

21

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

FCC 03M-12  
02172

In the Matter of	)	EB Docket No. 02-21
	)	
PENINSULA COMMUNICATIONS, INC.	)	File No. EB 01-IH-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	)	

**ORDER**

Issued: April 16, 2003

Released: April 18, 2003

For cause shown, the unopposed Request To Reopen the Record to Receive Official Notice Materials, filed by Peninsula Communications, Inc. ("PCI") on April 1, 2003, will be granted.

PCI reports that a post hearing Commission order terminated previously granted waivers of Sections 74.1231(b) and 74.1232(d) for Seward FM translator stations K272DG and K285EG (which are not the subject of violations charged in this show cause proceeding) and required PCI to come into compliance with modified licenses for those Seward translators by May 9, 2003.<sup>1</sup>

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<sup>1</sup> See *In re Peninsula Communications, Inc., Memorandum Opinion and Order*, FCC 03-47, released March 10, 2003.

PCI further reports that it is now seeking Commission consent to assign the licenses for the two Seward translators to The Moody Bible Institute of Chicago ("Moody") for noncommercial educational use in the rebroadcast of the signal of educational FM station WJCG(FM), Monee, Illinois.

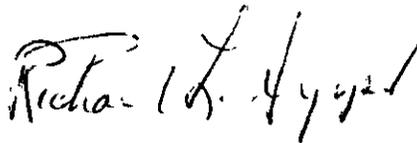
PCI further reports that in connection with such assignment it is donating the licenses and assets of the two Seward translators to Moody.

Accordingly, for cause shown, IT IS ORDERED that the Request to Reopen the Record to Receive Official Notice Materials filed on April 1, 2003, IS GRANTED.

IT IS FURTHER ORDERED that the hearing record is opened and the letter dated April 1, 2003, addressed to Ms. Marlene H. Dortch, Commission Secretary, and allied FCC Form 345 with attachments ARE RECEIVED as Official Notice Exh. No. 21.

IT IS FURTHER ORDERED that the hearing record IS CLOSED.

FEDERAL COMMUNICATIONS-COMMISSION<sup>2</sup>

A handwritten signature in black ink, appearing to read "Richard L. Sippel", with a checkmark at the end.

Richard L. Sippel  
Chief Administrative Law Judge

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<sup>2</sup> Courtesy copies of this Order were sent to counsel for the parties by fax or e-mail on the release date.

COPY

SOUTHMAYD & MILLER

1220 Nineteenth Street, N.W.  
Suite 400  
Washington, D.C. 20036  
(202) 331-4100  
(202) 331-4123 Fax

April 1, 2003

Jeffrey D. Southmayd  
jdsouthmayd@msn.com

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
236 Massachusetts Avenue, N.E.,  
Suite 110  
Washington, DC 20002

Re: FM Translators  
K285EG and K272DG, Seward, Alaska  
Facility ID #'s 52158 and 52160

Dear Ms. Dortch;

Transmitted herewith, in triplicate, on behalf of The Moody Bible Institute of Chicago is an FCC Form 345 application seeking an assignment of the licenses for FM translator stations K285EG and K272DG, Seward, Alaska (Facility ID #'s 52158 and 52160), from Peninsula Communications, Inc.

The applicants seek expeditious processing of the applications since the assignor, Peninsula Communications, Inc., will be forced to cease the operation of the stations in their present mode by May 9, 2003, based on the attached Memorandum Opinion And Order, FCC 03-47 (released on March 10, 2003), and with which Peninsula will comply.

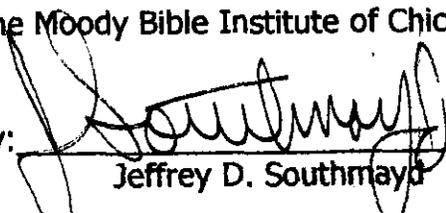
No fee accompanies this application due to the fee exempt status of the assignee. The assignee's FRN is 0006791354.

Please contact the undersigned should you have any questions on this matter.

Very truly yours,

The Moody Bible Institute of Chicago

By:

  
Jeffrey D. Southmayd

Its Attorney

Attachments

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In re Peninsula Communications, Inc. )  
 )  
Order to Show Cause Why the Licenses for )  
Translator Stations K272DG and K285EG, )  
Seward, Alaska Should not be Modified )

**MEMORANDUM OPINION AND ORDER**

**Adopted: March 4, 2003**

**Released: March 10, 2003**

By the Commission:

1. The Commission has before it the June 18, 2001, Protest and Opposition of Peninsula Communication, Inc. ("Peninsula") to the Commission's Order to Show Cause why the licenses of translator stations K272DG and K285EG, Seward, Alaska, ("Seward Translator Stations") should not be modified, pursuant to Section 316 of the Communication Act of 1934, as amended,<sup>1</sup> and Section 1.87 of the Commission's rules,<sup>2</sup> to terminate previously granted waivers of Sections 74.1231(b) and 74.1232(d)<sup>3</sup> of the Commission's rules.<sup>4</sup> Also before us is a July 5, 2001, Opposition to Peninsula's Protest and Opposition to the Commission's *Order to Show Cause* filed by Phoenix Broadcasting, Inc., licensee of KSWD(AM) and KPFN(FM) Seward, Alaska ("Phoenix"). In this Order, we deny Peninsula's Protest and Opposition and modify the Seward Translator Stations' licenses to terminate the waivers of Sections 74.1231(b) and 74.1232(d), effective 60 days from release of this Order.

**I. Background**

2. The most appropriate and efficient means of providing additional FM service nationwide is by creating opportunities for the establishment and development of full service broadcast stations.<sup>5</sup> FM translator stations provide supplementary service to areas that either are underserved or receive service limited by terrain.<sup>6</sup> Due to the potential competitive impact that translator stations can have on FM radio broadcast stations and the development of full service radio in less populated areas, the Commission authorizes FM translators on a secondary basis only under rules that restrict their service, ownership,

<sup>1</sup> 47 U.S.C. § 316

<sup>2</sup> 47 C.F.R. § 1.87.

<sup>3</sup> *Id.* § 74.1231 (b) and 74.1232 (d)

<sup>4</sup> See *Peninsula Communications, Inc.* 16 FCC Rcd 11364 (2001) ("*Order to Show Cause*").

<sup>5</sup> See *Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations, Report and Order*, 5 FCC Rcd 7212, 7215 (1990) ("*Translator R&O*"), modified, 6 FCC Rcd 2334 (1991), recon. denied and clarified, 8 FCC Rcd 5093, 5094 (1993) ("*Translator MO&O*").

<sup>6</sup> See *Translator R&O*, 5 FCC Rcd at 7212-13, *Translator MO&O*, 8 FCC Rcd at 5093.

sources of financial support, and program origination.<sup>7</sup> In 1990, the Commission substantially amended these rules to ensure that FM translator stations serve their intended secondary role. At issue in this case are Sections 74.1231(b) and 74.1232(d), which provide that an other-area or non-fill-in translator station may only retransmit a commercial FM station signal that is received directly off-air<sup>8</sup> and that an authorization for such a translator station will not be granted to any person interested in or connected with the translator's primary commercial FM station.<sup>9</sup> A primary station is the full service station whose signal a translator retransmits. An other-area or non-fill-in translator is one whose coverage contour extends beyond the protected service contour of its primary station.

