

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In re Authorization Granted to)
)
Reading Broadcasting, Inc., D.I.P.) **File No. BSDTS-20060407ACP**
(WTVE(TV), Facility ID 55305))
)
For Special Temporary Authority To Operate)
A Distributed Transmission System on)
Channel 25 at Reading, PA)

To: Chief, Video Division, Media Bureau

INTERFERENCE COMPLAINT AND REQUEST FOR IMMEDIATE ORDER
REQUIRING CESSATION OF OPERATION OF DTS TRANSMITTER

1. **Introduction.** WZBN TV, Inc. (“WZBN”), licensee of Class A television station W25AW, Facility ID 74464, Trenton, NJ, hereby requests that the Commission require Reading Broadcasting, Inc., D.I.P. (“RBI”) licensee of Station WTVE(TV), Reading PA, to shut down one or more Distributed Transmission System (“DTS”) transmitters that are causing co-channel interference to W25AW. The DTS transmitters are operating under Special Temporary Authority (“STA”), which was granted on a secondary basis.¹ W25AW is a primary spectrum user. Therefore, the DTS STA must yield to cure the interference problem.

2. **Urgency.** **Immediate relief** is needed, as W25AW is losing both viewers and advertisers. While some of the station’s programming is distributed by cable, including in Trenton, W25AW does not have must-carry rights and is carried full time by only one cable system serving Hamilton Township, New Jersey. The DTS signal is interfering with not only

¹ See *Letter to Reading Broadcasting, Inc., D.I.P.*, 21 FCC Rcd. 14081 (MB 2006) (DA 06-2447, released Dec. 1, 2006).

over-the-air reception but also reception of the W25AW signal at the head-end of the one cable television that carries the station full time.

3. WTVE's Authority. In addition to the STA, RBI holds a license for WTVE to transmit digital signals on Channel 25 with 630 watts effective radiated power ("ERP"), File No. BLCDT-20040323ATZ. Reading also holds a construction permit to increase that ERP to 900,000 watts, File No. BPCDT-20040518AAZ, expired on November 18, 2007, with an extension request pending, File No. BEPCDT-20071116ABS. The extension request notes that RBI has not built out its construction permit facilities because it is in bankruptcy, and it is operating using DTS technology under the STA. The extension request also notes that the coverage area of the DTS signal is based on the outstanding construction permit and not the DTV license.

4. W25AW's Authority. WZBN is licensed to operate W25AW on analog Channel 25 and has operated on Channel 25 since 1993. See File No. BLTTK-19930405JK, upgraded to Class A status in File No. BLTTA-20030512ABW. W25AW operates co-channel to WTVE.

5. Interference. According to RBI's own statement in BEPCT-20071116ABS, WTVE-DT has been operating in the DTS mode since November 14, 2007. As soon as the DTS operation started, W25AW began experiencing serious co-channel interference. Evidence that the interference is being caused by WTVE-DT is that RBI cooperated with WZBN by temporarily shutting down the WTVE-DT digital transmitter. When the digital transmitter was off the air, the interference to W25AW disappeared. When the digital transmitter resumed

operation, the interference reappeared. *See* the attached Declaration of Louis A. Zanoni, WZBN's Chairman.²

6. Harm to W25AW. The harm to W25AW is real and immediate. Attached to Mr. Zanoni's declaration are copies of e-mails from advertisers and listeners, all received after WTVE-DT started DTS operation, complaining about the interference. Advertisers are withdrawing their support, which is exceptionally harmful to W25AW, because W25AW is a small station that does not have mandatory cable carriage rights and is carried full time on only one cable system, not in its own community of license. The station depends on over-the-air viewership and barely survives as it is. Thus the interference received from WTVE is very harmful and threatening to WZBN.

7. Harm to the Public. W25AW is the only television station of any kind licensed to Trenton, which is the state capital of New Jersey, a state that has historically been deprived of local television service because those few TV stations that it does have focus their attention on the nearby New York and Philadelphia markets.³ W25AW broadcasts a local newscast every weekday evening, focusing on Trenton and New Jersey news.⁴ Its programming is unique and vital to the capital of the state.

² Mr. Zanoni has advised counsel that prior to asking RBI to suspend DTS operations temporarily, he paid a professional engineer to track and locate the source of the interference, as well as to check to make sure that W25AW's transmission system was operating properly.

³ Indeed, the Commission held a field hearing on November 28, 2007, to determine whether WWOR-TV, Secaucus, NJ, has failed to provide a program service and adequately meet the needs of its Northern New Jersey viewers.

