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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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SEP 15 2004

Federal Communications Commission  
Office of Secretary

In the Matter of )  
)  
Amendment of Section 73.606(b), )  
TV Table of Allotments, )  
TV Broadcast Stations and )  
Section 73.622(b), Table of Allotments, )  
Digital Television Broadcast Stations )  
(Campbellsville and Bardstown, Kentucky) )

MM Docket No. 01-148  
RM-10141

To: Marlene H. Dortch, Secretary  
Office of the Secretary

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**REPLY TO OPPOSITION TO APPLICATION FOR REVIEW**

Louisville Communications, LLC ("Louisville Communications"), the licensee of UHF television broadcast station WBKI-TV, NTCS Channel 34 and DTV Channel 19, both of Campbellsville, Kentucky, by its attorneys and pursuant to Section 1.115 of the Commission's rules, hereby replies to the Opposition of Independence Television Company ("Independence") to Louisville Communications' Application for Review.

**Introduction**

Independence is the licensee of television broadcast stations WDRB(TV), Louisville, Kentucky and WFTE(TV), Salem, Indiana. Independence and Louisville Communications are competitors in the Louisville television market ("Louisville DMA").

By its Application for Review, Louisville Communications is asking the full Commission to review and reverse the Media Bureau's July 9, 2004, Report and Order denying its Petition for Rule Making to (i) amend the NTSC and DTV Tables of Allotments by reallocating NTCS Channel 34 and paired DTV Channel 19 from Campbellsville, Kentucky to Bardstown,

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Kentucky; and (ii) modify the NTSC and DTV authorizations for WBKI-TV and WBKI-DT accordingly. Obviously motivated by undisclosed competitive concerns, Independence continues its opposition to these requests.

### **Discussion**

There should be no genuine dispute that the subject matter of the Application for Review is properly before the full Commission. The Application for Review raises the novel question whether a Class A television station should be considered a “local transmission service” for purposes of the Commission’s television channel allotment purposes. As the Video Division of the Media Bureau stated: “[T]he Commission has not established that Class A Television stations are local transmission services for purposes of the TV allotment priorities and we thus are not able to consider Class A Station W04BP to be a local service for these purposes.” *See Campbellsville and Bardstown, Kentucky*, Report and Order, DA 04-88, ¶ 7 (rel. July 9, 2004).

Admittedly there is a dispute between Independence and Louisville Communications on the issue of whether the full Commission should consider Class A Station W04BP to be a local transmission service for purposes of the FCC’s television allotment priorities. As demonstrated below, the full Commission should conclude (i) that Class A Station W04BP should be considered a “local transmission service” for purposes of the TV allotment priorities; (ii) that Bardstown is deserving of a first local transmission service; and (iii) that the reallocation of NTSC Channel 34/DTV Channel 19 from Campbellsville to Bardstown will not deprive Campbellsville of its only local transmission service. The following reasons support these conclusions:

1. W04BP provides the requisite coverage of Campbellsville, Kentucky, its community of license. Thus the station’s current power level is irrelevant.

2. W04BP is already carried on the Campbellsville cable system. If the Commission were to grant this Application for Review and NTSC Channel 34/DTV Channel 19 were reallocated to Bardstown, W04BP would be entitled to carriage on the cable system.

3. No relocations of the transmission facilities of WBKI-TV or of WBKI-DT are being proposed in this proceeding so the proposed reallocation will not result in the loss of reception service from those stations.

4. W04BP's main studio is and must be located closer to Campbellsville than that of a full-service television station, thereby making its studio more accessible to the residents of Campbellsville.

5. W04BP is required to maintain a public inspection file at its main studio.

6. A Class A television broadcast station like W04BP must broadcast a minimum of 18 hours per day. 47 C.F.R. § 73.6001(b)(1). The minimum hours of operation for a full-service television broadcast station is only 28 hours per calendar week. 47 C.F.R. § 73.1740(a)(2).