3. The Commission may grant a waiver of its rules for good cause.<sup>10</sup> Waiver of a Commission rule is appropriate if: (1) special circumstances warrant deviation from the general rule; (2) waiver will not undermine the policy served by the rule; and (3) deviation from the rule will serve the public interest.<sup>11</sup> The Commission will favorably consider requests for waivers of Sections 74.1231(b) and 74.1232(d) for translators that provide service to a white area, *i.e.*, an area outside the coverage contour of any full-time aural broadcast service.<sup>12</sup> A showing of service to a white area generally is required in order for a commercial primary station to own another-area translator.<sup>13</sup> The Commission has rejected the contention that waiver of the ownership restrictions set forth in Section 74.1232 of the Commission's rules also should be presumptively available for the provision of FM translator service to "underserved" areas, defined as areas receiving fewer than five full-time aural services.<sup>14</sup>

4. Peninsula is the licensee of the Seward Translator Stations and the primary full service stations that those translators rebroadcast KPEN-FM, Soldotna, Alaska, and KWVV-FM, Homer, Alaska. The Seward Translator Stations are located outside the protected service of their primary stations and require non-off-air delivery systems to rebroadcast the signals of those stations. At the time the applications for construction permits for the Seward Translator Stations were filed, KSWD (AM), Seward, Alaska, provided the only primary broadcast service to Seward. Thus, both Seward Translator Stations are non-fill-in translators that do not serve (and have never served) any white area. On February 18, 1992, the staff granted Peninsula's original construction permit applications for the Seward Translator Stations and granted waivers of the eligibility and signal delivery requirements set forth in Sections 74.1231(b) and 74.1232(d).<sup>15</sup> The staff noted that Peninsula reported that Seward was a somewhat isolated area for radio due to the mountainous terrain and that the Seward Translator Stations would provide a much needed first

<sup>7</sup> See *Translator R&O*, 5 FCC Rcd at 7212 (citing *Amendment of Part 74 of the Commission's Rules and Regulations to Permit the Operation of Low Power FM Broadcasting Translator and Booster Stations, Report and Order*, 20 Rad. Reg. 2d (P&F) 1538, 1541 (1970)).

<sup>8</sup> The Commission concluded that off-air reception should be adequate for most translator operations and that any further relaxation of this policy "would be inconsistent with the role of FM translators as a secondary service not intended to supplement the services provided by radio broadcasters." *Translator R&O*, 5 FCC Rcd at 7221.

<sup>9</sup> The Commission imposed this restriction to promote the establishment of full service FM broadcast stations. *Id.* at 7215.

<sup>10</sup> See 47 C.F.R. § 1.3, see also *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) ("*WAIT Radio*").

<sup>11</sup> See *Northeast Cellular Telephone Company, L.P., et al., v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("*Northeast Cellular*"); see also *WAIT Radio*, 418 F.2d at 1157, 1159; *Capital Cities/ABC, Inc., ET al.*, 11 FCC Rcd 5841, 5872-73, 5898 (1996).

<sup>12</sup> See *Translator R&O*, 5 FCC Rcd at 7213-16, 7220-21, *Translator MO&O*, 8 FCC Rcd at 5094-95.

<sup>13</sup> See *Translator Report and Order*, 5 FCC Rcd at 7216.

<sup>14</sup> See *id.* at 7215-16; *Translator MO&O*, 8 FCC Rcd at 5094-95.

<sup>15</sup> *Letter to Peninsula Communications, Inc.*, Ref. No. 8930-MER (Chief, Auxiliary Services Branch, Audio Services Division, Mass Media Bureau, Feb. 18, 1992).

commercial FM service. The staff found that off-air broadcast signals were not readily available in Seward and, relying on *Wrangell Radio Group*,<sup>16</sup> determined that waivers were justified. It noted the Commission's "special concern for the availability of broadcast services in Alaska" and the number of people who would receive programming.<sup>17</sup> On February 1, 1993, the staff granted Peninsula's applications for licenses to cover the construction permits for the Seward Translator Stations.

5. When reviewing Peninsula's November 1995 and September 1997 renewal applications for the Seward Translator Stations, the Commission determined that continuation of the waivers of 47 C.F.R. § 74.1232(d) was not warranted and granted the renewal applications conditioned on assignment of the licenses to unrelated parties in order to bring the stations into compliance with the Commission's FM translator rules.<sup>18</sup> Peninsula filed an appeal of the *February 2000 MO&O* with the United States Court of Appeals for the District of Columbia Circuit. Peninsula also filed a pleading with the Commission. The Court dismissed the Peninsula appeal without prejudice to refile following the Commission's resolution of the issues pending before the Commission. In the *Order to Show Cause*, the Commission dismissed Peninsula's newly filed pleading, granted the Seward Translator Stations' renewal applications,<sup>19</sup> and, finding that Section 316 of the Act afforded the most direct and expedient means of resolving outstanding matters, ordered Peninsula to show cause why the Seward Translator Stations' licenses should not be modified, pursuant to Section 316 of the Act and 1.87 of the Commission's rules, to discontinue the previously granted waivers of 47 C.F.R. 74.1231(b) and 74.1232(d). The Commission afforded Peninsula thirty days to file a written protest to the proposed license modifications. On June 18, 2001, Peninsula filed a "Protest and Opposition Order to Show Cause for Modification of Licenses," in which it opposed the proposed license modifications and requested a hearing prior to any Commission action. On July 5, 2001, Phoenix, the licensee of the only AM and FM full service stations in Seward, filed an Opposition to Peninsula's pleading asserting that the Commission should modify the Seward Translator Stations' licenses to discontinue the waivers of 47 C.F.R. Sections 74.1231(b), 74.1232(d).

## II. Discussion

6. Pursuant to our authority, under Section 316 of the Act and Sections 1.87 and 74.1232(h) of the Commission's rules, to modify any license if we determine that such action will promote the public interest, convenience, and necessity, we modify the Seward Translator Stations' licenses to terminate the waivers of Sections 74.1231(b) and 74.1232(d). Continued waivers of Sections 74.1231(b) and 74.1232(d) are not warranted because: (1) the facts upon which the staff waiver was based have changed materially; (2) Section 74.1232(h) specifically contemplates the termination of Section 74.1232(d) waivers as a result of changed circumstances; (3) these waivers undermine the policy objectives of

<sup>16</sup> See *Wrangell Radio Group*, 75 F.C.C. 2d 404 (1980) ("Wrangell").

<sup>17</sup> In *Wrangell*, the Commission granted rule waivers for the operation of 10-watt television translators in remote and isolated Alaskan communities where there was no off-air television programming available. The Commission noted that there are numerous small, isolated, and remote villages in Alaska, many of which are more than 500 miles apart, and that television broadcast signals are not readily available off-air in most Alaskan communities. 75 F.C.C. 2d at 405, 407.

