

*Filed 12/17/98 @ 9:20 A.M.
In. 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: 14
 Pages: 2184 through 2394
 Place: Washington, D.C.
 Date: November 9, 1998

HERITAGE REPORTING CORPORATION
Official Reporters
 1220 L Street, NW, Suite 600
 Washington, D.C.
 (202) 628-4888

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

In Re:)	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)		
)		

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

Monday,
November 9, 1998

The parties met, pursuant to the notice of the
Judge.

BEFORE: HON. JOSEPH CHACHKIN
Administrative Law Judge

Heritage Reporting Corporation
(202) 628-4888

APPEARANCES:

On behalf of the Mass Media Bureau:

JAMES SHOOK, ESQ.
ROY W. BOYCE, ESQ.
KATHRYN S. BERTHOT, ESQ.
Mass Media Bureau
Enforcement Division
Federal Communications Commission
2025 M Street, N.W.
Suite 7310-F
Washington, D.C. 20554
(202) 418-1430

On Behalf of Hicks Broadcasting:

ERIC T. WERNER, ESQ.
DOUGLAS HALL, ESQ.
ERWIN KRAWNOW, ESQ.
Verner, Liipfert, Bernhard, McPherson & Hand
901 15th Street, N.W.
Washington, D.C. 20005-2301
(202) 371-6230

On Behalf of Pathfinder Commissions Corp.
and John F. Dille, III:

MICHAEL J. GUZMAN, ESQ.
EVERETTE JOHNSON, ESQ.
ERIC BERNTHAL, ESQ.
ALLEN GARDNER, ESQ.
Latham & Watkins
1001 Pennsylvania Avenue, N.W.
Suite 1300
Washington, D.C. 20004-2505
(202) 637-2200

On Behalf of Niles Broadcasting:

DEAN R. BRENNER, ESQ.
WILLIAM CRISPIN, ESQ.
Crispin & Brenner, P.L.L.C.
1100 New York Avenue, N.W.
Suite 850
Washington, D.C. 20005
(202) 828-0155

Heritage Reporting Corporation
(202) 628-4888

APPEARANCES (Continued):

On Behalf of Edward Christian:

JAMES K. EDMUNDSON, ESQ.
Smithwick & Belendiuk, P.C.
1990 M Street, N.W.
Suite 510
Washington, D.C. 20036
(202) 785-2800

I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
Richard H. Harris	2194				
John Dille	2215	2288	2350		
Henry Bowman	2352				

E X H I B I T S

	<u>IDENTIFIED</u>	<u>RECEIVED</u>	<u>REJECTED</u>
<u>Pathfinder Communications Corp.:</u>			
32	(Prev.)	2193	
32A	2313		
30	(Prev.)	2287	
10	(Prev.)	2379	

E X H I B I T S (Continued)

	<u>IDENTIFIED</u>	<u>RECEIVED</u>	<u>REJECTED</u>
<u>Pathfinder Communications Corp.:</u>			
48	(Prev.)	2384	
49	(Prev.)	2384	
50	(Prev.)	2385	
53	(Prev.)	2386	
54	(Prev.)	2387	
58	(Prev.)		2389
60	(Prev.)		2390
75	(Prev.)	2392	
76	(Prev.)	2393	
77	(Prev.)	2394	
78	(Prev.)	2394	
<u>Hicks Broadcasting:</u>			
12		2377	
<u>Mass Media Bureau:</u>			
47	(Prev.)	2214	
6	2233		
7	(Prev.)	2374	
4	(Prev.)	2375	

P R O C E E D I N G S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JUDGE CHACHKIN: Please be seated. I see we're going to have a speaker phone to start the day off with.

MR. WERNER: That's true, Your Honor. The first witness will be Mr. Richard Harris. And we should be calling him in just a few moments.

JUDGE CHACHKIN: All right. As far as lunch today, we're going to recess from 11:30 to 12:45 for lunch. Is this Richard Harris you say?

MR. WERNER: That's correct, Your Honor.

JUDGE CHACHKIN: All right. After having Mr. Harris, that concludes your case? Is that --

MR. WERNER: That's correct, Your Honor.

JUDGE CHACHKIN: And then Pathfinder's first witness is who?

MR. GUZMAN: Mr. Dille, Your Honor.

JUDGE CHACHKIN: Mr. Dille gets his chance. All right. And then you have some character witnesses?

MR. GUZMAN: Just one, Judge.

JUDGE CHACHKIN: Just one? Is he coming or is he going to speak?

MR. GUZMAN: He'll be physically present.

JUDGE CHACHKIN: Physically present. Okay.

MR. GUZMAN: I hope mentally present, as well, Your Honor. It remains to be seen.

