

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

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In the Matter of )  
)  
Amendment of Section 73.202 )  
of the Commission's Rules )  
Table of Allotments )  
For FM Broadcast Stations )  
(St. Augustine and Neptune Beach, FL) )

RM No. \_\_\_\_\_  
MM Docket No. \_\_\_\_\_

To: Chief, Allocations Branch

**PETITION FOR RULEMAKING**

Clear Channel Broadcasting Licenses, Inc. ("CCBL"), licensee of WGNE-FM (formerly WFSJ-FM), Channel 250C2, St. Augustine, Florida, Facility ID No. 67243 (the "Station"), by its attorneys, hereby respectfully petitions the Commission for modification of the Commission's Table of Allotments for FM Broadcast Stations (Section 73.202 of the Commission's Rules) to: (a) delete Channel 250C2 from St. Augustine, Florida; (b) add Channel 250C2 to Neptune Beach, Florida; and (c) modify the license of the Station to specify operations on Channel 250C2 in Neptune Beach, Florida, in lieu of operation on Channel 250C2 in St. Augustine, Florida (collectively, the "Proposal"). 1/

1/ During this past week, according to the Commission's database, the call sign of the Station was changed from WFSJ-FM to WGNE-FM. However, for the convenience of the Commission, and for internal consistency with regard to exhibits to this pleading (which were largely prepared before news of the call sign change

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Grant of the Proposal would provide first local aural transmission service to Neptune Beach, Florida, a census designated and independent community of approximately 6,816 persons, according to the 1990 Census. Neptune Beach, which is situated between the Atlantic Ocean and the Intra-Coastal Waterway, is located in the Jacksonville Urbanized Area, but clearly has its own identity and merits its own transmission station, pursuant to the Commission's allotment priorities. *See Exhibit 1.*

Moreover, the Proposal, which proposes no change to the Station's transmitter site or facilities, would not deprive any current community of license of its sole local transmission service. St. Augustine, the current community to which the Station is assigned, will continue to be the community of license of five radio stations, even though it only has roughly five thousand more residents than Neptune Beach. Also, as no technical changes are proposed, the Station will continue to serve the entire area just as it is now, including coverage to roughly 61 percent of the Jacksonville Urbanized Area.

A Technical Statement, attached as Exhibit 2, demonstrates that the Proposal is consistent with the Commission's technical rules. A statement from CCBL affirming that it will apply for the allotment if changed as proposed also is attached.

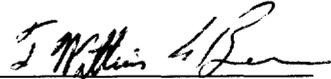
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became available), the Station will be referred to here by its former call sign throughout this pleading.

Accordingly, the Commission should grant the Petition, issue an appropriate Notice of Proposed Rule Making, and approve the proposed modification in the Station's license under Section 1.420(i) of the Commission's Rules.

Respectfully submitted,

**CLEAR CHANNEL  
BROADCASTING LICENSES, INC.**

By:   
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Its Attorneys

June 29, 2000

**EXHIBIT 1**

The foregoing Petition for Rule Making (the "Petition") requests that the Commission re-allot Channel 250C2 from St. Augustine, Florida, to the independent community of Neptune Beach, Florida, and simultaneously modify the license of WFSJ-FM, St. Augustine, Florida (the "Station" or "WFSJ"), to Neptune Beach (the "Proposal"). Because the Proposal is consistent with the public interest and better distributes local aural transmission service, the Commission should adopt the Petition and approve the Proposal as quickly as possible.

**I. THE COMMISSION SHOULD ADOPT THE PROPOSAL, WHICH PROVIDES A FIRST LOCAL AURAL TRANSMISSION SERVICE TO NEPTUNE BEACH AS WELL AS OTHER DEMONSTRABLE PUBLIC INTEREST BENEFITS.**

Three factors determine whether the Commission grants a proposal to change the FM Table of Allotments and an affected station's community of license: 1/

- whether the proposal is subject to competing applications; 2/

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1/ See Report and Order, Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Parker and Port St. Joe), 11 FCC Rcd 1095 (1996) ("Parker & Port St. Joe R&O").

