

Request for Waiver of Section 73.509

A de minimis waiver to Section 73.509 is hereby requested to continue a pre-existing overlap with second adjacent NCE Station WFUV(FM), New York, NY. Waiver is justified for the reasons set forth below. As indicated in the Technical Exhibit, this application proposes an increase in coverage area that will also increase the area and population subject to overlap with WFUV. However, the extent of the overlap remains de minimis, comparable with that approved in earlier modifications of this station and in other cases, and consistent with long-standing Commission policy regarding interference received from and caused to second-adjacent stations.

Station WFUV's 60 dBu contour completely encompasses the existing and proposed 100 dBu contour of WDFH, causing a small "donut hole" of interference within the WFUV service area. (*see* Technical Exhibit, Figure 4.) This pre-existing 100% overlap was first approved in 1992 with the initial authorization of WDFH and has continued through three subsequent modifications of the station, each of which has entailed a finding of de minimis interference and a waiver of Section 73.509 of the Commission's Rules. Such a finding and waiver are warranted again here.

The history of the WDFH waiver is set forth in an exhibit to the WDFH modification application submitted in 2005 (*see* File No. BPED-20050207AER). The exhibit notes that WDFH was initially authorized in 1992 following a lengthy dispute over contour overlap with WFUV. It points out that in its 1992 letter ruling authorizing construction of WDFH, the FCC granted a waiver of the interference caused to WFUV by WDFH.¹ It notes further that a prior modification in 1997 also involved interference to population within the WFUV protected contour. That modification requested waiver of interference to **5,966** persons, based on the 1990 US Census, representing a de minimis **0.0470%** of the population within the WFUV 60 dBu contour. The waiver was granted.

In the 2005 modification application, the Commission approved an increase in population coverage for Station WDFH of 415%. That application requested waiver of interference to **810** persons, based on the 2000 US Census, representing **0.0063%** of the population within the WFUV 60 dBu contour. Again, waiver of Section 73.509 was granted, because the number of listeners affected was considered de minimis and the public interest benefit was an increase in population within the WDFH 60 dBu contour.

The 2005 permit was modified in 2007 by a proposal to increase the HAAT and lower the ERP (*see* File No. BMPED-20070814ABF). The 2007 application cited interference to **355** persons, representing **0.0026%** of the population within the WFUV 60 dBu contour and requested a waiver. Once again, the Media Bureau granted the application, finding the overlap to be de minimis. The public interest benefit was an increase in population for WDFH within its 60 dBu contour.

¹ The Commission's letter cited *Educational Information Corporation (WCPE(FM))* ("EIC"), 6 FCC Rcd 2207 (1991) which had been decided one year earlier. The Commission was aware that the EIC case involved received interference and that the WDFH application requested waiver based on caused interference. The exact population and percentage of the WFUV service area subject to interference was not specified.

In the subject application, the proposal is to increase the ERP using a different directional antenna pattern. Using the 2010 US Census, the current population within the WDFH 100 dBu contour is 135 persons. The proposed facilities are predicted to result in interference to **771** persons, representing on **0.0056%** of the population of approximately 13,800,000 within the WFUV 60 dBu contour. The interference is once again de minimis, comparable to that allowed in 2005 and 2007, and well below what was approved in 1997. The public interest benefit will be an increase in the 60 dBu coverage from a current population of 127,200 to 147,439, an increase of 20,239 persons, representing a 16% increase.

In a similar case, Station WEEE(FM), Cherry Hill, New Jersey, was granted a contour overlap waiver where it caused an increase in interference to a third adjacent station which was considered de minimis. The Bureau's letter stated the overlap was "directly analogous to that in *Educational Information Corporation*".²

Based on the above history, Applicant requests a continuation of the de minimis waiver in effect for WDFH for the entire time it has existed. The population involved is comparable to or less than the population involved in early waiver requests. The benefit in increased service is significant.

The licensee of WFUV, Fordham University, has been notified of this request and was provided a copy of the Technical Exhibit. A representative of Fordham University has stated that it will not object to the application. WFUV has not opposed any of the previous applications filed by WDFH in which waivers were requested. Fordham University will be served a copy of this application.

² See Letter to Broadcast Learning Center, Inc., BPED-930422MA (May 9, 1994); see also Letter to Robert P. Bucaro, BPED-920608IC (Sept. 21, 1993).