

Federal Communications Commission
Washington, D.C. 20554

DA 06-979
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Living Faith Ministries, Inc.
c/o John M. Burgett, Esq.
Wiley Rein & Fielding LLP
1776 K Street, NW
Washington, DC 20006

Re: Request for Waiver of Main Studio Rule for
WAGV(TV), Harlan, KY
WLFB(TV), Bluefield, WV

Dear Counsel:

This concerns the above-referenced request for a waiver of Section 73.1125, the Commission's main studio rule, filed by Living Faith Ministries, Inc. ("Living Faith"), licensee of WAGV(TV), Harlan, Kentucky and WLFB(TV), Bluefield, West Virginia. Specifically, Living Faith seeks authority to permit it to operate WAGV(TV) and WLFB(TV) with the main studio of WLFV(TV), Grundy, Virginia.

Background. Living Faith asserts that it is a 501(c)(3) corporation that simulcasts religious television programming on stations WAGV, WLFB and WLFV (collectively, the "Stations") to residents of the Appalachian regions of Virginia, Kentucky and West Virginia. Living Faith states that it began broadcast operations on WLFV, Grundy in 1995, WAGV, Harlan in 1999 and WLFB, Bluefield in 2000. It asserts that in 1987 and 1992, respectively, the Commission authorized the operations of WAGV and WLFV as satellites of WLFB, Bluefield.¹ However, Living Faith explains that due to construction problems and delays, it constructed and commenced operations on WLFV, Grundy, in 1995 prior to the other two stations. Consequently, it states, when stations WAGV and WLFB went on the air several years later, as a matter of convenience and cost-efficiency, the stations began broadcasting without main studios. However, Living Faith states that it did establish (and continues to maintain) toll-free numbers in Harlan, Kentucky and Bluefield, West Virginia.

In November 2004, Living Faith submitted an application for the transfer of control of Living Faith to Living Faith Broadcasting, Inc. As part of this application, Living Faith requested authority to operate stations WAGV and WLFB as satellites of WLFV. By letter dated March 31, 2005, the Commission granted the transfer application, but denied the request for satellite status, noting that the satellite waivers were no longer necessary because the stations are all located in separate designated market areas ("DMAs"). Accordingly, the Commission directed Living Faith to either construct main studios for the stations by March 31, 2006 or provide additional information justifying a waiver of the main studio rule for stations WAGV and WLFB.

¹ See *Living Faith Ministries, Inc.*, 7 FCC Red 4245 (1992); 20 FCC Red 7503 (1987).

Waiver Showing. Living Faith submits that waiving the main studio requirements for WAGV and WLFB would serve the public interest. In this regard, Living Faith maintains that permitting the use of WLFG's main studio will allow it to continue to realize substantial cost savings, which are critical to a non-profit religious broadcaster. Living Faith explains that although it holds commercial licenses for the stations, they have always operated on a non-commercial basis. According to Living Faith, most of the stations' programming is provided by area churches that pay a nominal cost-of-service fee to help defray Living Faith's operational expenses. Also, Living Faith asserts that the vast majority of its funding (approximately 98%) comes from viewer contributions. Obtaining these contributions is extraordinarily difficult, claims Living Faith, in view of the fact that the Appalachian areas served by the stations are among the most economically depressed and impoverished areas in the nation.

Living Faith provides statistics showing that in 2004 the majority of counties within the DMAs served by the stations had unemployment rates higher than the national average of 5.5%.² Additionally, Living Faith states that, according to 2000 Census data, the per capita income of the residents in the counties served by the stations is significantly lower than the national average of \$21,587.³ Consequently, Living Faith asserts that the percentage of the populace within the stations' service areas living below the poverty level is extraordinarily high compared to the national average of 12.4%.⁴ Living Faith contends that given the limited resources in the communities served by the stations, it is not economically feasible for it to construct and maintain separate main studios for the stations. Living Faith, therefore, requests that the Commission waive the main studio requirements for stations WAGV and WLFB, authorizing them to use WLFG's facility.

