

**Request for Community of License Change and
Waiver of Prohibition on Removal of First Local Service**

Hearst Stations Inc. (“Hearst”) respectfully requests to change the community of license of WNNE(TV) (“WNNE” or the “Station”) from Hartford, Vermont, to Montpelier, Vermont, and, to the extent required, a waiver of the Commission’s general prohibition on removal of first local service to effectuate the requested change.

Background

WNNE is currently licensed to Hartford, Vermont, and operates as a satellite of commonly owned primary station WPTZ(TV), Plattsburgh, New York (“WPTZ”), both located in the Burlington-Plattsburgh Designated Market Area (DMA). WNNE was a participant in the recent broadcast incentive spectrum auction and an auction winner.¹ In WNNE’s pre-auction application on FCC Form 177, Hearst indicated its intent for WNNE to go off the air but also elected its intent to channel share after the auction. At the time of the Station’s FCC Form 177 filing, Hearst had not selected a channel sharing partner, and, thus, was not required to identify a proposed sharer station or community of license for WNNE’s intended channel sharing arrangements.²

As an auction winner that selected the present intent to channel share in the spectrum auction, Hearst may either surrender the license for WNNE or continue providing television service to the public as a channel sharee. In the instant application, Hearst proposes to modify WNNE’s license to become a channel sharee with WPTZ as channel sharer. However, WNNE cannot meet the principal community signal requirements for Hartford from WPTZ’s technical facilities and, accordingly, requests Commission approval to change WNNE’s community of license to Montpelier, Vermont.³ Montpelier is also located within the Burlington-Plattsburgh DMA.

¹ See *Incentive Auction Closing and Channel Reassignment Public Notice*, Public Notice, (DA 17-314) (rel. Apr. 13, 2017), at Appendix A, FCC Broadcast Television Spectrum Incentive Auction, Auction 1001 Winning Bids.

² See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, FCC 14-50 (rel. June 2, 2014) (“*Auction R&O*”), ¶ 376.

³ Although the proposed channel share facilities with WPTZ are such that WNNE could cover the entire community of Hartford with its principal community contour, WNNE could not meet the “line of sight” requirements for principal community coverage to Hartford due to terrain obstructions. See 47 C.F.R. § 73.625(a)(2); see also Attachment A (showing terrain limitations).

Hartford, with a 2010 population of 9,952,⁴ is a community in central Vermont made up of five unincorporated areas: Hartford, Quechee, White River Junction, West Hartford, and Wilder.⁵ Hartford is part of the “Upper Valley” region of Vermont and New Hampshire and is home to several educational institutions, medical facilities, and small businesses.⁶ WNNE is the only television service licensed to Hartford.⁷

Montpelier is the capital of Vermont and is located approximately 51 miles north of Hartford. Unlike Hartford, which is comprised of unincorporated villages, Montpelier is itself an incorporated city and is, in fact, the fifth largest city in Vermont.⁸ Montpelier’s 2010 resident population is 7,855.⁹ However, Montpelier’s daytime population, including commuters into the city’s government complex and local colleges, is more than 20,000.¹⁰ Although it is the smallest capital city in the U.S., Montpelier is a busy center for government and commerce.¹¹ The city is also a regional center for arts and entertainment, with state-run and local art galleries, a free

⁴ See U.S. Census Bureau, American FactFinder (Hartford town, Windsor County, Vermont), *available at* <https://factfinder.census.gov/> (last visited Nov. 9, 2017) (search “Community Facts”).

⁵ See Hartford, Vermont, Brief History, *available at* <http://www.hartford-vt.org/2151/Brief-History> (last visited Nov. 9, 2017).

⁶ See Hartford Area Chamber of Commerce, *available at* <http://www.hartfordvtchamber.com/> (last visited Nov. 9, 2017).

⁷ See 47 C.F.R. § 73.622 (Vermont).

⁸ See List of Cities in Vermont, *available at* https://en.wikipedia.org/wiki/List_of_cities_in_Vermont (last visited Nov. 9, 2017). As a community made up of unincorporated areas, Hartford is not on this list.

