

Failing Station Waiver Request

Independence Television Company (“ITC”) seeks this waiver of the Commission’s local television ownership rule in association with its application seeking consent to the transfer of control of the license of WBKI(DT), Salem, Indiana (Fac. ID No. 34267).¹ The requested waiver would permit ITC to continue owning and operating WBKI and WDRB(DT), Louisville, Kentucky, preserving a station combination that has served the public interest for nearly two decades.

I. BACKGROUND

ITC currently owns two full-power television stations in the Louisville Designated Market Area (DMA #48).² ITC has owned WDRB since 1983. ITC has participated in the operation of WBKI since 1994, when it helped build and launch the station pursuant to time brokerage and construction agreements with WBKI’s previous owner.³ In 2001, ITC exercised an option to purchase WBKI pursuant to an unbuilt station waiver granted by the Commission.⁴ At that time, based on a substantial record, the Commission concluded that “the LMA/purchase arrangement resulted in the construction of [WBKI], which at the time was an authorized but as yet unbuilt station” and that the public interest inherent in launching the station justified waiver of the duopoly rule.⁵

For the past 18 years, ITC has operated WBKI as a sister station to commonly owned WDRB, using the station to deliver high-quality local, syndicated, and minor network-affiliated programming to viewers in Salem, Indiana and throughout the Lexington DMA. In 2001, ITC rechristened the station “Great 58” in reference to the station’s old analog over-the-air channel location and broadcast the station as a full-time affiliate of the UPN Network. In 2006, when UPN merged with the WB network, WBKI became an affiliate the then-fledgling MyNetwork TV. Following the sale of Louisville’s CW-affiliated station in the TV incentive auction in

¹ 47 C.F.R. § 73.3555(b). ITC is a wholly-owned subsidiary of Block Communications, Inc. (“BCI”), a 118-year old family-owned media and communications company. The application to which this request pertains is being filed to address changes in BCI’s internal corporate governance. Prior to 2006, WBKI broadcast under the call sign WFTE(TV), and between 2006 and 2018, the station used call sign WMYO(TV). WBKI adopted its current call sign in 2018. To avoid confusion, the station is referred to as WBKI throughout this exhibit.

² In addition to WBKI(DT), ITC owns WDRB(DT), Louisville, Kentucky. WDRB is affiliated with the FOX television network, which is ranked among the top four stations in the market. WBKI has not been ranked among the top four stations in the Louisville DMA during any period relevant to this application.

³ The station initially operated as an independent station under the slogan “Big 58.” The station secured an affiliation with the UPN network in 1995.

⁴ See *Kentuckiana Broadcasting, Inc. and Independence Television Company, Memorandum Opinion and Order*, 16 FCC Rcd 6974 (MB 2001).

⁵ See *id.* at para. 10.

2018, ITC acquired the CW affiliation for WBKI. Today, the station broadcasts four full-time, minor network-affiliated program streams – the CW, MyNetwork, Cozi TV, and Movies!.

From the station's inception, ITC has dedicated WBKI's air time to serving the needs and interests of local viewers in Salem, Indiana, and the Louisville DMA. Since 2008, WBKI has aired a minority-focused program called Urban Lifestylez weekly at 12 p.m. on Saturdays. The show was developed to fill a void in local minority-focused programming and provides information and entertainment that is of particular interest to African-American and other minority viewers. The show features both national & local stories covering topics including health and wellness, politics, finances, entertainment, and sports.

In addition, WBKI is a substantial co-distributor of sister station WDRB's local newscasts. WBKI airs these newscasts when WDRB's FOX-affiliated programming requires pre-emption of regularly scheduled programming. In 2019, such preemptions led to local news airing on WBKI on 103 separate occasions on 70 days throughout the year. The availability of WBKI's air time has ensured that Louisville residents are not forced to forego local news due to national network's scheduling priorities.

Over the years, WBKI also has carried a host of local and regional sporting events, including Big Ten basketball games, Notre Dame football games, and Indianapolis Colts pre-season football games. Today, WBKI continues that tradition by broadcasting live matches of the United Soccer League's Louisville City FC soccer club. In 2019, WBKI broadcast 34 LouCity FC games between March and October, with most games airing on the CW-affiliated program stream and a few airing on the station's My Network TV-affiliated multicast. WBKI also aired two USL playoff games following the 2019 season.

