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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;)		

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DATE: November 3, 1998

HERITAGE REPORTING CORPORATION

Official Reporters
1220 L Street, NW, Suite 600
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FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Courtroom 1, Room 227
 FCC Building
 2000 L Street, N.W.
 Washington, D.C.

Tuesday,
 November 3, 1998

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

BEFORE: HON. JOSEPH CHACHKIN
 Administrative Law Judge

Heritage Reporting Corporation
 (202) 628-4888

APPEARANCES:

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I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE CROSS</u>	<u>VOIR DIRE</u>
Timothy E. Moore	1440	1486	1501		
Alan Campbell	1504	1554 1572 1617			
Eric Brown, Jr.	1619				

E X H I B I T S

	<u>IDENTIFIED</u>	<u>RECEIVED</u>	<u>REJECTED</u>
<u>Mass Media Bureau:</u>			
37	(Prev.)	1563	
40	(Prev.)	1564	
129	1603	1604	
 <u>Pathfinder:</u>			
45	(Prev.)	1554	
 <u>Hicks Broadcasting:</u>			
(None)			

Hearing Began: 9:00 a.m.	Hearing Ended: 4:00 p.m.
Recess Began: 12:25 p.m.	Recess Ended: 2:00 p.m.

P R O C E E D I N G S

1

JUDGE CHACHKIN: All right, on the record.

2

3

Who is the next witness?

4

MR. HALL: Hicks Broadcasting offers Tim Moore.

5

Whereupon,

6

TIMOTHY E. MOORE

7

having been first duly sworn, was called as a witness herein

8

and was examined and testified as follows:

9

JUDGE CHACHKIN: Please be seated.

10

THE WITNESS: Thank you.

11

DIRECT EXAMINATION

12

BY MR. HALL:

13

Q Good morning, Mr. Moore.

14

A Good morning.

15

Q Would you state your name and home address for the record, please, sir?

17

A Timothy E. Moore, and I reside at 639 Plymouth Southeast, in East Grand Rapids, Michigan.

19

Q How long have you lived in East Grand Rapids?

20

A I've been there exactly four years now.

21

Q Where did you live before that?

22

A In Charlevoix, way up on the northwest Michigan coast.

23

24

Q How long did you live in Charlevoix?

25

A Between '80 and '94.

1 Q How long have you lived in Michigan?

2 A Well, I'm a native of Michigan, born and raised
3 there. Spent a couple of years in Washington, and three
4 years in Dallas, and other than that, the balance in
5 Michigan.

6 Q Tell us a little bit about your educational
7 background? Did you attend high school in Michigan?

8 A I did. Fell in love with the media business early
9 on, and founded the high school radio station, began my
10 first radio job at 16, my first paying job. and then went on
11 to get a degree in radio and television.

12 Q You said you got your first paying job when you
13 were 16. What was that job?

14 A I was an on-air disk jockey roll at WCEN in Mount
15 Pleasant.

16 Q And you said you attended college. Where did you
17 go to college?

18 A I attended Central Michigan University, which has
19 always had a strong broadcasting, cinematics arts program.

20 Q Did you graduate from Central Michigan?

21 A I did.

22 Q When was that?

23 A '68.

24 Q What was your degree?

25 A Broadcast, cinematics arts, speech, et cetera.

1 Q While you were at Central Michigan, did you do any
2 radio work?

3 A Yes. One of the -- although the radio/TV school
4 having produce people like Dick Emberg and so on and so
5 forth, was a good one. The real key ingredient to my tenure
6 was the fact that they offered me a paying program director
7 job at the PBS. They were an early PBS, and so I gladly
8 accepted that position as a freshman, cut across the street
9 and do that.

10 Q Did you do that throughout your time at Central
11 Michigan?

12 A Yes.

13 Q How many hours a week was that?

14 A We probably averaged about 20 hours a week.

15 Q After you graduated from Central Michigan, did you
16 stay in radio?

17 A I did save for a short stint with the Navy. Came
18 back to Mount Pleasant, since that was sort of home, and at
19 that time Central Michigan University was escalating their
20 athletic program to a Division 1 school and jointing the new
21 American Conference, so I went back into the sports position
22 with WCEN and parallel with that helped CMU found their
23 broadcast network for sports.

24 Q What all were you doing for WCEN at this time?

25 A Doing the morning show, but also doing play by

1 play. There was the flagship for CMU at that time and,
2 again, they were just entering major college football and
3 basketball, so we paralleled with the university and set up
4 their 16 station network.

5 Q How were you at WCEN?

6 A Stayed involved in that vein until July of '74.

7 Q Where did you go at that point?

8 A At that point I had an opportunity to go to the
9 beautiful northwest coast and put on a new radio station for
10 some people that I was very fond of out of Bloomington,
11 Illinois. And they had won a license there, and so I went
12 up to put that on as their sales manager/morning man, which
13 was a rather unlikely combination, but nonetheless, that's
14 what we did.