1 JUDGE CHACHKIN: I hope the previous witnesses
2 have been mentally present. Well, we'll just have to wait I
3 guess. Do you have questions about something that is going
4 to be moved into evidence?

5 MR. GUZMAN: I didn't hear the first part.

6 JUDGE CHACHKIN: Do you have questions about
7 something that is evidence?

8 MR. GUZMAN: Yes. We had at one point planned to
9 bring Sam Thompson as part of our case. But in light of
10 some of the other evidence that was given, we decided he was
11 redundant and so informed the Bureau.

12 But there was one exhibit, Pathfinder Exhibit
13 Number 32, that we had intended to move in through him. And
14 I believe the Bureau is all right if we move that in now.
15 And there was one exhibit that they had planned to move in
16 through him, as well. And we agreed amongst ourselves
17 anyway that those two would be appropriate. And so we would
18 like to all that to your attention, sir.

19 JUDGE CHACHKIN: All right. Thirty-two you said?

20 MR. GUZMAN: Yes, Pathfinder Exhibit 32.

21 JUDGE CHACHKIN: Who is Thompson?

22 MR. GUZMAN: Sam Thompson was the attorney from
23 Barnes & Thornberg --

24 JUDGE CHACHKIN: Oh.

25 MR. GUZMAN: -- who organized Hicks Broadcasting

1 of Indiana.

2 JUDGE CHACHKIN: Thirty-two is just a note? Is
3 that what it is?

4 MR. GUZMAN: Thirty-two is the draft, handwritten
5 call provision reg.

6 JUDGE CHACHKIN: Okay.

7 MR. SHOOK: Your Honor, in the case of the Bureau,
8 it was Exhibit -- Mass Media Exhibit 47. We had page 9 in,
9 but the other pages of that exhibit have not yet been
10 offered.

11 JUDGE CHACHKIN: Well, once we finish with this --
12 we'll take care of that matter --.

13 MR. SHOOK: Very good.

14 JUDGE CHACHKIN: Who is going to translate this
15 exhibit?

16 MR. GUZMAN: Pardon me?

17 JUDGE CHACHKIN: Mr. -- who is going to translate
18 this?

19 MR. GUZMAN: Well, we have a handwriting expert
20 coming later.

21 JUDGE CHACHKIN: You do? Because I have
22 difficulty reading it.

23 MR. SHOOK: I had thought we were going to be
24 allowed to use our creative powers to determine what it was
25 that Mr. Thompson said and why he said it, but --

1 JUDGE CHACHKIN: I can see at least two different
2 versions. It might be a good idea to put in the record a
3 typed copy of this letter, these notes so that people can
4 read them.

5 MR. GUZMAN: Okay.

6 JUDGE CHACHKIN: It just might make it easier.

7 MR. GUZMAN: We can certainly do that.

8 JUDGE CHACHKIN: Interrupt it if necessary of this
9 person comes in. So you have your exhibit -- Pathfinder
10 Exhibit -- what is it?

11 MR. GUZMAN: Thirty-two, Your Honor.

12 JUDGE CHACHKIN: Thirty-two. And what is it
13 exactly?

14 MR. GUZMAN: Pathfinder Exhibit 32 is handwritten
15 notes evidencing the first creation or the first draft of
16 the call provision we've been discussing here. They were
17 authored at the direction of Sam Thompson.

18 JUDGE CHACHKIN: All right. The document will be
19 marked for identification as Pathfinder -- well, it has been
20 marked for identification. Any objection to its being
21 received in evidence?

22 MR. SHOOK: No objection.

23 JUDGE CHACHKIN: The exhibit is received.
24 However, as I indicated, it's difficult to read the notes.
25 So we should have appended to the exhibit either as --

1 perhaps as Exhibit 32A a typed -- a typed version of the
2 notes so that people will be able to read them.

3 (The document previously
4 marked for identification as
5 Pathfinder Exhibit Number 32
6 was received in evidence.)

7 MR. GUZMAN: We'll do that, Your Honor.

8 JUDGE CHACHKIN: All right. So that document --
9 (Telephone ringing.)

10 JUDGE CHACHKIN: All right. We'll stop at this
11 time. Hello?

12 (Richard H. Harris testifies by telephone.)

13 MR. HARRIS: Eric Werner?

14 JUDGE CHACHKIN: I'll -- I'm Judge Chachkin.
15 You're Mr. Harris?

16 MR. HARRIS: I am, sir.

17 JUDGE CHACHKIN: All right. Would you raise your
18 right hand, please.

19 MR. HARRIS: Yes, sir.

20 Whereupon

21 RICHARD H. HARRIS

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

24 JUDGE CHACHKIN: All right, Mr. Werner. Do you
25 want to start with the examination. He's going to ask you

1 some questions.

