

COORDINATED MODIFICATION AGREEMENT

This Coordinated Modification Agreement (“Agreement”) is made as of this 20th day of May, 2016, by and among **FITZGERALD AND HAWRAS, PARTNERSHIP**, a general partnership (“F&H”), and **SOUND COMMUNICATIONS, LLC**, a Delaware limited liability company (“Sound”).

RECITALS

A. F&H is the licensee of WPHD(FM), 96.1 MHz, South Waverly, Pennsylvania (Facility No. 77925) (“WPHD”), pursuant to certain licenses, approvals, and other authorizations issued by the Federal Communications Commission (“FCC”);

B. Sound is the licensee of WENY-FM, 92.7 MHz, Elmira, New York (Facility No. 71509) (“WENY-FM”), pursuant to certain licenses, approvals, and other authorizations issued by the FCC;

C. F&H and Sound each intend to file certain applications with the FCC to effect the exchange of channels. When the applications are granted by the FCC: (a) F&H’s station will retain its call sign of WPHD and its frequency of 96.1 MHz, but with the community of license of Elmira, New York and the Facility No. of 71509; and (b) Sound’s station will retain its call sign of WENY-FM and frequency of 92.7 MHz, but with the community of license of South Waverly, PA and the Facility No. of 77925 (such exchange, the “Channel Exchange”).

D. F&H and Sound intend for this Agreement to be bound by the Communications Act of 1934, as amended, and the rules and published policies of the FCC promulgated thereunder (collectively, the “Communications Laws”).

AGREEMENT

The parties hereby agree as follows:

1. **WPHD and WENY-FM License Assignment Applications.** Not later than five (5) business days after the date of this Agreement, F&H and Sound shall execute, file and vigorously prosecute applications with the FCC (each an “Assignment Application,” together the “Assignment Applications”) requesting consent to the assignment: (a) from F&H to Sound of all of the licenses, permits, applications, and other authorizations associated with WPHD, including the authorizations issued by the FCC (the “WPHD Licenses”); and (b) from Sound to F&H of all of the licenses, permits, applications, and other authorizations associated with WENY-FM, including the authorizations issued by the FCC (the “WENY-FM Licenses”).

2. **WPHD and WENY-FM Contingent Minor Change Applications.** Presently, the WENY-FM and WPHD antennas are located on a tower identified as Antenna Structure Registration Number 1006946. Presently, the WENY-FM antenna is located at approximately 82.0 meters above ground level (“AGL”) and the WPHD antenna is located at approximately 46.4 meters AGL. Not later than five (5) business days after the date of this Agreement, F&H and

Sound shall execute, file and vigorously prosecute applications with the FCC requesting construction permits for minor modifications to their station's licenses (each a "Minor Change Application," together the "Minor Change Applications"). The WPHD Minor Change Application, filed by F&H, will request a change of frequency, from 96.1 MHz to 92.7 MHz, along with a request for a modification of the location of the WPHD antenna to 82.0 meters AGL on ASR 1006946 (the present WENY-FM location), so as to provide sufficient coverage to the entire community of South Waverly, Pennsylvania. The WENY-FM Minor Change Application, filed by Sound, will request a change in frequency, from 92.7 MHz to 96.1 MHz, along with a request for a modification of the location of the WENY-FM antenna to 46.4 meters AGL on ASR 1006946 (the present WPHD antenna location), so as to provide sufficient coverage to the entire community of Elmira, New York. Both of the Minor Change Applications will specify that implementation of the proposals set forth therein are contingent on: (a) the grant of the other Minor Change Application; and (b) consummation of both of the Assignment Applications.

3. **WPHD and WENY-FM License to Cover Applications.** Not later than sixty (60) days after the FCC has granted a construction permit (reflecting the information in the Minor Change Application) to the relevant party, such party shall execute, file and vigorously prosecute an application for a license to cover that construction permit (each a "License to Cover Application," together the "License to Cover Applications").