15 Q What was that station?

16 A WV as in "Victor" OY.

17 Q You said that was a new station at the time?

18 A Yes, it was.

19 Q And were you involved at all in the station before
20 that that --

21 A Yes. Yes. We literally built it from the ground
22 up for the ownership.

23 Q How long were you with WVOY?

24 A Stayed with VOY for three years and enjoyed it
25 thoroughly, and probably would have continued with them

1 except we were surprised by a rather astounding offer from
2 the TM Companies in Dallas. We had been using their
3 products, and at that time the TM Companies were really a
4 centerpiece of production and radio and TV marketing
5 support, and they came up and surprised me with an offer to
6 become their vice president for sales. I had never been to
7 Dallas, or seen their facility, but I knew this was a great
8 opportunity, a sort of Ph.D. in the business, if you will.
9 So in late fall of '77, I packed it up and headed to Dallas
10 to take that role.

11 Q And you said you had used some of TM Companies
12 services and so forth?

13 A Yes. Yes.

14 Q What was that?

15 A Well, TM, founded by the legendary Tom Mariman, at
16 least in the production business, was a company that did
17 multiple services for radio and advertising agencies. You
18 might hear an American Airlines jingle, or a Maxwell House
19 jingle. The company also did radio jingles for people like
20 WMAL here in Washington. We programmed four or five
21 different formats to 300 stations across the country on
22 tape. So it was a multiple services organization that had
23 an excellent Rolls Royce reputation at that time. It was
24 part of the Star Broadcasting Group, which was a public
25 company at that time, shared by Bill Buckley, Jr. And then

1 during my tenure there, Roy Disney and his wife, Patty,
2 bought the company, along with the Shamrock stations.

3 Q What was the position that you were at the TM
4 Company?

5 A Well, I went in initially as vice president of
6 sales, but thankfully we were able to have some immediate
7 impact. It was a pretty right-brain company, so we were
8 able to bring a few left-brain ideas to their national and
9 international selling model, and about seven months in I was
10 offered the general -- executive vice president and general
11 manager's job that also included taking over the programming
12 company.

13 Q Okay. And in that role, what were your duties?

14 A Well, set budgets, forecast top line for the
15 companies, plan the sales and marketing effort, supervise
16 the quality control of the formats. All the formats were
17 done at that time on a very high-grade reel-to-reel tape
18 delivery just prior, prior to the days of satellite. And,
19 general, further the company's top of mind in the industry.

20 Q Let me make sure I understand what exactly --

21 A Sure.

22 Q -- the TM Companies were doing.

23 They were actually providing programming to
24 stations?

25 A That's exactly right.

1 Q Okay.

2 A Plus, plus sales support libraries, jingles for
3 stations, and independent agency work. If Anheiser-Bush
4 came to us and said, "We'd like a national jingle, you know,
5 based on such creative." So we really had many different
6 avenues within the company with which we could approach
7 clients, but the programming company was extremely
8 profitable, and the largest of its kind at that time.

9 Q Any particular format or formats that the TM
10 Companies focused on?

11 A Well, the first format for TM was a beautiful
12 music format, which they had pioneered people like KABL in
13 San Francisco and so forth, and they had gone on then to
14 create an adult contemporary format, a contemporary top 40
15 format, and country at that time was our newest but fastest
16 growing. So we really had --and we developed while I was
17 there a couple of other formats.

18 Q How long did you stay with TM Company?

19 A I would probably still be there. It was the
20 greatest job in radio at that time. That might be an
21 exaggeration. But in early '80, I got a call from the
22 former owners in Charlevoix who informed me that they had
23 won a 100,000 watt Class 3 for coastal northwest Michigan,
24 which again is an area very near and dear to me, and asked
25 if I would consider talking to them about coming back up for

1 one-third ownership, which, of course, I purchased, with an
2 option to do the rest of the radio station in time if it
3 works.

4 So I thought this was my great leap of
5 deliverance, not having come from a big trust, I thought
6 this is a great way to get into ownership to find out if, in
7 fact, I can perform some of the things I've been
8 recommending other people do.

9 Q What was this station in Charlevoix?

10 A The call letters were WKHQ, and, indeed, it was a
11 sister to VOY. It was the same basic entity.

12 Q And was this a station just getting off the ground
13 at the time?

14 A Yeah, it was not on. It was a construction permit
15 that they had won, somewhat to their surprise. It had
16 been -- at that time the Commission was working along the
17 lines of diversity, and the other applicant dropped out of
18 the race. I think everybody was surprised by that. So it
19 was simply a construction permit.

