

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington DC 20554

In re

TOM AND DIANA TAYLOR)	
)	
JENNINGS COUNTY PROMOTION PARTNERS, LLC)	File No. BAL-20180723AAB
)	File No. BALFT-20180723AAC
)	
AM Station WJCP)	Facility Identification Number 61196
FM Translator Station W249DG)	Facility Identification Number 141722
North Vernon, Indiana)	

To: Federal Communications Commission
Attn: Media Bureau, Audio Services Division

OPPOSITION TO SUPPLEMENTS TO PETITION TO DENY

Jennings County Promotion Partners, LLC (“JCPP”), by its attorneys, hereby files this Opposition to the two Supplements to Petition to Deny filed by New Beginnings Movement, Incorporated (“NBM”).¹ NBM fails to make any valid argument for the Commission to deny the above-referenced application for assignment of licenses of WJCP(AM) and W249DG from Tom and Diana Taylor (the “Taylors”) to JCPP. Instead, NBM (1) erroneously requests the Commission assert jurisdiction over a private contractual matter more appropriately handled by the local courts; (2) fails to satisfy their burden that an unauthorized transfer of control of WJCP and W249DG from the Taylors to JCPP has occurred; and (3) makes unsubstantiated allegations the Taylors and affiliated licensee companies of JCPP have committed numerous and egregious violations of the Commission’s rules warranting denying the assignment application. NBM’s filings are motivated entirely by their animosity towards JCPP combined with a desire to force the Taylors to sell WJCP and W249DG to NBM at a substantially discounted price. The

¹ NBM filed its two Supplements on September 24, 2018 and October 3, 2018. To the extent necessary, JCPP requests leave from the Commission to file this pleading. NBM did not limit its Supplements to responding to JCPP’s Opposition but instead submitted new allegations not previously included in NBM’s original Petition to Deny.

Commission should dismiss NBM's filings and grant the above-referenced assignment application. In support thereof, the following is respectfully submitted.

I. Facts

In its Supplements NBM cites unsubstantiated, alleged actions by JCPP, the Taylors and broadcast licensees that are not parties to the instant assignment application as evidence of an unauthorized transfer of control of the stations and violations of the Commission's rules as justification for denying the assignment application. In the interest of clarity and proper context, below is a summation of the parties to the assignment application and previous assignments relevant to the pending assignment application.²

NBM is the successor in interest to Indiana Community Radio Corporation ("ICRC"), the previous licensee of W249DG. On January 4, 2018, ICRC and NBM filed an application for assignment of various licenses, including W249DG, from ICRC to NBM.³ In its assignment application, ICRC and NBM represented the assignment was solely for utilizing NBM as the licensee of the stations and to phase out ICRC. Martin Hensley and Royce McPherson are board members of both companies and together previously held 66.6% of the voting control of ICRC and currently hold 50% of the voting control of NBM. Mr. Hensley was President of ICRC and is President of NBM. The mailing address for both companies in Greenfield, Indiana are identical. The Commission granted the assignment on March 7, 2018 and the parties closed on March 20.

Three days later on March 23, NBM and Taylors filed an application for assignment of

² JCPP incorporates by reference its "Opposition to Petition to Deny" filed in this proceeding on September 17, 2018.

³ Lead File No. BALED-20180104AAM.

license of W249DG from NBM to the Taylors.⁴ Prior to filing the assignment application the Taylors had paid \$11,500 of the \$35,000 purchase price to ICRC. At Mr. Hensley's request, the parties delayed filing the assignment application for W249DG until the corporate restructuring between ICRC and NBM was completed. The Commission granted the assignment application on June 26, 2018 and the parties closed on June 29 when the Taylors delivered to Mr. Hensley the remainder of the purchase price, payable to NBM, which Mr. Hensley accepted and immediately deposited. To this date NBM retains the proceeds. The FCC grant of the assignment application became a Final Order on August 8, 2018.

On July 23, 2018 the Taylors and JCPP filed the instant assignment application of WJCP and W249DG from the Taylors to JCPP. The Taylors have been the licensee of WJCP since December 9, 2014 until the present.⁵ No assignment or transfer of control of WJCP has occurred since then.