By all measures, common ownership operation of WDRB and WBKI has been a great benefit to television viewers in Louisville. Until ITC became involved with WBKI, the station could not be built. In the years since, ITC has built the station into an important part of the Louisville television market, using WBKI to deliver valued news, entertainment, and sports programming to television viewers in the Louisville DMA.

Nonetheless, as demonstrated below, ITC's continued ownership of WBKI remains necessary to ensure that the station continues to serve the viewing public. WBKI achieves limited ratings and revenue and generates negative cash flow on a stand-alone basis. There is simply no basis for concluding that an independent buyer not already operating in the Louisville market would be able to profitably acquire and operate WBKI. Accordingly, continuation of ITC's waiver to own and operate both WDRB and WBKI is warranted.

II. CONTINUING JOINT OWNERSHIP OF WDRB AND WBKI WILL SERVE THE PUBLIC INTEREST.

Under the Commission's precedents, upon filing of a long-form transfer of control application involving a station subject to an unbuilt station waiver, continuation of the waiver requires the applicant to demonstrate that the station qualifies as a "failing" station under the

FCC's duopoly rule.⁶ The Commission presumes a "failing" station waiver request to be in the public interest if (1) the "failing" station has a low all-day audience share (*i.e.*, no more than four percent); (2) the station has had negative cash flow for three consecutive years prior to the application; (3) the parties demonstrate public interest benefits resulting from joint ownership; and (4) there is no out-of-market buyer willing and able to acquire the station at other than an artificially depressed price.⁷ WBKI meets each of these criteria, and ITC's continued common ownership of WDRB and WBKI would plainly serve the public interest.

(1) ***WBKI Has a Low All-Day Audience Share***

WBKI consistently has failed to achieve an all-day audience share that even approaches four percent. As shown in Exhibit A, despite WBKI airing both CW and My Network TV programming on separate program streams, the combined audience rating for the station did not exceed three percent in any sweeps period during 2019. WBKI's failure to achieve a significant audience share in the Louisville DMA satisfies the first criterion of the failing station exception.

(2) ***WBKI's Operations Generate Negative Cash Flow***

Since ITC acquired WBKI in 2001, WDRB and WBKI have operated on a consolidated basis. WBKI takes advantage of substantial efficiencies of joint operation with WDRB, and the stations do not maintain separate financial records. For purposes of this waiver request, ITC has prepared a carve-out operating statement demonstrating that on a stand-alone basis, WBKI's stand-alone operations produced negative cash flow in each of the years 2017, 2018, and 2019.⁸

This situation likely would grow markedly worse if WBKI were sold to an independent third party. In that event, WBKI's financial condition would likely deteriorate significantly. This is because it would no longer have the benefit of the efficiencies that come with sharing facilities, employees, advertising sales, and other operations with WDRB. Establishing its own operations would be prohibitively expensive for WBKI – which is why the station couldn't be built in the first place without ITC's help. There is simply no scenario under which WBKI could be foreseen to operate at positive cash flow absent continued common ownership with WDRB or another in-market station.

For these reasons, ITC's showing satisfies the second prong of the Commission's failing station standard.

(3) ***Public Interest Benefits***

ITC is requesting that the Commission permit continued common operation of WDRB and WBKI, stations that have operated as a single unit for nearly 20 years. This request is

⁶ See Media General, Inc., *Memorandum Opinion and Order*, 29 FCC Rcd 14798, para. 23-24 (2014).

⁷ See 47 C.F.R. § 73.3555(b) and Note 7.

⁸ See Exhibit B, submitted separately with a request for confidentiality.

simply to permit continuation of an existing station combination – not the creation of a new duopoly or the elimination of an independent operator from the Louisville DMA.

As described above, joint operation has resulted in substantial public benefits to Louisville viewers and those benefits can be expected to continue.

First, as the Commission has recognized, absent ITC's assistance, WBKI likely never would have been built. The station never operated independently, and there is no reason to believe that it could do so while continuing to deliver the high-quality network, syndicated, and local programming WBKI delivers today. The cost of delivering even non-Big 4 networks like the CW and MyNet continues to increase, as does the acquisition of high quality syndicated fare. Such programming would likely be out of reach for an independently operated station.