2 THE WITNESS: Thank you, Judge.

3 MR. WERNER: Yes, Your Honor.

4 DIRECT EXAMINATION

5 BY MR. WERNER:

6 Q Mr. Harris?

7 A Yes.

8 Q Can you hear me all right?

9 A A little closer if you would, please. Do you hear
10 me okay?

11 Q Yes, we can hear you perfectly. Thank you for
12 joining us this morning.

13 A Thank you.

14 Q Can you start out, please, just by introducing
15 yourself for the record.

16 A Right. My name is Richard H. Harris. I am a
17 full-time resident of Sarasota, Florida. My profession is
18 in the broadcasting business.

19 Q Thank you. And how old are you?

20 A I'm 69 years old.

21 Q Can you tell us a little bit about any -- any
22 college work that you've done?

23 A Yes. I graduated in -- with a degree in radio
24 broadcasting at BAM (phonetic) Radio Broadcasting in 1950
25 from the University of Denver. I subsequently in 1954, '55,

1 after I returned from service in '51 to '53, I did a year of
2 graduate work in journalism at the University of Missouri.
3 And in the mid '70s, I attended Harvard Business School in
4 their advanced management program for two summers.

5 Q Okay. Now, you had said you retired before. And
6 you had spent a career in radio broadcasting. How long have
7 you been in the business?

8 A Well, if you count -- if you count college, I
9 guess 45 or so years probably. I started when I was 20
10 years old in actually a working job in broadcasting. I've
11 been in it all my life.

12 Q What were you doing at the time you retired?

13 A I -- well, I was -- I was president and then
14 chairman of Westinghouse Broadcasting's radio station group.

15 Q Is that Group W?

16 A That's Group W, yes, sir.

17 Q Well, let's talk briefly about your employment
18 history. You said that out of college, you were -- well,
19 you were drafted into the Army and --

20 A Well, I immediately went to work for a small radio
21 station in Mexico, Missouri out of college in 1950. And
22 then I was drafted in '51; spent two years in the service;
23 returned and spent a year back at the radio station; then
24 worked on my graduate work in journalism.

25 I then spent three years as a sales person at WHB

1 for the Todd Stores (phonetic) Broadcasting Company in
2 Kansas City, Missouri.

3 Q And when -- when was that?

4 A That would have been '55 to '58 approximately.

5 Q After that, after you left WHB in Kansas, what did
6 you do?

7 A Then I went -- that was Kansas City, Missouri. I
8 then -- I then -- there were three of us that started our
9 own broadcasting company, a company called Dandy
10 Broadcasting. That's ended up subsequently owning radio
11 stations in Peoria, Illinois; Wichita, Kansas; San Diego,
12 California; and Albuquerque, New Mexico.

13 I worked in three of those markets in helping them
14 get started, both in -- in Albuquerque, San Diego and in
15 Wichita.

16 Q And when you say you helped them get started, what
17 specifically were your responsibilities?

18 A I was general manager of those three stations. We
19 -- we all had invested some of our money and then
20 independent investors came in and bought the station. Radio
21 was a much different world back then. It was only AM radio.

22 Q Is it fair to say you were what we call an
23 owner/operator?

24 A Very much so, an owner/operator.

25 Q Now, what -- how long were you with Dandy

1 Broadcasting?

2 A We ran that company for a little over three years.
3 Then Stores Broadcasting, the company I had worked for
4 previously -- our company was sold. We sold our company,
5 the three of us along with our independent investors. And
6 Stores Broadcasting asked me to return in 1961 as general
7 manager of WDGY in Minneapolis/St. Paul area, Minnesota. I
8 stayed there as general manager for three years. And then
9 in 1964, I joined Westinghouse Broadcasting.

10 Q Just so I'm clear -- I want to make sure I
11 understand -- it was Dandy Broadcasting that you said was
12 sold?

13 A Yes, we sold Dandy Broadcasting, right.

14 Q In 1961?

15 A Right. And then -- and then I returned to Stores
16 Broadcasting in 1961 and worked with them until 1964 in
17 Minneapolis, Minnesota.

18 Q Okay. And what were you doing in Minneapolis?

19 A I was again general manager/vice president.

20 Q Now, so you joined -- if I recall your testimony
21 correctly, you joined Westinghouse in about 1964?

22 A Yes, that's right.

23 Q And what were your responsibilities with
24 Westinghouse?

25 A I then -- I went through a series of about eight

1 or nine years as general manager successively of WBZ in
2 Boston. I then went to KYW in Philadelphia where I
3 participated in the beginning in the development of the old
4 news radio station as general manager there. That was in
5 '65-'66 just as the all news concept radio was developing.