2/ The Commission's Rules state that competing applications will be accepted only if the amended allotment is not mutually exclusive with the licensee's present assignment or if the proposed change would deprive a community of its sole "local transmission service." See 47 C.F.R. § 1.420(i) & Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870, 4874 (1989) ("Change of Community R&O"), recon. granted in part, 5 FCC Rcd 7094 (1990).

- whether the proposal reduces or maintains any existing short-spacing; 3/ and
- whether the proposal is consistent with the statutory directive to “make such distribution of licenses . . . among the several States and communities as to provide a fair, efficient and equitable distribution of radio service to each of the same.” 4/

The instant Proposal satisfies each of these criteria.

First, under the Commission's Rules, the Proposal is not subject to competing applications. 5/ As the Technical Exhibit demonstrates, the Proposal is mutually exclusive with the current operation of the Station, and the Proposal would not deprive any community of its sole transmission service. In fact, the Station's current community of license – St. Augustine, which had a 1990 Census population not even twice as large as Neptune Beach – will continue to be home to three full-service FM radio stations, two full-service AM radio stations, and at least one FM and one television translator. 6/

Second, the proposed change – which does not involve a change in the Station's transmitter site and facilities – neither changes the Station's standing vis-

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3/ See *Parker & Port St. Joe R&O* at 1095 (¶ 2).

4/ 47 U.S.C. § 307(b).

5/ See attached Technical Exhibit (“Exhibit 2”).

6/ See, e.g., *Broadcasting & Cable Yearbook 1999* at D-100.

a-vis the Commission's technical requirements nor alters the Station's service area in any respect. <sup>7/</sup>

Third, the change would result in a more efficient and equitable distribution of local radio service. According to Commission precedent, a change to the FM Table of Allotments would result in a better distribution of service when the proposal better reflects the populations of and broadcast services available to an area's communities. <sup>8/</sup> Specifically, the Commission examines whether the proposed change would ensure one full-time aural reception service to a particular community. If not, the Commission considers whether the proposed change would afford any community a second full-time aural reception service or whether the proposed change would provide a community with its *first* local transmission service ("the "Local Transmission Priority"). <sup>9/</sup> Only to the extent that these first two priorities are inconclusive will the Commission then consider other public interest factors, including whether a proposal would enable comparatively sized communities to have a similar number of broadcast services or would increase the total number of persons served.

In this instance, because the Proposal would provide Neptune Beach – a growing and independent community with a 1990 Census population of 6,816

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<sup>7/</sup> See Exhibit 2 at 2.

<sup>8/</sup> See *Parker & Port St. Joe R&O*, 11 FCC Rcd at 1095 (¶ 4).

persons -- its first local aural transmission service, the Commission should adopt the Petition pursuant to the Local Transmission Priority. No higher re-allotment priority is implicated by the Proposal. <sup>10/</sup> Accordingly, the Commission should notice and ultimately grant the Proposal with all due speed.

**II. GRANT OF THE PROPOSAL IS CONSISTENT WITH THE HUNTINGTON DOCTRINE, TO THE EXTENT THAT THAT DOCTRINE EVEN APPLIES WHEN NO CHANGE IN THE STATION'S SITE OR FACILITIES IS PROPOSED.**

The Local Transmission Priority presumes that every community deserves at least one local transmission service. <sup>11/</sup> A "limited exception" to this sensible presumption -- the Huntington Doctrine -- may sometimes warrant denial of the re-allotment of an FM frequency to a particular community if:

- the community is within an Urbanized Area, or the station in question would be able to serve at least 50 percent of the Urbanized Area if the proposed change was adopted; and
- the proposed community is not distinct from the Urbanized Area's central city. <sup>12/</sup>

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<sup>9/</sup> See *id.* Commission precedent accords equal weight to these two priorities in matters in which they are both pertinent. See *Change of Community R&O*, 4 FCC Rcd at 4873 & n. 8.

