

1 Keep going. I think that's the 1993 Memorandum Opinion  
2 and Order. It's a much thicker document.

3 MR. SOUTHMAYD: Is this the 1991?

4 MR. SHOOK: This is the Report and Order that was  
5 released December 4, 1990.

6 MR. SOUTHMAYD: Okay.

7 MR. SHOOK RESUMES:

8 Q Now -- and do you recall that when we were looking at  
9 footnote 59 it was in conjunction with the section of  
10 the Order that pertained to signal delivery?

11 A Where is that?

12 Q If you look at page 7220 above paragraph 56 you will  
13 see the heading signal delivery.

14 A Okay.

15 Q And you will see that following that portion there are  
16 one, two, three, four, five, six, seven paragraphs  
17 numbering 56 through 62.

18 A Uh-huh (affirmative).

19 Q Do you see that?

20 A Yes.

21 Q And that's where footnote 59 appears. Footnote 59  
22 appears in connection with paragraph 61. Do you see  
23 that?

24 A There is a reference in -- in paragraph 61 with a  
25 footnote reference to 59 at that point.

1 Q And you do understand, don't you, that Section  
2 74.1232(d) of the rules has nothing to do with signal  
3 delivery?

4 A I need a copy of the rule in front of me. To see what  
5 it says.

6 Q Let me see if I can help you there.

7 MR. SHOOK: Jeff, I'm going to place before Mr.  
8 Becker.....

9 MR. SOUTHMAYD: I think we could stipulate to that.

10 MR. SHOOK: All right.

11 THE WITNESS: Okay.

12 MR. SHOOK RESUMES:

13 Q Now, if we take a look at the footnote 59. The  
14 Commission references Wrangell and it says that it has  
15 accommodated Alaska's unique lack of adequate  
16 communication services by granting various waivers and  
17 it notes three areas, program origination, alternative  
18 signal delivery and cross service translating. Do you  
19 see that?

20 A What page are we on?

21 Q That's page.....

22 A Oh, I.....

23 Q .....7245.

24 A Yeah, I found it. Okay. I see it.

25 Q Now Peninsula's translators for Kenai, Soldotna,

- 1 Kodiak, Anchor Point, Homer and Kachemak City, they  
2 don't have waivers for alternative signal delivery, do  
3 they?
- 4 A That is correct.
- 5 Q And currently they don't have waivers for cross service  
6 translating?
- 7 A Yes.
- 8 Q I mean that would be correct?
- 9 A Yes.
- 10 Q Now looking at the footnote, wouldn't you agree that  
11 the footnote says nothing about waiving ownership  
12 restrictions?
- 13 A There is nothing in the footnote that I see references  
14 owner restrictions.
- 15 Q Okay.
- 16 A However the footnote does say that we intend that our  
17 decisions herein not alter in any fashion the special  
18 treatment we accord Alaska, and it cites Wrangell Radio  
19 Group. And when we submitted all of our applications  
20 that were applicable to that we referenced Radio --  
21 Wrangell Radio Group. And the Commission by granting  
22 the licenses granted us that exception. And there are  
23 lots of, you know, examples around the state as well,  
24 not just my translators.
- 25 Q Well I'm sure we'll have a chance at some point in the

- 1 future to go into all those.
- 2 A Uh-huh (affirmative).
- 3 Q I just -- I don't intend to do that today.
- 4 A Okay.
- 5 Q Now, the next document I'd like to place in front of  
6 you is dated May 6, 1991. And it's a letter, a two  
7 page letter addressed to Ms. Donna R. Searcey and it  
8 transmits -- it appears to transmit on behalf of  
9 Peninsula an application for a new FM translator on  
10 channel 285 at Kenai.
- 11 A Yes.
- 12 Q Now, looking through this letter can you point to me or  
13 describe to me the language that Peninsula used to  
14 request a waiver for the current version of Section  
15 74.1232(d)?
- 16 A Paragraph one, two, three, four references -- paragraph  
17 four references Wrangell Radio Group, 75 FCC 2D404,  
18 1979. This policy has become known as the Alaska  
19 exception for FM translator applications. The  
20 Commission has evolved -- the need has evolved into a  
21 policy of granting liberal waivers of the Commission's  
22 broadcast rules including in the context of application  
23 for new FM translators and major changes and facilities  
24 of existing stations references Wrangell Radio Group.
- 25 Q All right. And then what does the next paragraph read

1 on the following page?

