



Jason E. Rademacher
T: +1 202 776 2370
jrademacher@cooley.com

**REDACTED – FOR
PUBLIC INSPECTION**

May 2, 2017

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Attn: James Bradshaw
Deputy Chief, Media Bureau
Federal Communications Commission

**RE: Sun Broadcasting Inc.
FM Translator W231DC(FX), Fort Myers, Florida
FCC File No. BLFT-20161024ADG
Request for Confidential Treatment – Cover Letter**

Dear Ms. Dortch:

On behalf of Sun Broadcasting Inc. ("Sun"), licensee of FM translator W231DC(FX), Fort Myers, Florida, please find two items. First, attached please find a letter explaining the need for confidential treatment. Second, please find Sun's Opposition to Interference Complaint. (Unredacted confidential versions of the attached documents were filed under separate cover in FCC File No. BLFT-20161024ADG.) Pursuant to Sections 0.457(d) and 0.459(a) of the Commission's rules, Sun hereby requests that the Commission withhold from public inspection, and accord confidential treatment to, the unredacted documents.

As discussed at length in the letter explaining the request for confidential treatment, because many of the requests concern confidential commercial information, confidential treatment is essential to ensure that the information does not become public or fall into the hands of competitors and other third parties. Sun, therefore, is submitting separate confidential and redacted versions of the company's responses.

We would be pleased, of course, to discuss at your convenience any aspect of this response.

Very truly yours,

Jason E. Rademacher

Enclosures



Jason E. Rademacher
T: +1 202 776 2370
jrademacher@cooley.com

**REDACTED – FOR PUBLIC
INSPECTION**

May 2, 2017

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Attn: James Bradshaw
Deputy Chief, Media Bureau
Federal Communications Commission

**RE: Sun Broadcasting Inc.
FM Translator W231DC(FX), Fort Myers, Florida
FCC File No. BLFT-20161024ADG
Request for Confidential Treatment – Cover Letter**

Dear Ms. Dortch:

On behalf of Sun Broadcasting Inc. (“Sun”), licensee of FM translator W231DC(FX), Fort Myers, Florida (the “Translator”), attached please find a redacted version of Sun’s Opposition to Interference Complaint. Confidential unredacted versions of the attached documents were filed under separate cover in FCC File No. BLFT-20161024ADG. Pursuant to Sections 0.457(d) and (f) and 0.459(a) of the Commission’s rules, Sun hereby requests that the Commission withhold from public inspection, and accord confidential treatment to, the confidential unredacted documents.

The confidential unredacted documents include sensitive commercial information regarding the financial terms related to confidential settlement agreements. Such information falls squarely within Sections 0.457(d) of the Commission’s rules, as well as Exemption 4 of the Freedom of Information Act (“FOIA”),¹ and thus should not routinely be made available for public inspection. Exemption 4 of FOIA provides that the statute’s public disclosure requirement “does not apply to matters that are (4) trade secrets and commercial or financial information obtained from a person and privileged or confidential.”² The attached information should be afforded confidentiality under Exemption 4 because it is sensitive commercial information that is confidential in nature. Such material customarily would not be released to the public by the Sun, and its release would cause substantial harm to Sun’s competitive position.

While Sun believes that the confidential nature of the financial information included in the attached documents automatically qualifies this submission as the type of record not routinely

¹ See 5 U.S.C. § 552(b)(4).

² *Id.* The Commission’s rules mirror this language. See 47 C.F.R. § 0.457(d).

Marlene H. Dortch
May 2, 2017
Page Two

available for public inspection under Section 0.457(d) of the FCC's rules, Sun out of an abundance of caution also alternatively requests that the confidential unredacted material be withheld from public inspection pursuant to Section 0.459(a). Sun seeks confidential treatment for the confidential unredacted commercially sensitive information. This information is being provided to the Commission only for purposes of the Opposition to Interference Complaint, and Sun has taken tremendous care to prevent its unauthorized disclosure to unaffiliated third parties. None of the redacted information included in the confidential unredacted documents currently is available to the public, and the information is not disclosed to third parties in the ordinary course of business. This information therefore qualifies for protection under Section 0.459(a).

