Exhibit 2.3(b)(2)(A)

PROMISSORY NOTE

$660,000.00
Maturity Date: _____, 199_ Dated: _____, 199_

FOR VALUE RECEIVED, the undersigned promises to pay to the order of Booth American Company, a Michigan corporation ("Booth") at its office at 333 W. Fort Street, 12th Floor, Detroit, Michigan 48226 or as the holder hereof may otherwise direct, the total amount of Six Hundred Sixty Thousand Dollars ($660,000.00), constituting principal in the amount of $460,000, and the remainder constituting interest. The principal of and interest on this Note shall be payable in lawful money of the United States of America in immediately available funds, in accordance with Schedule 2.1(a) attached hereto.

Interest will accrue on all past due amounts of principal and interest hereunder at an annual interest rate equal to the lesser of (1) 4% above the prime rate charged by Comerica bank at the time of such default (adjusted on an annual basis) and (2) the maximum interest rate allowable under applicable law.

If the undersigned fails to pay any installment as and when due under this Note, such failure shall constitute a default under this Note. In the event of any such default or any default under a certain Asset Purchase Agreement dated November 30, 1993 (the "Asset Purchase Agreement") or that certain Security Agreement (the "Security Agreement"), Guaranty (the "Guaranty"), Mortgage (the "Mortgage"), or a Pledge Agreement (the "Pledge Agreement") of even date herewith, the holder of this Note may, at its option, declare the entire amount due under this Note or otherwise immediately due and owing, and exercise all other rights and remedies afforded by law or available under the Asset Purchase Agreement, Security Agreement, Guaranty, Mortgage or Pledge Agreement; provided however, that the undersigned shall have thirty (30) days from the receipt of notice of any default which has not previously occurred (other than a default for which a grace period is already provided in the Asset Purchase Agreement, Security Agreement, Guaranty, Mortgage or Pledge Agreement) within which to cure the default before Booth may accelerate all future payments.

In the event Booth does not accelerate this Note upon a default: (1) all payments due hereunder shall be made in proper sequence, and (2) any accrued but unpaid interest due to late payments shall accrue interest at the rate specified above from the date of the default, to the extent permitted by law.

This Note may be voluntarily prepaid in whole or in part at any time without prepayment premium or penalty; provided, however, that any prepayment hereunder will not relieve the undersigned of its obligation to pay the full amount of principal and interest due or to become due hereunder (aggregating $660,000), plus any accrued but unpaid interest due to late payments.

This Note is secured by the collateral and rights granted to Booth under the Security Agreement, the Guaranty, the Mortgage and the Pledge Agreement, the terms and conditions of which are incorporated by reference.

In the event the undersigned becomes insolvent, makes a general assignment for the benefit of creditors, or if a proceeding of any nature, whether voluntary or involuntary, is commenced by or against the undersigned pursuant to any state or federal bankruptcy or insolvency law, the holder of this Note may, at its option, immediately accelerate maturity of this Note and any other obligations of the undersigned to Booth and the balance of the principal of and interest due or to become due on this Note and all such other obligations shall become immediately due and payable. The undersigned agrees to pay all costs of collection and enforcement of this Note including reasonable attorneys' fees and court costs.

The undersigned, and all endorsers and guarantors, hereby severally waive valuation and appraisement, presentment, protest and demand, notice of protest, demand, dishonor and nonpayment of this Note, and expressly agree that the maturity of this Note, or any payment hereunder, may be extended from time to time, without notice and without in any way affecting the liability of the undersigned or said endorsers or guarantors.

This Note shall be governed by and construed in accordance with the laws of the State of Indiana.

Hicks Broadcasting of Indiana, L.L.C.,
an Indiana limited liability company

By: _____

Its: _____

B3504c

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Schedule 2.1(a)

PAYMENT OF TRANSACTION CONSIDERATION

A. Unless otherwise defined in this Schedule, all capitalized terms used in this Schedule have the meanings given to them in the Purchase Agreement.

B. All payments will be made in immediately available funds on the first business day of the applicable month, except for Closing Date payments.

C. Seller shall be entitled to accelerate all future payments in the event of any late payment or other default as specified in the Note, except that the Note shall provide that the Purchaser shall have thirty (30) days from the receipt of notice of any default which has not previously occurred (other than a payment default) within which to cure the default before Seller may accelerate all future payments.

D. Interest will accrue on all past due amounts at an annual interest rate equal to the lesser of (1) 4% above the prime rate charged by Comerica Bank at the time of such default (adjusted on an annual basis) and (2) the maximum interest rate allowable under applicable law.

1. Subject to paragraph 2 below, Purchaser will pay Seller:

(a) Six monthly payments of $5,000 each, beginning on the seven month anniversary of the Closing Date;

(b) $105,000 on the first anniversary of the Closing Date;

(c) 6 monthly payments of $10,000 each beginning on the first day of the first month after the second anniversary of the Closing Date;

(d) 15 monthly payments of $15,000 each, beginning on the first day of the month immediately after payments under paragraph 1(c) above are completed; and

(e) a balloon payment, on the first day of the month immediately following the completion of payments under paragraph 1(d) above, equal to the difference between (1) the sum of $660,000, plus interest on any late payments which has not by then been paid, plus any other amounts then owed to Seller by Purchaser, minus (2) the amounts actually paid to such date under paragraphs 1(a) - (d) above.

B9909a

Exhibit 2.3(b)(2)(D)

GUARANTY

_____, 199__
_____, ____

IN CONSIDERATION of and in order to induce Booth American Company (hereinafter referred to as "Creditor"), to extend credit to Hicks Broadcasting of Indiana, L.L.C., an Indiana limited liability company ("Debtor"), the undersigned (hereinafter referred to as "Guarantors") hereby covenant and agree with Creditor as follows:

1. Guarantors hereby unconditionally guarantee to Creditor the full and prompt payment when due of all Indebtedness (as hereinafter defined) of Debtor due and to become due to Creditor. Creditor may have immediate recourse against Guarantors for full and immediate payment of the Indebtedness at any time after the Indebtedness, or any part thereof, has not been paid in accordance with its terms (whether at fixed maturity or maturity accelerated by reason of a demand for payment from Debtor or a default under the terms of the instrument governing such Indebtedness or any instrument securing the same). Notwithstanding anything herein to the contrary, each Guaranter shall be liable hereunder for the following portion of the total liability hereunder, but not exceeding the amount set forth below, and the total liability of all Guarantors hereunder shall not exceed $250,000:

Guarantor	Total Amount Guaranteed
David C. Hicks	$127,500
John F. Dille IV	$ 40,834
Sarah F. Dunkel	$ 40,833
Alec C. Dille	$ 40,833.

2. The term "Indebtedness" means any and all indebtedness, liabilities and obligations of every kind, nature and description, owed to Creditor by Debtor, whether direct or indirect, absolute or contingent, whether now due and owing, or which may hereafter, from time to time, be or become due and owing, whether heretofore or hereafter created or arising, including all indebtedness evidenced by any agreements now or hereinafter executed and delivered by Debtor to Creditor, any and all renewals, extensions or modifications thereof, and including, without limitation, reasonable attorneys' fees, costs and expenses incurred by Creditor in connection with the enforcement of this Guaranty or any obligation against Debtor.

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3. This is a guarantee of payment, and not of collection, and Guarantors therefore agree that Creditor shall not be obligated, prior to seeking recourse against or receiving payment from Guarantors, to do any of the following acts (although Creditor may do so, in whole or in part, at its sole option), the performance of each of which is hereby unconditionally waived by Guarantors:

(a) Take any steps whatsoever to collect from Debtor or to file any claim of any kind against Debtor; or

(b) Take any steps whatsoever to accept or perfect Creditor's interest in, foreclose or realize on collateral security, if any, for the payment of the Indebtedness, or any other guarantee of the Indebtedness; or

(c) In any other respect exercise any diligence whatever in collecting or attempting to collect the Indebtedness by any means.

4. Guarantors' liability for payment of the Indebtedness shall be absolute and unconditional and nothing whatever except actual full payment to Creditor of the Indebtedness shall operate to discharge Guarantors' liability hereunder. Accordingly, Guarantors unconditionally and irrevocably waive each and every defense which, under principles of guarantee or suretyship law, would otherwise operate to impair or diminish the liability of Guarantors for the Indebtedness. Without limiting the generality of the foregoing waiver, Guarantors agree that none of the following acts, omissions or occurrences shall diminish or impair the liability of Guarantors in any respect (all of which acts or omissions may be done without notice to Guarantors of any kind):

(a) Any extension, modification, indulgence, compromise, settlement or variation of the terms of any of the Indebtedness;

(b) The discharge or release of any obligations of Debtor or any other person now or hereafter liable on the Indebtedness, by reason of bankruptcy or insolvency laws;

(c) The acceptance or release by Creditor of any collateral security or other guaranty, seizure or conversion of any collateral security by any person or by operation of law, or any settlement, compromise or extension with respect to any collateral security or other guaranty;

(d) The application or allocation by Creditor of payments, collections or credits on the Indebtedness or any other obligations of Debtor to Creditor;

(e) The creation of any new indebtedness covered by this Guaranty;

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(f) The making of a demand, or absence of demand, for payment of the Indebtedness, or giving, or failing to give, any notice of dishonor or protest or any other notice; or

(g) The death of any Guarantor as to the obligations of such Guarantor's estate under this Guaranty or of any other Guarantors hereunder.

5. Guarantors unconditionally waive:

(a) Any acceptance of this Guaranty;

(b) Any setoffs or counterclaims against Creditor which would otherwise impair Creditor's rights against Guarantors; and

(c) Any notice of the disposition of any collateral security, and any right to object to the commercial reasonableness of the disposition of any such collateral security.

6. This Guaranty shall inure to the benefit of Creditor any its successors and assigns, including each and every holder or owner of any of the Indebtedness guaranteed hereby. In the event that there shall be more than one such holder or owner, this Guaranty shall be deemed a separate contract with each such holder and owner. In the event that any person other than Creditor shall become a holder or owner of any of the Indebtedness, each reference to Creditor hereunder shall be construed as if it referred to each such holder or owner.

7. This Guaranty shall be binding upon Guarantors and each of their successors and assigns, and shall continue in effect until Guarantors shall deliver to Creditor (and each other holder or owner of the Indebtedness) 30 days' advance written notice of termination; provided that this Guaranty shall continue in effect thereafter with respect to all Indebtedness in existence on the effective date of such termination (including all extensions and renewals thereof and all subsequently accruing interest and other charges thereon) until all such Indebtedness shall be paid in full.

8. Guarantors agree that recourse may be had against their earnings and separate property for all of their obligations under this Guaranty.

9. Notwithstanding anything to the contrary in this Guaranty, Guarantors hereby irrevocably waive all rights any of them may have at law or in equity (including, without limitation, any law subrogating Guarantors to Creditor's rights) to seek contribution, indemnification, or any other form of reimbursement from Debtor, any other Guarantor, or any other person now or hereafter primarily or secondarily liable for any obligations of Debtor to Creditor, for any disbursement made by Guarantors under or in connection with this Guaranty or otherwise and if, notwithstanding the foregoing, any amount shall be paid to Guarantors on account of any subrogation rights in connection with this Guaranty at any time when all of

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the Indebtedness shall not have been paid in full, such amounts shall be held by such Guarantors in trust for Creditor, segregated from other funds of such Guarantors, and shall, forthwith upon receipt by such Guarantors, be turned over to Creditor in the exact form received by such Guarantors (duly endorsed by such Guarantors to Creditor, if required), to be applied against the obligations of Debtor to Creditor, whether matured or unmatured, in such order as Creditor may determine.

11. THIS GUARANTY IS FREELY AND VOLUNTARILY GIVEN TO CREDITOR BY GUARANTORS, WITHOUT ANY DURESS OR COERCION, AND AFTER GUARANTORS HAVE EITHER CONSULTED WITH COUNSEL OR BEEN GIVEN AN OPPORTUNITY TO DO SO, AND GUARANTORS HAVE CAREFULLY AND COMPLETELY READ ALL OF THE TERMS AND PROVISIONS OF THIS GUARANTY.

12. This Guaranty, though executed and delivered in the State of _____, shall be governed by and construed with the internal laws of the State of Michigan.

13. This Guaranty is secured by _____
_____
_____.

(If this space is not filled, the Guaranty is unsecured. Otherwise described the nature of the security.)

WITNESS:	BY:
_____	_____ David C. Hicks
_____	_____ John F. Dille IV
_____	_____ Sarah F. Dunkel
_____	_____ Alec C. Dille

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ESCROW AGREEMENT

This Escrow Agreement ("Agreement") is entered into on November 30, 1993 among David L. Hicks as agent for an Indiana limited liability company to be formed under the name Hicks Broadcasting of Indiana, L.L.C. ("Purchaser"), Booth American Company ("Seller") and Honigman Miller Schwartz and Cohn (the "Escrow Agent").

R E C I T A L S

A. Purchaser and Seller have entered into a purchase agreement and certain related documentation (the "Purchase Agreement") for the purchase by Purchaser of certain assets of radio station WRBR (FM) in South Bend, Indiana (the "Radio Station").

B. Purchaser has today deposited $24,500 in cash and a $25,500 irrevocable standby letter of credit, in form attached to this Agreement (the "Letter of Credit") as a good faith deposit of its performance under the Purchase Agreement.

Therefore, the parties agree as follows:

1. Appointment of Escrow Agent and Deposit of Escrow Funds.

(a) Purchaser and Seller appoint and designate the Escrow Agent to serve as such under this Agreement, and the Escrow Agent accepts such appointment. The Escrow Agent will serve under this Agreement without compensation.

(b) Purchaser has today deposited $24,500 and the Letter of Credit with the Escrow Agent. (The deposit described in the preceding sentence, the earnings thereon and the Letter of Credit are referred to in this Agreement as the "Escrow Funds".) The Escrow Agent will receive, hold and deliver the cash portion of Escrow Funds in an escrow account pursuant to this Agreement and will hold the Letter of Credit for the parties.

(c) The cash portion of the Escrow Funds will be deposited in an interest bearing account at Comerica Bank, Detroit, Michigan, which will be maintained until disbursement of the Escrow Funds pursuant to paragraph 2 below.

2. Disbursement of the Escrow Funds. The Escrow Agent will hold the Escrow Funds until the earliest to occur of (a) through (f) of the following:

(a) If Purchaser and Seller give the Escrow Agent joint instructions as to the disposition of the Escrow Funds, the Escrow Agent will disburse the Escrow Funds in accordance with such instructions.

(b) Subject to paragraphs 2(e) and (h) below, if either party notifies the Escrow Agreement that the Purchase Agreement has been terminated pursuant to Section 11(a) of the Purchase Agreement, the Escrow Agent will disburse the Escrow Funds to Purchaser and the Letter of Credit will be returned to Purchaser.

(c) Subject to paragraphs 2(e) and (h) below, the Escrow Agent will disburse the Escrow Funds to Purchaser and the Letter of Credit will be returned to Purchaser if (1) Purchaser has notified the Escrow Agent in writing that it is terminating the Purchase Agreement pursuant to Section 11(b), (c) or (d) of the Purchase Agreement or (2) Seller has terminated the Purchase Agreement pursuant to Section 11(d) of the Purchase Agreement.

(d) Subject to paragraphs 2(e) and (h) below, if Seller has notified the Escrow Agent in writing that it is terminating the Purchase Agreement pursuant to Section 11 (b) or (c) of the Purchase Agreement, the Escrow Agent will disburse the Escrow Funds to Seller, including full payment to Seller under the Letter of Credit in accordance with its terms.

(e) Subject to paragraph 2(h) below, if either Purchaser or Seller notifies the Escrow Agent that the transaction has not closed, or will not be capable of closing, in the manner required by the Purchase Agreement because of the failure of the FCC to consent to the transfer of the Radio Station's license and approvals to Purchaser on or before August 1, 1994 (or for such consent to be granted but to not become a final order on or before such date), due to an adjudication by the FCC that Purchaser is not qualified to be a transferee of such license and approvals under applicable law and regulation (except as a result of the necessity for a waiver of the FCC's multiple ownership rules or a change in FCC laws or regulations after the six month anniversary of the date of this Escrow Agreement), the Escrow Agent will disburse the Escrow Funds to Seller and Seller will be entitled to full payment under the Letter of Credit in accordance with its terms.

(f) Subject to paragraph 2(h) below, if Seller and Purchaser notify the Escrow Agent that the Closing has occurred under the Purchase Agreement, the cash portion of the Escrow Funds and all earnings thereon will be disbursed to Purchaser. If Seller thereafter notifies the Escrow Agent that Purchaser has not timely made the complete payment called for under Section 2.1(a) of the Purchase Agreement, Seller will be entitled to full payment under the Letter of Credit in accordance with its terms; and, subject to paragraph 2(h) below, if Seller notifies the Escrow Agent that Purchaser has paid Seller a total of $105,000 under Section 2.1(a) of the Purchase Agreement, the Letter of Credit will be returned to Purchaser.

(g) The notifying party and the Escrow Agent will each give a copy of such notice (the "Notice") from Purchaser or Seller, as the case may be (the "Notifying Party"), to the other party (the "Notified Party").

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(h) If the Escrow Agent does not receive a written objection to the Notice from the Notified Party before the 10th day following its receipt of the Notice, the Escrow Agent will disburse the Escrow Funds as called for by the Notifying Party. If the Escrow Agent timely receives a copy of a written objection from the Notified Party to the Notice, the provisions of Section 4 below will apply.

3. Escrow Agent's Duties. The Escrow Agent will be under no duty or obligation to give any notice, or to do or to omit the doing of any action with respect to the Escrow Funds, except to give notice, make disbursements and deposit the Escrow Funds in accordance with the terms of this Agreement. The Escrow Agent will not be liable for any error in judgment or any act or steps taken or permitted to be taken in good faith, or for any mistake of law or fact, or for anything it may do or refrain from doing in connection with this Agreement, except for its own willful misconduct or gross negligence (including a disbursement made in violation of this Agreement). The Escrow Agent will not be required in any way to determine the validity or sufficiency, whether in form or substance, of any instrument, document, certificate, statement or notice referred to in this Agreement or contemplated by this Agreement, or the identity or authority of the persons executing it, and it will be sufficient if any writing purporting to be such instrument, document, certificate, statement or notice is delivered to the Escrow Agent and purports to be correct in form and signed or otherwise executed by the party or parties required to sign or execute it under this Agreement.

4. Right of Interpleader. If any controversy arises between or among Purchaser and Seller, or any other person, firm or entity, with respect to this Agreement or the Escrow Funds, or the Escrow Agent is in doubt as to what action to take, the Escrow Agent will (a) withhold delivery of the Escrow Funds until the controversy is resolved by a court of competent jurisdiction, the conflicting demands are withdrawn or the doubt is resolved, or (b) institute a bill of interpleader in a court in Michigan to determine the rights of the parties (in which case the Escrow Agent will withhold delivery of the Escrow Funds until paid into the court in accordance with Michigan state law). If a bill of interpleader is instituted, or if the Escrow Agent is threatened with litigation or becomes involved in litigation in any manner whatsoever on account of this Agreement or the Escrow Funds, as between themselves and the Escrow Agent, Purchaser and Seller, jointly and severally, will pay the Escrow Agent its reasonable attorneys' fees and any other disbursements, expenses, losses, costs and damages of the Escrow Agent in connection with or resulting from such threatened or actual litigation. All costs, attorneys' fees, and expenses of such controversy will be charged to the non-prevailing party in such controversy.

5. Indemnity. Purchaser and Seller, jointly and severally, will indemnify the Escrow Agent against and hold the Escrow Agent harmless from any losses, costs, damages, expenses, claims, and attorneys' fees suffered

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or incurred by the Escrow Agent as a result of, in connection with or arising from or out of the acts or omissions of the Escrow Agent in performance of or pursuant to this Agreement, except such acts or omissions as may result from the Escrow Agent's willful misconduct or gross negligence.

6. Resignation. The Escrow Agent may resign upon 30 days' prior written notice to Purchaser and Seller, and, upon joint instructions from Purchaser and Seller, will deliver the Escrow Funds to any designated substitute Escrow Agent selected by Purchaser and Seller. If Purchaser and Seller fail to designate a substitute Escrow Agent within 10 days, the Escrow Agent may, at its sole discretion, institute a bill of interpleader as contemplated by Section 4 above.

7. Termination. Upon delivery of all of the Escrow Funds as provided in Section 2 above or upon the institution of a bill of interpleader as provided in Section 4 above, this Agreement will terminate except for the provisions of Section 5 above.

8. Notices. Any notice or communication under this Agreement must be in writing and given by (a) deposit in the United States mail, addressed to the party to be notified, postage prepaid and registered or certified with return receipt requested, (b) delivery in person or by Federal Express or similar courier service providing evidence of delivery, or (c) confirmed transmission by facsimile transmission, telegram or telex. Each notice or communication that is mailed, delivered, or transmitted in the manner described above will be deemed sufficiently given, served, sent and received, in the case on which it is mailed, five days after the posting thereof, and, in the case of notices delivered by hand, courier service, facsimile, telegram or telex, at such time as it is delivered to the addressee (with the delivery receipt or the affidavit of messenger) or at such time as delivery is refused by the addressee upon presentation. For the purpose of notice, the addresses of the parties will be:

If to Purchaser:

P.O. Box 487
Elkhart, Indiana 46515
Fax: (219) 294-4014
Attn: David L. Hicks

With a copy to:

Eric V. Brown, Jr.
Miller, Canfield, Paddock & Stone
444 West Michigan Ave.
Kalamazoo, Michigan 49007
Fax: (616) 383-5858

1B

If to Seller:	333 West Fort Street Detroit, Michigan 48226 Fax: (313) 965-1160 Attn: John L. Booth, II
If to the Escrow Agent:	Honigman Miller Schwartz and Cohn 2290 First National Building Detroit, Michigan 48226 Fax: (313) 962-0176 Attn: David Foltyn

Any party may change its address for notice by written notice given to the other parties.

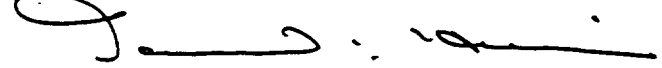
9. Choice of Laws; Cumulative Rights. This Agreement will be construed under the laws of the State of Michigan. All of the Escrow Agent's rights under this Agreement are cumulative of any other rights it may have by law or otherwise.

10. Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered will be deemed an original, and such counterparts together will constitute an original.

11. Binding Effect. This Agreement and the rights, interests and obligations under this Agreement will be binding upon and will inure to the benefit of the parties and their respective heirs, personal representatives, successors and assigns.

12. Escrow Agent's Representation of Seller. Purchaser is aware that the Escrow Agent is representing Seller in connection with the transactions contemplated by the Purchase Agreement, this Agreement or otherwise. The Escrow Agent is, and will remain, free to represent Seller in any action with respect to the Escrow Funds or otherwise arising out of or relating to the transactions provided for in the Purchase Agreement, this Agreement or otherwise.

In Witness Whereof, the parties have executed this Agreement on the date set forth in the introductory paragraph of this Agreement.



David L. Hicks, as agent for an Indiana limited liability company to be formed under the name Hicks Broadcasting of Indiana, L.L.C., and not in his individual capacity

Booth American Company

By: _____
John L. Booth, II, President

Honigman Miller Schwartz and Cohn

By: _____
Partner

B9883a

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In Witness Whereof, the parties have executed this Agreement on the date set forth in the introductory paragraph of this Agreement.

_____

David L. Hicks, as agent for an Indiana limited liability company to be formed under the name Hicks Broadcasting of Indiana, L.L.C., and not in his individual capacity

Booth American Company

By: John L. Booth II
John L. Booth, II, President

Honigman Miller Schwartz and Cohn

By: Kimberly K. Hudolin
Partner

B9883a

Michigan National Bank

The original of this irrevocable standby letter of credit has been placed in the vault of Honigman Miller Schwartz and Cohn, 2290 First National Building, Detroit, Michigan, on December 2, 1993.

ISSUING BANK: Michigan National Bank 300 River Place 30-01 Suite 6000 Detroit. MI 48207	IRREVOCABLE STANDBY LETTER OF CREDIT	NUMBER LC-016978-DY
PLACE AND DATE OF ISSUE: Detroit, MI 48207 12/01/1993	PLACE AND DATE OF EXPIRY: 11/30/1995 at our counters	
APPLICANT: DAVID L. HICKS 7463 COTTAGE OAK DR. PORTAGE. MI 49002	BENEFICIARY: HONIGMAN MILLER SCHWARTZ AND COHN, ESCROW AGENT FOR BOOTH AMERICAN CO. ("BOOTH"), 2290 FIRST NAT'L BLDG. DETROIT, MI 48226	
	AMOUNT:USD25,500.00 UP TO AN AGGREGATE THEREOF	
	CREDIT AVAILABLE WITH: MICHIGAN NATIONAL BANK DETROIT, MI ,48207 BY: PAYMENT Against presentation of documents detailed herein and drafts at SIGHT Drawn on: Michigan National Bank	

We hereby issue our irrevocable standby letter of credit in favor of beneficiary.

Documents Required:
CERTIFICATE FROM THE BENEFICIARY EXECUTED BY ONE OF ITS PARTNERS, CERTIFYING AS TO THE FOLLOWING:
" A. BENEFICIARY HAS BEEN NOTIFIED BY BOOTH PURSUANT TO PARAGRAPH 2(D), 2(E) OR 2(F) OF THE ESCROW AGREEMENT AND BOOTH IS ENTITLED TO RECEIPT OF THE ESCROW FUNDS; AND

B. APPLICANT HAS BEEN NOTIFIED BY BENEFICIARY PURSUANT TO PARAGRAPH 2(G) OF THE ESCROW AGREEMENT; AND

C. BENEFICIARY HAS NOT RECEIVED A WRITTEN OBJECTION TO THE NOTICE FROM BENEFICIARY TO APPLICANT BEFORE THE 10TH DAY FOLLOWING APPLICANT'S RECEIPT OF THE NOTICE: AND

D. BENEFICIARY IS ENTITLED TO THE FUNDS BEING DRAWN UNDER THIS LETTER OF CREDIT."

Continued on page 2.

Michigan National nk

Page: 1
Letter of Credit No. LC-016978-DY
12/01/1993

This credit is issued subject to the Uniform Customs and Practice for Documentary Credits (1983 revision), International Chamber of Commerce, Publication No. 400.

All drawings made under this credit are to be endorsed hereon and shall indicate date and amount.

RELATIVE TO: ASSET PURCHASE AGREEMENT DATED NOVEMBER 30, 1993, BETWEEN APPLICANT AND BOOTH (THE "PURCHASE AGREEMENT"), AND ESCROW AGREEMENT DATED NOVEMBER 30, 1993, BETWEEN APPLICANT, BOOTH AND BENEFICIARY (THE "ESCROW AGREEMENT").

WE HEREBY ENGAGE WITH YOU THAT EACH DRAFT DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT WILL BE DULY HONORED IF PRESENTED ON OR BEFORE THE EXPIRATION DATE.

THIS ORIGINAL LETTER OF CREDIT MUST BE SUBMITTED TO US TOGETHER WITH ANY DRAWINGS HEREUNDER FOR OUR ENDORSEMENT OF ANY PAYMENTS EFFECTED BY US AND/OR FOR CANCELLATION.

AUTHORIZED SIGNATURE

18

JOHN A. DUNKEL 1-93
SARAH D. DUNKEL
PH. 219-264-1683
1736 LAWNDALE RD.
ELKHART, IN 46514

2286

71-115/712

Nov. 18 1993

PAY TO THE ORDER OF HONIGMAN MILLER SCHWARTZ & COHN $ 8,166.67*

Eight Thousand One Hundred Sixty-six and ---------67/100 DOLLARS

NBD Bank
Elkhart Office - 707
Elkhart, Indiana 46516

E

MEMO Escrow Deposit

Sarah D. Dunkel

⑆071201155⑆ 379 228 5⑈ 2286

ALEC C. DILLE
PH. 219-264-9972
23840 GREENLEAF BLVD.
ELKHART, IN 46514

186

71-114/712

Nov. 26, 93

Pay to the order of HONIGMAN MILLER SCHWARTZ & COHN $ 8,166.67*

Eight Thousand One Hundred Sixty-six and ---------67/100

Ameritrust National Bank
Michiana
Elkhart, IN

Ameritrust

Memo Escrow Deposit

⑆071201142⑆ 92110⑈4658⑈ 0186

DR. J. FLINT DILLE 7-93
1902 E JACKSON PH 219-294-1127
ELKHART, IN 46516

539

71-9068/2712
BRANCH 1

Nov. 26, 19 93

PAY TO THE ORDER OF HONIGMAN MILLER SCHWARTZ & COHN $ 8,166.66*

Eight Thousand One Hundred Sixty-six and ---------66/100 DOLLARS

MILES Federal Credit Union Elkhart, In 46516

FOR Escrow Deposit

⑆271290681⑆ 80004962⑈ 0539

Exhibit 2

Booth American Company ("BAC") is the licensee of the following radio stations:

WRBR(FM), South Bend, Indiana

WJLB(FM), Detroit, Michigan

WSGW(AM), Saginaw, Michigan
WIOG(FM), Bay City, Michigan

WTOD(AM), Toledo, Ohio
WKKO(FM), Toledo, Ohio

WLTF(FM), Cleveland, Ohio
WWWE(AM), Cleveland, Ohio

WSAI(AM), Cincinnati, Ohio
WWNK-FM, Cincinnati, Ohio

An application is currently pending at the Commission for assignment of the license for WSAI(AM), Cincinnati, Ohio, from BAC to Middle Market Broadcasting Company (File No. BAL-931028EB). BAC is also party to a Program Service Agreement with WRED, Inc. whereby BAC provides programming for broadcast on WYHK(FM), Gibsonburg, Ohio.

