

EB #34

9/26

TESTIMONY OF ANDREW TIERNEY

1. My name is Andrew Tierney. In January of 1996 I was hired by Cobb Communications, Inc. ("Cobb") as the General Manager of its stations, KVOK-AM and KRXX-FM, in Kodiak, Alaska. I lived in Kodiak and remained the General Manager of the stations for approximately four and one-half years.

2. During most of that time period, Peninsula Communications, Inc. ("Peninsula") broadcast its stations, KPEN-FM and KWVV-FM, to Kodiak via its translator. The competition from Peninsula had a significant adverse economic impact on Cobb's revenue and market share.

3. Kodiak is an island that had, at that time, approximately 15,000 residents. This limited client base produced a small core group of advertisers. Cobb and Peninsula, as licensees of the only commercial radio stations serving Kodiak, directly competed for the limited advertising funds in the market. Peninsula regularly sent its advertising salesman to Kodiak for 3-4 days at a time. Its salesman would rent a car, attach a magnetic KWAVE/KPEN sign to it, and call on the island's advertisers.

4. Peninsula marketed its stations as being "super stations" that supplied broadcast coverage, with the help of its translators, to the entire Kenai Peninsula and Kodiak Island. In fact, even when Peninsula was 'dark' in Kodiak, it continued to issue the abbreviated Kodiak weather reports and continued to ID its Kodiak translators at the top of each hour on the broadcasts of its primary stations. Cobb's stations broadcast only in the Kodiak area. The "super stations" concept allowed Peninsula to sell commercial time on its stations to advertising agencies in Anchorage, Seattle and other locations, who represented national clients such as McDonalds, Burger King, Safeway, NAPA, Dodge, Ford and Toyota, each of which had franchises or operations in more than one of the Kenai, Soldotna, Homer, Kodiak and Seward

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Reporter E Thomas

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markets, and to politicians in state-wide or regional-wide races. With one buy, the agency or politician could reach the entire Kenai peninsula and Kodiak Island for its client.

5. Peninsula's "super station" concept also assisted Peninsula in undercutting Cobb's advertising rates. For example, Peninsula's regional advertising rates undercut Cobb's advertising rates by offering Kodiak coverage at a greatly reduced price if an advertiser would advertise peninsula-wide: Peninsula might offer a national or regional advertisement rate of \$100, of which \$95 was allocated for the peninsula-wide advertisement and \$5 for the Kodiak advertisement. Peninsula would, in effect, almost give away the Kodiak advertisements in order to attract the peninsula-wide advertisers. In one specific instance, the local McDonalds restaurant did not advertise with Cobb because Peninsula had the Alaska McDonald's Co-op as a client. The Kodiak McDonald's restaurant was not a member of the co-op, but the residents of Kodiak heard commercials for Alaska's McDonalds because Peninsula broadcast those commercials on its primary stations that were heard in Kodiak via Peninsula's translators. Within two months after Peninsula's translator quit broadcasting in Kodiak, the Kodiak McDonalds began advertising with Cobb in order to secure advertising coverage in the Kodiak market.

6. Peninsula's stations also split the listening audience by offering additional music formats to those offered by the local stations and that had an adverse impact of Cobb's advertising revenues. There were 2 non-commercial stations in Kodiak: a public radio station, KMXT, offered a typical National Public Radio format, such as classical music and programs such as "All Things Considered," as well as a station that offered 24-hour-per-day religious programming. Cobb's stations were the only local commercial stations in Kodiak: KVOK(AM) offered an oldies format and KRXX-FM offered a classic rock format. Peninsula's commercial

stations directly competed with Cobb for audience share and advertising revenue: KPEN-FM offered a country music format and KWVV-FM offered a soft rock – adult contemporary format. As a consequence, there were local advertisers who advertised with Peninsula because of the music format its stations offered. Cy's Sporting Goods, Cost Savers and City Limits, for example, bought advertising only on KPEN-FM, Peninsula's country music station, while that station was broadcasting in Kodiak.

7. The owner of a local store that regularly advertised, Joycrafts Marine, was a personal friend of David Becker and, while Peninsula was broadcasting in Kodiak, Joycrafts Marine would only advertise on Peninsula's stations.

