

General Information Exhibit
Request for Waiver of Go Off-Air Deadline

Pursuant to the Commission's spectrum incentive auction-related rules and policies¹ and FCC Rule 1.3,² Hearst Stations Inc. ("Hearst"), licensee of television station WNNE(TV) ("WNNE"), hereby requests a waiver of the Commission's requirement that WNNE cease broadcasting from its pre-auction facilities and go off the air by January 23, 2018. For the reasons described below, Hearst respectfully requests an additional ninety (90) days, until April 23, 2018, for WNNE to go off the air.³

Background

WNNE is a "license relinquishment station" in connection with the broadcast spectrum incentive auction.⁴ Pursuant to the Commission's rules, WNNE's go off-air date is 180 days after receipt of payment of auction proceeds—i.e., January 23, 2018.⁵

Following the public release of information about WNNE's status as a license relinquishment station on April 13, 2017,⁶ the members of Vermont's Congressional delegation wrote a joint letter to Chairman Pai, enclosed as Attachment 1 hereto, raising their concerns about potential loss of over-the-air broadcast service as a result of WNNE going off the air.⁷ Sen. Patrick

¹ See *Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Auction Broadcast Transition*, Public Notice, DA 17-106 (MB Jan. 27, 2017) (hereinafter, "*Procedures Public Notice*"); *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567 (2014), ¶ 578; Second Order on Reconsideration, 30 FCC Rcd 12016, ¶ 11 (2015).

² See 47 C.F.R. § 1.3.

³ The Licensee anticipates filing a request for an additional ninety (90) days, until July 22, 2018, at the appropriate time.

⁴ See *Incentive Auction Closing and Channel Reassignment Public Notice*, Public Notice, DA 17-314, Appendix A (MB April 13, 2017) (hereinafter, "*Auction Closing Public Notice*").

⁵ See 47 C.F.R. §§ 73.3700(b)(3), (b)(4)(ii); *Incentive Auction Task Force and Media and Wireless Telecommunications Bureaus Announce the Commission Is Ready to Pay Reverse Auction Winning Bids*, Public Notice, DA 17-702 (MB/WTS July 20, 2017), Attachment at 2 (identifying January 23, 2018, as WNNE's go off-air date).

⁶ See *Auction Closing Public Notice*, Appendix A.

⁷ See Letter from Sens. Patrick Leahy and Bernard Sanders and Rep. Peter Welch, to Hon. Chairman Ajit Pai, FCC, dated April 13, 2017 (hereinafter, "Attachment 1").

Leahy (D-VT), Sen. Bernard Sanders (Ind.-VT), and Rep. Peter Welch (D-VT) requested a report from Chairman Pai on methods by which the FCC would ensure Vermont viewers impacted by WNNE's winning auction bid would continue to receive over-the-air service, specifically referencing the critical nature of broadcast service during times of crisis.⁸ In response, Chairman Pai reported in three identical letters, each enclosed as Attachment 2, that WNNE had indicated in its auction filings an intent to channel share and remain on the air, albeit broadcasting on a different channel.⁹ In addressing the impact on viewers, Chairman Pai expressly noted that the Commission's rules permit WNNE to request up to 180 additional days beyond the deadline otherwise applicable to transition to channel share operations.¹⁰ At the time of the Chairman's response letters, Hearst had not yet filed its application seeking channel sharing authorization.

Contemporaneously with the filing of the instant request, Hearst is filing a minor change construction permit application whereby it proposes for WNNE to channel share, as sharee, with commonly-owned station WPTZ(TV), Plattsburgh, New York ("WPTZ"), as sharer (the "CP Application"). In connection with the CP Application, Hearst has requested to change WNNE's community of license from Hartford, Vermont, to Montpelier, Vermont. This change of community is required because WNNE will no longer be able to meet the principal community signal requirements for Hartford from the WPTZ channel share facilities. Accordingly, as discussed in the CP Application, WNNE first local transmission service to Hartford will be removed and some over-the-air viewers will lose service. However, through the instant request, Hearst proposes to continue operating WNNE from its pre-auction facilities providing first local transmission service to Hartford on channel 31 for the maximum amount of time allowed in order to prolong, for as long as possible, WNNE's service to Hartford and to its existing viewers.

Request for Waiver

Waiver of a Commission rule 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.¹¹ The Commission's auction-related rules and policies specifically authorize waiver of the deadline to commence shared operations.¹² The Media Bureau has stated that waiver requests will be evaluated on a case-by-case basis to determine whether grant will delay or disrupt

⁸ See Attachment 1.

⁹ See Letters from Chairman Ajit V. Pai, FCC, to Hon. Patrick Leahy, Hon. Bernard Sanders, and Hon. Peter Welch, dated June 30, 2017 (hereinafter, "Attachment 2").

¹⁰ See Attachment 2.

¹¹ 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 C.F.R. § 1.3.