Keith Reising, the sole owner of JCPP, is the sole owner of Reising Radio Partners, Inc. ("Reising Radio") and one of three members of the governing board of Good Shepherd Radio Inc. ("Good Shepherd"). Reising Radio and Good Shepherd are two separate broadcast companies. Good Shepherd is a not-for-profit corporation organized under the laws of the State of Indiana to provide information, encouragement, companionship and entertainment through Christian educational programming. Good Shepherd is the licensee of five full power noncommercial radio stations⁶ serving the South Central and South Eastern Indiana and North Eastern Kentucky Christian community with a family-focused ministry, uplifting music,

⁴ File No. BALFT-20180328ABG.

⁵ File No. BAL-20140528AFB.

⁶ Good Shepherd is the licensee of noncommercial FM radio broadcast stations WYGS, Hope, Indiana (Facility Id. No. 90693), WAUZ, Greensburg, Indiana (Facility Id. No. 81833), WKRY, Versailles, Indiana (Facility Id. No. 91416), WHMO, Madison, Indiana (Facility Id. No. 172366) and WKJD, Columbus, Indiana (Facility Id. No. 86545).

fellowship with other Christians, and news of worthwhile local causes and events. Reising Radio is a for-profit corporation organized under the laws of the State of Indiana and is the licensee of three commercial FM radio broadcast stations.⁷ The Reising Radio stations broadcast commercial programming such as classic hits (WXCH), country (WYGB) and adult contemporary (WRZQ).

On September 4, 2018, NBM filed an untimely Petition to Deny the assignment application. NBM requested the Commission adjudicate a private contractual dispute, alleging the sale of W249DG to JCPP violates the terms of a contract between NBM and the Taylors. NBM claims (without any evidentiary showing) the sale of WJCP to JCPP violated the Commission's media ownership rules because Keith Reising is the sole owner of Reising Radio and a member of the Board of Directors of Good Shepherd.

JCPP filed its opposition, requesting the Commission dismiss NBM's Petition for numerous procedural deficiencies. JCPP argued the courts are the appropriate forum for considering NBM's contractual arguments and submitted a showing that the proposed sale of WJCP to JCPP complies with the Commission's media ownership rules.

NBM filed its first Supplement on September 24, 2018. One day earlier, Mr. Hensley sent Mr. Taylor a threatening email stating that Mr. Hensley has "additional information I have received and wanted to share with you. The feds will have this soon enough."⁸ Mr. Hensley then demanded \$20,000 for WJCP to "settle the contract dispute." In a demand letter sent to Mr. Taylor on September 25, NBM again offered \$20,000 for WJCP.⁹ \$20,000 represents a significant discount on the purchase price of \$115,000 that JCPP has offered to pay the Taylors

⁷ WXCH, Columbus, Indiana (Facility Id. No. 16255), WYGB, Edinburg, Indiana (Facility Id. No. 18668) and WRZQ, Greenburg, Indiana (Facility Id. No. 74123).

⁸ A copy of Mr. Hensley's email is attached as Exhibit 1.

⁹ A copy of Mr. Hensley's email is attached as Exhibit 2.

for WJCP and W249DG. NBM filed its second Supplement on October 3, 2018.

NBM is the licensee of FM translator station W275BD, Greenfield, Indiana (Facility Id. No. 143744) and Reising Radio is the licensee of WXCH. From November 2016 through July 2018 Reising Radio and NBM (and its predecessor ICRC) were involved in a bitter and protracted dispute before the Audio Division as to whether W275BD was causing interference to the regular over the air reception of listeners of WXCH. On May 30, 2018 and June 1, 2018, the Audio Division issued decisions ordering NBM to resolve the interference complaints within 30 days.¹⁰ NBM made no effort to address the complaints and instead took W275BD silent on July 2, 2018.¹¹

II. Legal Arguments

NBM's Supplements are not limited to matters raised in JCPP's Opposition. Instead, NBM alleges perceived contractual violations on the part of the Taylors in purchasing W249DG, unsubstantiated claims the proposed sale to JCPP violates the Commission's ownership rules, allegations that an unauthorized transfer of control of the two stations has taken place and numerous other alleged and unsubstantiated FCC violations by the parties. None of these arguments are supported by any evidence, are speculative and without merit.

A. The Commission Is Not the Proper Forum for Resolving Private Contractual Disputes

In considering whether to grant an assignment application, the Commission focuses on whether the proposed assignment complies with the Commission's rules, policies and procedures

¹⁰ See *Letter to Indiana Community Radio Corp.*, 1800B3-HOD (Chief, Aud. Div.) (rel. May 30, 2018) ("*ICRC Letter*") and *Letter to Martin Hensley*, 1800B3-HOD (Chief, Aud. Div.) (rel. June 1, 2018) ("*Hensley Letter*").

