

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

JAN 14 2005

Federal Communications Commission  
Office of the Secretary

In the Matter of	)	EB Docket No. 02-21
	)	
<b>Peninsula Communications, Inc.</b>	)	
	)	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	)	
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	)	

To: The Commission

**ENFORCEMENT BUREAU'S FURTHER COMMENTS ON  
REQUEST TO REOPEN THE RECORD AND FOR OFFICIAL NOTICE**

1. The Enforcement Bureau (the "Bureau") hereby submits its comments in response to the January 3, 2005, request of the Office of General Counsel ("OGC"), that Peninsula Communications, Inc. ("PCI") and the Bureau each comment on specific provisions of the Consolidated Appropriations Act of 2005 ("CAA"), which, among other things, revised sections 307 and 312 of the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.* (the "Act"). Specifically, OGC seeks the Bureau's views on amended language to section 312(g) of the Act. OGC's request arises in connection with PCI's "Request to Reopen the Record and for

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Official Notice,” filed December 15, 2004 (“PCI Request”), in which PCI asked the Commission to take official notice of section 213 of the CAA and terminate the instant proceeding. Although that legislation added a new section 307(f) and amended section 312(g) of the Act, PCI’s pleading only urged the applicability of new section 307(f)(2) to the instant proceeding. Accordingly, the Bureau confined its response to a discussion of section 307(f).<sup>1</sup>

2. Section 312(g), as formerly written, required the automatic expiration of any broadcast license if the station failed to transmit broadcast signals for any consecutive 12-month period.

The CAA added the following language at the end of this provision:

except that the Commission may extend or reinstate such station license if the holder of the station license prevails in an administrative or judicial appeal, the applicable law changes, or for any reason to promote equity and fairness. Any broadcast license revoked or terminated in Alaska in a proceeding related to broadcasting via translator, microwave, or other alternative signal delivery is reinstated.

3. The Bureau submits that the first portion of this new language (the partial sentence beginning with “except”) is inapplicable to PCI. The record in this proceeding demonstrates that PCI did not have any licenses that expired pursuant to section 312(g) due to failure to broadcast for a 12-month period.<sup>2</sup> Thus, PCI did not have any “such station license” that could be

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<sup>1</sup> See “Enforcement Bureau’s Comments on Request to Reopen the Record and for Official Notice,” filed Dec. 17, 2004 (“EB Comments”).

<sup>2</sup> In compliance with an injunction that directed PCI to terminate broadcasting on seven of its translators in Alaska, PCI stopped broadcasting on the translators in August 2002, some fifteen months after the Commission *Memorandum Opinion and Order*, 16 FCC Rcd 11364 (2001) (Off. Not. Ex. 13) (“*Termination Order*”), which terminated PCI’s authority to operate the translators. See Off. Not. Exs. 15-20; EB Ex. 22; Tr. 331. The *Termination Order* makes clear that the termination of PCI’s authority to operate the translators resulted from its failure to fulfill conditions attached to their renewals of license, which the Commission had granted in 1998. See *Termination Order*, Off. Not. Ex. 13 at 6-7; *Peninsula Communications, Inc.*, 13 FCC Rcd 23992 (1998) (Off. Not. Ex. 11).

reinstated pursuant to the first portion of the new statutory language.

4. The final sentence of new 312(g) calls for reinstatement of any broadcast license “revoked or terminated in Alaska in a proceeding related to broadcasting via translator, microwave, or other alternative signal delivery.” To the extent that this sentence is viewed in the context of section 312(g) as applying only to stations whose licenses expired due to failure to broadcast for a 12-month period, it would not apply to PCI. As noted above, PCI’s translator licenses did not expire pursuant to section 312(g); they were terminated after PCI had failed to fulfill conditions attached to their renewal. To the extent that this sentence is viewed as applying to all stations and not just the class otherwise covered by section 312(g), the Bureau believes that the Commission proceeding that culminated in the *Termination Order* constitutes a proceeding covered by this language.<sup>3</sup> Thus, in the Bureau’s view, to the extent that the final sentence of amended section 312(g) is viewed as existing outside the context of stations otherwise covered by section 312(g), then we believe the sentence provides for the reinstatement of the licenses for the seven PCI translators ordered off the air by the *Termination Order*.

5. Even if the final sentence of section 312(g) is viewed as existing outside the context of stations otherwise covered by section 312(g), it is not as clear whether that sentence applies to the full-service licenses revoked by the *Initial Decision*.<sup>4</sup> The *Order to Show Cause*<sup>5</sup> makes plain that this proceeding relates to PCI’s qualifications to remain a licensee in light of its intentional decision not to comply with the *Termination Order*; namely, PCI’s decision to

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<sup>3</sup> See *Termination Order* (Off. Not. Ex. 13).

<sup>4</sup> FCC 03D-01 (rel. June 19, 2003).

<sup>5</sup> See *Peninsula Communications, Inc.*, Order to Show Cause, 17 FCC Rcd 2838, 2841-42, ¶ 6 (2002).

operate the translators notwithstanding its lack of authority to do so. However, if the Commission determines that the instant proceeding should be viewed as a "proceeding related to broadcasting via translator, microwave, or other alternative signal delivery," given that it arose due to PCI's operation of seven translators, contrary to the *Termination Order*, and if the Commission further determines that the final sentence of the amended section 312(g) applies to stations not otherwise covered by section 312(g),<sup>6</sup> then the two PCI full-service licenses revoked in the *Initial Decision* would be reinstated pursuant to the amended section 312(g) and this proceeding should be terminated.

Respectfully submitted,



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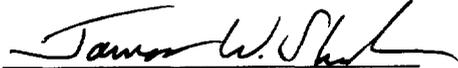
<sup>6</sup> In this regard, the Bureau notes that the two revoked licenses involve stations that are still operating in accordance with 47 C.F.R. § 1.276(d), which stays the effectiveness of the *Initial Decision* until the Commission rules on PCI's exceptions.

**Certificate of Service**

James W. Shook, Special Counsel in the Enforcement Bureau's Investigations and Hearings Division, certifies that he has on this 14th day of January, 2005, sent by email and by first class United States mail, a copy of the foregoing "Enforcement Bureau's Further Comments on Request to Reopen the Record and for Official Notice" to:

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