

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington DC 20554

In re:

NEW BEGINNINGS MOVEMENT,)	File No. BPFT-20180417AAE
INCORPORATED)	File No. BLFT-20151120AGX
)	
FM Translator Station W275BD)	Facility Identification Number 143744
Greenfield, Indiana)	

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

REPLY TO OPPOSITION TO COMMENTS

Reising Radio Partners Inc. (“Reising”), licensee of WXCH(FM), Columbus, Indiana (Facility Id. No. 16255), by its attorneys, hereby submits this Reply to “Opposition to Comments” that Radio One of Indiana, LLC (“Radio One”)¹ filed with the Commission on May 14, 2018.² Radio One’s pleading contains several material misstatements, and omissions of fact and law. The Commission must order W275BD to cease operations until such time as the station can commence operations with its newly permitted facilities.

It is fact that W275BD interferes with regular over the air reception of WXCH. Reising has previously submitted to the Commission several sets of listener interference complaints dating from December 2015 until the present.³ Commission staff has issued three separate

¹ New Beginnings Movement, Incorporated is the successor in interest to Indiana Radio Community Corporation (“ICRC”), the previous licensee of W275BD. *See* File No. BALFT-20180104AAR. ICRC (and apparently New Beginnings) delegated authority to Radio One for addressing interference complaints in this proceeding. References to Radio One throughout this pleading apply equally to New Beginnings Movement and ICRC.

² Section 1.45(c) of the Commission’s Rules authorizes the filing of a reply pleading within five days after the time for filing oppositions has expired. Section 1.4(g) provides that if the filing period is less than seven days, intermediate holidays shall not be counted in determining the filing date. Section 1.4(h) provides for an additional three days (excluding intermediate holidays), if the filing is served by mail, and the filing period is ten days or less. Radio One filed its Opposition on May 14, 2018 and served the pleading on Reising via regular mail. When the five days for Reising to file its Reply along with an additional three days for mail service is calculated, and intermediate holidays excluded, the filing deadline is May 24, 2018. Thus, this pleading is timely filed.

³ Reising incorporates by reference its previous filings with the Commission regarding W275BD.

Compliance Letters⁴ instructing W275BD to resolve the interference complaints. Instead, Radio One has adopted a strategy of disqualifying and not resolving the interference complaints.

First, despite there being no legal requirement, Radio One sent a detailed multi-page questionnaire, on law firm letterhead, to each individual complainant, instructing them to fully complete and execute the questionnaire under the penalty of perjury.

Second, Radio One, on its own volition, disqualified any complainant who either did not respond to, or failed to, fully complete the questionnaire. The questionnaire had the intended effect of intimidating and discouraging the majority of complainants from participating in the resolution process.

Third, for those complainants who did return a fully completed questionnaire, despite specific instructions from Commission staff to the contrary,⁵ Radio One arbitrarily eliminated from consideration the complaints from listeners who Radio One claimed had a social media relationship with WXCH, or its staff, via Facebook.

Fourth, contrary to established Commission precedent, on the rare occasion Radio One met with a listener complainant in the field, Radio One would claim that it had no responsibility to resolve the interference complaint because the interference occurred outside the protected contour of WXCH or, within the 60 dBu contour for W275BD. In one instance, Radio One used subterfuge to deliberately mislead a listener complainant that it had resolved the listener's interference problem.

On December 1, 2017 Reising submitted declarations from five original complainants

⁴ The Commission issued the Compliance Letters on December 15, 2015, October 8, 2016 and December 5, 2016.

⁵ This is consistent with the Commission's conclusion in the NPRM that social media connections, whereby parties friend or follow a station, or its personnel on Facebook, Twitter or other social media platforms, does not constitute evidence that a listener is impermissibly affiliated with the complaining station. *See In the Matter of Amendment of Part 74 of the Commission's Rules Regarding FM Translator Interference*, MB Docket No. 18-119 at 10 (released May 10, 2018) (the "NPRM").

who managed to survive this gauntlet. These listeners described how Radio One lied to, misled and/or simply ignored the listener's complaints. Despite being given every opportunity, Radio One did not contest the facts contained in these declarations. The Commission must therefore take legal notice of the declarations as evidence that W275BD causes prohibited interference to regular over the air reception of WXCH.

Unable to refute the clear and undisputed facts in this case, Radio One has resorted to legal subterfuge in an attempt to cloud the matter, raising legal arguments Reising has refuted in their previous pleading.⁶ Incorrectly, Radio One argues that its filing of an Application for Review ("AFR") constitutes an automatic stay of further action in this proceeding until the full Commission takes action.

In its Reply, Reising addressed why the AFR is procedurally defective stating that the AFR (1) does not constitute an automatic stay; and (2) is interlocutory in nature because Commission staff has not issued an initial decision on the merits of this case. The issuance of a Compliance Letter signals the commencement of an investigation. The Compliance Letter is similar in nature to a Letter of Inquiry, or Notice of Apparent Liability, each of which represents the start of an investigation, and not a Commission staff decision on the merits. Regardless, the filing of the AFR does not relieve Radio One of its obligations to resolve all interference complaints.