4. **Call Sign Exchange.** Not later than three (3) business days after the last of the Assignment Applications has been filed at the FCC, the parties will use commercially reasonable efforts to effectuate the exchange of the stations' call signs, such that call sign "WPHD," as licensed to F&H, will be associated with 96.1 MHz, a Facility ID number of 71509 and the community of license of Elmira, New York. And call sign "WENY-FM," as licensed to Sound, will be associated with 92.7 MHz, a Facility ID number of 77925 and a community of license of South Waverly, Pennsylvania (the "Call Sign Exchange"). From and after the Closing, the parties agree to take all commercially reasonable steps necessary to ensure that the Call Sign Exchange becomes and remains in full force and effect.

5. **Fees.** Each party shall bear the application processing fees charged by the FCC associated with the Assignment Applications, Minor Change Applications and License to Cover Applications fees it files. To the extent necessary, the parties agree to "true up" all of the application processing fees paid to the FCC or any other governmental authority, such that each party bear one half the cost of all such fees. Otherwise, each party shall be responsible for all of its own costs with respect thereto this Agreement and all of the applications contemplated hereby.

6. **Due Diligence; FCC Consents.** Each of the parties shall otherwise diligently take all commercially reasonable steps, at its cost and expense, and do such commercially reasonable things that may be required of it to obtain the consents of the FCC with respect to the Assignment Applications and Minor Change Applications (collectively, the "FCC Consents"). However, neither party shall have any obligation to satisfy any complainant or the FCC by taking any steps that would reasonably be expected to have a material adverse effect on it or its stations, other than as contemplated by this Agreement.

7. **Consideration.** On the Closing Date (as hereinafter defined), F&H and Sound

shall agree to effectuate the Channel Exchange. Neither party shall pay any monies to the other party. The consideration received by each party associated with the Channel Exchange shall be the benefits, which may be non-monetary, that shall accrue to each party following the Closing.

8. **Closing.** The closing (the “Closing”) of the transactions contemplated by this Agreement shall occur on a date (the “Closing Date”) mutually agreed upon by the parties, which shall be no later than ten (10) days following the date on which the License to Cover Applications have been officially “accepted for filing” by the FCC. The Closing shall be held by mail or in such other manner as mutually agreed upon by the parties.

9. **Representations and Warranties.** F&H and Sound each represent and warrant to the other that:

(a) It has the full organizational right, power and authority to enter into this Agreement and to perform the acts required of it hereunder;

(b) Its execution of this Agreement and the performance of its obligations hereunder do not and will not violate any material agreement to which it is a party or by which it is bound; and in its performance under and related to this Agreement, it shall comply with all applicable laws, rules and regulations, including the Communications Laws;

(c) When executed and delivered, this Agreement will constitute the legal, valid and binding obligation of each party, enforceable against it in accordance with its terms, except to the extent that enforcement thereof may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereinafter in effect relating to creditors’ rights generally and (ii) general principles of equity (regardless of whether enforceability is considered a proceeding at law or in equity);

(d) Each party acknowledges that its station is on the air and broadcasting a regularly-used signal to the public;

(e) There is no fact that would, under present law, including the Communications Laws, disqualify either party from being the assignee of the either station or that would delay the FCC’s approval of any of the Assignment Applications or Minor Change Applications. Should either party become aware of any such fact, such party will so inform the other party and will use its best efforts to remove any such disqualification. Neither party will take, or fail to take, any action that it knows, or has reason to believe, would result in such disqualification;

(f) No insolvency proceedings of any character including without limitation, bankruptcy, receivership, reorganization, composition or arrangement with creditors, voluntary or involuntary, affecting either party are pending or, to the knowledge of such party, threatened, and neither party has made any assignment for the benefit of creditors, nor taken any action with a view to, or which would constitute the basis for, the institution of any such insolvency proceeding.

10. **Covenants.** Each party covenants to the other that, between the date hereof and

the Closing Date, such party shall: (a) operate its station in material compliance with applicable law, including the Communications Laws; (b) take all steps reasonably necessary to ensure that its station remains on the air; (c) not adversely modify its station license; and (d) maintain in full force and effect the WPHD Licenses and WENY-FM Licenses (as applicable) and take any action necessary before the FCC or any other governmental authority to preserve such licenses in full force and effect without material adverse changes, except as provided herein.