6 I left there and they transferred me to WIND in
7 Chicago. From there, they transferred me to television in
8 KPIX, San Francisco and as general manager/vice president
9 again. In about 1969 now I think, I was transferred back to
10 New York City as -- as president of the Radio Advertising
11 Representatives which was the national sales organization
12 for all of the Westinghouse radio stations.

13 Q And what exactly was -- what was the function of
14 Radio Advertising Representatives?

15 A It represented at that time all of Westinghouse's
16 radio stations plus several outside radio stations in the
17 national sales -- national sales field, selling advertising
18 to people who were not in the local market where the radio
19 station was located. I had a group of about I think around
20 20 sales people in eight or nine offices around the United
21 States. I stayed at that job for about three years and then
22 I was named president of the radio station group.

23 Q How long did you serve as president?

24 A Well over 15 years. I retired in 1991. I was
25 president, and then the last two years, I was chairman when

1 I retired.

2 Q During the course of that 15 year tenure, how many
3 stations did you supervise?

4 A Well, we started with seven which at that time was
5 the legal limit. When I retired, 21 was the legal limit.
6 And that was the number of stations that we owned at that
7 time. And I believe it was -- then it was the largest radio
8 station group in the United States at the time that I
9 retired. It was a combination of AM and FM radio stations.

10 Q If I recall your testifying earlier that you
11 retired in about 1991?

12 A I retired in '91 to Sarasota right shortly after I
13 turned 60, 61, right in that area. We picked an orderly
14 succession to the radio group. And I retired to Sarasota.

15 Q Since your retirement, have you had any personal
16 involvement in broadcasting?

17 A Yes, I have. After I came down here, I had an
18 opportunity through personal knowledge to buy an AM radio
19 station here in Sarasota. I have five children and several
20 of my children from time-to-time have been interested in
21 broadcasting; have worked in various phases of it.

22 And we talked it over and thought it would be an
23 opportunity for us to go into business together. We bought
24 the radio station which my one son and one son-in-law
25 actively managed. I simply oversaw their operations. We

1 owned it for several years and had an opportunity to buy an
2 FM radio station in -- in Milwaukee -- the Milwaukee,
3 Wisconsin area, a classical music radio station. We sold
4 Sarasota.

5 The children moved up there. And about a year and
6 a half, two years after that, we had an opportunity to buy
7 another -- actually file and get a construction permit for a
8 second FM station, which we then owned those two stations.
9 And I was -- I've managed from long distance only as an
10 investor/manager. And they ran -- my son and my son-in-law
11 ran the two radio stations in Milwaukee. We sold those in
12 May of '97.

13 Q So if I'm correct, you no longer own any stations?

14 A I no longer own any radio station, yes, sir. I --
15 I don't -- I'm not involved in any ownership of radio
16 stations. I -- I do sit on a -- on a board that provides a
17 service to the radio industry. It's a Digital Generations
18 Systems, DG Systems, in San Francisco --

19 Q Okay.

20 A -- that provides a telephonic commercial delivery
21 service to -- to radio stations. So from that standpoint,
22 I stay active in the radio business as far as knowing --
23 knowing kind of what's going on and following the
24 consolidation, all of those kinds of things now.

25 Q And during your time in the industry, did you

1 participate in any professional organizations?

2 A Yes, several of them. I was certainly active in
3 two organizations primarily, along with various state
4 organizations from time-to-time. But the two national
5 organizations were the Radio Advertising Bureau of which I
6 served both on the board and then in -- sometime in the
7 early '80s, I was chairman of that -- that organization.
8 And then also, the National Association of Broadcasters,
9 their radio group. And that was -- I was on their board and
10 also served as vice chair in the late '80s, early '90s.

11 Q Briefly, can you tell us what the Radio
12 Advertising Bureau is?

13 A Radio Advertising Bureau is a voluntary industry
14 organization that is made up -- that is developed for the
15 advancement of radio -- of the radio industry and of radio
16 service and sales to the advertisers and advertising
17 agencies around the United States.

18 Q You had also mentioned you were on the -- the
19 radio side organization for the National Association of
20 Broadcasters. Is that what we've come to know as the NAB
21 Radio Board?

22 A Yes, that's the NAB Radio Board, right.

23 Q How did you -- how did you come to join the NAB
24 Radio Board?

25 A Well, that's an elected position. They were --

1 they are picked by various either geographic districts or
2 various sizes of radio stations. And I -- as I recall, I
3 was elected as a group owner representative; in other words,
4 like -- that would have been made up of a group of the
5 network-owned radio stations and the major group radio
6 stations in major markets at that time. I don't know if
7 it's still elected that way or not. But that was by a valid
8 vote. And then I went on to their board, yes, sir.