¹¹ File No. BLSTA-20180702ABE.

and not arguments outside its area expertise such as private contractual disputes. The Commission defers to the local courts as the arbiter of contractual disputes, recognizing the courts possess both the expertise and experience to resolve contractual disputes involving questions of disagreements between private parties. The Commission does not hold processing of an assignment application in abeyance until there is action by the courts.

Assuming *arguendo* the Commission were to consider NBM's contractual arguments, they are without merit. First and foremost, the Taylors paid in full the purchase price of \$35,000 for W249DG. The Taylors paid \$11,500 to ICRC and the remainder of the purchase price to NBM. NBM's argument that it was not paid in full because the \$11,500 was paid to ICRC is contradicted by NBM's representation to the Commission that NBM is the successor to IRCR as part of a corporate restructuring, that Mr. Hensley requested the parties delay filing the assignment application for W249DG to the Taylors until the corporate restructuring of ICRC was completed, and Mr. Hensley's actions constitutes acknowledgement of receipt of the purchase price on behalf of ICR and NBM.¹²

Second, any rights NBM had with respect to the sale of W249DG to the Taylors were extinguished on June 29, 2018 when NBM closed on the sale of the station to the Taylors and NBM filed the Notice of Consummation of Assignment of License.¹³ It is axiomatic that broadcast licensees do not have either a security or reversionary interest in a broadcast license. Whatever rights NBM may have held with regard to the FCC license for W249DG expired when the parties closed on the sale of the station to the Taylors.

¹² NBM's argument that JCPP paying a portion of the purchase price to NBM somehow constitutes a contract breach by the Taylors is contradicted by the facts. The Taylors delivered the check to Mr. Hensley, which he accepted and NBM subsequently cashed. Mr. Hensley signed and filed the Consummation Notice on behalf of NBM. These actions support the conclusion ICRC and NBM were paid in full for W249DG.

¹³ File No. BALFT-20180328ABG.

B. The Sale of WJCP and W249DG Complies with the Commission's Ownership Rules

NBM is incorrect that sale of WJCP to JCPP violates the Commission's multiple ownership rules because Keith Reising holds attributable interests in Reising Radio and Good Shepherd. Reising Radio and Good Shepherd are two separate broadcast companies. JCPP disclosed Mr. Reising's attributable interests in Good Shepherd and Reising Radio when JCPP filed the assignment application.

Section 73.3555(f) exempts noncommercial radio stations when determining compliance with the Commission's local broadcast ownership caps for commercial radio stations. JCPP subsequently amended its assignment application to submit an engineering showing that the sale of WJCP to JCPP complies with the Commission's multiple ownership rules. NBM's Supplement does not rebut this showing.

The Taylors retain control over WJCP and W249DG. JCPP programs WJCP pursuant to a Local Marketing Agreement with the Taylors dated July 20, 2018 submitted with the assignment application. Mr. Taylor approved all programming changes for WJCP.¹⁴ JCPP broadcasts programming at the direction of the Taylors, such as when Mr. Taylor served as the master of ceremonies for a recent political forum broadcast live from the Park Theatre for the November elections. The parties have worked together to improve service to the public, including adding local newscasts on the station throughout the day and meeting with representatives of the community to better ascertain the needs of the community.¹⁵

¹⁴ One program previously broadcast on WCJP on Sunday Mornings entitled "Southern Gospel Music" now airs on WYGS. Both the Taylors and the program's hosts agreed to the program moving to WYGS. The change in programming does not violate any agreement between the Taylors and NBM for two reasons. First, the change involves programming broadcast on WJCP licensed to the Taylors. Second the programming change took place after the Taylors closed on the sale of W249DG with NBM.

