

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In re)
)
NEW BEGINNINGS MOVEMENT,) FCC File No. BPFT-20180417AAE
INCORPORATED) FCC File No. BLFT-20151120AGX
) FCC Facility ID No. 143744
W275BD, Greenfield, Indiana)
)

To: Office of the Secretary
Attn: Media Bureau, Audio Services Division

OPPOSITION TO COMMENTS

Radio One of Indiana, LLC (“Radio One”), the licensee of WNOW-FM, Speedway, Indiana, the primary station of W275BD, Greenfield, Indiana,¹ by its attorneys, pursuant to Section 1.45(b) of the Commission’s rules, hereby respectfully opposes the May 1, 2018 Reising Radio Partners, Inc.² Comments (hereafter, the “Comments”).³ In opposition thereto, the following is submitted:

INTRODUCTION

1. WXCH without support states that the “underlying application [presumably referring to granted FCC Construction Permit File No. BPFT-20180417AAE] tacitly acknowledges W275BD causes prohibited interference to WXCH”.⁴ Yet, that application states or acknowledges no such thing. Rather than filing

¹ As shown in previous filings in this proceeding, the licensee of W275BD requested that Radio One, the licensee of the primary station, assist with responses in this proceeding. *See e.g.* January 14, 2016 Letter to James D. Bradshaw, Deputy Chief, Audio Division.

² Reising Radio Partners, Inc. is the licensee of WXCH(FM), Columbus, Indiana (hereafter “WXCH”).

³ As the stated times for filing Oppositions in Section 1.45(b) only apply to a “motion, petition, or request”, and the WXCH pleading is none of those, this Opposition to Comments is acceptable for filing at any time.

⁴ Comments at Page 2.

a pleading with the FCC that is authorized by the rules, WXCH brings confusion by the filing of unsupported “Comments”.

2. If the application was either not in accord with the FCC’s rules, or there was some other deficiency with the application, WXCH had the opportunity pursuant to Section 73.3587 of the Commission’s rules to submit a Section 74.1204(f) objection. Yet, rather than avail itself of a procedurally-correct filing, WXCH files “Comments” making unsupported allegations regarding some undefined tacit acknowledgement.

3. It is apparent why WXCH did not file a procedurally-correct pleading. WXCH has no basis upon which to show that which it suggests, which is that the W275BD application somehow has a bearing upon the underlying issues it has been prosecuting that are related to W275BD. Thus, lacking evidence or basis, WXCH files what is really an untimely opposition to the pending W275BD November 14, 2016 Application for Review that is now being considered by the Commission.

4. Specifically, the issues raised by WXCH in its Comments are presently before the full Commission in the November 14, 2016 Application for Review and a January 4, 2017 Supplement to Application for Review (collectively, the “Application for Review”). To this date, the Application for Review remains unopposed by WXCH or by any other party-in-interest.

5. WXCH, rather than timely opposing the Application for Review,⁵ or even now seeking Commission leave to submit an untimely opposition to the Application for Review, once again attempts an end-run around the Application for Review by filing an

⁵ The deadline under Section 1.115(d) of the Commission’s rules for submitting an opposition to the Application for Review was November 29, 2016.

unsupported pleading styled “Comments” without citing any Commission rule, precedent or policy in procedural support of such Comments.⁶

6. WXCH also fails to note that the FCC recently opened MB Docket No. 18-119 for a consideration of changes to its FM translator interference rules. On May 10, 2018, the Commission released of a Notice of Proposed Rulemaking (the “NPRM”)⁷ based upon the Aztec Capital Partners, Inc. Petition for Rulemaking in RM-11786, and the National Association of Broadcasters Petition for Rulemaking in RM-11787. The NPRM contemplates significant changes to Section 74.1203(a)(3) of the Commission’s rules regarding FM translator interference complaints.

THE APPLICATION FOR REVIEW

7. The Application for Review applied for a Commission review of the decisions of the Audio Division in response to the Radio One February 11, 2016 Request for Dismissal of Complaints (the “Request for Dismissal of Complaints”). The Request for Dismissal of Complaints was summarily decided by: an October 14, 2016 email from Robert Gates, writing for the Audio Division; an October 18, 2016 Letter from James D. Bradshaw; and a December 5, 2016 Letter from James D. Bradshaw (together, the “Decision Documents”).

8. The Application for Review challenges the *Decision Documents*, addressing on a legal and factual basis each of the alleged WXCH listeners with reception issues. It requests that the *Decision Documents* be reversed or rescinded. With a reversal of the *Decision Documents*, none of the alleged WXCH listeners are, for the

⁶ WXCH previously attempted the filing of such an unauthorized pleading in its December 1, 2017 Motion for W275BD Motion to Suspend Operations (the “Motion”) to which Radio One timely filed an opposition.

⁷ *Amendment of Part 74 of the Commission’s Rules Regarding FM Translator Interference*, Notice of Proposed Rulemaking (MB Docket No. 18-119), FCC 18-60, released May 10, 2018.

reasons stated in the Application for Review, entitled to radio reception remediation pursuant to Section 74.1203(a)(3) & (b) of the Commission's rules.

9. The Application for Review sets forth the repeated instances of WXCH presenting complainants to the FCC only to have the complainants turn out to be connected to WXCH through friends, family or employees raise significant questions as to the processes employed by the FCC in seeking compliance with Sections 74.1203(a)(3) & (b) of the Commission's rules. The *ad hoc* procedure used by the Audio Division where unverified complaints are taken as truth, complainants can refuse to truthfully answer as to their relationships with the complaining station, informal email exchanges take place between the FCC's staff and complaining station, and it is suspected that many complainants are shells for the complaining station, is not a model of administrative procedural due process.

10. WXCH is correct that this proceeding has now been ongoing for a number of years. Neither the proceeding, nor the number of years it has consumed, however, is attributable to Radio One. Rather, as repeatedly shown in the multiple filings in this proceeding, when the totality of complaints submitted by purported listeners of WXCH are considered, this complaint proceeding is an ongoing and pervasive effort by the owners, managers and personnel of WXCH to procure and solicit interference complaints having the purpose not to protect actual WXCH listeners, but rather to protect some concept of the diminishing WXCH signal as it gets closer to Indianapolis, more than twice the distance it is expected to be received as a regularly used signal.

11. Any action by the FCC now without full Commission action on the Application for Review would greatly harm the tens of thousands of local radio listeners


in the W275BD community and surrounding area who listen to and enjoy the diverse programming provided by W275BD. It would be antithetical to the public interest to administratively deny diverse radio programming to tens of thousands of radio listeners in favor of several WXCH-procured complainants trying to listen to WXCH well outside its community of license and service area.

CONCLUSION

12. The Radio One Application for Review remains pending. The WXCH Comments are a procedurally-incorrect pleading that fails to address the issues presented to the Commission in the Application for Review. The Comments should be dismissed as unsupported by the Commission's rules, precedent and policy.

Respectfully submitted,

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May 14, 2018

CERTIFICATE OF SERVICE

I, John F. Garziglia, an attorney at the law firm of Womble Bond Dickinson (US) LLP, do hereby certify that a true copy of the foregoing "Opposition to Comments" was sent this 14th day of May, 2018 via U.S. Mail, postage prepaid, to the following:

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