<sup>10/</sup> St. Augustine, Florida -- which is part of the Jacksonville Radio Market -- is otherwise well-served by local aural broadcast services, including five other radio stations assigned to St. Augustine alone. Accordingly, the current absence of any local transmission service for Neptune Beach is the most important consideration in this proceeding.

<sup>11/</sup> See *Parker & Port St. Joe R&O* at 1095 (¶ 6).

<sup>12/</sup> *Memorandum Opinion & Order, Faye & Richard Tuck, Inc.*, 3 FCC Rcd 5374 at 5376 (¶¶ 22-23) (1988); see also *Parker & Port St. Joe R&O* at 1095 (¶ 7)

Unless there is substantial evidence that the Huntington Doctrine applies, the Commission will “recognize a community’s presumptive need for local transmission service” and grant re-allotment. <sup>13/</sup>

**A. The Proposal Does Not Implicate a Proper Interpretation of the Huntington Doctrine.**

Because the Huntington Doctrine is but a limited exception to the general rule that all bona fide communities merit their own radio station, the Commission largely has refused to extend the doctrine. <sup>14/</sup> In particular, the Allocations Bureau has determined that it will not extend the Huntington Doctrine to instances where a proposed reallocation would involve moving a station that serves a particular urbanized area to another community within that area. <sup>15/</sup>

The Proposal requests Commission consent to re-allot the Station’s frequency from St. Augustine, a community of approximately 11,692 persons and six full-power radio stations, to Neptune Beach, a self-governing community with approximately 6,816 persons, but no broadcast stations of its own. The Proposal does not require any change in facilities, as the Station already encompasses

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(inquiring as to whether suburb was “so integrally related” with the central city area as to be credited with all transmission services of that area).

<sup>13/</sup> See *Faye & Richard Tuck, Inc.*, 3 FCC Rcd at 5377 (¶ 24).

<sup>14/</sup> See, e.g., *North Texas Radio, Inc.*, 11 FCC Rcd 8531 (1996) (holding that Huntington Doctrine does not apply to singleton application to construct new AM station).

<sup>15/</sup> See *East Los Angeles, Long Beach, and Frazier Park, California*, 10 FCC Rcd 2864 (¶¶ 20-21) (Allocations, 1995).

Neptune Beach within its 70 dBu contour. In fact, the Station *already* encompasses 54 percent of the Jacksonville Urbanized Area within its 70 dBu contour.

Under these circumstances, the Proposal should not be subject to the Huntington Doctrine. Under established Huntington precedent, a station that covers at least half of an Urbanized Area within its 70 dBu contour is deemed to serve that Urbanized Area. 16/ Accordingly, the Station already should be deemed to serve the Jacksonville Urbanized Area as a result of its existing coverage of 54 percent of that Area with a 70 dBu signal.

As a result, the proposed reallocation of the Station to become the first local transmission service for Neptune Beach, a community just inside the Jacksonville Urbanized Area and separated from the rest of that area by the wide waters of the Intra-Coastal Waterway and two communities with their own broadcast services, should not require a Huntington analysis. The Allocations Bureau has established that it will not expend scarce Commission resources to review, under the Huntington Doctrine, a proposed re-allocation with regard to an Urbanized Area that the affected station, per Huntington, already serves. 17/

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16/ See *Headland, Alabama, and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995).

17/ See Notice of Proposed Rule Making, *Kankakee and Park Forest, Illinois*, MM Docket No. 99-330 at ¶ 6 (Allocations, released Dec. 15, 1999) (refusing to require a *Tuck* showing with regard to a station's service of urbanized area in which the station's former community of license was located).

