

FOR
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BALFT

APPLICATION FOR TRANSFER OF CONTROL OF A CORPORATE LICENSEE OR PERMITEE,
ASSIGNMENT OF LICENSE OR PERMIT, FOR AN FM OR TV TRANSLATOR STATION,
OR A LOW POWER TELEVISION STATION

FOR COMMISSION USE ONLY
FILE NO. 970701 TX

REC'D
JUL 8 11 28 AM '97
AUDIO SERVICES

SECTION I - APPLICANT FEE INFORMATION			
1. PAYOR NAME (Last, First, Middle Initial)			
Peninsula Communications, Inc.			
MAILING ADDRESS (Line 1) (Maximum 35 characters)			
P.O. Box 109			
MAILING ADDRESS (Line 2) (Maximum 35 characters)			
CITY		STATE OR COUNTRY (if foreign address)	ZIP CODE
Homer		Alaska	99603
TELEPHONE NUMBER (include area code)		CALL LETTERS	
(907) 235-7551		K285EF	
2. A. Is a fee submitted with this application? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
B. If No, indicate reason for fee exemption (see 47 C.F.R. Section 1.1114)			
<input type="checkbox"/> Governmental Entity <input type="checkbox"/> Noncommercial educational licensee <input type="checkbox"/> Other (Please explain):			
C. If Yes, provide the following information:			
Enter in Column (A) the correct Fee Type Code for the service you are applying for. Fee Type Codes may be found in the "Mass Media Services Fee Filing Guide." Column (B) lists the Fee Multiple applicable for this application. Enter in Column (C) the result obtained from multiplying the value of the Fee Type Code in Column (A) by the number listed in Column (B).			
(A)	(B)	(C)	FOR FCC USE ONLY
FEE TYPE CODE	FEE MULTIPLE (if required)	FEE DUE FOR FEE TYPE CODE IN COLUMN (A)	
M D F		\$ 100.00	100.00

SECTION II - ASSIGNOR/TRANSFEROR

1. Application for (check only one box for A and B):

- A. Consent to Assignment Consent to Transfer of Control
- B. TV Translator Low Power TV Station FM Translator

Call letters	Location
K285EF	Kenai, AK

2. Name of Assignor/Transferor		Street Address (or other identification)	
Peninsula Communications, Inc.		66140 Diamond Ridge Road	
Telephone No (Include Area Code)	City	State	ZIP Code
(907) 235-7551	Homer	AK	99603

3. Call letters of any auxiliary stations which are to be assigned or transferred:

4. NOTE: Where the license or permit has been granted to an entity claiming preferences in the lottery selection process, the license or permit must ordinarily be held for a period of at least one year from the beginning of program tests.

Is the assignor or transferor in compliance with this requirement?

Yes No

If No, attach as an Exhibit an appropriate showing. (See 47 C.F.R. Section 73.3597.)

Exhibit No

5. Attach as an Exhibit a copy of the contract or agreement to assign the property and facilities of the station. If there is only an oral agreement, reduce the terms to writing and attach. The material submitted must include the complete agreement between the parties

Exhibit No
1

6. Has the assignor or transferor had any interest in:

(a) a broadcast application which has been dismissed with prejudice by the Commission?

Yes No

(b) a broadcast application which has been denied by the Commission?

Yes No

(c) a broadcast station, the license for which has been revoked?

Yes No

(d) a broadcast application in any Commission proceeding which left unresolved character issues against the applicant?

Yes No

If the answer to any of the above questions is Yes, state in an Exhibit the following

Exhibit No
2

- (i) Name of party having interest;
- (ii) Nature of interest or connection, giving dates;
- (iii) Call letters of station, file number of application, or docket number, and
- (iv) Location

7. Since the filing of the assignor's/transferor's last renewal application for the authorization being assigned or transferred, or other application, has an adverse finding been made or adverse final action been taken by any court or administrative body with respect to the applicant or parties to the application in a civil or criminal proceeding, brought under the provisions of any law relating to the following: any felony; mass media-related antitrust or unfair competition; fraudulent statements to another governmental unit; or discrimination?