<sup>18</sup> See *Letter to Jeffrey D Southmayd, Esq.*, Ref. No. 1800B4-AJS (Acting Chief, Audio Services Division, Mar. 4, 1996); *Letter to Jeffrey D Southmayd, Esq.*, Ref. No. 1800B4-AJS (Chief, Audio Services Division, Sept. 11, 1996); *Letter to Jeffrey D Southmayd, Esq.*, Ref. No. 1800B3-BSH (Chief, Audio Services Division, Nov. 6, 1997); *Peninsula Communications, Inc.*, 13 FCC Rcd 23992 (1998) ("*December 1998 MO&O*"); *Peninsula Communications, Inc.*, 15 FCC Rcd 3293, 3295 (2000) ("*February 2000 MO&O*"). In the *February 2000 MO&O*, the Commission also found that continued waivers of 47 C.F.R. § 74.1231(b) were not warranted.

<sup>19</sup> The renewal application proceeding is now final. For a complete history of this proceeding, see *Order to Show Cause*, 16 FCC Rcd at 11365-70.

Sections 74.1231(b) and 74.1232(d); and (4) continuation of the rule waivers would result in discriminatory application of the Commission's rules.

7. Changed circumstances in Seward since the grant of these waivers support their termination at this time. In February 1992, the staff noted that: (1) Peninsula asserted that the Seward Translator Stations would provide a much needed first commercial FM service to the community; (2) the Commission was concerned about the availability of broadcast services in Alaska; and (3) broadcast signals were not readily available off-air in Seward. In February 2000, the Commission granted the application for a license to cover the construction permit of station KPFN (FM), Seward, Alaska (File No. BLH-990125KE). Seward is now served by full service AM and FM radio stations. Therefore, the basis for these waivers no longer exists and their continuation is unwarranted. We note that the Seward Translator Stations' Section 74.1232(d) waivers are subject to the condition set forth in Section 74.1232(h) that permits the Commission to terminate such waivers upon sixty days written notice if changed circumstances would have prohibited grant of the initial authorization.<sup>20</sup>

8. Peninsula asserts that, after station KPFN (FM) commenced broadcast operations,<sup>21</sup> the Commission granted the Seward Translator Stations' licenses to operate pursuant to the subject rule waivers in January 1999 and granted in May 2001 the stations' renewal applications without taking any action against the waivers. Peninsula contends that there have been no changes in the number of broadcast stations operating in Seward and no changes in the Commission's translator rules and policies since January 1999 or May 2001 that would justify modification of the Seward translators' licenses by terminating the subject rule waivers. We reject Peninsula's selective and otherwise flawed parsing of the record and conclude that it has failed to raise a substantial and material question of fact as to whether the proposed modifications of the Seward Translator Stations' licenses are in the public interest. To the extent that the Commission has revisited these 1992 and 1993 waivers, it has consistently focused on the possibility that changed circumstances may require their termination. Prior to KPFN (FM) becoming operational, we specifically noted that it might be necessary to "consider whether the circumstances under which the waivers were granted have so changed as to warrant termination of the Seward translator operations."<sup>22</sup> It also appears that the Commission was unaware of the filing by Glacier, several days before the 1998 MO&O was adopted, which advised the Commission of the commencement of program tests by KPFN(FM). Moreover, the KPFN(FM) license application and fee were received by Mellon Bank on January 25, 1999, two months after adoption of the December 1998 MO&O. Plainly, the routine staff grants<sup>23</sup> on January 27 and 28, 1999, of licenses to cover minor changes in the Seward Translator Stations occurred without consideration of the impact of the receipt of the KPFN (FM) license application by the Commission several days earlier. Finally, Peninsula's reliance on the May 2001 *Order to Show Cause* is misplaced. In this action the Commission explicitly ordered Peninsula to show cause why the Seward Translators Stations' licenses should not be modified to discontinue the subject waivers.<sup>24</sup> The Commission stated that it believed that this afforded the most direct and expedient means of resolving this matter.

<sup>20</sup> See 47 C.F.R. § 74.1232(h) (any authorization for a FM translator station whose coverage contour extends beyond the protected contour of the commercial primary station that is issued to an applicant who is the licensee of the commercial primary FM radio broadcast station will be issued subject to the condition that it may be terminated at any time, upon not less than sixty days written notice, where the circumstances in the community or area served are so altered as to have prohibited grant of the application had such circumstances existed at the time of its filing).

<sup>21</sup> On November 13, 1998, Glacier notified the Commission that KPFN(FM) had commenced program tests.

<sup>22</sup> 13 FCC Rcd at 23999.

<sup>23</sup> See License Authorizations issued January 27 and 28, 1999 (File Nos BLFT-19981022TC-TD).

<sup>24</sup> Peninsula had argued, citing 47 U.S.C. § 309(k) (1), that the Commission was required to grant its renewal applications unconditionally and had no authority to terminate the subject waivers or terminate operating authority in the context of that renewal proceeding.

9. Waivers of Commission rules must not undermine the policy objectives of those rules which the Commission has determined serve the public interest.<sup>25</sup> We find that the Seward Translator Stations' waivers of Sections 74.1231(b) and 74.1232(d) adversely affect the operation of local full-service FM radio broadcast stations by impermissibly expanding the service area of a non-local primary station.<sup>26</sup> Here, adherence to the rule will promote local full-service radio service.<sup>27</sup> White area waivers are consistent with these policies; waivers to areas served by two full service radio stations are not.<sup>28</sup> Additionally, continuation of these waivers would result in the Seward Translator Stations being treated differently than other similarly situated non-fill-in translators without justification.<sup>29</sup> Therefore, modification of the Seward Translator Stations' licenses to terminate these rule waivers is in the public interest.

10. Peninsula asserts that there is no evidence in the Commission's records to indicate that the operation of the Seward translators causes economic harm to any other broadcast station in the Seward radio market. We conclude that Peninsula has failed to raise a substantial and material question regarding whether the proposed modification of licenses is warranted. Phoenix states that, during a previous license renewal proceeding, the licensee and permittee of stations KSWD(AM) and KPFN(FM) asserted that competition from the Seward translators made it difficult for station KSWD(AM) to survive and prosper in the small community of Seward, that the Seward translators would threaten the financial viability of station KPFN(FM), and that the Seward translators were taking between \$4,000 and \$6,000 per month in radio revenues out of Seward, a community of fewer than 5,000 people with limited sources of advertising revenue.<sup>30</sup> Phoenix now contends that the Seward translators continue to have an adverse economic impact on Seward's full service stations because they siphon substantial advertising revenues out of Seward which would otherwise be available to support the full service stations. Peninsula has not disputed the claim that the Seward translators generate \$4,000 to \$6,000 per month from Seward advertisers. We find that permitting Peninsula to continue the Seward translators current operations pursuant to waivers of 47 C.F.R. 74.1231(b) and 74.1232(d) would be a clear detriment to full-service broadcast stations licensed to Seward, given the size of the market.