Second, WBKI has been and will continue to be an important outlet for local programming essential to Louisville viewers. WBKI frequently airs local news during periods when network obligations preclude WDRB from doing so. On 103 occasions in 2019 alone, WBKI delivered local news broadcasts that viewers would not have received. Moreover, WBKI's continued airing of *Urban Lifestylez* provides valued programming to substantially underserved minority audiences in Louisville. Production of such local programming would be prohibitively expensive for a stand-alone station that lacked access to WDRB's production facilities. In addition, WBKI has consistently found opportunities to deliver local sports programming sought by Louisville viewers, as demonstrated by its delivery of 34 soccer matches involving Louisville FC in 2019.

ITC intends to maintain the strong public service that WBKI has always provided and continue offering viewers the high-quality local, minor network, and syndicated programming that Louisville DMA viewers have come to expect from the station.

(4) ***No Rational Out-of-Market Buyer***

Due to the challenges of operating WBKI as a stand-alone station, it is clear that no rational out-of-market buyer would purchase the station at all, let alone at a value that would adequately compensate ITC for its investment in the station over the past two decades.

The attached letter provided by W. Lawrence Patrick of Patrick Communications fully explains the challenges that an out-of-market purchaser of WBKI would face.⁹ Such a buyer would need to make substantial investments in facilities and staffing – investments that today are unnecessary due to joint operations with WDRB. The buyer would need to do so despite the fact that access to valuable programming is doubtful. Because ITC controls the CW and MyNet affiliations in the market, ITC would be more likely to shift those affiliations to WDRB than to allow a new owner to take them. Access to high-quality syndicated programming would also be unlikely given the limited earning potential of the station operating as an independent. Local news and public affairs programming also would be cost-prohibitive. Without in-demand programming, WBKI could not hope to generate enough advertising or other revenue to sustain

⁹ See Exhibit C.

operations at anything like the level WBKI produces today. For these reasons, Mr. Patrick concludes that “it is highly doubtful that a revenue level could be sustained that would provide for a full-service operation and generate profit sufficient to justify a new owner's investment. Only by continuing to operate along with WDRB can WBKI maintain economic viability and continuation of service to its community.”

Mr. Patrick is simply confirming what was true in 1994 when ITC helped build the station – the Louisville market will not support independent operation of WBKI. ITC has developed WBKI into a strong contributor to the programming mix in the market, but an independent out-of-market buyer could not maintain that progress. Absent grant of the requested waiver, Louisville viewers will experience a significant decline in the availability of quality over-the-air programming from WBKI. The fourth prong of the Commission’s failing station waiver test is therefore satisfied.

III. CONCLUSION

For the foregoing reasons, ITC requests that the Commission grant continuation of the waiver permitting common ownership of WDRB and WBKI.

[SUBMITTED SEPARATELY WITH REQUEST FOR CONFIDENTIALITY]

EXHIBIT

A

WBKI Audience Share

The following chart illustrates the total audience share of WBKI's CW and MyNet program streams for the 9 a.m. - 12 a.m. daypart, Monday through Sunday, for the major sweeps periods during calendar year 2019:

	Rating	Share
February 2019		
May 2019		
July 2019		
November 2019		

[SUBMITTED SEPARATELY WITH REQUEST FOR CONFIDENTIALITY]

WBKI/YMYO/WMYO - Channel 58
Operating Statement
For the Years Ended December 31, 2017 - 2019

**REDACTED - FOR
PUBLIC INSPECTION**

WBKI/YMYO 2019	WBKI/YMYO 2018	WMYO 2017
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Revenue:

Local, net

National, net

Political, net

Total Net Time Sales Revenue

Retransmission

Barter Programming Revenue

Internet Revenue

Other Broadcast Revenue

Total Net Broadcast Revenue

Cost of Revenue:

Engineering / Technical:

Salaries and Wages

Telephone

Equipment Maintenance & Repairs

Transmitter/Microwave Maintenance

Utilities

Other Technical/Engineering Expense

Total Engineering / Technical

Creative Services

Salaries and Wages

Advertising

Outside Talent/Special Events

Other Creative Services Expense

Total Creative Services

Production

Salaries and Wages

Auto Expense

Outside Talent & Production

Other Production Expense

Total Production

Programming/Traffic

Salaries and Wages

Program Licenses/Fees/Rent

Network Affiliation Fee

Other Program Expense

Total Programming/Traffic

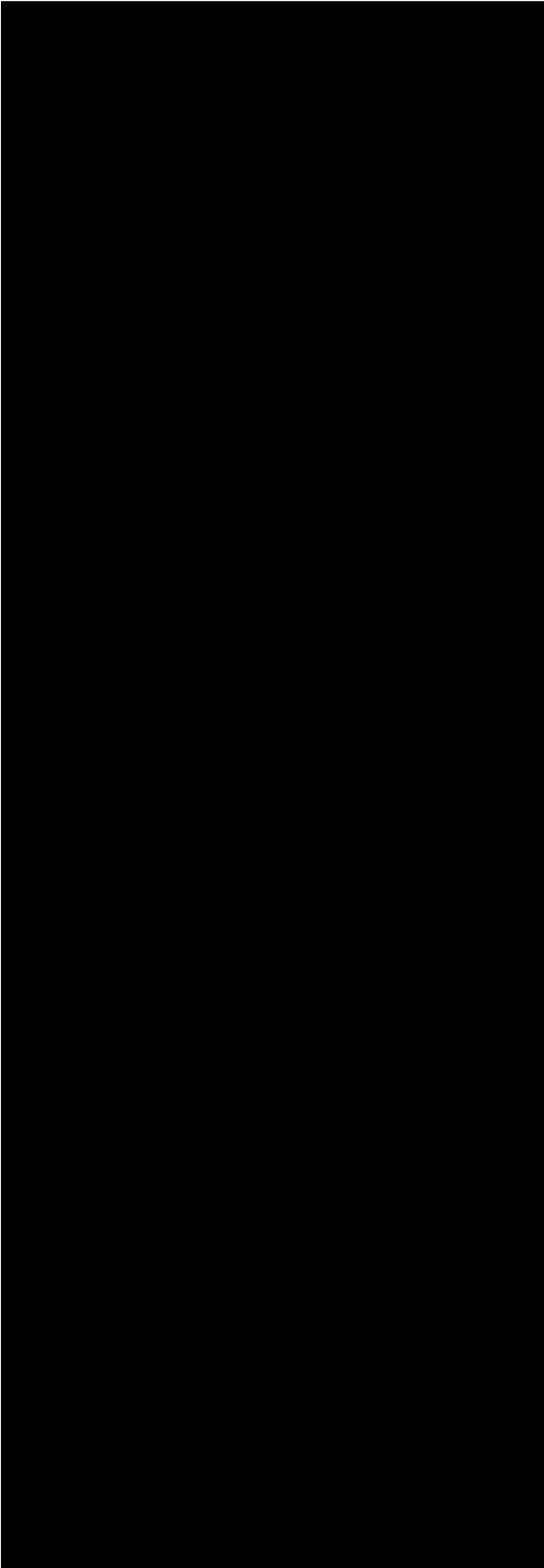
Sales/Digital

Salaries/Wages/Commissions

Dues & Subscriptions

Travel & Entertainment

Auto Expense



WBKI/YMYO/WMYO - Channel 58
Operating Statement
For the Years Ended December 31, 2017 - 2019

REDACTED - FOR
PUBLIC INSPECTION

	WBKI/YMYO 2019	WBKI/YMYO 2018	WMYO 2017
Sales Promotions			
Research			
Website Sales Projects			
Other Sales/Digital Expense			
Total Sales/Digital			
General & Administrative			
Salaries and Wages			
Payroll Taxes			
Employee Insurance			
401k Expense			
Insurance General			
Dues & Subscriptions			
Travel & Entertainment			
Auto Expense			
Telephone			
Freight/Shipping/Postage			
Building Maintenance			
Utilities			
Rent/Lease Buildings			
Professional Fees			
Taxes & Licenses			
Office Supplies			
Bank Charges			
Other G&A Expense			
Total General & Administrative			
Other Operating Expenses			
Depreciation			
Total Other Operating Expenses			
Total Operating Expenses			
Operating Income (Loss)			

WBKI/YMYO/WMYO - Channel 58
Operating Statement
For the Years Ended December 31, 2017 - 2019

**REDACTED - FOR
PUBLIC INSPECTION**

WBKI/YMYO 2019	WBKI/YMYO 2018	WMYO 2017
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Revenue:

Local, net

National, net

Political, net

Total Net Time Sales Revenue

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Barter Programming Revenue

Internet Revenue

Other Broadcast Revenue

Total Net Broadcast Revenue

Cost of Revenue:

Engineering / Technical:

Salaries and Wages

Telephone

Equipment Maintenance & Repairs

Transmitter/Microwave Maintenance

Utilities

Other Technical/Engineering Expense

Total Engineering / Technical

Creative Services

Salaries and Wages

Advertising

Outside Talent/Special Events

Other Creative Services Expense

Total Creative Services

Production

Salaries and Wages

Auto Expense

Outside Talent & Production

Other Production Expense

Total Production

Programming/Traffic

Salaries and Wages

Program Licenses/Fees/Rent

Network Affiliation Fee

Other Program Expense

Total Programming/Traffic

Sales/Digital

Salaries/Wages/Commissions

Dues & Subscriptions

Travel & Entertainment

Auto Expense



WBKI/YMYO/WMYO - Channel 58
Operating Statement
For the Years Ended December 31, 2017 - 2019

REDACTED - FOR
PUBLIC INSPECTION

	WBKI/YMYO 2019	WBKI/YMYO 2018	WMYO 2017
Sales Promotions			
Research			
Website Sales Projects			
Other Sales/Digital Expense			
Total Sales/Digital			
General & Administrative			
Salaries and Wages			
Payroll Taxes			
Employee Insurance			
401k Expense			
Insurance General			
Dues & Subscriptions			
Travel & Entertainment			
Auto Expense			
Telephone			
Freight/Shipping/Postage			
Building Maintenance			
Utilities			
Rent/Lease Buildings			
Professional Fees			
Taxes & Licenses			
Office Supplies			
Bank Charges			
Other G&A Expense			
Total General & Administrative			
Other Operating Expenses			
Depreciation			
Total Other Operating Expenses			
Total Operating Expenses			
Operating Income (Loss)			

Declaration of Clark Rhea

I, Clark Rhea, do hereby declare as follows:

1. I am Chief Financial Officer for Independence Television Company, a position I have held for 11 months. I was previously Director of Finance for Katayama American Company for 12 years and have been a CPA for over 30 years.

2. I am providing this Declaration with information on the financial situation for television station WBKI(DT), Salem, Indiana, ("WBKI"). I understand that this statement will be provided to the Federal Communications Commission ("FCC") in support of a request for waiver of Section 73.3555(b) of the Commission's Rules, 47 C.F.R. § 73.3555(b), in connection with the application for consent to transfer control of the license for WBKI.

3. Attached to this Declaration is a pro forma operating statement for WBKI for calendar years 2017, 2018, and 2019. Independence Television Company ("ITC"), licensee of WBKI, is a direct, wholly-owned subsidiary of Block Communications, Inc., and operates both WBKI and Louisville DMA television station WDRB(DT). Since it acquired WBKI, ITC has operated both WBKI and WDRB as components of a single entity. ITC has not historically operated WBKI as a stand-alone entity and, accordingly, ITC has not historically prepared separate financial statements for WBKI. The attached pro forma operating statement was prepared specifically for this application.

3. ITC acquired WBKI (then WFTE(TV)) in 2001. ITC has steadily invested in WBKI's programming, including addition of minor network programming and acquisition of non-network and local and regional sports offerings, as well as in WBKI's advertising/promotion in support of that programming. However, WBKI has been unable to garner significant audience share, and consequently, revenues have been chronically insufficient to cover the station's operating costs. Since WBKI added the CW affiliation in 2018, the station's revenues have increased significantly, but so have its costs. WBKI's financial condition considered on a stand-alone basis remains poor despite the economic efficiencies derived from shared infrastructure and lower personnel costs of a consolidated operations with WDRB.

4. The attached pro forma operating statement is a true and correct summary of WBKI's stand-alone financial performance for 2017, 2018, and 2019, based upon my personal knowledge and my information and belief. Executed this 21 day of February, 2020 at Independence Television Company, 624 W. Muhammad Ali Blvd., Louisville, KY 40203.

I declare under penalty of perjury that the foregoing is true and correct.

By Clark Rhea



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February 10, 2020

Ms. Michelle Carey
Chief-Media Bureau
Federal Communications Commission
445 12th Street S.W.
Room 3-C740
Washington, D.C. 20554

Re: WDRB, Louisville, KY and WBKI, Salem, IN

Dear Ms. Carey:

I have been asked to opine on the operation of WBKI, licensed to Salem, Indiana which operates along with WDRB, licensed to Louisville, KY. The stations operate in the Louisville, KY DMA. This letter addresses the feasibility of operating and marketing WBKI as a full-service standalone operation, versus the benefits of continued operation along with WDRB. WDRB operates as the FOX affiliate in the market, while WBKI is affiliated with both the CW and MyNet networks.

