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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	EB Docket No. 02-21
	)	
Peninsula Communications, Inc.	)	
	)	File No. EB 01-IH-0609
Licensee of stations	)	FRN: 0001-5712-15
KGTL, Homer, Alaska;	)	Facility ID Nos. 52152
KXBA(FM), Nikiski, Alaska;	)	86717
KWVV-FM, Homer, Alaska; and	)	52145
KPEN-FM, Soldotna, Alaska.	)	52149
	)	
Licensee of FM translator stations	)	
K292ED, Kachemak City, Alaska;	)	52150
K285DU, Homer, Alaska;	)	52157
K285EG and K272DG, Seward, Alaska	)	52158 and 52160
	)	
Licensee of FM translator stations	)	
K285EF, Kenai, Alaska;	)	52161
K283AB, Kenai/Soldotna, Alaska;	)	52155
K257DB, Anchor Point, Alaska;	)	52162
K265CK, Kachemak City, Alaska;	)	52154
K272CN, Homer, Alaska; and	)	52148
K274AB and K285AA, Kodiak, Alaska	)	52151 and 52164

To: Chief Administrative Law Judge Richard L. Sippel

PCI's COMMENTS AND OPPOSITION TO THE ENFORCEMENT BUREAU'S MOTION TO COMPEL ANSWERS TO INTERROGATORIES

Peninsula Communications, Inc. ("PCI"), by its undersigned counsel, hereby respectfully submits this opposition to the "Enforcement Bureau's Motion To Compel Answers to Interrogatories" (hereafter the "Motion"), filed on or about May 29, 2002, by the Enforcement Bureau (hereafter the "Bureau"). PCI submits that it has fully

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responded to the legitimate interrogatory requests by the Bureau, and has appropriately objected to those requests that are unreasonable, beyond the scope of the designated issues in this proceeding, and unlikely to lead to the discovery of any evidence that is either relevant to the issues in this proceeding, or admissible in evidence therein.[1] In support of this Opposition, the following is respectfully submitted for the consideration of the Presiding Judge.

I. Interrogatories At Issue.

1. **Interrogatory No. 4.** PCI objected to this request, but answered the inquiry fully. Therefore, PCI is at a loss to respond to the Bureau's request that it be compelled to answer Interrogatory No. 4.

2. **Interrogatory No. 7.** Once again, the interrogatory requests specific information from PCI, and PCI provided that specific information. PCI is at a loss to respond to the Bureau's request that it be compelled to answer Interrogatory No. 7 once again.

3. **Interrogatory No. 8.** ***Identify PCI's broadcasting competitors in each of the markets to which PCI serves with the FM translators whose licenses the Federal Communications Commission ("FCC") terminated by its Memorandum Opinion and***

[1] As a preliminary matter, PCI objected to the "time frame" referenced in "Instructions", paragraph "o" to the Bureau's First Interrogatories. That paragraph proposed the time frame from January 1, 2000 to the present. However, the designated issue in this proceeding limits the time frame upon which PCI will be judged to a discreet and specific period "...subsequent to August 29, 2001..." See, Order To Show Cause, FCC 02-32, released February 6, 2002, at paragraph 6 (a). Therefore, PCI objected to supplying information relevant to periods before the designated commencement date of inquiry as irrelevant to the matters at issue in this proceeding, and as merely an attempt by the Bureau to unduly expand the scope of its inquiry to matters that are not relevant in the instant proceeding.

Order, FCC 01-159, released May 18, 2001 ("May 2001 MO&O"). PCI objected to this interrogatory, but the Bureau misrepresents the full extent of the objection. PCI objected on relevance grounds. However, it also objected due to the fact that the Bureau failed in its interrogatory definitions to tender a definition for what it considers to be "broadcasting competitors" or "markets". Without a definition to apply, PCI cannot respond to this inquiry with any confidence that such a response would be accurate and complete, nor can PCI read the minds at the Bureau on what they consider these terms to mean in the context of this proceeding.