Please contact me if you have any questions about this matter.

Very truly yours,



Jason E. Rademacher

Enclosure

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
SUN BROADCASTING INC.)	FCC File No. BLFT-20161024ADG
)	
FM Translator W231DC)	
Facility ID No. 138791)	
Channel 231, 94.1 MHz, Fort Myers, Florida)	
(Input Channel WFSX(AM), Fort Myers, Florida)	

To: Secretary, Federal Communications Commission
Attention: Chief, Audio Division, Media Bureau

OPPOSITION TO INTERFERENCE COMPLAINT

Sun Broadcasting Inc. (“Sun”), licensee of FM translator W231DC(FX), Fort Myers, Florida, Channel 231, Fac. ID No. 138791 (the “Translator”), by its attorneys, hereby opposes the Interference Complaint filed April 12, 2017, by WDAS License Limited Partnership (“Beasley”),¹ licensee of full-power radio station WLLD(FM), Lakeland, Florida, Channel 231, Fac. ID No. 51987 (“WLLD”).

I. BACKGROUND AND INTRODUCTION

The Interference Complaint should be denied because it fails to substantiate Beasley’s claims of interference to WLLD consistent with the FCC rules and appears to have been filed for the purpose of protecting another Beasley station, WWCN(FM), from competition from Sun’s station WFSX(AM). Sun should be permitted to continue operating the Translator as authorized by the FCC.

Sun is the licensee of WFSX(AM), the Fox Sports Radio affiliate for the Fort Myers radio market. As part of the FCC’s efforts to revitalize the AM broadcasting service, Sun, with

¹ This Opposition is timely filed. The parties agreed and the FCC consented to an extension of

**REDACTED - FOR
PUBLIC INSPECTION**

the Commission's consent, acquired and modified the Translator to improve service to WFSX(AM)'s listeners. The Translator began broadcasting on July 6, 2016.

Beasley is the licensee of WWCN(FM), the ESPN Sports Radio affiliate for the Fort Myers radio market and the only direct competitor with WFSX(AM). Beasley also is the licensee of WLLD, a rhythmic contemporary hits station licensed to Lakeland, Florida and serving the Tampa, Florida DMA.

Shortly after the Translator commenced operations, improving WFSX(AM)'s service in competition with WWCN(FM), Beasley contacted Sun claiming that the signal of the Translator was interfering with Beasley's WLLD in some areas of the Fort Myers market. Sun took the Beasley complaint at face value and took its Translator silent to examine alternatives to identify and eliminate any interference to the signal of WLLD.² In an effort to eliminate any potential interference to WLLD, Sun modified the facilities by moving the Translator to a new location to the south and west of the prior location, such that the Translator's 40 dBu contour is 4.6 km from the closest point of the WLLD 60 dBu contour.³ Sun's consulting engineer conducted an analysis of the signals for the Translator and WLLD and determined that the change in location would eliminate the interference received by WLLD's listeners.⁴

After Sun commenced operations with the Translator's modified facilities, Beasley again alleged that its listeners experienced interference while listening to WLLD. Out of an abundance of caution, Sun ceased broadcasting on the Translator while it looked into the allegations of

the deadline to file the Opposition to May 2, 2017.

² See FCC File No. BLSTA-20160729ABF (requesting silent authority to investigate interference complaints).

³ See FCC File No. BPFT-20160915AAL (requesting modification of the FM translator to the new location).

⁴ An engineering study performed by Sun's consulting engineer is included as Exhibit 1.

interference.⁵ Sun also reached out to the six WLLD listeners identified by Sun and sought to address their concerns.⁶ Sun entered into written settlement agreements with [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] listeners, reached an oral agreement with [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] and was unable to reach [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] using the contact information supplied by Beasley.⁷ Having (Sun believed) resolved all pending interference complaints that could be verified, Sun resumed operations on the Translator. Shortly thereafter, Beasley renewed its claims that the Translator is interfering with WLLD, and the Interference Complaint quickly followed.

