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J. Peter Bragg

ORIGINAL

FEDERAL COMMUNICATIONS COMMISSION

In re Applications of:) MM Docket No. 98-66
)
 HICKS BROADCASTING OF INDIANA, LLC)
)
 Order to Show Cause Why the)
 License for FM Radio Station)
 WRBR (FM), South Bend, Indiana,)
 Should Not Be Revoked;)
)
 AND)
)
 PATHFINDER COMMUNICATIONS CORP.)
)
 Order to Show Cause Why the)
 License for FM Radio Station)
 WBYT (FM), Elkhart, Indiana,)
 Should Not Be Revoked.)

Volume: 4
 Pages: 252 through 448
 Place: Washington, D.C.
 Date: October 21, 1998

HERITAGE REPORTING CORPORATION

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

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Courtroom 1
FCC Building
2000 L Street, N.W.
Washington, D.C.

Wednesday,
October 21, 1998

The parties met, pursuant to the notice of the
Judge, at 9:00 a.m.

BEFORE: HON. JOSEPH CHACHKIN
Administrative Law Judge

APPEARANCES:

On behalf of Hicks Broadcasting of Indiana:

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Also Present:

JOHN DILLE

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I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>REXCROSS</u>	<u>VOIR DIRE</u>
Steve Kline	255	363	416	--	--

E X H I B I T S

	<u>IDENTIFIED</u>	<u>RECEIVED</u>	<u>REJECTED</u>
<u>Mass Media Bureau:</u>			
72	Prev.	319	--
73	Prev.	319	--
87	Prev.	320	--
88	Prev.	320	--
89, pp. 1-5	Prev.	321	--
91	Prev.	322	--
92	Prev.	323	--
93	Prev.	323	--
94	Prev.	324	--
95	Prev.	324	--
96	Prev.	325	--
100	Prev.	416	--
110	Prev.	359	--
118, pp. 1, 2, 4, 5 & 7	Prev.	352	--

Pathfinder:

1	378	380	--
2	381	381	--
3	390	392	--
4	392	394	--
5	394	396	--

Hearing Began:	9:02 a.m.	Hearing Ended:	4:15 p.m.
Recess Began:	12:30 p.m.	Recess Ended:	1:30 p.m.

1 P R O C E E D I N G S

2 JUDGE CHACHKIN: On the record.

3 Mr. Shook, are you ready to continue?

4 MR. SHOOK: Yes. I am deferring to my colleague,
5 Mr. Boyce.

6 JUDGE CHACHKIN: Mr. Boyce?

7 MR. BOYCE: Our next witness is Mr. Kline.

8 JUDGE CHACHKIN: Mr. Kline, will you please come
9 forward? Raise your right hand.
10 Whereupon,

11 STEVE KLINE

12 having been first duly sworn, was called as a witness herein
13 and was examined and testified as follows:

14 JUDGE CHACHKIN: Please be seated.

15 DIRECT EXAMINATION

16 BY MR. BOYCE:

17 Q Mr. Kline, my name is Roy Boyce, and I am
18 representing the Chief, Mass Media Bureau.19 Could you please state your name and current
20 address for the record, please?

21 A Steve Kline, 1204 Aster Court, Mishawaka, Indiana.

22 Q How are you currently employed?

23 A I'm the general manager of WBYT Radio, general
24 manager of WRBR Radio.

25 Q Who is the licensee of WBYT?

1 A Pathfinder Communications.

2 Q Who is the licensee of WRBR?

3 A Hicks Broadcasting.

4 Q Could you briefly review your educational
5 background?

6 A I'm from Indiana. I graduated high school in a
7 small town, Logansport, Indiana. I attended Indiana
8 University at Bloomington, Indiana.

9 Q Could you tell us about your experience in
10 broadcasting either professionally or non-professionally?

11 A Yes. It was an early start. I was hired as a
12 part-time disc jockey in the small Indiana town where I
13 lived when I was 16, and I have been in some form of radio
14 for 44 years. The high school experience as a part-time
15 announcer in Logansport then lasted two years, my junior and
16 senior year in high school. Then I went to college in
17 Bloomington.