11. Peninsula also asserts that termination of the Seward Translator Stations' rule waivers would force these stations, which have a significant number of listeners, to cease operations and would result in a significant loss of broadcast service to Seward. Peninsula's arguments in this regard are unavailing and fail to raise a substantial and material question of fact regarding whether the proposed license modifications serve the public interest. The Commission contemplated such a loss of translator service to

<sup>25</sup> See *WAIT Radio*, 418 F.2d at 1157; see also *supra* note 6.

<sup>26</sup> Modification of our rules to permit the expansion of FM service through the use of translators would be inconsistent with our basic FM allotment scheme. *Translator R&O*, 5 FCC Rcd at 7215; *Translator MO&O*, 8 FCC Rcd at 5094. The rules which generally limit FM translators to re-broadcasting off-air signals are designed to eliminate disincentives for service by full-service radio broadcast stations in instances where sufficient community interest exists for additional services, but where the existence of 'other area' translators financed by primary stations would work to limit the economic viability of such stations. See *Translator MO&O*, 8 FCC Rcd at 5098.

<sup>27</sup> The public interest is best served by promoting the broad distribution of full service FM radio broadcast stations. *Translator R&O*, 5 FCC Rcd at 7215; *Translator MO&O*, 8 FCC Rcd at 5094.

<sup>28</sup> See *supra* at ¶¶ 2, 3.

<sup>29</sup> See *Melody Music, Inc. v FCC*, 345 F.2d 730 (D.C. Cir. 1965) (the Commission must treat similarly situated parties alike unless it explains its reasons for differential treatment in light of the purposes of the Communications Act)

<sup>30</sup> See Phoenix Opposition at 5-7; see also *December 1998 MO&O*, 13 FCC Rcd at 23997; *February 2000 MO&O*, 15 FCC Rcd at 3295

the public when it created a service that is permitted to operate on a secondary basis only, and adopted rules that impose strict FM translator eligibility service and waiver standards. Section 74.1232(h), which permits the termination of certain translator authorizations based on changed circumstances, codifies this policy with regard to white area waivers. Therefore, this loss of translator service is not a special circumstance but an outcome specifically contemplated by the rules.

12. Peninsula's protest to our proposed modification of the Seward translators' licenses is subject to the requirements of Section 309 of the Act for petitions to deny.<sup>31</sup> Therefore, Peninsula is entitled to a hearing only if it presents a substantial and material question of fact as to whether the proposed modification serves the public interest.<sup>32</sup> The record establishes that KPFN(FM) has operated as a licensed station in Seward since February, 2000, and that AM and FM service is now readily available in Seward. As an initial licensing matter, the Commission would not have waived its rules in these circumstances to grant an other-area FM translator station construction permit to Peninsula. Section 74.1232(h) contemplates the termination of an FM translator station authorization in precisely this situation. Moreover, our order to terminate operations complies with the sixty-day notification period codified in this subsection. We conclude that Peninsula has failed to raise a substantial and material question of fact regarding whether the proposed modification of the Seward Translator Stations' licenses is in the public interest. Accordingly, we deny Peninsula's request for a hearing.

13. Peninsula's Protest is denied. Pursuant to Section 316 of the Act and Sections 1.87 and 74.1232(h) of the Commission's rules, we modify the Seward translators' licenses to terminate the waivers of Sections 74.1231(b) and 74.1232(d), effective 60 days from release of this Order. Thereafter, Peninsula must operate the Seward Translator Stations in accordance with their modified licenses and, if it is unable to do so, it must terminate operations immediately.<sup>33</sup> Within 60 days from release of this order, Peninsula must file with the Secretary of the Commission, with a copy to the Chief, Media Bureau, an affidavit executed by an officer or director certifying that the Seward Translator Stations are operating in compliance with their modified licenses and stating how such compliance was achieved, or certifying that the Seward Translator Stations have ceased operations.

### III. ORDERING CLAUSES

14. Accordingly, IT IS ORDERED, that Peninsula Communications, Inc.'s June 18, 2001 "Protest and Opposition Order to Show Cause for Modification of Licenses" IS DENIED.

15. IT IS FURTHER ORDERED, that pursuant to Section 316 of the Communications Act of 1934, as amended, and Section's 1.87 and 74.1232(h) of the Commission's rules, the licenses for translator stations K272DG and K285EG, Seward, Alaska ARE MODIFIED to terminate the waivers of Sections 74.1231(b) and 74.1232(d) of the Commission's rules, effective sixty days from release of this Order.

16. IT IS FURTHER ORDERED, that no later than sixty days after release of this Order, Peninsula SHALL FILE with the Secretary of the Commission, with a copy to the Chief, Media Bureau, an affidavit signed by an officer or director indicating: (1) that stations K272DG and K285EG, Seward Alaska are operating in compliance with their modified licenses and in compliance with Sections 74.1231(b) and 74.1232(d) of the Commission's rules and stating the basis on which such compliance

<sup>31</sup> See 47 U.S.C. § 316(a) (3), see also 47 C.F.R. § 1.87(d).

<sup>32</sup> See 47 U.S.C. § 309(d), (e); see also *Amendment of Section 73.606(b), Table of Allotments, Television Broadcast Stations (Crandon, Wisconsin)*, 3 FCC Rcd 6765 (1998); *Paul and Nancy Schumacher*, 3 FCC Rcd 7148 (1988), *recon denied*, 4 FCC Rcd 3605 (1989).

<sup>33</sup> See *Order to Show Cause*, 16 FCC Rcd at 11370.

was achieved; or (2) that stations K272DG and K285EG, Seward Alaska are unable to operate in accordance with their modified licenses and have terminated operations.

17. IT IS FURTHER ORDERED that the Media Bureau SHALL SEND, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a copy of this Memorandum Opinion and Order to:

Peninsula Communications, Inc.  
c/o Jeffrey D. Southmayd, Esquire  
Southmayd & Miller  
1220 19<sup>th</sup> Street, N.W., Suite 400  
Washington, D.C. 20036

Peninsula Communications, Inc.  
Post Office Box 109  
Homer, Alaska 99603

Phoenix Broadcasting, Inc.  
c/o David Tillotson, Esquire  
4606 Charleston Terrace, N.W.  
Washington, D.C. 20007

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

**FCC 345**

FOR  
FCC  
USE  
ONLY

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

FOR COMMISSION USE ONLY  
FILE NO.

**Section I - General Information**

1. Legal Name of the Licensee/Permittee  
**Peninsula Communications, Inc.**

Mailing Address  
**P. O. Box 109**

City <b>Homer</b>	State or Country (if foreign address) <b>Alaska</b>	ZIP Code <b>99603</b>
Telephone Number (include area code) <b>(907) 325-7551</b>	E-Mail Address (if available) <b>kwavefm@xyz.net</b>	
<b>[REDACTED]</b>	Call Sign <b>K285EG</b>	Facility Identifier <b>52158</b>

2. Contact Representative (if other than licensee/permittee)      Firm or Company Name

<b>Jeffrey D. Southmayd</b>	<b>Southmayd &amp; Miller</b>
Telephone Number (include area code) <b>(202) 331-4100</b>	E-Mail Address (if available) <b>jdsouthmayd@msn.com</b>

3. If this application has been submitted without a fee, indicate reason for fee exemption (see 47 C.F.R. Section 1.1114):

Governmental Entity     Noncommercial Educational Licensee     Other \_\_\_\_\_

4. Were any of the authorizations that are the subject of this application obtained through the Commission's competitive bidding procedures (see 47 C.F.R. Sections 1.2111(a) and 73.5001)?       Yes     No

If yes, list pertinent authorizations in an Exhibit.