In addition, BAC is the sole shareholder of Genesis Broadcasting, Inc. ("Genesis"), licensee of the following radio stations:

KRZN(AM), Thornton, Colorado
KMJI(FM), Denver, Colorado
KMJI-FM1, Boulder, Colorado (Booster)

KSMJ(AM), Sacramento, California
KSFM(FM), Woodland, California

Genesis currently has applications pending at the Commission for assignment of the license for KRZN(AM),

Thornton, Colorado, to Jacor Broadcasting of Colorado, Inc. (File No. BAL-931021EA), and for extension of KRZN's construction permit (File No. BMP-931006DA).

John L. Booth, II (an officer, director, and shareholder of BAC, and an officer and director of Genesis) and Ralph H. Booth, II (an officer, director, and shareholder of BAC, and a director of Genesis) are also officers, directors, and shareholders of WZPL, Inc., licensee of Station WZPL(FM), Greenfield, Indiana.

EXHIBIT 1
HICKS BROADCASTING OF INDIANA, LLC
STATION WRBR(FM)
SOUTH BEND, INDIANA

David L. Hicks is the President and CEO of Hicks Broadcasting of Indiana, LLC. He is also an approximately 35% shareholder and Chairman of **Crystal Radio Group, Inc.**, which is the licensee of stations WKMI(AM), Kalamazoo, Michigan; WKFR(FM), Battle Creek, Michigan; and WRKR(FM), Portage, Michigan.

EXHIBIT 2
HICKS BROADCASTING OF INDIANA, LLC
STATION WRBR(FM)
SOUTH BEND, INDIANA

Sarah D. Dunkel, Alec C. Dille and John F. Dille, IV are brothers and sister. They do not have attributable interests in Hicks Broadcasting of Indiana, LLC, which has a sole individual majority shareholder, David L. Hicks. They are not officers or directors of the company.

The father of Sarah Dunkel, Alec Dille and John F. Dille, IV is **John F. Dille, III**, who is the 94% voting shareholder of **Pathfinder Communications Corporation ("Pathfinder")**. Nine of the voting shares of Pathfinder (representing 18.75% of the voting stock) voted by John F. Dille, III are held for the benefit of his children under the Uniform Gifts for Minors Act of Indiana. Sarah Dunkel, Alec Dille and John F. dille, IV are not officers, directors or employees of Pathfinder. Pathfinder is the licensee of radio stations:

WTRC(AM)/WLTA(FM)	Elkhart, Indiana
WQHK(AM)/WMEE(FM)	Fort Wayne, Indiana
WCKY(AM)/WIMJ(FM)	Cincinnati, Ohio
WCUZ(AM)/WCUZ-FM	Grand Rapids, Michigan
WQWQ(AM)	Muskegon Heights, Michigan

Pathfinder is a party to a Joint Sales Agreement dated December 18, 1992, ("JOA") with Booth American Company, the proposed assignor. The JOA involves administrative operations and joint advertising sales between WRBR and WLTA and will be assigned to Hicks Broadcasting at the closing.

John F. Dille, III, also is a 20.8% voting shareholder of **Truth Publishing Company, Inc. ("Truth")**, which is the licensee of radio stations KQLL(AM), Tulsa and KQLL-FM, Owasso, Oklahoma and is the publisher of The Elkhart Truth, a daily newspaper published in Elkhart, Indiana. The 1.0 mv/m contour of WRBR encompasses all of Elkhart. Sarah Dunkel, Alec Dille and John F. Dille, IV are each .667% shareholders of Truth; the husband of Sarah Dunkel, John Dunkel, is a .667% shareholder of Truth. Sarah Dunkel, John Dunkel, Alec Dille and John F. Dille, IV are not officers, directors or employees of Truth and have no attributable interests in Truth. The grandfather of Sarah Dunkel, Alec Dille and John F. Dille, IV is John F. Dille, Jr., who is the 52.8% voting shareholder of Truth.

EXHIBIT 3
HICKS BROADCASTING OF INDIANA, LLC
STATION WRBR(FM)
SOUTH BEND, INDIANA

Hicks Broadcasting of Indiana, LLC will operate WRBR(FM) in compliance with the rules and regulations of the Federal Communications Commission and the Communications Act. The station will broadcast news, informational and other programming that is responsive to the needs and interests of South Bend and the station's service area.

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ATTACHMENT C

HICKS BROADCASTING of INDIANA, L.L.C.
7463 Cottage Oak Drive
Portage, Michigan 49002
(616) 392-7057

Federal Communications Commission
1919 M Street, NW.
Washington, D.C. 20554

Re: Station WRBR(FM)
South Bend, Indiana
BALH-931222GE

Gentlemen:

Please amend the above-referenced application to include the attached statement concerning the non-involvement of John F. Dille, Jr. and John F. Dille, III in the operations of Station WRBR following the closing.

Respectfully submitted,
HICKS BROADCASTING of INDIANA, L.L.C.

By: _____
David L. Hicks, President

Date: 2/23/94

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February 22, 1994

Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

Subject: Station WRBR(FM), South Bend, Indiana - BALH-931222GE

Gentlemen:

I am the father of Sarah D. Dunkel, Alec C. Dille and John F. Dille IV. I am aware that they are each proposing an ownership interest of 16.33% in Hicks Broadcasting of Indiana, L.L.C., which is proposing to acquire the above-captioned station. This is to advise the Commission that neither I, nor my father, John F. Dille, Jr., will finance or guarantee the purchase of the station by Hicks Broadcasting. Moreover, upon acquisition of the station by Hicks Broadcasting, neither I, nor my father, will be involved in the day-to-day operation of the station.

Respectfully submitted,

John F. Dille III

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OPERATING AGREEMENT

OF

HICKS BROADCASTING OF INDIANA, L.L.C.

AN INDIANA LIMITED LIABILITY COMPANY

THE MEMBERSHIP INTERESTS HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, OR THE SECURITIES ACT OF ANY STATE. THE MEMBERSHIP INTERESTS MAY NOT BE RESOLD, TRANSFERRED, OR ASSIGNED BY A MEMBER UNLESS A MEMBER HAS COMPLIED WITH THE TERMS OF THIS AGREEMENT, INCLUDING THE REQUIREMENT THAT A MEMBER (i) OBTAIN THE WRITTEN CONSENT OF ALL MEMBERS AND, IF REQUIRED BY THE MEMBERS, (ii) DELIVER TO THE COMPANY AN OPINION OF COUNSEL ACCEPTABLE TO THE MEMBERS THAT REGISTRATION IS NOT REQUIRED UNDER APPLICABLE FEDERAL AND STATE SECURITIES LAWS, THAT ALL OF THE PROVISIONS OF THIS AGREEMENT HAVE BEEN COMPLIED WITH, AND THAT THE SALE OF MEMBERSHIP INTERESTS, TOGETHER WITH ALL OTHER SALES OF MEMBERSHIP INTERESTS WITHIN THE PRECEDING TWELVE (12) MONTHS WILL NOT RESULT IN THE TERMINATION OF THE COMPANY PURSUANT TO SECTION 708 OF THE INTERNAL REVENUE CODE.

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OPERATING AGREEMENT
OF
HICKS BROADCASTING OF INDIANA, L.L.C.

THIS OPERATING AGREEMENT (the "Agreement") is made effective the _____ day of _____, 1994 by and among DAVID L. HICKS, SARAH F. DUNKEL, ALEC C. DILLE AND JOHN F. DILLE IV, each of whom shall hereafter be admitted as a Member in a limited liability company to be formed in accordance with the provisions of the Act. The Members hereby agree as follows:

ARTICLE 1.
FORMATION; TERM

1.1. Formation. After execution of this Agreement, the Members shall cause to be prepared and filed with the Indiana Secretary of State Articles of Organization in such form as the Members shall determine.

1.2. Term of Company. The Company shall be formed at the time of the filing of the initial Articles of Organization of the Company in the office of the Indiana Secretary of State (or at any later time specified in the initial Articles of Organization) and shall continue until December 31, 2035 unless sooner terminated as hereinafter provided.

ARTICLE 2.
NAME OF COMPANY; OFFICES; PURPOSE

2.1. Name. The name of the company shall be HICKS BROADCASTING OF INDIANA, L.L.C.

2.2. Offices; Registered Agent.

(a) Principal Office. The principal office of the Company shall be located at _____, Elkhart, Indiana 46516, or at such other place within or without the State of Indiana as may be determined by the Members. The Company shall maintain at its principal office: (i) a current list of the full name and last known mailing address of each Member and all former Members in alphabetical order; (ii) a copy of the Articles of Organization and all certificates of amendment thereto; (iii) copies of the Company's federal, state and local tax returns and reports, if any, for the three (3) most recent years; (iv) copies of this Agreement, any amendments to this Agreement, and any operating agreements no longer in effect; (v) copies of any financial statements of the Company for the three (3) most recent years; (vi) a current list showing the amount of cash and a description and a statement of the value of other property or services which each Member agreed to contribute to the Company and actually contributed to the Company; and (vii) the books and records of the Company.

(b) Other Offices. The Company may also have such other offices, within or without the State of Indiana, as may from time to time be determined by the Members.

(c) Registered Agent and Office. The initial registered agent of the Company shall be David L. Hicks, who is a resident of the State of Indiana. The business address of the initial registered agent, which shall be the Company's registered office, is _____, Elkhart, Indiana 46516. The registered agent may be changed from time to time as may be determined by the Members.

2.3. Purpose. The purpose and business of the Company shall be to acquire and conduct the business of a radio station and all incidental activities, including but not limited to acquiring, mortgaging and other activities relating to the Property. The Company may also undertake any other lawful act or engage in any other business or venture permitted under the Act as may from time to time be determined by unanimous consent of the Members. All property originally brought into the Company, subsequently acquired by purchase or otherwise by the Company, or with Company funds shall be Company property, and no Member, individually or otherwise, shall have any ownership or any other interest in such property.

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ARTICLE 3.
CERTAIN DEFINED TERMS

Capitalized terms used in the body of this Agreement and in Exhibit B attached hereto but not defined herein or therein shall have the meanings ascribed to them in Exhibit A attached hereto and incorporated herein.

ARTICLE 4.
CAPITAL OF THE COMPANY; LOANS

4.1. **Initial Capital Contributions.** Upon formation of the Company, each Member shall contribute to the capital of the Company the amount of cash or property set forth opposite his or her name under the heading "Capital Contribution" on Schedule I attached hereto in consideration of and as payment for his or her interest in the Company. The Book Value and adjusted tax basis of contributions of property are also set forth on Schedule I.

4.2. **Loans.**

(a) Third-Party Loans. If, at any time or from time to time, additional capital is necessary to pay the debts and obligations or maintain the financial integrity of the Company, the Members shall, in the following order and in the name and on behalf of the Company, endeavor to borrow the necessary funds from commercial banks, lending institutions and/or other persons:

(i) first, on an unsecured basis; and

(ii) second, on a secured basis with the borrowings secured by the Property and other assets of the Company.

(b) Loans From Members. In the event the Members are unable to arrange third-party financing as herein contemplated, then any one or more of the Members may, but shall not be obligated to, advance the necessary funds upon the unanimous consent of the Members. All amounts so advanced shall be treated as loans to the Company for all purposes and shall bear interest at the Prime Rate, as such rate may be adjusted from time to time, plus one percent (1%) from the date such funds are advanced until the date the loan is repaid in full. Loans to the Company made by Members under this Article are in addition to and not in lieu of any Additional Capital Contributions that may be required under Article 7 hereof.

4.3. **Capital Accounts.** The Company shall maintain a Capital Account for each Member as set forth in Section 10 of Exhibit A hereof.

4.4. **Liability of Members.** No Member shall be required to make any contribution to the capital of the Company except as set forth in this Article 4 nor shall any Member, in his capacity as such, be bound by, or personally liable for, any expense, liability, or obligation of the Company except to the extent of his interest in the Company and the obligation to return distributions made to him under certain circumstances as required by the Act.

4.5. **Return of Contribution; Interest.** No Member shall have any right to the return or withdrawal of any Capital Contribution until termination of the Company, unless such return or withdrawal is consented to by all other Members or as otherwise provided for herein. No Member shall have the right to demand and receive a distribution from the Company in a form other than cash unless such distribution is consented to by all other Members. No interest shall be paid on any Capital Contributions.

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ARTICLE 5.
ALLOCATIONS AND DISTRIBUTIONS

5.1. **Restrictions on Distributions.** No distributions shall be made to the Members if, after giving effect to such distribution, the Company would not be able to pay its debts as they become due in the usual course of business or if the Company's total assets would be less than the sum of its total liabilities except liabilities to Members on account of their Capital Contributions.

5.2. **Net Income and Net Losses.** After giving effect to the special allocations set forth in Exhibit B attached hereto and incorporated herein, if applicable, and subject to the other allocation rules set forth in Exhibit B, Net Income and Net Losses (except Net Gains and Net Losses from Capital Transactions) shall be allocated to each Member in accordance with the Members' respective Members' Percentages.

5.3. **Net Gains and Net Losses from Capital Transactions.** After giving effect to the special allocations set forth in Exhibit B, if applicable, and subject to the other allocation rules set forth in Exhibit B, Net Gains and Net Losses from Capital Transactions shall be allocated as set forth below.

(a) Net Gains. Net Gains from Capital Transactions shall be allocated as follows:

(i) First, proportionately among the Members who have negative Capital Accounts until all negative Capital Accounts shall have been increased to zero;

(ii) Second, to the Members, on a Pro Rata Basis, an amount necessary to cause the Capital Accounts of the Members to be equal to the Members' Aggregate Adjusted Capital Contributions;

(iii) Third, to the Members in accordance with their respective Members' Percentages.

(b) Net Losses. Net Losses from Capital Transactions shall be allocated:

(i) First, to the Members, on a Pro Rata Basis, an amount necessary to cause the Capital Accounts of the Members to be equal to their Aggregate Adjusted Capital Contributions;

(ii) Second, proportionately among the Members who have a positive balance in their Capital Accounts until all Capital Accounts have been reduced to zero; and

(iii) Third, the balance, if any, to the Members in accordance with their respective Members' Percentages.

5.4. **Members Bound.** The Members are aware of the income tax consequences of the allocations made by this Article 5 and Exhibit B and agree to be bound by the provisions hereof in reporting their shares of Company income and loss for income tax purposes.

5.5. **Tax Elections.** The Members shall make such elections and shall take such other action as the Members believe necessary: (a) to extend the statute of limitations for assessment of tax deficiencies against the Members with respect to any adjustment to the Company's federal and state income tax returns; (b) to cause the Company and the Members to be represented before the Internal Revenue Service, any other taxing authorities or any courts in matters affecting the Company and the Members; and (c) to cause to be executed any agreements or other documents that bind the Members with respect to such tax matters or otherwise affect the rights of the Company or the Members. All elections required or permitted by the Company under the Code shall be made by the Members in such manner as will be most advantageous to all Members and the Company. In the event of the distribution of property by the Company within the meaning of Section 734 of the Code, or the transfer of an interest in the Company within the meaning of Section 743 of the Code, the Members may elect to adjust the basis of the Company property pursuant to Sections 734, 743 and 754 of

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the Code. Any Members affected by such election shall supply the information as may be required to make, or give effect to, such elections by the Company.

5.6. **Tax Matters Member.** David L. Hicks is hereby specifically authorized to act as the "Tax Matters Member" under the Code and in any similar matter under state law, with full power and authority to act on behalf of the Company and the Members in such capacity.

ARTICLE 6.
MANAGEMENT AND OPERATION OF THE BUSINESS

6.1. **Management of the Company.**

(a) Management by Members. The powers of the Company shall be exercised by or under the authority of, and the business and affairs of the Company shall be managed under the direction of, the Members. Except as otherwise provided herein, all decisions and determinations regarding the operation of the Company shall be made by a Majority in Interest of the Members. The Members shall be under no duty to devote their full time to the business of the Company, but shall devote only such time as they may deem necessary to conduct the Company's business and to operate and manage the Property in an efficient manner.

(b) Designation of Officers and Other Agents. The Members shall have the right to delegate authority for the day-to-day operations of the Company to a Member or another individual, who may be designated as the President of the Company, or, if a Member, as Managing Member. The Members may also appoint one or more Members or other individuals to act as officers or other specified agents of the Company, with such titles or other designations as the Members may determine. Any such officer or other agent so appointed shall have such authority, and shall carry out such duties and responsibilities, as may directed by the Members and shall serve in such position until resignation or removal, with or without cause, by the Members. Any officer or other designee who is a Member shall automatically be removed from such office or position upon the occurrence of an Event of Dissociation with respect to such Member or upon transfer by such Member of all of his interest in the Company.

6.2. **Indemnification and Exculpation of Members.** No Member, officer or other designated agent of the Company shall be liable or accountable in damages or otherwise to the Company or any Member for any action performed or omitted in good faith on behalf of the Company within the scope of the authority conferred herein and for a purpose reasonably believed by such Member, officer or agent to be in the best interests of the Company, unless such action or omission was a result of fraud or constituted willful misconduct or gross negligence. The Members, officers and other designated agents may consult with such legal or other professional counsel as they may select. Any action taken or omitted by a Member, officer or other designated agent in good faith reliance on, and in accordance with, the opinion or advice of such counsel shall be full protection and justification with respect to the action taken or omitted. The Company shall indemnify and save harmless each Member, officer or designated agent from any loss, damage or expense (including reasonable attorneys' fees) incurred by reason of any act taken or omitted for and on behalf of the Company and in furtherance of its interests unless such act constituted gross negligence, willful misconduct or a breach of this Agreement.

ARTICLE 7.
TRANSFER AND WITHDRAWAL

7.1. **Transfer or Withdrawal.** Except as provided in this Agreement or with the consent of all Members, no Member shall have the right or power to pledge, mortgage, sell, assign, gift or otherwise dispose of (whether voluntarily or by operation of law) all or any portion of his interest in, or resign or withdraw from, the Company. Any action in violation of the terms of this Agreement shall be null and void as against the Company.

7.2. **Event of Dissociation.** Upon the occurrence of an Event of Dissociation, as defined in Exhibit A of this Agreement, with respect to a Member, the Company shall be dissolved unless all of the remaining Members, within ninety (90) days after the occurrence of the Event of Dissociation, agree in writing to continue the business of the Company.

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7.3. Transfer on Death, Incapacity, Termination, or Bankruptcy of a Member.

Transfer to Successor. If the business of the Company is continued pursuant to Article 7.2 after the death, Bankruptcy, termination of existence, or Incapacity of a Member, then, except as otherwise provided in Article 7 hereof, such Member's estate, successor-in-interest or legal representative shall immediately succeed to such Member's interest in the Company, including the Member's share of Net Income, Net Losses, Net Gains and Net Losses from Capital Transactions, Cash from Operations, Cash from Sales, Cash from Financings and Liquidation Proceeds, and shall be deemed the Assignee of the deceased, Bankrupt, terminated, or Incapacitated Member. Subject to the provisions set forth in Article 7.4 below, the legal representative may assign such interest, and the Assignee thereof may become a substitute Member if the requirements of Article 7.6 are satisfied. The estate, successor-in-interest or legal representative, as the case may be, of the deceased, Bankrupt, terminated, or Incapacitated Member shall be liable for, and shall be bound by, all of such Member's obligations under this Agreement, including the Member's financial obligations, if any, under Article 4 hereof and the restrictions on transfer set forth in Article 7.1 hereof. In no event, however, shall the estate, legal representative or successor become a substitute Member unless the requirements of Article 7.6 are satisfied.

7.4. Sale, Assignment, Call Provision or Other Voluntary Transfer of Interest.

(a) Permitted Transfers. A Member, or an Assignee thereof, may sell, assign, gift, or otherwise transfer all or any part of his interest in the Company to any person who is, immediately prior to such transfer, a Member in the Company.

(b) Call Provision. Sarah F. Dunkel, Alec C. Dille, and John F. Dille IV, jointly, may at any time purchase all the interest of David L. Hicks in the Company, by giving written notice to David L. Hicks of intent to purchase his interest as provided in this subsection. If David L. Hicks becomes Incapacitated or dies, then Sarah F. Dille, Alec C. Dille and John F. Dille IV shall purchase all the interest of David L. Hicks in the Company. The purchase price for the interest of David L. Hicks in the Company under this subsection shall be equal to the sum of the Operating Cash Flow of Station WRBR multiplied by five, and that product multiplied by David L. Hicks' Membership Percentage, minus the debt of the Company multiplied by David L. Hicks' Membership Percentage. [Example: Operating Cash Flow of Station WRBR x 5 X 51% (David L. Hicks' current Membership Percentage) minus (Company Debt x 51% (David L. Hicks' current Membership Percentage))] For purposes of this provision, "Operating Cash Flow" means the following amount determined for the twelve month period ended immediately before the relevant date on which a notice of intent to purchase has been given under this subsection: net income, determined in accordance with generally accepted accounting principles, plus depreciation expense, plus interest expense, plus trade/barter expense, minus interest income and loan trade/barter revenue. The closing of the purchase of David L. Hicks' interest in the Company under this subsection shall take place within sixty (60) days after the Federal Communications Commission ("FCC") has approved the transfer. The purchase price shall be payable over a term of three years with interest at the rate of 2% over the prime rate. This debt shall be evidenced by a promissory note and shall be secured by a pledge of the interest in the Company. The purchase price computed in accordance with this provision shall be at a minimum equal to $100,000.

(c) Consent to Transfer; Right of First Refusal. David L. Hicks agrees that, except as provided in Article 7.4(a) or 7.4(b), he will not sell or offer to sell his interest in the Company for the first three years of this agreement. Except as provided in Article 7.4(a) or (b), no Member, or Assignee thereof, shall sell, assign or otherwise transfer any or all of his interest in the Company without: (i) obtaining the written consent of a Majority in Interest of the Members and (ii) giving notice to the Company and to all other Members of his intention or desire to make a sale, assignment or other transfer. Such notice from a member desiring to make a sale, assignment or other transfer shall set forth a sales price and all other terms and conditions of the proposed sale, assignment or transfer, with the name and address of the purchaser (if applicable). For a period of sixty (60) days after such notice is given, the Company, the Company and the other Members, or the other Members alone, in the order listed, shall have the option to elect to buy all, but not less than all, of the interest offered by the offering Member. Such option shall be exercised by giving notice thereof to the offering Member, the Company and the other Members. The purchase shall be closed not more than sixty (60) days after expiration of the period during which the option may be exercised. If the Company fails to exercise its option with respect to the entire interest being offered, and more than one Member desires to purchase such interest, they shall be entitled to acquire such interest in proportion to the Members' Percentages held by the Members desiring to

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purchase such interest, unless they agree otherwise. If neither the Company nor any of the Members accept the offer and close the purchase as provided above, then for ninety (90) days thereafter and subject to receiving the consent of a Majority in Interest of the Members, the offering Member may sell, assign or otherwise transfer his interest in the Company to others. The purchase price in the event of a sale shall be computed in the same manner as provided in Article 7.4(b) except that the $100,000 minimum shall only apply under this subsection in the event of a sale of the interest of David L. Hicks.

(d) Information on Proposed Assignee. Prior to consenting to any sale, assignment, or other transfer, the Members shall be assured that, among other things, the proposed Assignee is financially responsible, understands the nature of the Company, and intends to take and hold the interest transferred for investment for his own account and not for resale to others. In assuring themselves that the proposed Assignee satisfies the foregoing requirements, the Members may, at their option, require the proposed Assignee to submit such financial and other information as the Members, in their sole discretion, deem necessary or desirable. The Members shall not consent to a sale, assignment or other transfer of less than all of the interest of a Member unless, in the opinion of the Members, the Member's interest in the Company is large enough to be practicably divided.

(e) Prior FCC Consent. Notwithstanding any other provision of this Agreement, the parties recognize that the prior approval of the FCC may be required prior to the closing on the transfer of a Member's interest in the Company. The parties agree to cooperate with each other in preparing, filing and prosecuting any application to the FCC that may be required to transfer a Member's interest in accordance with this Agreement. To the extent required, no transfer pursuant to this Agreement shall be effective or consummated until such FCC consent has been obtained. The party acquiring an interest of a Member pursuant to this Agreement may delay closing on the purchase until such time as the FCC consent has become a "final order", that is, until such consent is no longer subject to further review or reconsideration by the FCC or any court having jurisdiction over the matter and the time for seeking such further review or reconsideration has expired. The party acquiring an interest of a Member shall be responsible for the payment of all FCC fees required in order to obtain such FCC consent.

7.5. Basis Adjustment. In the event of a transfer of all or part of the interest of a Member by sale or transfer in accordance with this Agreement, or on the death of a Member, at the request of any Member or the executor, administrator or other legal representative of a deceased Member, the Members may cause the Company to elect, pursuant to Section 754 of the Code, to adjust the basis of Company property as provided by Sections 734 and 743 of the Code.

7.6. Substitute Members.

(a) Admission of Assignee as a Member. The Assignee of a deceased, Bankrupt, terminated, or Incapacitated Member under Article 7.3, or an Assignee of an interest transferred in accordance with the terms of Article 7.4, may become a substitute Member subject to receiving the written consent of all of the other Members, which consent shall be within the sole discretion of the Members and shall be conditioned upon:

(i) The instrument of sale, assignment, or other transfer being in form and substance satisfactory to the Members;

(ii) The Assignee's written acceptance and adoption of all the terms, provisions and obligations under this Agreement, as the same may have been amended;

(iii) The Assignee paying to the Company all reasonable expenses connected with his admission, including, but not limited to, the cost of preparing any amendments to this Agreement to effect such admission; and

(iv) The satisfaction of such other conditions and the execution and acknowledgment of such instruments, documents, certificates, or other agreements as the Members may deem necessary or desirable.

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(b) Refusal to Admit. If after a transfer in accordance Articles 7.3 or 7.4, the Assignee is not admitted as a substitute Member, such Assignee shall have none of the rights of a Member, except the right to receive the Assignee's share of Net Income, Net Losses, Net Gains and Net Losses from Capital Transactions, Cash from Operations, Cash from Sales, Cash from Financings and Liquidation Proceeds. Further, a Member who has transferred his entire interest in the Company in accordance with Article 7.4 shall continue to be a Member in the Company, with all of the rights and obligations of a Member under this Agreement, until removed as a Member by the vote of a Majority in Interest of the Members or until the occurrence of an Event of Dissociation (other than removal) with respect to such Member.

ARTICLE 8.
DISSOLUTION AND TERMINATION

8.1. Dissolution Events. The Company shall be dissolved and its business wound up:

(i) Upon the expiration of the term set forth in Article 1.2 hereof;

(ii) Upon the unanimous determination of the Members that the Company should dissolve;

(iii) Upon the sale, exchange, forfeiture or other disposition of all or substantially all of the assets of the Company;

(iv) Upon the Bankruptcy of the Company;

(v) Except as otherwise provided in this Agreement, upon the occurrence of an Event of Dissociation with respect to a Member; or

(vi) Except as otherwise provided in this Agreement, upon the occurrence of an event, other than an Event of Dissociation, which results in the dissolution of the Company under the laws of the State of Indiana.

8.2 Continuation by Consent. Notwithstanding the provisions of Article ?(iv), (v) or (vi), the Company's business shall be continued pursuant to the terms and conditions of this Agreement if, within ninety (90) days after the occurrence of any event referred to in Article ?(iv), (v) or (vi), all of the Members elect in writing to continue the business of the Company.

ARTICLE 9.
ENTIRE AGREEMENT; AMENDMENTS

9.1. Full Integration. This Agreement, including Exhibit A, Exhibit B and the Schedules hereto, sets forth the entire understanding of the parties, there being no oral or written agreements or understandings between them relating to the Company, and supersedes all previous oral or written agreements with regard to the Company. This Agreement shall not be amended, altered, changed or added to except by the written consent of all Members.

9.2. Amendment. Any Member may propose amendments to this Agreement by mailing to the other Members a notice describing the proposed amendment and a form to be returned by the other Members, indicating whether they consent to or disapprove of the adoption of such amendment. Such notice shall include the text of the proposed amendment, which shall have been approved in advance by legal counsel for the Company. If, within sixty (60) days after any notice proposing an amendment or amendments to this Agreement has been given, all of the Members have properly executed and returned the form indicating their consent to the proposed amendment, such amendment will become effective as of the date specified in such notice.

IN WITNESS WHEREOF, the parties have caused this Operating Agreement to be executed effective as of the day and year first above written.

MEMBER:

David L. Hicks

MEMBER:

John F. Dille IV

MEMBER:

Sarah F. Dunkel

MEMBER:

Alec C. Dille

JST06002

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EXHIBIT A
TO OPERATING AGREEMENT
OF
HICKS BROADCASTING OF INDIANA, L.L.C.

CERTAIN DEFINED TERMS

1. "Act" means the Indiana Business Flexibility Act, IND. CODE § 23-18-1-1, *et seq.*, as the same may be amended from time to time, or any successor legislation.

2. "Adjusted Capital Account Deficit" means, with respect to any Member or Assignee, the deficit balance, if any, in such Member's or Assignee's Capital Account as of the end of the relevant fiscal year, after giving effect to the following adjustments:

(a) Credit to such Capital Account any amounts which such Member or Assignee is obligated to restore pursuant to any provision of this Agreement or is deemed to be obligated to restore pursuant to the penultimate sentence of Treas. Reg. § 1.704-2(g)(1) or would be deemed obligated to restore if Member Nonrecourse Deductions were treated as Nonrecourse Deductions; and

(b) Debit to such Capital Account the items described in Treas. Reg. § 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), and 1.704-1(b) (2)(ii)(d)(6).

This definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Treas. Reg. § 1.704-1(b)(2) (ii)(d) and shall be interpreted consistently therewith.

3. "Adjusted Capital Contributions" means all Capital Contributions made by a Member or his predecessor-in-interest on or by a particular date minus all Cash from Sales, Cash from Financings and the value of any property distributed to such Member or his predecessor-in-interest on or by such date.

4. "Aggregate Adjusted Capital Contributions" means the aggregate or total of the Adjusted Capital contributions of the Members or their respective predecessors-in-interest on or by a particular date.

5. "Agreement" means this Operating Agreement and all Exhibits and Schedules hereto, as the same may be amended from time to time.

6. "Assignee" means the assignee or transferee of an interest in the Company, assigned or transferred by a Member in accordance with the provisions of Article 7 of this Agreement.