Moreover, such a result is consistent with the Commission's stated understanding that the Huntington Doctrine is but a narrow exception to the Local Transmission Priority. It also is consistent with the purpose of the Doctrine: to ensure that stations that have not previously served an urbanized area do not flock to serve such areas to the detriment of their existing communities. As, in this case, St. Augustine would remain well-served by five of its own radio stations, the station's current allotment already serves the majority of the Jacksonville Urbanized Area, and the Station has not proposed a change in facilities, there is no reason for the Commission to extend the Huntington Doctrine to the Proposal. 18/

Instead, the Commission must focus on whether the proposed re-allotment would more fairly allot scarce FM frequencies among bona fide communities. Since, under this standard, it is self-evident that a community such as Neptune Beach, which has more than half the population of St. Augustine, at least should have one-fifth as many radio stations, and that, in any event, such a community deserves at least *one* radio station -- the Commission should notice and grant the Proposal.

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18/ See *East Los Angeles, Long Beach, and Frazier Park, California*, 10 FCC Rcd 2864 (¶ 21) (Allocations, 1995) (refusing to consider Huntington factors when station to be moved already serves urbanized area as the "first local service preference is not being used as a basis to enter the market.").

**B. Even If The Huntington Doctrine Is Considered, The Proposal Still Merits Commission Approval.**

Even if the Commission were to consider the Huntington Doctrine, it should still grant the Proposal. Commission precedent has established three basic criteria to determine whether the Huntington Doctrine should deny re-allotment under the Local Transmission Priority in a particular case: 19/

- the size and proximity of the specified community to the central city;
- the signal population coverage at maximum power; and
- the interdependence of the community with the central city.

A review of these criteria confirms that Neptune Beach, though located within the Jacksonville Urbanized Area, merits its own broadcast service.

- 1. Neptune Beach, which is a significant community surrounded by water or communities with their own radio stations, deserves its own broadcast service.**

Neptune Beach, a self-governing city, has a 1990 Census population of 6,816 persons. (Since 1990, the city's population has grown to an estimated 7,543 persons.) Established in 1931, it is bordered on the north by Atlantic Beach, a community with its own AM and FM stations, on the south by Jacksonville Beach, a community with its own AM station, on the west by the Intra-Coastal Waterway,

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19/ *Faye and Richard Tuck, Inc.*, 3 FCC Rcd 5374, 5377 (1988).

and on the east by the Atlantic Ocean. 20/ Also, Neptune Beach – the geographic coordinates of which lies some 16 miles east of Jacksonville's – is as far from downtown Jacksonville as a number of communities with FM stations, including Atlantic Beach, Baldwin and Ponte Vedra Beach. 21/

In addition, Neptune Beach must be considered at least as deserving as other nearby communities within the Jacksonville DMA that have their own radio stations. For instance, the town of Baldwin – which has but 1,450 residents according to the 1990 Census – has its own FM (and its own AM) station, even though that community is surrounded by Jacksonville. Baldwin also has but one-fifth of one percent of Jacksonville's 1990 population of 635,230, while Neptune Beach's growing population -- which is roughly 4 times the size of Baldwin's -- is more comparable to those of Atlantic Beach or St. Augustine itself. Specifically, St. Augustine, the Station's current community of license, has a 1990 population of 11,692, or just a few thousand persons more than Neptune Beach's estimated 1997 population of 7,543, and yet St. Augustine has (including the Station) six of its own

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20/ That each of the two communities contiguous to Neptune Beach have a radio station, including one FM station, is itself evidence that Neptune Beach is deserving of its own radio station. *See Parker & Port St. Joe*, 11 FCC Rcd at 1096.

21/ *See* 47 C.F.R. § 73.202. Specifically, the U.S. Geographic Name Server through the web site <http://www.indo.com/distance>, which has been used in other Commission proceedings, states that the distances between Neptune Beach and Jacksonville (16 miles) is comparable to that of the distance (16 miles) between Jacksonville and Atlantic Beach, a community within the Urbanized Area of 11,636, and that of the distance between Jacksonville and Baldwin, a community within the Urbanized Area of only 1,450 residents (19 miles). Both Atlantic Beach and Baldwin have their own AM *and* FM stations.

radio stations. As Commission precedent suggests that the number of allotments to a community generally should reflect the relative size of the community, Neptune Beach, which has a larger population than Baldwin and a comparable population to Atlantic Beach and St. Augustine, likewise deserves at least one radio station to call its own. <sup>22/</sup> Accordingly, as compared to nearby communities with FM allotments, this criterion supports adoption of the Proposal.