Discussion. As an initial matter, we are not persuaded by your contention that the liberal main studio waiver policy that the Commission traditionally affords to noncommercial educational stations should apply to your operations. The Commission and Congress have long recognized a need, grounded in substantial public interest reasons, to take into account the differences between commercial and noncommercial educational stations in the regulatory scheme of broadcasting. With respect to main studio waiver requests, noncommercial stations have been given distinct treatment from commercial stations because the Commission has recognized the benefits of centralized operation for noncommercial educational stations due to their limited funding.⁵ As a commercial licensee, Living Faith is entitled to operate for profit and support the station by on-the-air advertising, the two actions that primarily distinguish a commercial licensee from a noncommercial licensee. *See* 47 C.F.R. § 73.621.

Nevertheless, we believe that Living Faith has justified its request for permanent waivers to

² In the Knoxville, TN DMA, served by WAGV, Harlan, ten of its fifteen counties had unemployment rates ranging from 5.6% to 9.8%. Similarly, in the Bluefield DMA, served by WLFB, seven of its ten counties had unemployment rates ranging from 5.6% to 10.3%.

³ In particular, Living Faith notes that the income disparity ranges from 12-54% below the national average in the Knoxville DMA, with residents of McCreary County, KY earning only \$9,896. Likewise, in the Bluefield DMA, counties run between 19-53% behind, with residents in McDowell County, WV earning only \$10,174.

⁴ Living Faith states that, according to 2000 US Census data, the percentage is as high as 32.5% in Harlan County and 37.7% in McDowell County.

⁵ *See Amendment of Sections 73.1125 and 73.1330*, 3 FCC Rcd 5024, 5027 (1988).

permit WAGV(TV) and WLFB(TV) to operate without main studios, utilizing the studio of WLFV(TV), Grundy, Virginia.⁶ With respect to the accessibility of the WLFV(TV) studio, Living Faith recently submitted a supplemental exhibit demonstrating that the studio is located 90 miles from Harlan and 70 miles from Bluefield, and is accessible by interstate and U.S. highways. Moreover, based on the economic showings and market statistics provided by Living Faith, we are persuaded that it is not economically feasible to construct and maintain a main studio for WAGV(TV) or WLFB(TV). According to 2000 U.S. Census data, the population of Harlan is comprised of only 2400 residents. The limited resources of this small community are evidenced by the fact that the per capita income of Harlan residents is 11-52% below the national average and the poverty level is almost three times the national average. While 2000 U.S. Census data indicate that the Bluefield community has a much larger population of 12,000 residents, Living Faith explains that the economic conditions of this community are just as dire. Specifically, the per capita income of Bluefield residents is 19-53% below the national average and the poverty level in Bluefield is slightly higher than in Harlan. We recognize that there is another full service station licensed to Bluefield, WVVA(TV), that does maintain a local studio. However, we do not believe that the operation of WLFB(TV) without a main studio will put this station at an unfair competitive disadvantage, since WVVA(TV) is an NBC network affiliate and WLFB(TV) is an independent station operating on a non-profit basis.

However, we are concerned that Living Faith takes adequate measures to ensure that it maintains awareness of the needs and interests of its local viewers. We will require Living Faith to maintain its toll-free number that will permit the residents of Harlan and Bluefield to contact the Grundy studio without long-distance charges. We also encourage Living Faith to engage in and maintain dialogue with residents of Harlan and Bluefield, and to make widely known the means for contacting Living Faith with input regarding these stations. Overall, in light of its showing here, we believe that Living Faith has demonstrated that it can and will serve the needs and interests of the communities of Harlan and Bluefield, even without main studios.

Accordingly, the request of Living Faith Ministries, Inc. for a permanent waiver of 47 C.F.R. § 73.1125(a) for WAGV(TV), Harlan, Kentucky and WLFB(TV), Bluefield, West Virginia **IS HEREBY GRANTED.**

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau

⁶ We note that Living Faith failed to obtain Commission approval to operate WLFB(TV), Bluefield as a satellite rather than the parent of satellite stations WLFV(TV), Grundy and WAGV(TV), Harlan, as originally authorized. Living Faith has engaged in this impermissible operation since the station commenced operations in 2001. The Commission was not notified of these violations until it filed a transfer of control application in November, 2004. While the Commission did not issue a Notice of Apparent Liability at that time, we admonish Living Faith for these repeated violations. We remind Living Faith that the Commission expects licensees to comply fully with the Commission's rules.