Yes No

If the answer is Yes, attach as an Exhibit a full disclosure of the persons and matters involved, including an identification of the court or administrative body and the proceeding (by dates and file numbers), and the disposition of the litigation. Where the requisite information has been earlier disclosed in connection with another application or as required by 47 U.S.C. Section 1.65(c), the applicant need only provide: (i) an identification of that previous submission by reference to the file number in the case of an application, the call letters of the station regarding which the application or Section 1.65 information was filed, and the date of the filing; and (ii) the disposition of the previously reported matter

Exhibit No
n/a

SECTION III - ASSIGNEE/TRANSFeree INFORMATION

1. Name of Assignee/Transferee		Street Address (or other identification)	
Coastal Broadcast Communications, Inc		17505 Meadow Creek Drive	
Telephone No. (Include Area Code) (907) 694-3985	City Eagle River	State AK	ZIP Code 99577

2. Assignee/Transferee is. (check one of the following):

- an individual
 a general partnership
 a limited partnership
 a corporation
 other (explain)

3. If the applicant is an unincorporated association or a legal entity other than an individual, partnership or corporation, describe in an Exhibit the nature of the applicant

Exhibit No.

4.(a) Is the applicant in compliance with the provisions of Section 310 of the Communications Act of 1934, as amended, relating to interests of aliens and foreign governments?

Yes No

(b) Will any funds, credit, or other consideration for construction, purchase or operation of the station be provided by aliens, foreign entities, domestic entities controlled by aliens, or their agents?

Yes No

f Yes, provide particulars as an Exhibit.

Exhibit No.

5. Has an adverse finding been made or adverse final action been taken by any court or administrative body with respect to the applicant or parties to the application in a civil or criminal proceeding, brought under the provisions of any law relating to the following. any felony; mass media-related antitrust or unfair competition; fraudulent statements to another governmental unit, or discrimination?

Yes No

If the answer is Yes, attach as an Exhibit a full disclosure of the persons and matters involved, including an identification of the court or administrative body and the proceeding (by dates and file numbers), and the disposition of the litigation. Where the requisite information has been earlier disclosed in connection with another application or as required by 47 U.S.C. Section 1.65(c), the applicant need only provide: (i) an identification of that previous submission by reference to the file number in the case of an application, the call letters of the station regarding which the application or Section 1.65 information was filed, and the date of the filing; and (ii) the disposition of the previously reported matter.

Exhibit No.

4

Section III, Page 2 - Assignee/Transferee Information

6. Has the applicant or any other party to this application had any interest in.

- (a) a broadcast application which has been dismissed with prejudice by the Commission? Yes No
- (b) a broadcast application which has been denied by the Commission? Yes No
- (c) a broadcast station, the license for which has been revoked? Yes No
- (d) a broadcast application in any Commission proceeding which left unresolved character issues against the applicant? Yes No

If the answer to any of the above questions is Yes, state in an Exhibit the following:

Exhibit No 2

- (i) Name of party having interest;
- (ii) Nature of interest or connection, giving dates,
- (iii) Call letters of station, file number of application, or docket number, and

7. The applicant certifies that sufficient net liquid assets are on hand or available from committed sources to consummate the transaction and operate the facilities for three months. Yes No

8. The applicant certifies that: Yes No

(a) it has a reasonable assurance of present commitments from each donor, from each party agreeing to furnish capital, from each bank, financial institution or others agreeing to lend funds, and from each equipment supplier agreeing to extend credit,

(b) it has determined that a reasonable assurance exists that all such sources (excluding banks, financial institutions and equipment suppliers) have sufficient net liquid assets to meet these commitments, and

(c) it can and will meet all contractual requirements as to collateral, guarantees, and capital investment or donations.

