

## On-Air Viewer Notification Waiver Request

Living Faith Ministries, Inc. (“LFM”) is licensee of WAGV, Harlan, Kentucky (“WAGV”). LFM was a winning bidder in the reverse auction for WAGV, and WAGV is preparing to commence a channel sharing arrangement with co-owned full-power station WLFQ. See LMS File No. [0000035558](#) (channel share CP granted Nov. 27, 2017). Currently, LFM believes that its channel share configuration will be complete and ready to commence operations around midday on February 1, 2018, though the precise time and date are subject to delay based on equipment issues, delivery delays, and weather at and access to the relevant site. Contemporaneously with this filing, LFM is notifying MVPDs of information relevant to WAGV’s channel change, pursuant to 47 C.F.R. § 73.3700(d).

In connection with WAGV’s transition to the new channel as a sharee station, LFM is required to engage in a series of on-air viewer notifications beginning at least 30 days prior to WAGV’s January 23, 2018, go off-air deadline. See generally 47 C.F.R. § 73.3700. However, pursuant to STA, WAGV has been silent for several months as a result of technical reasons beyond the control of the station. See LMS File Nos. [0000024670](#) (original silent STA request, granted June 8, 2017) and [0000036043](#) (pending request for extension of silent STA). Consequently, LFM seeks, pursuant to Section 1.3 of the Commission’s Rules,<sup>1</sup> waiver of the applicable on-air viewer notification requirements set forth in Section 73.3700(c) of the Commission’s rules. See 47 C.F.R. § 73.3700(c).

Pursuant to the Commission’s waiver standard, the applicant must show “good cause” for granting this request.<sup>2</sup> Further, the

Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. See *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission’s rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. See *id.*<sup>3</sup>

Consistent with these standards and in support of its waiver request, LFM shows as follows:

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<sup>1</sup> 47 C.F.R. § 1.3.

<sup>2</sup> See 47 C.F.R. § 1.3. See also, e.g., *Broadcast Transition Procedures Public Notice*, 32 FCC Rcd 858, n.36.

<sup>3</sup> *Broadcast Transition Procedures Public Notice*, 32 FCC Rcd 858, n.36.

On May 1, 2017, WAGV's facilities suffered damage as a result of a storm. *See* LMS File No. [0000024670](#), STA Exhibit. As reported by LFM in its silent STA request and extension request, repair of the damage to WAGV has been nearly impossible in the short term due to site accessibility issues implicating safety. In addition—and directly relevant to the instant waiver request—repair of WAGV's damaged transmission facilities at this point in time to restore WAGV's over-the-air operations would be economically unreasonable because WAGV is required to terminate its pre-auction channel operations in less than 60 days. *See* LMS File No. [0000036043](#), Silent STA Extension Exhibit (“Circumstances are such that it is not practical to make repairs to the transmitter due to WAGV's post-auction status and, to the extent additional reasons are necessary, due to safety concerns at the transmitter site. . . . WAGV's facilities will be moved to effectuate the channel sharing arrangement with WLFV(TV)”). Any investment by LFM in attempting to repair WAGV's physical plant would be lost as a sunk cost for a facility that will not continue to operate beyond January 23. As a result, the prospects for WAGV's over-the-air operation between now and the January 23, 2018, off-air date are essentially non-existent. It is important to reiterate, however, that this circumstance was created by a force majeure event, namely the May 1, 2017, weather event that damaged WAGV's transmission facility and caused the station to go silent.

Under Section 73.3700 of the Commission's rules, WAGV is required to engage in viewer education efforts in order to notify the public that WAGV's programming will no longer be available over-the-air after January 23, 2018, on the channel and from the transmitter site where consumers historically have received it. More specifically, absent a grant of the instant waiver request, WAGV would be required to air a series of crawls and PSAs to inform viewers about the transmission changes.