20 Q When did you start with WKHQ?

21 A I reported up there in mid-January, which isn't
22 the best time of the year to report up there, and we set a
23 target date of mid-May, May 16th. I can recall hitting the
24 ground running with that target date in mind. So we a lot
25 to do, including building a tower and building studio

1 facilities and so forth. But we made the date and signed it
2 on May 16th of '80.

3 Q And what were your position with WKHQ at the time?

4 A Well, I was the general manager. And since --
5 since the ownership really summered up there and were
6 involved with the Adlai Stevenson family, the group at
7 large. This was not a part of Bloomington Broadcasting. So
8 they would come up for the summer, but primarily I was the
9 owner/manager. I did the morning show, and really did a lot
10 of things as one does in his first entrepreneurial
11 experience, I guess.

12 Q How did the station do?

13 A It was beyond our wildest expectations. It was
14 interesting because we had forecast a pretty ambitious first
15 year, and the station exceeded all of our forecasting. In
16 fact, after the first 60 days, we never put any operating
17 money into it after that point. So I think even my partners
18 were pretty surprised, and so it was a wonderful story that
19 got a lot of attention. And because of the beauty of the
20 area and the visitation, it got a lot of attention not only
21 in the media trade -- in our industry trades, but people
22 from San Diego to New York would call us and say, "I'm going
23 to be up there on vacation. Can I come visit your station?"
24 So it was very flattering to get that kind of attention for
25 a relatively small market.

1 Q Did your duties change over time at WkHQ or did
2 you remain the general manager?

3 A No, I remained the general manager from the start
4 to finish. And June 20th of '90 when we sold it, but along
5 the way I started consulting by invitations. I had no
6 designs when I went up there to begin doing that, but,
7 again, because we were fairly visible, I began doing that to
8 parallel my general manager job.

9 Q Let's talk about, you mentioned that you sold WKHQ
10 in January 1990.

11 A Yes.

12 Q At some point before that did you exercise the
13 option that you were given?

14 A Yeah, my mentor and a great friend and someone I
15 hold in very high esteem, a gentleman named Ernie Wynn, with
16 whom we had worked at TM, who had been kind of a mentor to
17 me there; an older guy who had helped me really to take over
18 the reins of the programming company and so forth, we had
19 remained great friends.

20 And in 1988, Ernie and I bought 100 percent of
21 the, it was an asset sale, but we bought the radio station,
22 formed it, reformed it as Lake Shore Communications, and
23 each of us had 50 percent.

24 Q So that was in '88 that you exercised the option?

25 A That's correct.

1 Q When did you sell the -- actually sell the
2 station?

3 A Well, we went in, and I should say this candidly.
4 We went in with a clear announcement to our key people and
5 department heads that our exit strategy was to sort of
6 transition from the naivety and the fun and creative posture
7 that we went in with to really creating a real cash flow
8 story so that we could exit in early '90. We certainly
9 weren't clear when, and didn't see some of the changes in
10 the business. But it simply was a plan to be there about
11 two or three years, and then exit the station.

12 Q You mentioned that at some point while you were
13 still employed as the general manager at WKHQ that you began
14 to do consulting?

15 A Yes.

16 Q When was that?

17 A Our very first consulting invitation came in the
18 late summer of '83, when two groups approached us quite
19 coincidentally at the same time, MidWest Family, which owns
20 a series of radio stations in the midwest, and Liggett
21 Broadcasting, a Michigan-based company that at that time, I
22 guess, owned a couple of stations in California, but were
23 primarily in Michigan.

24 And so all of a sudden by invitation we were doing
25 14 or 15 different radio stations in terms of traveling out

1 and programming them, helping them with their problem.

2 Q What did they want you to do?

3 A Well, they, frankly, had heard our radio station
4 and I think heard things and recognized things in the
5 station that they would like to put in their own: music
6 architecture, positioning, packaging, talent development.
7 So it was a great way to start doing that because my selfish
8 motive really, besides the experience of doing it, was
9 knowing that I would bring back as much good information as
10 I was taking out. So I guess I rationalized spending half
11 my time doing that. And we had a great, a great run with
12 those stations. We ultimately did all the Midwest stations
13 and virtually all the Liggett stations, with the exception
14 of California.

15 Q Now, did it turn into a full time position at some
16 point?

17 A Yes, it did. Yes.

18 Q When was that?

19 A Well, it kept escalating by degrees, and sometimes
20 when things work in this kind of business interest begets
21 interest. So by '90, I was at about 22 radio stations and
22 it was becoming obvious that I had to make some choices,
23 flying 100,000 miles a year and yet still having the
24 obligation of being owner/manager of our radio station.

25 So we decided to formalize it at about the time,

1 really hang out our shingle at about the time we should KHQ.

