





January 6, 1999

David R. Buchanan  
Judith A. Buchanan  
17505 Meadow Creek Drive  
Eagle River, AK 99577

Re: SBA Loan

Dear Mr. and Mrs. Buchanan:

This letter is to inform you that Bank of America is unable to proceed with your loan as we have not received the required documentation as requested. Please refer to your approval letter dated February 18, 1998 by Mark S. Petit, credit officer.

We would like to take this opportunity in Thanking you for choosing Bank of America as your lender. If you wish to pursue a loan in the future, please contact Mr. Jon Andrew Howe at 907-263-3335.

If you have any questions, please call me at (702) 654-6991.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rochelle Chinen'.

Rochelle Chinen  
Loan Administration Officer

cc: Jon Howe



**COPY**  
**RECEIVED**

FEB 23 2000

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In re: Applications of	)	
	)	
Peninsula Communications, Inc.	)	File Nos. BRFT-951124UT, YU, YW,
	)	ZE through ZK; BALFT-
	)	970701TR through TZ;
	)	BRFT-970930U5, YA
	)	through YH; and BPFT-
	)	970616TK and TL;
For Renewal and Assignment of Licenses	)	
for FM Translator Stations	)	
	)	
K285EF, Kenai, K283AB, Kenai/Soldotna	)	
K274AB and K285AA, Kodiak	)	
K272DG and K285EG, Seward, Alaska	)	
K257DB, Anchor Point, Alaska	)	
K272CN, Homer, Alaska	)	
K265CK, Kachemak City, Alaska	)	

To: The Commission

**MOTION FOR STAY**

1. Peninsula Communications, Inc. (hereafter "PCI"), by its undersigned counsel, pursuant to the provisions of Section 1.43 of the Commission's Rules and Regulations<sup>1</sup>, hereby respectfully requests that the Commission issue an order staying and postponing the obligation of PCI to consummate the assignment of the licenses and assets for the above-captioned FM translator stations in connection with the above-captioned applications within thirty (30)

days of the February 14, 2000, release date of the Memorandum Opinion And Order (hereafter the "Order"), FCC 00-45, in the above captioned proceeding. The Order<sup>2</sup> instructs the Commission's "staff" to take the highly unusual and punitive action of rescinding the 1995 and 1997 license renewal grants for these translators, canceling the relevant call signs, and terminating the translators' operating authority in the event that PCI has not consummated the assignment of the licenses for the translators under the terms and conditions in the Order by the March 15, 2000 deadline. The Order also requires that FM translators K272DG and K285EG, Seward, Alaska, cease operation sixty (60) days from the release date, presumably on the assumption that the operating authority therefore has not been terminated by the staff immediately after the thirty day deadline.

2. PCI is seeking judicial review of the Order, and the underlying actions by the Commission in connection therewith, in the United States Court of Appeals for the District of Columbia Circuit. PCI requests that the Commission issue the stay, and maintain the operational *status quo* of the translators and the service they provide to the public, until the Court disposes of the PCI appeal. In support of this Motion, the following is respectfully submitted for the consideration of the Commission.

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<sup>1</sup> 47 CFR Section 1.43.

<sup>2</sup> Exhibit 1 hereto.

## I. LEGAL STANDARD FOR GRANTING A STAY

3. The Commission's current standard for determining whether to grant motions for a stay of its orders pending judicial review is found in the D.C. Circuit's decision in Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc., 559 F. 2d 841 (D.C. Cir. 1977). Holiday Tours affirmed the "four-prong test" which a stay proponent must satisfy as originally established in Virginia Petroleum Jobbers Association v. F.C.C., 259 F. 2d 921 (D.C. Cir. 1958). These are (1) that the petitioner is likely to prevail on the merits of its appeal; (2) that the petitioner will suffer irreparable harm if a stay is not granted; (3) that other interested parties will not be harmed if the stay is granted; and (4) that the public interest favors grant of the stay. However, Holiday Tours modified the Petroleum Jobbers standard by instructing that greater weight should be placed on prongs (2),(3) and (4).<sup>3</sup> If these three factors favor the grant of the stay, the relief should be granted even though the proponent cannot demonstrate that it is likely to prevail on appeal, but where it can show a substantial basis for the prosecution of its appeal.