Each crawl and PSA<sup>4</sup> is required to contain information about (i) the date the station will terminate operations on the pre-auction channel, (ii) the need for consumers to rescan their tuners, and (iii) how to obtain more information. *See* 47 C.F.R. § 73.3700(c). LFM respectfully submits that strict compliance with these viewer notification requirements is not only impracticable in light of WAGV's current silent status, but also that it would potentially create viewer confusion since the station has already been silent (as a result of circumstances beyond LFM's control) since May 1, 2017. Nonetheless, LFM understands and appreciates the importance of the Commission's consumer notification requirements for stations changing channels, and LFM proposes to meet the spirit of the rule by providing information to consumers through alternative notification efforts.

LFM operates a website for all of its stations, and LFM proposes to place the following message on its website for a period of 45 consecutive days beginning on the day following the filing of this waiver request:

Living Faith's television station WAGV, Harlan, Kentucky, has provided programming over-the-air on channel 51 for many years to viewers in the Knoxville market. Following a storm that damaged its transmission facilities,

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<sup>4</sup> In addition to the substantive content requirements, PSAs must meet the additional requirements of being closed captioned and in the language of the majority of programming aired on the station.

WAGV has been off the air since May 1, 2017. When WAGV resumes its over-the-air operations on or around February 1, 2018, it will be on a new channel, which will be channel 49. (The February 1 date may be delayed as a result of equipment issues, delivery delays, and weather-related problems. Please check back to this website for any updates.) In order to receive WAGV's programming on the new channel, viewers who receive the station's signal over the air should be sure to rescan their television set after February 1, 2018. As a result of this channel change, some over-the-air viewers will lose access to WAGV's over-the-air signal, but cable and satellite subscribers will be unaffected by the change. In order to better understand the reach of WAGV's new over-the-air signal, you can access a contour map of the station's new signal pattern in the online public inspection file at <https://publicfiles.fcc.gov/tv-profile/wlfg>. For more information, please email Living Faith at [lisa@livingfaithtv.com](mailto:lisa@livingfaithtv.com) or call us at 276-676-3806 (please leave a message if we do not answer the phone).

To facilitate the ability of consumers to find this message, LFM will place a conspicuous link on its homepage that says "**IMPORTANT INFORMATION for viewers of channel 51 in the Knoxville market**"; as a result, website visitors who click the link will be taken to a page that includes the text of the message set forth above.

In addition, LFM proposes to provide notice to consumers by publishing a notification in the Harlan Daily Enterprise, which is a local newspaper published four days per week (Tuesday, Wednesday, Friday and Saturday) and has circulation throughout Harlan County (WAGV's community of license, Harlan, is the county seat of Harlan County). LFM proposes to publish the notice at least one time per week for four consecutive weeks in the Harlan Daily Enterprise. The newspaper notice will be an abbreviated version of the website notice, and it will direct readers to LFM's website for more information. LFM proposes to use the following language for its newspaper notice:

TV station WAGV, Harlan, has provided programming over-the-air on channel 51 for many years. Following a storm that damaged its transmission facilities, WAGV has been off the air since May 1. When WAGV resumes its over-the-air operations on or around February 1, 2018, it will be on channel 49, which means that over-the-air viewers will need to rescan their television set after February 1. Cable and satellite viewers will still be able to get WAGV on the same channel as they have been. Some over-the-air viewers will no longer be able to receive the station's signal. For more information, please visit [livingfaithtv.com](http://livingfaithtv.com) or call us at 276-676-3806.

Grant of this waiver is in the public interest, and will not undermine any Commission rule or policy, because (i) WAGV has been off the air since May 1, 2017, as a result of a force majeure event, (ii) the alternative notification proposals set forth above are reasonably calculated to reach WAGV's viewers, and (iii) without a grant of this waiver request, LFM would be irreparably harmed by having to invest significantly in the repair of transmission facilities that will not be used after January 23, 2018.

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WAGV, Harlan, KY (FIN 37809)

For these reasons, the licensee respectfully requests a grant of this waiver request and approval of the alternate viewer notification elements proposed herein.

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