⁴ *See* the attached Declaration of Louis A. Zanoni.

8. Relative Priority of the Stations favors W25AW. It is clear that as a Class A station, W25AW is a primary spectrum user. *See* Sec. 336(f)(1)(A)(ii) of the Communications Act.⁵ In contrast, WTVE-DT's DTS operation is under special temporary authority, which is a secondary service and may be modified or canceled at any time without prior notice or right to a hearing.⁶ Thus it is clear that RBI must eliminate or otherwise cure the interference problem or shut down the offending DTS transmitter.⁷

9. Interim DTS Policies. The Commission has not yet adopted permanent DTS rules; such rules remain under consideration. *See Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, Report and Order in MB Docket No. 03-15, 19 FCC Rcd 18279 (2004) and Clarification Order and Notice of Proposed Rule Making in MB Docket No. 05-312, 20 FCC Rcd. 17797 (2005). Indeed, the STA grant to RBI is explicitly conditioned on the outcome of MB Docket No. 05-312; and it further explicitly recites that "all service beyond the authorized maximized service contour for this station shall be considered secondary in nature, shall not cause interference to any other service and shall not receive any protection from interference."

⁵ Sec. 336(f)(1)(A)(ii) states that "each such class A licensee shall be accorded primary status as a television broadcaster as long as the station continues to meet the requirements for a qualifying low-power station in paragraph (2)."

⁶ Sec. 73.1635(b) of the Commission's Rules.

⁷ WZBN does not object to the operation of any DTS transmitter that does not cause interference to W25AW. Even if WTVE-DT's DTS and W25AW have equal priority, which WZBN does not in any way concede, under a time-honored principle "[i]t is clear that the 'newcomer' is responsible, financially and otherwise, for taking whatever steps may be necessary to eliminate objectionable interference." *Sudbrink Broadcasting of Georgia*, 65 FCC 2d 691 (1977), citing *Midnight Sun Broadcasting Co.*, 11 FCC 1119 (1947).

10. WTVE's DTS Signal Coverage. Attached hereto are three maps:

- a. The 41dbu service area for WTVE-DT as depicted by the Commission's TV Query program.
- b. The 41 and 48 dBu contours for WTVE-DT in an exhibit to RBI's construction permit application BPCDT-20040518AAZ.
- c. A service area map currently found on RBI's website.⁸

The map published by RBI on its website indicates that it is an "approximation of the areas where TV51's signal has been received off air or measured as adequate by WTVE engineers." This map shows considerably further penetration into New Jersey, including over Trenton, W25AW's community of license, than the two predicted service area maps. It thus appears that WTVE-DT's STA signal in practice exceeds its maximized service contour under its granted construction permit; so RBI must, by the explicit terms of the STA, correct any interference to "any other service," including W25AW.⁹

10. Conclusion. Empirical evidence demonstrates that WTVE-DT's DTS operation is causing interference to reception of W25AW. The DTS operation is secondary and must yield under the general first-come, first-served principle, as well as specifically because it appears to be extending service beyond WTVE-DT's authorized maximized service area. This matter has been brought to the Commission's attention only a few weeks after commencement of the DTS operation, so WZBN has been diligent in determining the cause of the interference and seeking remedial action by the Commission. WZBN has also engaged in direct discussions with RBI,

⁸ See <http://www.wtve.com/aboutWTVE.htm>.

⁹ The map on RBI's website calls WTVE "Philadelphia's WTVE TV51," thus indicating that like New Jersey stations, WTVE appears to be more interested in associating itself with the largest nearby market rather than its community of license, Reading.

but to no avail. WZBN is prepared to continue such discussions.¹⁰ However, in the interim, RBI must shut down at least its DTS transmitter closest to W25AW and must assume full responsibility for remedying the interference problem.

Irwin, Campbell & Tannenwald, P.C.
1730 Rhode Island Ave., N.W., Suite 200
Washington, DC 20036-3120¹¹
Tel. 202-777-3977
Fax 703-812-0486

December 31, 2007

Respectfully submitted,



Peter Tannenwald

Counsel for WZBN TV, Inc.

¹⁰ There are several approaches that could be taken to ameliorating the situation, including financing W25AW's implementation of digital operation under call sign W49CW-D, Facility ID 168195, File No. BDCCDTL-20060914ADD, and/or financing a fiber optic link between W25AW and the local cable television head-end. Neither of these approaches is a complete solution. In any event, RBI has indicated an unwillingness to under take any financial commitment because it is in bankruptcy. That is RBI's choice to make; but having made that choice, it must now shut down the offending DTS transmitter.