18 Then I went to Cincinnati, and I worked in
19 Cincinnati for 18 years at a radio station there, a couple
20 years at an advertising agency that specialized in radio
21 advertising, five more years at a second radio station in
22 Cincinnati, WLW, and finally I was a station manager of a
23 third Cincinnati radio station. My time in Cincinnati was
24 from 1957 to 1987, 30 years in Cincinnati.

25 Then in 1987, I went to Chicago and worked for a

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1 radio consulting company for five years, Bonneville
2 Broadcasting, and in 1992, five years later, I became the
3 agency sales manager of a radio station in Sydney,
4 Australia. That lasted until late 1993, 1992 and 1993, when
5 then I came back to go to work in northern Indiana.

6 Q Had you worked for Pathfinder Communications prior
7 to 1993?

8 A Yes. I worked for Pathfinder Communications as
9 the station manager of an FM radio station that they owned,
10 WWEZ, in Cincinnati from 1980 to 1987, seven years.

11 Q How did you learn about the opportunity in South
12 Bend in 1993 that you mentioned?

13 A My two year stint in Sydney, Australia, had a
14 definite end. I was there on a work visa. I worked for an
15 Australian company, and my conditions of employment were one
16 year guaranteed employment, and if you like us and we like
17 you we'll extend that for a second year, but at the end of
18 two years, by law you will have to leave the country.

19 I worked a year. It was extended. An application
20 was made to extend the visa, and it was. Because of the
21 difficulty of networking back to the States, because I'm
22 going to need a job when I come home, I started looking
23 early in that second year of what are my opportunities, and
24 what am I going to do when I get out of here and go back to
25 the United States.

1 There was a national radio show in late 1993. It
2 was an NAB show or some kind of a show that I knew John
3 Dille would be attending, and I sent to John probably in the
4 summer of 1993 my resume and asked him to take it to the
5 clearinghouse for employment that would be occurring at that
6 radio show. He agreed to do that.

7 I did not know at that time that there were
8 opportunities for me with John Dille. I had worked for him
9 before, so when we started talking about that that was
10 attractive to me.

11 Q What did he tell you at that time as to what
12 opportunities were available?

13 A The radio station was called WLTA at that time,
14 the station that is now WBYT, and it was without a manager.
15 The radio station had an interim manager, but my predecessor
16 was already gone from the operation.

17 He told me that I would be hired as the general
18 manager of WLTA Radio, and this radio station had a sales
19 agreement with Booth Broadcasting, the licensee of WRBR
20 Radio, for the sales part of the operation. It had a name.
21 The entity of joint sales was called Radio One. The offer
22 to me was general manager of WLTA and general manager of
23 Radio One.

24 Q When did you become the general manager of WRBR?

25 A In April of 1994.

1 Q Now, do you recall giving a deposition in a legal
2 proceeding involving Mr. Hicks versus Crystal Radio Group?

3 A Yes, I do.

4 Q I would like to show you the transcript of your
5 deposition, which is in Mass Media Bureau marked for
6 identification Exhibit 1. We will bring you over a copy as
7 soon as I find it.

8 I apologize. I believe it is No. 3. Mass Media
9 Bureau No. 3, page 188. It starts at page 188.

10 A Page 88, did you say?

11 Q Page 188 is the beginning of it. Did you give
12 this deposition on January 30, 1996?

13 A Yes, I did.

14 Q I would like you to turn to page 189, and I would
15 explain so the record is clear, there are several page
16 numbers on this transcript. There is a handwritten page
17 189, which is the Mass Media Bureau exhibit page number.
18 There is also a printed page 2 at the bottom, which is put
19 there by the reporting service, and then there are on the
20 page approximately six panels, each of which have a separate
21 page number. I will refer to them as the small page number.

22 If you will look at small page number five on page
23 189?

24 A I see it.

25 Q At Line 5 you were asked:

1 "Q How long have you been the general manager
2 of WRBR?"