7. "Bankruptcy" or "Bankrupt" means, with respect to any person, including the Company or any of the Members, that such person has made an assignment for the benefit of creditors; filed a voluntary petition in bankruptcy; been adjudged a bankrupt or insolvent, or had entered against such person an order of relief in any bankruptcy or insolvency proceeding; filed a petition or an answer seeking for such person any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law, or regulation; filed an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him in any proceeding of such nature; sought, consented to, or acquiesced in the appointment of a trustee, receiver, or liquidator of such person or of all or any substantial part of his properties; one hundred twenty (120) days have elapsed after the commencement of any proceeding against such person seeking reorganization, arrangement, or similar relief under any statute, law, or regulation and such proceeding has not been dismissed; or ninety (90) days have elapsed since the appointment without his consent or acquiescence of a trustee, receiver, or liquidator of such person or of all or any substantial part of his properties and such appointment has not been vacated or stayed or the appointment is not vacated within ninety (90) days after the expiration of such stay.

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8. "Book Value" means, with respect to any item of Company property as of any particular date:

(a) With respect to any item of property contributed by a Member to the capital of the Company, Book Value shall be the agreed-upon gross fair market value of such item of property as of the date such property was contributed to the Company, as adjusted for depreciation, depletion, cost recovery and amortization deductions with respect to such property computed in the manner provided in Section 28 below; and

(b) With respect to any other item of Company property, Book Value shall be its adjusted basis for Federal income taxation purposes.

9. "Capital Account" means the capital account of each Member, determined and maintained in accordance with the rules of Treas. Reg. § 1.704-1(b), as follows:

(a) There shall be credited to each Member's Capital Account: (i) the amount of each Member's cash capital contributions; (ii) the fair market value of any property contributed by the Member to the Company (net of liabilities securing such contributed property that the Company is considered to assume or take subject to under Section 752 of the Code); and (iii) allocations to the Member of Company income and gain (or items thereof), including income and gain exempt from tax and income and gain described in Treas. Reg. § 1.704-1(b)(2)(iv)(g), but excluding income and gain described in Treas. Reg. § 1.704-1(b)(4)(i).

(b) There shall be debited to each Member's Capital Account: (i) the amount of cash distributed to the Member by the Company; (ii) the fair market value of property distributed to the Member by the Company (net of liabilities securing such distributed property that such Member is considered to assume or take subject to under Section 752 of the Code); (iii) allocations to the Member of expenditures of the Company described in Section 705(a)(2)(B) of the Code; and (iv) allocations of Company loss and deduction (or item thereof), including loss and deduction described in Treas. Reg. § 1.704- 1(b)(2)(iv)(g), but excluding items described in clause (iii) of this subparagraph and loss or deduction described in Treas. Reg. § 1.704-1(b)(4)(i) or (iii).

(c) Each Member's Capital Account shall be otherwise adjusted as required by Treas. Reg. § 1.704-1(b)(2)(iv).

(d) Each Member who has more than one interest in the Company shall have a single Capital Account that reflects all such interests as required by Treas. Reg. § 1.704-1(b).

(e) The Capital Accounts of the Members shall be restated in the event that additional contributions are made to the Company, Company property is distributed to a Member, a new Member is admitted to the Company, a Member withdraws from the Company, the Company is dissolved or in any other event as the Members deem appropriate. A Capital Account restatement shall be effected in such manner and at such time as required by Section 704(b) of the Code. The Capital Accounts shall be restated by: (i) determining the fair market value of all Company assets (taking Section 7701(g) of the Code into account) as of the date of such restatement; (ii) allocating any unrealized income, gain, loss or deduction inherent in such assets (that has not been reflected previously in the Capital Accounts) among the Members as if there were a taxable disposition of such assets for their fair market value as of the date of such restatement; (iii) making any adjustment required in accordance with Treas. Reg. § 1.704-1(b)(2)(iv)(g) for allocations to the Members of depreciation, depletion, amortization and gain or loss, as computed for book purposes, with respect to such assets; and (iv) determining the Member's distributive share of depreciation, depletion amortization, and gain or loss, as computed for tax purposes, with respect to such assets so as to take into account the variation between the adjusted tax basis and the Book Value of such property in the same manner as required by Section 704(c) of the Code.

(f) This Section 9 and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with the requirements of Section 1.704-1(b) of the Regulations and shall be interpreted and applied in a manner consistent with such Regulations. If the Members determine that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits to them (including, without limitation, debits or credits relating to liabilities that are secured by contributed or distributed property or that are assumed by the Company or the Members), are computed to comply with such Regulations, the Members may make such modifications; provided that such modifications are not likely to have a material effect on the amounts distributable to any Member pursuant to Article 5. The Members shall also make any appropriate modifications in the event unanticipated events might otherwise cause this Agreement not to comply with Section 1.704-1(b) of the Regulations.

10. "Capital Contributions" means all cash and the value of any property or services contributed to the capital of the Company by a Member or his predecessor-in-interest.

11. "Capital Transaction" means any sale, exchange, condemnation, loss or other disposition of any capital asset of the Company.

12. "Cash from Financings" means the amount or portion of the cash received by or remaining to the Company from the proceeds of any loan made to or obtained by the Company (whether as or from new financings or the refinancing of any indebtedness of the Company) after the payment or the provision for the payment of all costs and expenses incurred by the Company in connection with such loan, and after the payments made or required to be made on any prior indebtedness of the Company or encumbrance against the Property in connection with such mortgaging or partial sale.

13. "Cash From Operations" means the excess of cash revenue from operations of the Company over cash disbursements without deduction for recovery deductions.

14. "Cash From Sales" means the amount or portion of the cash received by or remaining to the Company from the proceeds (including, without limitation, any installment, interest on installment or interest on principal in the event of an installment sale) of any Capital Transaction or from the proceeds of policies of insurance received by the Company for or as a result of damage to or destruction of the Property or other capital asset of the Company (to the extent such proceeds exceed the actual or estimated costs of repairing or replacing the Property or other assets damaged or destroyed) after the payment or provision for the payment of all costs and expenses incurred by the Company in connection with such sale or the receipt of such insurance proceeds, as the case might be, and after the payments made or required to be made on any prior indebtedness of the Company or encumbrances against the Property in connection with such event.

15. "Code" means the Internal Revenue Code of 1986, as amended (or any corresponding provision or provisions of succeeding law).

16. "Company Minimum Gain" has the same meaning as "partnership minimum gain" set forth in Treas. Reg. § 1.704-2(d).

17. "Event of Dissociation" means the occurrence of any of the following events:

(a) The death of any Member who is an individual;

(b) The Bankruptcy of a Member;

(c) The Incapacity of a Member;

(d) The dissolution and commencement of the winding up of a Member which is a partnership or limited liability;

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(e) The dissolution of a Member which is a corporation;

(f) The distribution by any Member which is an estate of such Member's entire interest in the Company;

(g) The termination of the trust for which a Member is acting as a Member by virtue of his position as trustee;

(h) The resignation or withdrawal of a Member from the Company in accordance with the provisions of this Agreement; or

(i) The removal of a Member from the Company in accordance with the provisions of this Agreement.

18. "Incapacity" or "Incapacitated" means the inability of a Member who is an individual to manage the Member's own person or property by reason of mental or physical infirmity or other incapacity. The Incapacity of Member shall be established by (a) the entry of an order or decree by a court of competent jurisdiction or (b) a written statement signed by two (2) licensed physicians (i) certifying that (A) they have examined the Member and (B) they are of the opinion that such Member is Incapacitated and (ii) representing that (A) each such physician has been certified by a recognized medical board, including the identity of such board, and (B) each such physician currently practices medicine in the county or metropolitan area in which the Member is then residing.

19. "Liquidation Proceeds" means all cash of whatever type and however derived that is held by the Company as of the date of the dissolution, without reconstitution, of the Company.

20. "Majority in Interest of the Members" means, at any time, the Members who own more than fifty percent (50%) of the Members' Percentages of all of the Members.

21. "Member Minimum Gain" means an amount, with respect to each Member Nonrecourse Debt, equal to the Company Minimum Gain that would result if such Member Nonrecourse Debt were treated as a nonrecourse liability (as defined in Treas. Reg. § 1.704-2(b)(3)), determined in accordance with Treas. Reg. § 1.704-2(i).

22. "Member Nonrecourse Debt" has the same meaning as "partner nonrecourse debt" set forth in Treas. Reg. § 1.704-2(b)(4).

23. "Member Nonrecourse Deductions" has the same meaning as "partner nonrecourse deductions" set forth in Treas. Reg. § 1.704-2(i)(2). The amount of Member Nonrecourse Deductions with respect to a Member Nonrecourse Debt for a Company fiscal year equals the excess, if any, of the net increase, if any, in the amount of Member Minimum Gain attributable to such Member Nonrecourse Debt during that fiscal year over the aggregate amount of any distributions during that fiscal year to the Members or Assignees that bear the economic risk of loss for such Member Nonrecourse Debt to the extent such distributions are from the proceeds of such Member Nonrecourse Debt and are allocable to an increase in Member Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Treas. Reg. § 1.704-2(i)(2).

24. "Members" means the persons listed on Schedule I of this Agreement as members and any person(s) admitted as a substitute Member pursuant to the provisions of Article 7 of this Agreement or any person(s) admitted as a new Member upon the unanimous consent of the Members.

25. "Members' Percentages" means the percentage interest of each Member in the Company set forth on Schedule I, as such percentages may be amended from time to time.

26. "Net Gains from Capital Transactions" and "Net Losses from Capital Transactions" mean the Net Income and Net Losses consisting of gains (including, without limitation, any interest on installment or interest on principal in the

event of an installment sale) or losses, as the case may be, realized by the Company as a result of or upon any Capital Transaction or the damage or destruction of the Property or other capital asset of the Company.

27. "Net Income" or "Net Loss," means the Company's taxable income or taxable loss for Federal income taxation purposes as determined by the accountants then employed by the Company in accordance with Section 703(a) of the Code, with the items required to be separately stated by Section 703(a)(1) of the Code combined into a single net amount; provided, however, that in the event the taxable income or taxable loss of the Company for such fiscal year is later adjusted in any manner, as a result of an audit by the Internal Revenue Service (the "Service") or otherwise, then the taxable income or taxable loss of the Company shall be adjusted to the same extent. "Net Income" and "Net Loss" shall be further adjusted as follows:

(a) "Net Income" and "Net Loss," as the case may be, shall be adjusted to treat items of tax-exempt income described in Section 705(a)(1)(B) of the Code as items of gross income, and to treat as deductible items all non-deductible, non-capital expenditures described in Section 705(a)(2)(B) of the Code, including any items treated under Treas. Reg. § 1.704-1(b)(2)(iv) as items described in Section 705(a)(2)(B) of the Code.

(b) In lieu of depreciation, depletion, cost recovery and amortization deductions allowable for Federal income taxation purposes to the Company with respect to property contributed to the Company by a Member, there shall be taken into account an amount equal to the product derived by multiplying the Book Value of such property at the beginning of such fiscal year by a fraction, the numerator of which is the amount of depreciation, depletion, cost recovery or amortization deductions allowable with respect to such property for Federal income taxation purposes and the denominator of which is the adjusted basis for Federal income taxation purposes of such property at the beginning of such fiscal year.

(c) In lieu of actual gain or loss recognized by the Company for Federal income taxation purposes as a result of the sale or other disposition of property of the Company, there shall be taken into account the gain or loss that would have been recognized by the Company for Federal income taxation purposes if the Book Value of such property as of the date sold or otherwise disposed of by the Company were its adjusted basis for Federal income taxation purposes.

28. "Nonrecourse Deductions" has the meaning set forth in Treas. Reg. § 1.704-2(c). The amount of Nonrecourse Deductions for a Company fiscal year equals the net increase, if any, in the amount of Company Minimum Gain during that fiscal year, determined according to the provisions of Treas. Reg. § 1.704-2(c).

29. "Prime Rate" means the Prime Rate as published from time to time in *The Wall Street Journal*, and which is described as the base rate on corporate loans at large U.S. money center commercial banks, as such rate may vary from time to time. If such base rate is expressed in a range in said publication, the higher rate of the reported range will apply. If *The Wall Street Journal* ceases to publish a Prime Rate, a similar source shall be used to determine the Prime Rate.

30. "Property" means that certain real estate which is described on Schedule II to this Agreement.

31. "Pro Rata Basis" means an allocation or distribution to the Members in proportion to their respective Adjusted Capital Contributions.

32. "Regulations" means such regulations, including any interim or temporary regulations, as may be promulgated by the Treasury Department under the Code.

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EXHIBIT B
TO OPERATING AGREEMENT
OF
HICKS BROADCASTING OF INDIANA, L.L.C

1. Special Allocations.

Prior to making the allocations provided in Articles 5.2 and 5.3, the following special allocations shall be made in the following order (certain capitalized words and phrases used herein are defined in Exhibit A):

(a) Minimum Gain Chargeback. Notwithstanding any other provision of Articles 5.2 or 5.3, or this Exhibit B, if there is a net decrease in Company Minimum Gain during any Company fiscal year, each Member and Assignee shall be specially allocated items of Company income and gain for such fiscal year (and, if necessary, subsequent years) in an amount equal to the greater of: (i) the portion of such Member's or Assignee's share of the net decrease in Company Minimum Gain, determined in accordance with Treas. Reg. § 1.704-2(g)(1) that is allocable to the disposition of Company property subject to nonrecourse liabilities (as defined in Treas. Reg. § 1.704-2(b)(3)), determined in accordance with Treas. Reg. § 1.704-2(d); or (ii) if such Member or Assignee would otherwise have an Adjusted Capital Account Deficit at the end of such year, an amount sufficient to eliminate such Adjusted Capital Account Deficit. Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member and Assignee pursuant thereto. The items to be so allocated shall be determined in accordance with Treas. Reg. § 1.704-2(f). This Section 1(a) is intended to comply with the minimum gain chargeback requirement in such section of the Regulations and shall be interpreted consistently therewith. To the extent permitted by such section and only for the purposes of this Section 1(a), each Member's and Assignee's Adjusted Capital Account Deficit shall be determined prior to any other allocations pursuant to Article 5 with respect to such fiscal year and without regard to any net decrease in Member Minimum Gain during such fiscal year.

(b) Member Minimum Gain Chargeback. Notwithstanding any other provision of Article 5 or this Exhibit B except Section 1(a) above, if there is a net decrease in Member Minimum Gain attributable to a Member Nonrecourse Debt during any Company fiscal year, each Member or Assignee who has a share of the Member Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Treas. Reg. § 1.704-2(i)(5), shall be specially allocated items of Company income and gain for such year (and, if necessary, subsequent years) in an amount equal to the greater of: (i) the portion of such Member's or Assignee's share of the net decrease in Member Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Treas. Reg. § 1.704-2(i)(5), that is allocable to the disposition of Company property subject to such Member Nonrecourse Debt, determined in accordance with Treas. Reg. § 1.704-2(i)(4); or (ii) if such Member or Assignee would otherwise have an Adjusted Capital Account Deficit at the end of such year, an amount sufficient to eliminate such Adjusted Capital Account Deficit. Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member and Assignee pursuant thereto. The items to be so allocated shall be determined in accordance with Treas. Reg. § 1.704-2(i)(4). This Section 1(b) is intended to comply with the minimum gain chargeback requirement in such section of the Regulations and shall be interpreted consistently therewith. Solely for the purposes of this Section 1(b), each Member's or Assignee's Adjusted Capital Account Deficit shall be determined prior to any other allocations pursuant to Article 5 or this Exhibit B with respect to such fiscal year, other than allocations pursuant to Section 1(a) hereof.

(c) Qualified Income Offset. In the event any Member or Assignee unexpectedly receives any adjustments, allocations, or distributions described in Treas. Reg. § 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), or 1.704-1(b)(2)(ii)(d)(6), items of Company income and gain shall be specially allocated to each such Member or Assignee in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Adjusted Capital Account Deficit of such Member or Assignee as quickly as possible, provided that an allocation pursuant to this Section 1(c) shall be made only if and to the extent that such Member or Assignee would have an Adjusted Capital Account Deficit after all other allocations provided for in Article 5 and this Exhibit B have been tentatively made as if this Section 1(c) were not in the Agreement.

(d) Gross Income Allocation. In the event any Member or Assignee has a deficit Capital Account at the end of any Company fiscal year which is in excess of the sum of (i) the amount such Member or Assignee is obligated to restore pursuant to any provision of this Agreement and (ii) the amount such Member or Assignee is deemed to be obligated to restore pursuant to the penultimate sentences of Treas. Regs. §§ 1.704-2(g)(1) and 1.704-2(i)(5), each such Member or Assignee shall be specially allocated items of Company income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Section 1(d) shall be made only if and to the extent that such Member or Assignee would have a deficit Capital Account in excess of such sum after all other allocations provided for in Article 5 and this Exhibit B have been tentatively made as if Section 1(c) above and this Section 1(d) were not in this Agreement.

(e) Nonrecourse Deductions. Nonrecourse Deductions for any fiscal year or other period shall be specially allocated as provided in Section 1(b) above.

(f) Member Nonrecourse Deductions. Any Member Nonrecourse Deductions for any fiscal year or other period shall be specially allocated to the Member or Assignee who bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Treas. Reg. § 1.704-2(i).

(g) Section 754 Adjustments. To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Treas. Reg. § 1.704-1(b)(2)(iv)(m), to be taken into account in determining capital accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Members and Assignees in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such section of the Regulations.

2. Curative Allocations.

(a) The "Regulatory Allocations" consist of the "Basic Regulatory Allocations," as defined in Section 2(b) hereof, the "Nonrecourse Regulatory Allocations," as defined in Section 2(c) hereof, and the "Member Nonrecourse Regulatory Allocations," as defined in Section 2(d) hereof.

(b) The "Basic Regulatory Allocations" consist of the allocations pursuant to Sections 1(c), 1(d), and 1(g) hereof. Notwithstanding any other provision of this Agreement, other than the Regulatory Allocations, the Basic Regulatory Allocations shall be taken into account in allocating items of income, gain, loss and deduction among the Members and Assignees so that, to the extent possible, the net amount of such allocations of other items and the Basic Regulatory Allocations to each Member and Assignee shall be equal to the net amount that would have been allocated to each such Member and Assignee if the Basic Regulatory Allocations had not occurred. For purposes of applying the foregoing sentence, allocations pursuant to this Section 2(b) shall only be made with respect to allocations pursuant to Section 1(g) hereof to the extent the Members reasonably determine that such allocations will otherwise be inconsistent with the economic agreement among the parties to this Agreement.

(c) The "Nonrecourse Regulatory Allocations" consist of all allocations pursuant to Sections 1(a) and 1(e) of this Exhibit B. Notwithstanding any other provision of this Agreement, other than the Regulatory Allocations, the Nonrecourse Regulatory Allocations shall be taken into account in allocating items of income, gain, loss and deduction among the Members and Assignees so that, to the extent possible, the net amount of such allocations of other items and the Nonrecourse Regulatory Allocations to each Member and Assignee shall be equal to the net amount that would have been allocated to each such Member and Assignee if the Nonrecourse Regulatory Allocations had not occurred. For purposes of applying the foregoing sentence: (i) no allocations pursuant to this Section 2(c) shall be made prior to the Company fiscal year during which there is a net decrease in Company Minimum Gain, and then only to the extent necessary to avoid any potential economic distortions caused by such net decrease in Company Minimum Gain; and (ii) allocations pursuant to this Section 2(c) shall be deferred with respect to allocations pursuant to Section 1(e) hereof to the extent the Members reasonably determine that such allocations are likely to be offset by subsequent allocations pursuant to Section 1(a) hereof.

(d) The "Member Nonrecourse Regulatory Allocations" consist of all allocations pursuant to Sections 1(b) and 1(f) of this Exhibit B. Notwithstanding any other provision of this Agreement, other than the Regulatory Allocations, the Member Nonrecourse Regulatory Allocations shall be taken into account in allocating items of income, gain, loss and deduction among the Members and Assignees so that, to the extent possible, the net amount of such allocations of other items and the Member Nonrecourse Regulatory Allocations to each Member and Assignee shall be equal to the net amount that would have been allocated to each such Member and Assignee if the Member Nonrecourse Regulatory Allocation had not occurred. For purposes of applying the foregoing sentence: (i) no allocations pursuant to this Section 2(d) shall be made with respect to allocations pursuant to Section 1(f) relating to a particular Member Nonrecourse Debt prior to the Company fiscal year during which there is a net decrease in Member Minimum Gain attributable to such Member Nonrecourse Debt, and then only to the extent necessary to avoid any potential economic distortions caused by such net decrease in Member Minimum Gain; and (ii) allocations pursuant to this Section 2(d) shall be deferred with respect to allocations pursuant to Section 1(f) hereof relating to a particular Member Nonrecourse Debt to the extent the Members reasonably determine that such allocations are likely to be offset by subsequent allocations pursuant to Section 1(b) hereof.

(e) The Members shall have reasonable discretion, with respect to each Company fiscal year, to: (i) apply the provisions of Sections 2(b), 2(c) and 2(d) of this Exhibit B in whatever order is likely to minimize the economic distortions that might otherwise result from the Regulatory Allocations; and (ii) divide all allocations pursuant to Section 2(b), 2(c) and 2(d) hereof among the Members in a manner that is likely to minimize such economic distortions.

3. Other Allocation Rules.

(a) Varying Interests. If a Member's interest varies during any fiscal year of the Company (whether by reason of admission of a new member, withdrawal, additional contributions to capital or otherwise), Net Income and Net Loss shall be computed and allocated in accordance with this Agreement as if periods between such variations were each a separate fiscal year of the Company.

(b) Section 704(c) Allocations. Upon the sale or distribution of any property contributed by any Member, the gain or loss represented by the difference between the adjusted basis for Federal income taxation purposes and Book Value of the property to the Company shall be allocated to the Member who contributed such property, and the gain or loss in excess of that so allocated shall be allocated among the Members as provided in Articles 5.2 and 5.3. In addition, any other item of income, gain, loss or deduction with respect to such property shall be allocated in a manner consistent with the requirements of Section 704(c) of the Code and Treas. Reg. § 1.704-1(b)(2)(iv)(g), as amended from time to time.

(c) Allocation of Tax Items. All items of depreciation, gain, loss, deduction or credit that are taken into account in determining Net Income or Net Loss shall be allocated among the Members in the same proportions as is provided in Articles 5.2 and 5.3.

(d) Characterization of Net Gains. After Net Gains from Capital Transactions have been allocated among the Members, the characterization of such Net Gains between capital gains and depreciation recapture shall be determined by allocating depreciation recapture in proportion to the capital cost recovery deductions or other items previously allocated among the Members with respect to the assets giving rise to such depreciation recapture; *provided, however,* that in the event the amount of the depreciation recapture is less than the aggregate amount of capital cost recovery deductions or other items giving rise to depreciation recapture allocated to the Members with respect to such assets, such depreciation recapture shall be allocated among the Members based upon the order in time the Members were allocated such deductions with respect to such assets.

SCHEDULE I

CAPITAL CONTRIBUTIONS AND MEMBER PERCENTAGES

The capital contributions of the Members and the Member's Percentages are as set forth below.

Member	Capital Contributions	Member's Percentages
David L. Hicks	$_____	51%
Sarah Dunkle	$_____	16.33
Alex Dille	$_____	16.33
John F. Dille IV	$_____	16.33

JST06004

SCHEDULE II

Real Estate

Four (4) acres on Day road near the intersection of Fir road, Mishawaka, Indiana. Coordinates = 41 41' 53" 86 09' 20"

0001

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF KALAMAZOO

DAVID L. HICKS,
Plaintiff,

-vs-

File No.: S 94-3603-NZ

CRYSTAL RADIO GROUP, INC.,
a Michigan corporation,
EDWARD J. SACKLEY, III,
individually and as Trustee of
the EDWARD J. SACKLEY, II,
RICHARD C. DOERING,
JOHN M. STRANDIN,
JANICE J. SACKLEY, individually
and as Trustee of the
Janice J. Sackley Trust,
RICHARD R. ZARAGOZA,
ELISE R. ZARAGOZA and
EDWARD J. SACKLEY, Trustee of
the Edward J. Sackley Trust,

Defendants.

Deposition of DAVID L. HICKS, taken under the provisions of the Michigan Court Rules before Jennifer N. Van Alstine, RPR-CM (CSR 0028), Certified Shorthand Reporter and Notary Public, at 425 West Michigan Avenue, Kalamazoo, Michigan, on Friday, December 16th, 1995, commencing at or about 9:00 a.m., pursuant to Notice.

VAN ALSTINE REPORTING
Certified Shorthand Reporters
232 West Michigan Avenue, Suite B
Kalamazoo, Michigan 49007
1-800-826-1233 or 616-344-4716
FAX - 616-344-6450

0002

APPEARANCES:

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Grand Rapids, Michigan 49503-2489

MR. CRAIG M. LUBBEN
Attorney for Defendants
425 West Michigan Avenue
Kalamazoo, Michigan 49007

ALSO PRESENT:

Mr. Ed Sackley

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WITNESS: PAGE:

DAVID L. HICKS

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(1) PROCEEDINGS
(2) MR. LUBBEN: The record should reflect that
(3) this is the deposition of David Hicks. It's being taken
(4) in the case of David Hicks versus Crystal Radio Group and
(5) a number of other defendants. That case is pending in
(6) the Kalamazoo County Circuit Court. The deposition is
(7) being taken pursuant to Notice and for all purposes
(8) permitted under the applicable Michigan statutes and
(9) Court Rules.
(10) DAVID HICKS
(11) being first duly sworn by the reporter, was examined and
(12) testified under oath as follows:
(13) CROSS-EXAMINATION
(14) BY MR. LUBBEN:
(15) Q Mr. Hicks, my name is Craig Lubben. You understand I
(16) represent Crystal Radio Group and the defendants in this
(17) case?
(18) A Yes.
(19) Q Have you ever been deposed before?
(20) A No, I have not.
(21) Q A deposition, as you may know, is a question and answer
(22) process. I get a chance to ask some questions about your
(23) claim in this case. You understand we have a court
(24) reporter here who is going to prepare a transcript of my
(25) questions and your answers? You understand that?

Page 4
(1) A Yes.
(2) Q That transcript can be used later on in court. Do you
(3) know that?
(4) A Yes.
(5) Q Because the transcript can be used later on in court,
(6) it's very important that we be clear with each other. So
(7) I want you to know that if you do not understand a
(8) question of mine, you have the right to ask me to clarify
(9) it or repeat it. Do you understand that you have that
(10) right?
(11) A Yes.
(12) Q If you do not ask me to clarify or explain or repeat a
(13) question, I'm going to be assuming that you understood it
(14) and that you're answering it to the best of your
(15) ability. Is that fair?
(16) A That would be fair.
(17) Q Do you have any physical ailments or anything that would
(18) limit your ability to give clear and appropriate
(19) testimony today?
(20) A No.
(21) Q Incidentally, often in everyday conversation we'll nod
(22) our head and say uh-huh or huh-uh or something like
(23) that. Unfortunately, that doesn't show up in the
(24) record. So if you do that, I might say, "Do you mean
(25) yes," or "Is the answer no," or whatever. That's not to

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(1) be rude but it's just to be clear for the record. You
(2) understand that?
(3) A I understand.
(4) Q Did you have an opportunity to prepare yourself for the
(5) deposition that's going to take place today?
(6) A Somewhat.
(7) Q Did you look at any documents to help prepare for the
(8) deposition?
(9) A Yes.
(10) Q When did you look at documents?
(11) A The past two days.
(12) Q Where were you when you looked at these documents?
(13) A At my office.
(14) Q And, by the way, where is your office?
(15) A In Grand Rapids.
(16) Q Where in Grand Rapids?
(17) A Would you like the address in Grand Rapids?
(18) Q Yes.
(19) A 140 Monroe Court.
(20) Q And what is the name of the business that employs you at
(21) 140 Monroe Court?
(22) A Federated Media.
(23) Q What documents did you look at to prepare yourself for
(24) the deposition today?
(25) A I reviewed various documents about the – some of the

Page 6
(1) proceedings that have happened between Mr. Lubben and Mr.
(2) Jonker.
(3) Q When you say various documents, are you talking about
(4) briefs?
(5) A That pertain to the proceedings, correct.
(6) Q Did you review the Complaint that you filed in this case?
(7) A Yes.
(8) Q Did you review the Answer and the Counterclaim that the
(9) defendants filed?
(10) A Yes.
(11) Q And did you review your Answer to the Counterclaim?
(12) A Yes.
(13) Q Did you look at the various briefs that have been filed
(14) in connection with the motions in this case?
(15) A To the extent that I have them, yes.
(16) Q Did you look at any documents other than pleadings or
(17) papers that have been prepared and filed in the lawsuit?
(18) A I have FCC papers.
(19) Q What type of FCC papers?
(20) A Papers that pertain to one of the subjects regarding this
(21) dispute, and that would be the filing of a radio station
(22) in South Bend.
(23) Q Are you talking, then, about the application for the
(24) transfer of the license of WRBR?
(25) A That's correct.

Page 7
(1) Q To Hicks Broadcasting of Indiana?
(2) A That's correct.
(3) Q Did you look at any other FCC documents other than those
(4) that related to WRBR?
(5) A No.
(6) Q Did you look at any other documents to prepare yourself
(7) for the deposition today?
(8) A I don't recall anything beyond that.
(9) Q Do you have any personal notes or diaries that you looked
(10) at in preparing for the deposition?
(11) A To what I have – to the limited amount that I have, yes.
(12) Q Tell me what you have.
(13) A Not much.
(14) Q Can you describe for me what it looks like?
(15) A More or less what I have put together since January 15th
(16) of '94 – or January – July. Excuse me. July 15th of
(17) '94.
(18) Q Are these handwritten notes that you've prepared for
(19) yourself?
(20) A Just a legal pad of notes, dates mainly.
(21) Q Where is that legal pad maintained?
(22) A That's in my office.
(23) Q How many pages of notes would you estimate
(24) A Oh, it's just one page.
(25) Q And when did you prepare these notes?