¹¹ Effective January 2, 2008, please serve any responses to this petition and any rulings on Peter Tannenwald, Esq., Fletcher, Heald & Hildreth, PLC. 1300 N. 17th St., 11th Floor, Arlington, VA 22209-3801, tel. 703-812-0404. Not admitted in Virginia. Admitted only in the District of Columbia.

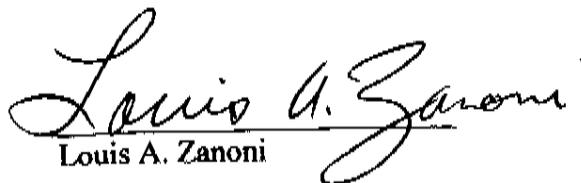
DECLARATION OF LOUIS A. ZANONI

LOUIS A. ZANONI hereby declares as follows:

1. I am Chairman of the Board of WZBN TV, Inc., licensee of Class A television station W25AW, Trenton, New Jersey.
2. Since November 14, 2007, I have observed new and serious interference to reception of the signal of W25AW. I communicated with Station WTVE(TV), Reading, Pennsylvania, and requested that they shut down their Channel 25 digital television signal for a short period of time. During the time when the WTVE digital signal was shut down, the interference to W25AW disappeared. When the WTVE digital resumed, interference also resumed.
3. Attached hereto are true and correct copies of electronic mail received by W25AW, from both listeners and advertisers, complaining about the new interference.
4. W25AW does not enjoy mandatory cable carriage rights. The station originates a newscast every weekday evening. That newscast is picked up by some cable systems, but W25AW is not carried full time by the cable system serving Trenton or any other cable system except for the system serving Hamilton Township, New Jersey.
5. Reception of W25AW's signal at the headend of the Hamilton Township cable system, the only system that carries W25AW full time, is being adversely affected by the new interference, resulting in a degraded signal delivered to cable subscribers.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 31, 2007.

 12/31/07
Louis A. Zanoni

ELECTRONIC MAIL RECEIVED BY W25AW

Subject: Reception Problems
Date: Mon, 17 Dec 2007 15:27:54 -0500
From: "Zalescik, Joseph" <JZalescik@CHSNJ.org>
To: "WZBN \ (E-mail)" <tv25@wzbn.com>

We continue to experience reception problems with the local broadcast signal. We receive the programming over the air and distribute it through our internal CATV system at the Fuld Campus.

Joe Zalescik
Capital Health System
750 Brunswick Avenue
Trenton, NJ 08638
609-394-6121 ext. 2123

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<http://www.chsmdconnect.com/postx>

From: Anthony DeFrank
December 11, 2007
Dear Lou and Greg,

As I told your salesperson, Pat, I am asking you to stop any further DeFrank's Appliances advertising until your signal improves. When that happens, I will be happy to go back on the air.

The picture quality varies, but most often it is unwatchable, and this has been the case since around the middle of September. I know you are trying to fix the situation, but my family and I find it hard to watch WZBN and I'm sure many others are not watching for this reason.

Good luck and I hope to hear from you soon that this has been resolved.

Sincerely,

Anthony DeFrank
DeFrank's Appliances and Kitchen Cabinetry, Inc.
(609) 587-5252

From: Gsmppgm9293@aol.com
Date: Wed, 12 Dec 2007 16:26:07 EST

Subject: T V reception
To: tv25@wzbn.com

Dear WZBN,

I 'am writing this as a complain, as to the reception I receive on my T V set broadcast by WZBN. It is not clear. This as been going on for over a month, Please do something about,
Thank You.

George S. Martin
Hamilton, N J

Date: Wed, 07 Nov 2007 14:13:22 -0500
From: "John Fratticcioli" <John.Fratticcioli@dot.state.nj.us>
To: <tv25@wzbn.com>
Subject: Reception

Hi, I'm a viewer of WZBN news and I was wondering why the reception is so poor. It's very difficult to watch such a distorted broadcast. I found it to be impossible to watch on election night. I was forced to tune into NJ news. I hope this is only a temporary broadcast problem.
Thanks you, John Fratticciol

From: bowlermike@optonline.net <bowlermike@optonline.net>
Date: Dec 12, 2007 7:53 PM
Subject: Picture isn't clear
To: wzbntv@aol.com

Just wanted to let you know I do watch your station everynight and my picture does not come in clear at all. I have cablevision. Keep up the good work. Have a nice holiday.

