



Federal Communications Commission  
Washington, D.C. 20554

October 6, 2017

Florida State University  
Douglas Crall  
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Re: Request for Modification and  
Waiver of Phase Assignment  
WFSG(TV), Panama City, FL  
Facility ID No. 6093  
LMS File No. 0000029464

Dear Licensee,

On September 20, 2017, Florida State University (FSU), the licensee of Station WFSG(TV), Panama City, Florida (Station or WFSG), filed an amended *Request for Modification and Waiver of Phase Assignment*, requesting to modify the post-incentive auction transition phase assignment assigned to the Station in the *Closing and Channel Reassignment Public Notice* from Phase 1 and instead transition as soon as construction of its post-auction facility is complete.<sup>1</sup> For the reasons below, we grant the request for modification and waiver of WFSG's phase assignment and modify its phase assignment to permit it to transition to its post-auction channel as soon as it is able to make the transition, and no later than September 13, 2018, subject to completion of applicable consumer education requirements and any required notice to multichannel video programming distributors (MVPDs).<sup>2</sup>

*Background.* Pursuant to the *Transition Scheduling Adoption Public Notice*, individual stations may request waivers of their phase assignments.<sup>3</sup> A waiver is appropriate where the particular facts

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<sup>1</sup> See *Incentive Auction Closing and Channel Reassignment Public Notice: The Broadcast Television Incentive Auction Closes; Reverse Auction and Forward Auction Results Announced; Final Television Band Channel Assignments Announced; Post-Auction Deadlines Announced*, Public Notice, 32 FCC Rcd 2786 (WTB & MB 2017) (*Closing and Channel Reassignment Public Notice*). See LMS File No. 0000029464, WFSG Legal STA (originally filed August 24, 2017) (Waiver Request).

<sup>2</sup> Repacked stations are required to conduct consumer outreach efforts including providing on-air viewer notifications in the form of public service announcements as well as on-screen crawls at least thirty (30) days prior to transitioning to their post-auction channels. See 47 CFR § 73.3700(c). To the extent applicable, repack stations are also required to provide MVPDs with notice ninety (90) days prior to transitioning. See 47 CFR 73.3700(d).

<sup>3</sup> See *Incentive Auction Task Force and Media Bureau Adopt A Post-Incentive Auction Transition Scheduling Plan*, MB Docket No. 16-306 and GN Docket No. 12-268, 32 FCC Rcd 890, 912-14, paras. 47-52 (MB 2017) (*Transition Scheduling Adoption Public Notice*).

would make strict compliance inconsistent with the public interest and deviation from the general rule would relieve hardship, promote equity, or produce a more effective implementation of overall policy on an individual basis.<sup>4</sup> The Media Bureau (Bureau) has stated it will evaluate such requests on a case-by-case basis to assess the impact of such requests on the transition schedule, including the impact on other broadcasters as well as viewers, in order to facilitate a timely and orderly transition.<sup>5</sup> The Bureau determined that it would view favorably requests that are compliant with the Commission's rules and have little or no impact on the transition schedule.<sup>6</sup> Requests that the staff determines would be likely to delay or disrupt the transition schedule will be viewed unfavorably.<sup>7</sup>

WFSG is currently licensed to operate on channel 38 and was reassigned to channel 28 in the *Closing and Channel Reassignment Public Notice* and assigned to transition phase 1, which has a testing period start date of September 14, 2018, and phase completion date of November 30, 2018. WFSG is located in the Panama City, Florida Designated Market Area (Panama City DMA).<sup>8</sup> A total of four stations, including WFSG, were repacked in the Panama City DMA and were all assigned to Phase 1. FSU states that in late July 2017, the Station's transmitter operating on its pre-auction channel "experienced an anomaly forcing it to operate at 95% of its license transmitter power output."<sup>9</sup> During an attempt to repair the transmitter, it was discovered that the transmitter "is no longer serviceable by the manufacturer or any of its subcontractors."<sup>10</sup> According to FSU's consulting engineer, the transmitter is likely to fail before the Phase 1 testing period start date.<sup>11</sup> Therefore, FSU seeks permission to begin operating on WFSG's post-auction channel as soon as construction of its post-auction facility is complete. Doing so will prevent FSU from having to purchase an interim transmitter to operate on its pre-transition channel if, and likely when, its existing transmitter ultimately fails. FSU has submitted letters from its vendors, including the tower crew, antenna manufacturer, and transmitter manufacturer it plans to use to construct its new facility,<sup>12</sup> affirming their ability to support construction of WFSG's post-auction facility

<sup>4</sup> See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); 47 CFR § 1.3 (waiver for good cause shown). See also *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 913-14, para. 51 and n.171.