11. **Termination.** This agreement may be terminated as follows:

(a) by the mutual consent of the parties; or

(b) by F&H or Sound in the event that the License Assignment Applications have not been granted by the FCC within twelve (12) months after they have been filed; or

(c) by F&H or Sound in the event that the Minor Change Applications have not been granted by the FCC within twelve (12) months after they have been filed; or

(d) by F&H or Sound, in the event that a petition to deny or informal objection is filed against any of the License Assignment Applications or Minor Change Applications, provided that neither F&H nor Sound may terminate this Agreement if it, or any of its officers, directors, employees, agents or other representatives files such petition to deny or informal objection against any License Assignment Application or Minor Change Application; or

(e) by F&H or Sound, in the event that the FCC dismisses, denies or designates for hearing any of the License Assignment Applications or Minor Change Applications; or

(f) by F&H or Sound, as applicable, upon breach of any warranty, covenant or material term of this Agreement by the other party and such breach has not been cured within ten business (10) days after written notice by the terminating party to the other party.

12. **Effect of Termination.** Upon termination of this Agreement, neither party shall owe any compensation to the other, except as provided in Section 5 hereof.

13. **Conditions Precedent to Obligation to Close.** The performance of the obligations of the parties hereunder is subject to the satisfaction of each of the following express conditions precedent:

(a) Each party shall have performed and complied in all material respects with all of the agreements, obligations and covenants required by this Agreement to be performed or complied with such party prior to or as of the Closing Date;

(b) The representations and warranties of the parties set forth in this Agreement shall be true and correct in all material respects on and as of the Closing Date with the same effect as if made on and as of the Closing Date;

(c) The FCC Consents to the Assignment Applications and the Minor Change

Applications each shall have become a Final Order. For purposes of this Agreement, the term “Final Order” means action by the FCC consenting to an application which is not reversed, stayed, enjoined, set aside, annulled or suspended, and with respect to which action no timely request for stay, petition for rehearing or appeal is pending, and as to which the time for filing any such request, petition or appeal or reconsideration by the FCC on its own motion has expired;

(d) No suit, action, claim or governmental proceeding shall be pending, and no order, decree or judgment of any court, agency or other governmental authority shall have been rendered, against any party hereto which: (A) would render it unlawful, as of the Closing Date, to effect the transactions contemplated by this Agreement in accordance with its terms; (B) questions the validity or legality of any transaction contemplated hereby; or (C) seeks to enjoin any transaction contemplated hereby;

(e) Each party shall have delivered the documents as set forth in Section 14 hereof; and

(f) The Call Sign Exchange shall be in full force and effect.

14. **Closing Deliveries.** At the Closing, the parties shall execute and/or deliver the following:

(a) An Assignment and Assumption of Frequencies, whereby each party assigns and accepts the Channel Exchange;

(b) A certificate, dated as of the Closing Date, executed by an officer of each company, certifying the fulfillment of the conditions set forth in Sections 13(a) and (b) hereof; and

(c) Certified copies of the resolutions of the members of Sound and the partners of F&H, authorizing and approving the execution and delivery of this Agreement and consummation of the transactions contemplated hereby.

15. **Indemnification.**

(a) Following the Closing, Sound shall indemnify, defend and hold harmless F&H with respect to any and all demands, claims, actions, suits, proceedings, assessments, judgments, costs, losses, damages, liabilities and expenses (including, without limitation, interest, penalties, court costs and reasonable attorneys’ fees) (“*Damages*”) asserted against, resulting from, imposed upon or incurred by F&H directly or indirectly relating to or arising out of: (i) the breach by Sound of any of its representations or warranties, or failure by Sound to perform any of its covenants, conditions or agreements set forth in this Agreement; and (ii) any and all claims, liabilities and obligations of any nature, absolute or contingent, relating to the operation of WENY-FM prior to the Closing.