Thanks,
Rosanne DiBenedetto



Audio and Video Divisions

FM and TV Service Contour Maps

(202)-418-2700

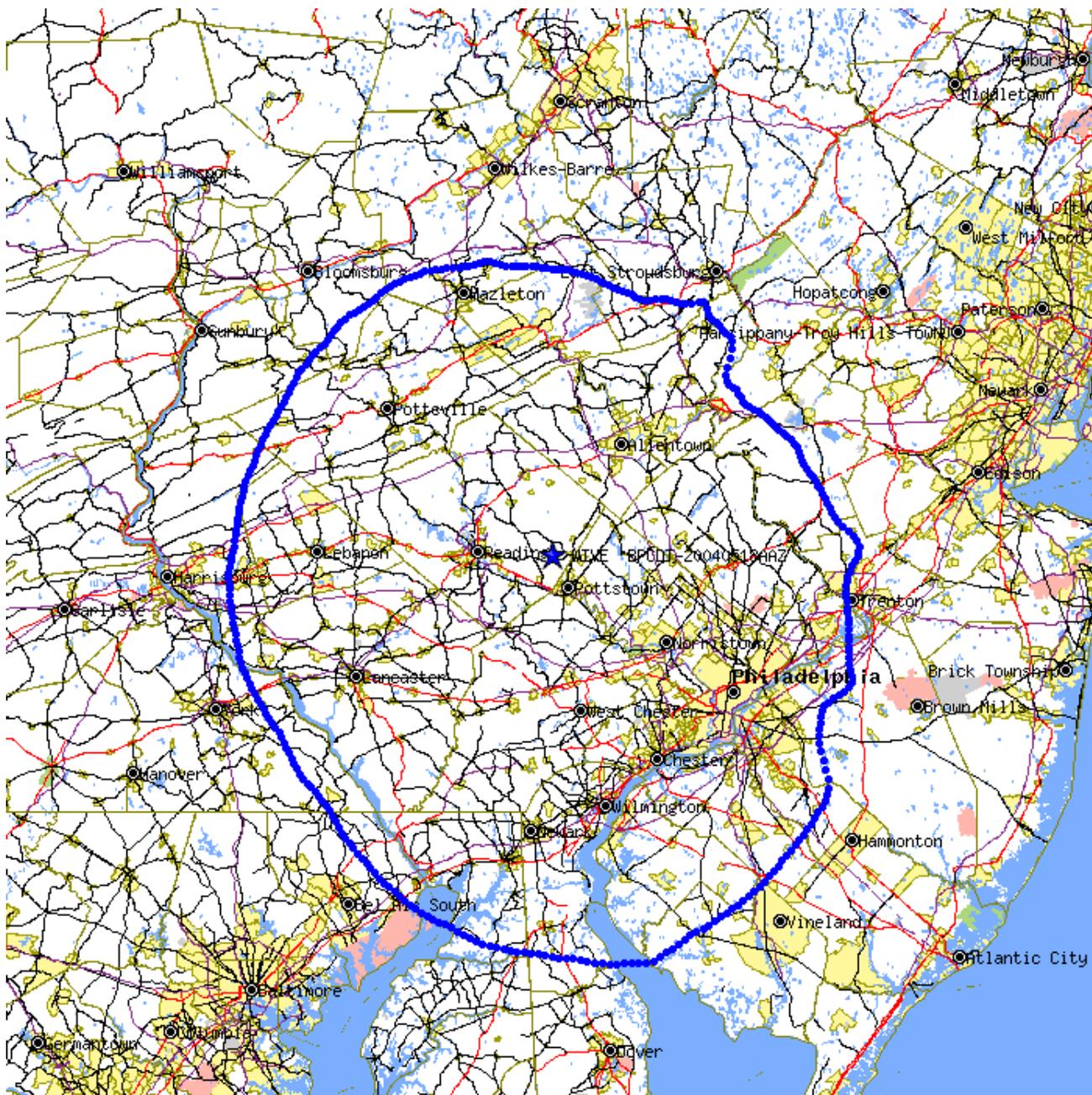
FCC > MB > Audio Division - Video Division

