

**Exhibit in Support of Continued Eligibility for Class A Status**

Indiana Broadcasting, LLC, licensee of Television Station WIIH-LD, Indianapolis, Indiana (Facility ID No. 167765)(“LIN”), submits this statement in support of its request for reinstatement of WIIH’s Class A status in the Commission’s databases. In the *LPTV DTV Second Report and Order*, FCC 11-110 (rel. July 15, 2011) ¶ 53, the Commission concluded that stations which had been granted a Class A designation for their analog facilities could transfer that designation to their digital companion channel facilities.

WIIH’s analog channel was designated as a Class A facility in 2001.<sup>1</sup> LIN applied for and constructed a digital companion channel for WIIH. The Commission granted a license for that facility in 2009. FCC File No. BLDVL-20090902ACB (granted Sept. 11, 2009). At that time, as the Commission has acknowledged, the Commission did not have a process by which an analog station’s Class A designation could be transferred to a digital companion facility.<sup>2</sup> The Commission in 2004 had decided that analog Class A stations “will retain Class A regulatory status on the channel they ultimately choose to retain for digital operations,”<sup>3</sup> but did not establish a way to transfer Class A status to new digital channels. The procedures adopted in the *LPTV DTV Second Report and Order* were intended to fulfill the Commission’s promises to Class A licensees of a way to keep their Class A status.

In the process of constructing WIIH’s digital facility, LIN realized that its original proposal to locate the digital antenna 162 meters above ground level would not work. LIN sought a modification of its construction permit to mount the digital antenna 144 meters above ground level, the same location as the station’s analog antenna, and the only viable location on the station’s tower.<sup>4</sup> As a result, the analog antenna had to be removed and the station began operations in digital mode only. LIN sought silent authority from the Commission for its analog operations as it waited for the Commission to establish a process to transfer the station’s Class A

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<sup>1</sup> FCC File No. BLTTH-2001207AEG (granted Jan. 29, 2001).

<sup>2</sup> *Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, Further Notice of Proposed Rulemaking and Memorandum Opinion and Order, 25 FCC Rcd 13833 ¶ 32 (2010).

<sup>3</sup> *Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, Report and Order, 19 FCC Rcd 19331, 19382 (2004).

<sup>4</sup> FCC File No. BMPDVL-20090825BTT (granted Aug. 28, 2009).

status to WIIH's digital channel.<sup>5</sup> After the analog facility was silent for a year, however, the Commission terminated the authorization for that facility pursuant to Section 312(g) of the Communications Act, 47 USC § 312(g).<sup>6</sup>

Although LIN intended to operate both WIIH's analog and digital companion channels, placement of dual facilities on the station's tower proved impossible. LIN, therefore, was unable to keep WIIH's analog facility in operation while taking steps to advance the transition to digital.

LIN has continued to operate WIIH-LD under the Commission's policies applicable to Class A stations. The Commission has consistently taken the position that licensees of Class A stations will be permitted to keep that status for their digital facilities, but delayed establishing specific procedures to allow Class A designations to be transferred. The Commission at no point conditioned licensees' right to retain their Class A status on their maintaining an analog signal until the Commission established such procedures. And since the licenses for analog and digital channels are unitary, there was no reason for LIN to expect that the termination of analog service would affect its ability to transfer that Class A service to WIIH's digital channel once the Commission adopted those procedures.

This application, therefore, fulfills the Commission's expectations that Class A status would be maintained following the digital transition. The Commission should therefore grant a Class A digital license for WIIH.

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<sup>5</sup> FCC File No. BLSTA-20100426ACS.

<sup>6</sup> Letter from Hossein Hashemzadeh to Indiana Broadcasting, LLC (Jan. 13, 2011). LIN submitted an *ex parte* letter in MB Docket 03-185, explaining these circumstances. Letter from Jack N. Goodman & Joshua N. Pila, MB Docket 03-185 (filed Jan. 25, 2011). The Commission acknowledged the filing of this letter in Appendix A of the *LPTV DTV Second Report and Order*, and did not indicate any disagreement with LIN's contentions. The procedures its adopted thus presumably were intended to permit stations which were unable to keep their analog facilities in operation, such as WIIH, to retain their Class A status for their digital companion channels.