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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of

Amendment of Section 73.202(b) )  
Table of Allotments ) MB Docket No. \_\_\_\_\_  
FM Broadcast Stations ) RM - \_\_\_\_\_  
(Trenton and )  
Burlington, New Jersey) )

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Attn: Assistant Chief, Audio Division  
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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**PETITION FOR RULE MAKING**

Nassau Broadcasting II, L.L.C. ("Nassau"), licensee of WPST(FM), Trenton, New Jersey, by its counsel, hereby submits this Petition for Rule Making, which proposes to delete Channel 248B at Trenton, New Jersey and allot Channel 248B at Burlington, New Jersey<sup>1</sup> as that community's first local service. If this Petition is granted, Nassau will file an application for Channel 248B at Burlington and construct the facilities as authorized. No change to the physical facilities of WPST are necessary in order to change the station's community of license. The following table summarizes the changes requested in this Petition:

City	Channel	
	Existing	Proposed
Trenton, New Jersey	233B, 248B, 268B	233B, 268B
Burlington, New Jersey	---	248B

*MB 04-26*

<sup>1</sup> The City of Burlington, the proposed community of license, is located in the larger region of Burlington County. Therefore, please note that, unless specifically mentioned, when referring to Burlington, Petitioner is referring to the City of Burlington.

## **I. Technical Analysis**

1. As demonstrated in the Engineering Statement, Channel 248B can be allotted to Burlington at WPST's current coordinates of 40-14-05 North Latitude, 74-46-02 West Longitude consistent with Section 73.207 of the Commission's Rules with respect to all existing and proposed domestic allotments and facilities, with the exception of certain grandfathered short spaced allotments as explained below. *See Exhibit 2.* A 70 dBu signal can be provided to Burlington from the current reference coordinates. *See Exhibit 3.* Since WPST's facilities will not be relocated, there will be no change in population and area served. Trenton will continue to receive 7 local services, and will thus remain well served.

2. The engineering statement reveals that at its current location, WPST is short-spaced to three stations, WALK-FM (Channel 248B), WIXM(FM) (Channel 247B), and WOGL(FM) (Channel 251B). *See Exhibit 2.* These short spacings were created prior to November 16, 1964 and the stations have remained continuously short spaced since then. Accordingly, these short spacings are governed by Section 73.213 of the Commission's Rules. The Commission has held that a station with pre-1964 short spacings under Section 73.213 may change its community of license so long as (i) no additional short-spacing is created, (ii) no existing short-spacing is exacerbated, and (iii) the potential for interference between currently short spaced stations is not increased. *See Kankakee and Park Forest, Illinois, 16 FCC Rcd 6768, 6768 (2001); Killeen and Cedar Park, Texas, 15 FCC Rcd 1945, 1945-46 (2000); Oceanside and Encinitas, California, 14 FCC Rcd 15302, 15304 (1999); Newnan and Peachtree City, Georgia, 7 FCC Rcd 6307, 6308 (1992).* These conditions are met here since this proposal requires no change to WPST's facilities. Therefore, the allotment of Channel 248B from Trenton to Burlington is consistent with the requirements of Section 73.213.

## II. Change in Community of License

3. Nassau desires to change the community of license of WPST from Trenton to Burlington under the guidelines set forth in *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recons. granted in part*, 5 FCC Rcd 7094 (1990). There, the Commission stated that a station may change its community of license without subjecting the license to other expressions of interest if (1) the proposed allotment is mutually exclusive with the current allotment; (2) the current community of license will not be deprived of its only local service; and (3) the proposed arrangement of allotments is preferred under the Commission's allotment priorities. These criteria are met here. First, because the facilities are identical, the proposed use of Channel 248B at Burlington is mutually exclusive with the current use of Channel 248B at Trenton. Second, Trenton will not be deprived of its only local service because it will continue to be served by five FM stations and two AM stations. Third, the provision of a first local service to Burlington (2000 U.S. Census population 9,736) under Priority 3 will result in a preferential arrangement of allotments over an eighth local service at Trenton (2000 U.S. Census population 85,403) under Priority 4. *See Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982).