2 Q What's the name of your business today?

3 A Audience Development Group.

4 Q When was that founded?

5 A '93, early '93.

6 Q What's your title with that entity?

7 A Managing partner.

8 Q Now, I know for you what a program consultant does
9 is sort of second nature, but for the rest of us perhaps if
10 you could just sort of broadly describe --

11 A Sure.

12 Q -- some of the things a program consultant does
13 for a radio station?

14 A Okay. Sometimes it's hard to translate in non-
15 radio syntax, but I guess since my day as a football coach,
16 I'll put in a sports parallel here.

17 We would be the equivalent of an offensive
18 coordinator for -- maybe the Redskins are a bad choice, but
19 for the Denver Broncos. In other words, what we attempt to
20 do in a very holistic sense -- I'm sorry, I didn't -- is to
21 come in and do a thorough needs assessment; try to help a
22 client see what perhaps he or she doesn't see. Then taking
23 into consideration their material, their physical size,
24 their personnel, their business plan, which varies from
25 market to market and station to station, form a plan to help

1 them achieve better ratings.

2 On rating point in Washington, D.C. is probably
3 worth \$1 million in revenue, plus or minus. So the stakes
4 are high, particularly now with the economic dynamics. And
5 our objective is to help them get better ratings.

6 Q On a more practical level, what sorts of issues
7 would you consult on? Format issues, would that --

8 A Yes, yes. Multiple --

9 Q What do you do with regard to format?

10 A We have seen through a multitude of research
11 projects done by other companies that the music mix of a
12 radio station is essential to its ability to build
13 constituency. And so we test music, and by that I mean
14 putting a group of constituents of the format in an
15 auditorium and playing short snippets of songs so that they
16 can rate them for like, dislike, tired of, don't know, very
17 familiar, et cetera. Then through sophisticated software we
18 can analyze that music to take it further and really create
19 a mapping system for them to satisfy their samplers and turn
20 them into fans.

21 We also work with talent coaching, talent
22 development, morning show. We help them procure talent. We
23 help them design marketing campaigns. We analyze the
24 competition. We analyze their ratings, going beyond just
25 the rating book. So it's, again, pretty holistic, i guess,

1 for lack of a better term.

2 Q Do your clients put you on retainer or are you
3 hired for specific projects, or is it a mixture of the two?

4 A Occasionally we're hired for projects, to come in
5 and do a day or two, which we're happy to do, but virtually
6 90 percent of our book of business is retainer, non-
7 cancelable service agreements for a minimum term of a year
8 whereby we literally become a strategic partner.

9 Q Are there any specific formats that your company
10 specializes in?

11 A No, and we flew against the face of what people
12 were doing in the early nineties by saying, and my partner,
13 Allen Mason, feels very strongly about this, who at one time
14 was the VP of research and programming for the erstwhile
15 King Group on the west coast. And Allen is a very cerebral
16 guy. And we simply felt that if indeed the industry
17 transitioned into, you know, multiple stations being managed
18 by one person or ultimately these clusters, that a
19 particular group wouldn't want 17 different consultants.

20 And so now we do five or six different formats,
21 and I think with equal success. They really are pretty much
22 even up in terms of their rating success.

23 Q Let's, I guess, focusing on today, how many
24 stations does the Audience Development Group represent?

25 A We were just totaling that the other day. We had

1 substantial growth in the last quarter. We have about 125
2 radio stations now.

3 Q Where does that place you in terms of size with
4 the other program consultant groups in the country?

5 A I'm not sure that anyone has an official monitor
6 on that. I guess we need a Hungerford for radio consultants
7 or some kind of mutual financial reporting.

8 I would presume, with 125 clients, we would be
9 among the three or four largest. This does not -- should
10 not be confused with satellite companies who are true
11 syndicators who might have 1,000 clients in tiny non-rated
12 markets in many instances. But in terms of a live hands on,
13 front-line consultancy, I'm sure we would be in the top
14 three or four.

15 Q Do you personally specialize in any particular
16 area or format?

17 A Really don't. I enjoy doing -- I don't do all
18 formats because I think that's quite impossible, but I began
19 doing adult contemporary, became very interested in doing
20 rock formats. We took country under our wings several years
21 ago, and we're enjoying news talk, and we're enjoying even
22 smooth jazz in some markets. So I do about five or six
23 format that I feel equally comfortable in.

24 Q How many employees does Audience Development have?

25 A We have -- it doesn't take a lot of people. We

1 have about seven people, our total complement of people.
2 Most of it is in the air and a lot it is simply in your head
3 when you go in to field a radio station. So these are not
4 large firms in the sense that we need a lot of people.

5 Q Now, with all these clients how do you -- what's
6 the procedure by which you stay in touch with these clients?

7 Are you there in person so many times a year? Do you
8 communicate with them on a regular basis? How do you
9 interact with your clients? Let me put it that way.