8. Peninsula's illegal broadcasts further reduced Cobb's revenues because many of the local advertisers (Northern Exposure Gallery, Sutliff's True Value, Kodiak Oil Sales, Petro Marine, Eggemeyer's Furniture, Ardingers) split their advertising budgets between Peninsula's and Cobb's stations in order to fully reach the island's audience. One specific example is Wodlingers Drug Store. The local manager, Rusty, had a \$6,000 radio budget slated for a large sales event. Cobb received a \$3000 order and KPEN/KWVV received the other \$3,000. Before the schedule was to begin airing, Peninsula's translator was turned off and, consequently, KVOK(AM) and KRXX-FM received the \$3,000 that was supposed to go to Peninsula. I estimate that Peninsula took between \$5,000 to \$10,000 out of the market each month in local advertising revenue. But for Peninsula's broadcasts, a significant portion of this revenue would have gone to KVOK(AM) and KRXX-FM.

9. Cobb's stations, KVOK-AM and KRXX-FM, also operated at a disadvantage when compared to Peninsula's stations because Peninsula's costs in the Kodiak market (as well as the Kenai/Soldotna and Seward markets) were much lower than its full-power competitors.

Peninsula maintained its programming staff in Homer. Peninsula did not have a studio in Kodiak and did not regularly produce or deliver any local programming to its Kodiak audience. Although Peninsula published local telephone numbers, Kodiak residents who dialed these numbers were simply transferred, via an extension, to Peninsula's offices on the Kenai Peninsula. Peninsula's expenses in Kodiak were limited to maintaining its translator and covering the costs of any sales efforts made. Thus, as a practical matter, any money spent for advertising in Kodiak went to Homer, where Peninsula was located, and little or none stayed in Kodiak or benefited the Kodiak community.

10. Cobb maintained and operated a local studio in Kodiak for its stations. Both KVOK-AM and KRXX-FM broadcast live local programming daily, and frequently offered live remote broadcasts from events of community interest. Additionally, Cobb often contributed free air-time, prizes and money to community causes and non-profit organizations. We often did food drives, fund raising events for non-profit organizations and families in need and we regularly supported the island's many public safety organizations. The increased costs associated with these services and functions included not only the mortgage, insurance, utility, studio and broadcast equipment and building maintenance costs associated with maintaining and using a local studio building, but the staff required to broadcast locally, including staff expenses incurred while attending community events; the music library necessary to broadcast live shows; the entertainment-related subscriptions necessary to offer games and contests in order to entertain the audience; the additional equipment and staff required for remote broadcasts, and the prizes and free air-time contributed to worthy community causes. The expenses of funding Cobb's full-service, community-based stations clearly put Cobb at a competitive disadvantage when compared to Peninsula's low-budget Kodiak operations.

11. Peninsula's ability to broadcast into Kodiak also diminished the value of Cobb's Kodiak stations. On April 3, 2000, Cobb sold KVOK-AM and KRXX-FM, its Kodiak stations. Although Peninsula was not broadcasting into Kodiak at the time of the sale, the threat that Peninsula would resume its broadcasts to Kodiak was of great concern to the stations' buyers and clearly reduced the market value and sales price of those stations.

12. In November of 1997 Peninsula lost its tower site in Kodiak and consequently was unable to effectively broadcast in the Kodiak area until October of 1998, when it resumed limited broadcasts to Kodiak. After a short initial waiting period to determine whether Peninsula would get back on the air, Cobb's advertising business suddenly and dramatically improved when Peninsula did not immediately resume its broadcasts. Advertisers who had previously only advertised with Peninsula suddenly advertised on KVOK-AM and KRXX-FM and advertisers who previously split their advertising budgets between Peninsula and Cobb began advertising exclusively on Cobb's stations (Northern Exposure Gallery, Wodlingers, Kodiak Oil Sales, Eggemeyer's Furniture, Ardinger's Apparel, Norman's, Bases Loaded). For the first time, the Kodiak McDonalds, Associated Island Brokers, Cy's Sporting Goods and Cost Savers, for example, advertised on Cobb's stations. Political, regional and national advertisement revenues noticeably increased, as did Cobb's audience share. The increased audience share instilled listener loyalty to Cobb's stations, which further increased its advertising sales. The sudden increase in advertising as a result of Peninsula's stations being unable to broadcast in Kodiak clearly demonstrated the detrimental effect Peninsula's illegal Kodiak translators had had on the revenues of KVOK-AM and KRXX-FM.

