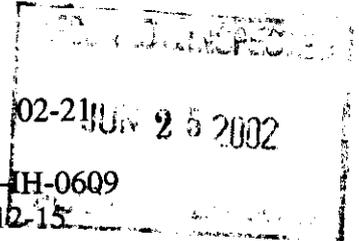


Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 02M-55
01255



In the Matter of	)	EB Docket No. 02-21
)	
PENINSULA COMMUNICATIONS, INC.	)	File No. EB 01-H-0609
	)	FRN: 0001-5712-15
Licensee of stations)	
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
)	
Former licensee of FM translator stations)	
K285EF, Kenai, Alaska;)	
K283AB, Kenai/Soldotna, Alaska;)	
K257DB, Anchor Point, Alaska;)	
K265CK, Kachemak City, Alaska;)	
K272CN, Homer, Alaska; and)	
K274AB and K285AA, Kodiak, Alaska)	

MEMORANDUM OPINION AND ORDER

Issued: June 21, 2002

Released: June 25, 2002

Background

1. This is a ruling on Motion to Compel Answers to Interrogatories ("Motion") that was filed by the Enforcement Bureau ("Bureau") on May 29, 2002. Peninsula Communications, Inc. ("PCI") filed its Comments and Opposition on June 10, 2002.

2. The Commission issued Order To Show Cause, FCC 02-32, released February 6, 2002, to determine the facts and circumstances surrounding PCI's continued operation of seven FM translator stations contrary to Commission order, and to determine related possible violation of §416 (c) of the Communications Act of 1934, as amended.

3. For purposes of discovery and trial preparation, on April 16, 2002, the Bureau served PCI with Enforcement Bureau's First Interrogatories to Peninsula Communications, Inc. ("Interrogatories"). On May 15, 2002, PCI filed its Response of Peninsula Communications, Inc. to Enforcement Bureau's First Interrogatories ("Response").

Discovery Standards

4. The Commission rules provide for discovery that is "reasonably calculated to lead to the discovery of admissible evidence." 47 C.F.R. §1.311 (b). The rules specifically authorize the use of interrogatories directed to a party. 47 C.F.R. §1.323.

Relevant Time Frame

5. The time frame for the interrogatories is **January 1, 2000 to the present**. That time frame is reasonable.¹

Interrogatories, Objections and Rulings

6. Interrogatory No. 4 asks whether there are licenses held by PCI (alone) or by its control persons other than the captioned licenses. The Bureau also asks for the same information about pending applications. The Bureau requests that the licenses be identified. PCI objects on grounds that the information could be found in Commission filings. But PCI provides an answer that identifies licenses for the categories asked. In its Objection to the Motion, PCI states that it has fully answered this interrogatory. PCI has identified satellite facility, amateur license, radio telephone license, and auxiliary licenses. Therefore, there will be nothing further compelled of PCI with respect to Interrogatory No. 4.

7. Interrogatory No. 7 asks for the identity of shareholders, directors, employees, agents and officers of PCI since January 1, 2000. PCI responded on May 15, 2002, by providing what appears to be responsive information. But the Bureau specifically asked for residence and business addresses and phone numbers by cross-referencing the definitional section of the interrogatories, an appropriate procedure. It may be that PCI did not reference the restriction for "identity." That omission is readily cured. PCI shall provide the prescribed "identify" information to the Bureau no later than **June 28, 2002**.

8. Interrogatory No. 8 asks PCI to identify broadcasting competitors in markets which PCI serves with the terminated translators. PCI objects to answering the question without being provided definitions of "broadcasting competitors" or "markets."

¹ The Commission's "Termination Order" was released on May 18, 2001. Evidence of before and after termination income derived from advertising that resulted from continued operations of translators is relevant discovery under the Commission's broad discovery standard. 47 C.F.R. §1.311(b). Nor is the extent of the time period oppressive.

Motive is posited by the Bureau as an essential issue. The Bureau is seeking substantial discovery on advertising revenues to show motive, the information is relevant to discovery. And PCI is in the best position to know its "competitors" and its "markets." These are common business terms that do not require definitional direction for PCI to be able to give responsive answers. PCI shall complete its answer to Interrogatory No. 8 by **June 28, 2002.**

9. Interrogatory No. 9 asks for the identity of past and current licenses/stations that are owned, controlled or managed by PCI (alone) and/or its principals. PCI refers to Interrogatory No. 4 above where PCI objects to providing answers on grounds that the information can be found in Commission files. The Bureau cannot as readily determine from Commission files the broadcast properties that PCI controls or manages. The Bureau staff is not as familiar with PCI's broadcast properties as is PCI and its agents. This information is relevant, is readily known by PCI, and can be fully furnished. PCI shall complete its answer to Interrogatory No. 9 by **June 28, 2002.**

10. Interrogatory No. 10 asks for explanation with particularity of PCI's reasons for continuing to operate the terminated translator stations after May 2001. The Response of PCI consists of references to pleadings and briefs submitted by PCI to the Commission, to two federal courts of appeals, and to the Presiding Judge. Those pleadings and decisions are responsive. But PCI also must disclose its business reasons for operating past May 2001. PCI shall complete its answers to Interrogatory No. 10 by **June 28, 2002.**

11. Interrogatory No. 10 is also asking PCI to give legal reasons for its conduct. The question is sufficiently broad to be asking for legal research, work product and privileged communications. PCI is taking the position that it is entitled to a hearing on the merits before the Commission can order termination. The Bureau is not entitled to underlying work product or privileged information.