¹⁵ Mr. Reising has met with representatives of the North Vernon Rotary Club, North Vernon Kiwanis Club, North Vernon Mayor, former sheriffs, the Executive Director of the Jennings County Foundation and a board

JCPP consulted with and received Mr. Taylor's approval prior to making any changes in the physical plant for WJCP. Mr. Taylor supported JCPP relocating the WJCP studios to downtown North Vernon in a building leased by JCPP. Mr. Taylor comes to work on a daily basis, dividing his time between the former WJCP studio and the new offices downtown. The Taylors still have one additional part-time employee in addition to themselves. Mr. Taylor has reviewed and approved any filings JCPP has made with the FCC, including the pleadings JCPP has filed in this proceeding.¹⁶

C. The Commission Must Dismiss NBM's Allegations of FCC Violations

NBM makes several unsubstantiated claims of alleged FCC violations by the parties and their affiliates to the assignment application, such as several alleged unauthorized transfers of control of WJCP and W249DG prior to the pending assignment, that the Taylors have already assigned WJCP and W249DG to JCPP prior to receiving FCC approval, that Good Shepherd radio broadcasts impermissible underwriting announcements on its noncommercial radio stations, that WKJD did not construct its facilities in a timely manner, and that a different board member than Mr. Reising signed an application for a community of license change for WYGS.

NBM bears the burden for showing each and every allegation that the Taylors, Good Shepherd, Reising Radio or JCPP violated the Commission's rules, policies or procedures. NBM does not meet that burden by making wild and unsubstantiated claims without any documentary evidence to support those claims. For example, NBM does not provide any dates for when the alleged violations occurred or examples in the case of the alleged enhanced underwriting

member of the Economic Development Corp. Based on these meetings, JCPP has already added Public Service Announcements addressing drug addiction, obesity and pet adoptions.

¹⁶ NBM relies upon but does not produce articles from the local newspaper as evidence of the Taylors prematurely transferring control of the WJCP and W249DG to JCPP prior to Commission approval. Newspaper articles are a secondary source of information and not a substitute for the direct knowledge of the Taylors and JCPP.

announcements. NBM claims unauthorized transfers of control of WJCP has occurred since the Taylors consummated the assignment in 2014, but fails to provide any evidence in support of its claim. Accordingly, the Commission must reject NBM's arguments and give them no consideration when deciding to grant the pending assignment application.

III. NMB's Filings Are Not in Good Faith

NBM did not file its Opposition and Supplements in the public interest but out of a desire to even scores and for their pecuniary self-interest. Mr. Hensley, IRCR and NBM bear a personal animosity against Mr. Reising arising out of their dispute about W275BD. The cessation of operations by W275BD while it finds a way to operate without causing interference to WXCH undoubtedly resulted in a loss of coverage and revenue for NBM. It is not coincidence therefore that NBM would oppose the sale of W249DG to JCPP mere months after shutting down operations of W275BD.

NBM's motivations in opposing the sale of WJCP and W249DG is pecuniary in nature as well. NBM has requested the FCC unwind the sale of W249DG to the Taylors and return the license to NBM for free while pocketing the purchase price. NBM ignore factors arguing against such an outcome, such as approval of the sale of W249DG is a final order, the parties closed on the sale and filed the consummation notice with the FCC, the FCC does not allow reversionary interests in broadcast licenses and that the Taylors paid ICRC and NBM the full purchase price.

The most egregious action however is NBM's threatening email followed by a demand letter that if the Taylors refuse to sell WJCP to NBM for \$20,000, NBM will file with the feds to force such an action. The Commission should not reward such behavior.

Conclusion

NBM's contractual arguments are a private contractual matter more appropriately considered by the local courts and in any event have no merit. The proposed assignment will not result in undue media concentration because the Commission does take into consideration noncommercial radio stations in determining compliance with the Commission's media ownership rules. The sale of WJCP complies with the Commission's media ownership rules even when the Reising Radio stations are taken into consideration. No unauthorized transfer of control of WJCP has taken place; JCPP is delivering programming to WJCP pursuant to a valid Local Marketing Agreement.

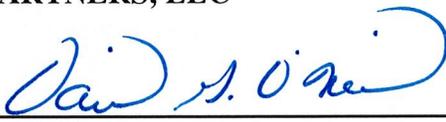
NBM's opposition to the sale of WJCP and W249DG is not motivated by public interest concerns or a private contractual dispute but instead NBM's hostility towards Mr. Reising and his desire to purchase WJCP and W249DG at a discount for NBM's benefit.

WHEREFORE, FOR THE FOREGOING REASONS, Jennings County Promotion Partners requests the Commission deny NBM's petition to deny and grant the assignment application.