¹² See sources cited *supra*, note 1.

the post-auction transition schedule.¹³ Applications or requests that are otherwise compliant with the rules and have little or no impact on other stations' transition schedules are to be viewed "favorably," while applications or requests that would be likely to delay or disrupt the transition are to be viewed "unfavorably."¹⁴

Hearst respectfully submits that the instant request represents a quintessential case where extension of the go off-air deadline will cause no delay or disruption to the post-auction transition schedule and, in fact, will serve the public interest.

Television stations in the Burlington-Plattsburgh DMA have all been assigned to transition Phase 7 or later.¹⁵ Transition Phase 7 stations start their testing on October 19, 2019, and must have their construction and testing completed by January 17, 2020.¹⁶ Both dates are well beyond the maximum 180-day period WNNE may permissibly extend its go off-air date (i.e., July 22, 2018). WNNE's proposed go off-air date is well more than a year earlier than the remaining television stations in the Burlington-Plattsburgh DMA must transition to post-auction, repacked facilities. Extension of WNNE's go off-air date will therefore have no adverse impact on the transition schedule.

Additionally, extension of WNNE's go off-air date will not delay or disrupt wireless providers commencing service in the 600 MHz band. WNNE's current channel designation is 25, which corresponds to 536-542 MHz,¹⁷ whereas wireless providers have acquired rights to spectrum in the 600 MHz band.¹⁸ WNNE's proposed go off-air date thus has no impact at all on forward auction winners.

¹³ See *Procedures Public Notice*, ¶¶ 69, 74.

¹⁴ *Procedures Public Notice*, ¶¶ 73-74. The following examples of disruption are given as unfavorably viewed: temporary pairwise interference to another station above the two percent authorized, creating additional linked-station sets, necessitating changes to the construction permit deadlines for other stations, or likely causing a strain on limited transition resources required by other stations. See *id.*

¹⁵ See *Incentive Auction Task Force and Media Bureau Announce Regional Coordinators to Facilitate Post-Auction Transition for Broadcast Stations*, Public Notice, DA 17-376 (MB April 20, 2017), at 15-16 (Northeast Region transition phases).

¹⁶ See *Auction Closing Public Notice*, Appendix G at 70-71; see also Transition Schedule, available at <https://www.fcc.gov/about-fcc/fcc-initiatives/incentive-auctions/transition-schedule> (last visited Nov. 10, 2017).

¹⁷ See 47 C.F.R. § 73.603.

¹⁸ See, e.g., *Auction Closing Public Notice*, ¶¶ 14-16.

Finally, extension of WNNE's go off-air date will actually serve the public interest by prolonging for an additional ninety days first local transmission service and over-the-air viewing that will otherwise be removed once WNNE commences channel sharing operations with WPTZ. Thus, viewers will actually be positively impacted if allowed ninety more days of service by WNNE from its current facilities. Indeed, grant of this request will help mitigate concerns expressed by the Congressional delegation from Vermont by prolonging over-the-air broadcast service to WNNE's current viewers for as long as possible.¹⁹

Grant of the instant waiver request is fully in keeping with the FCC's standards for waiver of the go-off air deadline and recent decisions in analogous circumstances.²⁰

For the reasons described above, for good cause shown, Hearst respectfully requests waiver of the go off-air deadline for WNNE, until April 23, 2018.

* * *

¹⁹ See Attachments 1 and 2.

²⁰ See, e.g., *Procedures Public Notice*, ¶¶ 69-74; *WECT License Subsidiary, LLC, Request for Modification and Waiver of Phase Assignment WECT(TV), Wilmington, NC*, Letter Decision (MB July 3, 2017) (waiver of WECT and WWAY-TV transition phase assignments upon determination that it would have no adverse impact on transition schedule, including no negative impact on other stations or viewers); *Richard Van Gendern, Request for Modification and Waiver of Phase Assignment KCDT, Coeur D'Alene, ID*, Letter Decision (MB Aug. 17, 2017) (waiver of KCDT phase assignment upon finding it would not have adverse impact on transition schedule or a negative impact on other stations or viewers).

Attachment 1
(Letter from Sen. Leahy, Sen. Sanders, and Rep. Welch)

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Congress of the United States
Washington, DC 20510

April 13, 2017

Received & Inspected

APR 24 2017

FCC Mail Room

The Honorable Ajit Pai
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20536

Dear Chairman Pai:

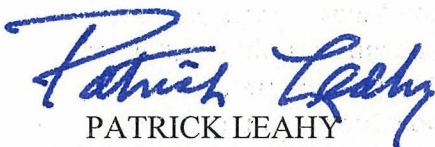
We write seeking information on the Federal Communications Commission's (FCC) plan to ensure that consumers' access to local television broadcasting is not compromised in any way during the incentive broadcast auction process, including plans to communicate with consumers in a timely fashion about any impact on their viewing options.

