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

Oct 3 2 11 PM '94

FCC 94M-552

In re Applications of)	MM DOCKET NO. 93-94
)	42966
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: September 28, 1994 ; Released: September 30, 1994

Background

1. This is a ruling on a Petition To Enlarge The Issues that was filed by Four Jacks Broadcasting, Inc. ("Four Jacks") on August 11, 1994. An Opposition was filed by Scripps Howard Broadcasting Company ("Scripps Howard") on August 24, 1994. An Opposition also was filed on that date by the Mass Media Bureau ("Bureau"). A Reply to the Oppositions was filed by Four Jacks on September 6, 1994.

2. Four Jacks seeks to add additional qualifying issues against Scripps Howard for a judgment of state antitrust liability that was entered against a Scripps Howard owned cable operator under California's Unfair Practices Act, Business and Professions Code. Scripps Howard acknowledges the violation but asserts that the issues were untimely sought and that therefore the issues should not be added. Scripps Howard further asserts that there was no involvement by persons who operate Channel 2 and that therefore, under the Commission's policy, the state antitrust violations of a California subsidiary have no relevance to this renewal proceeding for Station WMAR-TV in Baltimore.

Facts

3. On July 27, 1994, Scripps Howard filed a pleading entitled "Notice Pertaining To Earlier Filed Amendment To Application." There was attached to the Notice a Judgment and a Permanent Injunction entered on June 30, 1994, by the Superior Court of California, County of Sacramento, against Sacramento Cable Television ("SCT"). SCT is a California general partnership which is 95% owned by a subsidiary of Scripps Howard. SCT was found to have violated California's laws prohibiting unfair business practices with respect to cable television services from January 1988 to March 1989. Previously, on May 11,

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1994, Scripps Howard had disclosed to the Commission and to the parties in a reporting amendment that the same state court had "tentatively" concluded, based on the same facts, that SCT had violated California law prohibiting locality discrimination, unfair competition, and unfair pricing.

4. E.W. Scripps Company owns 100% of the stock of Scripps Howard, Inc. which owns 86.10% of the common stock of Scripps Howard Broadcasting Company, the licensee of WMAR-TV. See Scripps Howard's Statement Regarding Integration and Diversification filed on May 07, 1993. There are 25 officers of Scripps Howard listed on the Statement. Id. Scripps Howard also is the 95% owner of Scripps Howard Cable Co. of Sacramento which owns 95% of SCT. Id. There is no evidence showing or assertion made that any of the 25 officers of Scripps Howard is involved in the management of day to day operations at SCT.¹

Discussion

5. Four Jacks requests, based on the state court's final Judgment of June 30, 1994, that the following issue be added :

To determine whether, in light of the recent judgment against Scripps Howard for violations of the California Unfair Practices Act, Business and Professions Code including locality discrimination and unfair competition and for violations of county and city codes with respect to its pricing of cable television services, Scripps Howard possesses the requisite qualifications to be a Commission licensee.

Timeliness

6. Scripps Howard's first objection is to the timeliness of Four Jacks' petition. The Commission's rules require that petitions to add issues that are based upon "new facts or newly discovered facts shall be filed within 15 days after such facts are discovered by the moving party". See 47 C.F.R. §1.229(b)(3). The state court findings had not become final until June 30, 1994. The Commission was informed by Scripps Howard on July 27, 1994. And the petition was filed on August 11, 1994, which was within fifteen days of the disclosure to the Commission. Scripps Howard argues that based on the Amendment that it had filed in May 1994, Four Jacks was on notice of the underlying facts. But Scripps Howard fails to note that the Judgment that was reported in May was only tentative. The Commission's expressed policy is to take action only on non-FCC antitrust adjudications which are final. See Policy Regarding Character Qualifications in Broadcast Licensing, 102 FCC 2d 1179, 1204-05 (1986), recon granted in part, denied in part 1 FCC Rcd 421 (1986) ("Character Qualifications"). An adjudication is defined as those

¹ In a Threshold Showing Of Scripps Howard Broadcasting Company's Unusually Good Past Programming Record that was filed on May 13, 1993, Scripps Howard discloses its policy of making each station manager an officer of Scripps Howard. None of the 25 listed officers is identified with SCT.