9. For applicants proposing translator rebroadcasts who are not the licensee of the primary station, the applicant certifies that written authority has been obtained from the licensee of the station whose programs are to be retransmitted. Yes No

Primary station proposed to be rebroadcast:

Call Sign	City	State	Channel No.
KWVV	Homer	AK	278

FOR LOW POWER TELEVISION APPLICANTS ONLY

10 Low power television stations must offer a broadcast program service (a nonprogram service is not permitted). Attach as an Exhibit a brief description, in narrative form, of the proposed program service

11 Does the low power television applicant propose to employ five or more full time employees? Yes No

Yes, the applicant must include an EEO program called for in the separate Broadcast Equal employment Opportunity Report (FCC Form 396-A)

SECTION IV - ASSIGNOR/TRANSFEROR CERTIFICATION

1. Has or will the assignor/transferor comply with the public notice requirement of 47 C.F.R. Section 73.3580?

Yes No

2. By checking Yes, the applicant certifies that, in the case of an individual applicant, he or she is not subject to a denial of federal benefits that includes FCC benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. Section 862, or, in the case of a non-individual applicant (e.g., corporation, partnership or other unincorporated association), no party to the application is subject to a denial of federal benefits that includes FCC benefits pursuant to that section. For the definition of a "party" for these purposes, see 47 C.F.R. Section 1.2002(b).

Yes No

The ASSIGNOR/TRANSFEROR acknowledges that all its statements made in this application and attached exhibits are considered material representations, and that all of its exhibits are a material part hereof and are incorporated herein.

The ASSIGNOR/TRANSFEROR represents that this application is not filed by it for the purpose of impeding, obstructing, or delaying determination on any other application with which it may be in conflict.

In accordance with 47 C.F.R. Section 1.65 of the Commission's Rules, the ASSIGNOR/TRANSFEROR has a continuing obligation to advise the Commission, through amendments, of any substantial and significant changes in the information furnished.

I certify that the ASSIGNOR'S/TRANSFEROR'S statements in this application are true, complete, and correct to the best of my knowledge and belief, and are made in good faith

Name of Assignor/Transferor Peninsula Communications, Inc.	Signature <i>David F Becker</i>
Title President	Date 6/27/97

WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).

SECTION IV - ASSIGNEE/TRANSFeree CERTIFICATION

1. By checking Yes, the applicant certifies that, in the case of an individual applicant, he or she is not subject to a denial of federal benefits that includes FCC benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. Section 862, or, in the case of a non-individual applicant (e.g., corporation, partnership or other unincorporated association), no party to the application is subject to a denial of federal benefits that includes FCC benefits pursuant to that section. For the definition of a "party" for these purposes, see 47 C.F.R. Section 1.2002(b).

Yes No

2. FOR FM TRANSLATOR APPLICANTS ONLY. The applicant certifies that it is in compliance with 47 C.F.R. Section 74.1232(d) with regard to the restriction on ownership of FM translator stations by parties with interests in FM broadcast stations. See paragraph 7 of the Instructions.

Yes No

The ASSIGNEE/TRANSFeree hereby waives any claim to the use of any particular frequency as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application. (See Section 304 of the Communications Act of 1934, as amended.)

The ASSIGNEE/TRANSFeree acknowledges that all its statements made in this application and attached exhibits are considered material representations, and that all its exhibits are a material part hereof and are incorporated herein.

The ASSIGNEE/TRANSFeree represents that it has not filed this application for the purpose of impeding, obstructing or delaying determination on any other application with which it may be in conflict.

In accordance with 47 C.F.R. Section 1.65, the ASSIGNEE/TRANSFeree has a continuing obligation to advise the Commission, through amendments, of any substantial and significant changes in the information furnished.

I certify that the ASSIGNEE'S/TRANSFeree'S statements in this application are true, complete, and correct to the best of my knowledge and belief, and are made in good faith.

Name of Assignee/Transferee	Signature
Coastal Broadcast Communications, Inc.	<i>David L. Buchanan</i>
Title	Date
President	6.27.97

WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).

EXHIBIT NO. 1

ASSET PURCHASE AGREEMENT

AS MODIFIED BY THE

ASSET PURCHASE AGREEMENT AMENDMENT

ASSET PURCHASE AGREEMENT AMENDMENT

THIS ASSET PURCHASE AGREEMENT AMENDMENT is made and entered into on this 20th day of June, 1997, by and among Coastal Broadcast Communications, Inc. and Peninsula Communications, Inc. to modify the terms of that certain Asset Purchase Agreement (hereafter the "Agreement"), dated November 4, 1996, by and between the Parties.