13. Since it began broadcasting in Kodiak, Cobb actively served the Kodiak community through news programming, public affairs programming and other community services. On

behalf of Cobb, I was active in the community. I was President of the Chamber of Commerce, active in the Rotary Club and a member of the Kodiak Emergency Response Board. Cobb's stations offered broadcast coverage of all major Kodiak events and a forum for public discussion on topics of interest to the community. KVOK-AM broadcast live for the greater part of each day. In addition to its entertainment programming, it broadcast local weather three times each hour and full marine weather five times per day, as well as local, statewide and national news each hour and "crabber messages" five times each day. "Crabber messages" were an important way for people who are in an isolated location and without access to telephones or other means of communication to communicate with each other. KVOK-AM's "Hotline Show" was a popular community sounding board program that frequently presented guests, ranging from U.S. Senators and the Chief of Police, to local individuals or representatives of local organizations. KRXX-FM primarily presented music, local and full marine weather and news but, if warranted, also broadcast special notices, warnings, etc.

14. Contrary to assertions made by Peninsula in documents filed with the FCC, Kodiak is not a remote fishing village. Kodiak Island is the largest island in a large group of islands known as the Kodiak Island Archipelago. It is the second largest island in the United States. Only the island of Hawaii is larger. The City of Kodiak, at the northeastern tip of the island, is about 250 miles south of Anchorage. Seven roundtrip flights a day take place between Anchorage and Kodiak. The city serves as the major supply and transportation center for the archipelago's six villages. The largest Coast Guard base in the United States is permanently located on the island. It is the largest Coast Guard command in the Pacific area and performs search and rescue missions for all of Alaska's coastal communities. Many of Cobb's employees were the dependents of Coast Guard personnel stationed there.

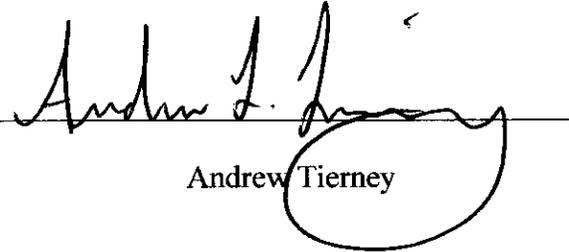
15. The weather in and around Kodiak is often unpredictable and harsh. Because of its location Kodiak is also subject to tsunami's occurring as a result of earthquakes and volcanic eruptions. For these reasons, Kodiak residents pay particular attention to marine weather reports. Residents, particularly fishermen, want full, accurate, marine weather reports. Abbreviated weather reports are not useful to them. Consequently, each of Cobb's stations regularly broadcast full marine weather reports. Peninsula's stations did not. Peninsula offered only abbreviated weather reports that were simply a vehicle for Peninsula to advertise its sponsors.

16. In 1964 Kodiak and several Kenai peninsula ports experienced a devastating tsunami. Consequently, a tsunami "watch" and "warning" system was established in Kodiak. A "watch" told residents to gather their possessions to prepare to move to higher ground. When I was in Kodiak, the public was informed of a tsunami "watch" primarily by radio broadcasts of the pertinent information. A "warning," normally communicated by the sounding of a siren, told people to immediately proceed to higher ground. In approximately 1998 there was a tsunami "watch" issued by the Kodiak Emergency Response Board. It was the closest Kodiak had come to a tsunami "warning" since the 1964 earthquake. Cobb's stations immediately began broadcasting the tsunami "warning" information to its audience. Peninsula's stations did not. In fact, no mention of the tsunami "warning" was ever broadcast by the Peninsula stations. The Emergency Response Board subsequently received numerous complaints about Peninsula's failure to broadcast the tsunami "watch" information from listeners who were unaware at the time that a tsunami "watch" had been issued. Given the circumstances surrounding the pending danger, many listeners did not take the time to realize that Peninsula was not a local station.

17. This tsunami "watch" incident is but one example of Peninsula's lack of involvement in the Kodiak community. Peninsula offered no community services to its Kodiak audience and

seldom was physically represented in Kodiak. In addition to its sales calls to local merchants, Peninsula would occasionally broadcast high school sports games played in Kodiak IF a team from Homer, Kenai or Soldatna was playing in the game, and Peninsula would broadcast live each March from Comfish, the country's second largest commercial fishing exposition, on behalf of a local sponsor. Peninsula only visited Kodiak if it reaped a direct financial benefit from doing so. Similarly, Peninsula offered no programming aimed at its Kodiak audience. The only times that Kodiak was mentioned on KPEN-FM or KWVV-FM was during advertisements and weather forecasts. Peninsula's presence in Kodiak was 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 11th day of September, 2002.


Andrew Tierney