Exhibit No.  
**n/a**

**NOTE:** In addition to the information called for in this section, an explanatory exhibit providing full particulars must be submitted for each question for which a "No" response is provided.

**Section II - Assignor/Transferor**

1. **Certification.** Licensee/permittee certifies that it has answered each question in this application based on its review of the application instructions and worksheets. Licensee further certifies that where it has made an affirmative certification below, this certification constitutes its representation that the application satisfies each of the pertinent standards and criteria set forth in the application instructions and worksheets.  Yes  No

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

- A.  Consent to Assignment  Consent to Transfer Control  
 Amendment to pending application

If an amendment, submit as an Exhibit a listing by Section and Question Number of the portions of the pending application that are being revised.

Exhibit No.

- B.  TV Translator  Low Power TV Station  FM Translator

3. Legal Name of the Assignor/Transferor  
**Peninsula Communications, Inc.**

Mailing Address  
**P. O. Box 109**

City <b>Homer</b>	State or Country (if foreign address) <b>Alaska</b>	ZIP Code <b>99603</b>
Telephone Number (include area code) <b>(907) 235-7551</b>		E-Mail Address (if available) <b>kwavefm@xyz.net</b>

If more than one transferor, submit the information requested in question 1. for each transferor.

Exhibit No.  
**n/a**

4. Contact Representative (if other than assignee) **Jeffrey D. Southmayd** Firm or Company Name **Southmayd & Miller**

Telephone Number (include area code) <b>(202) 331-4100</b>	E-Mail Address (if available) <b>jdsouthmayd@msn.com</b>
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5. **Authorizations to be Assigned/Transferred.** List call signs, locations and facility identifiers of all authorizations to be assigned/transferred. Include construction permits and file numbers. List main station authorizations and any FM and/or TV translator stations, LPTV stations, SCA, FM and/or TV booster stations, and associated auxiliary service stations. **K285EG, #52158, Seward, Alaska**  
**K272DG, #52160, Seward, Alaska**

Exhibit No.  
**n/a**

6. **Agreements for Sale/Transfer of Station.** Licensee/permittee certifies that:

- it has placed in its station records copies of all agreements for the sale/transfer of the station(s);
- these documents embody the complete and final understanding between licensee/permittee and transferee; and
- these agreements comply fully with the Commission's rules and policies.

Yes  No See Explanation in Exhibit No **1**

7. **Character Issues.** Licensee/permittee certifies that neither licensee/permittee nor any party to the application has or has had any interest in or connection with:
- a. any broadcast application in any proceeding where character issues were left unresolved or were resolved adversely against the applicant or party to the application; or
  - b. any pending broadcast application in which character issues have been raised.
- Yes  No See Explanation in Exhibit No. 1
8. **Adverse Findings.** Licensee/permittee certifies that, with respect to the licensee/permittee and any party to the application, no adverse finding has been made, nor has adverse final action been taken by any court or administrative body in a civil or criminal proceeding brought under the provisions of any law related to the following: any felony; mass media-related antitrust or unfair competition; fraudulent statements to another government unit; or discrimination.
- Yes  No See Explanation in Exhibit No.
9. **Local Public Notice.** Licensee/permittee certifies that it has or will comply with the public notice requirements of 47 C.F.R. Section 73.3580.
- Yes  No
10. **Auction Authorization.** Licensee/permittee certifies that more than five years have passed since the issuance of the construction permit for the station being assigned/transferred, where that permit was acquired in an auction through the use of a bidding credit or other special measure.
- Yes  No See Explanation in Exhibit No.  
 N/A
11. **Anti-Drug Abuse Act Certification.** Licensee/permittee certifies that neither licensee/permittee nor any party to the application is subject to denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. Section 842.
- Yes  No

I certify that the statements in this application are true, complete, and correct to the best of my knowledge and belief, and are made in good faith. I acknowledge that all certifications and attached Exhibits are considered material representations.

Typed or Printed Name of Person Signing <b>David Becker</b>	Typed or Printed Title of Person Signing <b>President</b>
Signature 	Date <b>March 28, 2003</b>

WILLFUL FALSE STATEMENTS 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).

**NOTE:** In addition to the information called for in this section, an explanatory exhibit providing full particulars must be submitted for each question for which a "No" response is provided.

**Section III - Assignee/Transferee**

1. **Certification.** Assignee/transferee certifies that it has answered each question in this application based on its review of the application instructions and worksheets. Assignee/transferee further certifies that where it has made an affirmative certification below, this certification constitutes its representation that the application satisfies each of the pertinent standards and criteria set forth in the application instructions and worksheets.  Yes  No

2. **Legal Name of the Assignee/transferee**  
 The Moody Bible Institute of Chicago

**Mailing Address**  
 820 North LaSalle

<b>City</b> Chicago	<b>State or Country (if foreign address)</b> Illinois	<b>ZIP Code</b> 60610
<b>Telephone Number (include area code)</b> 312-329-4301	<b>E-Mail Address (if available)</b>	

If more than one transferee, submit the information requested in question 1. for each transferee.

Exhibit No.  
n/a

3. **Contact Representative (if other than assignee)** Firm or Company Name  
 Jeffrey D. Southmayd Southmayd & Miller

<b>Telephone Number (include area code)</b> 202-331-4100	<b>E-Mail Address (if available)</b> jdsouthmayd@msn.com
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4. **Nature of Applicant.** Assignee/transferee is:

- an individual       a general partnership       a for-profit corporation  
 a limited partnership       a not-for-profit corporation       a limited liability company (LLC/LC)  
 other

a. If "other," describe nature of transferee in an Exhibit.

Exhibit No.  
n/a

5. **Agreements for Sale/ Transfer of Station.** Assignee/Transferee certifies that.

- a. the written agreements in the licensee/permittee's station records embody the complete and final agreement for the sale of the station(s) which are to be assigned; and these  
 b. agreements comply fully with the Commission's rules and policies.

Yes  No

See Explanation  
in Exhibit No.  
n/a

6. **Character Issues.** Assignee/Transferee certifies that neither assignee/transferee nor any party to the application has or has had any interest in, or connection with:

a. any broadcast application in any proceeding where character issues were left unresolved or were resolved adversely against the applicant or party to the application; or

b. any pending broadcast application in which character issues have been raised.

Yes  No See Explanation in Exhibit No n/a

7. **Adverse Findings.** Assignee/Transferee certifies that, with respect to the assignee/transferee and any party to the application, no adverse finding has been made, nor has an adverse final action been taken by any court or administrative body in a civil or criminal proceeding brought under the provisions of any law related to the following: any felony; mass media-related antitrust or unfair competition; fraudulent statements to another governmental unit; or discrimination?