Respectfully Submitted,

**JENNINGS COUNTY PROMOTION
PARTNERS, LLC**

By: _____


David G. O'Neil
Rini O'Neil, PC
1200 New Hampshire Avenue, NW
Suite 600
Washington, D.C. 20036
(202) 955-3931

October 9, 2018

Its Attorney

EXHIBIT 1

**EMAIL FROM MARTIN HENSLEY TO
TOM TAYLOR DATED SEPTEMBER 23, 2018**

From: Martin Hensley <hensleym31@aol.com>
Subject: **Default on Contract**
Date: September 23, 2018 at 7:29:12 AM EDT
To: totaylor@seidata.com

Tom,

I have additional information I have received and wanted to share with you. The feds will have this soon enough. You and Keith had a deal in May of 2018. He even incorporated then.

To settle the contract dispute NBM would give you \$20,000 for the AM. You have not made a single payment to NBM and Reising was a third party. Notice can be given by email per the contract. Do you accept this offer?

Martin Hensley
NBM

EXHIBIT 2

**EMAIL FROM MARTIN HENSLEY TO
TOM TAYLOR DATED SEPTEMBER 25, 2018**

From: Martin Hensley <hensleym31@aol.com>
Subject: W249DG Contract Default
Date: September 25, 2018 at 4:07:37 PM EDT
To: totaylor@seidata.com

New Beginnings Movement

PO Box 846

Greenfield, IN 46140

Tom and Diane Taylor

PO Box 728

47265

Re: Contract Default

September 23, 2018

Tom,

You are selling the translator W249DG along with WJCP which we have a lien on the equipment and transmitter site. You have satisfied none of the funds for W249DG without a third party.

The Agreement requires no third party involvement. The single payment you have made was not from you and was from a third party who is unrelated to the Agreement.

Jennings County Promotion Partners (JCPP) was the name on the check of the only payment received. You

2

indicated this is "my account" and then followed by saying "it is another account I have." Then on the internet (not by notification from you) it is shown you are selling the W249DG facility and WJCP. The Indiana Secretary of State indicates JCPP became an entity in May of this year and you are not affiliated with it. You have already allowed the new operator to take legal control of the station.

We want you to contact us with the method of which you will resolve default. Any equipment we have a lien on and you are selling should be included in a list to us and your

method for resolving default. We require a copy of any Agreements with the new entity and the dates signed.

If your financials do not allow you to consummate the Agreement we offer \$20,000 to you for WJCP which is paired with the FM station we are selling you in the Agreement. We need your response and cure to the default within 10 days.

Martin Hensley

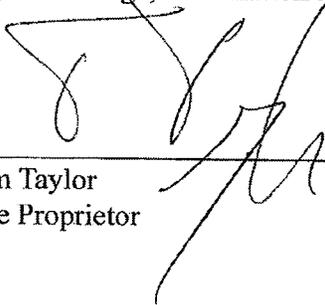
New Beginnings Movement

EXHIBIT 3
DECLARATION OF TOM TAYLOR

DECLARATION OF TOM TAYLOR

My name is Tom Taylor. My wife, Diana, and I are the licensee of WJCP(AM), North Vernon, Indiana (Facility Id. No. 61196) and W249DG, North Vernon, Indiana (Facility Id. No. 141722). This Declaration is made in support of the "Opposition to Supplements to Petition to Deny" that Jennings County Promotion Partners LLC is filing with the Commission. I have reviewed the Opposition and to the best of my information, knowledge, and belief the information contained therein is complete and accurate. I hereby declare under penalty of perjury that the statements of fact set forth in this Declaration are true and correct to the best of my knowledge, information and belief.

By:



Tom Taylor
Sole Proprietor

October 9, 2018

EXHIBIT 4
DECLARATON OF KEITH REISING

DECLARATION OF KEITH REISING

My name is Keith Reising. I am the Managing Member of Jennings County Promotion Partners LLC (“JCPP”). This Declaration is made in support of the “Opposition to Supplements to Petition to Deny” that Jennings County Promotion Partners LLC is filing with the Commission. I have reviewed the Opposition and to the best of my information, knowledge, and belief the information contained therein is complete and accurate. I hereby declare under penalty of perjury that the statements of fact set forth in this Declaration are true and correct to the best of my knowledge, information and belief.

By:



Keith Reising
Managing Member
Jennings County Promotion Partners, LLC

October 9, 2018

CERTIFICATE OF SERVICE

I, David G. O'Neil, hereby certify that a true and correct copy of the foregoing "Opposition to Supplements to Petition to Deny" was sent via first class mail (unless otherwise indicated) this 9th day of October 2018 to the following:

Martin Hensley
New Beginnings Movement, Incorporated
P.O. Box 846
Greenfield, IN 46140



David G. O'Neil