10 A Multi-variant. We feel very strongly about
11 bedside manner. I would like to think that is one of the
12 reasons that we are nominated quite frequently. So we
13 believe, frankly, in staying in front of them or in high
14 touch through a number of ways. Fax communiques that may
15 simply be industry heads ups, or some piece of strategic or
16 tactical news, in-field visits to the stations which our
17 contract or service agreement literally states the number of
18 in-field visits. Lots of phone contact, virtually unlimited
19 phone contact with the program director of the general
20 manager, and those are just a few of the ways. Of course,
21 lots of fax communiques and so forth. So really a number of
22 different layers that help us do that.

23 Q Does the Audience Development Group provide any
24 work current form WRBR Radio?

25 A Yes.

1 Q How long has that been the case?

2 A We started with WRBR Radio when Hicks Broadcasting
3 bought the property in '94, and have continued with them.

4 Q Had you known Mr. Hicks before you becoming
5 involved with WRBR?

6 A Oh, yes. Yeah.

7 Q How long have you known him?

8 A Well, I've known -- I probably knew of Dave,
9 thanks to his reputation in Michigan and having grown up
10 there. Ironically, coming from the same home town
11 originally, of Elmoe. Had heard his name long before I met
12 him. But we met in the seventies, and probably crossed
13 paths at some Michigan broadcast meetings and so. So a good
14 20 years, I think, is safe to say.

15 Q Did there come a time when you developed a closer
16 relationship with Mr. Hicks?

17 A Well, I remember thinking there was a lot of
18 commonality in our respective missions when Dave was getting
19 a lot of publicity for his successful ownership in
20 Battlecreek/Kalamazoo, and we had gone to Charlevoix to put
21 WKHQ on, and so in a sense we sort of paralleled in being a
22 couple of, you know, reasonably young entrepreneurs of
23 building stations, and at that time I think we were on a
24 couple of panels together at either summer or winter or both
25 sessioning of the MAB in Michigan.

1 So, yeah, we would talk more often, see each other
2 more often, and I can recall that Dave and his good friend,
3 Eric Beseth, from Lansing would occasionally stop at our
4 station when they would come up north to, you know, see the
5 area or spend a few days on the beach, and they would stop
6 and see our station in Charlevoix.

7 Q About what time frame are we talking about?

8 A Well, we're talking mid-eighties, late eighties.

9 Q You mentioned the MAB. Just for the record, what
10 is that?

11 A Michigan Association of Broadcasters.

12 Q And did you say that you and Mr. Hicks were
13 involved in MAB issues together?

14 A Well, Dave was far more involved than I was. I'd
15 love to say I had done as much for them. But, yes, we were
16 on a couple of panels together. We would see each other
17 there. I didn't attend all the meetings, but I always
18 looked forward to seeing Dave whenever I went.

19 Q Did you have any involvement with the regional
20 National Association of Broadcasters in Michigan, you
21 personally?

22 A Well, I've addressed the National Association of
23 Broadcasters and done some seminars and speaking for them.
24 But as a consultant, no. We were member as a radio station,
25 but not as a consultant.

1 Q That's what I was asking.

2 A Not a formal link up with the NAB really.

3 Q Did you have any interaction with Mr. Hicks in the
4 context of the NAB?

5 A Well, I can recall thinking -- one of our real
6 good clients, one of the Midwest Family clusters in
7 Springfield, Illinois, Tom Cousack is the operating manager
8 there, was the first to inform me that Dave had been elected
9 to the NAB board, which I thought was a terrific compliment,
10 and I think he and Lowery Mays and Dave all sort of
11 paralleled together on the board for awhile, their terms
12 overlapped. So that was kind of typical that you hear
13 someone, you know, refer to Dave's NAB responsibilities.

14 Q You mentioned you felt that was a terrific
15 compliment. What do you mean by that?

16 A Well, our business is an arcane business where it
17 would be wonderful to say that we're all hail fellows, well
18 met and wishing well for the other guy, but in fact it's a
19 zero sum game in terms of the financial basis, and there are
20 a lot of -- I think there is a lot of petty, for lack of a
21 better word, rivalry in the business. And so it's quite a
22 compliment when peers elect someone to the board of the
23 National Association of Broadcasters. I can't think of a
24 higher honor.

25 Q Do you have a social relationship with Mr. Hicks

1 as well?

2 A Well, not -- not really. It's only time and
3 distance that prevents that. We have tried to get together
4 several times to see a concert or just go have dinner, but
5 Dave's schedule is a lot like mine, and so only the fact
6 that we don't live in the same cities and are separated by
7 time and distance and my now 180,000 miles a year in the air
8 we really -- we really haven't been able to socialize at
9 all.