FM Query

TV Query

FCC site ma

Service Area on a Tiger Census Map



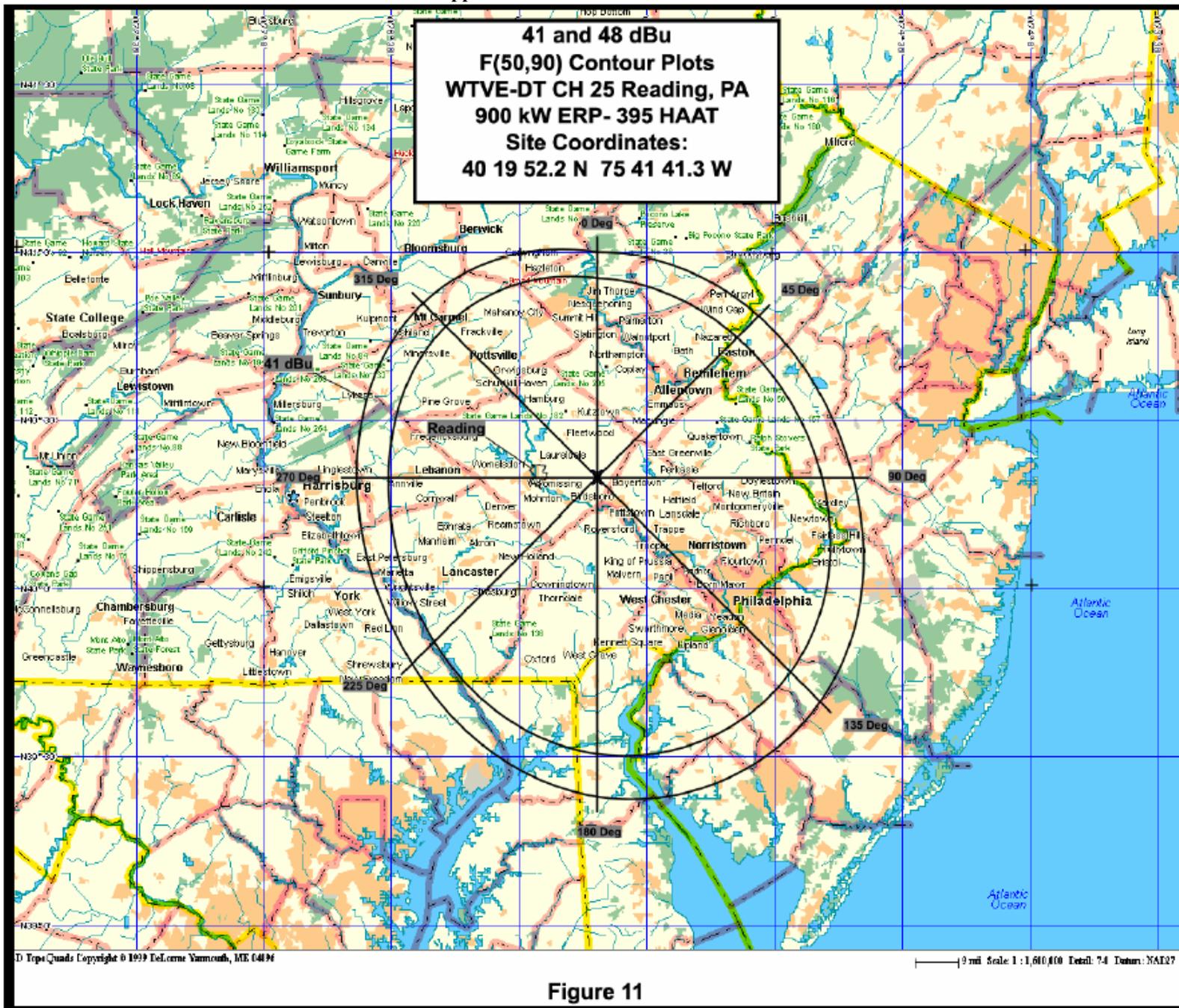
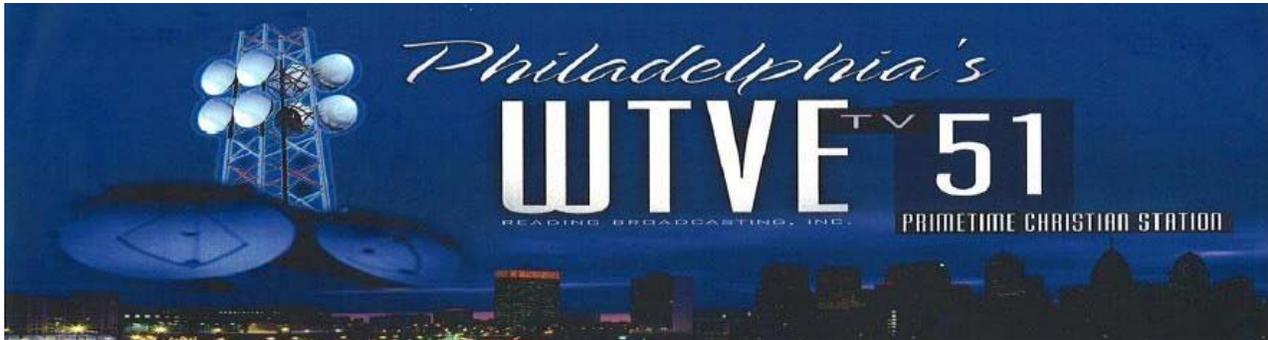