<sup>5</sup> See *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 912-14, paras. 49-52. See also *Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Broadcast Transition*, MB Docket No. 16-306 and GN Docket No. 12-268, 32 FCC Rcd 858, 881-82, para 73 (MB 2017).

<sup>6</sup> *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 912-13, para. 49 and n.163.

<sup>7</sup> *Id.*

<sup>8</sup> Because non-commercial and educational (NCE) stations are not assigned by Nielsen to DMAs, for purposes of creating the transition schedule the Bureau placed NCEs in DMAs based on their community of license. WFSG was placed in the Panama City DMA because its community of license is Panama City, FL. In its waiver request FSU stated that WFSG is located in the Tallahassee-Thomasville DMA. Waiver Request at 3. Counsel for FSU has informed Video Division staff that the reference to the Tallahassee-Thomasville DMA was in error. WFSG's sister station, WFSU, Tallahassee, Florida (WFSU), is the station located in the Tallahassee-Thomasville DMA. WFSU was not repacked and is not subject to the instant request. According to counsel, WFSG was properly located by the Bureau in the Panama City DMA and the rescan analysis in FSU's waiver request was in fact conducted under that assumption. For purposes of our evaluation we substitute the Panama City DMA for all references to the Tallahassee-Thomasville DMA. See LMS File No. 0000029464, Corrected DMA Confirmation.

<sup>9</sup> Waiver Request at 1.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 1-2.

<sup>12</sup> *Id.* at 2.

without interrupting the vendors' ability to support other stations in the transition.<sup>13</sup> Further, FSU states that it is not linked with any other station, and that its early transition will not negatively impact any other station's transition. FSU has also submitted an engineering analysis demonstrating that its early transition "will not create any new linked station sets or result in impermissible interference during the transition period."<sup>14</sup> FSU argues that while its proposed early transition will add a second rescan for viewers in the Panama City DMA, "the benefits of ensuring continuity of service from this station outweigh the burden of the additional rescan...."<sup>15</sup>

*Discussion.* Upon review of the facts and circumstances presented, we find that FSU's request to modify its phase assignment to permit WFSG to transition to its post-auction channel immediately upon completion of construction satisfies the requirements for a waiver and will not have an adverse impact on the transition schedule or a negative impact on other stations or viewers. A staff analysis confirms that the phase change does not create any new linked station sets and will not result in new interference above the two percent permitted during the transition.<sup>16</sup> We agree with FSU that although transitioning immediately upon completion of construction will add a second rescan in the Panama City DMA, that additional burden is outweighed by the benefit of ensuring continuity of service from this station considering that the station's transmitter is likely to fail and is no longer serviceable.<sup>17</sup> Finally, FSU has demonstrated that vendors are now available to support its transition without impacting other transitioning stations.

Accordingly, we **GRANT** FSU's *Request for Modification and Waiver of Phase Assignment* and modify the transition phase assignment for WFSG **from Phase 1 and permit the Station to commence testing and transition to its post-auction channel immediately, subject to satisfaction of all applicable notice requirements.**<sup>18</sup> Furthermore, the Station must cease operation on its pre-auction channel no later than September 13, 2018, upon commencement of operation pursuant to program test authority, or upon the filing of an application for license to cover, whichever occurs first.

Sincerely,



Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

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<sup>13</sup> See LMS File No. 0000029464, Exhibit B- Capacity for Early Transition Vendor Statements.

<sup>14</sup> Waiver Request at 3. See LMS File No. 0000029464, Exhibit A- TVStudy.

<sup>15</sup> Waiver Request at 3.

<sup>16</sup> See *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 897, para. 16 (allowing temporary increased pairwise (station-to-station) interference of up to two percent during the transition period).

<sup>17</sup> When creating the transition schedule plan, the Bureau determined that in order to "minimize consumer disruption" the Bureau would limit the assignment of all stations within a DMA to no more than two phases and thereby limit the number of viewer rescan periods to two per DMA. See *id.* at 898-99, paras. 20-21. While when modifying the transition schedule we find this is not a hard cap, we note here that the increase in the number of rescan periods from one to two is within the limit used for creating the transition schedule.

<sup>18</sup> See 47 CFR § 73.3700(c), (d).