As demonstrated below, the Interference Complaint fails to establish that regular WLLD listeners are being negatively affected by the Translator's operations. Moreover, Beasley's efforts to (1) drum up additional complaints from the small handful of WLLD listeners whom Beasley had identified previously; and (2) interfere with Sun's good-faith efforts to resolve listeners' interference complaints confirms a competitive motive that has nothing to do with the out-of-market listeners of WLLD and everything to do with insulating WWCN(FM) from their sole format competitor, WFSX(AM). Because it fails to prove Beasley's claims and appears to be motivated by illegitimate competitive aims, the Commission should deny the Interference Complaint.

⁵ See FCC File No. BLSTA - 20170203AAF.

⁶ As discussed below, the Interference Complaint identifies a seventh complainant of which Sun was not previously aware.

⁷ Prior to filing of the Interference Agreement, Sun believed it had reached an agreement with [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]. Sun prepared the paperwork for that settlement but [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] to Sun's offices to sign the agreement. As discussed below, the Interference Complaint makes clear that [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] not to settle with Sun was influenced by Beasley's interference and urging

**II. BEASLEY FAILS TO DEMONSTRATE THAT REGULAR LISTENERS OF WLLD
ARE RECEIVING INTERFERENCE FROM THE TRANSLATOR.**

FM translators operate on a secondary basis and have an obligation to resolve interference that the translator may cause to regular listeners of a primary station. Beasley's demonstration of interference, however, falls far short of the Commission's requirements to demonstrate that interference is occurring to any regular listener of the WLLD signal.

Section 74.1203(a) of the Commission's Rules provides,

[a]n authorized FM translator . . . station will not be permitted to continue to operate if it causes any *actual* interference to . . . [t]he direct reception by the public of the off-the-air signals of any authorized broadcast station Interference will be considered to occur whenever reception of a *regularly used* signal is impaired by the signals radiated by the FM translator. . . .⁸

FCC precedent makes clear that any claim of interference must include verifiable listener complaints establishing that the interfering station is causing interference to regular listeners of a protected station.⁹

The e-mails that Beasley attached to its Interference Complaint fall far short of the Commission's requirements for such a demonstration. Most of the e-mails fail to allege with any specificity, the exact nature of the interference supposedly experienced. For example, none of the e-mails includes an assertion that the listener, absent the alleged interference, regularly listens to the over-the-air signal of WLLD at the location in which the alleged interference is occurring. Given the remote location of the Translator from WLLD's predicted contour and the fact that WLLD serves the Tampa – not the Fort Myers – radio market, it is highly unlikely that a significant number of WLLD's listeners regularly listen to the station in Fort Myers. Moreover,

of [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] not to accept Sun's offer.

⁸ 47 C.F.R. § 74.1203(a) (emphasis added).

⁹ See, e.g., *Valley Broadcasting, Inc.*, 7 FCC Red 4317, 4320 (M.M. Bur. 1992).

**REDACTED - FOR
PUBLIC INSPECTION**

the e-mails are unverified, and they are impossible to corroborate or confirm. In many cases, they were sent in response to inquiries from Beasley, so it is difficult to tell if the listener actually was experiencing interference while listening to WLLD or tuned in only at Beasley's prompting.

Even assuming that the emails provided by Beasley represent legitimate complaints from regular listeners, Beasley fails to acknowledge that **[BEGIN CONFIDENTIAL]**

[END CONFIDENTIAL] cited in the Interference Complaint have permanently settled their complaints with Sun.¹⁰ Of the seven names of individuals that Beasley puts forward as supposedly suffering interference, Sun has reached settlement agreements with **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]**¹¹ Sun reached an oral settlement with a **[BEGIN CONFIDENTIAL]**

[END CONFIDENTIAL] not yet entered into a settlement agreement.¹² **[BEGIN CONFIDENTIAL]**

[END CONFIDENTIAL] supplied by Beasley.¹³ **[BEGIN CONFIDENTIAL]** **[END**

¹⁰ See Exhibit 2.