4. Burlington is located in the Philadelphia, Pennsylvania Urbanized Area. Trenton is also located in an Urbanized Area and therefore, this relocation does not implicate the Commission's policy regarding the migration of stations into urban areas. *See Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995) ("*Headland*"); *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988) ("*Tuck*"). Nevertheless, a *Tuck* showing is provided. In making the determination whether to award an urbanized community a first local service

preference, the Commission will consider the extent to which the station will provide service to the entire Urbanized Area, the relative populations and proximity of the suburban and central city, and, most importantly, the independence of the suburban community. *Tuck*, 3 FCC Rcd at 5377-78. In this case, the WPST 70 dBu contour currently encompasses 19% of the Philadelphia Urbanized Area and will continue to do so following the community of license change. Burlington's population (2000 U.S. Census 9,736) is less than 1% of that of Philadelphia (2000 U.S. Census 1,517,550), and Burlington is located 28.7 kilometers from Philadelphia. These figures are similar to those of other suburban communities granted a first local preference. *See e.g., Park City, Montana*, DA 04-285 (2004) (Park City's population is less than 1% of that of Billings, and Park City is located 21 miles from Billings); *Ada, Newcastle and Watonga, Oklahoma*, 11 FCC Rcd 16896, 16899 (1996) (Newcastle's population is less than 1% of that of Oklahoma City, and Newcastle is located 15 miles from Oklahoma City). Nevertheless, the Commission has repeatedly stated that these factors are less important than evidence of independence. *See Headland*, 10 FCC Rcd at 10355. The following analysis of the eight *Tuck* factors demonstrates the independence of Burlington from Philadelphia.

**(1) *Extent to which the residents of Burlington work in Burlington.***

According to 2000 Census figures, 804 of the 4,658 employed individuals in Burlington, or 17.3%, work at their place of residence. *See Exhibit 5*. This percentage compares favorably with other independent communities. *See, e.g., Albemarle and Indian Trail, North Carolina*, 16 FCC Rcd 13876 (2001) (11.3% of working-age residents worked in community); *Coolidge and Gilbert, Arizona*, 11 FCC Rcd 3610 (1996) (13% of Gilbert's working population actually worked in Gilbert).

(2) ***Newspapers and other media that cover Burlington's local needs and interests.*** The *Burlington County Times* is a daily publication that covers the local needs and interests of Burlington. While the paper reports on the news in Burlington County, its on-line edition allows users to tailor the news to specific communities in Burlington County, like the City of Burlington. The *Burlington County Times*, with a circulation of approximately 40,000, covers local news for the residents of Burlington, including articles on local government, local business, community news, and local sports. In addition to local media coverage through the *Burlington County Times*, the City of Burlington maintains its own webpage at <<http://www.burlingtonnj.us>> where it publishes news, headlines, and notices concerning the community of Burlington. See Exhibit 5.

(3) ***Community leaders and residents perceive Burlington as being separate from Philadelphia.*** The City of Burlington, which was officially founded in 1784 when it acquired its own Charter and was detached from Burlington Township, has its own unique identity and history that is separate from that of Philadelphia. It was once the capital of West Jersey and the third largest port in North America, and today, the City contains the state's oldest library, fire company and pharmacy. Burlington has an official Historic District where residents and visitors are invited to experience the rich and vibrant history of Burlington. See Exhibit 5.