WHEREAS, the Parties wish to continue to be bound by the terms of the Agreement, but desire to modify certain of the terms and conditions therein;

NOW THEREFORE, the Parties, for valuable consideration, the receipt of which is hereby acknowledged, do hereby covenant and agree as follows:

SECTION 3

PURCHASE PRICE

This section of the Agreement is hereby amended to note that the Purchase Price will be payable in full at closing by certified check or wire transfer, at the option of Seller.

SECTION 4

4.1 Commission Consent. The termination date in this section of the Agreement is modified from December 31, 1997 to December 31, 1998.

SECTION 9

9.1 Termination (a) This section of the Agreement is modified to substitute December 31, 1998 for December 31, 1997.

EXHIBIT F

This exhibit is deleted from the Agreement.

EXHIBIT G

This exhibit is deleted from the Agreement.

Buyer: Coastal Broadcast
Communications, Inc.

Seller: Peninsula
Communications, Inc.

By: David L. Buchanan
President

By: _____
President

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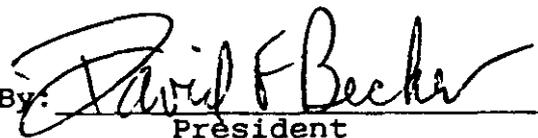
EXHIBIT G

This exhibit is deleted from the Agreement.

Buyer: Coastal Broadcast
Communications, Inc.

Seller: Peninsula
Communications, Inc.

By: _____
President

By: 
President

POSTED
1/7/94

EB 13

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

In re Applications of)

PENINSULA COMMUNICATIONS, INC.)

) FCC File Nos.:

285DCU
274AB
285AA

~~K274AB~~, Kodiak, AK

) BRFT-951124ZI ✓

~~K285AB~~, Kodiak, AK

) BRFT-951124ZH ✓

~~K285EF~~, Kenai, AK

) BRFT-951124JZ ✓

K283AB, Soldotna, AK

) BRFT-951124YU ✓

K272DG, Seward, AK

) BRFT-951124ZG ✓

K285EG, Seward, AK

) BRFT-951124ZK ✓

For Renewal of Broadcast Licenses for
FM Translator Stations

To: The Commission

OPPOSITION TO APPLICATION FOR REVIEW

Peninsula Communications, Inc. (hereafter "PCI"), by its attorney and pursuant to the provisions of Section 1.115(d) of the Commission's Rules and Regulations¹ hereby respectfully submits this "Opposition" to the "Application For Review" (hereafter the "Application") filed jointly by Glacier Communications, Inc., KSRM, Inc., Cobb Communications, Inc. and King Broadcasters, Inc. (hereafter the "Petitioners") to the action of the Chief, Audio Services Division, Mass Media Bureau (hereafter the "Chief") approving the above-captioned applications to renew the broadcast licenses for various FM translators operated by PCI in the State of Alaska.

The action by the Chief is memorialized in a letter dated November 6, 1997 (hereafter the "Action"). Contrary to the erroneous factual and legal assertions of the Petitioners, the Chief's Action is fully consistent with the Commission's rules and policies, and the Application should be summarily denied.

I. BACKGROUND

1. During the period 1982-1991, PCI acquired the licenses for the above-captioned FM translator stations serving various communities in the State of Alaska. In its applications seeking the construction permits and licenses for the translators, PCI acknowledged that its operation of the stations would not comply with the requirements of the Commission's former FM translator rules due to PCI's ownership interests in the FM stations being rebroadcast on the translators.² Accordingly, PCI sought appropriate waivers of these ownership restrictions under the long-established "Alaska Exception" for FM translators operated in the State of Alaska.³ Under the Alaska Exception policy of the 1980's and early 1990's, the Commission routinely granted waivers of the normal restrictions on the ownership of FM translator by the stations that were re-broadcast thereon in order to allow for the expansion of FM translator service in remote communities in the State of Alaska. The Commission granted PCI the appropriate waivers under the Alaska Exception that were necessary to

¹ See 47 C.F.R. 1.115(d).

² See, 47 C.F.R. 1232(d).