¹¹ The listeners identified by Beasley include: Feliesha Costa, Kailey Barrett, Tim Ashcroft, Quiana Fuller, Jeanette Caragena (Jehamy), Michael Onzo, and Jasmine Santos.

¹² See Interference Complaint at **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]** Sun asserts that **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]** orally accepted Sun's offer for remediation and resolution, but apparently chose not to enter into the settlement agreement after being discouraged from doing so by Beasley. **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]** In any event, as described above, **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]** **[END CONFIDENTIAL]** does not meet the FCC's strict requirements that the only actionable interference is that which occurs to regular listeners of the primary station in question.

¹³ **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]** could not be located with the information Beasley was willing to supply, and those answering the telephone **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]** could be reached at that number.

**REDACTED - FOR
PUBLIC INSPECTION**

CONFIDENTIAL] only disclosed to Sun in late March just prior to Beasley's filing of the Interference Complaint.¹⁴ Sun remains willing to discuss the purported interference with any WLLD listener and to enter into additional settlement agreements to resolve any legitimate interference concerns. Beasley, however, has failed to carry its burden to show that any such legitimate concerns exist.

More disturbingly, the FCC has every reason to question why Beasley is so energetically pursuing the rights of a tiny group of out-of-market listeners to WLLD, most of whom have abandoned any complaint against Sun and none of whom have ever contacted Sun independently to complain of the purported interference. The Interference Complaint fails to mention key facts about the local market that shine a light on Beasley's intentions in filing the complaint. The translator rebroadcasts the Sun's co-owned station WFSX(AM), which is the local Fox Sports radio affiliate for the Fort Myers market. The Translator has improved WFSX(AM)'s service to a large number of Fort Myers listeners. In doing so, the Translator allows WFSX(AM) to compete more effectively with Beasley's WWCN(FM), the local Fort Myers ESPN Sports Radio affiliate. Sun's WFSX(AM) and Sun's Translator directly compete with Beasley's WWCN(FM) in the coverage of local and national sports stories. WLLD is not located in the Fort Myers market but, instead, serves the Tampa market. Beasley appears to be using the instant proceeding to reduce competition to WWCN(FM), not to remedy interference experienced by WLLD's out-of-market Fort Myers listeners. The FCC should not permit Beasley to misuse complaint procedures intended for the benefit of *bona fide* regular radio listeners of WLLD by

¹⁴ Beasley initially identified **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]** to Sun in July of 2016. Beasley did not, however, identify **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]** as receiving interference following the modification of the license for the Translator until just before the Interference Complaint was filed.

**REDACTED - FOR
PUBLIC INSPECTION**

making ill-founded allegations to punish those who would compete with WWCN. Given Beasley's strong interest in thwarting Sun's expansion in the FM band through the Translator, its motives warrant Commission skepticism and its inadequately supported claims warrant prompt denial of the Interference Complaint.

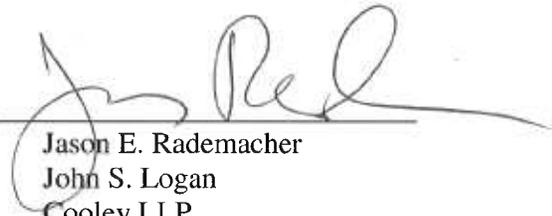
III. Conclusion

For the foregoing reasons, Sun requests that the FCC deny the Interference Complaint.

Respectfully submitted,

SUN BROADCASTING INC.