10 Q Did you do any, or you and the Audience
11 Development Group do any work for Mr. Hicks while he was
12 involved with the Battlecreek station?

13 A No, I would have loved to have to have done work
14 for Dave when he was at WKFR, and I think we called him once
15 to make that clear. But, frankly, Dave had a very good
16 consulting relationship with E. Alvin Davis at that time,
17 who is very active in that format at that time. And it's
18 sort of like changing core vacs in the middle of the season.
19 It wouldn't have made any sense for Dave to do that, and I
20 certainly understood that. But we would have loved to have
21 done that.

22 Q Did you do any work for any other station that Mr.
23 Hicks had any involvement in before coming to do work for
24 WRBR?

25 A Well, Mr. Hicks did some follow-up work in Grand

1 Rapids after he had left his active management role in
2 Battlecreek and Kalamazoo, and so we overlapped with him a
3 very short time in Grand Rapids with WAKX, and it was really
4 less than a year, I think, that we did that. Everyone knew
5 Clear Channel was about to buy the stations, and they were
6 interested in having us sort of watch over them for awhile.

7

8 Q I think you mentioned that -- well, maybe you
9 didn't, but when did you first start performing your
10 consulting services with WRBR?

11 A Well, we did an assessment for them, sort of what
12 we would call an alpha thinking session in February of '94.
13 I don't think formally Hicks Broadcasting owned the station,
14 but it was a "if we do" and "if it comes to pass" will you
15 come discuss some possibilities for us in regards to format
16 and strategy.

17 Q What is an alpha thinking session?

18 A Well, again, our firm syntax. But where we simply
19 go some possibility thinking around where the station is
20 now, where it could be, what might cause the difference, how
21 we would optimize it, what the options were for programming.
22 So it's a session where you go to the war room and look at
23 the opposition map and say, you know, where is the best
24 opportunity for the radio station.

25 Q Okay. How were you contacted to perform those

1 analysis?

2 A Well, I think -- first of all, I think that Steve
3 Kline told us that Dave was going to be -- had hoped to buy
4 the radio station, and that we really ought to call Dave,
5 which I was delighted to do. And as I recall, I think I
6 placed a call to Dave right around the holidays and said,
7 "Geeze, I understand you're going to -- chances are you'll
8 be taking over a radio station down here, and I just wanted
9 to let you know, we'd be delighted to work with you." So I
10 think the invitation to come down for that particular day
11 came from Dave.

12 Q And what did you and Mr. Hicks discuss before you
13 started doing the work for any predisposition as to what he
14 wanted you to do or where he wanted you to come out?

15 A No, knowing that Dave is an insatiable competitor,
16 I knew he was going to challenge me to figure out a way for
17 this radio station to be number one. And by number one, I
18 mean in the grand sweepstakes Arbitron category of total
19 persons 12 plus to dead, that entire universe. So I knew
20 that that would be Dave's -- be Dave's mandate.

21 One of the huge responsibilities that I think I
22 have as an advisor to owners, having been an owner, is
23 bringing some empathy to the situation that maybe typically
24 programming people not having had my experience can do. So
25 I try to look at these situations as an owner would look at

1 it. If I were his partner or if I were a shareholder, would
2 I still do the same thing that I'm recommending.

3 So we talked about the station in its current
4 state, which was an oldies radio at that time.

5 Q And what was involved in the assessment that you
6 did at this time?

7 A Well, I think I -- I don't know this, but I think
8 I surprised Dave because my recommendation was from a
9 business plan standpoint that he stay the course with the
10 station in oldies, at least on an interim basis because it
11 appeared to us that it wasn't being done very well under its
12 former stewardship; that it really wasn't particularly well
13 strategized, it wasn't executing very well. It was, again,
14 a midpack performer.

15 So our sense was that for his -- the betterment of
16 his operating plan and run rate, expense rate and so forth,
17 it would be much easier to improve the product as it existed
18 than paint on a blank canvas and start all over again with a
19 whole lot of additional costs.

20 Q Why do you say you think you surprised Mr. Hicks
21 with --

22 A Well, I think it's been traditional for people who
23 do what I do, I mean, it's fun to do an Admiral Halsey,
24 Lattie golf type of an end run and create a new radio
25 station and a lot of uproar. I mean, it is fun. It's very

1 stimulating. But it may not be the best thing for the
2 owner. And so I think Dave probably expected that I would
3 come in brandishing sabres and suggesting that we do
4 something else with the station and go in another format
5 direction.

6 So he sort of said -- I remember him saying, "That
7 kind of surprises me that you're taking that tact; that I'm
8 not arguing with you. I'm just kind of surprised. I
9 thought you'd come in and tell me it's all got to go."