**2. The Proposal would not result in increased coverage of the Jacksonville Urbanized Area.**

As noted, the Proposal does not involve a change in the Station's technical facilities. Accordingly, the Station will continue to cover 54 percent of the Jacksonville Urbanized Area with a 70 dBu signal regardless of the Commission's action on the proposed change. Because no technical change is proposed, this indicia weighs strongly in favor of the Proposal.

**3. Neptune Beach, a self-governing community, also is as distinct from Jacksonville as its neighbors, each of which has its own radio station.**

As to be expected from such a growing and physically distinct community, Neptune Beach's residents do not depend on Jacksonville for private or public services, their retail services, or local events. Commission precedent focuses on eight factors for assessing whether a community within the boundaries of an urbanized area is dependent on that area's central city:

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<sup>22/</sup> See *Douglas, Tifton and Unionville, Georgia*, 12 FCC Rcd 1280 (1997) (reallotting channel would equalize the number of transmission services between larger and smaller communities).

- whether the community has its own local government and elected officials;
- the extent to which the specified community relies on the larger metropolitan area for various municipal services such as police, fire protection, schools, and libraries;
- whether the community has its own commercial establishments, health facilities, and transportation systems;
- the extent to which community residents work in the central city;
- whether the community has its own newspaper or other local media;
- whether the community leaders and residents perceive the specified community as being separate from the larger metropolitan area;
- whether the community has its own telephone book or zip code; and
- the extent to which the specified community and the central city are part of the same advertising market.

As measured by these factors, Neptune Beach merits its own broadcast service.

First and foremost, Neptune Beach has its own city government, including its own elected mayor, city council, and city clerk. Its city manager, who is appointed by the city council, indirectly oversees separate city departments of public safety, public works and finance.

Second, the City of Neptune Beach provides its residents an extensive variety of municipal services, including its own sewage plant and water works. 23/

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23/ See, e.g., Attachment 1 (listing addresses of various Neptune Beach entities).

The city's public safety department oversees the Neptune Beach Police Department and Neptune Beach Fire Department, as well as other public safety personnel, including local lifeguards for the community's family-oriented beach. <sup>24/</sup> The city's Parks and Recreation Department is responsible for the city's several parks, including Jarboe Park, which features, among other more common amusements, a Butterfly Garden. Neptune Beach also boasts two of its own schools -- Fletcher High School and Neptune Beach Elementary School.

Third, the community has its own health care and commercial facilities. In addition to the Beaches Speech and Language Center, there are at least a dozen medical practitioners with Neptune Beach addresses. <sup>25/</sup> Among its dozens of retail establishments, the city boasts three grocery stores, a drug store, five hair salons, a hardware store, two hotels, several bars, two banks, roughly 15 restaurants, and a six-theater movie cinema. The city also is not dependent on Jacksonville for other services: for example, the community has at least three dance studios, a number of insurance agents, and nearly a dozen attorneys or law firms.

Such indicia are sufficient to deem Neptune Beach a distinct community deserving of its own radio station. However, these are not the only distinguishing characteristics of the community. In addition to the wide variety of commercial establishments (which also provide employment to Neptune Beach)

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<sup>24/</sup> See *id.*

noted above, Neptune Beach is intent on fostering its sense of community among its residents. For example, Neptune Beach is the process of refurbishing its own Town Center, which, when finished, will offer the community a focal point for its commercial district. The city recently completed work on a new City Hall, which was named for a recent mayor of the town, and has its own beautification committee. Also, the city hosts its own Easter egg hunt and a city festival annually, as well as other periodic community events. Neptune Beach also builds its sense of community through its six churches.

Neptune Beach does not have its own phone book or newspaper, and it is part of the Jacksonville Designated Market Area. However, such minor characteristics cannot deny Neptune Beach its own local transmission service in light of the other evidence in favor of the change. In fact, the lack of newspaper should be all the more the reason for the community to obtain a local media source of its own. Moreover, mail to Neptune Beach is to be addressed to Neptune Beach and the city's associated zip code -- 32266.