### A. IRREPARABLE HARM TO PCI

4. It is clear that the PCI appeal will not be acted upon by the Court of Appeals on or before the FM translator operational termination deadline of March 15, 2000. The *de facto* revocation of the PCI licenses for the FM translators will irrevocably harm the proponent by causing it to lose these authorizations permanently and without any recourse for the reinstatement thereof. Moreover,

the termination of the operating authority for the FM translators will render PCI's Court appeal moot, since the licenses are the corpus of the PCI appeal. Clearly, the proposed action by the Commission in terminating the operating authorizations for the subject FM translators on March 15, 2000 will cause PCI irreparable harm.

### B. THE PUBLIC INTEREST

5. Section 307 of the Communications Act of 1934, as amended, empowers the Commission to grant a license application for a broadcast station only "...if the public convenience, interest, or necessity will be served thereby."<sup>4</sup> In the Commission's Memorandum Opinion And Order, FCC 98-314 (released December 10, 1998) (the "Initial Order")<sup>5</sup>, the 1995 and 1997 license renewal applications for the above-captioned FM translators were granted in order to allow for the continued operation thereof. This action demonstrates in a compelling manner that the Commission considers the continued operation of these facilities to be in the "public convenience, interest, or necessity." The satisfaction of this prong, therefore, has been previously determined by the Commission.

6. Conversely, it is not in the public convenience, interest or necessity for the translators to cease operation. The Commission's instructions, therefore, to its "staff" to terminate the operation of these translators on March 15, 2000, in

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<sup>3</sup> 259 F.2d 943.

<sup>4</sup> 47 U.S.C. Section 307.

<sup>5</sup> See Exhibit 2 hereto.

the event the change in ownership has not been completed is obviously not in the public interest and should be stayed.

**C. HARM TO OTHER PARTIES INTERESTED IN THE  
PROCEEDING.**

7. The Commission has never alleged, much less factually demonstrated, that the continued operation of 7 of the 9 PCI translators has caused harm to anyone. With the exception of PCI's two Seward, Alaska FM translators, the actions taken by the Commission have been premised on its interpretation of the revised FM translator rules and policies, and not based on the continued operation of these translators causing harm to any identified party. To the contrary, as noted above, the Commission has found that the continued operation of the PCI translators to be in the public interest.

8. In the case of the two Seward FM translators, the Order contains the following language:

KPFN claims that Peninsula's Seward translators are taking between \$4,000 and \$6,000 per month in radio revenues out of Seward, which is a community of fewer than 5,000 people with limited sources of advertising revenue. Peninsula does not dispute this claim. Given the totality of circumstances, we conclude that waiver of 47 C.F.R. 74.1231(b) permitting Peninsula to continue to deliver a distant signal to Seward would be a clear detriment to the continued viability of full service broadcast stations licensed to Seward.<sup>6</sup>

However, the Commission has conducted no factual investigation of the "radio revenues of Seward" and nothing in the record of this proceeding supports the finding that the PCI's operation of the two translators is a "detriment" to anyone. Peninsula may not have disputed KPFN's claim because it has never been asked

to respond thereto, and has been given no opportunity to present evidence on this issue. Moreover, the Commission has no expertise that can be the basis for its "independent" finding that a community of fewer than 5,000 persons cannot support numerous local broadcast stations. This is particularly true inasmuch as FM translators, such as those operated by PCI in Seward, are precluded from originating local programming containing local advertising.<sup>7</sup> The "harm" created by the Commission is wholly imaginary and without factual or legal basis.

#### D. THE MERITS OF THE PCI APPEAL

##### 1. THE CONDITIONAL GRANT OF THE PCI LICENSE RENEWAL APPLICATIONS.

9. In the Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures), the Commission adopted an order with new procedures for processing license renewal applications for broadcast stations, including FM translators. Under the "New Two Step Procedure", implementing Section 309(k) of the Communications Act of 1934, as amended, the Commission is required to grant a license renewal application unconditionally in the event it finds with respect to that station, during the preceding term of its license:

- (A) the station has served the public interest, convenience and necessity;
- (B) there have been no serious violations by the licensee of this Act of the rules and regulations of the Commission; and

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<sup>6</sup> FCC 00-45 at page 3, para. 9.