(b) Following the Closing, F&H shall indemnify, defend and hold harmless Sound with respect to any and all Damages asserted against, resulting from, imposed upon or incurred by Sound directly or indirectly relating to or arising out of: (i) the breach by F&H of any

of its representations or warranties, or failure by F&H to perform any of its covenants, conditions or agreements set forth in this Agreement; and (ii) any and all claims, liabilities and obligations of any nature, absolute or contingent, relating to the operation of WPHD prior to the Closing.

(c) The indemnities of Sound and F&H in (a) and (b), respectively above, shall be limited such that no claim may be made by an indemnified party until the total of Damages shall equal or exceed \$1,000, and then a claim may be made for the amount of Damages including the \$1,000. In the aggregate all claims for Damages against either Sound or F&H for Damages shall not exceed \$200,000.

(d) The right to indemnification under this Section 15 shall be the exclusive remedy of any party in connection with any breach or default by another party under this Agreement occurring after the Closing Date or with respect to any ancillary document executed and/or delivered in connection with Closing under this Agreement. No party shall have any liability to another party under any circumstances for special, consequential, punitive or exemplary damages, unless such special, consequential, punitive or exemplary damages are included in any governmental order entered against the indemnified party arising out of a claim by a third party against the indemnified party for which the indemnified party is entitled to seek indemnification pursuant to this Section 15.

16. **Unwind.** In the event the FCC fails to grant either License to Cover Application within twelve (12) months of the date of filing, or the FCC at any time dismisses, denies or designates for hearing either License to Cover Application, then the parties agree to take all steps necessary, including filing any applications necessary to obtain the consent of the FCC, in order to restore the status quo with respect to the WPHD Licenses and WENY-FM Licenses that exists as of the date of this Agreement.

17. **Remedies.**

(a) The parties acknowledge that the transactions contemplated by this Agreement involve special and unique assets and that damages alone are an inadequate remedy for a breach of this Agreement. In the event of a breach or threatened breach by either party, the other parties may, at its election, in addition to any other remedy available to it, shall be entitled, subject to obtaining any requisite approval of the FCC, to seek enforcement of this Agreement by a decree of specific performance. Such right of specific performance or injunctive relief shall be in addition to, and not in lieu of, any right to recover damages and to pursue any other remedies available for breach.

(b) If a party initiates any litigation against the other involving this Agreement, the party most prevailing in such litigation shall be entitled, in addition to any other remedy or relief, to an award of its costs and expenses in connection with such litigation, including the fees of accountants, experts, or other professionals, and including reasonable attorneys' fees, including any incurred on appeal.

18. **Assignability.** No party may assign any of its rights or delegate any of its duties hereunder to any other person or entity without written consent from the other party. Nothing

herein, express or implied, is intended or shall be construed to confer upon or give any person or entity other than the parties hereto any right, remedy or claim, legal or equitable, under or by reason of this Agreement.

19. **Governing Law.** The construction and performance of this Agreement shall be governed by the laws of the State of New York. In the event of any litigation between the parties arising out of or related to this Agreement, each agrees that venue for such litigation shall properly lie in Steuben County, New York, and each consents to the personal jurisdiction over it of any federal or state court seated there.

20. **Counterparts.** This Agreement (or any amendment hereto) may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement (or any amendment) shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected hereon as the signatories. Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission, shall be the same as delivery of an original. Upon request, the parties will confirm facsimile transmitted signatures by signing or providing an original document.

