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

FCC MAIL SECTION

FCC 94M-504

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In re Applications of

SCRIPPS HOWARD BROADCASTING COMPANY

For Renewal of License of Station WMAR-TV
Baltimore, Maryland

and

FOUR JACKS BROADCASTING, INC.

For a Construction Permit for a New
Television Facility on Channel 2
at Baltimore, Maryland

DOCKET NO. 93-94

File No. BRCT-910603KX

DISPATCHED BY

File No. BPCT-910903KE

ORDER

Issued: August 26, 1994 ; Released: August 30, 1994

This is a ruling on a Motion For Production Of Documents that was filed by Scripps Howard Broadcasting Company ("Scripps Howard") on August 18, 1994. An Opposition was filed by Four Jacks Broadcasting, Inc. ("Four Jacks") on August 24, 1994.

Scripps Howard seeks the personal tax returns of the three principals of Four Jacks who are proposed to be integrated for the years 1991, 1992, and 1993. The reason for seeking the documents is to determine the manner in which income was treated (wages or otherwise) which was received from the Four Jacks' parent company, Sinclair Broadcast Group, Inc. and or its subsidiaries (collectively referred to as "Sinclair"). The evidence would relate to the added misrepresentation issue with respect to the integration pledge of Four Jacks. Because of the recognized privacy nature of personal income tax information, Scripps Howard is prepared to accept redacted copies or, alternatively, a stipulation that the principals reported Sinclair generated income as "wages," that such income was not reported as earnings from self-employment, and that dividends attributable to Sinclair ownership were not reported.

The reason for this eve-of-trial request for tax returns is due to the inability or unwillingness of the Four Jacks principals to state on-the-record whether or not income from Sinclair was reported as wages on their respective Form 1040s. See, e.g., Deposition Transcript of Robert E.C. Smith taken July 19-21, 1994 ("I never look at [my federal tax return]"). Mr. Robert Smith also testified that he did not know how his income from Sinclair was reflected on his Form 1040. Id. The other two principals of Four Jacks presented similar testimony at their respective depositions.

Four Jacks opposes the production request as untimely and waived since personal income tax returns were not requested by Scripps Howard in earlier document requests. Scripps Howard states that it was relying on

deposition discovery for the disclosure of such information.¹ Four Jacks also asserts that Scripps Howard has not shown cause for the documents because it has other information, including other tax information, on which to base an argument for findings that there was an employment relationship between Sinclair and the principals. Four Jacks also offers to "explore the possibility of entering into a mutually agreeable stipulation."

Four Jacks seeks to minimize the importance of the status of the Four Jacks principals as employees of Sinclair. Scripps Howard takes the opposing view. The Presiding Judge has determined the evidence to be relevant to the added issues. It is appropriate to permit litigation counsel for Scripps Howard to develop the hearing record on the added issues that it requested. There is no showing of prejudice or undue hardship and there is a means that is readily available to avoid disclosure of amounts of income. Therefore, the motion will be granted.

Rulings ²

Accordingly, IT IS ORDERED that the Motion For Production Of Documents that was filed on August 18, 1994, by Scripps Howard Broadcasting Company IS GRANTED.

IT IS FURTHER ORDERED that copies of the Form 1040 federal income tax returns, with attachments, that were filed by the Robert E.C. Smith, David D. Smith, and Frederick G. Smith for the years 1991, 1992, and 1993, SHALL BE PRODUCED to counsel for Scripps Howard by 4 p.m., September 31, 1994.

IT IS FURTHER ORDERED that the copies of the tax returns may be redacted as to dollar amounts.

IT IS FURTHER ORDERED that the documents need not be produced if the parties reach a Stipulation that is signed by counsel for both parties before September 1, 1994.

FEDERAL COMMUNICATIONS COMMISSION



Richard L. Sippel
Administrative Law Judge

¹ The Presiding Judge might have protected the production of such documents before deposition discovery because of the personal nature of the data and the probability that the manner in which income is reported on a Form 1040 could be discovered in a deposition.

² Copies were made available to counsel on date of issuance.