Yes  No See Explanation in Exhibit No n/a

8. **Alien Ownership and Control.** Assignee/Transferee certifies that it complies with the provisions of Section 310 of the Communications Act of 1934, as amended, relating to interests of aliens and foreign governments.

Yes  No See Explanation in Exhibit No n/a

9. **Financial Qualifications.** Assignee/Transferee certifies that sufficient net liquid assets are on hand or are available from committed sources to consummate the transaction and operate the station(s) for three months.

Yes  No See Explanation in Exhibit No n/a

10. **Rebroadcast Certification.** 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  N/A  
See Exhibit No. 1

11. a. Applicant certifies that it is not the licensee or permittee of the commercial primary station being rebroadcast and that neither it nor any parties to the application have any interest in or connection with the commercial primary station being rebroadcast? See 47 C.F.R. Section 74.1232(d).

Yes  No See Explanation in Exhibit No n/a  
 N/A

b. Applicant certifies that the coverage contour of the translator station will not extend beyond the protected contour of the commercial primary station being rebroadcast

Yes  No See Explanation in Exhibit No n/a  
 N/A

**NOTE:** If No to a. and b., and no waiver has been requested in an Exhibit, this application is unacceptable for filing. See 47 C.F.R. Section 74.1232(d).

If No to a. and Yes to b. applicant is prohibited from receiving any support, before or after construction, either directly or indirectly from the commercial primary station being rebroadcast or from any person or entity having any interest whatsoever, or any connection with the primary FM station. Interested and connected parties include group owners, corporate parents, shareholders, officers, directors, employees, general and limited partners, family members and business associates. See 47 C.F.R. Section 74.1232(e).

12. The applicant, if for a commercial FM translator station with a coverage contour extending beyond the protected contour of the commercial primary station being rebroadcast, certifies that it has not received any support, before or after constructing, directly or indirectly, from the licensee/permittee of the primary station or any person with an interest in or connection with the licensee or permittee of the primary station, except for technical assistance as provided for under 47 C.F.R. Section 74.1232(e).

Yes  No See Explanation in Exhibit No. n/a  
 N/A

13. **Auction Authorization.** Assignee/Transferee certifies that where less than five years have passed since the issuance of the construction permit and the permit had been acquired in an auction through the use of a bidding credit or other special measure, it would qualify for such credit or other special measure.  Yes  No  N/A 

See Explanation in Exhibit No n/a
--------------------------------------
14. **Anti-Drug Abuse Act Certification.** Assignee/transferee certifies that neither assignee nor any party to the application is subject to denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. Section 862.  Yes  No
15. **Equal Employment Opportunity (EEO).** If the applicant proposes to employ five or more full-time employees, applicant certifies that it is filing simultaneously with this application a Model EEO Program Report on FCC Form 396-A.  Yes  No  N/A

I certify that the statements in this application are true, complete, and correct to the best of my knowledge and belief, and are made in good faith. I acknowledge that all certifications and attached Exhibits are considered material representations. I hereby waive 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 request an authorization in accordance with this application. (See Section 304 of the Communications Act of 1934, as amended.)

Typed or Printed Name of Person Signing <b>Robert C. Neff</b>	Typed or Printed Title of Person Signing <b>Vice President</b>
Signature 	Date <b>March 28, 2003</b>

WILLFUL FALSE STATEMENTS 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

Peninsula Communications, Inc. is donating the licenses and assets for FM translator stations K272DG and K285EG, Seward, Alaska, to The Moody Bible Institute of Chicago. Moody will replace the current stations rebroadcast on the translators with its owned and operated noncommercial, educational station, WJCG (FM), Monee, Illinois. Moody will file applications to modify the licenses for the two translators to become noncommercial, educational FM translator stations, subject to the consummation of this transaction. Peninsula has granted Moody permission to file these license modification applications.

Peninsula has been ordered by the Commission to terminate the present operation of these translators no later than May 9, 2003. See, Memorandum Opinion And Order, FCC 03-47, released on March 10, 2003. This is the result of a modification in the licenses for the two translators that terminates the waivers of Section 74.1231(b) and 74.1232(d) of the Commission's Rules and Regulations pursuant to which the translators have operated since the institution of their operation. The subject assignment of the station licenses and assets is being undertaken in order to allow the translators to continue the service that they provide to the community of Seward, Alaska, through the rebroadcast of noncommercial, educational station WJCG (FM).

Upon the consummation of this transaction, Peninsula has agreed to donate funds to Moody for the costs and expenses associated with the operation of the translators.

Peninsula is the subject of a show cause proceeding whether the licenses for its broadcast stations should be revoked or otherwise modified. See, In the Matter of Peninsula Communications, Inc. in EB Docket No. 02-21. The matter is currently pending before Chief Administrative Law Judge Richard L. Sippel. The subject licenses are included in that proceeding.

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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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 <sup>1</sup>	)	52150
K292ED, Kachemak City, Alaska;	)	52157
K285DU, Homer, Alaska;	)	52158 and 52160
K285EG and K272DG, Seward, Alaska	)	
	)	
Former licensee of FM translator stations <sup>2</sup>	)	
K285EF, Kenai, Alaska;	)	
K283AB, Kenai/Soldotna, Alaska;	)	
K257DB, Anchor Point, Alaska;	)	
K265CK, Kachemak City, Alaska;	)	
K272CN, Homer, Alaska; and	)	
K274AB and K285AA, Kodiak, Alaska	)	

ORDER TO SHOW CAUSE

Adopted: February 1, 2002

Released: February 6, 2002

By the Commission:

1. In this Order, pursuant to Sections 312(a), 312(c) and 503(b) of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. §§ 312(a), 312(c) and 503(b), we commence a hearing proceeding to determine whether the above-captioned licenses held by Peninsula Communications, Inc. ("Peninsula") should be revoked. Peninsula has continued to operate the seven captioned unlicensed FM translators following our warning that continued unauthorized operation might lead to possible

<sup>1</sup> The captioned licensed translators are currently operating in accordance with the Commission's rules. However, as explained below, because Peninsula continues to operate the seven captioned formerly licensed translators subsequent to a direct order from us to cease such operations, the captioned translators are now subject to possible revocation.

<sup>2</sup> We include the stations formerly held by Peninsula as part of our revocation proceeding to cover the eventuality that the D.C. Circuit could ultimately reinstate their licenses. Should those licenses be so reinstated, the conduct discussed in this order raises serious questions whether Peninsula should be entitled to continue as licensee.

revocation of all of Peninsula's Commission licenses.<sup>3</sup> Such operations not only violate Section 301 of the Act, 47 U.S.C. § 301, but also are in blatant disregard of our prior order to terminate such operations,<sup>4</sup> and thus in apparent violation of Section 416(c) of the Act. Peninsula's continued refusal to obey a direct Commission order, which has not been stayed or otherwise modified, calls into question Peninsula's fitness to remain a Commission licensee. See 47 U.S.C. § 312(a)(2) and (a)(4). See also *Policy Statement on Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179 (1986) ("*Character Policy Statement*") (subsequent history omitted). Moreover, as explained herein, our order to terminate operations on the seven translators continues to be valid, and Peninsula is obligated to comply with it.