7. A Class A television broadcast station like W04BP must broadcast an average of at least three hours per week of locally produced programming each quarter. 47 C.F.R. § 73.6001(B)(2). Full-service television stations have no such requirement.

8. A Class A station must serve the public interest, convenience and necessity in order to be licensed and to retain its license. *See Establishment of a Class A Television Service*, 15 FCC Rcd 6355, ¶ 5 (2000) ("*Class A R&O*"), *recon. granted in part*, 16 FCC Rcd 8244 (2001) ("*Class A MO&O*") (noting that Class A licensees are subject to the same license renewal standards as full power television licensees). At least implicit in this requirement is that such stations serve the needs, interests and concerns of the residents of their communities of license by airing programming that is responsive to these needs, interests and concerns.

In addition to the above, the record in this proceeding clearly demonstrates that W04BP has served, and continues to serve, as a genuine local television broadcast service for the residents of Campbellsville and the surrounding service area.

Independence ignores all of these facts and attempts to liken W04BP to a Part 74 secondary service low power television or television translator station. Thus, Independence incorrectly claims that Class A stations “are not required to meet basic full-service station requirements, i.e., provide responsive programming or maintain a presence in the community, cover the community with an adequate strength signal, etc.” Independence Opposition at 4 (*citing Implementation of Section 307(j) of the Communications Act*, 13 FCC Rcd 15920, ¶ 115 n.109 (1998)). While Class A stations do not have a community coverage requirement due to the lower power at which they operate, as Part 73 “primary service” stations, they must meet “all Part 73 regulations except those that cannot apply for technical or other reasons.” *Class A R&O* at ¶ 23. As the Commission recognized in adopting rules for the Class A service, application of the full-power rules to Class A stations is consistent with their status as primary stations and with the language of the Community Broadcasters Protection Act of 1999 (the “CBPA”), “which provides that from and after the date of an application for a Class A license, LPTV stations must comply with the operating rules for full-power television stations to be eligible for Class A status.” *Id.*

Accordingly, the CBPA directs that Class A licensees be subject to the same license terms and renewal standards as full-power television licensees and that Class A licensees be accorded primary status as television broadcasters as long as they continue to meet the requirements set forth in the statute. Moreover, as Louisville Communications previously pointed out, Class A stations must comply with virtually all of the Commission’s Part 73

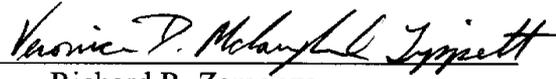
operational rules, including the rules governing informational and educational children's programming and the limits on commercialization during children's programming; the requirement to identify a children's programming liaison at the station and to provide information regarding the "core" educational and informational programming aired by the station to publishers of television program guides; the requirement to place in their file the quarterly forms 398; the political programming rules; the public inspection file rule, including the requirement to prepare and place in the public inspection file on a quarterly basis an issues/programs list; station identification requirements; and the Emergency Alert System rules. *Id.* at ¶ 24. Such stations also must maintain a main studio and comply with the same main studio staffing requirements as other full service stations. *Id.* at ¶ 25; *Class A MO&O* at ¶ 29. Thus, Independence's attempts to portray Class A stations as simply secondary LPTV stations is contrary to both Congress's intent in enacting the CBPA as well as to the Commission's rules.

**Conclusion**

Based on the foregoing, Louisville Communications respectfully requests the full Commission to review and reverse the Media Bureau's action and reallocate NTSC Channel 34 and DTV Channel 19 from Campbellsville, Kentucky to Bardstown, Kentucky, as that community's first local television transmission service.

Respectfully submitted,

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Dated: September 15, 2004

**CERTIFICATE OF SERVICE**

I, Renee Williams, do hereby certify that on this 15th day of September 2004, I mailed by first-class United States mail, postage prepaid, copies of the foregoing "REPLY TO OPPOSITION TO APPLICATION FOR REVIEW" to the following:

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