The City of Burlington also has a Tourism Council which is responsible for promoting tourism and travel in and to Burlington. The Tourism Council's responsibilities include marketing Burlington's historical resources, developing guided tours, and maintaining a promotional website. In 2002, Burlington celebrated its 325th

anniversary. To commemorate this event, the Tourism Council published a number of publications including, a Tour Guide & Map, a Tour Planner, and post cards portraying historic landmarks for visitors and residents interested in learning more about the heritage of Burlington. The Tourism Council also coordinated events throughout the year, including the October 10, 2002 commemorative U.S. Postal Service cancellation stamp event held at City Hall. *See Exhibit 5.*

**(4) *Burlington has its own local government and elected officials.***

Burlington operates independently of any other government, and is run by the Mayor and Common Council. The Mayor is elected to four-year terms and is responsible for the administration of the city. The Common Council consists of seven members who each serve four-year terms; three at-large members representing the entire city and four members each representing one of Burlington's four wards. In addition to these elected positions, the Mayor and Council appoint officials who are responsible for the daily administration of Burlington. The Mayor appoints the City Business Administrator who administers the budget, purchasing, and personnel. The Council appoints the Municipal Clerk who serves as secretary to the Council, chief administrative officer of all elections, and chief registrar of voters. *See Exhibit 5.*

Burlington also has seven departments that collectively employ over 100 of Burlington's employees, including Public Safety, Public Works, Housing & Community Development, Engineering, Finance, Law and Municipal Court, and Public Affairs. Information on all of these departments can be found on the Burlington website. *See Exhibit 5.*

(5) ***Burlington has one zip code and a phone directory.*** The zip code assigned to Burlington is 08016 and the U.S. Postal Services operates a post office in Burlington located at 322 High Street. The Burlington City-Camden North Phone Directory provides white and yellow page directories for the City of Burlington. In addition, the City of Burlington provides an extensive listing of all government phone numbers on the Burlington website. The residents of Burlington can use these numbers to contact any individual, elected official, board or department in Burlington, and to find out information about the services provided by Burlington. *See Exhibit 5.*

(6) ***Burlington has its own commercial establishments and health facilities.*** Burlington is home to a variety of businesses and commercial establishments.<sup>2</sup> A number of these local businesses identify with the community by using “Burlington” in their name, including Burlington Antiques Emporium, Burlington County Historical Society Gift Shop, Burlington Fine Arts, Burlington KIA, Burlington Beauty Supply, Burlington Café, Burlington Pharmacy, and Burlington Supermarket. Other retail and commercial businesses located in the City of Burlington include Abbey’s, Angel Nails, High Street Tailor Shop, Imhoff Furniture, JB Bakery, L & H Plumbing and Heating, Modern American Hairstylists, NAPA Auto Parts, Philip’s Furniture, and Verizon. Dining establishments include the Cornerstone Restaurant, Duff’s Deli, Panda Restaurant, The Fish House, Thommy G’s, and Perro’s Bar and Grill. The City of Burlington Historical District website, <[www.tourburlington.org](http://www.tourburlington.org)>, provides information of shopping, dining and other things to do in Burlington. *See Exhibit 5.*

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<sup>2</sup> Because the City of Burlington is located in Burlington County, it is hard to determine whether businesses are actually located in the City of Burlington. Therefore, Nassau contacted the City of Burlington City Hall, which provided a list of businesses located in the City of Burlington. *See Exhibit 5.*

The Public Affairs Department of the City of Burlington has a Health and Vital Statistics Division that provides a number of services to the residents of Burlington, including issuing birth, death, and marriage certificates, maintaining Burlington's health records and vital statistics, and issuing dog and food establishment licenses. Additionally, a number of health care providers are located in Burlington. Medical services and dental services are provided by a number of sole practitioners. The Lourdes Medical Center of Burlington County provides the residents of Burlington with access to a 259-bed community hospital without having to rely on Philadelphia for hospital services. This hospital provides acute and emergency care, cancer care, maternity services, behavioral health services, and a women's center. *See Exhibit 5.*

Burlington is also home to a number of religious organizations, such as Broad Street Methodist, Burlington Meeting House, New St. Mary's, Old St. Mary's, and Temple B'nai Israel. Community activities and events that occur in Burlington include Burlington Day, Riverfront Concert Series, Festival of Lights Fireworks, Illuminated Boat Parade, and Holiday House Tour. *See Exhibit 5.*