Figure 11

Peter Tannenwald

From: Saved by Windows Internet Explorer 7
Sent: Saturday, December 29, 2007 1:22 PM
Subject: WTVE Coverage Map



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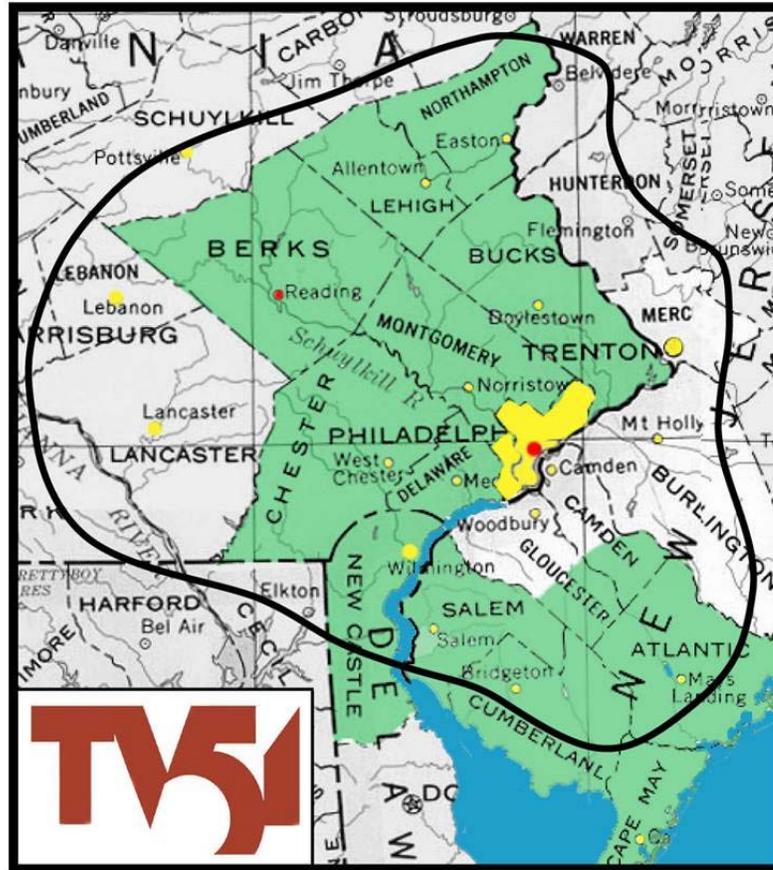
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Coverage Notes: The line depicting TV 51's signal reach is an approximation of areas in which TV 51's signal has been received off air or measured as adequate by WTVE engineers. Off air results by consumers may vary.

TV 51 is carried on cable systems to over 1.5 million television households in the Philadelphia Designated Market area. Areas in Philadelphia Market counties in which WTVE has cable carriage are marked in green. Other market counties are identified in white, while out-of-market counties are shaded in gray.

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CERTIFICATE OF SERVICE

I, Peter Tannenwald, do hereby certify that I have, this 31st day of December, 2007, caused to be sent by first class United States mail, postage prepaid, copies of the foregoing “Interference Complaint and Request for Immediate Order Requiring Cessation of Operation of DTS Transmitter” to the following:

John D. Poutasse, Esq.
Leventhal, Senter & Lerman, P.L.L.C.
2000 K St., N.W., Suite 600
Washington, Dc 20006-1809
Counsel for Reading Broadcasting, Inc., D.I.P.

In addition, copies will be delivered by electronic mail to:

Barbara A. Kreisman, Chief
Video Division, Media Bureau
Federal Communications Commission
Washington, DC 20554

Clay Pendarvis, Associate Division Chief
Video Division, Media Bureau
Federal Communications Commission
Washington, DC 20554

Hossein Hashemzadeh, Associate Division Chief
Video Division, Media Bureau
Federal Communications Commission
Washington, DC 20554



Peter Tannenwald