Page 8
(1) A Wednesday probably, of this week.
(2) Q Do you have any other notes?
(3) A No.
(4) Q Did you look at any other documents in preparing for the
(5) deposition besides those that you already described for
(6) me?
(7) A I don't recall.
(8) Q Did you speak with anyone to prepare yourself for the
(9) deposition today?
(10) A Mr. Jonker, my counsel.
(11) Q Did you speak with anyone other than Mr. Jonker?
(12) A To prepare myself? Is that the question you're asking?
(13) Q Yes.
(14) A I spoke to no one to prepare myself.
(15) Q When did you speak with Mr. Jonker?
(16) A Yesterday.
(17) Q Was anyone else present at the meeting besides you and
(18) Mr. Jonker?
(19) A No.
(20) Q Do you know John Dille, III?
(21) A Yes, I do.
(22) Q Who is John Dille, III?
(23) A John Dille is my employer and a friend.
(24) Q How long have you known John Dille, III?
(25) A I have known of John Dille, III, probably eight years.

Page 9
(1) Q How did you come to know Mr. Dille?
(2) A I got to know Mr. Dille through our industry, the radio
(3) broadcast industry.
(4) Q And how through the industry did you come to know Mr.
(5) Dille?
(6) A Mr. Dille and I have served on various broadcast
(7) committees on a national level and became acquaintances
(8) and friends to that area.
(9) Q Are you social friends?
(10) A Yes.
(11) Q Have you, for example, ever gone out to dinner together?
(12) A Yes.
(13) Q Has he ever been to your house?
(14) A Yes.
(15) Q Have you been to his house?
(16) A Yes.
(17) Q Are your wives also friends?
(18) A Yes.
(19) Q Are you related in any way to John Dille or any member of
(20) his family?
(21) A Am I personally related?
(22) Q Yes.
(23) A To Mr. Dille?
(24) Q Right.
(25) A No, I am not personally related.

Page 10
(1) Q Is your wife related in any way to Mr. Dille?
(2) A No, my wife is not related.
(3) Q Is any other member of your family related in any way to
(4) the Dille family?
(5) A No. Not to my knowledge.
(6) Q You're aware that Mr. Dille was deposed in this case?
(7) A Yes, I am.
(8) Q Did you review the deposition of Mr. Dille?
(9) A No, I did not.
(10) Q You're aware that John Booth has been deposed in this
(11) case?
(12) A Yes, I am.
(13) Q Have you reviewed the deposition of John Booth?
(14) A No, I have not.
(15) Q Have you reviewed any depositions taken in this case?
(16) And I think the only other ones –
(17) A Mr. Brown. Yes, Mr. Brown.
(18) Q When did you review Mr. Brown's deposition?
(19) A Shortly after it was received. I have – I can't
(20) remember that date.
(21) Q Did you speak with Mr. Dille about his deposition at any
(22) time?
(23) A The answer is yes, but not detailed.
(24) Q When did you speak with him?
(25) A Monday of this week.

Page 11
(1) Q In person or by telephone?
(2) A By telephone.
(3) Q Was anyone else a party to that conversation?
(4) A No.
(5) Q Besides you and Mr. Dille?
(6) A No one.
(7) Q Did you make any notes of that conversation?
(8) A No, I did not.
(9) Q How long did the conversation last?
(10) A Well, the conversation involved many other items. The
(11) conversation regarding that was a very short
(12) conversation. The total conversation was probably an
(13) hour.
(14) Q What do you remember being said in the conversation with
(15) Mr. Dille about his deposition?
(16) A That it was three and a half hours in length, that it was
(17) in Elkhart, that you asked if we were related. And he
(18) and I both agreed we did not want to go into detail any
(19) more than that.
(20) Q Why did you agree that you didn't want to go into more
(21) detail than that?
(22) A We didn't feel that was really necessary.
(23) Q Did Mr. Dille indicate that your conversation would be
(24) asked about in the deposition?
(25) A Yes.

Page 12
(1) Q And have you told me everything you can recall about your
(2) discussions with Mr. Dille about his deposition?
(3) A Everything I can recall.
(4) Q Have you spoken with John Booth about his deposition?
(5) A No, I have not.
(6) Q When was the last time you had any communication with
(7) John Booth?
(8) A Probably at the closing of the – as far as written
(9) communication, closing of the transaction.
(10) Q Are you talking about the closing of the transaction
(11) where Booth Communications transfered WRBR to Hicks
(12) Broadcasting of Indiana?
(13) A That's correct.
(14) Q When was the last time you had any oral communication
(15) with John Booth?
(16) A Probably six months prior to that, possibly longer than
(17) that.
(18) Q What is your present address?
(19) A I live in Portage, Michigan, 7463 Cottage Oak Drive.
(20) Q How long have you lived at that address?
(21) A Three years.
(22) Q Do you have any plans on moving from that address at this
(23) time?
(24) A No, I don't.
(25) Q What's your date of birth?

Page 13
(1) A 10-4-39.
(2) Q And can you describe for me your educational background,
(3) picking up with high school?
(4) A I graduated from high school in 1957. Attended Ferris
(5) State, at that time College, in the School of Pharmacy.
(6) Continued through Ferris for five years, in business
(7) administration. I did not graduate.
(8) Q What high school did you graduate from?
(9) A Alma High School in Michigan.
(10) Q Did you grow up in the Alma area?
(11) A Yes.
(12) Q Did you go directly from high school to Ferris?
(13) A Yes.
(14) Q And did you go continually from Ferris from 1957 until
(15) 1962?
(16) A That's correct.
(17) Q When you left Ferris, what did you do?
(18) A I began employment at a radio station in Charlotte,
(19) Michigan.
(20) Q In what capacity?
(21) A As an on the air personality slash sales.
(22) Q Did you have any ownership interest in that station?
(23) A Later. I was there eight years. Near the end I had a
(24) very small – very small ownership position.
(25) Q What was the name of the station?

Page 14
(1) A The – it was a – company name was Eaton County
(2) Broadcasting. The call letters were WCER.
(3) Q Who was the owner of that corporation?
(4) A A gentleman by the name of Roy McLain.
(5) Q Where is Mr. McLain today, if you know?
(6) A I believe in – residing in Arizona, Scottsdale possibly.
(7) Q Now, you say you continued at that station for eight
(8) years; is that right?
(9) A Approximately eight years.
(10) Q That would take you through to about 1970?
(11) A That's correct.
(12) Q Did you continue as an on air personality and in sales
(13) for the entire eight-year period?
(14) A No.
(15) Q What other positions did you hold at that station?
(16) A Sales, sales manager, and manager.
(17) Q And when you say manager, do you mean general manager
of
(18) the station, then?
(19) A Probably station manager.
(20) Q What were your responsibilities as station manager?
(21) A Sales. It was a very small operation.
(22) Q Where did you go after you completed your time at WCER?
(23) A To Lansing, Michigan.
(24) Q What did you do in Lansing?
(25) A I was a sales representative at a radio station in

Page 15
(1) Lansing.
(2) Q What station?
(3) A WILS, and Lansing Broadcasting.
(4) Q Who owned Lansing Broadcasting?
(5) A A fellow by the name of – the principal was a fellow by
(6) the name of Edwin Byrd, B-y-r-d.
(7) Q How long did you continue as a sales representative at
(8) WILS?
(9) A Two years.
(10) Q Where did you go after that?
(11) A I stayed at WILS. I was then promoted to general sales
(12) manager.
(13) Q How long did you continue as general sales manager?
(14) A Where are we now on the dates?
(15) Q I'm showing you started at WILS in 1970 and about 1972
(16) you became the general sales manager there.
(17) A Yeah. Probably another eight years.
(18) Q Were you the general sales manager for that entire
(19) eight-year period?
(20) A Correct.
(21) Q That takes us about to 1980. What did you do at that
(22) time?
(23) A Left the Lansing radio station to relocate in Battle
(24) Creek.
(25) Q Why?

Page 16
(1) A I was given an opportunity to be a – the general manager
(2) of two radio stations in Battle Creek.
(3) Q Which stations?
(4) A At that time the call letters were WKNR, which was an AM
(5) radio station, and WKFR, which was an FM radio station.
(6) Q Who owned those stations?
(7) A It was owned by a Maryland corporation. Principal was
(8) Joe Waldschmit.
(9) Q Do you know how to spell Waldschmit?
(10) A W-a-l-d-s-c-h-m-i-t.
(11) Q How long did you continue as general manager of those
(12) stations?
(13) A Where are we now?
(14) Q 1980.
(15) A Five years.
(16) Q What was the name of the Maryland corporation that owned
(17) those stations?
(18) A I can't remember.
(19) Q What happened in 1985 then, after you had been general
(20) manager for five years?
(21) A I bought the radio stations.
(22) Q Is that when you formed Hicks Broadcasting Corporation?
(23) A That's correct.
(24) Q Were you the sole owner of Hicks Broadcasting
(25) Corporation?

Page 17
(1) A I was the sole owner, yes.
(2) Q Did you buy just those two stations, WKNR AM and WKFR
FM?
(3) A I bought just those stations in Battle Creek, that's
(4) correct.
(5) Q Is that the first time that you owned a license to
(6) broadcast radio?
(7) A That's correct.
(8) Q Did you have licenses for any other stations under the
(9) name of Hicks Broadcasting besides WKNR and WKFR FM?
(10) A No, sir.
(11) Q What was the price that you paid for those two stations?
(12) A Three point two million.
(13) Q What were the terms under which you were going to pay the
(14) 3.2 million, if there were terms?
(15) A Well, there were terms. I'm not – I can't remember what
(16) the terms were. The terms were cash – excuse me. The
(17) terms were cash.
(18) Q Did you have to secure financing to raise the 3.2
(19) million?
(20) A Correct.
(21) Q And from whom or what entity did you secure that
(22) financing?
(23) A I secured that financing through bank – a bank in
(24) Boston.
(25) Q What is the name of that bank?

Page 18
(1) A Bay Bank of Boston.
(2) Q Did you have to put some of your own money in as equity
(3) as part of this transaction?
(4) A Yes.
(5) Q How much?
(6) A $200,000.
(7) Q And how did you come up with the $200,000?
(8) A I borrowed 200,000.
(9) Q From whom did you borrow it?
(10) A From a gentleman named Hoyt Goodrich.
(11) Q Who is Hoyt Goodrich?
(12) A Hoyt Goodrich is an investor in various things, among
(13) broadcasts – among many broadcasts and cable and
(14) television stations.
(15) Q When did you first come to know Hoyt Goodrich?
(16) A Well, at this – at the time of – what date did we come
(17) up with here?
(18) Q 1985?
(19) A Yes.
(20) Q How were you introduced to Hoyt Goodrich?
(21) A Industry friends and through Bay Bank.
(22) Q Which industry friends?
(23) A A specific friend.
(24) Q Yes.
(25) A By the name of Ed Christian.

Page 19
(1) Q Who was Ed Christian?
(2) A Ed Christian is – at that time was a general manager of
(3) a Detroit radio station. He is now president of Saga
(4) Communications.
(5) Q Where is Saga Communications located?
(6) A In Detroit – or actually Birmingham.
(7) Q How did you come to know Ed Christian?
(8) A Long time friends, beginning in Charlotte, Michigan.
(9) Q Did you know John Dille at the time you formed Hicks
(10) Broadcasting in 1985?
(11) A No, I did not.
(12) Q Did you know John Booth in 1985?
(13) A No, I did not.
(14) Q You mentioned that you borrowed $200,000 that you put
(15) down in equity, you borrowed that from Hoyt Goodrich to
(16) acquire these stations in 1985; is that correct?
(17) A That's correct.
(18) Q And the total price you paid was 3.2 million; is that
(19) correct?
(20) A That's correct.
(21) Q Where did the other three million come from?
(22) A Two million came from – 2.2 million came from Bay Bank.
(23) 800,000 came from a company called Bridge Capital
(24) Investors.
(25) Q Bridge Capital Investors. Where were they located?

Page 20
(1) A In New York.
(2) Q How did you come into contact with them?
(3) A That is Mr. Goodrich's company.
(4) Q The $200,000 that you put in as equity, was that loaned
(5) to you personally –
(6) A Yes.
(7) Q (Continuing) – or was that loaned to the corporation?
(8) A That was loaned to me personally, I believe.
(9) Q Did Mr. Goodrich have any affiliation with Bay Bank, to
(10) your knowledge?
(11) A No, he did not. Or to my knowledge, he did not.
(12) Q How did you come into contact with Bay Bank?
(13) A Through Mr. Christian.
(14) Q And how did you come into contact with Bridge Capital?
(15) A Through Bay Bank and Mr. Christian.
(16) Q Was Mr. Christian sort of your –
(17) A Mentor.
(18) Q (Continuing) – mentor in terms of how to raise financing
(19) for this type of an acquisition?
(20) A That is correct.
(21) Q And I want to be clear on this. The total price was 3.2
(22) million. Was essentially all of the money that you put
(23) up for the acquisition of this station, was all of it
(24) borrowed funds?

(25) A All of it was borrowed funds.

Page 21
(1) Q After you formed Hicks Broadcasting Corporation in 1985,
(2) who functioned as the general manager for the two radio
(3) stations?
(4) A I did.
(5) Q What were your responsibilities as general manager?
(6) A My duties as general manager were to oversee the entire
(7) operation of both radio stations.
(8) Q Were you directly involved in sales?
(9) A Yes.
(10) Q Did you have a sales manager?
(11) A Not at that time.
(12) Q Were you directly involved in programming?
(13) A I had a program director.
(14) Q Who was the program director?
(15) A A gentleman by the name of Mike Kinnolson.
(16) Q How do you spell the last name, if you know?
(17) A I – K-i-n-n-o-l-s-o-n, I guess. I don't know.
(18) Q Hicks Broadcasting ultimately merged with a corporation
(19) called the Airborne Group, correct?
(20) A Ultimately.
(21) Q And that occurred on or around August 31st of 1993; is
(22) that consistent with your recollection?
(23) A That's correct.
(24) Q From the time you formed Hicks Broadcasting in 1985 until
(25) 1993, did Hicks Broadcasting sell one of the radio

Page 22
(1) stations?
(2) A That's correct.
(3) Q Specifically, did it sell WKNR?
(4) A That's correct.
(5) Q When did it sell WKNR, the AM station?
(6) A In 1997.
(7) Q 1987?
(8) A Excuse me. I'm sorry. '87.
(9) Q I think the corporate records reflect the sale in July of
(10) 1986. Does that seem consistent with your recollection?
(11) A Well, you're going to get at this, why all this happened,
(12) but there was a time lapse before that was actually
(13) sold. So we had – let's back up. We purchased another
(14) radio station.
(15) Q You purchased a station before you sold WKNR?
(16) A That's correct.
(17) Q Which station did you purchase?
(18) A WKMI in Kalamazoo.
(19) Q When did you purchase WKMI in Kalamazoo?
(20) A In '96.
(21) Q 1986?
(22) A '86 again. Excuse me.
(23) Q From whom did you purchase WKMI?
(24) A A gentleman by the name of Steer. I just lost his first
(25) name. Steer Broadcasting. Howard Steer was the father.

Page 23
(1) I can't remember the son's name.
(2) Q What was the price that you paid for WKMI?
(3) A 800,000 rings a bell.
(4) Q Was that a cash purchase?
(5) A That was a cash purchase.
(6) Q How did you come up with the cash to purchase KMI for
(7) $800,000?
(8) A Bay Bank.
(9) Q Was the entire $800,000 borrowed?
(10) A Yes.
(11) Q At or near the time that you purchased WKMI, did you also
(12) then decide to sell WKNR?
(13) A That's correct.
(14) Q Were those transactions related in some way?
(15) A Those transactions were related due to, at that time, FCC
(16) rules that prohibited the ownership of two overlapping AM
(17) radio stations, signal overlapping radio stations.
(18) Q Is that referred to as a duopoly, where you own two
(19) stations with overlapping signals?
(20) A It is now, yes.
(21) Q So when you purchased WKMI, in other words, to be in
(22) compliance with the FCC rules, did you have to sell WKNR?
(23) A That's correct.
(24) Q To whom did you sell WKNR?

(25) A A new corporation was formed with my children, who

Page 24
(1) purchased the radio station.
(2) Q What are your children's names and ages?
(3) A Jane Johnson, she's 35. Janelle Crystal, and she's 30.
(4) And Jeff Hicks, he's 25.
(5) Q What was the name of the corporation that was formed with
(6) your children to purchase WKNR?
(7) A I believe it was WKNR, Incorporated. I can't recall.
(8) Q What was the price that –
(9) A I don't recall.
(10) Q (Continuing) – you received for the sale of WKNR?
(11) A I don't recall. That was their transaction.
(12) Q Were you involved in any way in your children's securing
(13) the funding for the purchase of WKNR?
(14) A Yes.
(15) Q What was your involvement?
(16) A To set the – to introduce them to the Bay Bank people in
(17) Boston and to help them secure the financing.
(18) Q Did you have any ownership interest in WKNR, Inc.?
(19) A No, I did not.
(20) Q Did you –
(21) MR. JONKER: I think it's obvious, but you're
(22) talking about after the sale, right?
(23) MR. LUBBEN: Right. Right.
(24) MR. JONKER: Okay.
(25) Q Did you guarantee any of the debt that your children

Page 25
(1) incurred in purchasing WKNR?
(2) A I don't recall.
(3) Q Do you know who was responsible for overseeing the
(4) operations of WKNR after your children purchased it?
(5) A Yes.
(6) Q Who?
(7) A A fellow by the name of Mike Klein.
(8) Q Who is Mike Klein?
(9) A Mike Klein was an employee of WKNR, Incorporated.
(10) Q Had Mike Klein been an employee of WKNR?
(11) A Prior, yes.
(12) Q He had worked for the station during the time that Hicks
(13) Broadcasting owned it?
(14) A That's correct.
(15) Q And in what capacity?
(16) A He was a sales representative.
(17) Q After the sale to your children, did he become more than
(18) just a sales representative?
(19) A Yes, he was the station manager in addition to sales.
(20) Q After your children acquired the station, did you have
(21) any role in the sales operation of the station?
(22) A No.
(23) Q Did you have any role in the programming of the station?
(24) A No.
(25) Q After your children purchased WKNR, did the physical

Page 26
(1) offices of the station move?
(2) A No.
(3) Q They remained where they had been before?
(4) A That's correct.
(5) Q And where were those offices in relationship to the
(6) offices of Hicks Broadcasting, which then owned WKMI and
(7) WKFR?
(8) A They were in the same complex.
(9) Q Where was that complex?
(10) A Battle Creek, Michigan.
(11) Q Do you know the address?
(12) A American Bank Building. I don't know the address.
(13) Q You said they were in the same complex. Were they in the
(14) same office?
(15) A Yes.
(16) Q Did you have any FCC counsel in connection with the sale
(17) of WKNR to your children?
(18) A Yes, I did.
(19) Q Who was that FCC counsel, if you can recall?
(20) A A fellow by the name of Bill Green.
(21) Q How long had Mr. Green been your FCC counsel?
(22) A Mr. Green was FCC counsel for the original Joe Waldschmit
(23) owned stations. I retained him when I purchased the
(24) stations. Pearson, Ball and Dowd used to – I think

(25) that's not the name now, in Washington.

Page 27
(1) Q Can you repeat that?
(2) A Pearson, Ball and Dowd.
(3) Q Have you ever been convicted of a crime?
(4) A No.
(5) Q Have you had any charges brought against you with the
(6) FCC?
(7) A No.
(8) Q Have you ever been investigated by the FCC? And when I
(9) say FCC, you know that I mean the Federal Communications
(10) Council?
(11) A No. Yes.
(12) Q It's Council, isn't it?
(13) A Commission.
(14) Q Commission. Excuse me.
(15) I want to try to understand the corporate
(16) structure of Hicks Broadcasting from 1985 up until August
(17) 31st of '93. Were you the president of the corporation?
(18) A That's correct.
(19) Q And maybe I need to draw a distinction between the
(20) corporate entity and the operational side of the
(21) station. I want to focus on the operational side for a
(22) minute. Did you serve as the general manager of the
(23) station?
(24) A That's correct.
(25) Q And did you serve as a general manager for the entire

Page 28
(1) time from 1985 'til August 31st of '93?
(2) A Correct.
(3) Q Did you have a program manager? I think you indicated
(4) earlier that you did.
(5) A Yes.
(6) Q And did that program director – that was Mike Kinnoiski;
(7) is that what you said?
(8) A Kinnoison, excuse me.
(9) Q Was he the program manager for the entire time?
(10) A No.
(11) Q When he was program manager, was he program manager for
(12) both the AM and the FM station?
(13) A Originally he was program manager.
(14) Q And that would cover both stations?
(15) A Originally, right.
(16) Q Now, when you sold WKNR and acquired WKMI, did he remain
(17) program manager for both stations?
(18) A No.
(19) Q What happened at that time with respect to the program
(20) manager position?
(21) A That – I can't remember. It was a very small
(22) operation. And I think Mike Klein was in that capacity.
(23) It was an automated radio station.
(24) Q Which was an automated radio station?
(25) A WKNR.

Page 29
(1) Q And you mentioned that after WKNR was sold to your
(2) children Mr. Klein went with WKNR, correct?
(3) A Correct.
(4) Q Let me follow up on that a minute. Do your children
(5) continue to own WKNR?
(6) A No.
(7) Q How long did they continue to own WKNR after they
(8) purchased it?
(9) A I would say no more than a year.
(10) Q What happened after the end of that year?
(11) A They sold the radio station.
(12) Q To who?
(13) A To a gentleman by the name of Wayne Wright.
(14) Q Who is Wayne Wright?
(15) A Wayne Wright was an operator of radio stations in
(16) Marshall and Albion, a company by – called Triad
(17) Communications.
(18) Q Do you know what price your children obtained when they
(19) sold WKNR?
(20) A I can't remember.
(21) Q Do you know if they made a profit or suffered a loss?
(22) A I don't think any profit was made.
(23) Q Do you know whether there was a loss?
(24) A There was not a loss.
(25) Q After your children sold WKNR, did they own any other

Page 30
(1) radio stations?
(2) A No.
(3) Q Was the corporation WKNR, Inc. dissolved at that point in
(4) time?
(5) A Dissolved.
(6) Q Did you receive any of the proceeds from the sale of WKNR
(7) to Triad Communications?
(8) A No.
(9) Q Do you know who functioned as the counsel for your
(10) children, the legal counsel, in connection with this sale
(11) to Wayne Wright at Triad?
(12) A Yes.
(13) Q Who?
(14) A Eric Brown, Jr.
(15) Q Who is Eric Brown, Jr.?
(16) A Eric is an attorney in Kalamazoo.
(17) Q How long have you known Mr. Brown?
(18) A Since my purchase of the radio stations in Battle Creek.
(19) Q In 1985?
(20) A That's correct.
(21) Q How did you come to know Mr. Brown?
(22) A I was introduced to Mr. Brown through the accounting firm
(23) of BDO Seidman.
(24) Q Who at BDO Seidman introduced you to Mr. Brown?
(25) A A gentleman by the name of Charles McNeely.

Page 31
(1) Q How long had you known Charles McNeely?
(2) A About the same time.
(3) Q Did BDO Seidman come to be your accountants at the time
(4) that you formed Hicks Broadcasting in 1985?
(5) A That's correct.
(6) Q Who functioned as the FCC communications counsel in
(7) connection with the sale of WKNR by your children to
(8) Triad Communications?
(9) A Mr. William Green.
(10) Q Let's come back now to Hicks Broadcasting and the
(11) operation, the operational positions. You mentioned,
(12) again, that Mike Kinnoison served as the program manager
(13) for a period of time. Did you have other program
(14) managers after Mr. Kinnoison?
(15) A Yes.
(16) Q And who were they?
(17) A One, his name was Terry Winik.
(18) Q When did Mr. Winik – was it Mr. or Ms.?
(19) A Mr.
(20) Q When did he serve in that capacity?
(21) A I don't know the dates.
(22) Q And did you have other program managers after Mr. Winik?
(23) A Yes.
(24) Q And who were they?
(25) A A Mr. Jack Swart.

Page 32
(1) Q And how long did he serve?
(2) A Again, I don't know.
(3) Q Did you have other program managers after Mr. Swart?
(4) A Yes.
(5) Q And who were they?
(6) A Mr. Bill Anthony.
(7) Q Do you know the dates that he served in that capacity?
(8) A I don't know the dates.
(9) Q And after Mr. Anthony?
(10) A Mr. David Miholer.
(11) Q How long did he serve in that capacity?
(12) A He must have served in that capacity for four, five
(13) years.
(14) Q Did you have other program managers after Mr. Miholer?
(15) A No.
(16) Q How long have you known David Miholer?
(17) A Just during that period of time.
(18) Q Just those four to five years?
(19) A Right.
(20) Q How did he come to work for Hicks Broadcasting?
(21) A He was – he applied for the position, for a position of
(22) program director and on air announcer.

(23) Q Incidentally, when Hicks Broadcasting Corporation sold
(24) WKNR to your children, did Rick Brown represent Hicks
(25) Broadcasting in that transaction?

Page 33
(1) A Yes.
(2) Q Did he also represent your children in the same
(3) transaction?
(4) A Well, ask that question again.
(5) Q Sure. Did Rick Brown also represent your children and
(6) their new corporation, WKNR, Inc., in the transaction
(7) where they acquired WKNR from Hicks Broadcasting?
(8) A I believe he did.
(9) Q Just so I'm clear, then, was he representing both –
(10) A Yes.
(11) Q (Continuing) – the seller, Hicks Broadcasting, and the
(12) buyer, WKNR, Inc., which was owned by your children?
(13) A That's correct. I believe that's correct.
(14) Q Let me back up even further. When you formed Hicks
(15) Broadcasting to acquire the stations, Mr. Brown
(16) represented you in that transaction?
(17) A When I originally purchased the stations?
(18) Q Right.
(19) A That's correct. Rick Brown has been my legal counsel all
(20) through. Correct.
(21) Q Did he also represent the corporation which sold the
(22) radio stations to Hicks Broadcasting?
(23) A No.
(24) Q When Hicks Broadcasting purchased WKMI, Mr. Brown
(25) represented Hicks Broadcasting in that transaction,

Page 34
(1) correct?
(2) A Yes.
(3) Q Did he also represent the seller of those stations?
(4) A No.
(5) Q Does David Mihoier also use another name?
(6) A Phil Britten.
(7) Q Why does he use the name Phil Britten, if you know?
(8) A To my knowledge, he uses Phil Britten. It's an on air
(9) personality name.
(10) Q During the time that you owned Hicks Broadcasting, from
(11) 1985 until August 31st of 1993, did you have a station
(12) manager?
(13) A When we purchased WKMI, we had a station manager for WKMI
(14) slash sales manager.
(15) Q Who was that?
(16) A A Robert Miller.
(17) Q How long did Mr. Miller continue as the station manager
(18) slash sales manager for WKMI?
(19) A Through the -- through the merger of the 31st of August.
(20) Q The next position I was going to ask you about is whether
(21) you had a sales manager for Hicks Broadcasting?
(22) A That was myself.
(23) Q Did you have an accountant or a bookkeeper?
(24) A Yes.
(25) Q Who was that?

Page 35
(1) A Marilyn White.
(2) Q Was Ms. White the bookkeeper for the entire period from
(3) 1985 until August 31st of 1993?
(4) A That's correct.
(5) Q How did you know Marilyn White?
(6) A Marilyn White applied for a position of business manager
(7) of my company in Battle Creek and was employed at that
(8) time, hired at that time.
(9) Q How would you characterize the financial performance of
(10) Hicks Broadcasting Corporation from the period, let's
(11) say, 1985 up until August 31st of 1993?
(12) A Very good.
(13) Q Did you have some difficulty in your relationship with
(14) Bay Bank and/or Bridge Capital?
(15) A I had difficulty near the '93 – the 1990's, '90, '91
(16) period, with Bay Bank.
(17) Q What was the source of the difficulty?
(18) A It was an industrywide problem. Bay Bank was moving to
(19) dispose of all of their broadcast assets at that time and
(20) were trying to get out of the business.
(21) Q And how was that impacting Hicks Broadcasting?
(22) A Our agreements with Bay Bank each time that we did a deal
(23) had amortization payments that were accelerated near the
(24) end, with the idea of refinancing. And when those became
(25) to the point that they couldn't be maintained by the

Page 36
(1) property, then we would refinance. When we got into the
(2) '90's and when they were beginning to move out, it was an
(3) opportune time for them to say we aren't really
(4) interested in renewing. Those were the difficulties.
(5) Q Looking through the corporate record book, I saw that in
(6) August of 1990 the amount of the debt was increased to
(7) three and a half million, or at least you were authorized
(8) to borrow up to three and a half million. Let me ask
(9) you, first of all, did you, in fact, borrow three and a
(10) half million?
(11) MR. JONKER: Do you mean Hicks Broadcasting?
(12) Q Yes, Hicks Broadcasting. As part of a refinancing –
(13) A Yes.
(14) Q (Continuing) – increase the debt to three and a half
(15) million?
(16) A I believe it. I believe so.
(17) Q Why was it necessary to increase the amount of the debt
(18) in 19 –
(19) A That was one of those times that we – we refinanced to
(20) again lower the amortization schedule. It was in the
(21) plan.
(22) Q I'm having trouble understanding. You said you
(23) refinanced to lower the amortization schedule. What do
(24) you mean?
(25) A To lower the payments.

Page 37
(1) Q Okay.
(2) A To renegotiate the payment plan, I guess is what –
(3) Q How would increasing the debt result in lowering the
(4) payments?
(5) A At that time we – I took out Bay Bank – or, excuse me,
(6) Bridge Capital.
(7) Q But as I understood the way you described the transaction
(8) originally, you borrowed 2.2 million from Bay Bank and
(9) 800,000 from Bridge Capital, correct?
(10) A Right.
(11) Q And that was in 1985, correct?
(12) A Right.
(13) Q And so by 1990, presumably, you would have paid down some
(14) portion of that?
(15) A Right.
(16) Q So the total should have been something less than three
(17) million?
(18) A Yes.
(19) Q But you increased the debt to three and a half million?
(20) A Well, I'm not sure that was increased to three and a
(21) half. I can't remember those numbers.
(22) Q In any event, again looking at the corporate records, it
(23) talks about being increased, and I'm still having trouble
(24) understanding how increasing the debt would result in
(25) lower payments. Can you explain that?