2 A Peninsula respectfully requests that its subject  
3 application be accepted for filing and processed in  
4 advance of the lifting of the FM translator application  
5 freeze under this policy. The public interest will be  
6 served by such a waiver in that it will allow Peninsula  
7 to continue to operate the FM translator and continue  
8 to help provide expanded broadcast services in the  
9 State of Alaska. Without a grant of the requested  
10 waiver it is doubtful that Peninsula will be able to  
11 modify the facilities of the subject FM translator till  
12 the summer of 1992 and it may be forced to discontinue  
13 operation until that time.

14 Q All right. Now from what you just read are you stating  
15 to us it's your understanding that that also  
16 constituted a request for a waiver of 74.1232(d)?

17 A It must be because the staff granted it. Yes, we did -  
18 - under a broad liberal policy the Commission was  
19 granting at the time, they extended us a construction  
20 permit. And it was done under a request of a broad  
21 liberal waiver based on Wrangell Radio Group  
22 exceptions. So it was not only just for the freeze, it  
23 was to permit this translator to be licensed under  
24 Wrangell Radio Group waivers.

25 Q All right. Are you claiming with respect to the Kenai

1 translator that Peninsula made an appropriate showing  
2 to justify a waiver of the ownership restrictions now  
3 appearing in 74.1232(d)?

4 A I would say evidently we did because the staff granted  
5 our application.

6 Q All right. If you would please could you give me some  
7 idea of what showing Peninsula actually made?

8 A There was.....

9 Q I recognize it may take a little while to look through.  
10 So please take your time.

11 A This -- what you have here is our showing, it's our  
12 application for a CP which was granted by the  
13 Commission under a -- under a broad policy called  
14 Wrangell Radio Group. The policy was a broad policy as  
15 evidenced by all the licenses that we were granted  
16 under Wrangell.

17 Q Did Peninsula show that the Kenai translator was going  
18 to serve what we have discussed and what the Commission  
19 defined as a white area?

20 A No, it was not a white area.

21 Q Now the next document I'd like you to look at is a very  
22 -- it's a similar cover letter and application. And it  
23 also bears the date of May 6, 1991. It's a two page  
24 letter addressed to Ms. Donna R. Searcey signed by  
25 Jeffrey D. Southmayd. And this appears to concern

1 Peninsula's application to seek a modification of the  
2 output frequency for FM translator K285DT to channel  
3 283. And I think that is the one that we have referred  
4 to as being dual licensed for Kenai and Soldotna.

5 A Yes. Yes.

6 Q Now are you claiming that with respect to this  
7 translator Peninsula had requested a waiver of the  
8 current version of Section 74.1232(d)?

9 A The cover letter states that the broad liberal -- the  
10 policy of the Commission has been a long recognized  
11 policy for the need for additional broadcast services.  
12 This need has evolved into a policy of granting liberal  
13 waivers of the broadcast rules of the Commission,  
14 including in the context of applications for new  
15 translators and major changes in facilities and  
16 references Wrangell Radio Group. The Commission at  
17 this point in time in 1991 was liberally granting CP's  
18 and licenses to translators in Alaska under the  
19 exception known as the Wrangell Radio Group exception.  
20 It was not necessary at the time to specifically  
21 request waivers of specific sections of the rules. And  
22 it's obviously so because the Commission granted our  
23 application so they acted accordingly and that was all  
24 that was required at the time.

25 Q Okay, just to clarify, with respect to the Soldotna

1 application. There is nothing specific in the cover  
2 letter then that requests a waiver of.....

3 A No.

4 Q .....ownership.

5 A Other than the reference to Wrangell Radio Group and  
6 the overall waiver policy that was in existence at that  
7 point in time and was understood by the staff in  
8 granting licenses and permits at that time, it was  
9 sufficient to do it under a Wrangell Radio Group  
10 exception.

11 Q So then it would also be the case as with the Kenai  
12 application that there was nothing specific in the  
13 Soldotna application.