## DISCUSSION

2. The background of this case is discussed at length in the *NAL* and related *Forfeiture Order* issued in connection with Peninsula's violation of Section 301 of the Act.<sup>5</sup> In our *May 2001 MO&O*, the Commission ordered Peninsula to cease operating seven FM translator stations. It is undisputed that Peninsula has not complied with our order. Peninsula has indicated that it intends to continue to operate despite the Commission's order until the D.C. Circuit rules on its appeal of the *May 2001 MO&O*.<sup>6</sup>

3. Peninsula has argued that it is justified in continuing to operate despite the Commission's order pursuant to sections 1.62 and 73.3523 of the Commission's rules, 47 C.F.R. §§ 1.62 and 73.3523, because its renewal applications are still "pending." We disagree. As a preliminary matter, we note that even if the rules did permit Peninsula to continue operation, a licensee cannot ignore a Commission order simply because it believes such order to be unlawful. As the Act specifically provides:

All such orders shall continue in force for the period of time specified in the order or until the Commission or a court of competent jurisdiction issues a superseding order.<sup>7</sup>

It shall be the duty of every person, its agents and employees, and any receiver or trustee thereof, to observe and comply with such orders so long as the same shall remain in effect.<sup>8</sup>

In any event, neither rule cited by Peninsula authorized it to continue broadcasting after the date

<sup>3</sup> See *Peninsula Communications, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 16 FCC Rcd 16124 (2001) ("*NAL*").

<sup>4</sup> See *Peninsula Communications, Inc.*, 16 FCC Rcd 11364 (2001) ("*May 2001 MO&O*"). This day we also release a *Forfeiture Order* (FCC 02-31), which imposes a forfeiture of \$140,000 on Peninsula for its willful and repeated violations of Section 301 of the Act, resulting from the continued operation of the unlicensed translators.

<sup>5</sup> See notes 3 and 4, *supra*.

<sup>6</sup> See Declaration of David F. Becker, President, Peninsula Communications, Inc., filed September 10, 2001. Peninsula filed this sworn declaration in response to the Commission's order that it do so. See also *Peninsula Communications, Inc. v. FCC*, Case No. 01-1273 (D.C. Cir. June 15, 2001).

<sup>7</sup> 47 U.S.C. § 408.

<sup>8</sup> 47 U.S.C. § 416(c).

specified in the *May 2001 MO&O*. Section 1.62 of our rules provides that a renewal applicant's license "shall continue in effect ... until such time as the Commission shall make a final determination with respect to the renewal application."<sup>9</sup> Here, the Commission made such a final determination. The fact that an appeal is pending is irrelevant for purposes of section 1.62, as the Commission held in *Mobilcom Pittsburg, Inc.*, 9 FCC Rcd 509 (1994). As for 47 C.F.R. § 73.3523, the definition of a pending application on which Peninsula relies is expressly restricted by subsection (d) of that rule to the operation of that rule alone. Section 73.3523 seeks to prevent a competing applicant who filed against a renewal application from receiving "greenmail" from the renewal applicant. That rule has absolutely nothing to do with this case. Hence, neither rule provides any justification for Peninsula's continued operation of the captioned translators after the date specified in the *May 2001 MO&O* (that is, after midnight May 19, 2001).<sup>10</sup>

4. Peninsula also contends that the D.C. Circuit Court's September 6, 2001, Order,<sup>11</sup> raises questions about the finality of the *May 2001 MO&O*. We disagree. That order merely requests a status report and does not purport to find that the *May 2001 MO&O* was not a final decision as to the status of the seven FM translators. In any event, the fact that an order may not be final does not affect a party's obligation to comply with such order. Next, Peninsula argues that 47 U.S.C. § 312(g)'s mandate for the

<sup>9</sup> See also 5 U.S.C. § 558(c) (corresponding provision of the Administrative Procedure Act states that the license continues until the renewal application "has been finally determined by the agency").

<sup>10</sup> Generally, we permit a disqualified broadcast licensee to continue operations during judicial appeals to ensure service to the public until the court resolves the licensee's qualifications. See *Pinebluffs, Inc.*, 7 FCC Rcd 6058, 6061 n. 12 (1992). In those situations, when we choose to allow licensees to continue operations, we do so explicitly. See, e.g., *Contemporary Media, Inc.*, 13 FCC Rcd 14437, 14461 (1998). In our *May 2001 MO&O*, we did not give Peninsula continued authority to operate. We also note that, in light of the record, it would have been inappropriate for us to do so. As discussed in the *May 2001 MO&O* and *NAL*, Peninsula received in November 1997 conditional grants of renewal and assignment applications to remedy rule violations that had been ongoing since June 1, 1994. At the outset, Peninsula accepted and endorsed the conditional grants as fair and consistent with the facts and the law. See *May 2001 MO&O*, 16 FCC Rcd at 11368. However, by the time of the *May 2001 MO&O*, Peninsula had failed to fulfill the condition, namely, consummating the assignment of its FM translator licenses, despite having years to do so and despite our explicit warning that not doing so would result in cancellation of those licenses. See *Peninsula Communications, Inc.*, 15 FCC Rcd 3293 (2000) ("*February 2000 MO&O*"); *May 2001 MO&O*. Moreover, the record further demonstrated beyond doubt that Peninsula would never fulfill the condition. In light of these circumstances, granting Peninsula authority to continue to operate its FM translators during the pendency of any judicial appeals of the *May 2001 MO&O* would have perpetuated long-standing rule violations and been inconsistent with the warning in our *February 2000 MO&O*. We saw no reason to do either. We had given Peninsula ample time to meet the condition imposed in 1997 and come into compliance with 47 C.F.R. § 74.1232(d).

<sup>11</sup> *Peninsula Communications, Inc. v. FCC*, Case No. 01-1273 (D.C. Circuit). In pertinent part, the Order requires Peninsula to "file a status report addressing whether any proceedings on the FCC's order to show cause [concerning the proposed modification of two FM translator licenses for Seward, Alaska] or any other proceedings related to the FCC's May 18, 2001 order remain pending before the FCC. The parties are directed to file motions to govern proceedings within 30 days of the filing of appellant's status report. If appellant's status report demonstrates that any proceedings on the FCC's May 18, 2001 order remain pending before the FCC, the parties should address the effect of such proceedings on the court's jurisdiction to hear this appeal." Peninsula filed the required status report on September 20, 2001. In response, we filed a "Motion to Govern Further Proceedings" on October 18, 2001. Therein, we argued that the *May 2001 MO&O* is final and appealable with respect to the seven translators whose licenses we cancelled, and we urged the Court to issue a briefing schedule. The Court has not yet acted on our motion.

cancellation of licenses for stations that remain silent for any consecutive 12-month period justifies Peninsula's continued operation pending its appeal in order to preserve those licenses. Again, we disagree. As matters now stand, the seven FM translator licenses are no longer in effect. Hence, 47 U.S.C. § 312(g), which by its terms applies to licensed stations that remain silent for one year, is inapposite. In any event, the fact that compliance with an order might negatively impact Peninsula does not justify ignoring such an order. Finally, Peninsula submits that it had a right to a hearing prior to the dismissal of its seven translator licenses pursuant to 47 U.S.C. §§ 309(e) or 312(c). Peninsula is mistaken. Peninsula had received and accepted a conditional grant of its 1995 renewal applications for the translators in 1997. Having failed to fulfill the condition despite having years to do so, Peninsula forfeited its licenses and has no entitlement to a hearing. See *P & R Temmer v. FCC*, 743 F.2d 918, 928 (D.C. Cir. 1984) (termination of license for failure to meet license condition did not require hearing). In any event, even if Peninsula wins on this argument in court, that does not justify its failure to comply with the Commission's order.