As noted, a finding that a proposed community is distinct from a nearby city is the single most important consideration in determining whether the narrow Huntington exception should block a requested change in the Table of Allotments. 26/ Because, in this case, Neptune Beach is not dependent on Jacksonville for its government, its schools, its retail, social or community services,

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25/ See *id.*

and because Neptune Beach has maintained its own sense of a distinct community, the Huntington Doctrine is not a bar to Neptune Beach be awarded its first local transmission service.

### CONCLUSION

The proposal described in the Petition complies with all Commission requirements. It does not disrupt service to a rural region, as the Station already serves more than 50 percent of the Jacksonville Urbanized Area with its 70 dBu signal. Moreover, because the Proposal does not involve a technical change, the Proposal also does not terminate service to any listeners. Finally, it brings the first local aural transmission service to Neptune Beach, a distinct Florida community with its own government, municipal services, commercial, health and social services, and its own sense of identity.

For all the foregoing reasons, the Commission should adopt and grant the proposed rule making.

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26/ See *Faye and Richard Tuck, Inc.*, 3 FCC Rcd at 5377 (¶ 28).

# **ATTACHMENT 1**

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<a href="#">Neptune Beach Sewage Plant</a>	2010 Forest Ave	Neptune Beach, FL	(904) 270-2422
<a href="#">Neptune Beach Water Works</a>	1019 5th St	Neptune Beach, FL	(904) 270-2419

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<a href="#">Neptune Beach Fire Dept</a>	200 Lemon St	Neptune Beach, FL	(904) 270-2413

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<a href="#">Fletcher High School</a>	700 Seagate Ave	Neptune Beach, FL	(904) 247-5905
<a href="#">Neptune Beach Elementary</a>	1515 Florida Blvd	Neptune Beach, FL	(904) 247-5954
<a href="#">Red School House</a>	2049 Florida Blvd	Neptune Beach, FL	(904) 249-0905

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<a href="#">Beaches First Church-Nazarene</a>	424 Davis St	Neptune Beach, FL	(904) 249-3655
<a href="#">Christ United Methodist School</a>	400 Penman Rd	Neptune Beach, FL	(904) 249-5370
<a href="#">Church Of Jesus Christ Of Lds</a>	440 Penman Rd	Neptune Beach, FL	(904) 241-0201
<a href="#">First Christian Church-Beaches</a>	2125 Ocean Front	Neptune Beach, FL	(904) 246-2010
<a href="#">Neptune Baptist Church</a>	407 3rd St	Neptune Beach, FL	(904) 249-2307

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<a href="#">Batton Steven DO</a>	910 3rd St # C	Neptune Beach, FL	(904) 246-5448	<a href="#">MoreInfo</a>
<a href="#">Beaches Speech &amp; Language Ctr</a>	302 3rd St	Neptune Beach, FL	(904) 246-9353	
<a href="#">Carper Laura B PhD</a>	810 3rd St # A	Neptune Beach, FL	(904) 241-0666	
<a href="#">Enrique M Silva MD - Jacksonville Pediatric Assoc</a>	930 3rd St	Neptune Beach, FL	(904) 246-9428	<a href="#">MoreInfo</a>
<a href="#">Gross Brenda</a>	808 3rd St	Neptune Beach, FL	(904) 247-4335	
<a href="#">James Barbara</a>	302 3rd St # 3	Neptune Beach, FL	(904) 247-3679	
<a href="#">James Lane DDS - James A Lane &amp; Assoc</a>	802 3rd St	Neptune Beach, FL	(904) 247-0111	
<a href="#">Jones Phil DDS</a>	802 3rd St	Neptune Beach, FL	(904) 247-0444	
<a href="#">Juan Carlos Quintana MD - Jacksonville Pediatric Assoc</a>	930 3rd St	Neptune Beach, FL	(904) 241-2860	
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