³ See, *Wrangell Radio Group*, 75 FCC 2d 404 (1979).

allow for its operation of each of the above-captioned FM translator stations. Since the time these FM translator stations were originally licensed, the Commission has routinely granted PCI renewals of the licenses, and PCI has continued over the years to provide valuable broadcast services within the State of Alaska through its operation of these translators.

2. The licenses PCI's FM translators were set to expire on April 1, 1996, unless PCI submitted applications to the Commission seeking the renewal of the licenses on or before December 1, 1995. PCI submitted timely applications seeking to renew the licenses for each translator on November 24, 1995, and the Commission accepted the renewal applications for filing. The Commission never notified PCI that the licenses for its FM translators would not be renewed, and PCI had no reason to believe it could not continue to operate the translators under its Alaska Exception waivers.

3. The Petitioners, competitors of PCI in the various radio markets in Alaska in which the FM translators operate, filed petitions seeking the denial of the license renewal applications. The Petitioners argued that a Commission action in a rule making proceeding modifying the FM translator rules in 1991 warrant the denial of the renewal applications due to PCI's continued ownership and operation of the translators.⁴ In a letter,

⁴ See, *Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations*, 5 FCC Rcd 7212 (1990), *modified*, 6 FCC Rcd 2334 (1991), *recon. Denied*, 8 FCC Rcd 5093 (1993).

dated September 11, 1996 (hereafter the "Initial Letter"), the Chief, while acknowledging that the various Alaska Exception waivers of the FM translator rules were granted by the Commission to allow for PCI's prior operation of the stations, deferred action on each of the above-captioned applications for a period of 60 days and instructed PCI to divest its ownership interest in each translator or the Commission would "...take appropriate action regarding the renewal application of that (non-divested) station." The Initial Letter did not specify what was meant by "appropriate action." The Chief made no finding in its letter that PCI was not legally qualified to own and operate the translators based on the waivers that had been granted to allow for such operation. However, PCI submitted timely applications seeking to divest its ownership in the above-captioned FM translator stations. In its Action, the Chief approved the renewal applications and the assignment applications for the sale of the licenses and assets of the FM translators to Coastal Broadcast Communications, Inc. (hereafter "Coastal"). It is the Chief's Action in approving the license renewal applications for which the Petitioners seek the review of the Commission.⁵

⁵ Petitioners criticize the Commission for what they consider unnecessary delay in acting on its various petitions. However, had Petitioners not

II. THE "PENINSULA HAS NO LICENSES TO ASSIGN" ARGUMENT IS ERRONEOUS

4. While the Petitioners are seeking review of the Chief's Action in approving PCI's license renewal applications for these translators, the body of the Petition is a factually and legally deficient and disingenuous argument against the Chief's approval of the applications by PCI to divest its ownership of the translators and to assign the licenses and assets thereof to Coastal. The Petitioners argue that "it is axiomatic that once the term of a broadcast license has expired, *which is the case for all of the Translators*, the holder of the license has nothing to assign unless and until the license is renewed [emphasis added]." The Petitioners cite *Gross Broadcasting Co.*⁶, *MG-TV v. FCC*⁷, and *Jefferson Radio Co. V. FCC*⁸ in support of this position. Their assertions are factually disingenuous and legally bankrupt. PCI has fully valid licenses to assign to Coastal, unencumbered by any action of the Commission.

5. Petitioners have previously acknowledged to the Commission in connection with these applications that PCI does, in fact and in law, have licenses to assign. In its "Reply To Opposition To Petition To Deny", filed on August 26, 1997⁹, these parties acknowledged:

continually filed appeals of the actions by the Chief, PCI would have sold its translators to Coastal two years ago, and the matter would be resolved.

⁶ 31 FCC 2d 266 (1971).

⁷ 408 F 2d 1257 (D.C. Cir. 1968).

⁸ 340 F 2d 761 (D.C. Cir. 1964).

⁹ Copy Appended hereto for the convenience of the Commission as Exhibit A.

Petitioner's do not dispute that Peninsula currently holds licenses for the Translators and that by virtue of the fact that Peninsula filed timely license renewal applications, those license currently remain in effect.¹⁰

However, Petitioners now have the audacity to contradict themselves in this Application and argue that which they have previously acknowledged...there is no question PCI holds valid licenses that can be assigned to Coastal.