⁹ See U.S. Census Bureau, American FactFinder (Montpelier city, Vermont), *available at* <https://factfinder.census.gov/> (last visited Nov. 9, 2017) (search “Community Facts”).

¹⁰ See A Study and Analysis of the Fiscal Impacts of Growth in the City of Montpelier, *available at* <http://www.montpelier-vt.org/DocumentCenter/View/2804>, at 13 (last visited Nov. 9, 2017) (estimate of 2015 daytime population).

¹¹ See City of Montpelier Vermont, About Montpelier, *available at* <http://www.montpelier-vt.org/552/About-Montpelier> (last visited Nov. 9, 2017).

summer concert series, local theater, and other entertainment options.¹² Currently, there is no television service licensed to Montpelier.¹³

Community of License Change

The public interest would be served by reallocating WNNE channel 25 from Hartford, Vermont, to Montpelier, Vermont, and modifying WNNE's license to allow channel sharing with commonly owned WPTZ. The requested reallocation would result in a preferential arrangement of allotments under the Commission's governing standards.

The Commission evaluates community of license change requests using allotment priorities rooted in Section 307(b) of the Communications Act, as amended.¹⁴ The allotment priorities are to: (1) provide at least one television service to all parts of the country; (2) provide each community with at least one television broadcast station; (3) provide a choice of at least two television services to all parts of the country; (4) provide each community with at least two television broadcast stations; and (5) assign any remaining channels to communities based on population, geographic location, and the number of television services available to the community from stations located in other communities.¹⁵ While the Commission generally views the removal of first local service (reception or transmission) as undesirable due to the disruption to existing service, the FCC has a longstanding policy that permits waiver of this prohibition.¹⁶ In these cases,

¹² See, e.g., Capitol District, Explore Vermont's Art & History, available at <http://us12.campaign-archive1.com/?u=6ebe7d78ee31f5b188e29c834&id=77a80c2439&e=4e156eba42> (last visited Nov. 9, 2017).

¹³ See 47 C.F.R. § 73.622 (Vermont).

¹⁴ See 47 U.S.C. § 307(b) (requiring "fair, efficient, and equitable distribution" of broadcast service among communities).

¹⁵ See *Amendment of Section 3.606 of the Commission's Rules and Regulations*, Sixth Report and Order, 41 FCC 148, 167 (1952); see also *Gray Television License, LLC and New Rushmore Radio, Inc., Amendment of Section 73.622(i) Digital Television Table of Allotments (Scottsbluff, Nebraska and Sidney, Nebraska)*, Report and Order, 31 FCC Rcd 5204 (2016), at n.7.

¹⁶ See, e.g., *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, Memorandum Opinion and Order, 5 FCC Rcd 7094 (1990) ("COL R&O"), at ¶¶ 17-19; see also *Amendment of Section 73.606(b), Table of Allotments, Television Broadcast Stations (Ardmore, Oklahoma and Sherman, Texas)*, Report and Order, 7 FCC Rcd 4846 (1992) ("KXII R&O") (permitting the removal of first local transmission service from Ardmore, Oklahoma, to provide first local transmission service to Sherman, Texas, in the case of KXII(TV)).

the Commission evaluates the circumstances of the proposed change in light of policies and precedent under Section 307(b) and will permit removal of service if there are “sufficient public interest factors to offset the expectation of continued service.”¹⁷ Notably, continued reception service coverage at the original community of license by an applicant for community of license change is *not* a factor in the Commission’s analysis of Section 307(b) priorities.¹⁸

In addition to longstanding precedent applying the Section 307(b) allotment priorities, the Commission’s 2014 *Report and Order* adopting rules to implement the spectrum auction explicitly permits community of license changes in the spectrum auction context for winning channel share bidders, subject to certain restrictions.¹⁹ First, channel sharing stations must select a new community of license located within the station’s existing DMA. Second, channel sharees may change community of license only where the sharee station cannot satisfy the community of license signal requirement operating from the host or “sharer” transmitter site.²⁰ Third, the new community of license must at a minimum meet the same allotment priorities as the station’s current community.²¹ The Commission recognized that “[t]his approach may result in service loss in some areas, but the public interest benefits that will stem from maximizing broadcasters’ participation in the reverse auction through channel sharing outweighs the detriment of potential service losses.”²²

¹⁷ See *COL R&O*, ¶¶ 18-19.