3 "A Since September of 1993."

4 Then if you will refer to small page number eight,
5 it states:

6 "Q Let's back up to when you first went to work
7 for WRBR as general manager in September of 1993."

8 "A Uh-huh."

9 "Q At that time the station was owned by Booth
10 American Company? Is that correct?"

11 "A That's correct."

12 "Q Who hired you to become the general manager
13 of WRBR in September, 1993?"

14 "A September of 1993 there was a business
15 arrangement that I inherited between Booth American and
16 Pathfinder Communications whereby Pathfinder would provide
17 the sales organization for both stations under an agreement.
18 I don't know that there was ever a specific interview from
19 Booth American for me to be general manager of that radio
20 station."

21 Then skipping to small page 9, Line 15:

22 "Q At the time that you were hired for WBYT
23 then, the joint sales agreement with Booth American was
24 already in place, correct?"

25 "A That's correct. Yes."

1 "Q Did somebody tell you that you would also be
2 asked to serve as general manger of WRBR?"

3 "A Again, I inherited a position of -- that was
4 occupied by Vince Ford, who was an employee of Booth
5 American, Booth Broadcasting. He was the -- at the time
6 that I came there in September of 1993, performed the duties
7 of a general manager of both operations, and I assumed those
8 duties when I went to work there in September of 1993."

9 Finally, on page 11, small page 11, Line 11:

10 "Q You had served as general manager of WRBR
11 before the acquisition. You continued to serve after the
12 acquisition?"

13 "A That's right."

14 Now, as you will see, you testified on several
15 occasions that you became the general manager of WRBR in
16 September of 1993. Could you explain that testimony?

17 A Yes. At the time that I was hired in late 1993, I
18 was hired as general manager of WLTA and general manager of
19 the sales operation of both radio stations called Radio One.
20 I was not hired, and Vince Ford was the general manager of
21 WRBR. He was physically there until April of 1994.

22 Now, Vince had been operating as the general
23 manager of WRBR and involved, although it was before I got
24 there, in the joint sales operation, Radio One. I don't
25 know what that involvement was, but when I was hired there

1 was no question in my mind. My duties were general manager
2 of WLTA and general manager of the sales operation for both
3 radio stations.

4 The idea that the dates are incorrect, this was
5 two years after it occurred. When I was asked to do a
6 deposition, I did not know the purpose of that deposition.
7 These dates are incorrect. I was wrong.

8 Preparing for my most recent deposition, knowing
9 the reason and the severity of the reason, you go back and
10 you check personnel records, and you look, and you do some
11 research to find out when are those dates.

12 Vince was the general manager at WRBR for Booth
13 until April 1, 1994. No question.

14 Q You have a lot of broadcast experience, and
15 presumably you know what a general manager is. Was it
16 necessary for you to consult personnel records to realize
17 that you had not been the general manager when you first
18 came on board?

19 A No. The format of WRBR in late 1993 was it was an
20 oldies radio station. An oldies radio station does not
21 require the kind of management that other formats would. I
22 mean, it's oldies music. It doesn't change. There is no
23 new oldies music. That part of the operation is pretty
24 static.

25 The important part of the operation that I felt I

1 was manager of was the sales part of the operation, and that
2 has been -- most of my career has been sales. I'm not a
3 programmer. I was on the air for five years in Cincinnati,
4 and I realized early on in programming I could probably make
5 a living at it, but I was never going to be a star.

6 From that point on, my whole background has been
7 the sales operation of radio. That would be from 1962.
8 That's where my interest is, and that's where the operation
9 was in 1993. I was running the sales part of two radio
10 stations and the entire part, if you will, of WLTA.

11 Q So you would say that perhaps the confusion arose
12 because your job as general manager of Radio One was
13 actually more important to the running of WRBR than the job
14 performed by Mr. Ford?