(7) ***Burlington is a separate and distinct advertising market from Philadelphia.*** The Tourism Council publishes a Tour Guide & Map and a Tour Planner. These publications provide information on dining, shopping, and lodging in the City of Burlington. The City of Burlington Historical District, through its extensive business listings, provides the businesses of Burlington with the resources to reach the residents and visitors of Burlington without having to rely on Philadelphia media sources. Additionally, the *Burlington County Times*, enables businesses in Burlington to reach its

residents through advertising in its print edition and on its website. Finally, businesses can advertise in the Burlington City-Camden North Phone Directory. *See Exhibit 5.*

**(8) *Burlington has its own schools, library, and police and fire protection.***

The City of Burlington Public School District operates six schools for the residents of Burlington: Burlington City High School, Burlington City Junior School, Wilbur Watts Intermediate School, Capt. James Lawrence Elementary School, Samuel Smith Elementary School, and Elias Boudinot Elementary School. The Library Company of Burlington operates the oldest library in New Jersey. The library serves the community of Burlington with historical volumes, modern books, CDs, DVDs, broadband web access, and a new distance-learning facility. The City of Burlington Police, which employs 31 full-time officers and 11 part-time officers, provides police services throughout the City of Burlington. The City of Burlington Police have the following divisions and units: patrol division, bike division, patrol car, detective bureau, pro-active unit, emergency services unit, K-9 unit, and administration and records. The City of Burlington Fire Division, which is comprised of six volunteer fire companies located throughout the City, provide fire protection services. One of these companies, Endeavor Fire Company is New Jersey's oldest fire company and has provided fire services to the City of Burlington since 1742. *See Exhibit 5.*

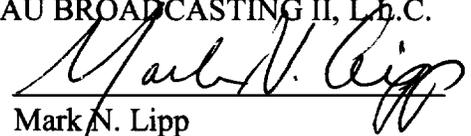
**III. CONCLUSION**

For the foregoing reasons the Commission should delete Channel 248B at Trenton, New Jersey and allot Channel 248B at Burlington, New Jersey as that community's first local service. The Commission should promptly issue a Notice of Proposed Rule Making as described herein.

Respectfully submitted,

NASSAU BROADCASTING II, L.L.C.

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Its Counsel

February 26, 2004

**ENGINEERING STATEMENT**

**EXHIBITS 1-4**

**Engineering Statement**  
*In Support of a*  
**Petition for Rulemaking**  
**WPST**  
**Nassau Broadcasting II, LLC.**

**General**

This Petition for Rule Making (“PRM”) was prepared for Nassau Broadcasting II, LLC. (“Nassau”), licensee of WPST channel 248B, Trenton, NJ. Nassau proposes to delete channel 248B at Trenton, NJ and subsequently allocate channel 248B to Burlington, NJ as the community’s first local service. Nassau proposes that the license of WPST be modified accordingly.

The PRM seeks the allotment of channel 248B at Burlington, NJ in lieu of channel 248B at Trenton, NJ. The allotment of 248B at Burlington requires no additional spectrum modifications.

**Methods**

The Nassau PRM begins with the associated allocation or channel spacing study. Additional exhibits then support the proposed modification’s technical compliance.

All searches were performed using V-Soft’s SearchFM program and then cross-checked using Au Contraire’s FMSTUDY search program. The FCC(50,50) contour and contour distance were calculated using RadioSoft’s Comstudy ver. 2.2.12.50. The studies were based on the latest technical data from the Commission’s database. Mapping was conducted using MapInfo ver. 7.5. The Burlington community boundary was cross-checked with the U.S. Census Bureau’s American Fact Finder map. See Exhibit E4. Since WPST will not be changing its antenna site or its operating facilities, neither an area gain/loss study nor remaining services study will be included.