Radio One continues its false assertion that Reising never responded to the AFR. Radio One filed its AFR on November 14, 2016. Reising filed its response to the AFR on December 15, 2016 when Reising filed its Motion to Dismiss the AFR. Even if Reising had not opposed the AFR, Reising has the right to file complaints and refresh the record that W275BD is causing interference to reception of WXCH.

⁶ Reply to Opposition to Motion for W275BD to Suspend Operations filed January 23, 2018 (the "Reply").

Radio One incorrectly suggests that the Commission's current rule making proceeding to review its current rules and procedures for processing interference complaints is the appropriate forum for considering the instant case. The NPRM states, without exception, that if and until the Commission revises its rules and procedures for addressing interference complaints, the agency's existing rules and procedures apply.⁷

Commission staff can and should issue a decision ordering W275BD to suspend operations until such time as W275BD resolves each and every interference complaint or until the station commences operation with its newly permitted facilities.

Reising filed its Comments with respect to the outstanding interference complaints as well as the new permit. Reising filed its Comments in both proceedings and made clear the Comments were neither an Informal Objection nor a Petition for Reconsideration of the staff decision granting the permit application. Instead, Reising pointed out that by specifying the new facilities, Radio One tacitly acknowledges that W275BD is causing interference to WXCH.

Radio One disagrees with Reising's characterization that the new permit is a *tacit* acknowledgement that W275BD is causing interference to WXCH. Reising agrees. The new permit application is a *direct* acknowledgement by Radio One that W275BD is indeed causing interference to WXCH. The engineering exhibit attached to the permit application makes it manifestly clear that the new permitted facilities represent a significant reduction in coverage area for W275BD.⁸ The permit application proposes the following changes to the W275BD facilities, (1) a change in tower site from the eastern to the northwestern portion of Indianapolis; and (2) a directional signal pointing in a northwest direction away from WXCH.

As the Radio One engineering exhibit makes abundantly clear, the combined changes

⁷ See NPRM at 15 n.99.

⁸ A copy of the relevant portion of the engineering exhibit is attached as Exhibit 1 to this filing.

represent a significant reduction in coverage for W275BD. Even the combined use of W275BD and W286CM will not replicate the coverage provided by the W275BD licensed facilities.

For almost 30 months, Radio One has expended considerable time and resources opposing any interference complaints against W275BD. By filing an application for diminished facilities for W275BD that will significantly reduce the station's coverage area, Radio One recognizes the merits of the interference complaints against W275BD.

Regardless, Radio One cannot use the new permit as a reason to evade its responsibilities to resolve outstanding unresolved interference complaints. W275BD is a secondary station and as such must cease operations immediately until such time as the station resolves each and every complaint of interference to WXCH. Radio One may disagree with the Commission's procedure for resolving interference complaints, but it must comply nonetheless if, and until, the Commission adopts a new process in the NPRM.

Conclusion

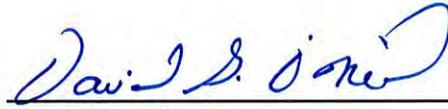
W275BD causes actual interference to WXCH in violation of the Commission's Rules. When confronted with bona fide listener complaints, Radio One created hurdles to discourage listeners from seeking assistance. When a handful of listener complainants survived the process, Radio One misled them and threw up procedural hurdles to avoid its legal responsibilities. Radio One's actions throughout this process demonstrates their lack of good faith compliance with the Commission's rules and procedures.

Despite being provided every opportunity to do so, Radio One did not dispute that at least five listener complaints remain unresolved. By filing for a new permit application for W275BD, Radio One cannot escape its responsibility to resolve listener complaints. The Commission must order cessation of operations of W275BD until the earlier of resolution of the interference complaints, or commencement of operations with the new permitted station.

Respectfully Submitted,

REISING RADIO PARTNERS INC.

By:



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May 24, 2018

Its Attorney

EXHIBIT 1

**PREVIOUSLY LICENSED AND NEW 60 DBU
CONTOURS FOR W275BD**

W275BD

BLFT20151120AGX
Latitude: 39-50-25 N
Longitude: 086-10-34 W
ERP: 0.25 kW
Channel: 275
Frequency: 102.9 MHz
AMSL Height: 348.0 m
Elevation: 213.0 m
Horiz. Pattern: Directional