5. We have considered and rejected Peninsula's contentions. None of the rule or statutory provisions cited by Peninsula authorized in any way its operation of the translators once the *May 2001 MO&O* became effective. We did not provide for continued operation of Peninsula's translators in our *May 2001 MO&O*, and, absent a stay of that order,<sup>12</sup> Peninsula was required to terminate operations upon that order's effective date. See 47 U.S.C. §§ 408, 416(c). Peninsula did not do so. Instead, it has chosen to defy our order. We conclude that Peninsula's continued failure to obey our *May 2001 MO&O* belies its claim that it has acted as a conscientious and responsible broadcast licensee. We further conclude that Peninsula's defiance raises extremely serious questions as to whether Peninsula has the character qualifications to continue as a licensee, regardless of whether it ultimately prevails in court on the appeal of our *May 2001 MO&O*.

#### ORDERING CLAUSES

6. Accordingly, IT IS ORDERED THAT, pursuant to Sections 312(a)(2), 312(a)(4) and 312(c) of the Act, 47 U.S.C. §§ 312(a)(2), 312(a)(4) and 312(c), and section 1.91 of the Commission's rules, 47 C.F.R. § 1.91, Peninsula Communications, Inc. is hereby ORDERED TO SHOW CAUSE why its licenses for broadcast stations KGTL, Homer; KXBA(FM), Nikiski; KWVV-FM, Homer; KPEN-FM, Soldotna; and its licenses for FM translator stations K292ED, Kachemak City; K295DU, Homer; K285EG and K272DG, Seward, all in Alaska, SHOULD NOT BE REVOKED. In the event the D.C. Circuit reinstates the licenses for former FM translator stations K285EF, Kenai; 283AB, Kenai/Soldotna; K257DB, Anchor Point; K265CK, Kachemak City; K272CN, Homer, and K274AB and K285AA, Kodiak, all in Alaska, we intend that all such licenses shall be included in this Order to Show Cause. Peninsula shall

<sup>12</sup> Peninsula observes that it filed a motion for stay of our *February 2000 MO&O*, which, it argues, we never directly addressed. It now "renews" its request that the Commission stay its *May 2001 MO&O* pending a final court determination of Peninsula's appeal. We dismiss Peninsula's request. Peninsula's request does not comply with section 1.44(e) of our rules, 47 C.F.R. § 1.44(e), which requires that stay requests be filed as separate pleadings. Moreover, our *May 2001 MO&O* modified in significant respects the *February 2000 MO&O*, thereby rendering moot Peninsula's stay request of the *February 2000 MO&O*. In any event, we note that the mere pendency of such a motion does not give Peninsula the right to disobey our direct order to terminate operations of the seven translators. We also note that an order of the 9<sup>th</sup> Circuit Court of Appeals staying a District Court preliminary injunction against Peninsula's continued operation pending Peninsula's appeal of the District Court's order (*United States v. Peninsula Communications, Inc.*, Case No. 01-35965 (9<sup>th</sup> Cir.), Order, November 21, 2001) does not affect the continuing validity of the Commission's *May 2001 MO&O*. Even if the 9<sup>th</sup> Circuit's order did have such an effect, Peninsula's defiance of the *May 2001 MO&O* continued for six months, which, by itself, would be a sufficient basis to commence this revocation proceeding.

appear before an Administrative Law Judge at a time and place to be specified in a subsequent Administrative Law Judge order and give evidence upon the following issues:

- (a) To determine the facts and circumstances surrounding Peninsula Communications, Inc.'s operation of former FM translator stations 285EF, Kenai; K283AB, Kenai/Soldotna; K257DB, Anchor Point; K265CK, Kachemak City; K272CN, Homer; and K274AB and K285AA, Kodiak, all in Alaska, subsequent to August 29, 2001, contrary to the Commission's order in *Peninsula Communications, Inc.*, 16 FCC Red 11364 (2001), and related violation of Section 416(c) of the Act;
- (b) To determine, in light of the evidence adduced pursuant to issue (a), whether Peninsula Communications, Inc. has the requisite character qualifications to be a Commission licensee and thus whether its captioned broadcast and FM translator licenses, including any former licenses reinstated, should be revoked.

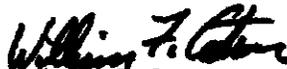
7. IT IS FURTHER ORDERED THAT, to avail itself of the opportunity to be heard and to present evidence at a hearing in this proceeding, Peninsula Communications, Inc., pursuant to section 1.91(c) of the Commission's rules, 47 C.F.R. § 1.91(c), SHALL, within thirty days of its receipt of this ORDER TO SHOW CAUSE, FILE with the Commission a written appearance stating that it will appear at the hearing and present evidence on the issues specified above. An unexcused failure to file a timely notice of appearance will constitute a waiver of such hearing, pursuant to section 1.92(a)(1) of the Commission's rules, 47 C.F.R. § 1.92(a)(1). If the hearing is waived, Peninsula Communications, Inc. may submit a written signed statement pursuant to section 1.92(b) of the Commission's rules, 47 C.F.R. § 1.92(b), which can deny, seek to mitigate or justify its unauthorized operation of the seven noted translators. In the event Peninsula Communications, Inc. waives its right to a hearing, the Chief Administrative Law Judge (or presiding officer if one has been designated) shall, at the earliest practicable date, issue an order reciting the events or circumstances constituting a waiver of hearing, terminating the hearing, and certifying the case to the Commission. See section 1.92(c) of the Commission's rules, 47 C.F.R. § 1.92(c).

8. IT IS FURTHER ORDERED THAT, pursuant to section 0.111(b) of the Commission's rules, 47 C.F.R. § 0.111(b), the Enforcement Bureau shall serve as trial staff in this proceeding.

9. IT IS FURTHER ORDERED THAT, pursuant to Section 312(d) of the Act, 47 U.S.C. § 312(d), and section 1.91(d) of the Commission's rules, 47 C.F.R. § 1.91(d), the burden of proceeding with the introduction of evidence and the burden of proof shall be upon the Commission.

10. IT IS FURTHER ORDERED THAT, pursuant to Section 312(c) of the Act, 47 U.S.C. § 312(c), a copy of this ORDER TO SHOW CAUSE shall be sent by Certified Mail Return Receipt Requested to David F. Becker, President, Peninsula Communications, Inc., Post Office Box 109, Homer, Alaska 99603, with a copy to Jeffrey D. Southmayd, Esquire, Southmayd & Miller 1220 19<sup>th</sup> Street, N.W., Suite 400, Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

  
William F. Caton  
Acting Secretary