9 Q So your constituency was made of mostly large
10 group broadcasters?

11 A Yes. That's exactly right.

12 Q Now, what exactly does the NAB Radio Board do?

13 A The NAB Radio Board would be the trade
14 organization that worries about the legislative development,
15 radio being a licensed business; worries about the
16 legislative and administrative development of -- of all of
17 the various impacts of -- of the impact those -- those
18 organizations may have on the radio industry. And it
19 lobbies, if you will, for their -- for their welfare and
20 good. It's I guess the closest thing to a trade
21 organization it would be -- would be called.

22 Q And when did you serve on the board?

23 A That would have been the late '80s, early '90s.

24 Q I believe you also mentioned before that you had
25 served as vice chairman, is that correct?

1 A I was elected as -- I think it was my second or
2 third year on the board. I was elected to vice chair -- as
3 vice chairman of the -- of the radio board.

4 Q So to the best of your recollection, how long
5 would you say was your total term on the board?

6 A A little over three years, I believe.

7 Q Have you served in any other capacities in the NAB
8 or other trade organizations?

9 A Yes. I -- I have -- I have -- I am -- I just --
10 just recently -- about less than two years ago, I served for
11 almost ten years I guess as the chairman of the All Industry
12 Radio Music Licensing Committee organization. That's a --
13 how best can I explain that? We were charged with the
14 responsibility of negotiating with ASCAP (phonetic) and BMI
15 (phonetic).

16 That's the licensing organizations, operating
17 under a consent decree of -- I believe in the 1st District
18 Court of New York; I'm not sure of that, but I think that's
19 the court it operates under -- a consent decree. And the
20 radio industry was given authority to put together a
21 committee to negotiate for the industry the fees that are
22 paid the composers, authors and publishers through those two
23 licensing organizations. We had about a -- at various
24 times, from a six to ten-person committee. And I was that
25 chair.

1 Q I would like to move on to another topic right
2 now. At some point in your career, did you come to know
3 David Hicks?

4 A Yes, I did.

5 Q And how long -- do you still know him today?

6 A Yes, I do. I haven't seen him in a while, but I
7 do know him.

8 Q How long would you say you've known him?

9 A Probably between -- probably between 12 and 15
10 years would be my guess.

11 Q Do you recall when you first met Mr. Hicks?

12 A Not specifically. I would -- I would guess we met
13 at a trade organization; either one of the RAB events or
14 more likely an NAB event because that's where we first began
15 working together, was at -- at the National Association of
16 Broadcasters. We were concurrently on the board in the
17 early '90s -- or late '80s really.

18 Q Were there any specific projects that you can
19 recall working on with Mr. Hicks?

20 A There was one specifically during that time.
21 Dave, myself, a representative of the NAB and Lowrey Maze
22 (phonetic), another group owner/operator at that time -- a
23 major group owner now -- were asked to head a committee to
24 work with a group of European broadcasters, the counterpart
25 of the NAB to develop a trade conference in Montro

1 (phonetic), Switzerland. And that -- we were on that
2 committee.

3 We had several meetings of course here in the
4 United States. We made -- I remember clearly one trip we
5 made to Montro with Dave and Lowrey. And then we attended
6 the conference. Also, subsequently we attended the
7 conference so that there was a lot of close working
8 relationship on that specific subject during that time.

9 Q I may have missed this in your testimony. Could
10 you give us a time frame for when you were working on the
11 conference?

12 A I want to say it was -- it was -- I say about the
13 time I was -- I was vice chair of the board -- of the radio
14 board would have been '89, '90, '91, in that time frame
15 right there.

16 Q And when you were working on that project, what
17 sort of contact did you have with Mr. Hicks?

18 A Well, it was the same kind of normal contact you
19 would have with an associate who neither -- you didn't have
20 a -- a business employment working relationship, but you had
21 a peer relationship that involved developing an agenda,
22 contacting possible speakers, those -- developing a whole
23 idea for a conference that would involve -- I think we had
24 two or three, maybe four other participants at this
25 conference. And it was that kind of relationship.

1 We would have meetings together here in the United
2 States and then also with our counterparts when we went to
3 Europe. And specifically, I know I spent some time with him
4 because at that time -- prior to that, I had asked him to go
5 on the Radio Music Licensing Committee. He served on my
6 committee there, also. And after having worked with being
7 involved with him, then he went on the Radio Music Licensing
8 Committee.

9 And I think he specifically was charged the
10 responsibility of finding some people to put that committee
11 together in Europe. And we spent some time -- we even spent
12 one afternoon I know -- he and I went up to -- took an -- it
13 was a free afternoon. I remember riding a train up to some
14 other village in Switzerland. We just went on the train
15 together to -- to sightsee and back down. So that's the
16 kind of time I spent with him.

17 Q Let's -- let me ask just a couple more specific
18 questions about some of the preparations for the -- the
19 conference. You had said that you had had a number of
20 meetings in preparation for it. Were these meetings
21 frequent?