¹⁸ See, e.g., *KXII R&O*, ¶ 9; see also *Amendment of the Commission’s Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, Report and Order, 4 FCC Rcd 4870 (1989), ¶ 26, *reconsidered and vacated in part by COL R&O*.

¹⁹ See *Auction R&O*, ¶ 374.

²⁰ See *Auction R&O*, ¶ 376.

²¹ See *Auction R&O*, ¶¶ 374, 376. Channel sharee applicants were required to indicate on pre-auction application FCC Form 177 the present intent to channel share. For those channel sharee applicants who answered “yes” to that question and “yes” to the question asking if the applicant had entered into one or more executed channel sharing agreements for the station as a sharee, certifications appeared related to the community of license signal coverage requirements or an alternative community of license that meets the same or a higher allotment priority. See FCC Form 177, Channel Sharing Agreement Certification no. 4. Applicants who answered “yes” to the present intent to channel share question and “no” to the executed channel sharing agreements question were not given the option to make this certification.

²² *Auction R&O*, ¶ 376 & n.1118 (also noting that service loss to one area necessarily will result in a gain in service to a different area).

Hearst's proposal to change the community of license for WNNE directly supports the Section 307(b) allotment priorities and is fully in keeping with the Commission's 2014 rules with respect to community of license changes for channel sharees.

The change of community of license from Hartford to Montpelier meets the same allotment priority as WNNE's current community of license—first local transmission service (priority two). Montpelier is the capital of Vermont and a busy government and commercial center deserving of local transmission service.²³ Montpelier has a slightly smaller though generally comparable population to that of Hartford.

While Montpelier's gain of first local transmission service means that Hartford will lose its first local transmission service, the public interest benefits of the proposed move far outweigh the detriment of service loss.²⁴ The flexibility to change WNNE's community of license and channel share was an inducement to Hearst's commitment to enter WNNE in the spectrum auction, which the Commission recognized as a public interest benefit.²⁵ As a winning auction bidder to go off the air that elected to channel share, Hearst now has two options for WNNE—go off the air for good, or find a channel sharing partner that meets the Commission's channel sharing rules. As demonstrated in Exhibit A, WNNE's channel sharing partner, WPTZ, has technical facilities that make it impossible for WNNE to meet the principal community signal requirements for Hartford.²⁶ Yet, WNNE can meet the principal community signal requirements for Montpelier from WPTZ's facilities, as demonstrated in the attached Exhibit A.²⁷ Principal community signal coverage by WNNE will be lost to a large portion of Hartford,²⁸ and while no service loss is ordinarily preferable, in the unique context of the spectrum auction where WNNE would otherwise go off the air and cease providing *any service at all* to 100% of the Hartford community or any other area, the public interest is better served by WNNE remaining on the air and providing first local

²³ See *Western Pacific Broadcast, LLC Amendment of Section 73.622(i), Digital Television Table of Allotments (Seaford, Delaware and Dover, Delaware)*, Report and Order, 29 FCC Rcd 4773 (MB 2014) (“WMDE R&O”) (channel 5 at Seaford deleted and allotted to capital city Dover).

²⁴ See *COL R&O*, ¶¶ 18-19.

²⁵ See *Auction R&O*, ¶ 376.

²⁶ See 47 C.F.R. § 73.625(a)(2).

²⁷ Terrain limitations are included to demonstrate issue with respect to “line of sight” requirements. See note 3, *supra*.

²⁸ See Exhibit A. Approximately 11% of the population of the Hartford community would continue to receive a principal community signal from WNNE at its new location—a principal community loss of 8,863. However, as discussed above, continued reception service coverage at the original community of license is not a factor in the Commission's analysis of Section 307(b) priorities. See, e.g., *KXII R&O*, ¶ 9.

transmission service to Montpelier. Indeed, WNNE's channel sharing arrangement and proposed community of license change is exactly the circumstance the Commission contemplated in permitting community of license changes in the auction context.²⁹ Accordingly, to the extent waiver of the Commission's rule prohibiting removal of first local transmission service is required, in this case ample public interest factors in favor of the proposed move to Montpelier offset the expectation of continued local transmission service to Hartford.

