

TESTIMONY OF JOHN C. DAVIS

1. My name is John C. Davis. I am president, chief executive officer and majority shareholder of KSRM, Inc., licensee of radio stations KSRM(AM) and KWHQ-FM, Kenai, Alaska, and KSLD(AM) and KKIS-FM, Soldotna, Alaska. I have been the president, chief executive officer and majority shareholder of KSRM, Inc. since 1982. From 1972 to 1982, I was general manager of radio station KSRM(AM). I became general manager of KQOK-FM (which became KWHQ-FM), when it began operations in late 1976.
2. In January 1979, KSRM, Inc. commenced operations of an FM translator station in Homer, Alaska on channel 278, which rebroadcast the signal of KQOK-FM. I was responsible for placing the translator in Homer. I obtained the financing, assisted the engineers with the installation, and oversaw the paperwork that went to the Federal Communications Commission ("FCC"). It cost about \$2,500 to build the translator.
3. Kenai is approximately 65 miles from Homer. The 1 mV/m contour of KQOK-FM did not reach Homer. Thus, our translator was not a "fill-in" translator but an "other-area" translator. We installed the translator in Homer in order to provide KQOK-FM's programming to Homer and increase the sale of advertising time on KQOK-FM. We knew that a full-power FM station for Homer was in the offing as Peninsula Communications, Inc. ("Peninsula") had filed a construction permit application in December 1978. We opted to broadcast to Homer via translator, rather than seek a full-power broadcast station, because we did not believe the Homer market was sufficient to support a second commercial FM station.

Federal Communications Commission

Docket No. 02-21 Exhibit No. EB31

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Disposition Received 9-26-02

Rejected _____

Reporter E. Thomas

Date 9-26-02

4. Peninsula's FM station in Homer came on line in September 1979. As a consequence, we were forced to relocate the output frequency of our Homer translator to channel 265. We operated that translator (K265AG) until June 1, 1994. During our tenure as licensee of Station K265AG, we employed a series of sales persons in Homer, paid entirely by commission, who generated more than enough revenue to support the operation of the translator. In this regard, our costs to operate and maintain the translator were quite modest; usually, our only significant monthly expense was the station's electric bill, which was approximately \$160.

5. About the time Peninsula's FM station in Homer commenced broadcast operations, Peninsula filed a petition with the FCC to terminate the operation of Station K265AG. In essence, Peninsula argued that it should not be forced to compete against a translator for the limited revenues likely to be available in the Homer market. The FCC denied Peninsula's petition by an order released to the public in early 1982. The FCC concluded that our translator could continue to operate because Peninsula did not demonstrate that the presence of our translator was likely to cause its full-power FM station to fail.

6. Shortly after the FCC's decision, Peninsula sought and obtained an authorization from the FCC to build a translator that would serve Kenai and Soldotna, the markets served by KSRM, Inc.'s then two radio stations, which would rebroadcast its Homer FM station. Like our translator in Homer, Peninsula's translator in Kenai/Soldotna was an "other-area" translator in that the 1 mV/m contour of KWVV-FM (then known as KGTL-FM) did not reach Kenai or Soldotna. Peninsula's translator, then known as K265BJ, began operations sometime in the summer of 1983. In addition to its translator, Peninsula

soon thereafter sought and received an authorization from the FCC to build a full-power FM broadcast station, licensed to Soldotna. That station, KPEN-FM, began operations in early 1984.

7. Initially, Peninsula's Kenai/Soldotna translator did not have a noticeable impact on KSRM, Inc.'s revenues. However, after Peninsula built or bought additional "other area" translators, which allowed Peninsula to broadcast its two FM stations, KWVV-FM and KPEN-FM, in Kodiak and Seward, Peninsula began to market their operations as the area super stations. The super stations concept allowed Peninsula to sell commercial time on its stations to advertising agencies in Anchorage, Seattle and other cities outside of Alaska, who represented national clients such as McDonalds, Burger King, Midas, Chrysler, Ford and Chevrolet, each of which had franchises or operations not only in Kenai, but also in Homer, Kodiak and Seward, or wanted to attract listeners to their other locations. With one buy, the agency could reach the entire Kenai peninsula as well as Kodiak Island for its client. Similarly, local businesses in Kenai and Soldotna would often purchase advertising time on KWVV-FM and KPEN-FM, not because those stations had higher local ratings than KSRM, Inc.'s stations, but because Peninsula's stations reached potential customers via its translators that KSRM, Inc.'s stations could not reach. In this regard, once KSRM, Inc. ceased operating K265AG in Homer, we could reach only the populations centered in Kenai and Soldotna. Thus, even though KSRM, Inc.'s stations had the bulk of the listening audience in Kenai and Soldotna, which, in turn, had more people than Homer, Seward and Kodiak combined, we lost potential sales to Peninsula because it continued to operate its "other area" translators in Kenai/Soldotna, Homer and Kodiak after it should have shut them down.

8. In addition to the reasons noted above, KSRM, Inc. lost business to Peninsula because of the latter's illegal operation of its "other area" translators for the simple reason that Peninsula's costs in the Kenai/Soldotna market (as well as the Kodiak and Seward markets) were always going to be lower than its full-power competitors. Peninsula maintained its programming staff in Homer. Peninsula has a main studio in Kenai, but, to my knowledge, it is never used for the purpose of producing and delivering local programming. Moreover, Peninsula has no studios in either Seward or Kodiak. Its expenses in those markets are limited to maintaining the translators and covering the costs of any sales efforts made. Thus, as a practical matter, any money spent for advertising in Kodiak and Seward goes to Homer, where Peninsula is situated; little or none stays in Kodiak or Seward.

9. As noted above, KSRM, Inc. shut down its translator in Homer on June 1, 1994. KSRM, Inc. took this action in order to abide by the FCC's directives concerning "other-area" translators. Essentially, KSRM, Inc. has been punished for complying with the FCC's rules because its principal competitor, Peninsula, did not comply. Indeed, since being informed explicitly in March 1996 by the FCC that its operations violated the rules, Peninsula has found one way or another to continue to operate its "other-area" translators. Worse, even after the FCC told Peninsula in 2001 to shut down the Kenai/Soldotna and Kodiak translators, Peninsula refused to stop their operations and thereby garnered income which could have gone to KSRM, Inc. or the licensee of the Kodiak stations.

10. KSRM, Inc. has proudly served its local communities of Kenai and Soldotna through news programming, public affairs programming and other community service for more than 30 years. Peninsula, on the other hand, has spent little time or effort serving

Kenai and Soldotna. Peninsula's presence in Kenai and Soldotna has been, and continues to be, basically limited to selling advertisements and providing music. While important in their own right, these activities are not, and have never been, the essence of public service.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on this 10th day of September, 2002.

A handwritten signature in black ink, appearing to read "John C. Davis", written over a horizontal line.

John C. Davis