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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In re Applications of	)	MM Docket No. 93-94
Scripps Howard Broadcasting Company	)	FCC File No. BRCT-910603KX
For Renewal of License of Station WMAR-TV, Baltimore, Maryland	)	
and	)	
Four Jacks Broadcasting, Inc.	)	FCC File No. BPCT-910903KE
For a Construction Permit For a New Television Facility on Channel 2 in Baltimore, Maryland	)	

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TO: The Honorable Richard L. Sippel
Presiding Administrative Law Judge

REPLY OF SCRIPPS HOWARD BROADCASTING COMPANY
AND FOUR JACKS BROADCASTING, INC. TO
MASS MEDIA BUREAU'S COMMENTS ON JOINT REQUEST
FOR APPROVAL OF SETTLEMENT AGREEMENT

Scripps Howard Broadcasting Company ("Scripps Howard") and Four Jacks Broadcasting, Inc. ("Four Jacks") (hereinafter the "Parties" when referenced jointly) by their respective attorneys and pursuant to Section 1.294 of the Commission's rules, hereby reply to the "Mass Media Bureau's Comments on Joint Request for Settlement Agreement."[1]

[1] This pleading is timely filed as the Presiding Judge has granted two extensions of time for the Parties to file their reply to the Mass Media Bureau's Comments.

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List A B C D E

1. The Mass Media Bureau supports approval of the Settlement Agreement, with the exception of paragraph eight of the Agreement. According to the Bureau, "[s]ection 8 . . . which prohibits either party from filing 'any document with the Commission . . . that opposes the grant of any application' filed by the other for a period of ten years, is contrary to the public interest in that it would prevent either party from bringing information to the Commission's attention about the other party even if that party had a bona fide belief that the other party's station was not being operated in the public interest." Mass Media Bureau's Comments at ¶ 4. The Bureau cites Nirvana Radio Broadcasting Corp, 4 F.C.C. Rcd 2778, 2779 (Rev. Bd. 1989) for the proposition that the Commission has required that a similar clause be reformed before approving a settlement agreement.

2. The Parties submit that paragraph eight of the Settlement Agreement is not at odds with the Review Board's decision in the Nirvana case. The primary concern raised by the Nirvana case is that a "no filings" provision would prevent parties from "bringing to the Commission's attention any matter, however substantial, even when those parties have a bona fide belief that the stations are not being operated in the public interest." Nirvana Radio Broadcasting, corp., 4 F.C.C. Rcd 2778, 2779 (Rev. Bd. 1989) (first emphasis added). The Review Board in Nirvana struck down a provision prohibiting the settling parties from filing "any application, complaint, petition to deny, informal objection, or other document of any nature or kind . . . ." Id. at 2778 (emphasis added).

3. In contrast to the provision struck down in Nirvana, paragraph eight of the Parties' Settlement Agreement only prohibits the filing of a document "that opposes the grant of any application." Settlement Agreement, ¶ 8. Paragraph eight does not prohibit either Party from filing with the Commission a declaratory statement bringing relevant information to the Commission's attention, so long as that statement does not object, formally or informally, to the grant of an application. Thus, the Settlement Agreement recognizes that the Parties cannot bind themselves to withholding potentially relevant information from the Commission.[2] It merely insures that any action that may be undertaken as a result of a party's neutral declaratory statement will be solely within the discretion of the Commission, and that the filing party will not act as an advocate for any particular course of action by the Commission based on the submitted information.

4. The distinction regarding types of filings embodied in paragraph eight is not without consequence. In paragraph eight, the Parties have agreed not to file any type of "opposition"

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[2] Of course, the Review Board has previously recognized that a licensee does not have an absolute affirmative duty to inform the Commission of negative information concerning another licensee. See Gulf Coast Communications, Inc., 81 F.C.C.2d 499, 513 (Rev. Bd. 1980) ("[i]t may be that a party to a proceeding before the Commission does not have an absolute duty to apprise the Commission of any and all derogatory material concerning an opponent licensee.")

which under the Commission's general practices would generally require a written Commission opinion prior to the grant of the opposed application.

5. Finally, in Intercontinental Radio, Inc., 62 R.R.2d 1565, 1567 (1985), the Commission recognized that a renewal applicant "has a legitimate interest in precluding [its renewal challengers] or their principals from 'turning right around' and beginning a new comparative renewal proceeding." Paragraph eight of the Settlement Agreement serves a similar purpose without restricting the Commission's interest in keeping open all of its potential channels for obtaining information.

6. Thus, as paragraph eight of the Settlement Agreement is designed to achieve a lasting peace between the Parties but does not require the withholding of relevant information from the Commission, it is proper under both the Nirvana and the Intercontinental cases.

Accordingly, for the reasons set forth above and those articulated in the Parties' Joint Request for Approval of the Settlement Agreement, the Parties urge the Presiding Judge to approve the Settlement Agreement in its entirety.

Respectfully submitted,

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Dated: April 28, 1995

CERTIFICATE OF SERVICE

I, Margie Sutton Chew, a secretary in the law firm of Fisher Wayland Cooper Leader & Zaragoza L.L.P., do hereby certify that true copies of the foregoing **"REPLY OF SCRIPPS HOWARD BROADCASTING COMPANY AND FOUR JACKS BROADCASTING, INC. TO MASS MEDIA BUREAU'S COMMENTS ON JOINT REQUEST FOR APPROVAL OF SETTLEMENT AGREEMENT"** were sent this 28th day of April 1995, by hand delivery, to the following:

The Honorable Richard L. Sippel
Administrative Law Judge
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