Significantly, although first local transmission service to Hartford will be removed, Hartford will continue to be well served with noise limited service contour reception service, post-repack, by several television stations: WCAX-TV, Burlington, Vermont; WETK(TV), Burlington, Vermont; WEKW-TV, Keene, New Hampshire; WVNY(TV), Burlington, Vermont; and WVER(TV), Rutland, Vermont.³⁰ In fact, WPTZ/WNNE channel share facilities will also continue to provide NLSC reception service to Hartford.³¹

Hearst's proposal to change the community of license of WNNE from Hartford to Montpelier otherwise meets the Commission's requirements for community of license changes in the auction context. Montpelier is located within WNNE's existing DMA,³² Burlington-Plattsburgh.³³ As demonstrated in Exhibit A and discussed above, WNNE cannot satisfy the community of license signal requirements operating from the WPTZ host or "sharer" transmitter site.³⁴ And, as discussed above, the new community of license, Montpelier, meets the same

²⁹ See *Auction R&O*, ¶ 376 & n. 1117.

³⁰ See Exhibit B (noise limited service contour map analyzing post-repack facilities). Those signals depicted on the map that entirely cover Hartford will also continue to cover Hartford if maximization applications filed in the window that closed November 2, 2017, are granted and constructed. Those signals depicted that partially cover Hartford (WFFF-TV and WLED-TV) will expand their coverage of Hartford if maximization applications filed in the same window are granted and constructed. See *Freeze on the Filing of Modification Applications to be Lifted Temporarily to Permit Filing of Applications to Expand the Contours of Full Power and Class A Television Stations That Are Not Part of the Post Incentive Auction Repack Process*, Public Notice, DA 17-1033 (Oct. 19, 2017) (second priority window).

³¹ See Exhibit B; see also, e.g., *WMDE R&O*, ¶ 14 (discussing continued NLSC coverage in 307(b) analysis).

³² See *Auction R&O*, ¶ 376.

³³ Montpelier is located in Washington County, Vermont.

³⁴ See *Auction R&O*, ¶ 376.

allotment priorities as the station's current community, Hartford—first local transmission service (priority two).³⁵

For these reasons, Hearst respectfully submits that the public interest favors grant of this request to change WNNE's community of license from Hartford to Montpelier.

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³⁵ See *Auction R&O*, ¶ 376. Hearst indicated a present intent to channel share in its pre-auction application on FCC Form 177. See *supra* note 18.

Exhibit A



Chesapeake RF Consultants, LLC
Radiofrequency Consulting Engineers
Digital Television and Radio

Sharer Facility: WPTZ
Ch. 14 650 kW 845 m
FCC Contours
48 dBu Principal Community
41 dBu DTV Service