4. **Interrogatory No. 9:** ***Identify each license and station previously or currently controlled or managed by PCI alone (as opposed to PCI as defined by definition a. above), its officers and/or shareholders, other than those licenses and stations listed in the caption of this matter.*** The Commission presumably knows from its licensing records which stations PCI has been issued licenses to operate, and PCI referred the Bureau to those records. The stations that are the subject of this proceeding are also prominently listed in the caption of this proceeding. PCI submits that its response to this interrogatory is complete.

5. **Interrogatory No. 10:** ***Explain with particularity each and every reason why PCI has not turned off each of the FM translators whose licenses the FCC terminated by its May 2001 MO&O, and identify all documents relied upon in such explanation.*** PCI has, in response to numerous inquiries by the Commission since 2000, explained in detail to the Commission its bases for continuing to operate the FM translators that are the subjects of this proceeding. In response to this interrogatory, PCI referenced, and thereby incorporated by reference, various of these documents which

have been previously served on the Commission, and in which it has explained with particularity its reasons for not turning off its FM translator stations. PCI believes that it has fully responded to the subject interrogatory.

6. **Interrogatories 12 Through 17 and Interrogatories 25 and 29.** As discussed in PCI's "Opposition To Motion To Compel Production of Documents" filed on May 31, 2002, the Bureau is apparently attempting to begin an inquiry into PCI's operation of its full power AM and FM stations, and into PCI's private advertising, financial, and other business operations in connection with those full power stations, through the discovery process in this proceeding. As discussed in PCI's opposition to the Bureau's documents production request, PCI does not believe that is can be coerced into providing the Bureau with private and highly confidential business and financial records and other information that has nothing to do with PCI's operation of its FM translators, and that is irrelevant to the issues designated in this proceeding and cannot possibly lead to the discovery of any admissible evidence. The Bureau's interrogatories 12 through 17, and interrogatories 25 and 29, are the Bureau's corresponding interrogatory inquiries into PCI's private and highly confidential business and financial operations. The Bureau states that the "..information is reasonably calculated to lead to the discovery of admissible evidence, including witness testimony...", but fails to make any substantive showing that this may be the case. PCI submits that it should not be required to produce such private and highly confidential financial and business information in response to these interrogatories merely to satisfy whatever gratuitous curiosity the Bureau may have over the financial operations

of PCI's full power stations, or in furtherance of the Bureau's unwarranted attempt to expand the areas of inquiry in this proceeding beyond the designated issue.

7. **Interrogatories 18 through 24.** Each of these interrogatories request that PCI disclose "... each **FCC document** specifically issued to and received by PCI..." to authorize the operation of each of PCI's translators (emphasis added). PCI responded by directing the Bureau to the station licenses issued by the FCC that are presently in the possession of the Bureau for the operation of each of these translators. The Bureau apparently objects to these responses by arguing that, in its opinion, there are no current licenses in effect. This is not legitimate discovery, but merely the Bureau advocating a position that should be left for the post-hearing findings. PCI's responses stand as fully responsive answers to these interrogatories.

8. **Interrogatory No. 26.** PCI answered this interrogatory, but objects to providing an irrelevant equipment inventory for each of its seven translators. PCI has stipulated that its translators have continued to operate, and the types and brands of equipment it is using for the operation would not appear the least relevant to the designated issues, or likely to result in discoverable evidence other than the fact that the translators continue to operate. PCI has admitted that this is the case.

Wherefore, PCI respectfully requests that the Presiding Judge deny the Bureau's second attempt through its interrogatories to start a "fishing expedition" on matters that

are irrelevant to the designated issues in this proceeding and that are unlikely to lead to the production of evidence that will be admissible in this proceeding.

Respectfully submitted,

Peninsula Communications, Inc.

By: _____
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Date: June 10, 2002

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing were sent by first class United States mail, postage pre-paid, and email on this 10th day of June, 2002, to the following:

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