15 A He would probably disagree.

16 Q Now, you mentioned that you had talked to Mr.
17 Dille, I believe, at a convention?

18 A No. I'm still in Australia at the time of the
19 convention.

20 Q Okay. So you did not, for instance, apply for a
21 vacancy that was in the newspaper or trade journals or
22 something? You had sent your resume directly to Mr. Dille?

23 A To take to the convention.

24 Q At some point did he or somebody get back to you
25 to discuss this job that was available?

1 A Yes. I heard from David Hayes, an employee of the
2 company in human resources, and he called me in Australia to
3 ask me questions. I'm sure David was aware of my past
4 experience with Pathfinder, but he was not an employee of
5 Pathfinder when I worked for the company between 1980 and
6 1987, so I didn't know who David Hayes was other than he was
7 an employee.

8 It was more than one interview by phone, and he
9 talked at one time of bringing me to South Bend for an
10 interview from Sydney and then for me to return to Sydney.
11 I thought well, this doesn't make a lot of sense. John
12 Dille knows me. Why would they go to the expense of
13 bringing me up there?

14 Then I heard also from Dick Rhodes, who I did know
15 from my previous time at Pathfinder, and I knew Dick. Dick
16 told me about the opportunity and probably contributed more
17 to my positive decision on that than anybody because I
18 trusted Dick and what was going on and what was there.

19 I believe Dick at that time was overlooking the
20 operation, the sales operation, Radio One, and so when he
21 told me of the situation it sounded very interesting, but I
22 never did make that trip for the interview. I was hired by
23 phone.

24 Q Okay. Mr. Hayes, just so the record is clear, is
25 an employee of Pathfinder's human resources department?

1 A I don't know David's title, but yes.

2 Q He worked for Pathfinder?

3 A That's correct.

4 Q And Dick Rhodes worked for Pathfinder?

5 A That's right.

6 Q Do you know what his present position is?

7 A Dick Rhodes? He's general manager of WTRC Radio
8 in Elkhart.

9 Q And that is licensed to Pathfinder?

10 A That's correct.

11 Q So after you were hired by phone and presumably
12 you returned to this country, did you have a meeting with
13 Mr. Dille to discuss your employment after you returned?

14 A I'm sure that I did. I was met -- I came to town
15 on a Sunday night. I was met by Mr. Hayes and Mr. Rhodes.
16 I don't know how soon I would have met Mr. Dille. I would
17 assume in that first week, but I don't remember the
18 circumstances.

19 Q Now, in your discussions with Mr. Hayes and Mr.
20 Rhodes, was there any discussion regarding your
21 responsibilities with WRBR?

22 A Yes. To work Radio One, which I thought was -- I
23 didn't like the name of it, and I said that in the very
24 beginning that I did not like the idea of calling the sales
25 operation of the two stations Radio One.

1 I mean, we spend a lot of time to brand our
2 product, and here we are creating a third product in the
3 minds of the buyers. We discussed that at length, and I
4 said I would like to consider changing the name of the
5 company, if you will, that sold the two radio stations. I
6 remember that conversation.

7 The program director of WLTA had resigned, and so
8 I very quickly had to take on those responsibilities of
9 WLTA.

10 I met Vince Ford, the manager of WRBR, but he was
11 not located in the same building that I was. He was two
12 miles away, so we did not have a lot of contact.

13 Q Was there any discussion at that time, let's say
14 in that period when you were hired, about the possibility
15 that WRBR would be sold?

16 A I did not know that in the early days.

17 Q During those early days, was there any discussion
18 about the possibility of co-locating WRBR with WLTA?

19 A I don't -- no, not in those early days. There was
20 no discussion of moving it. That would have occurred
21 sometime in 1994, not in 1993.

22 Q When did you learn that there was a possibility
23 that WRBR would be sold?

24 A From the trades. That is, Booth Broadcasting had
25 some major market radio stations, Detroit and major market

1 radio stations and stations in three smaller markets,
2 Saginaw, Toledo and South Bend. After Mr. Booth sold his
3 large market radio stations to a Cincinnati broadcaster whom
4 I knew, it seemed like he was going out of the radio
5 business.