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(1) MR. JONKER: Maybe it would help him to look at
(2) the record, I don't know, but with the corporate records
(3) he hasn't had access to. And if it would help him, fine.
(4) A It was a whole refinancing package, that particular
(5) point, to – a pay-off to Bridge Capital.
(6) Q At the time of the refinancing, was Hicks Broadcasting in
(7) default –
(8) A No.
(9) Q (Continuing) – on some of the loans covenants?
(10) A No.
(11) Q Mr. Hicks, I'm showing you a Page Number 69 from the
(12) corporate record book. And these are part of minutes of
(13) a meeting of the board of directors on June 5th, 1991.
(14) Let me ask you, first of all: Bottom left-hand side of
(15) those minutes, there is a signature line. It says,
(16) "Approved, David L. Hicks." Is that your signature?
(17) A Yes.
(18) Q I would like to direct your attention to the paragraph
(19) that talks about the next matter to come before the
(20) meeting was a discussion of the future long-term plan for

(21) the corporation. A long and detailed discussion
(22) followed. It was agreed that Mr. Hicks should pursue any
(23) local interest in purchasing the station owned by the
(24) corporation, but that it was not desirable to list
(25) station for sale at this time.

Page 39
(1) Why was it discussed that you should pursue the
(2) sale, at least any local interest in the purchase of this
(3) station, at that time in 1991? And, by the way, if it
(4) helps to look at the rest of the minutes, feel free to do
(5) so.
(6) A I don't have all the facts here on that, but I think
(7) there were some – there was some interest in – there
(8) was some interest in some local people to purchase a
(9) radio station. I think that was all I was addressing.
(10) Q Who had expressed interest in it?
(11) A I am – I am not sure. It possibly was the Miller
(12) brothers, who were getting into broadcast at that time.
(13) Q Was Hicks Broadcasting having financial difficulties in
(14) 1991?
(15) A No.
(16) Q Was the company having difficulty meeting its loan
(17) repayment obligations to Bay Bank?
(18) A They were becoming increasingly difficult, right.
(19) Q Was Hicks Broadcasting in default –
(20) A No.
(21) Q (Continuing) – on its loan obligations as of June 5th,
(22) 1991?
(23) A No.
(24) Q Mr. Hicks, I'm showing you the minutes of a special
(25) meeting of the board of directors dated October 23, 1991,

Page 40
(1) in New York, New York. And the minutes indicate that
(2) there was a special meeting held at the Yale Club in New
(3) York.
(4) A Uh-huh.
(5) Q Do you recall there being a meeting –
(6) A Yes.
(7) Q (Continuing) – of the board at the Yale Club in New
(8) York?
(9) A Yes.
(10) Q Why was the board meeting in New York in August of –
(11) A We had a social function during that week and we were a
(12) guest of Mr. Goodrich at the Yale Club.
(13) Q The minutes reflect that you and Mr. Goodrich and Mr.
(14) Brown were present at that meeting?
(15) A Correct.
(16) Q Is that consistent with your recollection?
(17) A Yes.
(18) Q And it also indicates that Paul Leonard was also present
(19) by invitation of the board?
(20) A Right.
(21) Q Who is Paul Leonard?
(22) A Paul Leonard is a broker, broadcast broker.
(23) Q How long have you known Paul Leonard?
(24) A Eight years.
(25) Q How did you come to know Paul Leonard?

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(1) A Through the industry, became a friend.
(2) Q Why was Paul Leonard invited to the board meeting? I
(3) think earlier I said it was in August. In fact, it was
(4) in October of 1991.
(5) A Paul wanted to discuss some opportunities, at the
(6) suggestion of Mr. Goodrich, of possible sale of the
(7) company.
(8) Q Incidentally, am I correct that the meeting was held in
(9) October of 1991?
(10) A I believe, if that's what it says, yes.
(11) Q Why, if you know, did Mr. Goodrich want to discuss
(12) possible sale of the station in 1991?
(13) A I think he felt there was some opportunities there to
(14) investigate.
(15) Q Did he identify for you the opportunities that he felt
(16) should be investigated?
(17) A I don't recall. I think it was through Mr. Leonard. And
(18) Mr. Leonard was really the one to discuss our direction
(19) at that point.
(20) Q Was Hicks Broadcasting Corporation in October of 1991
(21) experiencing the results of an economic recession?
(22) A Certainly.
(23) Q And was the company finding that, as a result of the
(24) recession, it was difficult to maintain revenues at the
(25) 1990 levels?

Page 42
(1) A Certainly.
(2) Q And had that led to the need for the corporation to ask
(3) for a waiver from Bay Bank of certain conditions of its
(4) loan agreement?
(5) A Certainly.
(6) Q And what conditions was the corporation asking Bay Bank
(7) to waive?
(8) A The monthly – or the quarterly payments. And not
(9) eliminating them at that point, but just asking for some
(10) relief.
(11) Q And this is the quarterly payments on the loan?
(12) A Correct.
(13) Q And why was it necessary for Hicks Broadcasting to
(14) request relief on the quarterly payments of the loan as
(15) of October of '91?
(16) A You just outlined that in your questions.
(17) Q Help me understand.
(18) A You just said we were experiencing economic downtrends
(19) and unable to maintain levels of the previous year.
(20) Q Had the company, Hicks Broadcasting, in fact defaulted?
(21) A No.
(22) Q Had it made less than the scheduled amount of any
(23) quarterly payment up 'til October of 1991?
(24) A I don't recall. But that was the reason for our request.
(25) Q To whom did you direct your request at Bay Bank?

Page 43
(1) A To the loan officer on this account.
(2) Q Do you remember the name of that individual?
(3) A Fredericka Sea.
(4) Q Can you repeat that?
(5) A Fredericka Sea, a female.
(6) Q Sea? Do you know how to spell that last name?
(7) A S-e-a.
(8) Q What was the response of Fredericka Sea to Hicks
(9) Broadcasting's request for a reduction of the quarterly?
(10) A If I recall, they granted our request.
(11) MR. JONKER: We have been going for 75 minutes,
(12) and I know – I mean, I want him to be able to answer
(13) your question, but, to me, it's hard to see the relevance
(14) of much of what we're talking about. Are we going to be
(15) at it a long time? My hope and expectation was we would
(16) finish today if we had the full day. I mean, I don't
(17) understand where you're going. I'm just worried, at this
(18) rate, we'll have a three-day deposition, that's all.
(19) MR. LUBBEN: I think it's conceivable we won't
(20) finish today. I doubt it will take three days. That's
(21) about all I can tell you.
(22) MR. JONKER: Can you at least enlighten me on
(23) the relevance, if it's going to take a long time, why
(24) we're spending so much time on minor background?
(25) MR. LUBBEN: I don't want to get into too much

Page 44
(1) on my theory and background. Generally, as you know, one
(2) of the issues in this case relates to the operation of
(3) Hicks Broadcasting prior to the merger and whether there
(4) was complete disclosure at the time of the merger of all
(5) contingent liabilities and problems that may have been
(6) associated with Hicks Broadcasting. Because of that, I'm
(7) seeking to explore some issues regarding Hicks
(8) Broadcasting that existed prior to the merger.
(9) Generally, that's where I'm coming from.
(10) MR. JONKER: Okay.
(11) MR. LUBBEN: And, incidentally, I know we have
(12) been going for 75 minutes. If you want to take a break
(13) now, that's fine with me.
(14) And I would repeat that to you, Mr. Hicks. If
(15) at any point you want a break, just take a minute to walk
(16) around, use the rest room, just let us know, and we will
(17) freely grant breaks. It's not intended to be an
(18) endurance contest.
(19) MR. JONKER: I would rather limit breaks if we
(20) think there is a chance to finish.

(21) MR. LUBBEN: I –
(22) MR. JONKER. I mean. If there is no chance to
(23) finish today, we'll take normal breaks.
(24) MR. LUBBEN: Well, there is always a chance to
(25) finish. I think – we'll see how we go through the day,

Page 45
(1) but –
(2) Q I noticed in going through the corporate minutes of Hicks
(3) Broadcasting that in March of 1993 Hoyt Goodrich resigned
(4) from the board. Is that consistent with your
(5) recollection?
(6) A That's correct.
(7) Q Why did Hoyt Goodrich resign in March of 1993?
(8) A He was – this was prior to the merger, and we were
(9) reorganizing the corporation to merge with Airborne,
(10) Airborne merged with Hicks. And he was not going to be a
(11) director at that point.
(12) Q Just so I'm clear, you're saying in March of 1993 you
(13) were already anticipating the merger; is that correct?
(14) A Yes.
(15) Q And Mr. Goodrich resigned in anticipation of that merger?
(16) A Yeah. I recall – I don't recall the dates. I recall
(17) the conversation with Mr. Goodrich and Mr. Brown
(18) regarding his resignation. And he accepted – he agreed
(19) to do this, and it was strictly related to the merger.
(20) Q Was Hicks Broadcasting successful in finding another
(21) lender to take over the Bay Bank loan –
(22) A No.
(23) Q (Continuing) – prior to the merger?
(24) A We really – we did not seek another lender.
(25) Q Now, the minutes indicate - and this goes back to October

Page 46
(1) 23, 1991 in New York - it said it was agreed that efforts
(2) should continue to refinance the loan with a local bank.
(3) Are you saying that, notwithstanding what the minutes
(4) said, you did not make efforts to refinance the loan with
(5) a local bank?
(6) A No concrete efforts. We had a lot of options that we
(7) were talking about. We had some sale opportunities, some
(8) merger opportunities, and we had some refinancing
(9) opportunities.
(10) Q Did you make any efforts to refinance the loan with
(11) Citizens Bank?
(12) A Is Citizens Bank a bank in South Haven? If that's the
(13) bank –
(14) Q Yes.
(15) A That was one of the options we talked about.
(16) Q Did you ever succeed –
(17) A No.
(18) Q (Continuing) – in refinancing with Citizens Bank?
(19) A No. We were at the preliminary stages. They are a very
(20) small bank and they were not interested in broadcast
(21) properties.
(22) Q Are you familiar with FCC rules regarding sponsorship
(23) identification in connection with receipt of goods and
(24) services from sponsors?
(25) A Somewhat, uh-huh.

Page 47
(1) Q And what's your understanding of a station's obligation
(2) if a station receives goods or services from a record
(3) promoter?
(4) A You'll have to be a little clearer about whether we're
(5) pertaining to on-air announcements, a general on-air
(6) announcement.
(7) Q Well, what I'm trying to understand or get a feel for is
(8) your knowledge of the FCC sponsorship identification
(9) rules.
(10) A Uh-huh.
(11) Q And so the question I'm asking you is, what is your
(12) understanding of those rules? What are the requirements?
(13) MR. JONKER: You're asking about his
(14) understanding today or –
(15) MR. LUBBEN: Yes.
(16) MR. JONKER: (Continuing) – understanding
(17) then?
(18) MR. LUBBEN: Well, if it's different, we'll
(19) explore that.
(20) Q But let's start with your understanding today of the FCC
(21) sponsorship identification rules.
(22) A Well, in regard to prizes, to promotional activity,
(23) what – I don't know what you're talking about.
(24) Q Let's talk specifically about prizes.
(25) A If prizes are donated by a record company, there is

Page 48
(1) really no type of announcement that would have to be
(2) made. If there is a trip involved for promotional
(3) activity, a credit to that particular record company
(4) would be appropriate.
(5) Q I would like to ask you about a large screen television.
(6) Do you recall a large screen television being supplied to
(7) Hicks Broadcasting as part of a record promotion with
(8) Epic Records?
(9) A No.
(10) Q In your interrogatory answers, where we inquired about a
(11) large screen television, you indicated that a friend and
(12) business associate, Norman Cohen, helped you obtained a
(13) large screen television that was not available in
(14) Kalamazoo?
(15) A That's correct.
(16) Q Do you mean Norrin Cohen?
(17) A Norrin Cohen.
(18) Q As opposed to Norman; is that correct?
(19) A As opposed to Norman.
(20) Q How do you spell Norrin?
(21) A N-o-r-e-n, I imagine.
(22) Q Who is Norrin Cohen?
(23) A Norrin Cohen is an employee of a company called Best
(24) Marketing, or was an employee of Best Marketing.
(25) Q What is the business of Best Marketing?

Page 49
(1) A Best Marketing is a media promotional company.
(2) Q And you said he was employed by Best Marketing. Do you
(3) know where Norrin Cohen is employed today?
(4) A No, I did not.
(5) Q When was the last time you had communications with Norrin
(6) Cohen?
(7) A I have no knowledge of a date.
(8) Q How did Norrin Cohen assist you in obtaining a large
(9) screen television?
(10) A I requested or asked him if he could obtain this large
(11) screen television for me. It's a television I saw at the
(12) Sony store in Chicago. It was not available in Kalamazoo
(13) at that particular time.
(14) Q How large a screen was it?
(15) A 45-inch.
(16) Q And why did you ask Norrin Cohen to help you obtain that
(17) particular television?
(18) A I think in a conversation – Norrin Cohen had obtained
(19) some television sets for us to give away at a Super Bowl
(20) promotion. And in conversation, I was reflecting my
(21) visit to the Sony store and mentioned this. And I said,
(22) "Do you know of this?" And he said he didn't, "But let
(23) me try to see what I can find out." Yes.
(24) Q Now, you said that he had helped you get some televisions
(25) to give away in connection with a Super Bowl promotion?

Page 50
(1) A He didn't help me, but he helped the radio station.
(2) Q And how did he help the radio station?
(3) A He was an independent contractor for the radio station to
(4) set up promotions, obtain prizes.
(5) Q And what were the terms under which these prizes would be
(6) supplied?
(7) A No terms, other than he represented us exclusively in
(8) Kalamazoo.
(9) Q Who paid for the televisions that were given away in
(10) connection with the promotion for the Super Bowl?
(11) A I have no idea.
(12) Q Did Hicks Broadcasting pay for those televisions?
(13) A No.
(14) Q What was your understanding as to who was paying for
(15) these prizes that were being given away?
(16) A Best Marketing Company.
(17) Q The company with which Mr. Cohen was associated?
(18) A That's correct.
(19) Q And what was Best Marketing Company receiving in
exchange

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(20) for the televisions it was providing as prizes?
(21) A They represent promotional companies, record companies.
(22) What they – what they obtain, I have no knowledge.
(23) Q What's your understanding as to why the record companies
(24) would provide the money for these prizes? What did they
(25) get in return for it?

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(1) MR. JONKER: I object to foundation. I don't
(2) think there is any foundation that Dave Hicks knows what
(3) a record company is getting or thinks it is getting. But
(4) you can answer, if you know.
(5) A The record companies have promotional prizes and dollars
(6) available to radio stations throughout the country for
(7) promotion of their product.
(8) Q And the radio station promotes the product by running
(9) advertisements for the record company?
(10) A That is one possible way.
(11) Q In what other way does the station provide promotion to
(12) the record company?
(13) A If it is a record of value, if it's a record of – a top
(14) hit record, and would be added to a play list, that is
(15) certainly a value.
(16) Q And when you talk about a play list, what do you mean?
(17) A The play lists that the radio stations play on a weekly
(18) basis in the radio business.
(19) Q Does the record company then provide some sort of prize
(20) or promotional thing to the radio station in exchange for
(21) having its record added to the play list?
(22) A Many times there are promotional opportunities available.
(23) Q Are there other types of promotional opportunities that
(24) the radio station provides to the record company in
(25) exchange for the prizes, or whatever, that's provided for

Page 52
(1) by the record company?
(2) A I don't follow your question.
(3) Q My question relates to what the radio station can offer
(4) to the record company as the promotional opportunity for
(5) the record company. One of the things you said was to
(6) add their record to a play list.
(7) A Give away their T-shirts would be another example. Give
(8) away posters would be another example.
(9) Q What about actual advertising spots for the record
(10) company? Is that done?
(11) A In many instances there is advertising dollars allotted
(12) to purchase commercial radio time to sell records,
(13) certainly.
(14) Q Now, you mentioned that you had seen this 45-inch large
(15) screen Sony television in Chicago and were interested in
(16) obtaining it. You contacted Norrin Cohen; is that
(17) correct?
(18) A In conversation with Norrin the subject was brought up,
(19) that's correct.
(20) Q And Norrin said he would see what he could do?
(21) A That's correct. After I asked him if it was possible he
(22) could check and see if he knew where that might be
(23) available.
(24) Q And what happened next in connection with acquiring this
(25) large screen television?

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(1) A He obtained the television for me.
(2) Q And how did he obtain the television?
(3) A I have no idea.
(4) Q Was the television shipped to your home?
(5) A That's correct.
(6) Q Did you pay anyone for the television?
(7) A No. I did not.
(8) Q What was the price of the television, at least when you
(9) saw it listed in Chicago?
(10) A I'm sure that at the Sony store they have prices, but I
(11) would say it would be under $2,000.
(12) Q What year was this?
(13) A This was in early '93.
(14) Q When you received the large screened television at your
(15) home, did you expect that you would pay for it?
(16) A Yes.
(17) Q Did you ask Norrin Cohen –
(18) A Yes.
(19) Q (Continuing) – about paying for it?
(20) A Yes.
(21) Q And when did you ask him?
(22) A Prior to – prior to receiving the TV.
(23) Q What did he tell you?
(24) A We would work – we would work something out.
(25) Q Did you, in fact, work something out?

Page 54
(1) A Yes.
(2) Q What was it that you worked out?
(3) A I was going to work out an advertising trade.
(4) Q Did you, in fact, work out an advertising trade?
(5) A No.
(6) Q Why not?
(7) A The subject didn't come up and it was – it was one of
(8) those things that was just never addressed.
(9) Q Isn't it true that you reached an agreement with Epic
(10) Records whereby five of their records were added to the
(11) play list of Hicks Broadcasting in exchange for your
(12) receiving that big screen TV?
(13) A Not to my knowledge, no.
(14) Q Were you concerned that it was taking too long for the TV
(15) to be shipped to your house?
(16) A Yes.
(17) Q Did you, in fact, begin calling the record company on a
(18) daily basis to complain about the delay?
(19) A No.
(20) Q Did you call anyone to complain about the delay?
(21) A Yes.
(22) Q Who did you call?
(23) A Norrin Cohen.
(24) Q Now, Norrin Cohen was not associated in any way with Sony
(25) Television, to your knowledge, was he?

Page 55
(1) A Not to my knowledge.
(2) Q And what did Mr. Cohen say when you began to call him
(3) complaining about the delay in getting the big screen TV?
(4) A That he would check on it. I'm not sure it was
(5) complaining about a delay. I think it was more of
(6) inquiry.
(7) Q Earlier you indicated you did, in fact, receive the
(8) television, correct?
(9) A That's correct.
(10) Q I take it you kept it at your home?
(11) A Yes.
(12) Q You still have it to this day?
(13) A Yes.
(14) Q You never paid for it?
(15) A No.
(16) Q You never reached any sort of advertising trade-off, that
(17) you're aware of, for that television?
(18) A No.
(19) Q So is it your belief that that was a gift, then?
(20) A No.
(21) Q What's your understanding in terms of either your
(22) obligation or the obligation of Hicks Broadcasting to
(23) provide some sort of compensation to the record company?
(24) A Fully intended to. Not to the record company.
(25) Q To who?

Page 56
(1) A I had no obligation to the record company.
(2) Q Who was the obligation to?
(3) A To Mr. Cohen or his company, Best Marketing.
(4) Q And is it your understanding that that obligation remains
(5) outstanding to this day?
(6) A In our terms of a trade, correct.
(7) Q And whose obligation is it? Is it yours personally or is
(8) it the obligation of Hicks Broadcasting Corporation?
(9) A Of course it would be mine.
(10) Q It's your personal obligation?
(11) A Yes.
(12) Q And so you would have to purchase the advertising time
(13) from Hicks Broadcasting Corporation in order to be able
(14) to provide it in trade to Mr. Cohen's company; is that
(15) correct?
(16) A No. Hicks Broadcasting was – company was owned by
(17) myself. And trading advertising time with anybody is
(18) done in this business.
(19) Q So you felt that you could trade advertising time of the

(20) company in exchange for personal gifts to you?
(21) A Yes, I could.
(22) Q And did you do that in other cases, as well?
(23) A No, I did not.
(24) Q Did there come a time when you acquired two inflatable
(25) boats?

Page 57
(1) A Yes.
(2) Q And --
(3) A I don't know about two inflatable boats. I know about
(4) one inflatable boat. Possibly two.
(5) Q When did you acquire the inflatable boat?
(6) A I have no idea. Years ago.
(7) Q From whom did you acquire it?
(8) A From a dealer in Benton Harbor, Michigan.
(9) Q What's the name of the dealer?
(10) A I have no idea.
(11) Q And this is a dealer in boats?
(12) A This is a marine dealer.
(13) Q Did you pay for that boat?
(14) A No. That was an advertising trade.
(15) Q What were the terms of the trade?
(16) A Advertising time for delivery of the boat.
(17) Q So you gave the marine dealer advertising time in
(18) exchange for the boat?
(19) A Advertising time. (Nodding affirmatively.)
(20) Q Who received the boat?
(21) A I did.
(22) Q Do you still have the boat to this day?
(23) A Yes.
(24) Q What was the value of the boat?
(25) A Again, I don't know. It's an inflatable boat. Under

Page 58
(1) $1,000.
(2) Q Did Hicks Broadcasting Company show the boat as income to
(3) you?
(4) A I don't know.
(5) Q Did you report it as income on your income tax returns?
(6) A I don't recall.
(7) Q Did you report the large screen television --
(8) A I don't remember. That was years ago, six, eight years
(9) ago.
(10) Q Let's go back to the large screen television. Did you
(11) report the large screen television as income to you?
(12) A No, I did not.
(13) Q Why not?
(14) A I just -- I have -- I don't know. Probably forgot about
(15) it.
(16) Q Can you think of other examples where you personally
(17) received goods or services in exchange for advertising
(18) time on Hicks Broadcasting?
(19) A No, I cannot.
(20) Q Did you receive some computers, or at least money to
(21) purchase computers, as a result of a promotional campaign
(22) with Electra Records?
(23) A No. I don't know anything about that.
(24) Q You had some computers at Hicks Broadcasting, correct?
(25) A Correct.

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(1) Q In fact, one of those computers, you claimed, is your own
(2) personal computer; is that right?
(3) A A computer, right.
(4) Q How did you acquire that computer?
(5) A That was an advertising trade.
(6) Q With who?
(7) A A computer company in Kalamazoo. I'm not sure of the
(8) name.
(9) Q What were the terms of the trade?
(10) A Advertising time for receipt of the computer.
(11) Q One computer or more than one?
(12) A There was just one involved.
(13) Q When was this done?
(14) A I have no knowledge of time.
(15) Q Now, Hicks Broadcasting Corporation, the company, was
(16) supplying the advertising time, correct?
(17) A The Hicks Broadcasting Corporation, correct.
(18) Q Was the computer then to become the property of Hicks
(19) Broadcasting Corporation?
(20) A The computer --
(21) (Telephone interruption.)
(22) Q Go ahead.
(23) A The computer probably was property of Hicks
(24) Broadcasting. It was a part of the merger agreement
(25) where that reverted to my personal computer.

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(1) Q That was spelled out in the merger documents?
(2) A Correct.
(3) Q Do you recall a promotion that was worked out with
(4) Electra Records where for adding four records to your
(5) play list they would provide two computers as promotional
(6) support for WKFR?
(7) A I never worked any promotional with any record company.
(8) Q Do you recall any promotional campaign worked out with
(9) Norrin Cohen where in exchange for adding four records to
(10) your play list you would be supplied with two
(11) computers --
(12) A No.
(13) Q (Continuing) -- for WKFR?
(14) A I was not adding records. I had nothing to do with
(15) adding records.
(16) Q Do you recall any sort of promotional campaign where the
(17) company received two computers?
(18) A No.
(19) Q Were there any other situations where a computer was
(20) traded for air time?
(21) A I think there was. I think there was a music computer, a
(22) computer that was used in the music room, that was worked
(23) out through Norrin Cohen. I don't remember anything
(24) about it.
(25) Q Let me ask again: Do you recall any other situations

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(1) where you personally received goods or services in
(2) exchange for an advertising trade?
(3) A No.
(4) Q Did WKFR reach an agreement whereby it would exchange a
(5) promotional opportunity for money to be used to detail
(6) the radio station's van? Do you know what I mean by
(7) detailing a van?
(8) A Uh-huh. State your question again.
(9) Q Sure. Was there an agreement reached whereby WKFR would
(10) provide a promotional opportunity in exchange for money
(11) that could be used to redecorate or detail out its
(12) corporate van?
(13) A There was some lettering, I think, done on the van, I'm
(14) not clear, which possibly was part of some promotional
(15) activity. I am not sure.
(16) Q Who arranged that particular promotional opportunity?
(17) A Phil Britten, or David Miholer.
(18) Q With whom did he arrange the opportunity?
(19) A I have no idea.
(20) Q Do you recall Mr. Britten using the money to make repairs
(21) on his personal vehicle instead of using it to detail the
(22) van?
(23) A No, I do not. No, I do not.
(24) Q Did you allow, let's begin with, Phil Britten to arrange
(25) promotional opportunities wherein he would personally

Page 62
(1) receive goods and services --
(2) A No, sir.
(3) Q (Continuing) -- in exchange for promotional opportunities
(4) by Hicks Broadcasting?
(5) A No, sir.
(6) Q Did that ever happen, to your knowledge?
(7) A Not to my knowledge.
(8) Q Did you allow any other employees of Hicks Broadcasting
(9) to, in effect, barter Hicks Broadcasting advertising time
(10) in exchange for goods and services for themselves?
(11) A Not to my knowledge.
(12) Q That computer that you acquired, did that come from a
(13) company called Affitech?
(14) A That's correct.
(15) Q Who owns Affitech, if you know?
(16) A I believe a gentleman by the name of Joel Wright.
(17) Q And who is Joel Wright's father, if you know?

(18) A Joe Wright, who was an employee of mine.
(19) Q Of Hicks Broadcasting. Just so I'm clear, then, you
(20) arranged for Hicks Broadcasting to trade advertising time
(21) with Joel Wright's company in exchange for Joel Wright's
(22) providing a computer; is that a fair statement?
(23) A That's correct. I believe on his father's radio program.
(24) MR. JONKER: Time for a break?
(25) THE WITNESS: Yes.

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(1) MR. JONKER: Is that all right?
(2) MR. LUBBEN: Fine.
(3) (Recess taken.)
(4) (Last question and answer read back by the
(5) court reporter.)
(6) THE WITNESS: Now that you've read that, I have
(7) probably a correction on that. I don't know if I'm the
(8) one who arranged that.
(9) Q Who do you think arranged it?
(10) A I don't know. A sales representative from our company,
(11) no doubt, but I don't know whether it was myself.
(12) Q During your negotiations for the merger with the Airborne
(13) Group did you disclose to Ed Sackley or any
(14) representative of the Airborne Group that you had
(15) received personally a large screen television?
(16) A No.
(17) Q Did you disclose that you had received an inflatable
(18) boat?
(19) A No.
(20) Q Did you disclose the computer transaction with Joel
(21) Wright's company?
(22) A No.
(23) Q I asked you earlier whether you were aware of any
(24) employee of Hicks Broadcasting receiving goods or
(25) services in exchange for advertising time, and you told

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(1) me no; is that correct?
(2) A I told you I was not – yeah, knowledgeable about that.
(3) Q Did there come a time when you learned that Norrin Cohen
(4) had supplied airline tickets to Phil Britten in exchange
(5) for promotional time with Hicks Broadcasting station?
(6) A I learned that that was a possibility after the merger.
(7) Q When you say you learned it was a possibility, what do
(8) you mean?
(9) A I think Mr. Sackley mentioned a possibility of that.
(10) Q Let's talk about that a little bit. How did you learn
(11) that there was a question as to whether Phil Britten was
(12) receiving airline tickets in exchange for promotional
(13) opportunities from WKFR?
(14) A I think Mr. Sackley mentioned that.
(15) Q When?
(16) A After – after the merger. I don't know the dates it
(17) was.
(18) Q Where were you when he brought it up?
(19) A In my office.
(20) Q Was anyone else present besides you and Mr. Sackley?
(21) A I don't recall.
(22) Q Do you know how long after the merger this occurred?
(23) A No.
(24) Q What do you recall Mr. Sackley saying?
(25) A He – I think he just inquired if I was aware of this.