By



Jason E. Rademacher

John S. Logan

Cooley LLP

1299 Pennsylvania Avenue, NW

Suite 700

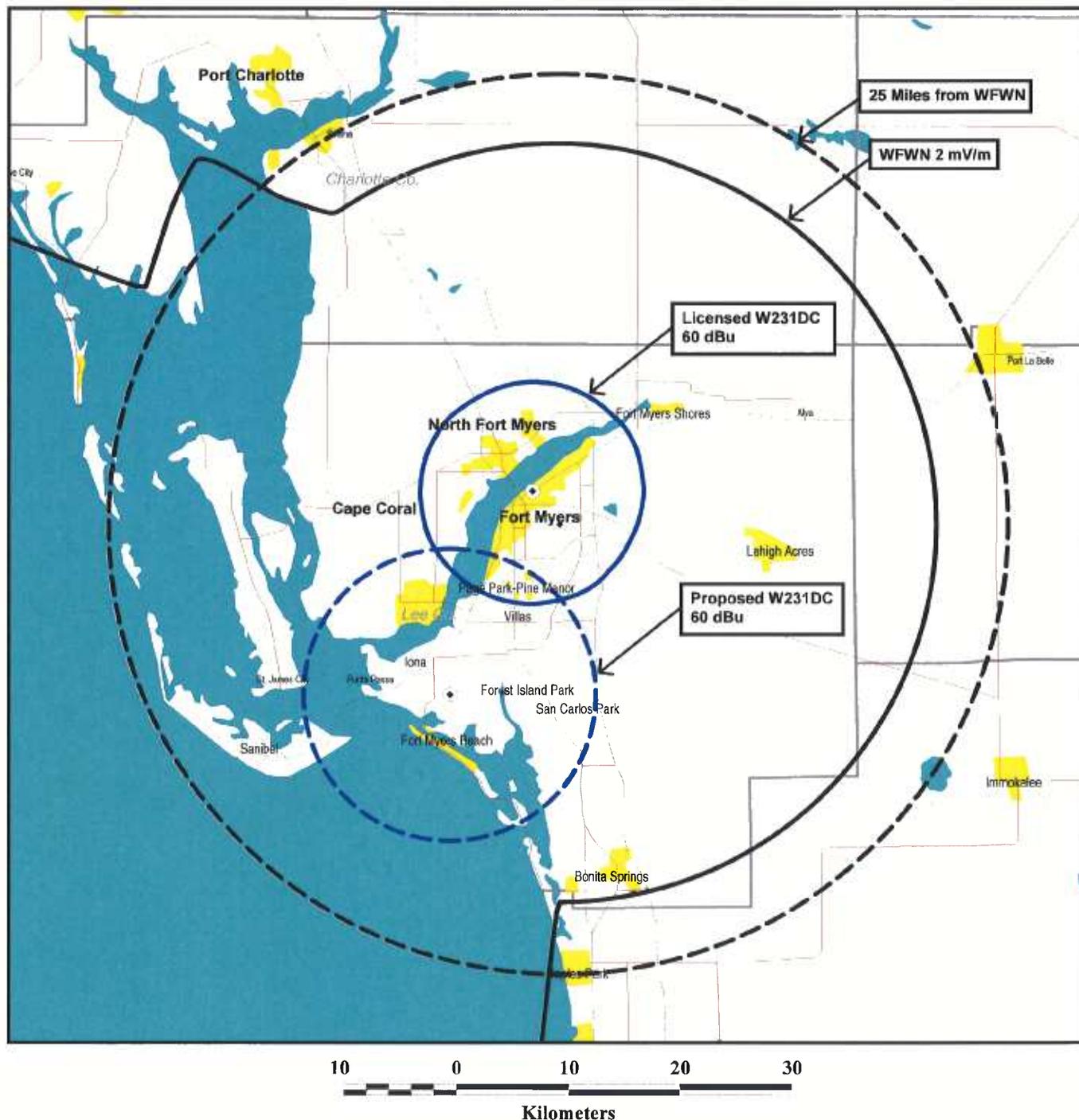
Washington, DC 20004

(202) 776-2370

Its Attorneys

May 2, 2017

Exhibit 1



AM FILL-IN COMPLIANCE MAP

FM TRANSLATOR STATION W251BF
FORT MYERS, FLORIDA
CH 231 (94.1 MHz) 0.250 kW (ND)

du Treil, Lundin & Rackley, Inc. Sarasota, Florida

FM Contour Study

du Treil, Lundin, & Rackley, Inc., Sarasota, Florida



Channel: 231 **Coordinates:** 026-29-16 081-55-46 (NAD 27) **ERP:** .25 kW **Max. HAAT:** 103 m **Considering Only Interference Caused**