### **Nature of the Nassau PRM**

A summary of both communities and their related channels, present and proposed, is included in Exhibit E1 for reference. Nassau proposes to delete channel 248B at Trenton, NJ and substitute channel 248B at Burlington, NJ for use by WPST. The PRM provides for first local service at Burlington, NJ.

### **Exhibits Explained**

Exhibit E2 is an allocation study depicting the spacing to all known FM facilities. Note that WPST is short-spaced to three other facilities. These short-spacings are due to the fact that WPST is a pre-1964 “grandfathered” station. Exhibit E3 is a map generated using the programs listed in the Methods section of the PRM. This study depicts the WPST channel 248B allotment coordinates, a maximum class B 70 dBu contour, an F(50,50) contour using WPST’s present facilities, and the community boundary of Burlington, NJ. Exhibits E2 and E3 demonstrate full compliance with §73.315 of the rules. Exhibit E4 is a U.S. Census Bureau – American Fact Finder map of the community of Burlington, NJ.

### **Conclusion**

The Nassau PRM has demonstrated that it is in technical compliance with the present Commission rules concerning such actions. The PRM produces a new first local service at Burlington, NJ while Trenton, NJ will continue to receive service from 5 FM and 2 AM stations.

**Statement of the Consultants**

The engineering portion of the Petition for Rulemaking was prepared for Nassau. It was developed by American Media Services, LLC. ("AMS") and may not be used for purposes other than submission to the Commission by Nassau.

The information in this application is compiled from the most recent Commission and outside data. AMS is not responsible for errors resulting from incorrect data or unpublished rule and procedure changes.

I personally prepared the foregoing exhibits. I certify to the best of my knowledge, education, and belief that the above information is true and correct.

For American Media Services, LLC.

  
Laramie Guest

February 18, 2004

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**Engineering Statement**  
*In Support of a*  
**Petition for Rulemaking**  
**WPST**  
**Nassau Broadcasting II, LLC.**