21. **Notices.** All notices, requests, demands, and other communications required or permitted under this Agreement shall be in writing (which shall include notice by electronic mail transmission) directed to the party at the address set forth below, or to such other address as that party may from time to time establish by giving notice as provided herein:

If to Sound:

Sound Communications, LLC
21 East Market Street, Suite 101
Corning, NY 14830
Attention: Paige Christian, Vice President
e-mail: pchristian@stny.rr.com

With a copy (which shall not constitute notice) to:

Smithwick & Belendiuk, P.C.
5028 Wisconsin Avenue, N.W., Suite 301
Washington, D.C. 20016
Attention: Mark Denbo
e-mail: mdenbo@fccworld.com

If to F&H:

Fitzgerald and Hawras, Partnership
c/o George J. Hawras
734 Chemung Street
Horseheads, NY 14845

e-mail: GeorgeHawras@equinoxbroadcasting.com

With a copy (which shall not constitute notice) to:

Kevin Fitzgerald
734 Chemung Street
Horseheads, NY 14845
e-mail: kfitzwmtt@gmail.com

Any notice or communication hereunder shall be deemed to have been received by a party, if it is addressed to that party as provided herein with any postage or other delivery charges prepaid, (i) on the date delivered, if personally delivered, (ii) on the date sent, if sent by electronic mail on a regular business day in the State in which the addressee resides or, if not sent on a regular business day, on the next regular business day after the date sent, provided that, in either event, the sender's e-mail server shall report the transmission was successfully completed, (iii) on the date set forth in the delivery records of a nationally recognized courier service if sent by that means, and (iv) on the third regular business day after deposit into the United States mail. Giving of notice in the manner provided herein shall not substitute for the requirements for notice in connection with the commencement or maintenance of court or other proceedings.

22. **Survival.** The several representations and warranties of the parties hereto contained in or made pursuant to this Agreement shall be deemed to have been made on the date of this Agreement and on the Closing Date, shall survive the Closing Date for a period of one year following the Closing Date or, in the case of a third-party claim, until the applicable statute of limitations with respect to such claim shall have expired.

23. **Entire Agreement.** This Agreement constitutes the full and entire understanding and agreement between the parties with regard to the subject matter hereof and supersedes all prior negotiations, agreements, inducements, or understandings, express or implied, oral or written, relating to the subject matter hereof. This Agreement has been prepared by, or with input from, all parties, and no inference of ambiguity against the drafter of a document shall apply against any party.

24. **Cooperation; Further Efforts.** Each party agrees to execute and deliver all such documents or instruments and take all such actions as any other party shall reasonably request, without payment of further compensation, in connection with carrying out and effectuating the intent and purpose hereof and all transactions contemplated hereunder including, without limitation, the execution and delivery of any and all confirmatory and other instruments, and any and all actions which may reasonably be necessary to complete the transaction contemplated herein. The parties shall cooperate fully with each other and with their respective counsel, accountants, and consultants in connection with any steps required to be taken as part of their respective obligations under this Agreement.

25. **Amendment; No Waiver.** The terms, covenants, representations, warranties, and conditions of this Agreement may be changed, amended, modified, or terminated only by a written instrument executed by all parties. The failure of any party at any time or times to require performance of any provision of this Agreement shall in no manner affect the right of such party at a later date to

enforce the same. No waiver by any party of any condition or the breach of any provision, term, covenant, representation, or warranty contained in this Agreement, whether by conduct or otherwise, in any one or more instances shall be deemed to be or construed as a further or continuing waiver of any such condition or of the breach of any other provision, term, covenant, representation, or warranty of this Agreement.

26. **Exclusive Right; Confidentiality.** During the term of this Agreement, neither party shall enter into negotiations or discussions with any other person or entity or knowingly take any actions which would make the modifications contemplated in this Agreement impossible or impracticable. The parties agree to keep the terms of this Agreement confidential and shall not disclose the existence, terms or context of this Agreement to a third party, unless required by law.

27. **Neutral Construction.** The language used in this Agreement will be deemed to be language chosen by the parties to express their mutual intent. In the event an ambiguity or question of intent arises, this Agreement will be construed as if drafted jointly by the parties, and no presumption or burden of proof will arise favoring or disfavoring any person or entity by virtue of the authorship of any of the provisions of this Agreement.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized representatives, each as of the date first above written.

FITZGERALD AND HAWRAS, PARTNERSHIP

Kevin Fitzgerald, General Partner

SOUND COMMUNICATIONS, LLC



Paige P. Christian, Vice President

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized representatives, each as of the date first above written.

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