12. PCI objects to Interrogatories 12 through 17. Those interrogatories seek financial information to which PCI objects as irrelevant. PCI also contends that the information would disclose highly confidential and private business matters. The Bureau is seeking evidence of profitability of the operation of the terminated translators which is relevant evidence to the theory of its case on which the Bureau has the burden of persuasion. Federal tax returns and P&L Statements have been ordered to be produced in related document discovery.² PCI can answer these interrogatories with reference to items in those financial documents which are being produced.³ PCI shall supplement its Response accordingly by **June 28, 2002.**

² See Memorandum Opinion and Order FCC 02M-52, released June 20, 2002.

³ Data may also be sought for the full power AM and FM stations since they are related to the translators. The entire financial picture of PCI broadcast operations may be considered for motive purposes, an element of the Bureau's burden of proof as to intent, as well as for making a complete record for ultimate decision.

13. In addition, PCI must list sources of income for PCI (alone) and the annual gross income derived from each source; a description of method of bookkeeping for each identified profit center and a specification of the books of record that are maintained (e.g. cash flow ledger, etc); identity of the custodian of records for each profit center; identity of accountants who have audited the books and records of PCI and/or who has audited each PCI related entity since January 2000; identity of each bookkeeper used by PCI since January 1, 2000.

14. The financial information sought does not appear to be commercially sensitive. For discovery purposes, the data need go no further than Bureau counsel. Reference can be made to information in tax returns and P&L Statements that should be provided in document discovery.

15. PCI objects to Interrogatories Nos. 18 through 24. These interrogatories requests "each document specifically issued – to authorize the operation of each translator." The Bureau seeks to exclude the possibility that there is any written authorization from the Commission to PCI permitting operation of the terminated translators after May 2001. PCI merely refers to the corresponding license. It seems reasonably clear from the answers that PCI has admitted that it has no authorizing documents of the kind that the Bureau describes in the interrogatories. If the Bureau desires added assurance, it may proceed by an appropriate Supplemental Request for Admission, or ask the question in depositions. Better yet, the parties could stipulate and thereby save time and expense.

16. Interrogatory No. 25 asks for the terms and conditions under which PCI sells advertising, including frequency, area coverage, and rates or fees charged. This is a relevant subject for discovery and the information requested by the Bureau must be provided by PCI. The Bureau has focused on a motive of profitability of the unauthorized translators. The Bureau is entitled to obtain relevant evidence in discovery to support its theory and may obtain relevant business evidence from PCI for that purpose. See discussion at Para. 14 above. The information is to be provided by **June 28, 2002**.

17. Interrogatory No. 26 asks for the identity of the owner of each tower that is used for transmission of signals for the translators. Much of the information is provided in PCI's Response. Information concerning tower ownership, tower location, identity of station utilizing each tower, and description of terms of rent, sale and loan agreements is relevant discovery. PCI must provide the information requested by responsive answer by **June 28, 2002**.

18. The Bureau also asks for the identification of "each piece of equipment" located at each tower site. There is no relevance shown of information concerning site equipment (subquestion (d)). There will be no requirement to audit and categorize station equipment since there is no need shown for that information.

19. There are no objections to Interrogatories 27 and 28 and the Bureau seeks no relief with respect to the Responses which PCI has already provided.

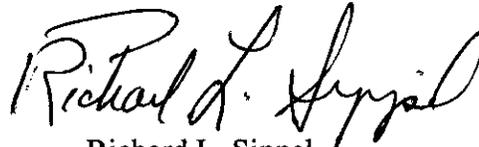
20. Interrogatory No. 29 asks for the identity of each advertiser that is currently advertising on a PCI station, and the terms of each related advertising agreement. The advertising income is relevant to motive as explained above. Therefore, the Bureau is entitled to the identity of the advertisers and to the terms of the advertising agreements. The information shall be provided by **June 28, 2002**.

Transmission of Answers

21. Where additional or supplemental answers are required under the above rulings, the date for providing the information by fax or e-mail is **June 28, 2002**. The signed pleading may be filed and served by mail or hand-delivery by **July 3, 2002**. The parties also may agree to another schedule or other means of transmission, provided that the information is exchanged reasonably close to the dates prescribed.

SO ORDERED.

FEDERAL COMMUNICATIONS COMMISSION⁴



Richard L. Sippel
Chief Administrative Law Judge

⁴ Courtesy copies of this Order were faxed or e-mailed to Bureau counsel and to counsel for PCI on the date of issuance.