<sup>7</sup> Section 74.1231 of the Commission's rules prohibits FM translators from originating local programming, including local advertising, except for acknowledgements of financial support which are limited to 30 seconds per hour.

(C) there have been no other violations by the licensee of this Act or the rules and regulations of the Commission which, taken together, would constitute a pattern of abuse.<sup>8</sup>

This is in contrast to the situation where a licensee of a broadcast station "...fails to meet the requirements of this subsection..." In that event, the Commission is authorized by the Communications Act to "...deny the application for renewal in accordance with paragraph (3), or grant such application on terms and conditions as are appropriate, including renewal for a term less than the maximum otherwise permitted."

10. In the case at hand, the Commission has specifically found in its orders in this proceeding that PCI meets the above criteria (A), (B), and (C) in connection with all 9 of its FM translator license renewal applications. The Commission found:

There is no evidence that Peninsula attempted to deceive or mislead the Commission as to its compliance with Section 74.1231(d). Indeed, the staff's previous actions reasonably could have led Peninsula to believe that the Alaska translators were being accorded special treatment....there is nothing in the record to suggest a likelihood that in the future it will not deal truthfully with the Commission and comply with the Communications Act and the Commission's rules and policies. FCC-98-314 at page 5, para. 9.

Accordingly, the Commission lacks statutory authority to grant the license renewal applications for these stations on any basis other than unconditionally and for a full term. The conditional grant of the license renewal applications requiring the divestiture of the stations cannot withstand judicial scrutiny under Section 309(k) of the Act, since such a "conditional" license renewal application

approval is beyond the scope of the Commission's authority under the Communications Act of 1934, as amended, and its own order implementing Sections 204(a) and 204(c) of the Telecommunications Act of 1996 where, as here, a license renewal applicant has been found to pass the first step of the two step license renewal procedure. The Commission's action in granting the PCI license renewal applications conditionally, i.e. on condition the stations be divested, cannot withstand judicial review in light of the agency's own findings.

**2. THE TERMINATION OF THE OPERATING AUTHORITY FOR THE PCI FM TRANSLATORS IS BEYOND THE AUTHORITY OF THE COMMISSION UNDER THE ACT.**

11. Section 312 of the Communications Act specifies the administrative sanctions at the disposal of the Commission. Section 312(a) provides that the Commission may revoke a station license or construction permit under seven (7) specific circumstances. None of these are found in the situation at hand. To the contrary, as noted previously, the Commission has found that the operation of the PCI FM translators is in the public interest, and has granted the 1995 and 1997 license renewal applications on that basis. Assuming, *arguendo*, that the operation of the PCI translators does come within the scope of these seven circumstances, the Commission is required to notify the licensee either by a cease and desist order or an order to show cause that its license is subject to revocation before taking such action.

12. In the case at hand, the Commission has failed to issue either a cease and desist order or a show cause order to PCI. Thus, any present action by the

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<sup>8</sup> See, *Broadcast License Renewal Procedures*, 2 CR 1238, 1239 (1996).

Commission to revoke the licenses for the PCI translators would fail to comply with the requirements of Section 312 of the Act and would be arbitrary, capricious, an abuse of discretion and in excess of its statutory authority.

### **3. THE STANDARD OF REVIEW.**

13. Title 5, Section 706 of the United States Code requires a reviewing court to hold unlawful and set aside any action by an agency that is:

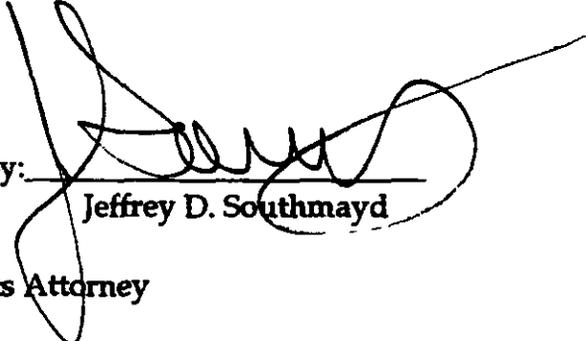
- A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;....
- C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
- D) without observance of procedure required by law.

As noted above, PCI would in all likelihood prevail in its appeal on these bases, among others that it intends to prosecute before the Court.