14 A That is correct.....

15 Q .....asking for.....

16 A .....it was not required.

17 Q ..... a waiver of 74.1232(d).

18 A That's correct.

19 Q And would it also be the case that with respect to the  
20 Soldotna translator there was no showing that Peninsula  
21 was going to be serving a white area?

22 A No, it was not required. The only -- the only thing  
23 that was necessary at the time was to make a -- a  
24 showing or a reference to Wrangell Radio Group. The  
25 policy that was in existence at the time, and obviously

1 it worked because we were given licenses.

2 Q Just to clarify though, the application itself did not  
3 actually make any showing that Soldotna was going to be  
4 serving.....

5 A Well, the cover letter is a part of the application and  
6 it references Wrangell Radio Group.

7 Q No, no, I understand that. My question is a very  
8 narrow one. And that is that the Soldotna translator  
9 application, and if you wish you can include the cover  
10 letter here.

11 A Yes.

12 Q There was no showing that a white area was going to be  
13 served by that translator.

14 A There was no showing. And it was our interpretation of  
15 the policy that was in place at the FCC that no showing  
16 was necessary under -- at this point in time, in 1991,  
17 it was not necessary to make a showing. In fact the  
18 rule change that later on came in '94 was -- from that  
19 point on is where the showing was required, '91 it  
20 wasn't necessary to make a showing.

21 Q Now finally there is another application, and  
22 unfortunately I wasn't able to locate the cover letter  
23 so this is just the application itself. Or actually,  
24 excuse me, the cover letter is on the following page.  
25 So I did find it. Anyway, you will notice that it

1 bears the same date of May 6, 1991 as the two letters  
2 that we had just looked at. And it appears to me that  
3 exception -- with the exception of it now referring to  
4 a translator in Kodiak that the letter is identical to  
5 the other two letters.

6 A Yes.

7 Q And that likewise there was no specific showing in this  
8 letter or in this application regarding 74.1232(d).

9 A No.

10 Q So your answers would be the same as before in terms  
11 of.....

12 A Yes.

13 Q .....what you did and why you did it.

14 A Yes.

15 Q And it would also be so that with respect to the Kodiak  
16 translator referenced here that there was not going to  
17 be service to a white area?

18 A Let's see, the date is '91?

19 Q Yes sir.

20 A No, there was no showing made with respect to whether  
21 it was a white area or not. It was not necessary to do  
22 so.

23 Q No, I mean my question was simply whether or not the  
24 application contained such a showing, not whether it  
25 was required or not. I mean that's something that.....

- 1 A The application.....
- 2 Q .....we can argue about.
- 3 A .....does not appear to have a showing of any white  
4 area considerations.
- 5 Q Now, I believe we've established or talked earlier  
6 about there being a second Kodiak translator. This one  
7 was serving -- the one that you are looking at now, the  
8 application that you're looking at now, the station was  
9 serving channel 272 and then it was going to be moved  
10 to channel 274. But then there was another Kodiak  
11 translator on channel 285. Do you remember that?
- 12 A Yes.
- 13 Q Now, with respect to the Kodiak 285 translator is it  
14 your understanding that there was a request at some  
15 point for a waiver of Section 74.1232(d)?
- 16 A For 285.....
- 17 Q Yes.
- 18 A .....in Kodiak?
- 19 Q Right.
- 20 A It was never necessary under the current version of the  
21 rules in place, when that translator was filed for a  
22 waiver wasn't necessary.
- 23 Q And the reason for that was?
- 24 A It was not located within the primary contour of any  
25 other commercial FM station. It was the first

1 commercial FM service in Kodiak, that translator  
2 provided it.

3 Q And there came a time, however, when there was a  
4 commercial FM service in Kodiak?

5 A Eventually. Yeah, some years later.

6 Q And following the appearance of that FM full power  
7 station did there ever come a time when Peninsula asked  
8 for a waiver of 74.1232(d) with respect to the Kodiak  
9 285 translator?

10 A No. The Commission found that small communities in  
11 Alaska were better served by more than one station in  
12 81-484. So that was the Commission policy. And  
13 74.1232(d) was permissive in nature and -- and  
14 permitted but did not require the termination of a  
15 translator upon the appearance of a full service  
16 station.