6. None of the legal precedent cited by Petitioners supports their faulty position. In *Gross*, the Commission denied an application to assign a construction permit which had been rescinded due to a finding that the applicant lacked the basic qualifications to hold the permit. Similarly, in *MG-TV*, the Commission refused to approve the sale of a construction permit for an unbuilt station where the permit had expired prior to the filing of the assignment application, and where the permit could not be reinstated. And in *Jefferson Radio*, the license that was the subject of the proposed sale had been revoked pursuant to a Commission hearing. Unlike the factual situation in *Jefferson Radio*, PCI has not "forfeited its authorization." It holds fully valid licenses for the translators. None of the cases referenced by Petitioners is applicable to the case at hand wherein the Petitioners acknowledge the viability of the underlying PCI licenses for assignment to Coastal.

¹⁰ Reply at Section II, page 3, lines 5-9.

7. PCI also needs to correct one other major recurring error on the Petitioners' part. Petitioners allege in various sections of its Petition that PCI is "not qualified to be the licensee of the Translators"¹¹, that PCI has been found to have a "lack of qualifications to continue as licenses(sic) of the Translators"¹², and that PCI "was found unqualified to continue as the licensee of the Translators"¹³. These assertions are incorrect. The record herein is devoid of any determination by the Chief that PCI is "not qualified" to be the licensee of these translator stations. The Chief in its Initial Letter, while acknowledging the Alaska Exception waivers PCI was granted by the Commission in order to acquire the various licenses for the translators, makes the finding that PCI should have divested its interests in the translators at some earlier time based on its analysis of the 1991 *Report And Order*.¹⁴ However, the Chief also found that PCI's failure to do so was the result of the direct actions by the Commission in approving the Alaska Exception waivers, thereby allowing PCI to "...have reasonably, albeit mistakenly, believed that the staff had implicitly waived the provisions of revised Section 74.1232(d) for these stations." Thus, the Chief found, and Petitioners have not filed exceptions to, that PCI has at all times acted "reasonably" in its operation of the translators. While the Chief's letter allowing PCI to file applications to assign the licenses

¹¹ Application at page 7.

¹² Application at page 2, Section II.

¹³ *Id.*

¹⁴ This proceeding was not "final" until late in 1993. *See*, footnote 4, *infra*.

strongly "encouraged" such sales, it did not specify that the any PCI FM translator licenses not sold would be revoked. There was no finding PCI was, or is presently, unqualified to hold the FM translator licenses.

III. The Question Presented For Review Is Factually Flawed

8. The Petitioners' sole "Question Presented For Review" in its Application is as follows:

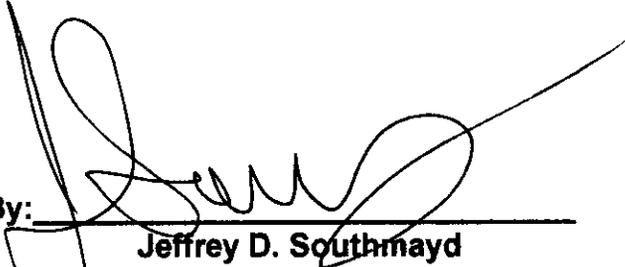
Whether, in light of the fact that Peninsula is not qualified to be the licensee of the Translators, it was error for the Chief ASD to have granted the renewal applications.

However, as noted above, the Question relies on an erroneous predicate. There has been no finding that PCI is "not qualified to be the licensee" of the FM translators in question. To the contrary, the Chief found in granting the license renewal and assignment applications that PCI is fully qualified, and there is no legal or factual basis for the Commission to review the Action of the Chief as presented by the Petitioners.

Based on the foregoing, PCI submits that the Action of the Chief in granting the subject license renewal applications was fair and consistent with the facts and existing legal precedent for approving such applications. The Application by the Petitioners seeking Commission review the Chief's Action should be summarily denied and PCI should be allowed to consummate the sale of its FM translator stations to Coastal.

Respectfully submitted,

Peninsula Communications, Inc.