22 A They were -- they were spread out. By frequent, I
23 would guess there were maybe a half dozen, but spread out
24 probably over two, maybe four months, somewhere in that
25 area.

1 Q Okay. And about how long would they last when you
2 had the meeting?

3 A Oh, a half a day probably on average; no longer
4 than that would be my guess.

5 Q So three to four hours perhaps?

6 A Maybe until lunch. That's the way meetings last
7 frankly.

8 Q Would you -- would you say that when you were
9 working with Mr. Hicks in these meetings you were working
10 closely together or --

11 A Well, we were in groups of probably four at the
12 most, maybe six. So I -- you know, I don't know whether to
13 define close that way or not. I don't recall an awful lot
14 of simply one-on-one meetings.

15 Q Okay. Now, you had mentioned that you had taken a
16 train trip together --

17 A Right.

18 Q -- some sightseeing. So do I understand correctly
19 that you socialized together?

20 A Yes, to some extent. We -- we have -- we know
21 each other's spouses. He -- he and I have -- I mentioned
22 that he was on the Radio Music License Committee. And
23 they -- they came down here to a meeting.

24 And I believe maybe Dave was either looking -- I
25 lived here in Sarasota. This would have been in the mid

1 '90s probably, '94, '95 -- '93 maybe. And he was with his
2 wife Sally. And they spent -- I know we had dinner here.
3 They came by our home. We had several drinks and went out
4 to dinner.

5 I also was -- a few years ago was coming from New
6 Hampshire to our -- our family -- our children's home in
7 Wisconsin. We were driving across the state of Michigan to
8 take the ferry from Michigan to Wisconsin. And I remember
9 contacting Dave.

10 And he and Sally and Lynn and I had a dinner
11 before I caught a ferry off -- I can't recall the name of
12 the city up in northern Wisconsin that -- or northern
13 Michigan that takes you across to Wisconsin. But we had
14 dinner there one evening. That kind of personal
15 relationship.

16 Q Okay. Let's go back to the Montro conference
17 again just very briefly. In the time -- I guess you had
18 indicated before that -- that you had done some sightseeing
19 with Mr. Hicks. And when I asked you before about whether
20 you had had occasion to socialize with him, it really tended
21 to --

22 JUDGE CHACHKIN: Let's move this along, Counsel.
23 You're just taking too long for this.

24 MR. WERNER: Very well, Your Honor.

25 BY MR. WERNER:

1 Q Let's move on to another topic. You have
2 indicated a couple of times that Mr. Hicks had worked with
3 you on the Radio Music Licensing Committee and that you
4 had --

5 A Yes.

6 Q -- you had invited him on to -- to work on that
7 committee.

8 A Right.

9 Q What caused you to invite Mr. Hicks to work on the
10 committee with you?

11 A Well, I think the explanation I've just given you,
12 my working with him in the -- Montro and being on the NAB
13 Board. I thought he had a good knowledge of the radio
14 industry. The Radio Licensing Committee I try and compose
15 of people who represent various constituencies in the radio
16 business: major group operators, very small market
17 operators.

18 I think Dave represented an entrepreneurial group
19 of middle-market to small-market size operators, one who --
20 I used to use the phrase, people would return his phone
21 calls in that group. That's the reason I put him on.

22 Q Was the -- was the work on the committee
23 difficult?

24 A It was -- yes, it's arduous because it is -- it
25 requires a great deal of knowledge of the contracts that are

1 drawn between -- based on about 50 years of -- of legal
2 contract work on the court decisions. We have, of course, a
3 -- a law firm that has represented us. And they were always
4 present in these meetings, the law firm.

5 The committee itself was a volunteer committee.
6 No one worked for pay of any kind. We had our travel
7 expenses reimbursed only on this. And it required a lot of
8 technical because you deal with very minute percentages and
9 a lot of research.

10 Q And when were you working with Mr. Hicks on the
11 Radio Music Licensing Committee?

12 A From -- from the late '80s through -- I resigned
13 as chairman in '92 -- let's see, in 1997 -- I guess early
14 1997. I -- I simply felt that it was time for somebody else
15 to do that work.

16 Q And in that -- in that work with him, were you
17 coming in regular contact with Mr. Hicks?

18 A Yes. We -- we negotiated contracts with ASCAP and
19 BMI on five-year terms. And they will take as long as two
20 to -- two to two and a half, maybe three years to negotiate.
21 Usually the contracts run in an open state. And the
22 meetings are held periodically.

23 They could be as often as once every -- once every
24 month or once every three to six weeks to as infrequently as
25 once every six months or so. So it depended on at what

1 level of negotiation and how serious the negotiations were
2 from time-to-time. There was always the recourse of going
3 to court which never happened during the time we were
4 involved anyway.

