

REQUEST FOR WAIVER OF SECTION 73.512(c) WITH RESPECT TO MAJOR CHANGE IN EXISTING CLASS D FACILITIES

Section 73.512 of the Commission's Rules regarding "special procedures applicable to Class D non-commercial educational stations" has been reviewed thoroughly by the affiant with respect to the uniqueness of the **WUDR** situation. It is believed that a waiver of *Section 73.512(c)* of the Rules is warranted with respect to the instant **WUDR** Application for Construction Permit based on the following:

1. The proposed site change will result in a change of coverage area of 172.4% which is greater than the maximum of 50% which constitutes this application as a major change. The specific area and population data associated with the proposal is shown below:

Licensed 60 dBu contour = 36.9 sq kM, 26,688 persons

Proposed 60 dBu contour = 41.8 sq kM, 73,897 persons

Common overlap area = 7.55 sq kM, 12, 823 persons

Population loss = 13,865 persons

Population gain = 61,074 persons

Area loss = 29.35 sq kM

Area gain = 34.25 sq kM

Resulting percent of proposed area change = 172.4%

It should be noted that **WUDR** does not seek to move its transmitter site to a location which would require a change in its community of license. In fact, more of the population and area within the community of license of Dayton, Ohio, will be served from the proposed site than from the currently licensed site location as shown on Figure 2.

2. The site proposed is the closest viable site that the applicant was able to locate.
3. **WUDR** is going to experience a loss of site beyond its control. In concert with grant of the **WUDR** license on December 18, 2003, the share time condition which previously existed with WGXM, Dayton, Ohio, was deleted pursuant to WGXM's request. The transmitter site for both

WUDR and **WGXM** is located on **WGXM**-owned property, and **WGXM** has advised **WUDR** to locate alternate transmitting facilities

4. There are no *Section 73.509* issues at either the present or proposed site locations. All licensed or proposed full service and secondary service FM translator facilities are fully protected at the proposed site as shown on *Figure 1*.

5. This request is believed consistent with past Commission precedent concerning waiver of Section 73.512(c). Cases cited include:

WPLS-FM, Greenville, SC, BPED-940222MD, FCC Mass Media Bureau, Audio Services Division, Letter Decision dated June 12, 1995, 1800B3-BJB.

WNYK(FM), Nyack, NY, BPED-940506IZ, FCC Mass Media Bureau, Audio Services Division, Letter Decision dated July 21, 1995, 1800B3-BJB.

CONCLUSION

It is believe that a waiver of *Section 73.512(c)* of the Commission's current Rules regarding Class D major change applications is warranted with respect to the instant **WUDR** Application for Construction Permit. The **WUDR** facility, as proposed, will not result in interference to any existing or proposed full service or secondary facilities as described above. The proposed **WUDR** site change is necessitated due to the imminent loss of its current site and will, additionally, result in improved coverage of the community of license. Based on the Commission's expressed desire to assist Class D facilities with the ability to preserve their service to the public, it is believed that such a waiver has been demonstrated to be in the public interest and is respectfully requested in the processing of the instant **WUDR** Application.