



Federal Communications Commission  
Washington, D.C. 20554

November 30, 2018

Florida State University  
WFSG  
c/o Doug Crall  
1600 Red Barber Plaza  
Tallahassee, FL 32310

Re: Request for Modification and  
Waiver of Phase Assignment  
WFSG, Panama City, FL  
Facility ID No. 6093  
LMS File No. 0000063626

Dear Licensee,

On November 16, 2018, Florida State University (FSU), the licensee of Station WFSG(TV), Panama City, Florida (WFSG or the Station), filed a *Request for Modification and Waiver of Phase Assignment* requesting to modify the post-incentive auction transition phase assigned to the Station in the *Closing and Channel Reassignment Public Notice* from Phase 1 to Phase 2.<sup>1</sup> For the reasons below, we grant FSU's request for waiver and modify WFSG's phase assignment to Phase 2, as conditioned herein.

*Background.* Pursuant to the *Transition Scheduling Adoption Public Notice*, individual stations may request waiver and modification of their phase assignment.<sup>2</sup> A waiver is appropriate where the particular facts 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>3</sup> The Media Bureau (Bureau) stated it will evaluate such requests on a case-by-case basis to assess the impact on the transition schedule, including the impact on other broadcasters as well as viewers, in order to facilitate a timely and orderly transition.<sup>4</sup> The Bureau determined that it would view favorably requests that are compliant with the Commission's rules and

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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. 0000063626, Request for Modification and Waiver of Change Assignment (Waiver Request).

<sup>2</sup> See *Incentive Auction Task Force and Media Bureau Adopt a Post-Incentive Auction Transition Scheduling Plan*, Public Notice, MB Docket No. 16-306 and GN Docket No. 12-268, 32 FCC Rcd 890, 912-14, paras. 47-52 (IATF & MB 2017) (*Transition Scheduling Adoption Public Notice*).

<sup>3</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>4</sup> See *id.* at 912-14, paras. 49-52. See also *Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Broadcast Transition*, 32 FCC Rcd 858, 881-82, para. 73 (MB 2017).

have little or no impact on the transition schedule.<sup>5</sup> Requests that the staff determines would be likely to delay or disrupt the transition schedule will be viewed unfavorably.<sup>6</sup>

WFSG is currently licensed to operate on channel 38. It 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 states that its tower crew, Tower Consultants Incorporated (TCI), had planned to mobilize to the WFSG tower site between October 1 and October 15, 2018. However, due to the impact of Hurricane Michael, which hit the Panama City area on October 10, 2018, TCI was forced to delay its work.<sup>7</sup> According to FSU, TCI has indicated that it can return to complete installation of WFSG's post-auction facility in early December 2018.<sup>8</sup> FSU represents that it has all required parts and equipment on hand in order to complete WFSG's transition by the end of Phase 2. FSU also states that WFSG is not part of a linked-station set and will not delay any other Phase 1 station's transition.<sup>9</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 in Phase 2 satisfies the requirements for a waiver and is in the public interest. We agree that the change to WFSG's transition phase should not have an adverse impact on the overall transition schedule or a negative impact on other stations or viewers. Permitting FSU to transition WFSG to its post-auction channel in Phase 2 will benefit the public by allowing the Station to continue broadcasting during the post-hurricane recovery process without disruption. A staff analysis confirms that the phase change will not result in new increased pairwise interference above the two percent permitted during the post-auction transition period.<sup>10</sup> Furthermore, this action will not result in viewers in the Panama City DMA being subject to an additional rescan period.<sup>11</sup> As a result, we find the benefits of this phase change in light of the delay caused by Hurricane Michael outweighs the short delay in access by wireless providers to the 600 MHz band.

We caution FSU that any additional expenses incurred as a result of the grant of WFSG's voluntary phase change may not be reimbursable from the TV Broadcasters Relocation Fund. Such additional costs might include, but may not be limited to, additional legal or engineering expenses; filing fees; and interim or additional equipment that was not contemplated when the station filed its initial estimated expenses but was subsequently necessitated to complete the transition to its post-auction channel due to its phase change.

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<sup>5</sup> *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 912-13, para. 49 and n.163.

<sup>6</sup> *Id.*; see *Incentive Auction Task Force and Media Bureau Remind Repacked Stations of Certain Post-Auction Transition Requirements and Deadlines*, Public Notice, MB Docket No. 16-306 and GN Docket No. 12-268, DA 18-884 (IATF & MB, rel. Aug. 27, 2018) (*Transition Reminder Public Notice*).

<sup>7</sup> Waiver Request at 1.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</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>11</sup> See LMS file No. 0000063268 (granted Nov. 21, 2018); *Transition Scheduling Adoption Public Notice* 32 FCC Rcd at 898-99, paras. 20-21 (adopting a two rescan periods per DMA limitation when assigning stations to transition phases).

Accordingly, we **GRANT** FSU's *Request for Modification and Waiver of Phase Assignment* and modify the transition phase assignment for WFSG from **Phase 1 to Phase 2**, subject to all the commitments made in its waiver request and compliance with all Commission rules applicable to transitioning stations.<sup>12</sup> Testing on the Station's post-auction channel **may not begin until 12:01 am (local time) on December 1, 2018**, and the Station is required to cease operating on its pre-auction channel **no later than 11:59 pm (local time) on April 12, 2019**.<sup>13</sup> The Station's construction permit expiration date will also be modified to correspond to its new phase completion date.<sup>14</sup>

Sincerely,



Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

Cc (via electronic mail):  
David O'Connor, Esq.

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<sup>12</sup> See generally 47 CFR § 73.3700; *Transition Reminder Public Notice*.

<sup>13</sup> Each transition phase has a designated testing period on which a station in that phase may begin testing equipment on its new channel and a designated phase completion date when a station must cease operation on its pre-auction channel. The phase completion date is the date that will be listed in that station's construction permit as its construction deadline and is the date the station must cease operation on its pre-auction channel. See *Closing and Channel Reassignment Public Notice*, 32 FCC Rcd at 2806, para. 64. A station that commences testing on its post-auction channel before the beginning of its assigned testing period will be operating in violation of Commission rules.

<sup>14</sup> *Id.* ("The phase completion date is . . . [also] the date listed in each station's construction permit as its construction deadline."). If a station must commence operations on its post-auction channel at variance from the parameters authorized in its construction permit, it must file for and be granted special temporary authority prior to commencing operations. See 47 CFR § 73.1635. A station that needs additional time to complete construction of its post-auction facility beyond its construction permit expiration date must file for a 180-day extension of its construction permit in accordance with Section 73.3700(b)(5)(iv). Stations needing additional time to construct after a 180-day extension is granted, will be subject to the Commission's tolling provisions. 47 CFR § 73.3700(b)(5)(iv). Grant of an extension of time to construct does not relieve a station of the requirement that it ceases operation on its pre-auction channel by its assigned phase completion date.