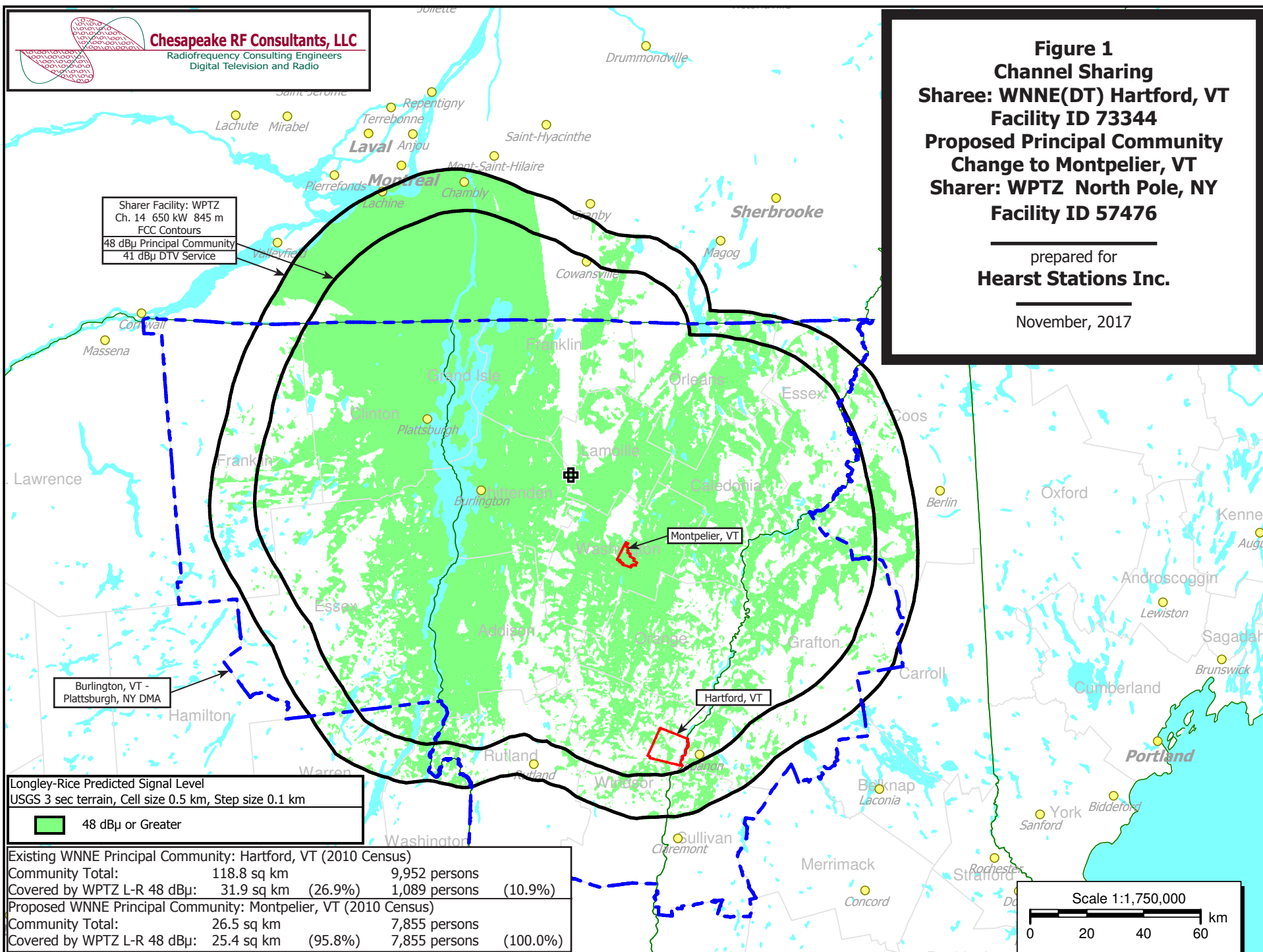



Figure 1
Channel Sharing
Sharee: WNNE(DT) Hartford, VT
Facility ID 73344
Proposed Principal Community
Change to Montpelier, VT
Sharer: WPTZ North Pole, NY
Facility ID 57476

prepared for
Hearst Stations Inc.

November, 2017

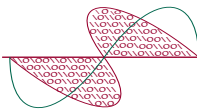
Longley-Rice Predicted Signal Level
USGS 3 sec terrain, Cell size 0.5 km, Step size 0.1 km

 48 dBu or Greater

Existing WNNE Principal Community: Hartford, VT (2010 Census)			
Community Total:	118.8 sq km	9,952 persons	
Covered by WPTZ L-R 48 dBu:	31.9 sq km (26.9%)	1,089 persons (10.9%)	
Proposed WNNE Principal Community: Montpelier, VT (2010 Census)			
Community Total:	26.5 sq km	7,855 persons	
Covered by WPTZ L-R 48 dBu:	25.4 sq km (95.8%)	7,855 persons (100.0%)	

Scale 1:1,750,000
0 20 40 60 km

Exhibit B



Chesapeake RF Consultants, LLC
Radiofrequency Consulting Engineers
Digital Television and Radio

Figure 2 Post-Auction Television Services Hartford, VT Noise Limited Service Contours

prepared for
Hearst Stations Inc.

November, 2017