By: _____
Jeffrey D. Southmayd
Its Attorney

**Southmayd & Miller
1220 Nineteenth street, N.W.
Suite 400
Washington, D.C. 20036
(202) 331-4100**

Date: December 30, 1997

**OPPOSITION TO
APPLICATION FOR REVIEW**

EXHIBIT A

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In re Applications of)	
)	
PENINSULA COMMUNICATIONS, INC.,)	
Assignor)	File Nos: BALFT-970701TU
)	BALFT-970701TS
)	BALFT-970701TX
and)	BALFT-970701TW
)	BALFT-970701TY
COASTAL BROADCAST COMMUNICATIONS,)	BALFT-970701TR
INC., Assignee)	
)	
For Consent to Assignment of the)	
Licenses for FM Translator Stations))	
K274AB and K285AB, KODIAK, AK,)	
K285EF, KENAI/Soldotna, AK, K283AB,)	
SOLDOTNA, AK and K272DG and K285EG,)	
SEWARD, AK)	

To: Chief, Audio Services Division

REPLY TO OPPOSITION TO PETITION TO DENY

Glacier Communications, Inc. ("Glacier"), KSRM, Inc. ("KSRM"), Cobb Communications, Inc. ("Cobb") and King Broadcasters, Inc. ("King") (collectively "Petitioners") hereby reply to the Opposition to Deny that Peninsula Communications, Inc. ("Peninsula") filed in this proceeding on or about August 15, 1997.

I. Preliminary and Procedural Matters.

The Opposition was not served on Petitioner's undersigned counsel, or at least was not received by counsel. Therefore, Petitioner's counsel is not certain of the date that it was filed, and thus, is also not certain of the due date for Petitioner's Reply. Petitioner's counsel learned of the filing as a result of a call from a member of the Commission's staff requesting a copy of

the Petition to Deny. When the Opposition did not show up in the mail, Petitioner's counsel attempted to contact Peninsula's counsel to obtain a copy, and learned that Peninsula's counsel was on vacation until after Labor Day. Rather than seek an extension of time to file this Reply until after Peninsula's counsel returned from vacation, Petitioner's counsel obtained a copy of the Opposition by other means. This Reply is being filed the same day that the copy of the Opposition was obtained. In view of these circumstances, if this Reply is not filed within the time frame specified in the rules, it is requested that the deadline be waived on the grounds that Petitioner's counsel was not served with the Opposition.

Peninsula's statement that it is "odd that apparent competitors . . . have "teamed up" in opposition to its efforts to divest the Translators, and its characterization of the Petitioners as "Joint Conspirators" gives new meaning to the term "chutzpah." There is not thing at all "odd" about parties who have all suffered significant financial damage as a consequence of Peninsula's flouting of the Commission's rules relating to FM translators and the Commission's lax and slow enforcement of those rules joining together in filing a single "class action" petition to deny. And if there is a conspiracy a foot, it is between Peninsula and its proposed assignee to find a means by which the Translators which serve no useful purpose other than to enrich Peninsula at the cost of its competitors can remain in business.

Peninsula also claims that because the file numbers of the

assignment applications against which the Petition to Deny is directed were misstated in the caption, the Petition does not relate to the actual assignment applications that are now pending. This argument is ridiculous. As reflected in Peninsula's Opposition, it fully understood that the Petition to Deny was directed at the pending applications, not the applications that it had filed and then voluntarily dismissed. Moreover, in view of the fact that Peninsula had filed, and then dismissed and refiled, applications to assign the translators within a six day period, it is understandable that some confusion might have resulted in connection with the correct file numbers of the applications that remained on file after the dust had settled. The Petition to Deny was timely filed and, notwithstanding the fact that it listed the file numbers of the applications incorrectly, there was no doubt as to the applications against which they were directed.