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 findings that are made by tribunals that are not subject to a de novo review. Character Qualifications at 1205 n.62. Such an adjudication would be one made by a state trial court of general jurisdiction such as the Superior Court for Sacramento County. However, the judgment must be final and not tentative. Therefore, Four Jacks' petition to add the issue that was based on the report that Scripps Howard made on July 27, 1994, of the California Superior Court's final adjudication was timely.

Merits

7. Scripps Howard and the Bureau oppose the merits of the issue because there is no nexus shown between the antitrust violations by SCT, a west coast subsidiary of Scripps Howard, and the operation of Station WMAR-TV by Scripps Howard in Baltimore.² Four Jacks asserts in its Reply that there is no element of proof that requires a showing of a commonality of participation in the day-to-day operations of WMAR-TV and SCT before an issue may be added against Scripps Howard. Cf. RKO General, Inc. (WNAC-TV), 78 FCC 2d 1, 32, 47, 60, 62 and 71. (Comm'n 1980) (misconduct of parent General Tire attributable to subsidiary RKO). There the Commission found the commonality and ultimately concluded that the parent General Tire not only controlled RKO as a legal matter but that the record showed that General Tire had exercised "practical control over RKO operations in certain respects and has involved the broadcast operations in serious misconduct." 78 FCC 2d at 119. But here there are no factual allegations of indicia of operational control of SCT by Scripps Howard.

8. Since the RKO case, the Commission has issued its Policy Statement on parent-subsidiary relationships in the context of adjudications of non-FCC antitrust misconduct. The Commission has stated that where there are parent-subsidiary issues of responsibility for non-FCC misconduct, the significance of the non-FCC misconduct to the operation of the broadcast entity will be considered only where there are "two common principals, and if the common principals are actively involved in the day to day operations of the broadcast subsidiary---" Character Qualifications, 102 FCC 2d at 1219. Thus, the Commission's policy is to add an issue to inquire into activities in cases where the misconduct of a subsidiary (SCT) is imputed to the parent corporation (Scripps Howard) only where there is an "actual involvement of the common principals in both the misconduct and the day-to-day activities of the broadcast subsidiary." Id.³ And although the Judgment does not relate to broadcasting, the adjudication of state antitrust misconduct is related to a

² There is no showing that the Scripps Howard officers or employees who are responsible for the day-to-day operations and business decisions at Station WMAR-TV have any operational or decisional responsibility for or even knowledge of the business of SCT.

³ The Bureau notes that Station WMAR-TV is directly owned by Scripps Howard. Therefore, Scripps Howard is not the "broadcast subsidiary." But the Bureau agrees that the analysis of the issue remains the same. There still must be shown a mutuality of persons involved in the state antitrust violations and in the licensee's broadcasting in cases involving non-FCC adjudications of misconduct. See Memorandum Opinion and Order FCC 93M-445, released July 8, 1993 at Paras. 19-21.

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media of mass communications (cable) and therefore could be the appropriate subject of an added issue. See Policy Regarding Character Qualifications In Broadcasting, 5 FCC Rcd 3252, 3554-55 (Comm'n 1990) (modifying 1986 Policy Statement on Character Qualifications).⁴

Conclusion

9. An issue will be added only where the facts alleged will support the adding of the issue. 47 C.F.R. §1.229(d). Since there are no allegations that the same persons who engaged in the non-FCC misconduct of SCT in Sacramento are involved in the day-to-day operations of Station WMAR-TV, under the Commission's policy there is no basis for adding the issue that is requested by Four Jacks. Cf. Washoe Shoshone Broadcasting, 5 F.C.C. Rcd 5561, 5562 (1990).

Ruling

Accordingly, IT IS ORDERED that the Petition To Enlarge The Issues that was filed by Four Jacks Broadcasting, Inc. on August 11, 1994, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Richard L. Sippel
Administrative Law Judge

⁴ In the event such an issue were to be added, the universe of relevant evidence would include the nature of the participation (if any) of managers or owners, the efforts made to remedy the wrong, the overall record of compliance with FCC rules and policies, and rehabilitation. Id. 3554.