17 Q And the reference that you're making is to that 1981  
18 Commission decision.....

19 A Yes.

20 Q .....concerning Peninsula?

21 A Uh-huh (affirmative).

22 Q And the rule that you're referencing is the one that  
23 was in place at that time?

24 A That's right.

25 Q Has Peninsula ever requested a waiver of the current

1 version of Section 74.1232(d) for the Anchor Point  
2 translator?

3 A No.

4 Q Is it your understanding -- or what is your  
5 understanding as to whether or not the Anchor Point  
6 translator serves what the Commission defines as a  
7 white area?

8 A No, it's not a white area. It was never a white area.

9 Q Has Peninsula ever requested a waiver of the current  
10 version of Section 74.1232(d) for the Homer  
11 translator.....

12 A No.

13 Q .....that carries KPEN?

14 A No.

15 MR. SOUTHMAYD: Dave, let him finish his question,  
16 okay?

17 THE WITNESS: I apologize, I'm sorry, I interrupted.

18 MR. SOUTHMAYD: That's okay.

19 MR. SHOOK RESUMES:

20 Q And with all that we know in terms of service in Homer  
21 we know that the Homer translator does not serve a  
22 white area, correct?

23 A Correct.

24 Q And with respect to the Kachemak City translator has  
25 Peninsula ever requested a current -- or a waiver of

1 the current version of Section 74.1232(d)?

2 A No.

3 Q With respect to the Kachemak City translator's coverage  
4 area, does it serve what the Commission defines as a  
5 white area?

6 A No.

7 Q Now what is your understanding as to why Section 312(g)  
8 of the Communications Act has anything to do with  
9 Peninsula's failure to comply with the Commission's  
10 Order to turn off the translators that we've been  
11 discussing? And for purposes of your recollection I  
12 can show you 312(g) if you need to look at it.

13 A I -- I know it, I've memorized it. It has everything  
14 to do with why we haven't turned them off. And the  
15 reason being under 307(c)(3) our licenses continue in -  
16 - in effect pending finality of judicial review. And  
17 therefore since our licenses continue in effect even  
18 though they've been terminated I am not jeopardizing  
19 those licenses by shutting off the translators for more  
20 than 12 months. And since they continue in effect they  
21 would be forever lost under 312(g) because for 12  
22 months of continuous silence the licenses are  
23 automatically forfeited.

24 Q We had -- we talked about this just a little bit, but  
25 did there come a time when you attempted to sell the

1 translators we've been talking about to an entity  
2 called Coastal Broadcast Communications, Inc.?

3 A Yes.

4 Q And in addition to the seven translators that the  
5 Commission has ordered be turned off you also proposed  
6 to sell in that transaction the two translators in  
7 Seward to Coastal, correct?

8 A That is correct.

9 Q Now, you have in front of you a document entitled or  
10 styled Asset Purchase Agreement and it bears a date of  
11 November 4, 1996. And I direct your attention to page  
12 15 and ask if you could identify the signatures that  
13 appear there.

14 A David F. Becker, Seller, Buyer, David Buchanan, Coastal  
15 Broadcast Communications.

16 Q Now to your knowledge who is it that prepared or  
17 drafted the Asset Purchase Agreement that you executed  
18 with Mr. Buchanan?

19 A It was prepared by Jeffrey Southmayd.

20 Q Do you have any knowledge as to whether or not Mr.  
21 Buchanan was represented by counsel during the  
22 preparation of the Asset Purchase Agreement?

23 A To my knowledge he was not represented by any counsel.  
24 We prepared the agreement, he signed it and I signed it  
25 and that was -- as simple as that.

- 1 Q To your knowledge was Mr. Buchanan represented by  
2 counsel during the prosecution of the applications to  
3 assign the licenses for the translator stations that  
4 are referenced in the Asset Purchase Agreement?
- 5 A I'm not aware of any other counsel. We mutually agreed  
6 to have Jeff prepare the paperwork, we signed it and it  
7 was a very simple transaction.
- 8 Q Now I want to focus on the time period that led up to  
9 the signing of this Asset Purchase Agreement. That's  
10 the context in which my next questions are coming from.  
11 Did you show Peninsula station ratings to Mr. Buchanan?
- 12 A I don't know. I don't recall.
- 13 Q Did you show any of the station's accounts, the money  
14 that was coming in, to Mr. Buchanan?
- 15 A This is six years ago, I don't remember. I might --  
16 maybe yes, maybe no, I don't know.
- 17 Q If you cannot remember it's perfectly acceptable to say  
18 you don't remember.
- 19 A Okay.
- 20 Q Did you discuss income potential of the translators  
21 with Mr. Buchanan?
- 22 A Yes.
- 23 Q And do you recall what it was that you discussed with  
24 him about that?
- 25 A Yes, I do recall. We discussed various scenarios, I