WHEREFORE, this Motion For Stay meets the four-prong test for the grant of injunctive relief under the standards in Holiday Tours. For good cause shown, PCI respectfully requests that the Commission stay the effectiveness of its Order pending a decision on the appeal thereof in the United States Court of Appeals for the District of Columbia Circuit.

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: February 23, 2000





purchaser of its above-captioned FM translator stations<sup>1</sup>. Not surprisingly, as a result of the Commission's action in substantially modifying the licenses for the two Seward, Alaska FM translator stations by requiring the termination of the feeds for the stations rebroadcast thereon, and thereby effectively terminating the translators' ability to continue to operate, within 60 days of the release date of the Memorandum Opinion And Order (hereafter the "Order"), FCC 00-45, in the above captioned proceeding, the Buyer has determined that it is not longer obligated to purchase the stations. The Buyer is unwilling to consummate the transaction proposed in the above-referenced assignment applications under the terms contained in the Asset Purchase Agreement between the parties due to the diminution in the value of the two Seward FM translators, and the uncertainty that has arisen as to the continued viability of any of the licenses for the translators in light of the Commission's arbitrary actions in this proceeding.

2. The Buyer is willing to consider a re-negotiation of its agreement with PCI for the purchase of the translators with the modifications in the licenses that the Commission placed on them in the Order, but does not believe that a proper re-evaluation of the value of the stations and subsequent negotiations can be completed within the unreasonable thirty (30) day deadline imposed by the Commission for the consummation of the sale or the termination of the operations and licenses for the stations.

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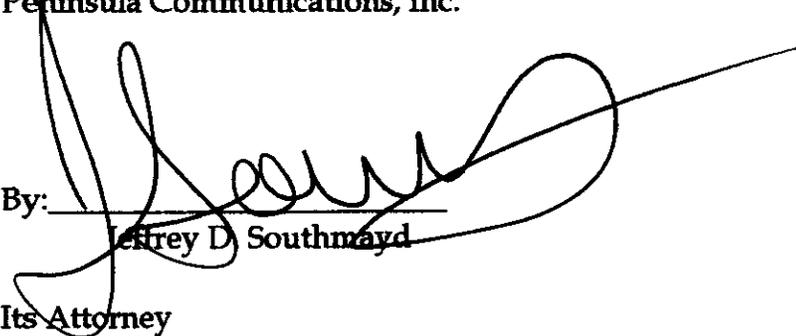
<sup>1</sup> The sale to the Buyer was required by the Commission in its September 11, 1996 letter from the Chief, Audio Services Division (1800B4-AJS), and was affirmed in its Memorandum Opinion And Order, FCC 98-314 (released December 11, 1998).

Accordingly, it should be even clearer than before that PCI will be irreparably harmed in the event the Commission does not issue a stay in this proceeding of these requirements in the Order.

WHEREFORE, for additional good cause shown<sup>2</sup>, PCI respectfully requests that the Commission stay the effectiveness of its Order pending a decision on the appeal thereof to the United States Court of Appeals for the District of Columbia Circuit.

Respectfully submitted,

Peninsula Communications, Inc.

By: 

Jeffrey D. Southmayd

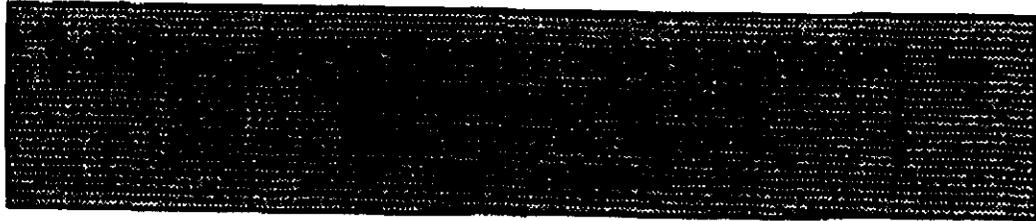
Its Attorney

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

Date: March 3, 2000

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<sup>2</sup> This information is also submitted pursuant to Section 1.65 of the Commission's Rules.