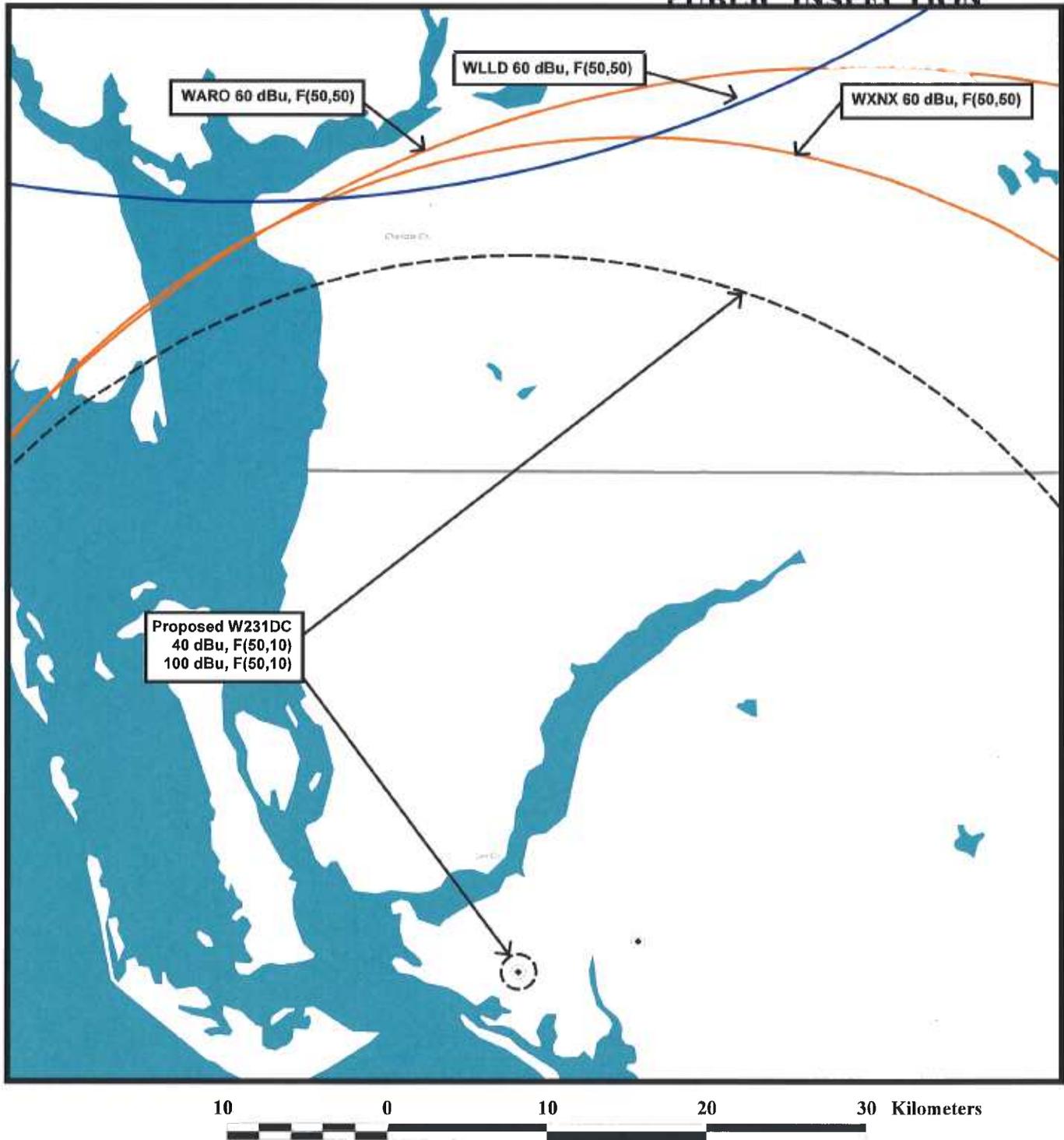
Comment: Proposed W231DC

Callsign	Chan.	Service	Status	Freq.	City	State	Co.	Rec.	Latitude	Dist. (km)	Sep. (km)	Spac. (km)
Facility ID	ARN			Class	DA	73.215	ERP (kW)	HAAT (m)	Longitude	Bear. (deg)	Comment	
WXNX	229	FM	LIC	93.7	SANIBEL	FL	US	C	26-30-18	7.77	51.4	-43.63
66223	BLH	20100119ABA	C2	N	Y	43	145		081-51-14	75.69	SHORT	/1
				WXNX 60.0 dBu desired distance: 50.3 km				Proposed 100.0 dBu undesired distance: 1.1 km				
W231DC	231	FX	LIC	94.1	FORT MYERS	FL	US	C	26-39-05	19.56	54.9	-35.34
138791	BLFT	20160706AAC	D	N	N	0.22			081-51-20	21.98	SHORT	/2
				W231DC 60.0 dBu desired distance: 10.1 km				Proposed 40.0 dBu undesired distance: 44.8 km				
WLLD	231	FM	LIC	94.1	LAKELAND	FL	US	C	27-40-23	132.54	129.66	2.88
51987	BLH	19950713KB	C	N	N	100	455		082-06-35	352.33	CLOSE	/3
				WLLD 60.0 dBu desired distance: 84.8 km				Proposed 40.0 dBu undesired distance: 44.8 km				
WARO	233	FM	LIC	94.5	NAPLES	FL	US	C	26-20-26	27.04	74.15	-47.11
66224	BLH	19881007KA	C0	N	N	100	309		081-42-48	127.21	SHORT	/1
				WARO 60.0 dBu desired distance: 73.1 km				Proposed 100.0 dBu undesired distance: 1.1 km				

/1 There will be overlap normally prohibited by Section 74.1204 (see Figure 3). However, based on the U/D signal strength interference ratio method, which is permitted by the FCC per Living Way Ministries, it has been determined that no actual interference would occur due to lack of population under Section 74.1204(d). See Exhibit 17.

/2 Licensed W231DC operation being modified by this proposal.