Hearst Television Inc., the parent company of WNNE (NBC), voluntarily sold its rights back to the FCC in the recently completed reverse auction, potentially leaving a number of households in Vermont, New Hampshire, and Massachusetts without broadcast NBC coverage. It is our understanding from the company that, in some instances, households could have no over the air broadcast service at all, potentially leaving consumers who do not have satellite or cable services without broadcast access to emergency alert systems, local news, and weather forecasts. In Vermont, Hearst estimates that 2,000 to 4,000 households could be impacted in Rutland and Windsor counties starting this fall.

As you may know, Tropical Storm Irene devastated Vermont in 2011, causing loss of life and significant damage to homes and businesses. Local news was an important source of information for Vermonters during and after the storm, keeping them informed throughout this natural disaster. It is critical that Vermonters continue to have access to broadcast services in the event of a similar crisis in the future.

We ask that you report to us on how the FCC will ensure that Vermonters impacted by this auction sale will continue to receive over the air broadcast service.

Sincerely,



PATRICK LEAHY
United States Senator



BERNARD SANDERS
United States Senator



PETER WELCH
United States Congressman.

Attachment 2
(Letters from Chairman Pai)



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

June 30, 2017

The Honorable Peter Welch
U.S. House of Representatives
2303 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Welch:

Thank you for your letter inquiring about how Vermonters may be impacted by Hearst Television Inc.'s successful bid to relinquish its broadcast license for WNNE in the Incentive Auction. I share your view on the critical nature of local broadcast news. The importance of local stations as a trusted source for news and information—especially when disaster strikes—is among the key reasons why I believe we will always need broadcasters.

So I am pleased to report that WNNE, like 90 percent of reverse auction bidders that relinquished their license in the auction, has indicated that it intends to enter into a channel sharing agreement (CSA) and remain on air, albeit broadcasting on a different channel. The Commission's rules give WNNE up to 120 days (absent an extension) after receiving payment of its share of the auction proceeds to submit an application for a construction permit and an executed copy of the CSA. WNNE also has until 180 days from payment to commence shared operations on its new facilities. The rules also permit WNNE to request up to 180 additional days to complete the transition. Once the Commission has been informed as to what WNNE's post-auction channel sharing plans are, we will be in a better position to know the impact, if any, on viewers.

I agree that it is critical that consumers be aware of any changes to their viewing options that result from the broadcast Incentive Auction. The Commission's rules require *all* transitioning stations—whether they intend to go off-air, move to a shared channel facility, or are being repacked—to provide on-air notice to their viewers. Specifically, a station must air, at minimum, either 60 seconds of on-air consumer education public service announcements (PSAs) or 60 seconds of crawls per day for 30 days prior to termination of operations on their pre-auction channel. Of course, broadcasters are free to air additional notifications so long as the information is accurate and not misleading. I would also like to point out that stations electing to channel share with another station must also include a certification that they have complied with the viewer notification requirements in their online public file within 30 days of beginning operations on the shared channel.

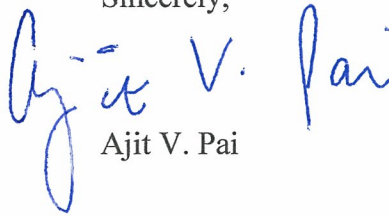
Beyond these requirements, the Commission will help ensure that consumers are aware of any impact on their viewing options. We've already begun by updating two of our consumer guides on over-the-air tuners to reflect the potential impact of the Incentive Auction and the transition. Our Consumer and Governmental Affairs Bureau recently released a PSA-style video on how to rescan an over-the-air tuner. Stations are free to use or modify this video for their own use. The Commission's consumer call center staff have been trained on how to answer viewer

Page 2—The Honorable Peter Welch

questions about the coming changes to their TV lineups. And we're working with our national partners to develop educational materials and programs to ensure that at-risk constituencies such as seniors, Americans with disabilities, and low-income households get the assistance they need.

I appreciate your interest in this matter. Please let me know if I can be of any further assistance.

Sincerely,

A handwritten signature in blue ink that reads "Ajit V. Pai". The signature is fluid and cursive, with the first name "Ajit" being the most prominent part.

Ajit V. Pai



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

June 30, 2017

The Honorable Bernard Sanders
United States Senate
332 Dirksen Senate Office Building
Washington, D.C. 20510

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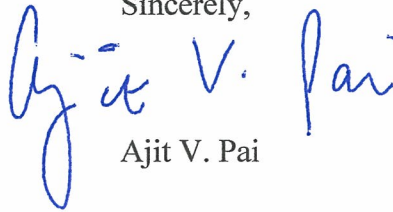
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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
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June 30, 2017

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United States Senate
437 Russell Senate Office Building
Washington, D.C. 20510

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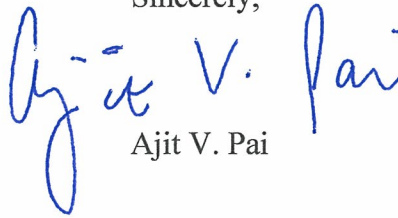
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