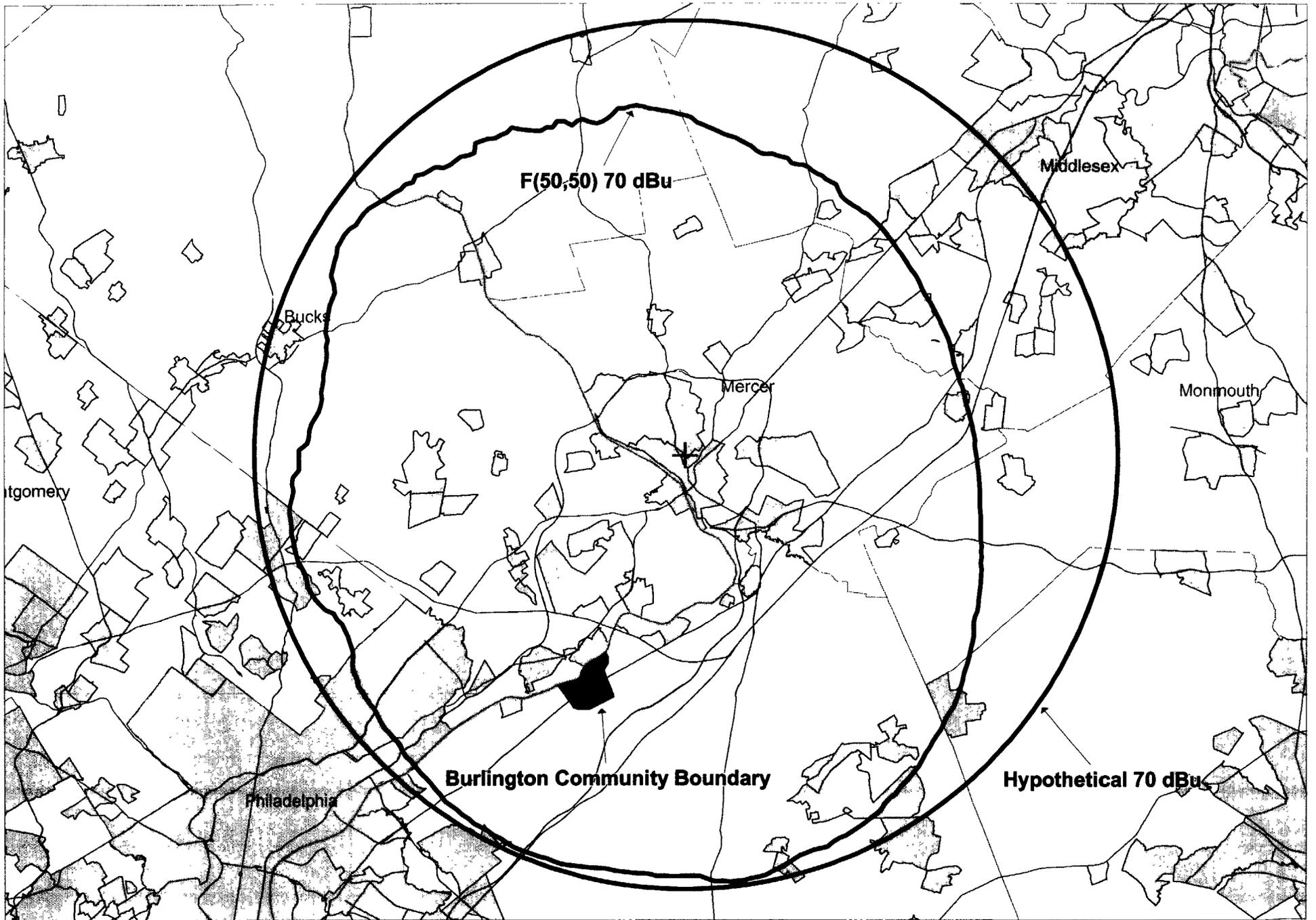
**Summary of channel assignments**

<b>Community</b>	<b>Present</b>	<b>Proposed</b>	<b>Comments</b>
Burlington, NJ	----	<b>248B</b>	Delete channel 248B at Trenton, NJ and change community of license to Burlington, NJ on channel 248B as first local service.
Trenton, NJ	<b>201A, 206A, 217A, 233B, 248B, 268B</b>	<b>201A, 206A, 217A, 233B, 268B</b>	Delete channel 248B at Trenton, NJ and change community of license to Burlington, NJ on channel 248B.

**Engineering Statement**  
*In Support of a*  
**Petition for Rulemaking**  
**WPST**  
**Nassau Broadcasting II, LLC.**

Allocation Study: 248B - Burlington, NJ(WPST)

REFERENCE								
40 14 05 N				CLASS = B				
74 46 02 W				Current Spacings			SEARCH 02-18-04	
----- Channel 248 - 97.5 MHz -----								
Call	Channel	Location		Dist	Azi	FCC	Margin	
N. Lat.	W. Lng.	Ant	Power		HAAT			
-----								
WPST	LIC-D 248B	Trenton		NJ	0.00	0.0	241.0	-241.00
40 14 05	74 46 02	DEN	50.000 kW-D		131 M			
	Nassau Broadcasting Ii, L.			BLH19860827IA				
	<b>Note: Present facilities for WPST</b>							
WALKFM	LIC-D 248B	Patchogue		NY	161.74	64.6	241.0	-79.26
40 50 41	73 02 01	DCN	39.000 kW-D		169 M			
	Amfm Radio Licenses, L.l.c			BLH19910524KA				
	<b>Note: 73.213 Short-Spacing</b>							
WIXM	LIC 247B	Millville		NJ	101.47	180.2	169.0	-67.53
39 19 15	74 46 17	C	50.000 kW		142 M			
	Millennium Atlantic City I			BLH19981104KD				
	<b>Note: 73.213 Short-Spacing</b>							
WOGL	LIC 251B	Philadelphia		PA	45.35	241.9	74.0	-28.65
40 02 31	75 14 11	CN	12.500 kW		305 M			
	Infinity Broadcasting Oper			BLH7443				
	<b>Note: 73.213 Short-Spacing</b>							
WOGL.C	CP 251B	Philadelphia		PA	45.37	241.9	74.0	-28.63
40 02 30	75 14 11	CX	9.600 kW		338 M			
	Infinity Broadcasting Oper			BPH20020909AAE				
	<b>Note: 73.213 Short-Spacing</b>							
WRVV.A	APP-N 247B	Harrisburg		PA	179.16	274.6	169.0	10.16
40 20 43	76 52 09	NCX	15.000 kW-N		260 M			
	Clear Channel Broadcasting			BPH20020916AAQ				
WRVV	LIC 247B	Harrisburg		PA	179.16	274.6	169.0	10.16
40 20 44	76 52 09	CN	17.000 kW		256 M			
	Clear Channel Broadcasting			BLH19880825KG				
WRVV.A	APP 247B	Harrisburg		PA	179.16	274.6	169.0	10.16
40 20 43	76 52 09	CN	16.500 kW		260 M			
	Clear Channel Broadcasting			BPH20020916AAQ				
-----								