I am Managing Partner of Patrick Communications, a leading media brokerage firm in the industry with over \$8.0 billion in transactions. I have been involved in the broadcast industry for over forty years and my firm has sold 170 television stations in the past ten years, more than any other brokerage firm. In addition to Patrick Communications, I served from 2005 to 2008 as Chairman of the Board of ION Media Networks, the licensee of 60 television stations. I am also a past president of the National Association of Media Brokers and am the current chairman of the National Association of Broadcasters Educational Foundation, and past chairman of the National Association of Broadcasters PAC. I also own a minority interest in television stations in New York, Los Angeles, San Francisco, and Houston. In addition, I speak regularly to industry groups and have a long history of experience in both television operations and transactions.

I am familiar with the Louisville TV market and the various television station signals, competition and market conditions there, as well as the current television economic environment and station transactional market. I have also provided numerous opinions to the FCC on failing station waivers. I believe that I am qualified to opine on the viability and marketability of WBKI as a standalone television station.

There are six full power commercial television stations in the market as well as one low power station. Between the full and low power stations and their digital channels, all major television networks are represented including ABC, NBC, CBS, FOX, CW, MY, ME and ION as well as several religious stations and Independents. It is a very competitive market with total television advertising dollars estimated by BIA/Kelsey to be \$94.9 million in 2019. Ranked as the 48th DMA in the U.S., the DMA population is approximately 1.8 million persons spread over 29 counties.

With both CW and MYNet affiliations, WBKI currently has a revenue share in the market of 7.3 percent according to BIA, the lowest revenue share it has had in the 5 years and one of the lowest shares in the market. WBKI shares the facilities and staff of WDRB. If WBKI were to operate as a standalone station, a new owner would need to completely rebuild any staff and relocate the facilities, a daunting and extremely expensive endeavor.

In addition, WBKI operates now with both CW and MYNet affiliations, which is why it has the 7.3 revenue share (along with the ability to sell in combo with WDRB). However, Block controls both of these affiliations and would not have to deliver either to a new owner in a sale. Block could, and probably would, choose to move the CW and MYNet affiliations to other WDRB digital channels. There are no other viable primary networks that would be available to the station at that point. WBKI would have to compete with significantly less successful programming, likely as a pure independent station. WBKI's ability to compete for syndicated programming would also be substantially diminished. With much lower revenues than the most successful stations in the market, competitively bidding for any reasonably successful syndicated programming is unlikely.

It is also unrealistic to assume that WBKI would be able to sell enough advertising to be viable, attract employees, or be able to provide all the services to the community expected of a full service, standalone station. Even if a new owner decided to take on the prohibitive costs of re-establishing the station in a new facility, with a new staff, and with much less attractive programming, it is highly unlikely that the revenues generated going forward would be enough to sustain news and community-focused programming expected in a full service TV station. In my opinion, it is highly doubtful that a revenue level could be sustained that would provide for a full-service operation and generate profit sufficient to justify a new owner's investment. Only by continuing to operate along with WDRB can WBKI maintain economic viability and continuation of service to its community.

As a broker, I believe that the marketing of WBKI as a standalone station would be unsuccessful given the marginalized nature of the operation as a full-service TV station for all the reasons cited above. Local market conditions are already very competitive in the Louisville market. Finding buyers for what would be a very marginal operation would be difficult at best, and most likely unsuccessful.

As a broker, if I were asked to market the station as a standalone entity, I would be hard-pressed to identify any potential viable buyers. WBKI is not marketable as a standalone station. Given the low chance of success in finding any buyer I would decline to take the listing as I would have to invest in a widespread effort including personal and telephonic contact, direct mail, and possibly trade press advertising in order to try and find a qualified buyer. The cost of these efforts would be prohibitive and would take a significant investment of my time as well. It is my opinion that even after an exhaustive marketing effort, if a buyer could even be found, it would only be at a very depressed minimal price.

Therefore, based on my 25 years of media brokerage experience, it is my opinion that no knowledgeable and experienced television operator could be found that would provide a viable, full service operation with WBKI as a standalone station and that an effort to find a qualified buyer would either be fruitless or at a very depressed price.

Sincerely,



W. Lawrence Patrick
Managing Partner