair will provide television programming to Station WNUV-TV, Baltimore, Maryland and to Station WTVV (TV) in Milwaukee, Wisconsin.² The disclosure does not report the number of hours of programming that will be provided under the PSA. It appears from earlier filings with the Commission

¹ Sinclair is the parent company of Four Jacks that is wholly owned by the principals of Four Jacks. Sinclair filed a Form S-1 Registration Statement on September 28, 1993. There are also related filings that are in evidence as SH Exhs. 28, 31, 33, and 34.

² The concern of Scripps Howard is with respect to the WNUV-TV PSA because WMAR-TV and WNUV-TV are in the same market.

[FCC] that Sinclair would have a right to provide programming/advertising for substantially all of the station's inventory broadcast time.³ Four Jacks does not raise any objection in its Opposition to that conclusion.

3. Scripps Howard focuses on diversification. Scripps Howard contends that Four Jacks was required to amend its application under §1.65 to disclose the PSA since it effects Four Jacks' diversification. Specifically, Scripps Howard asserts that Sinclair's PSA with WUNV-TV is a cognizable media interest under the Commission's policy, that the PSA in the Baltimore market would make it a second TV outlet attributable to Four Jacks, and that it adversely effects Four Jacks' diversification and therefore it was required to have been disclosed within thirty days.

4. In an earlier related ruling, Scripps Howard's request to expand the scope of cross-examination on Four Jacks' diversification was denied. See Order FCC 93M-671, released October 22, 1993. The issue there also included a PSA in connection with an assignment of Station WNUV-TV. Id. The Presiding Judge found that an inquiry into control over broadcasting through a PSA was too speculative to allow inquiry. The Commission has not yet addressed the multiple ownership rules in the context of the diversification effect to be given to PSAs in comparative renewal cases. There has been no subsequent definitive ruling by the Commission which would change that determination and which would authorize such cross-examination on diversification.⁴

5. However, there is an added issue of a substantial question of fact concerning the bona fides of Four Jacks' integration commitment. It is relevant to that issue to determine the states of mind of the Four Jacks' principals at the time they were testifying in 1993, and earlier when they filed Four Jacks' application and integration statement. The known and anticipated scope of their business commitments through Sinclair at the time of Four Jacks' written integration commitments and at the time of the testimony in November 1993, are relevant discovery inquiries. At this time, the Presiding Judge is prepared to permit the Form 8-K to be used in deposition discovery for the limited purpose of determining the feasibility

³ A previously proposed Sinclair WNUV-TV PSA provided for the use of substantially all of the station's inventory of broadcast time. That proposal is in the record: SH Exh. 31 at 19 and Exh. 33 at 21.

⁴ The Commission has not yet announced rules on diversification for local programming agreements in television. Scripps Howard recognizes that fact. Therefore, the Presiding Judge is not now prepared to grant a form of relief that would expand the scope of this case based upon Scripps Howard's prediction that the Commission will, at a later time, hold that a PSA is an ownership interest to be considered under diversification. A review of the Commission's authority on which Scripps Howard relies does not alter this ruling. See NOPR, Review of Regulations Governing Television Broadcasting, 7 F.C.C. Rcd 4111 (1992).

and bona fides of Four Jacks' integration pledge.⁵ However, a final determination of its relevancy to the misrepresentation issue and its admissibility into the hearing record should await the hearing.

Ruling

Accordingly, in accordance with the above comments and conclusions, IT IS ORDERED that the Motion To Reopen The Record For The Receipt Of New Evidence Relevant To Diversification that was filed by Scripps Howard Broadcasting Company on June 27, 1994, IS DENIED.

IT IS FURTHER ORDERED that the principals of Four Jacks Broadcasting, Inc. MAY BE EXAMINED at their depositions commencing July 19, 1994, on the disclosures in the Form 8-K that relate to business commitments that may effect the feasibility and the bona fides of the integration commitments of Four Jacks and the related testimony of the principals.⁶

FEDERAL COMMUNICATIONS COMMISSION



Richard L. Sippel
Administrative Law Judge

⁵ Counsel for Four Jacks has noted in the telephone conference calls that the rule making on comparative integration will address the comparative standard that ultimately will be applied in this case. See Public Notice 94-41 (February 25, 1994). Therefore, the evidence ultimately may or may not be relevant on the integration comparative issue. See also letter from counsel for Four Jacks to the Presiding Judge dated July 18, 1994 (permitted to be submitted in conference call of July 15, 1994). But that also is a speculative assertion. It also overlooks the possible overlap of evidence that would be relevant to a finding of an unfeasible proposal and to a finding of an intentionally misleading proposal. It could require a remand if evidence were left out which is later found to be relevant to integration. Also, the depositions of the principals of Four Jacks are soon to be taken. It would be timely and not exceedingly time consuming to permit questioning of the principals on the information in the Form 8-K.

⁶ Counsel for the parties were told of the substance of the rulings herein in a telephone conference held on July 18, 1994, and copies were made available to all counsel on that same date.