5 Q At some point after you had invited him to join
6 the committee with you, did there come a time when Mr. Hicks
7 became vice chairman of the committee?

8 A Yes. I want to say that was in the mid -- in
9 probably '92, '93, somewhere in that time frame I guess he
10 became vice chair.

11 Q Okay. And was that also an appointed position?

12 A It was appointed by me. These positions I -- the
13 way the bylaws are set up, the chair has -- has a very large
14 power, very large -- is given a very large charter by the --
15 by the bylaws of this organization.

16 Q And based on what you've just told us about the
17 time you've spent with Mr. Hicks and the work with him in
18 various contexts, how would you characterize your
19 relationship with him? Is he a friend? Is he just an
20 acquaintance?

21 A I would -- I would characterize as -- as an
22 acquaintance and a business friend. I think that would be
23 the proper way to do it. We -- we had I think a fine
24 working relationship. We started out as a fine working
25 relationship. It became a personal relationship.

1 Am I very close personal friend? I could not
2 honestly say I'm a very close personal friend. But
3 certainly I feel I have knowledge of him. I've met one of
4 his children and he has met some of mine.

5 Q Well, based upon your experience with him, what
6 would be your impression of David Hicks?

7 A I -- well, very simply, my experience with him in
8 the work that I've described to you this morning is he's
9 been very honest. He's been -- he's been candid and
10 forthcoming. I also found that he had a very good attitude
11 when it came particularly to the music licensing
12 negotiating, what I would call a very strong backbone in
13 that there would be time-to-time -- and as everyone knows in
14 negotiating, one way you win your point is to wear a person
15 down.

16 And he was very persistent in many times when
17 maybe the consensus would begin to become -- conceded a
18 certain point, why, Dave would rear back, if you will, and
19 say, "Let's go do it", and carry us one step further
20 sometimes. Those were some of the impressions I have of
21 him.

22 Q Okay. Let's step back for a moment to the 1993-
23 '94 time frame when you would have been working with him on
24 the Music Licensing Committee. Was your impression of him
25 the same at that time?

1 A Oh, yes, it was. It hasn't changed either.

2 Q Okay. One last question then. In your experience
3 of working with Mr. Hicks and knowing Mr. Hicks over the
4 last ten to 15 years, does he strike you as the sort of
5 person who would be out to mislead the FCC?

6 A No.

7 MR. WERNER: Thank you very much. No further
8 questions, Your Honor.

9 JUDGE CHACKIN: Any cross examination?

10 MR. SHOOK: No, Your Honor.

11 JUDGE CHACKIN: All right. Thanks very much, Mr.
12 Harris. You're excused.

13 THE WITNESS: Thank you, Judge.

14 (Witness excused.)

15 JUDGE CHACKIN: Well, let's -- as far as
16 Pathfinder Exhibit 32 is concerned, I will also receive
17 Exhibit 32A which will be the typed portion of the notes.
18 So that will also be received and permission is granted to
19 make it -- to do -- prepare that exhibit.

20 The Bureau -- you had an exhibit also, the Bureau,
21 that you wanted to put in?

22 (The document identified as
23 Pathfinder Exhibit Number 32A
24 was received in evidence.)

25 MR. SHOOK: Yes, we did, Your Honor. It was Mass

1 Media Exhibit 47. It's pages 1 through 8. Page 9 I believe
2 is already in evidence.

3 JUDGE CHACKIN: And I understand there is no
4 objection to its receipt.

5 MR. WERNER: No objection.

6 MR. GUZMAN: That's correct, Your Honor.

7 JUDGE CHACKIN: All right. That exhibit is
8 received, as well. All right. Let's go to Pathfinder's
9 case now.

10 (The document previously
11 marked for identification as
12 Mass Media Bureau Exhibit
13 Number 47 was received in
14 evidence.)

15 MR. JOHNSON: Thank you, Your Honor. We'll call
16 John Dille.

17 JUDGE CHACKIN: Mr. Dille. You sound like you're
18 anxious to get up.

19 MR. DILLE: I am.

20 JUDGE CHACKIN: Raise your right hand.

21 Whereupon

22 JOHN F. DILLE, III
23 having been first duly sworn, was called as a witness
24 herein, assumed the stand, was examined and testified as
25 follows:

Heritage Reporting Corporation
(202) 628-4888

1 JUDGE CHACHKIN: Please be seated.

2 THE WITNESS: Thank you.

3 DIRECT EXAMINATION

4 BY MR. JOHNSON:

5 Q Good morning, Mr. Dille.

6 A Good morning.

7 Q Just for the record, please, could you state your
8 full name.

9 A John F. Dille, III.

10 Q Where do you live?

11 A In Elkhart, Indiana.

12 Q And how long have you lived in Elkhart, Indiana?

13 A For 33 years.

14 Q Are you married, Mr. Dille?

15 A I am.

16 Q And how long have you been married 33 years?

17 A Thirty-three years.

18 Q How about children?

19 A Three children.

20 Q Tell us their names and what they do.

21 A The oldest is -- is John Flint. He is -- he is
22 just 30. He is in the sign-making business. But he has
23 really started just in the last several months -- determined
24 that he would like to teach school. So he is embarking on
25 that career.