6 That was I think just an assumption that was made,
7 so I assumed at that time that those three small radio
8 stations would probably be sold.

9 Q Did you have any discussion with anyone as to how
10 that would impact your job?

11 A No. It wouldn't impact my job if the joint sales
12 agreement were to continue. It didn't seem threatening to
13 me of how it would. It would not be a negative situation
14 for it to be sold.

15 Q So you assumed then at least you would continue in
16 the position you already had as general manager of WLTA and
17 general manager of the joint sales agreement, assuming that
18 survived?

19 A Right. Yes, that is correct.

20 Q What duties specifically did you perform in
21 connection with WRBR during that period between September or
22 October, 1993, and April 1, 1994?

23 A We had a single sales staff at that time that sold
24 the two radio stations, so the only time that I as a general
25 manager at Radio One had contact with WRBR is when that

1 joint sales staff would sell a commercial on WRBR. It was
2 not located in our building. It got to be a hassle of
3 scripts and tapes and so forth going to the WRBR studios.
4 They were a couple of miles away.

5 My contact with Vince Ford would be in those kinds
6 of administrative duties in the sales department, sending
7 tapes up there that had to be transferred to cart machines
8 and their traffic person noting the cart number and putting
9 that order on the log and so forth.

10 That would have been my only involvement with
11 WRBR. All the sales were operating at my location, and all
12 of the programming was coming from a second location.

13 Q Did Pathfinder provide any programming to WRBR
14 during that period prior to April 1, 1994?

15 A No.

16 Q Now, was it September of 1993 that you were hired
17 to be station manager of WLTA or general manager of WLTA and
18 general manager of Radio One?

19 A I believe I went on the payroll in October. I
20 believe it was mid October.

21 Q Okay. Well, you would have been hired earlier, I
22 assume, since you were still in Australia when you were
23 hired?

24 A Well, I remember a conversation with Mr. Dille on
25 the phone, though. Now, I had been working for several --

1 more than a year at the Australia job and, frankly, had not
2 traveled Australia at all other than Sydney.

3 Once I held the security of a job in South Bend, I
4 wanted to at least see some of the country. I remember
5 asking him how soon do I need to be there, and he said
6 tomorrow facetiously. I did take two weeks of travel time,
7 if you will. My wife remained in Australia until the
8 following January, and I came back in October to take that
9 position.

10 Q At the time you agreed to take the position, was
11 there an understanding as to your compensation?

12 A Very broad terms.

13 Q What was that?

14 A That I would be paid a salary to come back and
15 operate WLTA and also as an employee and general manager of
16 Radio One. It would be included in that salary.

17 Q Did your agreement include any bonus arrangement?

18 A I don't believe in that first, no. I don't
19 believe in that first year that it did. I may be wrong
20 there, but I believe that it was just a flat guarantee of
21 that first year's employment.

22 Q And that was a straight salary?

23 A As I remember, yes.

24 Q Did the amount of your salary change on April 1,
25 1994, when you became general manager of WRBR?

1 A I don't know that it changed on that day. I took
2 on small additional duties, and I don't know how soon the
3 pay caught up with the task.

4 Q Has your salary changed since then, your salary as
5 opposed to bonus arrangements?

6 A It has.

7 Q And at some point bonus arrangements were
8 initiated? Is that correct?

9 A That's correct.

10 Q What are those arrangements?

11 A Well, again the history that I had with Mr. Dille
12 for seven years in Cincinnati, I was not concerned about my
13 ultimate pay.

14 Those arrangements have changed, and it follows a
15 pattern of a guaranteed salary and then a bonus that is paid
16 on cash flow, the margin between revenue and operating
17 expense. The more efficiently I can run the radio stations,
18 then the more money I can make.

19 Q When your guaranteed salary has been increased,
20 who increased it?

21 A Mr. Dille and Mr. Hicks. That is part of a budget
22 process, although it's not the budget process that I chair.

23 At the time of the budget process, which usually
24 occurs in October or November every year for the following
25 year, that's when matters like that are discussed with me.