E2 CONTOURS

WNOW-FM 60 DBU

W286CM
60 DBU

W275BD
APP 60 DBU

W275BD
LIC 60 DBU

Scale 1:400,000



Shelbyville Communications LLC ©

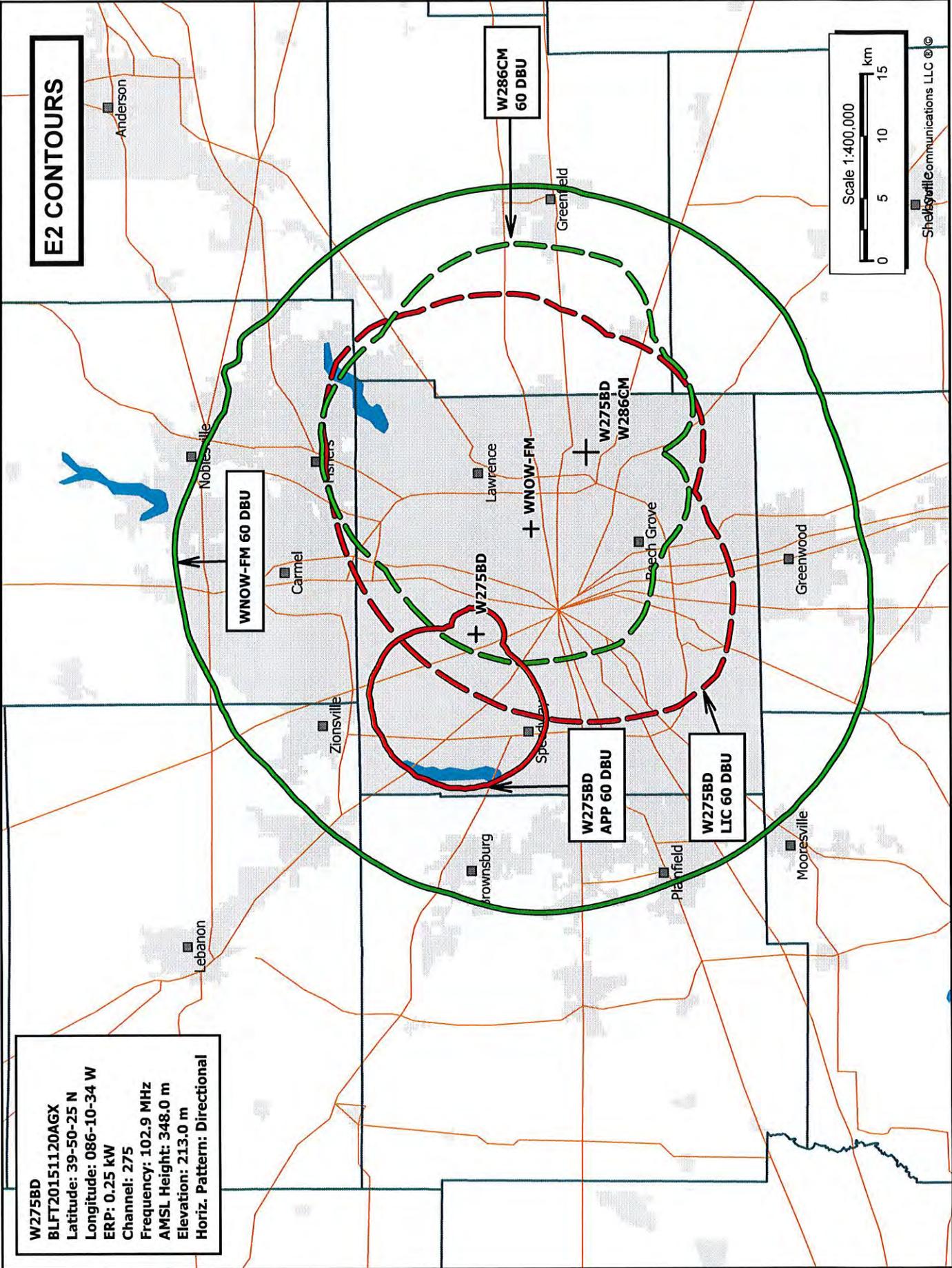


EXHIBIT 2
DECLARATION OF KEITH REISING

DECLARATION OF KEITH REISING

My name is Keith Reising. I am the President of Reising Radio Partners, Inc., the licensee of WXCH(FM), Columbus, Indiana. This Declaration is submitted in support of the "Reply to Opposition to Comments" that Reising Radio Partners is filing with the Commission today.

I have reviewed the pleading and to the best of my information, knowledge, and belief the information contained therein is complete and accurate. This declaration is submitted under the penalty of perjury.

By: Keith Reising
Keith Reising
President
Reising Radio Partners, Inc.

May 24, 2018

CERTIFICATE OF SERVICE

I, David G. O'Neil, hereby certify that a true and correct copy of the foregoing "Reply to Opposition to Comments" was sent via first class mail (unless otherwise indicated) this 24th day of May 2018 to the following:

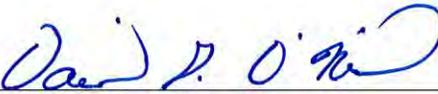
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* Copy served by e-mail only.