**WPST Community Coverage Map**  
Citygrade Contours

Proposed Class B - Burlington, NJ  
Coordinates: 40-14-05 N and 74-46-02 W



**Engineering Statement**  
*In Support of a*  
**Petition for Rulemaking**  
**WPST**  
**Nassau Broadcasting II, LLC.**

U.S. Census Bureau - American Fact Finder map of Burlington, NJ



**Reference Maps**

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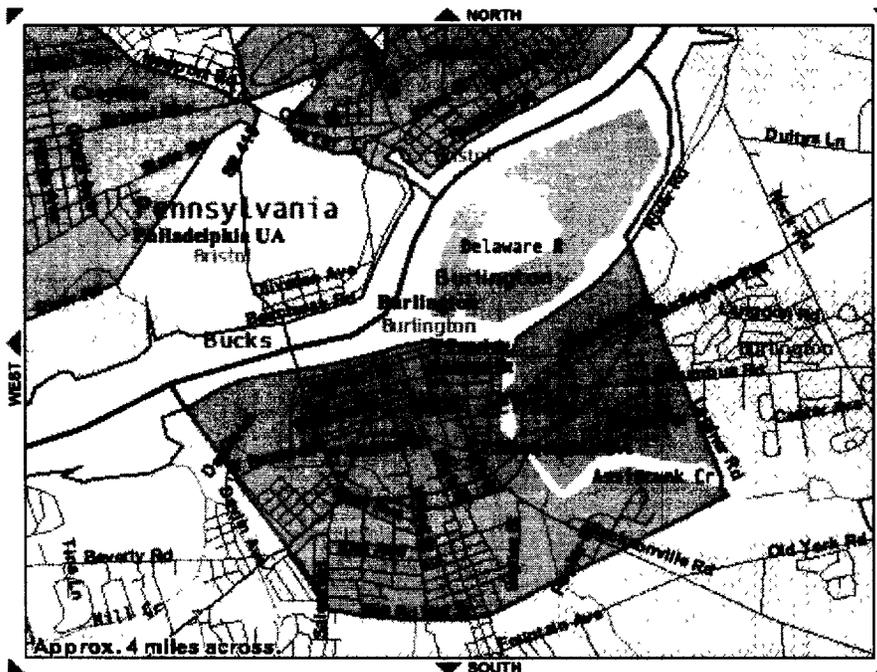
**Legend**

**Boundaries**

- State
- '00 County
- '00 Co Sub
- '00 Subbarrio
- '00 Place
- '00 Con City
- '00 Urban Area
- '00 Urban Area

**Features**

- Major Road
- Street
- Stream/Waterbody
- Stream/Waterbody



**Zoom**

- 
- U.S.
- 9
- 8
- 7
- 6
- 5
- 4
- 3
- 2
- Street
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