/3 Proposal complies with the contour overlap provisions of Section 74.1204(d). See Exhibit 17 and Figure 3.



COMPLIANCE WITH SECTION 74.1204
FM TRANSLATOR STATION W231DC
FORT MYERS, FLORIDA
CH 231 (94.1 MHZ) 0.25 kW (ND)

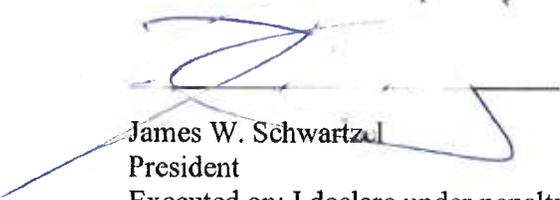
du Treil, Lundin & Rackley, Inc. Sarasota, Florida

Exhibit 2

Redacted

DECLARATION OF JAMES W. SCHWARTZEL

1. My name is James W. Schwartzel and I am President of Sun Broadcasting, Inc.
2. I have read the foregoing Opposition to Interference Complaint and the facts contained therein are true and correct to the best of my knowledge, information, and belief formed after reasonable inquiry.
3. I declare under penalty of perjury that the foregoing is true and correct.



James W. Schwartzel
President

Executed on: I declare under penalty of perjury that the foregoing is true and correct. May 2 2017

CERTIFICATE OF SERVICE

I, Rayya Khalaf, hereby certify that on this 2nd day of May, 2017, I caused a true and correct copy of this Opposition to Interference Complaint to be served on the following by first class mail and e-mail:

James D. Bradshaw
Deputy Chief, Audio Division
Media Bureau
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554
James.Bradshaw@fcc.gov

Sally A. Buckman
Laura M. Berman
Lerman Senter PLLC
2001 L Street, NW
Suite 400
Washington, DC 20036
sbuckman@lermansenter.com

A handwritten signature in blue ink that reads "Rayya Khalaf". The signature is written in a cursive, flowing style.