March 1, 2000

Mr. David Becker  
President  
Peninsula Communications, Inc.  
P.O. Box 109  
Homer, AK 99603

Dear Dave,

I have read the most recent FCC decision contained in the Commission's Memorandum Opinion and Order dated February 14, 2000, which concerns Coastal Broadcast Communication's purchase of Peninsula's nine (9) FM translator stations. This decision now states that purchase of the stations is allowed but that the two Seward translator stations will have to cease operation in sixty (60) days since the satellite feed will have to end which results in a "non-useable scenario". Moreover, the FCC will not allow the Kodiak translators to use a satellite feed either, so, this too is of no practical use to Coastal. Obviously, these changes are unacceptable to me.

We entered into a contract back in the Fall of 1996 for the purchase of the nine (9) FM translator stations. The contract states that the sale would include all the licenses and assets for the total nine translators that you owned and that the licenses and assets would be free and clear of any problems or encumbrances. My understanding was that the FCC was willing to allow you to sell these stations to a qualified buyer on that basis. Instead, three and one half (3 1/2) years later the FCC has finally agreed to allow Coastal Broadcast Communications, Inc. to buy the nine translators (within a shortened 30 day time frame) but now under a different mandate that will allow only seven (7) translators to operate after sixty (60) days and the Kodiak translators cannot use a satellite feed rendering them useless. These changes make no sense from the FCC's initial directions and no valid explanation is apparently forth coming. The Commission might just as well have refused Coastal permission to originally purchase since the current allowances with new conditions has the same resultant effect as saying "no". The underlying greatest impact means that you cannot sell to Coastal the total nine stations under the terms of the original contract.

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David Becker  
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As I am sure you can appreciate, I am not willing as President of Coastal Broadcast Communications, Inc. to buy these stations now for the price and terms to which we agreed in 1996. The primary option that may allow a continuation on our part is that the FCC change its current stance in the Memorandum Opinion and Order and allow the translators to be sold under terms of the original contract thus allowing all the translators with their operations and licenses in full effect including Seward and Kodiak.

Since the above mentioned scenario of the FCC changing its stance on the Memorandum Opinion and Order is most unlikely, I see only two other possible alternatives:

1) The FCC should now possibly allow adequate time for additional interested parties to have an opportunity to purchase under the new conditions that the Commission itself has created.

and/or

2) Coastal Broadcast would reconsider revising, modifying, and renegotiating a contract sale under new mutually agreed upon terms subject to having sufficient time to do so without the threat of the termination of the licenses on March 15th by the FCC and with the following understanding as being foundational.

Based upon the current FCC actions and the severe "fire storm of limitations on usability" imposed by the Commission, there could now be an appropriate re-offering to Coastal Broadcast Communications, Inc. the licenses and assets that reflect significant "fire sale allowances".

Most Sincerely,



David R. Buchanan, President  
Coastal Broadcast Communications, Inc.

copy to:  
Jeffrey D. Southmayd, Esq.  
Southmayd & Miller  
1220 Nineteenth St. N.W. Suite 400  
Washington, DC 20036

## CERTIFICATE OF SERVICE

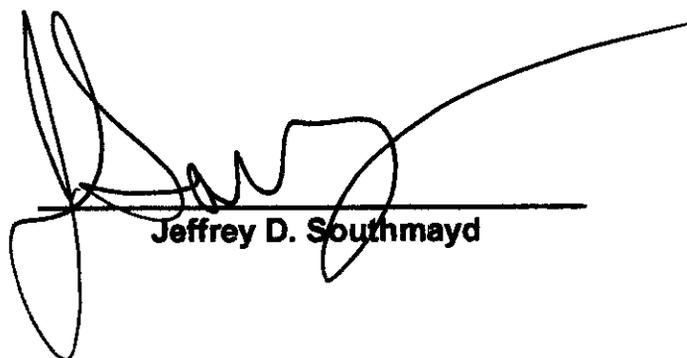
I, Jeffrey D. Southmayd, do hereby certify that I have caused copies of the foregoing to be served by first class United States mail, postage prepaid, on this 3<sup>rd</sup> day of March, 2000 on the following:

**Mr. Christopher J. Wright,  
General Counsel  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room 8-C723  
Washington, D.C. 20554\***

**Mr. Daniel M. Armstrong  
Associate General Counsel  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room 8 B724  
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Jeffrey D. Southmayd