



Federal Communications Commission
Washington, D.C. 20554

September 13, 2018

Florida State University
Doug Crall
Director of Engineering and Operations
1600 Red Barber Plaza
Tallahassee, FL 32310

Re: Request for Modification and
Waiver of Phase Assignment
WFSG(TV), Panama City, FL
Facility ID No. 6093
LMS File No. 0000059156

Dear Licensee,

On August 27, 2018, Florida State University (FSU), the licensee of Station WFSG(TV), Panama City, Florida (WFSG or Station), filed the above captioned request for waiver and modification of its early transition deadline from on or before September 13, 2018, back to its originally assigned post-auction transition phase, Phase 1.¹ For the reasons below, we grant FSU's request for waiver and modify WFSG's phase assignment to Phase 1, which has a testing period start date of September 14, 2018, and phase completion date of November 30, 2018.

Background. Pursuant to the *Transition Scheduling Adoption Public Notice*, individual stations may request waiver and modification of their phase assignment.² 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.³ The Media Bureau (Bureau) has 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.⁴ 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.⁵ Requests that the staff determines would be likely to delay or disrupt the transition schedule will be viewed unfavorably.⁶

¹ LMS File No. 0000059156, Narrative-WFSG Waiver of Phase Assignment (Waiver Request).

² See *Incentive Auction Task Force and Media Bureau Adopt a Post-Incentive Auction Transition Scheduling Plan*, 32 FCC Rcd 890, 912-14, paras. 47-52 (MB 2017) (*Transition Scheduling Adoption Public Notice*).

³ 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.

⁴ 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).

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

⁶ *Id.*

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 1.⁷ On October 6, 2017, FSU was granted authority to transition WFSG to its post-auction channel on or before September 13, 2018, with a testing period to commence immediately prior.⁸ FSU received a waiver and modification of its assigned transition phase because in 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."⁹ During an attempt to repair the transmitter it was discovered that the transmitter was no longer serviceable by the manufacturer or any of its subcontractors. According to FSU, the transmitter was likely to fail before the Phase 1 testing period start date, and as such it requested authority to transition to its post-auction channel on or before September 13, 2018.¹⁰

In its instant request, FSU states that for reasons beyond its control, it will be unable to complete its transition by September 13, 2018. WFSG's tower crew, Tower Consultants Incorporated (TCI), arrived at the WFSG tower site on June 6, 2018, and began work to allow installation of WFSG's post-auction antenna and transmission line. While awaiting delivery of additional parts and equipment, TCI's crew was mobilized to another project.¹¹ TCI has indicated to FSU that a tower crew will not be available to return to WFSG's tower site until sometime between October 1 and 15, 2018. TCI has committed to FSU that it will complete the installation at that time.¹² Fortunately, the original basis for WFSG's early transition has not been realized and the Station's pre-auction transmitter continues to operate.¹³ Given these unforeseen circumstances, FSU requests that WFSG be moved back into its originally assigned transition phase – Phase 1.

Discussion. Upon review of the facts and circumstances presented, we find FSU's request to modify WFSG's back to Phase 1 satisfies the requirements for a waiver and is in the public interest. We agree that reassigning WFSG back to Phase 1 will not have an adverse impact on the overall transition schedule or a negative impact on other stations or viewers. 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.¹⁴ FSU has also provided evidence that TCI is scheduled to complete the necessary transition work in October 2018. Without this phase change WFSG would be forced to go silent. We also note, that because all other stations in the Panama City, Florida Designated Market Area

⁷ 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*).

⁸ Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau, to Douglas Crall, Florida State University (Oct. 6, 2017) available at LMS File No. 0000029464.

⁹ *Id.* at 2.

¹⁰ *Id.*

¹¹ Waiver Request at 1 and TCI Letter.

¹² *Id.*

¹³ Waiver Request at 1.

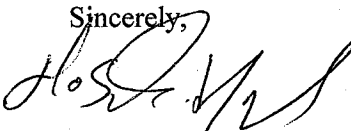
¹⁴ See *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 897, para. 16 (allowing temporary increased pairwise (station-to-station) interference of up to two percent during the transition period).

(DMA) are assigned to Phase 1, moving WFSG back to Phase 1 will re-create a single rescan period in the DMA.¹⁵

We caution FSU that any additional expenses incurred as a result of the grant of the Station'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 necessary to complete the transition to its post-auction channel due to its phase change. The station is responsible for paying for any expenses incurred as a result of the voluntarily requested changes to the station's transition schedule.

Accordingly, we **GRANT** FSU's *Request for Modification and Waiver of Phase Assignment* and modify the transition phase assignment for WFSG back to transition Phase 1, which has a testing period start date of September 14, 2018, and phase completion date of November 30, 2018. The Station's construction permit expiration date will be modified to correspond to its new phase completion date.¹⁶ We remind FSU that WFSG must cease operation on its pre-auction channel **no later than 11:59 pm (local time) on November 30, 2018.**

Sincerely,



Barbara A. Kreisman
Chief, Video Division
Media Bureau

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

¹⁵ See *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 898-99, paras. 20-21 (establishing a limitation of two rescan periods per DMA in the tool adopted by the Bureau in the *Transition Scheduling Adoption Public Notice* to assign stations to transition phases).

¹⁶ *Closing and Channel Reassignment Public Notice*, 32 FCC Rcd at 2806, para. 64 ("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. 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); see *Broadcast Transition Procedures Public Notice*, 32 FCC Rcd at 871-72, paras. 40-45. 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.