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(1) Q Aware of what?
(2) A Aware of what you just said.
(3) Q Did he tell you the tickets were to Phoenix?
(4) A I think he thought they were Phoenix. I think that came
(5) up, yes, now that you mention it.
(6) Q And when he asked you if you were aware of this, what did
(7) you tell him?
(8) A I told him I was not aware of it.
(9) Q Did you do anything to investigate it?
(10) A No. I don't recall.
(11) Q Do you know whether, in fact, Norrin Cohen supplied
(12) airline tickets to Phil Britten in exchange for
(13) promotional opportunities by Hicks Broadcasting Company?
(14) A I do not.
(15) Q Did you learn that Mike Klein was receiving $350 a month
(16) in gasoline services from a gas station in exchange for
(17) Hicks Broadcasting providing promotional opportunities?
(18) A Advertising trade.
(19) Q Uh-huh.
(20) A Many of our sales reps at various times had advertising
(21) trades with gasoline stations.
(22) Q And what were the terms of those trades?
(23) A Advertising announcements for dollars spent.
(24) Q Let's go back to the airline tickets for a minute. When
(25) Mr. Sackley presented to you his evidence that Norrin

Page 66
(1) Cohen had provided Phil Britten with airline tickets, did
(2) you tell Mr. Sackley that you thought those airline
(3) tickets were a gift from Norrin Cohen to Phil Britten?
(4) A I don't recall that incident beyond what I said.
(5) Q Do you deny that you told Mr. Sackley that those airline
(6) tickets were a gift?
(7) A No. I don't recall making any statement –
(8) Q So –
(9) A (Continuing) – regarding it at all.
(10) Q So you're not able to deny it because you simply can't
(11) recall it?
(12) A Yes.
(13) Q Do you know who used those airline tickets?
(14) A No.
(15) Q You indicated it was not uncommon for your sales
(16) representatives to have – you called them these
(17) advertising trades with gas stations; is that correct?
(18) A That's correct.
(19) Q What were the terms of these advertising trades, as you
(20) understood it?
(21) A At various times sales representatives were allowed
(22) certain dollars if they could obtain a trade with a local
(23) gas station for services up to a certain amount. Those
(24) were the terms.
(25) Q And these services were provided to whom? In other

Page 67
(1) words, gas stations were providing their services to
(2) whom?
(3) A They were providing their services to the sales rep.
(4) Q Did Hicks Broadcasting have some sort of an accounting
(5) mechanism to make sure that the services were tracked and
(6) reported as income to the sales representative?
(7) A That would be my assumption.
(8) Q You assumed that there was such a system in place?
(9) A I assumed there was.
(10) Q Did you ever check to see if such a system was in place?
(11) A We didn't carry that very long. That was – that was a
(12) service that was provided to sales reps periodically,
(13) so –
(14) Q Whose idea was it to provide that service?
(15) A Oh, that's a – that's a common practice in the
(16) industry. We've done that for – we've done that for
(17) years.
(18) Q I'm confused because I thought you said you hadn't done
(19) it very long.
(20) A No. At various times – sales reps were permitted to
(21) find a gasoline trade. I'll make a very simple
(22) statement. During the high price of gasoline, those
(23) trades dried up. It was difficult for advertising sales
(24) reps to find a trade that helped compensate them for
(25) driving their automobile, selling advertising time.

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(1) Q Did Hicks Broadcasting Company pay mileage to these sales
(2) representatives for driving their automobiles?
(3) A Our policy was to pay mileage if the sales rep went out
(4) of town. But if they did not have an advertising trade
(5) –
(6) Q Did the company make any effort to determine whether or
(7) not the services being provided by the gas station were,
(8) in fact, being used for company trips, or was the sales
(9) representative permitted to use the services for personal
(10) or company, whatever they saw fit?
(11) A Well, it was designed for their company trips.
(12) Q Who monitored it to make sure that they were using the
(13) money for company trips?
(14) A The sales rep and the business manager.
(15) Q Who was the business manager?
(16) A Marilyn White.
(17) Q Is it your belief that Marilyn White had arranged some

(18) sort of system to be sure that these services were being
(19) used for the benefit of Hicks Broadcasting?
(20) A She kept track of those services, right.
(21) Q Were they to be used for the benefit of Hicks
(22) Broadcasting?
(23) A Well, that was the original purpose, correct.
(24) Q Was it also within the intent of the original purpose
(25) that it was okay for these sales reps to use it for

Page 69
(1) personal purposes, as well?
(2) A That, I don't know.
(3) Q Who would know?
(4) A Well, the assumption was that you use it for business
(5) purposes.
(6) Q I understand that that was the assumption. My question,
(7) I guess, is: Was it okay, as you understood the deal,
(8) for them to use these services for their own personal
(9) benefit?
(10) A I don't know that it was okay. It probably was done.
(11) Q Did Hicks Broadcasting make any efforts to make sure that
(12) it would not be done?
(13) A No.
(14) Q Do you recall Ed Sackley bringing to your attention after
(15) the merger his concern that Mike Klein had such an
(16) arrangement with Pennfield Shell?
(17) A I recall a little of that, yes.
(18) Q When was it brought to your attention?
(19) A I don't know.
(20) Q Where were you when it was brought to your attention?
(21) A In my office.
(22) Q Who was present?
(23) A Again, I don't know.
(24) Q Just you and Mr. Sackley?
(25) A Right.

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(1) Q What did he say?
(2) A He just wanted to inquire about it, I believe.
(3) Q What did you say?
(4) A I don't recall.
(5) Q You recall nothing about what you said?
(6) A No, I don't recall anything that I said.
(7) Q Was it your understanding that Phil Britten had a similar
(8) arrangement whereby he did an advertising trade in order
(9) to pay for his personal automobile repairs?
(10) A No, I had no knowledge of him having an advertising
(11) trade.
(12) Q Are you aware of Norrin Cohen providing other goods or
(13) services to any other sales representative of Hicks
(14) Broadcasting besides the airline tickets to Phil Britten?
(15) MR. JONKER: I object to the form. I think he
(16) said he wasn't sure if those airlines tickets did come
(17) from Norrin Cohen as part of an advertising trade. But
(18) subject to that –
(19) Q Are you aware of any other situations where Norrin Cohen
(20) provided goods or services to –
(21) A No, I am not.
(22) Q (Continuing) – to an employee of Hicks Broadcasting?
(23) A No, I am not.
(24) Q Norrin Cohen would learn about promotional opportunities
(25) that were being presented by record companies, correct?

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(1) That was part of his job?
(2) A That was his job.
(3) Q And he would fax to you and to Phil Britten every week a
(4) list of all of the promotional opportunities that were
(5) being offered by the record companies, correct?
(6) A He would – he would fax – that's somewhat correct. I
(7) am not sure I got all the facts on that, but that was
(8) policy, yeah.
(9) Q Do you recall that there would be two copies of the fax,
(10) one went to you and one went to Phil Britten?
(11) A I don't recall that. But I recall getting faxes
(12) periodically.
(13) Q Do you remember each week you would go over the list and
(14) circle the ones you were interested in?
(15) A I didn't circle anything that I was interested in.
(16) Q Do you remember reviewing the lists that Mr. Cohen would
(17) send?

(18) A No. I received a list back from the programming
(19) department with the record ads of that week.
(20) Q And that would be from Mr. Britten?
(21) A That would be from Mr. Britten or his assistant at that
(22) time.
(23) Q What was the assistant's name?
(24) A And that would be – I don't know, Dave Benson was
(25) possible, or Glenn Dillon. I think it was probably Glenn

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(1) Dillon.
(2) Q Did Hicks Broadcasting prior to August 31st of 1993 make
(3) any effort to determine what portion of, for example,
(4) these gas trades were being used for personal purposes
(5) and then report that as income to the employee?
(6) A That's a question, I guess, that would have to be asked
(7) of the business manager.
(8) Q You don't know of any?
(9) A I don't know.
(10) Q Did Marilyn White ever ask you whether the large screen
(11) television should be reported to you as income?
(12) A No.
(13) Q In 1991 did you take a check from the State of Michigan
(14) that was sent to Hicks Broadcasting as a tax refund?
(15) A Yes, I did.
(16) Q And did you deposit that in your personal account?
(17) A Yes, I did.
(18) Q Why did that happen? Let me ask you, first of all: The
(19) check was not deposited into the bank account of the
(20) company, Hicks Broadcasting, correct?
(21) A Correct.
(22) MR. LUBBEN: I have documents I would like to
(23) have marked as Exhibit 22 and 23.
(24) (Defendant's Deposition Exhibits 22 and 23
(25) marked for identification.)

Page 73
(1) Q Showing you two documents, Mr. Hicks. Looking first at
(2) the document marked as Exhibit 22, that's a check payable
(3) to Hicks Broadcasting, or at least a copy of a check
(4) payable to Hicks Broadcasting from the state of Michigan,
(5) correct?
(6) A Uh-huh.
(7) Q The answer is yes?
(8) A The answer is yes.
(9) Q And the amount of that check is $5,797.05; is that right?
(10) A That's correct.
(11) Q And the back of the check is attached as a second page to
(12) Exhibit 22, correct?
(13) A Uh-huh.
(14) Q The answer is yes?
(15) A The answer is yes.
(16) Q And it's endorsed, "Hicks Broadcasting Company, David L.
(17) Hicks, President, For Deposit Only," correct?
(18) A Correct.
(19) Q And it's endorsed to a specific Merrill cash management
(20) account, correct?
(21) A Correct.
(22) Q Was that your personal cash management account?
(23) A That's correct.
(24) Q Did you write the endorsement that constitutes the second
(25) page of Exhibit 22?

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(1) A Yes.
(2) Q And directing your attention to Exhibit 23, that's also a
(3) check from the state of Michigan payable to Hicks
(4) Broadcasting Corporation, correct?
(5) A Correct.
(6) Q And that's in the amount of $23,351; is that correct?
(7) A That's correct.
(8) Q And the second page of Exhibit 23 is again the back of
(9) that check; is that right?
(10) A That's right.
(11) Q And again it's endorsed, "Hicks Broadcasting Corporation,
(12) David L. Hicks, President"?
(13) A Correct.
(14) Q And deposited to a Merrill cash management account?
(15) A Correct.
(16) Q Is that your personal cash management account?
(17) A Correct.

(18) Q Again did you put the endorsement that constitutes the
(19) second page of Exhibit 23?
(20) A Correct.
(21) Q Why were the proceeds from the checks that constitute
(22) Exhibit 22 and 23 deposited into your personal account as
(23) opposed to being deposited into the accounts of Hicks
(24) Broadcasting?
(25) A I was directed by my board of directors to obtain those

Page 75
(1) funds personally.
(2) Q When did the board of directors issue that directive?
(3) A I don't know dates.
(4) Q I have been through the corporate record book and I was
(5) not able to locate any minutes authorizing that. To your
(6) knowledge, were any minutes prepared?
(7) A I don't know. Mr. Brown was the secretary. I don't know
(8) whether those were prepared regarding this particular
(9) issue.
(10) Q Why were you directed to deposit the proceeds of those
(11) checks into your personal account as opposed to into the
(12) account of Hicks Broadcasting Corporation?
(13) A Because at that time the corporation owed me funds in
(14) excess of $300,000 for accrued bonuses, dating back from
(15) almost the beginning of the company.
(16) Q Now, you could have deposited these checks into the
(17) accounts of the company and then written you a check back
(18) for that bonus, correct?
(19) A Correct.
(20) Q But that was not done, correct?
(21) A Right.
(22) Q And the reason it was not done was because Bay Bank had
(23) put some limitations on how you could use the funds of
(24) Hicks Broadcasting --
(25) A That's correct.

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(1) Q (Continuing) -- true? And what were the nature of those
(2) limitations?
(3) A I am not real sure. I guess any excess dollars should go
(4) to Bay Bank.
(5) Q So that these funds, under the terms of your agreement
(6) with Bay Bank, could not be given to you directly?
(7) A That's correct.
(8) Q And Bay Bank was monitoring the accounts of Hicks
(9) Broadcasting, correct?
(10) A That's correct.
(11) Q And if you would have deposited this money into the
(12) accounts of Hicks Broadcasting, Bay Bank would have
(13) become aware of it?
(14) A Well, they did become aware of it.
(15) Q But they became aware of it after the fact, correct?
(16) A Yes. We told them, yes.
(17) Q After you had already deposited the money in your
(18) personal account?
(19) A That's correct.
(20) Q The reason you put it into your personal account as
(21) opposed to putting it into Hicks Broadcasting's account
(22) is because you did not want them to know at that time
(23) about these funds; is that a fair statement?
(24) A That's a fair statement.
(25) Q And why is it that later on you decided to tell Bay Bank

Page 77
(1) about this transaction?
(2) A I don't know that there was any reason other than that
(3) was what we were going to do. We had -- we had, you
(4) know, no reason not to.
(5) Q Now, at the end of 1991, do you recall the accountants
(6) from BDO Seidman raising a question about what had
(7) happened to that tax refund?
(8) A BDO Seidman was aware of this. I don't know when they
(9) raised the question. They were aware almost from the
(10) time that the directive came from the board.
(11) Q And who at BDO Seidman was aware of it?
(12) A Ed Barry.
(13) Q Anyone else?
(14) A Not to my knowledge.
(15) Q How was Ed Barry made aware of this transaction?
(16) A I think I notified him.
(17) Q What did Mr. Barry say when you notified him?
(18) A I don't -- I don't recall what he said. I think it was
(19) just in information conversation.
(20) Q Do you know a Kelly Presta?
(21) A Yes.
(22) Q Who is Kelly Presta?
(23) A She's an accountant at BDO Seidman.
(24) Q Did she have any role in connection with the books and
(25) records or accounting for Hicks Broadcasting?

Page 78
(1) A She did annual audits, along with Ed Barry.
(2) Q Do you recall Kelly Presta and/or Ed Barry doing an audit
(3) in 1991?
(4) A I don't recall what years they did the audits offhand.
(5) Q Do you recall them explaining to you that in the books
(6) the receivable that was owed to the corporation from the
(7) state of Michigan for this tax refund would have to be
(8) shown as paid?
(9) A No, I don't recall that conversation.
(10) Q Do you recall them telling you that in order to show it
(11) as paid they would have to apply it to some other
(12) account?
(13) A No, I don't recall that conversation.
(14) Q Do you recall anyone telling you that the books and
(15) records of Hicks Broadcasting would reflect this tax
(16) refund now as a loan owed by an officer to Hicks
(17) Broadcasting Corporation?
(18) A No one ever told me that, no.
(19) Q Did you learn about that at some point?
(20) A Yes.
(21) Q When did you learn about it?
(22) A Marilyn White, who is the business manager, evidently had
(23) talked to the accountants on how to record this. How she
(24) recorded it, I am not sure. Quite honestly, I forgot
(25) about it. Mr. Sackley, after his due diligence, found

Page 79
(1) the recording and asked about it. I was unaware at the
(2) time how that was recorded, so I did not know how to
(3) respond at the time.
(4) Q Mr. Sackley raised this before or after the merger?
(5) A It was after the merger.
(6) Q Now, do you know whether, in fact, the financial
(7) statements of Hicks Broadcasting still showed this as an
(8) accounts receivable owed by you to the corporation?
(9) A Well, the understanding was that we would credit that to
(10) the accrued bonus.
(11) Q Whose understanding?
(12) A My understanding, the board of directors' understanding.
(13) Q And that was back in 1991?
(14) A Ed Barry's understanding.
(15) Q That was back in 1991, at the time --
(16) A That's correct.
(17) Q (Continuing) -- the money was deposited, correct?
(18) A That's correct.
(19) Q As of 1993, is it fair to say that you did not discuss
(20) this particular transaction with any representative of
(21) the Airborne Group prior to the merger?
(22) A I think that would be fair to say.
(23) Q And do you recall that as part of the merger documents
(24) you represented that the accounts receivable that were
(25) being shown as assets of Hicks Broadcasting were, in

Page 80
(1) fact, valid and correct accounts receivables?
(2) MR. JONKER: I object to the form of the
(3) question. I think whatever the agreement says it says.
(4) And we may not agree completely on the significance. But
(5) subject to that, you can answer.
(6) A Yes.
(7) Q Do you know whether the accounts receivable showed an
(8) obligation from you to Hicks Broadcasting in the amount
(9) of these two checks?
(10) A No.
(11) Q You do not know?
(12) A I do not know.
(13) Q Would you agree with me that if, in fact, the financial
(14) statements of Hicks Broadcasting showed this as an
(15) account receivable owed by you to the corporation and if,
(16) in fact, you represented as part of the merger documents
(17) that those accounts receivable were valid and accurate,

(18) that you would, in fact, owe this money to the new mergec
(19) entity?
(20) A No.
(21) Q Why not?
(22) A Because there was another part to this agreement. Part
(23) of this agreement was that after the merger the two
(24) parties and their accountants would sit down and work out
(25) what we called loose ends. That was never done.

Page 81
(1) Q Are you saying that that agreement was contained in these
(2) merger documents?
(3) A I don't think so, no.
(4) Q You're saying this was a separate side agreement?
(5) A That was a side agreement.
(6) Q An oral agreement?
(7) A That's correct.
(8) Q Not in writing?
(9) A Not in writing. It seems like –
(10) Q With whom did you make this oral agreement that you would
(11) sit down and work out loose ends?
(12) A Mr. Sackley.
(13) Q Where were you when you made this oral agreement?
(14) A One conversation was in the office of BDO Seidman.
(15) Q Who was present?
(16) A At that time the gentleman, I think, was Mark Weishaar,
(17) who was the manager, or Ed Barry. I don't recall who was
(18) there.
(19) Q And what do you recall being said that, in your mind,
(20) constituted this agreement?
(21) A That there will be some things that we will want to pick
(22) up, and after the merger, because of the two different
(23) accountants, we would sit down and work these out.
(24) Q Anything else that was said as part of that conversation?
(25) A Well, I don't recall anything beyond that at that point.

Page 82
(1) Q Were there any other conversations you had with Mr.
(2) Sackley or anyone else from the Airborne Group that you
(3) rely upon or believe constituted an oral agreement to
(4) work these things out after the merger?
(5) A A couple of times I asked, inquired about when we were
(6) going to get the accountants together.
(7) Q When did you make those inquiries?
(8) A Shortly after the merger.
(9) Q To whom did you make the inquiries?
(10) A Mr. Sackley.
(11) Q And what did he respond?
(12) A I don't recall his answer.
(13) Q Do you remember that discussion about sitting down
(14) together and working things out to be made in the context
(15) of a discussion about consolidating the balance sheets of
(16) the two corporations?
(17) A I don't remember any specifics other than there would be
(18) some loose ends that would be wrapped up, would have to
(19) be wrapped up.
(20) Q And you interpreted that to mean that if the books showed
(21) that you owed $29,000 or so to the corporation, that that
(22) would be forgiven?
(23) A There was no question about – in my mind about being
(24) forgiven. That was a directive from my board to me.
(25) Q Okay.

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(1) A Yeah.
(2) Q But –
(3) A We knew – we knew it was a loose item in the books.
(4) Q You knew it was a loose item in the books, correct?
(5) A We knew it was a loose item in the books.
(6) Q But did Mr. Sackley have any reason to know prior to the
(7) merger that this tax refund that you had taken and
(8) deposited in your personal account was a loose end?
(9) A I don't know. He did his due diligence. The item was
(10) certainly in the books.
(11) Q Fair to say you never told him that this was, in fact,
(12) not a valid receivable?
(13) A No. I – specific times, I don't recall that I even
(14) thought about specific items. Those were kind of
(15) gentlemanly things to kind of do.
(16) Q But the agreement for the merger was not just a
(17) gentleman's agreement with a handshake, was it?

(18) A Regardless of the complexity of any business dealing,
(19) there is always loose ends. And I think if gentlemen get
(20) into a business relationship they ought to continue the
(21) gentlemanly response to clean up loose ends.
(22) Q And do you recall that the agreement of merger, the
(23) closing booklet from the agreement of merger, had
(24) something like 29 legal documents in it?
(25) A Well, I knew there were a lot of them, yes.

Page 84
(1) Q Would you expect that part of a gentleman's agreement
(2) would be to comply with the written word that you had
(3) committed yourself to?
(4) A To some extent. This was a very complex business deal.
(5) Q And just so I'm clear on my answer, you would agree that
(6) complying with the terms of the written agreement would
(7) be one of the things that you, as a gentleman, would
(8) expect to do; is that accurate?
(9) A If those terms were put together in good faith and
(10) written as the intent was written, yes.
(11) Q Did you act in good faith?
(12) A I acted in very good faith.
(13) Q I would like to direct your attention to the agreement of
(14) merger and plan of reorganization. As a part of this
(15) closing booklet, let me ask you, first of all, on Page 32
(16) of that document, under Hicks Broadcasting, is that your
(17) signature?
(18) A Yes.
(19) Q And I'd like to direct your attention to a Paragraph 4.5,
(20) entitled "Accounts Receivable." A portion of that
(21) paragraph is crossed out and initialed. The cross-out is
(22) initialed, correct?
(23) A Looks that way.
(24) Q Is that your initial as part of that cross-out?
(25) A Yes, it is.

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(1) Q And so you intended that that part of the paragraph would
(2) not be valid, correct?
(3) A It would appear that way.
(4) Q I assume, then - correct me if I'm wrong - you intended
(5) that the part of the paragraph that was not crossed out
(6) would be valid?
(7) A It would be the assumption.
(8) Q And looking at the beginning of this Article 4, you see
(9) that, except as set forth on disclosure schedule to be
(10) promptly prepared by Airborne and Hicks, Airborne
(11) represented and warranted to Hicks and Hicks represented
(12) and warranted to Airborne according to these paragraphs
(13) that followed, correct?
(14) A If that's what it says.
(15) Q And one of the things that you warranted were that Hicks
(16) Broadcasting's accounts receivable arising from its
(17) business as set forth in the year-end balance sheet or
(18) arising since that date thereof were valid and genuine?
(19) A Correct.
(20) Q Did you anywhere in a disclosure schedule set forth that,
(21) in fact, there was not a receivable owed from you to the
(22) corporation in the amount of 29,000 that arose from this
(23) tax refund?
(24) A Nowhere in those closing documents.
(25) Q And independent of the closing documents, you never

Page 86
(1) discussed the issue of this tax refund with Mr. Sackley
(2) or anyone else from the Airborne Group prior to the
(3) merger, correct?
(4) A The $32,000 was an issue that transpired pre-merger. I
(5) did not track how that was recorded. So I had no
(6) knowledge of making a response to that at time of
(7) closing.
(8) Q Just so I'm clear, then, are you saying you didn't
(9) discuss it?
(10) A That was not discussed. It was a loose end item.
(11) Q Did Norrin Cohen pay Phil Britten's rent for his
(12) apartment?
(13) A I wasn't aware of that, no.
(14) Q Did you learn about it at some point?
(15) A Mr. Sackley mentioned that in, "Oh, by the way."
(16) Q When did he mention that?
(17) A But – I think during the course of the airline ticket.

(18) Q Were you surprised to learn that?
(19) A Yes, I was.
(20) Q Was it troubling to you?
(21) A I was not aware of it. I had no knowledge that that
(22) happened. I had no evidence that that happened.
(23) Q Did you look for evidence that it happened after Mr.
(24) Sackley brought it to your attention?
(25) A Mr. Sackley and I were running the company, both, at that

Page 87
(1) time together. And if he was doing an investigation,
(2) then I'm assuming he's doing the investigation.
(3) Q Did you review the results of his investigation?
(4) A I never heard the final of the investigation, though.
(5) Q Well, Phil Britten was terminated from the employment of
(6) Hicks Broadcasting, was he not?
(7) A He was terminated.
(8) Q Did you participate in the exit interview with him at the
(9) time that he was notified of his termination?
(10) A Mr. Britten was terminated by both Mr. Sackley and
(11) myself.
(12) Q So you were physically present?
(13) A That's correct.
(14) MR. JONKER: Just to clarify, I think you
(15) indicated earlier Hicks Broadcasting was the terminating
(16) entity, and I think it was Crystal Radio Station.
(17) MR. LUBBEN: Fair statement.
(18) Q The Airborne Group merged on August 31st of 1993, as we
(19) discussed earlier, correct?
(20) A Correct.
(21) Q At the time of the merger the entity was renamed Crystal
(22) Radio Group; is that right?
(23) A Correct.
(24) Q And so it was actually Crystal Radio Group that was the
(25) employer of Mr. Britten at the time of termination?

Page 88
(1) A At the time of the termination.
(2) Q Do you remember in the termination with Phil Britten the
(3) issue of whether Norrin Cohen had paid his rent?
(4) A No, I don't recall that was discussed.
(5) Q Were you aware of Norrin Cohen providing bail money to
(6) Phil Britten to bail him out of jail?
(7) A Yes. And I think that was one of the reasons of the
(8) termination.
(9) Q When did you learn that Norrin Cohen had provided bail
(10) money to Phil Britten?
(11) A I don't know the date of the termination, but it was that
(12) week of the termination. Possibly two days before, as I
(13) recall.
(14) Q Did you concur that the termination of Phil Britten was
(15) appropriate?
(16) A Yes.
(17) Q Do you prepare your own individual income tax returns?
(18) A No, I don't.
(19) Q Who prepares them?
(20) A Mr. Ed Barry.
(21) Q How long has Ed Barry prepared your individual income tax
(22) returns?
(23) A Seven years.
(24) Q Was Mr. Barry preparing your individual income tax
(25) returns at the time that you received the inflatable

Page 89
(1) boat?
(2) A I don't recall.
(3) Q Was Mr. Barry preparing your individual income tax
(4) returns at the time that you received the large screen
(5) television?
(6) A Yes, he was.
(7) Q Did you disclose to Mr. Barry the fact that you had
(8) received the inflatable boat?
(9) A I don't recall.
(10) Q Did you disclose to anyone from BDO Seidman that you
(11) received the inflatable boat?
(12) A I don't recall.
(13) Q Did you disclose to anyone from BDO Seidman that you
(14) received the large screen television?
(15) A Possibly. I don't recall.
(16) Q You mentioned that you did disclose to Mr. Barry the fact
(17) that you had received the tax refund that's represented
(18) by Exhibits 22 and 23, correct?
(19) A That's correct.
(20) Q Was that reported as income on your individual income tax
(21) returns for 1991, to your knowledge?
(22) A To my knowledge, no.
(23) Q Why not?
(24) A Because we hadn't made the official determination at that
(25) point, how that was going to be credited.

Page 90
(1) Q Was it ever reported as income on your individual income
(2) tax returns?
(3) A I am – I am not certain at this point.
(4) Q You don't know?
(5) A I don't know. It's an issue with Mr. Barry. I have no
(6) idea.
(7) (Discussion held off the record between Mr.
(8) Lubben and Mr. Sackley.)
(9) Q To your knowledge, did Mr. Sackley have any arrangements
(10) whereby he was receiving goods or services from Norrin
(11) Cohen or anyone else in exchange for advertising trades?
(12) A I don't know.
(13) Q You're not aware of any?
(14) A No.
(15) Q How did you document the business expenses that you
(16) incurred on behalf of Hicks Broadcasting Corporation.
(17) Let me ask it differently. Did you document in any way
(18) the business expenses you incurred on behalf of Hicks
(19) Broadcasting?
(20) A I am not sure what you mean. Marilyn White would be the
(21) business manager. She would be taking care of that. She
(22) knew my – she knew my travel and business.
(23) Q Did you fill out any expense vouchers or forms?
(24) A No.
(25) Q At any time during –

Page 91
(1) A Yes. I think periodically. I don't recall.
(2) Q Where would those, if you had, in fact, filled out an
(3) expense reimbursement form, where would those documents
(4) be kept?
(5) A They would be kept at the radio station.
(6) Q Do you have any specific recollection of ever having
(7) completed an expense reimbursement form at any time from
(8) the time you formed Hicks Broadcasting up until the
(9) merger in August 31st of '93?
(10) A I don't recall.
(11) Q You have no specific recollection at this time?
(12) A No.
(13) Q Did you have any system in place whereby the employees of
(14) Hicks Broadcasting were responsible for submitting
(15) expense reimbursement forms?
(16) A Again, that would be from the department of the business
(17) manager, and I'm sure she did.
(18) Q You say you're sure that she did?
(19) A Well, I'm not sure she did. I assume she did.
(20) Q What was the nature of the system, if you know?
(21) A I think it was – I would assume it's turning in receipts
(22) and being reimbursed.
(23) Q Let me distinguish between what you assume and what you
(24) know.
(25) A That's what I assume and that's what I know.

Page 92
(1) Q Did you ever see any of these expense reimbursement
(2) forms?
(3) A Well, I have seen the receipts go in, yes.
(4) Q Were there other people besides yourself who did not fill
(5) out expense reimbursement forms?
(6) MR. JONKER: I object to the form of the
(7) question. I think he said he didn't remember filling
(8) them out; he said he didn't have any recollection of
(9) doing it.
(10) Q Is it fair to say that most of the time you did not fill
(11) out an expense reimbursement form?
(12) A I don't know if that's a fair statement or not.
(13) Q But you have no recollection of ever having done it?
(14) A Well, I filled out a lot of expense forms, but I don't
(15) know specifically for what particular company or
(16) whatever.
(17) Q Well, let me ask you this: Did you have an arrangement

(18) whereby other employees were required to fill out expense
(19) reimbursement forms but you were not?
(20) A Well, that would be an accounting practice, yes, that
(21) would come out of the business office.
(22) Q Were you exempted from that practice because you were the
(23) owner?
(24) A Yes.
(25) Q Were there other key people who were exempted from the

Page 93
(1) expense reimbursement program?
(2) A No.
(3) Q You were the only one?
(4) A Yes.
(5) Q During the time that you operated Hicks Broadcasting,
(6) from 1985 until the merger, did you incur expenses that
(7) were paid by a third party?
(8) A Yes.
(9) Q When did that happen?
(10) A When I was serving a five-year term at the National
(11) Association of Broadcasters.
(12) Q What were the expenses that you incurred that would be
(13) reimbursed by the third party?
(14) A Periodic travel.
(15) Q Who reimbursed those expenses?
(16) A The National Association of Broadcasters.
(17) Q How would you obtain that reimbursement?
(18) A If I filled out a reimbursement form.
(19) Q Did the money go to you personally?
(20) A Yes.
(21) Q Or did it come to Hicks Broadcasting Corporation?
(22) A It came to me personally.
(23) Q Did Norrin Cohen ever provide you with airline tickets
(24) personally?
(25) A Never. Never.

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(1) Q Did Hicks Broadcasting Corporation maintain any records
(2) of the transactions where you incurred expenses that were
(3) reimbursed by a third party?
(4) A No.
(5) Q Did Hicks Broadcasting Corporation pay the bills that you
(6) incurred on your personal credit card?
(7) A If they were business related, yes.
(8) Q Who made the determination as to whether or not a
(9) specific expense was business related?
(10) A I did.
(11) Q Did you occasionally use the credit card for non-business
(12) related expenses?
(13) A Yes.
(14) Q When you would get the statement from the credit card
(15) company, did you just submit it to the company, to the
(16) bookkeeper?
(17) A I would itemize the items and submit it, yes.
(18) Q And then she would pay the entire credit card balance?
(19) A No. I would pay the credit card balance and submit for
(20) reimbursement.
(21) Q So you personally would pay the balance and then you
(22) would turn it in for reimbursement?
(23) A I think that's the way it worked, yeah, unless it was --
(24) unless it was all business related. If it was all
(25) business related, sometimes maybe it was a direct check.