10 Q What sort of analysis did you do to come up with
11 your recommendation?

12 A In the absence of a formal strategic perceptual
13 study, which had we had time might have been a nice luxury
14 to bring a research company in and do a three-day look at
15 the market and figure out what the format proclivities were,
16 our sense was that in South Bend, in middle America, that
17 oldies was a very, very popular and retail selling rich
18 format, meaning that salespeople can easily define it. It
19 was exclusive in the format. All those things led us to
20 believe, coupled with the fact that it simply wasn't very
21 good, that it could be a much better radio station in its
22 current position point.

23 Q How long did this analysis take you at that point?

24 A We did some listening in the market. We had lots
25 of tape on the radio station. We heard it while we were

1 there. We look at the rating book. We can do some -- it
2 would be boring to introduce them here, I guess, but we can
3 do some barometer readings of the station's health in terms
4 of converting samplers to true fans. And when we did all
5 those numbers and looked at -- by using the ratings, but all
6 those numbers and looked at the end result, it was here is a
7 station that should be running on eight cylinders and it's
8 running on four.

9 So, again, I had no prejudice about doing oldies
10 versus something else. But I also felt that the expense and
11 the time and, you know, the re-pioneering the station is
12 something else at that point. I couldn't justify that. Had
13 they been doing it real well and had they been performing,
14 you know, all those benchmarks of conversion of fans, it
15 would have been a different story. I would have probably
16 said, well, you've done all you can do with it, you've
17 topped out, it's time to go.

18 Q Who at WRBR were you dealing with at this time?

19 A Well, at that time Steve Kline was working with
20 Dave to oversee WRBR, so Steve Kline was certainly in on the
21 discussions, and Steve was the liaison to the sales effort
22 clearly.

23 Q How much interaction did you have with Dave Hicks
24 at this point?

25 A Did I?

1 Q How much interaction did you have with Mr. Hicks
2 at this point?

3 A With Mr. Hicks?

4 Q Yes.

5 A Well, Dave probably was 60 percent, I mean, if I
6 were to assign a percentage to it, of our discussions, but
7 the level being Dave's discussions with me and our dialogue
8 was more strategic, and discussions with Steve were more
9 tactical, relating to, well, these details, we need to get
10 to, the sales team needs to understand, et cetera. So there
11 was -- I'm not demeaning Steve's role. I'm simply saying
12 that my contact with Dave was very architectural or
13 strategic.

14 Q Was the advice that you rendered as a result of
15 this discuss was followed by the station?

16 A Almost to the letter. Not quite, but close.

17 Q And after you finished the assessment, did you
18 later enter into a more regular consulting relationship with
19 WRBR?

20 A Yes, we entered there in May, about May 6th or
21 17th, as I recall, of '94.

22 Q Did you enter into a written contract with WRBR
23 and Hicks Broadcasting?

24 A No, actually -- it doesn't make me a very good
25 businessman. Based on my feeling for Dave and regard for

1 him and our history, it's one of about three clients out of
2 our entire universe we don't have a written contract with.
3 We certainly could, I'm sure, if we pressed Dave for it, but
4 I just -- I guess, from a personal standpoint wouldn't want
5 to be there if we weren't performing and helping him, so we
6 never, never really consummated a written agreement.

7 Q So that's unusual?

8 A Well, yeah. It's simply not good business. We
9 have a standard service agreement, as I said earlier, that
10 points out how many visits, what we do, et cetera, and
11 spells out a term of one to two years. So, yeah, it's
12 unusual for us not to have that.

13 Q At some point RBR changed its format from the
14 oldies to a different format; is that right?

15 A Yes.

16 Q Do you recall approximately when that was?

17 A Well, we watched it perform. The sales came up on
18 the radio station. We were able to do some things with it
19 to get better numbers, but as the station got better and as
20 we looked at the competitive field, and Dave continued to
21 challenge us virtually every meeting, "I want to be the
22 number one radio station in this market." And I -- I mean,
23 the message was pretty clear.

24 I finally read the room, and Dave said, "You know,
25 this has been fine, and we can make money with it, and we're

1 going forward with it, but I'm just, I'm just not satisfied
2 not to make a run at the top rung of the ladder in the
3 market." And I said, "Well, it's highly unlikely we can get
4 there with oldies," and very few markets would have an
5 oldies station as the top ranked overall property. The
6 reason for that is very simple, that its constituencies is
7 older. So numerically it has no teens, no 18 to 24s, very
8 few 25s and 34s, and the cards are sort of stacked against
9 you if in fact being number one total persons is your key
10 objective.

11 Q And when was it that that format changed
12 eventually, please?

13 A Well, we changed -- we started talking very
14 seriously about it in late '95. We wanted to see the fall
15 '95 book, and in South Bend that's released very early
16 because it piggybacks with Chicago. So South Bend, sort of
17 like Nassau, Suffolk or Ocean Monmouth to New York, is a
18 very early market release in the calendar release date, and
19 we knew we'd get to see those results pretty early on in
20 '96.