1 gave him some basic information about, you know, he  
2 could sell one 30 second ad an hour, he could crunch  
3 the math and determine for himself what he might think  
4 would be the income potential of these translators by  
5 selling a 30 second announcement once an hour as  
6 permitted by the rules to generate some revenue to  
7 offset his cost of running these stations.

8 Q And did you -- in discussing that did you talk with him  
9 about what it was that he might charge? Did you  
10 discuss dollar figures with him?

11 A We only ran -- our discussions were just speculative  
12 based on if you charge this much this is how much you  
13 could possibly make. I didn't set any rates for him,  
14 it was his responsibility to determine whether or not  
15 this thing made sense for him to do it economically.  
16 And he crunched his own numbers and figured out what -  
17 - what he might make on running this as a business.

18 Q Now did he happen to show you any documents or any  
19 figuring that he had done?

20 A Yeah, he did. He came up with some -- some possible  
21 scenarios of -- of what he might realize out of  
22 operating it.

23 Q Now did you show station rate cards of any kind to Mr.  
24 Buchanan?

25 A Yes. Yeah, I showed him what we were currently

1 charging with our rate card. Yeah, he -- he got a copy  
2 of our rate card.

3 Q Did you ever discuss with Mr. Buchanan what the likely  
4 cost of maintaining the translators might be?

5 A I gave him what our current obligations were in terms  
6 of leases and a rough estimate of the time of what the  
7 electric bills might be and -- and -- so that he had  
8 some idea of what the monthly cost might -- might  
9 possibly amount to, you know, if he took them over.

10 Q Now with respect to these translators, the -- so I  
11 understand it, the basic costs would be the -- the  
12 lease such as they were for the tower sites and then a  
13 second component would be the electrical costs.....

14 A Uh-huh (affirmative).

15 Q .....involved in running the translator?

16 A Space and power.

17 Q Wouldn't there also be a third component, and that is  
18 figuring out how much it would ultimately cost to  
19 replace equipment as it wore out?

20 A Uh-huh (affirmative). I left that up to him.

21 Q But that was something that you had brought to his  
22 attention?

23 A Well, in the attached here -- attached as an Exhibit I  
24 believe was the list of every -- of all the assets that  
25 we would be transferring. And it's -- the equipment

1 list there and it includes the equipment and it'd be up  
2 to him to determine what the life of that equipment  
3 would be and what it would cost him to replace it or to  
4 repair it or to operate it. I didn't go there for him,  
5 it was -- that was his job.

6 Q I take it that you're referring to what appears  
7 following Exhibit E that -- Exhibit E appears on page  
8 20 of the Agreement and then.....

9 A Yes.

10 Q .....there are a number of pages that follow.

11 A Yes.

12 Q Now is -- just focusing on the first example following  
13 Exhibit E, the one -- the translator for Kachemak City.

14 a Yes.

15 Q Is there any particular item or items that have a much  
16 greater cost than any of the others?

17 A Well, there's two -- two items primarily that  
18 constitute more cost than the rest of what is listed.  
19 And that would be the Tepco three -- J 317 translator  
20 and the Henry 100 watt amplifier.

21 Q Oh, and there's one each of those.

22 A Uh-huh (affirmative).

23 Q And -- now is there any indication or any material that  
24 you shared with Mr. Buchanan to indicate how old this -  
25 - these items were and when they might have to be

1 replaced?

2 A No.

3 Q Do you have any understanding as to whether or not Mr.  
4 Buchanan undertook any inspection of the sites of these  
5 translators?

6 A He did. He looked at all of them.

7 Q And that would include the ones on Kodiak Island?

8 A Yes.

9 Q And did you bring to Mr. Buchanan's attention that the  
10 reason that you were going to sell these -- you meaning  
11 Peninsula was going to sell these translators in the  
12 first place, because there were Petitions to deny  
13 directed against Peninsula?