II. The No License to Assign Theory.

Peninsula's response to Petitioner's contention that *unless and until* the Commission makes an affirmative public interest determination that Peninsula is legally qualified to have its licenses for the Translators renewed Peninsula has no licenses to assign misses the point of Petitioner's argument. Petitioner's do not dispute that Peninsula currently holds licenses for the Translators and that by virtue of the fact that Peninsula filed timely license renewal applications, those licenses currently remain in effect. Rather, Petitioners argue, based on clear and consistent case precedent, that where the term of licenses has expired, the

Commission cannot consent to an assignment of the licenses until it has first found that the license holder, in this case Peninsula, is legally qualified for renewal of the licenses. In other words, before reaching the question as to the assignee's qualifications to hold the licenses, the Commission must first determine whether the assignor is qualified to have the licenses renewed. If the assignor is not qualified for renewal, the renewal applications must be denied, and there is nothing left to assign no matter how qualified the proposed assignee may be. Of course, if the renewals are denied and the proposed assignee is still interested in the frequencies, it can file applications for the frequencies in its own name.¹

The fact that Peninsula has chosen to ignore rather than attempt to distinguish the precedents cited by Petitioners in support of their argument that, since Peninsula is not qualified for renewal, it has nothing to assign, is in effect a concession by Peninsula that the precedents are both apposite and controlling.

III. Section 74.1232 Compliance.

It is undeniable that the operation of FM translators in compliance with the rules relating to financial support and the origination of announcements acknowledging and soliciting support provides little if any opportunity for financial reward. Therefore,

¹Presumably, Peninsula has not informed Coastal, which is not separately represented by counsel (raising an interesting ethical question if Peninsula and Coastal are in fact dealing at arms length) that rather than pay Peninsula \$100,000 for the Translators, Coastal could simply wait for the Commission to deny the license renewal applications on the grounds that have already been decided that Peninsula is unqualified to continue as the licensee and then apply for the Translators in its own name without having to pay Peninsula anything more than the used value of the equipment.

only someone who is grossly misinformed about the profit making potential of owning FM translators would invest a substantial sum of money to acquire these or any other FM translator's for "private business reasons." Coastal should be required to explain what "private business reasons" are behind its desire to own the Translators as the very suggestion that Coastal sees ownership of the Translators as creating a business opportunity raises significant questions as to whether Coastal understands the restrictions that exist on using FM translators as profit making assets.² Accordingly, the Commission should obtain answers to the following as yet unanswered questions before it acts on the pending applications:

- ▶ What are Coastal's "business reasons" for wanting to acquire the Translators?
- Is Coastal specifically aware of the costs that it will incur in operating and maintaining the Translators and, if so, how

²In view of the fact that Coastal is not separately represented by counsel and Peninsula has an interest in making the purchase of the Translators appear as attractive as possible from a "business" point of view to Coastal, Coastal's protestations that it will operate the Translators "in full compliance with the FCC's rules" cannot be taken at face value. How would Coastal, a company that is owned by two individuals who have never before owned FM translators have any knowledge of the requirements of the FCC's rules relating to translators other than what it has been told by Peninsula?

does Coastal intend to defray the costs of such operation and maintenance?

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Dated: August 26, 1997

CERTIFICATE OF SERVICE

I, David Tillotson, do hereby certify that a copy of the foregoing **PETITION TO DENY** has been sent via first class United States mail, postage pre-paid, this 26th day of August, 1997, to:

Jeffrey D. Southmayd, Esq.
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and has been hand delivered this 26th day of August, 1997, to:

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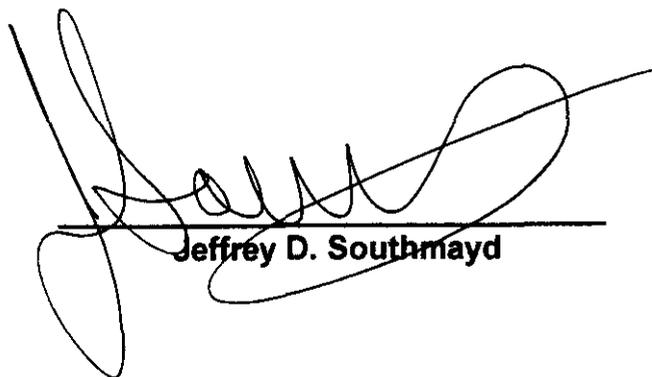
David Tillotson

CERTIFICATE OF SERVICE

I, Jeffrey D. Southmayd, do hereby certify that I have caused copies of the foregoing to be served by first class United States mail, postage pre-paid, on this 30th day of December 1997 on the following:

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