21 Q Before you get into too much detail about the
22 format change itself --

23 A Sure.

24 Q -- let me ask you to, I guess, we spoke generally
25 about what sorts of things you do for your clients.

1 Focusing now specifically on WRBR, in sort of broad terms
2 can you tell us the kinds of things you did for them between
3 May of '94, when --

4 A Ah, okay.

5 Q -- you first started consulting and this time
6 frame where the format change began to be discussed?

7 A We did a lot of work with morning show coaching
8 and development. One of the Achilles heels of the radio
9 station, in your opinion, in the early days with them in
10 early mid-94 and our early relationship was that the morning
11 show simply wasn't compelling enough or good enough to be a
12 command presence morning show. Of course, you're in trouble
13 without a command presence morning show in virtually any
14 rated market. So we did a lot of work in trying to take the
15 morning show that we inherited and make it some better.

16 We worked a great deal on music mix and brought in
17 tested oldies to make sure that the music software to
18 schedule the songs was giving us what we really should have
19 to be able to improve the station's appeal. So we worked a
20 lot with music, and a lot of this was done with fax, or
21 station visitation, taking a backup disk from their
22 software. Every station, virtually every station now in a
23 rated market has all their music on software and can
24 influence it very quickly in terms of tempo and song air and
25 so on. So much concentration there.

1 A fair amount of concentration on marketing,
2 marketing tools. The station was called "Cool 104." We
3 were very intent on helping them build a icon that would
4 again help the recall value of the station.

5 So a lot of different things. We sort of
6 scratched where it itched on a given visit, but mostly music
7 and talent development and positioning.

8 Q How frequently during this period would you be
9 physically present at the WRBR?

10 A Well, our standard service agreement, and we don't
11 have one with them, but our standard service agreement calls
12 for two to three visits before we build any additional fees.
13 In other words, in that monthly retainer, I probably should
14 make this clear, they're entitled to a couple of visits with
15 nothing but the air travel and hotel.

16 But since it's driveable for us, within about two
17 hours of Grand Rapids, we were making about four, and I
18 think a couple of times, five visits a year there.

19 Q When you would be -- I'm sorry.

20 Who on behalf of the Audience Development Group
21 was conferring with the WRBR account?

22 A It was my personal booking, yeah.

23 Q When you would be at the station, would Mr. Hicks
24 be in attendance at those meeting as well?

25 A Virtually every time, with a couple of exceptions

1 where he had to serve on a music committee meeting or
2 something. He was traveling and the dates just wouldn't
3 coordinate. In fact, a lot of times we rode down together
4 because it was simply on the route to stop at Portage and
5 pick Dave up. So it was kind of nice to go down together on
6 a number of occasions. But most of the time Dave was there
7 while I was there.

8 Q And again focusing on this period of time of May
9 of '94 to the end of '95, did you have other meetings with
10 Mr. Hicks concerning WRBR that didn't occur at the station?

11 A Oh, I think we might have had one or two in
12 Kalamazoo or in Grand Rapids.

13 Q Were you in touch with Mr. Hicks by telephone or
14 facsimile --

15 A Yes.

16 Q -- during this period?

17 A Yes.

18 Q Let's go the format, let's talk about the format
19 change now.

20 A Okay.

21 Q You started telling us a little bit about the
22 discussions that led to that. Can you tell us again when
23 those started happening and what those discussions were?

24 A Well, going into the fall book it was very clear
25 to me that even if the results were reasonably good, that

1 the station was sort of in a margin trap, in a sense, with
2 its audience building, and that as an oldies station we
3 certainly weren't going to increase 10 points.

4 So in the back of my mind as we went into the fall
5 of '95 book, I thought it may well be that when this book
6 comes out we'll be in a position -- we'll be hearing from
7 Dave that he wants to change the format, or he wants to look
8 at a bigger picture.

9 Q By "book," you mean the Arbitron?

10 A Exactly, the sweep, the rating sweep lasts 13
11 weeks, and then the results begin to be released by not
12 necessarily market size, although L.A., New York, Chicago,
13 et cetera, come out first, and those suburban markets that
14 are under that umbrella come out with them. So I knew by
15 early January we would have a pretty good sense that it
16 would be quite likely we would change format.

17 Q Now, you mentioned the margin of traffic, and I
18 meant to ask you to explain a little bit and go into that a
19 little bit for me.

20 A What I mean by that that if the oldies opportunity
21 in a market, if we did a research project in Washington and
22 it said to us that the first preference of oldies listeners
23 were about eight percent, we might get it to a nine, we
24 might get it to a 10 temporarily, but it's going to hover in
25 the eight to 10, seven to 10 range best case, and it's not