14 A Well, it was a mutually beneficial arrangement. He was  
15 looking for something to do in terms of a business by  
16 taking an early retirement from the State of Alaska.  
17 He had broadcast experience. We saw it as a way to get  
18 on with our lives and transfer these things and let him  
19 run them. And it was just a mutually beneficial  
20 arrangement.

21 Q Now I'm going to bring -- I'm going to talk about  
22 various rules and so I'll open the rule book here and  
23 bring them to your attention one by one. Now, Jeff,  
24 I'm handing Mr. Becker a copy of the rules and I'm  
25 going to ask him some relatively simple questions. And

1 with respect to Section 74.1231(b), did you and Mr.  
2 Buchanan happen to talk about that rule at all?

3 A Mr. Buchanan had a copy of the rules. I don't remember  
4 specifically talking to him about this section. He had  
5 a copy of the rules. I don't recall discussing it.

6 Q All right. Directing your attention to 74.1232(d), did  
7 you talk with Mr. Buchanan about that rule?

8 A I don't remember. We probably -- perhaps, I don't  
9 know.

10 Q Directing your attention to Section 74.1232(e), did you  
11 talk with Mr. Buchanan about that rule?

12 A Yes.

13 Q And what, if anything, do you remember about that  
14 discussion? Or conversation.

15 A We talked about the -- I think in relation to his 30  
16 second announcements that he was permitted to -- to  
17 make. And also that -- although I couldn't provide him  
18 with financial assistance I could help him with a  
19 technical problem if he needed some kind of technical  
20 assistance to -- if the transmitter were to --  
21 translator were to fail or something and he needed help  
22 figuring out what was wrong with it that it was  
23 permissible to offer him technical assistance.

24 Q And finally, with respect to 74.1232(h), did you and  
25 Mr. Buchanan talk about that rule?

- 1 A 32(h). No.
- 2 Q Did you show or discuss with Mr. Buchanan the  
3 Commission's 1990 Report and Order? That's the  
4 document that we have talked about a number of times  
5 that has that famous footnote 59 in it.
- 6 A We talked about footnote 59. I don't know if he had a  
7 copy of that in his possession.
- 8 Q Did you ever modify the financing provisions of the  
9 Asset Purchase Agreement in any way while the  
10 assignment applications were pending?
- 11 A I would have to say no, I don't remember any amendments  
12 that we filed.
- 13 Q Well, along those lines, as I understand, and you can  
14 correct me if I'm wrong, the original financing  
15 provision here for the.....
- 16 A Oh, yes.
- 17 Q .....Asset Pur.....
- 18 A Yeah, I.....
- 19 Q Okay, that brings something to mind?
- 20 A Yes. We originally proposed to provide financing and  
21 that was rejected by the Commission so Mr. Buchanan  
22 went out and -- and sought and received a loan approval  
23 contingent upon the consummation of the sale, that he  
24 would receive independent financing.
- 25 Q The purchase price didn't change though.

- 1 A No.
- 2 Q Now did you suggest to Mr. Buchanan that he should  
3 retire from his job with the State of Alaska?
- 4 A No. It was his -- his decision.
- 5 Q And how was it that the price for the translators came  
6 to be determined?
- 7 A It was just a simple estimate of these translators cost  
8 in the neighborhood of \$10,000.00 to \$15,000.00 a  
9 piece, I had nine -- nine of them to sell, we just  
10 rounded it off at \$100,000.00. Nine at \$15,000.00  
11 would be more than \$100,000.00, nine at \$10,000.00  
12 would be \$90,000.00, \$100,000.00 was just an arbitrary  
13 number.
- 14 Q And do you recall what negotiations, if any, there were  
15 relative.....
- 16 A There were no -- no negotiations, it was just -- that  
17 seems like a good number, he thought it sounded good  
18 and that was the end of it. There was no big  
19 discussion.
- 20 Q Now at the time of the Asset Purchase Agreement in  
21 November of 1996 I take it you were aware that  
22 Peninsula had received a letter from the staff of the  
23 Commission granting waivers of Commission rules with  
24 respect to the Seward translators.
- 25 A I don't know about the date. That seems -- '96 does