Page 95
(1) Q Normally?
(2) A I don't know normally. I mean --
(3) Q You don't recall?
(4) A I don't recall.
(5) Q Who would recall?
(6) A Well --
(7) Q Marilyn White?
(8) A If she had specific items, yes.
(9) Q You didn't have a company credit card, did you?
(10) A No.
(11) Q For business expenses?
(12) A (Shaking negatively.)
(13) Q Why didn't you have a company credit card?
(14) A I just didn't have one.
(15) Q Now, you indicated earlier that you did not submit
(16) expense reimbursement forms, correct?
(17) A I didn't say that I didn't totally.
(18) Q You can't recall ever having done it?
(19) A Well, periodically, I think I might have.
(20) Q But you have no specific recollection?
(21) A I have no specific recollection.
(22) Q What I'm wondering, then, is how you would let Marilyn
(23) White know what portions of your credit card expenses
(24) were personal and what portions were business related.
(25) A I would probably initial the ones that were, or indicate

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(1) in some manner the ones that were.
(2) Q And then what was supposed to happen with the ones that
(3) were personal? In other words, did the company pay them
(4) and then show that to you as income?
(5) A No, no, no.
(6) Q All right.
(7) A If there were personal on there, I paid for them.
(8) Q So would you write two checks from to the company, one
(9) from Hicks Broadcasting and one from you personally?
(10) A No.
(11) Q How did it work?
(12) A I probably paid the total bill and then was reimbursed.
(13) Q So there should be expense checks from Hicks Broadcasting
(14) payable to you in those cases?
(15) A Yes.
(16) Q And the documentation to support that would be the credit
(17) card statement itself?
(18) A I would assume that, yes.
(19) Q And you would expect that to be in the records of the
(20) company?
(21) A Yes.
(22) Q Do you have any specific recollection of this actually
(23) occurring this way or is this your assumption as to how
(24) it happened?
(25) A This is an assumption. But, again, I didn't do the daily

Page 97
(1) accounting, so --
(2) Q When did you first begin discussions about the
(3) possibility of a merger with the Airborne Group?
(4) A I recall we had a telephone conversation possibly in late
(5) '92. Our first actual meeting was sometime early in '93.
(6) Q Who initiated the telephone conversation?
(7) A I think Mr. Sackley.
(8) Q Where were you when you received the call?
(9) A In my office.
(10) Q Was anyone else party to that conversation besides you
(11) and Mr. Sackley?
(12) A No.
(13) Q How long did the conversation last?
(14) A The initial conversation?
(15) Q Right.
(16) A I think it was something we could discuss later and,
(17) "Yes, I would be interested in sitting down and
(18) talking." It was a very short conversation, if I recall.
(19) Q You sort of got ahead of me. I was going to ask the
(20) question. What do you remember being said in that
(21) conversation?
(22) A I was interested, that's it.
(23) Q When you said, "I would be interested in talking,"
(24) talking about what?
(25) A About how possibly our companies could take advantage of

Page 98
(1) some new pending legislation or legislation --
(2) legislation, some new rulings from the Federal
(3) Communications Commission, mergers.
(4) Q What were the new rulings, as you understood it?
(5) A The new rulings were that two companies could move
(6) together in a market. It was not done before. It was
(7) not possible to do.
(8) Q In other words, one company could own two radio stations
(9) in the same market?
(10) A Two radio stations with a --
(11) Q Incidentally, it's happened a couple times, you answer
(12) before I finish my question. I may have cut you off a
(13) couple of times. You need to try to wait until I'm done,
(14) and I will try to wait until you're done, because the
(15) court reporter can't do both the question and the answer
(16) at the same time.

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(17) A Certainly.
(18) Q Other than a brief discussion then about the possibility
(19) of taking advantage of this legislation or this change in
(20) the rules, that's all that you can recall being said at
(21) that time?
(22) A Yes.
(23) Q And you said that was followed up by a meeting?
(24) A Yes.
(25) Q And when did that meeting occur?

Page 99
(1) A Well, I'm not sure. It was shortly – I think it was
(2) early in '93.
(3) Q Where did it occur?
(4) A Ruby Tuesdays, if I recall.
(5) Q Restaurant –
(6) A Out at the Crossroads Mall.
(7) Q Who was present?
(8) A Mr. Sackley and myself.
(9) Q How long did it last?
(10) A Maybe an hour and a half.
(11) Q What was discussed in that meeting?
(12) A The pending or the new rulings. I think maybe the new
(13) rulings at that time. A little bit about our individual
(14) problems, our radio operations, just a general
(15) conversation. That's basically it, as I recall.
(16) Q How did it end?
(17) A That we would have another meeting.
(18) Q Did you have another meeting?
(19) A Yes.
(20) Q When?
(21) A Again, I don't know the sequence, but shortly thereafter.
(22) Q Who was present at the next meeting?
(23) A Mr. Sackley and myself.
(24) Q Where did it occur?
(25) A I am not sure about that one.

Page 100
(1) Q What do you remember being discussed at that meeting?
(2) A I think we just took our conversation a little bit
(3) further to see if it made sense to begin exploring the
(4) possibilities of doing this.
(5) Q And what did you conclude?
(6) A That we should explore the possibilities of doing this.
(7) Q Eventually did you have accountants involved?
(8) A Eventually we had accountants, yes.
(9) Q Who were your accountants?
(10) A We obtained the services of BDO Seidman.
(11) Q BDO Seidman had been the accountants for Hicks
(12) Broadcasting all along?
(13) A Correct.
(14) Q Did you also obtain counsel to assist you in this
(15) transaction?
(16) A Yes.
(17) Q Who were the counsel?
(18) A We obtained the firm of Miller Canfield.
(19) Q Did Mr. Sackley discuss with you who was functioning as
(20) his accountant?
(21) A Yes.
(22) Q What did he say?
(23) A He said a Mr. Cook had done some work in the past for Mr.
(24) Sackley, involving a lawsuit. And I informed him that I
(25) have used Rick Brown, or I did use Rick Brown

Page 101
(1) exclusively.
(2) Q My question wasn't clear, I think. When you talk about
(3) Mr. Cook, you're talking about an attorney, correct?
(4) A Correct.
(5) Q My question had been, did Mr. Sackley disclose to you who
(6) his accountants were?
(7) A Excuse me. I'm sorry.
(8) Q That's okay.
(9) A Yes, he did.
(10) Q Who did he say he was using as his accountants?
(11) A His accountants were Hungerford accounting firm in Grand
(12) Rapids.
(13) Q And did Mr. Sackley also disclose who he was using as his
(14) attorneys?
(15) A Yes.
(16) Q And what did he say?
(17) A And he said Mr. Cook at Miller Canfield – I'm not sure
(18) that that was disclosed, that that was his sole attorney,
(19) but he said he had used them in the past on a matter.
(20) Q Initially was there an agreement that the Airborne Group
(21) would be the corporate entity that would survive the
(22) merger and that Hicks Broadcasting would be merged into
(23) the Airborne Group?
(24) A That was the initial way we had started.
(25) Q And who suggested that that was the approach you ought to

Page 102
(1) use initially?
(2) A I don't recall. That was just the way we – it started.
(3) I don't recall how that came about.
(4) Q Was that changed at some point?
(5) A Yes, it was.
(6) Q How was it changed?
(7) A As we began to develop conversations with BDO Seidman, it
(8) was suggested by BDO Seidman that we might want to
(9) reverse the surviving corporation because of the S corp.
(10) status that Hicks Corporation was in and some tax
(11) advantages that would fall to me.
(12) Q Who at BDO Seidman suggested that you might want to
(13) reverse the transaction?
(14) A I don't know whether it was the group that was working
(15) with us, Ed Barry and Mark Weishaar.
(16) Q Who did you understand that BDO Seidman was
representing
(17) in the course of these merger discussions.
(18) MR. JONKER: Well, I object to the form of the
(19) question. I'm not quite sure what representation means
(20) in the context of an accounting firm.
(21) MR. LUBBEN: Let me rephrase.
(22) Q Did you have an understanding as to who BDO Seidman
was
(23) acting on behalf of in these merger discussions?
(24) A Yes.
(25) Q What was your understanding?

Page 103
(1) A That they were representing both parties.
(2) Q And how did you come to that understanding?
(3) A Because they were charged with developing a business plan
(4) to present to a financial institution.
(5) Q Who charged them with that responsibility?
(6) A Both Mr. Sackley and myself.
(7) Q Did you have an understanding as to who the law firm of
(8) Miller, Canfield, Paddock and Stone was representing in
(9) these merger discussions?
(10) A Yes.
(11) Q What was your understanding?
(12) A That they were representing both of us.
(13) Q How did you come to that understanding?
(14) A Because we had a – we sat down and discussed the matter
(15) of the merger.
(16) Q When did you sit down in discussions?
(17) A I guess at the early beginning of talks.
(18) Q Who did you sit down with?
(19) A Mr. Cook and Mr. Brown, Mr. Sackley and myself.
(20) Q Where did that meeting take place?
(21) A In the offices of Miller Canfield.
(22) Q What do you remember being said in that meeting?
(23) A Well, it was a series of meetings. It's hard to sort
(24) them out. But right up front it was indicated that Mr.
(25) Brown would represent me and Mr. Cook would represent Mr.

Page 104
(1) Sackley. And which was normal sequence because of past
(2) relationships.
(3) Q Let's come back to discussions with the accountants where
(4) they suggested flipping the transaction so that Hicks
(5) Broadcasting would be the surviving entity. Was this
(6) suggestion made at a meeting?
(7) A I recall it was made at a meeting.
(8) Q Who was present at the meeting?
(9) A Mr. Sackley and myself. I think Mr. Barry and Mr.
(10) Weishaar.
(11) Q Do you recall which of the accountants raised this
(12) suggestion?
(13) A I don't recall.
(14) Q What rationale or what explanation did the accountants

(15) give as to why Hicks Broadcasting should be the surviving
(16) entity?
(17) A What I stated earlier.
(18) Q Which was because Hicks Broadcasting was an S
(19) corporation --
(20) A And I'm the sole shareholder. There were certain tax
(21) advantages relating to me with continuance if it were
(22) merged this way rather than the other way.
(23) Q Did they explain the tax advantages to you that would
(24) exist if Hicks Broadcasting was the surviving entity?
(25) A I believe there was some discussion of that. I don't

Page 105
(1) recall how much.
(2) Q What do you remember that they said, if anything, if you
(3) can remember anything?
(4) A Well, that if it were -- if Hicks were merging into
(5) Airborne, then the loss carryovers would terminate. We
(6) built up some pretty good loss carryovers that relate
(7) only to me. And if we flipped the other way, then those
(8) would continue.
(9) Q What was the amount of the loss carryovers at the time of
(10) the negotiations?
(11) A I don't know.
(12) Q Do you know to this day the amount of the loss
(13) carryovers?
(14) A I don't know exactly, no.
(15) Q Have you had the benefit of those loss carryovers?
(16) A A very limited degree.
(17) Q Is the firm of BDO Seidman still your personal
(18) accountants?
(19) A Yes.
(20) Q Did they do your individual income taxes for 1994?
(21) A Yes.
(22) Q Who at BDO was your principal contact?
(23) A Ed Barry.
(24) Q Do you anticipate that they will be doing your 1995 tax
(25) returns?

Page 106
(1) A Yes.
(2) Q When was the last time you had contact with Ed Barry?
(3) A Probably in October of this year.
(4) Q What was the purpose of that contact?
(5) A Final filing of tax returns.
(6) Q Personal?
(7) A Personal.
(8) Q So October of 1995 you filed your tax returns for 1994?
(9) A Right.
(10) Q Were there any other tax returns that were being filed in
(11) October?
(12) A No.
(13) Q In other words, your tax returns were up-to-date up to
(14) 1994?
(15) A That's correct.
(16) Q At the meeting where the accountants suggested that Hicks
(17) Broadcasting should be the surviving entity, did they
(18) explain that the tax benefit of the loss carry-forwards
(19) would flow only to you?
(20) A You know, I believe that was part of the conversation.
(21) Q What did Mr. Sackley say, if you can recall?
(22) A I don't recall.
(23) Q Did Mr. Sackley indicate any reluctance to doing a merger
(24) where Hicks Broadcasting Corporation would be the
(25) surviving corporate entity?

Page 107
(1) A I don't recall. No. I don't think so, no.
(2) Q Have you told me everything you can recall being said in
(3) that meeting --
(4) A Yes.
(5) Q (Continuing) -- with the accountants regarding the loss
(6) carry-forwards?
(7) A Yes.
(8) Q Do you remember any other discussions after that at any
(9) time with Mr. Sackley or anyone else from the Airborne
(10) Group regarding this issue of loss carry-forwards?
(11) A No, I don't.
(12) Q Did you ever disclose to Mr. Sackley or anyone from the
(13) Airborne Group the amount of loss carryover that you were
(14) going to have available to you as a result of the
(15) transaction being structured with Hicks Broadcasting
(16) surviving?
(17) A I don't know that I did. I think that was discussed.
(18) Q Who do you think discussed it?
(19) A I think Mr. Barry.
(20) Q When?
(21) A During the course of these meetings. I'm not sure which
(22) one or where. At his office, but which one --
(23) Q Do you have a specific recollection of Mr. Barry
(24) discussing with Mr. Sackley or anyone else from the
(25) Airborne Group --

Page 108
(1) A No.
(2) Q (Continuing) -- the amount of the loss carryover?
(3) A No.
(4) Q In your discussions regarding the merger, how did you
(5) arrive at the agreement as to what portion of the new
(6) merged entity would be owned by you and what portion
(7) would be owned by the other shareholders?
(8) A That was a long series of discussions. I think our
(9) counsel helped us in that determination. Certainly there
(10) was credit given to the Airborne side for the Hicks
(11) debt. It wasn't a hard thing to figure out.
(12) Q Was there any credit given to the Airborne Group for the
(13) fact that they would not be sharing in the benefit of the
(14) tax loss carryovers?
(15) A N
(16) Q Was the issue discussed as to whether or not anyone from
(17) the Airborne Group ought to receive some benefit from
(18) this loss carry-forward?
(19) A No. But the knowledge was there prior to the percentage.
(20) Q How do you know the knowledge was there?
(21) A Because, to my recollection, that discussion in Ed
(22) Barry's office was prior to deciding the percentages that
(23) Hicks would enjoy versus what the Sackley family would
(24) enjoy. That was almost near the end of our discussions.
(25) Q Are you able to put a month on it?

Page 109
(1) A No.
(2) Q Did you keep any notes of this meeting?
(3) A Did I keep any personal notes?
(4) Q Correct.
(5) A Mr. Brown would have those notes.
(6) Q Was Brown present at the meeting?
(7) A Yes.
(8) Q Did BDO Seidman say that you could not - that is, you
(9) personally - could not agree to a merger of Hicks
(10) Broadcasting into Airborne because it would result in
(11) immediate tax liability to you?
(12) A I don't recall if that was a discussion. It possibly
(13) could have been, but I don't recall that subject. The
(14) only subject I recall was the loss carryover ratio.
(15) Q To your knowledge, would there have been a tax
(16) consequence to you --
(17) A I don't have any knowledge of that.
(18) Q Let me complete my question. To your knowledge, would
(19) there have been a tax consequence to you if Hicks
(20) Broadcasting was merged into the Airborne Group, apart
(21) from the fact that you would lose the loss carry-forward?
(22) A Yeah. That -- as I say, that didn't come out as an
(23) issue, to my recollection of that conversation.
(24) Q But, to this day, do you know if there would have been a
(25) tax consequence --

Page 110
(1) A I don't know. I don't know that.
(2) Q We're talking over each other again.
(3) A Sorry.
(4) MR. LUBBEN: That's okay.
(5) It's a little after 12:00. Do you want to take
(6) a lunch break now or do you want to go for a while? I
(7) can do either.
(8) MR. JONKER: Do you have any sense for how long
(9) you have left to go? I mean, if we go from now 'til 5:00
(10) or 6:00, can we finish it, if we don't take a full lunch?
(11) THE WITNESS: Well, I'm going to request, if I
(12) may, definitely 5:00 o'clock would be -- if that would be
(13) permissible.
(14) MR. LUBBEN: You want to break at 5:00. Yes,

(15) we're not going to get done whether we take a lunch break
(16) or not. That's my best guess.
(17) MR. JONKER: Well, then why don't we take a
(18) lunch break, at least for 45 minutes or so.
(19) MR. LUBBEN: Yes. It doesn't have to be very
(20) long. It's 10 after now. Do you want to be back at
(21) 1:00?
(22) MR. JONKER: Okay.
(23) (Recess taken between 12:10 and 1:05 p.m.)
(24) Q Mr. Hicks, as the negotiations progressed, you eventually
(25) arrived at an agreement, as I understand it, a

Page 111
(1) shareholders agreement, which was previously marked as
(2) Exhibit 1. Let me ask you, first of all, do you
(3) recognize Exhibit 1?
(4) A Well, I recognize it as a shareholders agreement.
(5) Q And the last page of that –
(6) MR. JONKER: I'm not sure. There is a whole
(7) series of Page 11's, for each shareholder, presumably,
(8) but –
(9) MR. LUBBEN: There is at least one of those
(10) signed by Mr. Hicks.
(11) MR. JONKER: There is the promissory note,
(12) pledge agreement.
(13) A What was your question?
(14) Q My question is this: Do you remember a discussion in the
(15) course of your negotiation over the shareholders
(16) agreement about the forced sale provision?
(17) A Yes.
(18) Q Was there more than one discussion about the forced sale
(19) provision?
(20) A Yes.
(21) Q How many discussions do you remember?
(22) A More than one.
(23) Q Are you able to put a specific number?
(24) A No.
(25) Q When was the first time that you recall discussing the

Page 112
(1) forced sale provision?
(2) A I really don't remember, though a lot of documents
(3) pertained to this merger. Specific documents, when, I
(4) have no recollection of times, whether it's early, middle
(5) or end.
(6) Q I take it, there was more than one draft of these
(7) documents?
(8) A That, I can't answer, either.
(9) Q Do you recall whether you had meetings with Rick Brown to
(10) discuss the terms of these documents independent of Mr.
(11) Sackley?
(12) A We had conversation regarding the forced sale agreement.
(13) I remember that one specifically.
(14) Q Rather than just focusing on the forced sale provision
(15) alone at this point, I'm trying to get an idea of how the
(16) negotiations worked. And specifically, when you talk
(17) about documents, would you and Mr. Sackley and Mr. Brown
(18) and Mr. Cook all sit down together or, as an alternative,
(19) would you meet separately and talk with Mr. Brown and Mr.
(20) Sackley –
(21) A Sometimes during the proceedings it would be separate,
(22) yes. Now, again, how many, I don't know.
(23) Q Was there anyone else representing the Airborne Group in
(24) the negotiations besides Mr. Sackley?
(25) A No. He was not negotiating.

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(1) Q What was he doing? When you say –
(2) A Excuse me. I thought you meant the legal side by Mr.
(3) Cook. Excuse me.
(4) Q You described earlier in the deposition a number of
(5) meetings that you had with Mr. Sackley as this idea of a
(6) merger came together.
(7) A Yes, there was. His wife was involved on a few
(8) occasions.
(9) Q And that was Jan Sackley; is that right?
(10) A I believe it.
(11) Q At what point in the negotiations did you begin looking
(12) at documents?
(13) (Mr. Sackley entered deposition suite.)
(14) A Oh, I think as the sections were gone, they were reviewed
(15) at that particular time. If there were documents drawn
(16) at that specific meeting, they were reviewed.
(17) Q When is the first time that you can recall the issue of
(18) the forced sale provision coming up?
(19) A About midway through.
(20) Q Can you put a month on that? If we know that the first
(21) conversation was near the end of '92, and I think you
(22) said the first meeting was in January of '93, and the
(23) merger was consummated August 31st of '93, does that help
(24) at all in putting a date on it?
(25) A Well, it would be June or July.

Page 114
(1) Q Where were you when this forced sale –
(2) A In the office of Miller Canfield.
(3) Q Who was present?
(4) A Mr. Sackley and Mr. Brown, Mr. Cook and myself.
(5) Q How did the issue of the forced sale provision come up?
(6) A I think Mr. Cook brought it up. Obviously, it was
(7) assumed, I guess, that Mr. Brown and Mr. Cook had
(8) discussed it. And they described it as a drop dead
(9) clause.
(10) Q Did they explain what they meant by that?
(11) A They explained what it meant.
(12) Q What did they say?
(13) A It was our mechanisms to get out of the merger
(14) individually if it did not work.
(15) Q Did they explain how it would work?
(16) A Yes.
(17) Q What did they say about that?
(18) A They said that after a certain date - and I think that
(19) date wasn't discussed at that particular time - but after
(20) a period of time, then if the merger was not working,
(21) that one – either Mr. Sackley or myself could present to
(22) one or the other that they wished to get out of this
(23) merger, and one would – one would be – for a price, and
(24) one would be either obligated to pay that price, or the
(25) person presenting it would buy it at that price.

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(1) Q Did Mr. Brown say that this type of a provision was
(2) rarely used?
(3) A They said they had done this on a number of occasions and
(4) they said it happened once that they recalled.
(5) Q Did they use, as you can recall, the phrase that this is
(6) rarely used?
(7) A I don't recall them using the phrase rarely. I recall
(8) them saying that they have used it on a number of
(9) occasions and they recalled that it was actually used at
(10) one of those occasions.
(11) Q Just to be clear, did you understand them to be saying
(12) that they had included it in a number of agreements?
(13) A Yes.
(14) Q But they could only recall one time when it actually had
(15) been used?
(16) A Right.
(17) Q Did Mr. Sackley say anything at this meeting in response
(18) to the presentation of the forced sale provision?
(19) A I don't recall.
(20) Q Did you say anything?
(21) A It appeared from that description that I favored that
(22) type of an agreement.
(23) Q But did you say anything?
(24) A And I think I expressed that.
(25) Q Do you recall the words that you used?

Page 116
(1) A No, I don't.
(2) Q But your recollection is that you were in favor of the
(3) concept of a forced sale agreement?
(4) A Oh, definitely.
(5) Q Do you remember anything else that was said about the
(6) forced sale provision in that meeting?
(7) A No.
(8) Q Do you recall another time or times where the forced sale
(9) provision was discussed?
(10) A Discussed at a luncheon with myself and Mr. Brown.
(11) Q When?
(12) A Again, after that particular occasion but in the
(13) negotiations.
(14) Q Anyone else present at that lunch besides you and Mr.

(15) Brown?
(16) A No.
(17) Q What was the context in which it came up?
(18) MR. JONKER: Before we get too far into this,
(19) this does raise the privilege issue I think we had in the
(20) other deposition, as well. If your intent is to go into
(21) the content of the conversation, I would like to talk to
(22) Dave first, and then, depending on that, we may assert or
(23) may not. If we don't assert, we may do it with the
(24) understanding that we do not waive the privilege, which
(25) was the understanding we came to during the deposition of

Page 117
(1) Mr. Brown.
(2) MR. LUBBEN: That's fine. It is my intent to
(3) go into that discussion. If you want to take a break and
(4) talk to him.
(5) MR. JONKER: Just for a minute. Thank you.
(6) (Recess taken.)
(7) MR. JONKER: We have had a chance to talk. And
(8) I'm willing to let Dave and Dave is willing to talk about
(9) this meeting as well as others he may have had with Rick
(10) Brown on this issue, as long as we can have the
(11) stipulation that we had with the Brown deposition, it's
(12) not a general waiver of the attorney-client privilege.
(13) MR. LUBBEN: I think that's agreeable for
(14) purposes of the deposition, with a caveat. I want to
(15) make clear that I think when it comes to trial you've got
(16) to take one position or the other. And I will certainly
(17) not take the position that your having testified about it
(18) waived it.
(19) MR. JONKER: Fine.
(20) MR. LUBBEN: But I think at trial you're either
(21) going to have to cite it entirely – well, we'll cross
(22) that bridge when we come to it, or file a motion.
(23) MR. JONKER: Okay.
(24) Q You indicated you were at a luncheon with Mr. Brown where
(25) this subject came up about the forced sale provision; is

Page 118
(1) that right?
(2) A That's correct.
(3) Q And where was that luncheon, by the way?
(4) A At the City Club.
(5) Q Is that the Park Club?
(6) A Park Club. Excuse me.
(7) Q And what was the purpose of the luncheon?
(8) A Just a review of proceedings of the negotiation.
(9) Q What do you remember being said about the forced sale
(10) provision at that lunch?
(11) A That – in the review of the proceedings, that this was
(12) the mechanism that both parties had, again, as I stated
(13) earlier, to get out of the merger under the guidelines
(14) that were established.
(15) Q Anything else you can remember Mr. Brown saying about the
(16) forced sale provision in that conversation?
(17) A Again, emphasizing that this is – this is your
(18) protection and your – the mechanism that we have in
(19) there to use.
(20) Q Was it important to you to include this forced sale
(21) provision?
(22) A Very much.
(23) Q Were you anticipating that you might want to get out of
(24) this partnership or this arrangement soon?
(25) A No.

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(1) Q Did you go into the transaction with the Airborne Group
(2) anticipating that you might want to get out in a short
(3) period of time?
(4) A No.
(5) Q Did you discuss this proposed merger with Hoyt Goodrich?
(6) A Yes.
(7) Q When?
(8) A At the beginning, at the beginning of discussions with
(9) Mr. Sackley.
(10) Q Did you discuss it with Mr. Goodrich on more than one
(11) occasion?
(12) A I kept Mr. Goodrich up-to-date.
(13) Q Did you discuss the forced sale provision with Mr.
(14) Goodrich?
(15) A Yes.
(16) Q On how many occasions?
(17) A I think Mr. Brown discussed it with him in great detail
(18) so he would totally understand.
(19) Q Were you present when Mr. Brown discussed it with Mr.
(20) Goodrich?
(21) A Yes.
(22) Q Was this in person or over the phone?
(23) A It was over the telephone.
(24) Q How long did the discussion take place?
(25) A Well, I don't know.

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(1) Q What do you remember Mr. Brown telling Mr. Goodrich about
(2) the forced sale?
(3) A Explaining not only the forced sale but where we were at
(4) this particular point. And the forced sale is exactly as
(5) I've indicated it, that that is our protection, that is
(6) –
(7) Q Did Mr. Brown suggest to Mr. Goodrich that after January
(8) 1st, 1995 you and Mr. Goodrich could buy out the other
(9) shareholders of Crystal Radio Group?
(10) A No.
(11) Q Did you discuss the forced sale provision with John
(12) Dille?
(13) A No.
(14) Q You mentioned earlier that Mr. Brown discussed this
(15) agreement with Mr. Goodrich at length; is that correct?
(16) A That's correct.
(17) Q Why was it so important that Mr. Goodrich be brought up
(18) to speed about what was going on and why was it discussed
(19) with him at length, if you know?
(20) A Mr. Goodrich was giving up his position in Hicks
(21) Broadcasting for no position in the new merged
(22) corporation.
(23) Q If I heard you correctly, you mentioned that the forced
(24) sale provision was discussed with Mr. Goodrich at
(25) length. Did I hear you correctly on that?

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(1) A You heard me correctly.
(2) Q Why was the forced sale provision discussed at length?
(3) A The forced sale provision was discussed at length, along
(4) with all of the other items up to that particular point.
(5) Q How much time was spent on the forced sale provision?
(6) A I don't know.
(7) Q More than 15 minutes?
(8) A I don't know.
(9) Q Do you recall whether Mr. Brown gave examples to Mr.
(10) Goodrich of how the forced sale provision could be used?
(11) A There is a possibility that one could buy out the other.
(12) Q Did you and Mr. Goodrich discuss whether you might want
(13) to use the forced sale provision at some point in time –
(14) A No.
(15) Q (Continuing) – as an opportunity to acquire the entire
(16) ownership of Crystal Radio Group?
(17) A No.
(18) Q Did you and Mr. Dille ever discuss whether you might use
(19) the forced sale provision as a method of acquiring
(20) complete ownership of Crystal Radio Group?
(21) A No.
(22) MR. JONKER: I object to the form of the
(23) question, just for the record, since he already said he
(24) didn't discussed the forced sale with Dille at all.
(25) Q Anything else you can remember being said about the

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(1) forced sale provision in the luncheon at the Park Club
(2) with Rick Brown?
(3) A No.
(4) Q Perhaps we've discussed it already, but what was the next
(5) time you can recall the forced sale provision being
(6) discussed after the luncheon at the Park Club?
(7) A I don't really recall. I'm sure then we were back to
(8) other documents, and it probably came up again during the
(9) course of those conversations.
(10) Q Well, you've mentioned it came up at least at one point
(11) in a conversation with Hoyt Goodrich, correct?
(12) A Correct.
(13) Q And Ed Sackley, I take it, was not present during that
(14) conversation?

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(15) A No, he was not, not at that particular one.
(16) Q Was John Cook present during that conversation?
(17) A No.
(18) Q Can you remember any other occasions in which the forced
(19) sale provision was discussed other than the three you've
(20) described already?
(21) A Not specifically, no.
(22) Q Generally?
(23) A Again, in the course of the deliberations on all of the
(24) documents.
(25) Q What do you mean by that? Sorry, I'm not following you.