1 Q Where does young John live?

2 A He lives in Elkhart, also.

3 Q What about --

4 A He is married and has a daughter -- little
5 daughter, one year.

6 Q What about your other two children?

7 A Sarah is 29. She is a housewife and a new mother
8 with a six-month-old son. And the third is Alec, 24. And
9 he is in the golf business in Arizona.

10 Q G-O-L-F business.

11 A G-O-L-F, yes. He's a -- he's a pro.

12 Q Can you tell us, Mr. Dille, just briefly about
13 your own educational background starting with the year and
14 place that you graduated from high school.

15 A Graduated from high school, Lake Forest Academy in
16 suburban Chicago in 1959; went then to Colby College. And
17 concluded with an MBA from the University of Notre Dame.

18 Q Did you get a degree from Colby College?

19 A I did not.

20 Q And how long were you in Colby College?

21 A I was there on two occasions.

22 Q How about the first time?

23 A I was excused after the -- my first tour, when I
24 came here actually, to work for the Washington Post.

25 Q Roughly what year was that?

1 A Well, that was during the -- the Nixon-Kennedy
2 campaign. So 1960. Eisenhower was President. I tell my
3 kids I was down here when Eisenhower was President. And
4 they -- they sort of say Washington, Jefferson, Lincoln --

5 Q Eisenhower.

6 A I came down here on a horse. But anyway, it's all
7 in that time period.

8 Q What did you do for the Washington Post?

9 A I was a copy boy. So was Tom Wolf who was there
10 in that same newsroom.

11 Q And how long did you work in Washington with the
12 Post?

13 A Through that election and -- well, eight months,
14 something like that.

15 Q What did you do after that?

16 A Went to work for the Associated Press in -- in
17 their London Bureau as a -- really a typist; and once in the
18 U.K., hooked up with Thompson Newspapers, again, as a -- as
19 a -- well, a copy boy/court reporter in an apprentice
20 program they had there. It took me from London to Cardiff
21 to New Castle, Sheffield, Aberdeen.

22 Q How long did you live abroad?

23 A About a year.

24 Q What happened when you returned to the United
25 States?

1 A I returned to Colby College. And that wasn't for
2 me. I was there for a year and a half or so.

3 Q And what did you do after that, Mr. Dille?

4 A I -- I came briefly to a newspaper in -- in
5 Mishiwauka (phonetic), Indiana and then enlisted in the
6 Army.

7 Q What year did you enlist in the Army?

8 A Sixty-four -- '63 or '64.

9 Q Okay. And how long did you remain in the Army?

10 A I was on active duty for a couple of years. And
11 then I had six more years of reserve time.

12 Q Well, can you tell us your rank upon discharge?

13 A Well, I -- I enlisted and started out in the
14 artillery; actually re-enlisted in order to go to OCS and
15 came out at the end of all of that as a captain, having
16 commanded a battery.

17 Q And what did you do when you left the Army?

18 A I came then to the newspaper in Elkhart, the
19 Elkhart Truth.

20 Q Tell us a little bit about that. Was that your
21 father's newspaper?

22 A It was.

23 Q How long had he been in the newspaper business?

24 A At that time, he had been in the business about
25 ten -- ten or so years, ten -- 12 years. He had been a --

1 he had been a -- prior to that, he had been a sales -- sales
2 guy for his father selling comic strips and things,
3 syndicated features to newspapers.

4 Q So he had been in the publishing business for some
5 time --

6 A That's right.

7 Q -- but new to the newspaper business. Tell us a
8 teeny little bit about the Elkhart Truth. Is it a daily or
9 a weekly or --

10 A Well, it's -- it is a daily, seven days a week,
11 seven mornings; and is the only paper in the world now with
12 the name "Truth". I'm proud of having abandoned --

13 (Laughter.)

14 Q Okay. What did you first do when you first began
15 working for the -- for the Elkhart Truth?

16 A Well, I began actually as a copy boy long before
17 then. But I was -- I was a reporter, City Hall.

18 Q How long did you continue as a reporter?

19 A Well, a year I guess, something like that. I then
20 moved to -- I was promotion manager and wound up general
21 manager.

22 Q Mr. Dille, I think I neglected to ask you at the
23 beginning, how old are you?

24 A I am 57.

25 Q Did there come a time when you got into the radio