

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington D.C. 20554

In re Applications of ) MM Docket No. 93-94  
)  
SCRIPPS HOWARD BROADCASTING ) File No. BRCT-910603KX  
COMPANY )  
)  
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: Administrative Law Judge  
Richard L. Sippel

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**MASS MEDIA BUREAU'S OPPOSITION TO  
PETITION TO ENLARGE THE ISSUES**

1. On August 11, 1994, Four Jacks Broadcasting, Inc. ("Four Jacks"), filed a petition requesting that the Presiding Judge enlarge the issues against Scripps Howard Broadcasting Company ("Scripps Howard"). The Mass Media Bureau hereby submits its opposition to Four Jacks' petition.

2. Four Jacks seeks addition of an issue to determine whether Scripps Howard is qualified to be a Commission licensee in light of a recent judgement against Sacramento Cable Television (SCT), a subsidiary of Scripps Howard,<sup>1</sup> for violation

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<sup>1</sup> SCT is a California general partnership. The general partner and 95% equity owner of SCT is Scripps Howard Cable Company of Sacramento, Inc. Scripps Howard Cable Company of Sacramento is a 100% owned subsidiary of Scripps Howard, the

of the California Unfair Practices Act, Business and Professions Code. SCT was found to have violated the Act by engaging in unfair competition and locality discrimination. As a result, SCT was ordered to make a monetary rebate to its subscribers.

3. Four Jacks cites the Commission's Policy Regarding Character Qualifications in Broadcast Licensing, 102 FCC 2d 1179, 1201 (1986) (Character Policy Statement), for the proposition that "[t]he Commission has long been concerned with the type of media-related anticompetitive activity for which Scripps Howard has recently been convicted." Four Jacks contends that, in light of Scripps Howard having been found "guilty of illegal behavior in its cable pricing tactics,"<sup>2</sup> the Commission must consider the policies underlying antitrust and unfair competition laws in connection with Scripps Howard's fitness to be a licensee. RKO General, Inc., 47 RR 2d 921 (1980). Four Jacks claims that an issue was added under less egregious circumstances in Metrowest Corp., 48 RR 2d 1281 (Adm L. J. 1981), where the principal of an  

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corporate licensee of Station WMAR-TV, Baltimore.

<sup>2</sup> As an initial matter, Scripps Howard has not been "convicted" of anything, nor has it been found "guilty" of any crime. The suit at issue is a civil suit in which restitution was ordered. The Presiding Judge has stated, in response to similar language in a Four Jacks pleading:

The use of the term "guilt" in a lawyers pleading implies (if not outright states) a criminal guilt. There has been no criminal proceeding identified which connects a Scripps Howard related entity to any criminal conduct. Such mischaracterized language in a pleading can have the effect of inviting a reply in kind. Order, FCC 94M-401, released June 14, 1994.

applicant was also the CEO of another company which had repeatedly engaged in questionable trade practices.

4. While Scripps Howard has not been convicted of a crime, it has been found in violation of California Code Sections dealing with anticompetitive practices. The Commission has stated "that adjudicated violations of antitrust or anticompetitive laws involving any media of mass communications ... are relevant to our licensing decisions." Policy Statement and Order, 5 FCC Rcd 3525 (1990). Where there is a parent/subsidiary relationship, however, the Commission has stated that it will consider the significance of the relationship of the non-FCC misconduct to the operation of the broadcast subsidiary only "if the two have common principals, and if the common principals are actively involved in the day to day operations of the broadcast subsidiary...." Character Policy Statement, 102 FCC 2d at 1219. In this regard, the Commission "will focus on the actual involvement of the common principals in both the misconduct and in the day-to-day activities of the broadcast subsidiaries." (Id.).

5. In the instant case Four Jacks has failed to establish the necessary nexus between the wrongdoing by SCT and persons who are involved in the day-to-day activities of Scripps Howards' Baltimore station, WMAR-TV. The Metrowest case, cited by Four Jacks, supports the conclusion that such a nexus is

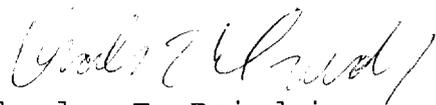
necessary. In that case, the personal nexus was provided by the principal of an applicant who was also the president and CEO of a company which had engaged in questionable trade practices. As noted, no such personal connection has been shown to exist between anyone at WMAR-TV and SCT.<sup>3</sup> Thus, no issue is warranted.

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<sup>3</sup> The Bureau notes that WMAR-TV is directly owned by Scripps Howard and therefore is not technically a subsidiary. This distinction, the Bureau submits, is not significant in the absence of any showing that the individuals involved in the discriminatory pricing by SCT were also involved in the day-to-day activities of WMAR-TV. In other words, the principle set forth in the Character Policy Statement is that the Commission, in evaluating wrongdoing by corporations with non-broadcast interests, will look to the culpability of the specific persons involved in the wrongdoing and their relation to the regulated broadcast station rather than automatically tar the broadcast interests for sins committed in unrelated aspects of company activity.

6. In sum, in the absence of a showing that a person involved in the day-to-day operation of WMAR-TV was also involved in the unfair competition and locality discrimination by SCT, no issue is warranted.

Respectfully submitted,  
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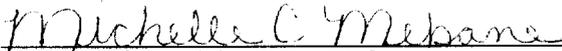
August 24, 1994

**CERTIFICATE OF SERVICE**

Michelle C. Mebane, a secretary in the Hearing Branch, Mass Media Bureau, certifies that she has on this 24th day of August 1994, sent by regular United States mail, copies of the foregoing **"Mass Media Bureau's Opposition to Petition to Enlarge the Issues"** to:

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