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(1) A As all of these documents become a reality and they're
(2) all brought together, there is certainly some discussion
(3) on each of them as they came up, including the forced
(4) sale.
(5) Q Did you discuss Paragraph 17-F, having to do with
(6) amendments of the shareholders agreement?
(7) A I don't recall.
(8) Q Did you have an understanding that the shareholders
(9) agreement could be amended?
(10) A No.
(11) Q Was there a formal closing of the transaction --
(12) A Yes.
(13) Q (Continuing) -- of the merger between Hicks Broadcasting
(14) and the Airborne Group?
(15) A Yes.
(16) Q And did that occur at the offices of Miller Canfield?
(17) A Yes.
(18) Q And did you sign a number of documents as part of that
(19) closing?
(20) A A very large number of documents.
(21) Q I'm showing you a document that was part of the closing
(22) packet, entitled "First Amendment to the Shareholders
(23) Agreement."
(24) A Uh-huh.
(25) Q And specifically the second page. Is that your signature

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(1) on the line, "David L. Hicks"?
(2) A That is.
(3) Q Was it your understanding as part of the closing that the
(4) shareholders agreement was being amended?
(5) A No, it was not.
(6) Q I guess what I'm trying to understand, if you signed it,
(7) how was it that you did not realize a shareholders
(8) agreement was being amended?
(9) A As I said, there was a number of documents presented on
(10) the closing.
(11) Q Okay.
(12) A You certainly aren't going to read all of the documents.
(13) You're going to rely on the competence of people that
(14) have drawn the documents. You rely on the people that
(15) you're in business with, the honest approach to the
(16) merger and the intent. Nowhere did it dawn on me that
(17) somebody would try to slip something in.
(18) Q Did you believe that the amendment provision of the
(19) shareholder agreement was slipping something in?
(20) A It -- as time has gone by, there is a possibility.
(21) Q Do you recall discussions prior to the closing that it
(22) would be necessary to have an amendment provision that
(23) would not require the unanimous consent of the
(24) shareholders because there were some dissenters to the
(25) merger?

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(1) A I am not sure of your question.
(2) Q You have read the amendment language, I take it, since
(3) this litigation has been going on?
(4) A Yes.
(5) Q And you mentioned you had not read it, at least you
(6) didn't recall reading it, prior to the merger; is that
(7) accurate? Maybe you didn't say that. Let me ask the
(8) question differently.
(9) Do you recall reading the amendment language
(10) prior to the merger?
(11) A I recall reviewing all the documents with my counsel. I
(12) don't know that I read word for word every document.
(13) Q The document, Paragraph 17-F, says, "The agreement may
(14) not be altered or modified except by a writing signed by
(15) the corporation and the shareholders holding a majority
(16) of the issued and outstanding stock, and any such written
(17) amendment shall bind all of the shareholders in the same
(18) manner as if signed by all of the shareholders."
(19) Do you remember discussing that provision?
(20) A No.
(21) Q You indicated that you relied on your counsel to some
(22) extent in drafting these documents; is that right?
(23) A That's correct.
(24) Q And you relied on him to draft them in a way that was
(25) consistent with your expectation?

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(1) A That's correct.
(2) Q You understood that these were important legal documents?
(3) A That's correct.
(4) Q You understood that you were going to be bound by the
(5) terms of the legal documents?
(6) A That's correct.
(7) Q You were present during the deposition of Rick Brown,
(8) were you not?
(9) A Yes, I was.
(10) Q Is Rick Brown's interpretation of the amendment language
(11) and whether it applies to the forced sale provision
(12) consistent with your interpretation?
(13) MR. JONKER: Well, I object to the form of that
(14) question. I'm not sure what particular angle -- the
(15) interpretation you're talking about.
(16) MR. LUBBEN: Fair enough. Let me rephrase it.
(17) I'll withdraw it. Let me ask it differently.
(18) Q Do you believe that the amendment language in Paragraph
(19) 17-F applies to the forced sale provision?
(20) A No.
(21) Q Why not?
(22) A Because that was not the intent.
(23) Q Can you identify any language in the agreement itself,
(24) which is this Exhibit 1, which indicates that it was not
(25) the intent that the amendment language apply to the

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(1) forced sale provision?
(2) A Not in legal documents.
(3) Q Did you ever have any discussion with any representative
(4) of the Airborne Group prior to the merger about whether
(5) the amendment language would apply to the forced sale
(6) provision?
(7) A No. There was never any discussion that the forced sale
(8) amendment could be amended or --
(9) Q Do you recall Rick Brown indicated he thought that he may
(10) have discussed with you just prior to the closing the
(11) question of whether this amendment language applied to
(12) the forced sale provision?
(13) A I don't know that Rick Brown knew, if he said "may have."
(14) Q Do you remember that testimony?
(15) A No. I remember the testimony.
(16) Q You do remember the testimony?
(17) A The testimony, I remember.
(18) Q My question is, do you remember whether Rick Brown, at
(19) the last minute, just prior to the closing brought to
(20) your attention the issue of whether or not the amendment
(21) language could be used to change the forced sale
(22) provision?
(23) A He did not.
(24) Q You are sure?
(25) A I am sure.

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(1) Q What causes you to be sure?
(2) A Because of the intent and all of the assurances that we
(3) have -- had talked about prior to that.
(4) Q When you say "because of the intent," I want to make sure
(5) I understand what you're saying. There was no discussion
(6) specifically about whether the amendment language would
(7) apply to the forced sale provision; is that true?
(8) A There was no discussion, to my knowledge, anywhere in the
(9) conversation -- in the deliberations that an amendment
(10) could change the forced sale, the intent of the forced
(11) sale.
(12) Q It was never discussed whether it could or whether it
(13) could not?
(14) A It was never changed from the original intent. It was

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(15) never discussed or changed.
(16) Q See, what I'm having a problem with is, when you say "the
(17) original intent," it's always a question of whose intent.
(18) A Well, I'm having problems with – because you're playing
(19) with words.
(20) Q Well, if we have a dispute about intent, would you agree
(21) with me that the first place that we look to try to
(22) understand the agreement of the parties is to look to the
(23) written document itself?
(24) A That would probably be – yes.
(25) Q And that document says, under Paragraph 17-F, that "This

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(1) agreement contains the entire agreement with respect to
(2) the matters described herein and is a complete and
(3) exclusive statement of the terms thereof and supersedes
(4) all previous agreements with respect to such matters,"
(5) correct?
(6) A Craig, we've had much discussion on this. I do not agree
(7) with the forced sale section, that that was drafted with
(8) the intent of the two parties, the good faith intent.
(9) Q And this is what I'm trying to understand.
(10) A Right.
(11) Q Are you saying, then, that the language of the agreement
(12) does not correspond with what you had intended?
(13) A That's correct, of what both parties intended in good
(14) faith.
(15) Q What causes you to think that the other shareholders of
(16) Crystal Radio Group did not anticipate that the forced
(17) sale provision could be amended?
(18) A Repeat the question.
(19) Q What causes you to think that the other shareholders of
(20) Crystal Radio Group did not anticipate that the forced
(21) sale provision could be amended using the amendment
(22) language contained in Paragraph 17-F?
(23) A Why do you say they think contrary to what I think?
(24) Q My question is really focusing on: Do you have any
(25) reason to believe that they thought that the forced sale

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(1) provision could not be amended; in other words, they
(2) thought the same way you did?
(3) A I don't know.
(4) Q Okay.
(5) A I don't know –
(6) Q All right.
(7) A (Continuing) – what they thought.
(8) Q Would it surprise you to learn that they had a specific
(9) discussion with their counsel and an understanding that
(10) the forced sale provision could be amended?
(11) A Yes, it would.
(12) Q Do you have any reason to believe that they did not have
(13) such a conversation?
(14) A I was not aware of any conversation that they had.
(15) Q Do you believe that you were not properly counseled on
(16) the impact of that amendment language?
(17) MR. JONKER: Well, I object to the question.
(18) That assumes the language is going to govern as it is.
(19) Our position, as you know, all along has been that the
(20) whole point and intent of the sale provision is to
(21) operate in the case of a dispute to get the parties out;
(22) and that if, in fact, in the midst of the dispute it can
(23) be amended, you know, it's meaningless and violates
(24) reasonable expectations. So I think it may be premature
(25) to ask him, unless it's premised on the assumption that

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(1) the literal language is going to control contrary to what
(2) Dave has expressed is his belief on the intent. But with
(3) that caveat, he can answer if he wants to.
(4) Q Do you remember the question?
(5) A Again, I believe a mistake was made.
(6) Q By Rick Brown?
(7) A By Rick Brown.
(8) Q Have you told Rick Brown that?
(9) A And I have told Rick Brown that.
(10) Q And what has Rick Brown said to you?
(11) A He has not replied about that.
(12) Q And the mistake that you believe was made was?
(13) A The amendment to the forced sale clause.
(14) Q The failure to indicate that the forced sale clause could
(15) not be amended?
(16) A That's correct.
(17) Q Excuse me, the failure to indicate –
(18) (Discussion held off the record between Mr.
(19) Lubben and Mr. Sackley.)
(20) Q In other words, it was your expectation that Rick Brown
(21) would draft the agreement so that the forced sale
(22) provision could not be amended; is that a fair statement?
(23) A That was the intent of the negotiations in the
(24) conversation. And I expected him to come out as we had
(25) negotiated and talked about, yes.

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(1) Q And you believe he made a mistake because he did not make
(2) that point clear?
(3) A Well, it's quite apparent that he made a mistake.
(4) Q Have you brought any claims against Mr. Brown –
(5) A No.
(6) Q (Continuing) – or the Miller Canfield firm –
(7) A No.
(8) Q (Continuing) – based on what you believe to be their
(9) mistake?
(10) A No.
(11) Q Did you have any discussions with John Cook about whether
(12) the forced sale provision could be amended?
(13) A No.
(14) MR. JONKER: Are you talking about private
(15) discussions or discussions in a group?
(16) MR. LUBBEN: I guess either way.
(17) MR. JONKER: Does that change your answer?
(18) Q Does that change your answer in any way? Did you have
(19) any discussions of any type, either in a group or
(20) individually with John Cook, about whether the forced
(21) sale could be amended using Paragraph 17-F?
(22) A No. The amendment issue was not discussed, to my
(23) recollection.
(24) Q Did Hoyt Goodrich own any stock in Hicks Broadcasting
(25) prior to the merger?

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(1) A No.
(2) Q You mentioned earlier that you had borrowed $200,000 from
(3) Mr. Goodrich as part of the original financing when Hicks
(4) Broadcasting was formed in 1985, correct?
(5) A Correct.
(6) Q And you mentioned that his company, Bridge Capital, also
(7) loaned about $800,000 as part of that transaction; is
(8) that right?
(9) A That's right.
(10) Q When the merger occurred, what happened with respect to
(11) the 200,000 that was owed to Mr. Goodrich?
(12) A That was not owed to Mr. Goodrich at that time.
(13) Q When was it paid?
(14) A It was paid probably a year prior to that.
(15) Q By who?
(16) A On our refinancing. By myself.
(17) Q The refinancing with Bay Bank?
(18) A That's correct.
(19) Q What happened with respect to the $800,000?
(20) A The same.
(21) Q It also was not owed?
(22) A It was also paid.
(23) Q And it was paid using the proceeds from the refinancing
(24) of the Bay Bank loan?
(25) A Right.

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(1) Q So that at the time of the merger was any money owed by
(2) Hicks Broadcasting to Hoyt Goodrich?
(3) A No.
(4) Q Did you personally owe any money to Hoyt Goodrich?
(5) A No.
(6) Q Then why did Hoyt Goodrich have any interest in the
(7) merger?
(8) A Because Hoyt Goodrich also, in addition to the loan, had
(9) a 48 percent interest in Hicks Broadcasting, which
(10) evaporated at the time of merger.
(11) Q I'm confused by that. You were the hundred percent
(12) shareholder of Hicks Broadcasting?
(13) A He was not a shareholder. I was a hundred percent

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(14) that you could be terminated only for just cause?
(15) A No. It was not discussed.
(16) Q Your counsel made some reference to some bank loan
(17) documents. Do you know what those documents say?
(18) A Now, this is a Michigan National Bank document. There is
(19) a clause in there pertaining to management of this
(20) company.
(21) Q When did you first become aware of that clause?
(22) A I became aware of that clause, I guess, in reviewing the
(23) document with counsel.
(24) Q Was this after you had been removed --
(25) A No.

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(1) Q (Continuing) -- from your employment?
(2) A No. This was -- this was during the negotiations of the
(3) merger.
(4) MR. JONKER: Yes. Just as a point of
(5) reference, I think it already came up in testimony when
(6) he was talking about his lunch with Rick Brown, the need
(7) or lack of need for written employment contract.
(8) Q That conversation, again, was between your counsel and
(9) Rick Brown, it was not between anybody from the Airborne
(10) Group; is that correct?
(11) A No one was there at that time.
(12) MR. LUBBEN: Let's take a short break.
(13) (Recess taken.)
(14) Q Mr. Hicks, during the break I got a copy of the closing
(15) book from the loan with Michigan National Bank in
(16) connection with the merger. Can you identify for me -
(17) and I know there are 32 documents - but can you identify
(18) for me which documents you're relying upon in thinking
(19) that you could not be terminated at will?
(20) A Section D, "Maintain Business Existence and Operations."
(21) Q First of all, the document you're looking at is called
(22) the business loan agreement; is that correct?
(23) A That's correct.
(24) MR. LUBBEN: Why don't we just pull this apart
(25) and have that marked as Exhibit 24.

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(1) (Defendant's Deposition Exhibit 24 marked for
(2) identification.)
(3) Q Showing you the document that has been marked as Exhibit
(4) 24, is that the document that you're relying upon?
(5) A Yes.
(6) Q Are there any other documents that you're relying upon
(7) that cause you to think that you could be discharged only
(8) for just cause?
(9) A Well, again, my basis is -- not even begin to think about
(10) discharge, but in the original organizational meeting
(11) there was some areas specified as to how co-management
(12) would work. I think that was the original directors
(13) meeting, structure that was put together.
(14) Q Let me focus on the question. The question is, are there
(15) any other documents?
(16) A That certainly would be one.
(17) Q Incidentally, in your break did your counsel remind you
(18) of this document?
(19) A That's correct.
(20) Q Did he remind you of any other documents?
(21) A Really no other documents other than --
(22) Q Okay.
(23) A (Continuing) -- just the intent and the good faith
(24) discussions that we had in the merger. We weren't
(25) talking about termination.

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(1) Q You mentioned that there were no discussions about the
(2) circumstances under which employment could be terminated,
(3) correct?
(4) A That's correct.
(5) Q The only discussion about having a written employment
(6) contract was the one you had with Rick Brown, correct?
(7) A That was where this issue came up, yes.
(8) Q And you agreed with Rick Brown that you did not need an
(9) employment contract, correct?
(10) A Correct.
(11) Q And I asked you if you could identify any documents that
(12) led you to believe that you could be terminated only for
(13) just cause. And you made reference to Exhibit 24, the
(14) business loan agreement, correct?
(15) A Correct.
(16) Q Are there any other documents that you rely upon or that
(17) caused you to believe that you could not be terminated
(18) except for just cause only?
(19) A I mentioned the original structure that was put together
(20) at the first directors meeting.
(21) Q Anything else?
(22) A As far as documents go, no, I can't think of any
(23) additional documents.
(24) Q Let's look at Exhibit 24 first. I asked you what portion
(25) of this document caused you to think that you could be

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(1) terminated only for just cause, and you pointed to this
(2) Subsection D, "Maintain Business Existence and
(3) Operations"; is that correct?
(4) A That's correct.
(5) Q Can you point out to me what language in there you
(6) thought meant that you could be terminated only for just
(7) cause?
(8) A "The borrower shall not change its corporate partnership
(9) or other existence nor sell nor merger the business in
(10) whole or in part to any other person or change the
(11) executive management, other than a change occasioned by
(12) the death of either David Hicks or Edward Sackley,
(13) without prior written consent of the bank."
(14) Q Now, what is it about that language that caused you to
(15) think you could be only terminated for just cause?
(16) A Well, I don't know about the just cause or the at will.
(17) I'm talking about an employment agreement, period. I'm
(18) not --
(19) Q I don't mean to lean over you. I just need to see the
(20) document, too. Maybe I'm confusing you with my question.
(21) And if so, I want to make it very clear.
(22) A Well, the fact that I had obligated myself along with Mr.
(23) Sackley to one-half each of our bank debt, the only two
(24) shareholders of this corporation to do that, and with a
(25) clause in there that the Michigan National Bank

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(1) recognized our management abilities to work together as a
(2) team, to me, that was significant enough to realize that
(3) I would be a part of that team.
(4) Q Focusing on that Paragraph D, that does not talk about
(5) the circumstances in which your employment could be
(6) terminated, does it?
(7) A No.
(8) Q So it really doesn't say anything about whether it has to
(9) be just cause or whether it can be at will? It doesn't
(10) address it, does it?
(11) A It does not.
(12) MR. JONKER: I object to form. He has already
(13) explained that it's another thing.
(14) MR. LUBBEN: Did you get the answer before the
(15) objection?
(16) THE COURT REPORTER: Yes.
(17) Q Is there anything else in Exhibit 24 that caused you to
(18) think you could be terminated only for just cause?
(19) A I don't believe it.
(20) Q Pardon me?
(21) A I don't believe it, no.
(22) Q Now, I asked you if there were any other documents that
(23) caused you to think you could be terminated for just
(24) cause only, and you made reference to a business -- what
(25) did you call it? Why don't you tell me again. What did

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(1) you call it?
(2) A A business structure.
(3) Q Showing you the document that was previously marked as
(4) Deposition Exhibit 9, is that the document that you're
(5) talking about?
(6) A Designations of the September 28th board of directors
(7) meeting agenda.
(8) Q Listen carefully to my question, because we'll get more
(9) into the document in a minute. My first question: Is
(10) that the document you're talking about?
(11) A This was -- to my knowledge, was the document that set up
(12) the structure of operation.
(13) Q And earlier I asked you if there were other documents

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(14) that caused you to think you could be terminated only for
(15) just cause, and you made reference to an organizational
(16) structure. Is Exhibit 9 the document you're talking
(17) about?
(18) A I would say that this is what I was talking about.
(19) Q Can you point out to me what language in Exhibit 9 caused
(20) you to think that you could be terminated only for just
(21) cause?
(22) A My thought was not to be terminated for just cause or any
(23) other reason.
(24) Q Okay.
(25) A It was lining up a structure of operation.

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(1) Q Is there any language in Exhibit 9 –
(2) A There is no legal language in there using your terms, no.
(3) Q Well, more than legal language. Is there any language in
(4) Exhibit 9 that caused you to think that you could be
(5) terminated only for just cause?
(6) A There is no language in this document that indicated I
(7) could be terminated.
(8) Q Are you answering my question? Are you –
(9) A At the time the document was drafted we weren't talking
(10) about termination. We were talking about working
(11) together as a business structure.
(12) Q So is it fair to say that –
(13) A The intent is here that two partners came together to
(14) operate a business.
(15) Q Is it fair to say that there is nothing in Exhibit 9,
(16) there is no language in Exhibit 9 that caused you to
(17) think that you could be terminated only for just cause?
(18) A That's correct. That's correct.
(19) Q Are there any other documents that caused you to think
(20) that you could be terminated only for just cause?
(21) A Craig, I don't know of any right now.
(22) Q Can I see Exhibit 9?
(23) A (Witness complying.)
(24) (Discussion held off the record between Mr.
(25) Lubben and Mr. Sackley.)

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(1) Q Exhibit 9 is an agenda for the board meeting of September
(2) 28, 1993; is that correct?
(3) A It looks – what it's labeled.
(4) Q And that was prepared by Ed Sackley?
(5) A That's correct.
(6) Q And he reviewed that with you before the Board meeting,
(7) correct?
(8) A That's correct.
(9) Q And do you recall that you were unhappy with some of the
(10) language in the proposed agenda?
(11) A I do recall, but I can't recall what without taking time
(12) to read.
(13) Q And do you remember that, in fact, the language in the
(14) agenda was revised because of some of your concerns?
(15) A No, I don't remember that.
(16) Q But you do remember having a problem with it and talking
(17) about it with Mr. Sackley?
(18) A Well, there were a lot of areas that I was unhappy about
(19) and talked to him about. I don't know of a specific one
(20) at this point, or the point here.
(21) (Discussion held off the record between Mr.
(22) Lubben and Mr. Sackley.)
(23) Q You made reference earlier to the paragraph in Exhibit 9
(24) that talks about designation of chief executive officer
(25) and assignment of operational titles, correct?

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(1) A Correct.
(2) Q And it says, "From a philosophical standpoint, Dave and
(3) Ed are committed to sharing the responsibility for
(4) success of the venture and managing of that success,"
(5) correct?
(6) A That is correct.
(7) Q Is there any language in the paragraph that made you
(8) think you could be discharged for just cause only?
(9) A I didn't relate discharge to that paragraph.
(10) Q You would agree with me that there is nothing in that
(11) paragraph that discusses grounds for termination?
(12) A In general, if we didn't have the same philosophy to make
(13) the company work, then – I'm not reading any discharge
(14) in there, but I'm reading employment.
(15) Q But just so we're clear, you're not reading anything in
(16) there that says you can only be terminated for just
(17) cause?
(18) A No.
(19) Q Prior to the merger, had you met any of the other
(20) shareholders of Crystal Radio Group besides Ed and Jan
(21) Sackley?
(22) A Mr. Zaragoza.
(23) Q When did you meet Mr. Zaragoza?
(24) A Oh, I meet Mr. Zaragoza at various broadcast functions.
(25) Q Over the years?

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(1) A Over the years.
(2) Q How well did you know Mr. Zaragoza?
(3) A As acquaintance.
(4) Q Did you discuss the terms of this merger with Mr.
(5) Zaragoza at any point?
(6) A I recall maybe one or two telephone conversations, just
(7) general – maybe one telephone conversation, just general
(8) getting acquainted and saying hello. I guess that was
(9) about it.
(10) Q Did you ever discuss with Mr. Zaragoza whether the
(11) amendment language of the shareholders agreement could be
(12) used to amend the forced sale provision?
(13) A No.
(14) Q Did you ever discuss with Elise Zaragoza whether or not
(15) the amendment language could be used to amend the forced
(16) sale provision?
(17) A I was not aware that the amendment provision could be
(18) used on the force sale, so I had no reason to talk to
(19) anybody regarding that.
(20) Q And if Mr. and Mrs. Zaragoza read the document to allow
(21) for such an amendment, you never said anything to them to
(22) indicate you had a different understanding?
(23) A Well, no, I've never discussed that with Mr. Zaragoza.
(24) Q Is it fair to say you've also never discussed it with
(25) John Strandin?

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(1) A That's correct.
(2) Q And you have never discussed it with Richard Doering?
(3) A That's correct.
(4) Q And you have never discussed it with Ed Sackley's father,
(5) who is also known as Edward Sackley?
(6) A That's correct.
(7) Q When did you first have contact with John Dille about the
(8) possibility of acquiring some sort of an interest in WRBR
(9) FM in South Bend, Indiana?
(10) A Maybe spring of '93. I can't remember exactly.
(11) Q Who initiated the contact?
(12) A John Dille.
(13) Q You mentioned earlier you've known John Dille about eight
(14) years; is that correct?
(15) A About that, yeah.
(16) Q And you came to know Mr. Dille, I think you said, through
(17) broadcast association activities; is that right?
(18) A That's correct.
(19) Q How did Mr. Dille initiate the contact in the spring of
(20) '93 about WRBR?
(21) A Mr. Dille called and wanted to know if we could get
(22) together and have lunch.
(23) Q Did you agree?
(24) A And I agreed.
(25) Q Did you discuss over the phone what the topic would be at

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(1) the lunch?
(2) A No.
(3) Q Where did you meet for lunch?
(4) A At the Holiday Inn on 131.
(5) Q In Kalamazoo?
(6) A In Kalamazoo.
(7) Q Anyone else present at that lunch besides you and Mr.
(8) Dille?
(9) A No.
(10) Q What was discussed at that lunch?
(11) A Mr. Dille knew of – had become aware of a past interest
(12) I had in purchasing WRBR radio. And he indicated that he
(13) also was interested in purchasing WRBR radio and that,

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(14) due to circumstances, he was not a buyer of WRBR radio
(15) because of present FCC rules, and proposed a business
(16) relationship with myself and members of his family.
(17) Q You mentioned he became aware of a past interest you had
(18) in WRBR. When had you expressed an interest in acquiring
(19) WRBR in the past?
(20) A I was approached by a fellow by the name of Bob Ridder,
(21) who was representing John Booth, with a proposal to
(22) purchase WRBR radio, because of Mr. Booth's desire to
(23) dispose of that property along with some broadcast
(24) property in Saginaw because he was moving to a merger
(25) situation. And those two properties did not fit within

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(1) the merger category. I asked Mr. Ridder to send me a
(2) prospectus. I certainly would look it over.
(3) Q And did you?
(4) A And I did.
(5) Q When was that?
(6) A It was prior to – I could have my dates wrong here, but
(7) it was prior to that early summer, late spring of '93.
(8) Q You passed on the opportunity at that time?
(9) A I shared that with Mr. Sackley, the prospectus, asked Mr.
(10) Sackley what he thought. He took it for a couple of
(11) evenings, looked it over.
(12) Q And what happened then?
(13) A Wrote back that that wasn't anything of his interest,
(14) looked like a dog to him.
(15) Q I asked you as part of the Notice of Deposition to bring
(16) certain documents with you today. Have you brought any
(17) of those documents?
(18) A What documents?
(19) Q Well, one of the things I asked for was all documents
(20) which related to the allegation in Paragraph 15 of your
(21) answer that you informed Mr. Sackley and Crystal Radio
(22) Group board of directors of the South Bend opportunity.
(23) In your Interrogatory Answers you indicated that you had
(24) supplied a prospectus and that you didn't know if you
(25) still had it, but if you did, you would produce it. Do

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(1) you still have this prospectus that you believe you
(2) shared with Mr. Sackley?
(3) A There is a possibility that I have that.
(4) Q Have you looked for it?
(5) A I have looked through the limited papers that I have.
(6) Q Have you found it?
(7) A The other detail, probably are more detail, papers that I
(8) have are not with me. They are still at the Jennings
(9) Drive location. They have not been returned or any
(10) personal belongings.
(11) Q Why haven't you picked those up?
(12) A I was never informed that they were available to pick up.
(13) Q Are you aware that I wrote a letter to your counsel
(14) indicating that they were available for pickup or that we
(15) would have them delivered to you?
(16) A We have talked about it. And he says the same thing,
(17) "How come you haven't received them?" I have not
(18) received them.
(19) Q Are you saying, then, that you would like them shipped to
(20) you?
(21) A I certainly would like to have all of my personal
(22) belongings returned. It's been a year and a half. I
(23) think it's well overdue.
(24) Q Well, you understand that you have been offered a couple
(25) of opportunities to come get them?

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(1) A No, I have never been offered any opportunities to come
(2) and get them.
(3) Q Do you recall a situation where you indicated your son,
(4) Jeff, would come pick them up?
(5) A No, I never indicated that Jeff would come and pick them
(6) up.
(7) Q Are you aware of your son, Jeff, coming and taking a
(8) computer and picking it up and taking it?
(9) A Yes. That was – after much hassle, that was arranged
(10) between you and Mr. Jonker.
(11) Q Why didn't you –
(12) A But that wasn't a long time ago.
(13) Q Why didn't he take the rest of the stuff?
(14) A The rest of the stuff was not available at that time.
(15) Q Yes, it was.
(16) A Excuse me. It was not. We have asked for it. It was
(17) not returned. So if it was available, it would have been
(18) available then.
(19) Q We can address it later, I guess.
(20) A I guess.
(21) Q Sounds like we've had a misunderstanding.
(22) MR. JONKER: At the time of the computer we
(23) were still working with your partner, Jack, and I don't
(24) know if they were all available. But how far is Jennings
(25) Drive from here?

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(1) MR. LUBBEN: I have no idea. Maybe we can talk
(2) about it afterwards.
(3) MR. JONKER: Maybe we can stop by on the way
(4) out and you can pick it up.
(5) THE WITNESS: No. I think it should be
(6) delivered. That's what they –
(7) MR. JONKER: Let's go off the record a second.
(8) (Discussion held off the record.)
(9) Q Coming back to the prospectus, which really got us into
(10) this. Are you saying, at least in the documents
(11) currently available to you, you are not able to locate a
(12) copy of that prospectus?
(13) A That is correct.
(14) Q In any event, you believe you shared this prospectus with
(15) Mr. Sackley and he took it, you said, and looked at it
(16) for a few days. Did he respond in any way to it?
(17) A As I indicated, he responded back that that wasn't of
(18) interest to him because it looked like a real dog.
(19) Q Was this before the merger or after the merger?
(20) A I recall Mr. Sackley was in our building at some
(21) temporary quarters in a conference room at that point.
(22) Now, whether the merger had been completed or not, I
(23) don't – I don't think it had. I think it was earlier.
(24) I think it was earlier, because – because of John
(25) Dille's conversation. This was prior to that.

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(1) Q That was going to be my next question.
(2) A Yes.
(3) Q You believe you discussed it with Mr. Sackley and he
(4) indicated he thought it was a dog. That occurred before
(5) the contact you had with Mr. Dille and the lunch at the
(6) Holiday Inn; is that right?
(7) A It had to be, because that was offered to me, and there
(8) was no knowledge that John Dille had a joint operating
(9) agreement already in place with that company. I was
(10) unaware of that. There is a question of timing here.
(11) But it's somewhere in that category.
(12) Q Now, when John Dille approached you and you had this
(13) lunch, is it your recollection that also was before the
(14) merger?
(15) A Yes.
(16) Q And you indicated Mr. Dille told you that he was aware
(17) you were interested in WRBR and he was also interested in
(18) WRBR; is that right?
(19) A He was not interested in WRBR. He was interested in
(20) maintaining a – what they call a joint sales agreement.
(21) That was the first knowledge I had that he had that sort
(22) of an arrangement with that company.
(23) Q Did he explain to you that he was interested in
(24) purchasing WRBR but he was precluded from doing so
(25) because of FCC regulations?

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(1) A Yes.
(2) Q Did he explain to you what those regulations were?
(3) A Briefly explaining that he was – he has an overlap and a
(4) newspaper ownership problem.
(5) Q Did he refer to those as cross-ownership rules?
(6) A Possibly.
(7) Q What happened next in this conversation at the Holiday
(8) Inn?
(9) A Well, he – he laid a program on the table and – just in
(10) the form of notes. It wasn't a proposal.
(11) Q What was the program that he laid out, as you recall it?
(12) A Well, just a thought that if I were interested in
(13) becoming a business partner with his family, that this is