



**Federal Communications Commission  
Washington, D.C. 20554**

September 30, 2016

**DA 16-1117**

***In Reply Refer to:***

**1800B3-CEG**

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**In re: KGTL(AM), Homer, AK**  
File Nos. BR-20050919AEZ  
BR-20130830AMW  
Facility ID No. 52152

**KXBA(FM), Nikiski, AK**  
File Nos. BRH-20050919ACU  
BRH-20130830AMJ  
Facility ID No. 86717

**KPEN-FM, Soldotna, AK**  
File Nos. BRH-20050919AEM  
BRH-20130830AMR  
Facility ID No. 52149

**KWVV-FM, Homer, AK**  
File Nos. BRH-20050919AES  
BRH-20130830AMK  
BPH-20141219AAA  
Facility ID No. 52145

**K272CN, Homer, AK**  
File No. BPFT-20141112AMU  
Facility ID No. 52148

**Petitions to Deny**

## Informal Objection

Dear Petitioner and Counsel:

We have before us the above-referenced applications for renewal of stations KGTL(AM), Homer, Alaska (KGTL);<sup>1</sup> KXBA(FM), Nikiski, Alaska (KXBA);<sup>2</sup> KPEN-FM, Soldotna, Alaska (KPEN);<sup>3</sup> and KWVV-FM, Homer, Alaska (KWVV),<sup>4</sup> filed by Peninsula Communications, Inc. (Peninsula) on September 19, 2005,<sup>5</sup> and August 30, 2013.<sup>6</sup> The 2005 and 2013 Renewal Applications also include the renewals of twelve associated FM translator stations. Two petitions to deny were filed against the 2005 Renewal Applications, one by KSRM, Inc. (KSRM) on January 3, 2006 (KSRM Petition), and one by Northern Radio, Inc. (NRI) on January 4, 2006 (NRI Petition) (collectively, 2005 Renewal Petitions).<sup>7</sup> No petitions to deny were filed against the 2013 Renewal Applications. We also have a petition for reconsideration (K272CN Petition for Reconsideration) filed by Kenai Broadcasting LLC (Kenai) on December 22, 2014, seeking reconsideration of the December 16, 2014, grant by the Audio Division, Media Bureau (Bureau) of the above-referenced modification application filed by Peninsula on November 12, 2014, to change the channel frequency and antenna for FM translator station K272CN.<sup>8</sup> Finally, we

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<sup>1</sup> File Nos. BR-20050919AEZ (2005 KGTL Renewal Application) and BR-20130830AMW (2013 KGTL Renewal Application) (collectively, KGTL Renewal Applications). The 2013 KGTL Renewal Application includes the renewal of KGTL fill-in FM translator station K265CK, Kachemak City, Alaska (K265CK).

<sup>2</sup> File Nos. BRH-20050919ACU (2005 KXBA Renewal Application) and BRH-20130830AMJ (2013 KXBA Renewal Application) (collectively, KXBA Renewal Applications).

<sup>3</sup> File Nos. BRH-20050919AEM (2005 KPEN Renewal Application) and BRH-20130830AMR (2013 KPEN Renewal Application). The 2005 and 2013 KPEN Renewal Applications include the renewals of the following FM translator stations: K257DB, Anchor Point, Alaska; K272CN, Homer, Alaska; K272DG, Seward, Alaska; and K274AB, Kodiak, Alaska.

<sup>4</sup> File Nos. BRH-20050919AES (2005 KWVV Renewal Application) and BRH-20130830AMK (2013 KWVV Renewal Application). The 2005 and 2013 KWVV Renewal Applications include the renewals of the following FM translator stations: K285EF, Kenai, Alaska; K283AB, Soldotna, Alaska; K285DU, Homer, Alaska; K258AA, Kodiak, Alaska; K292ED, Kachemak City, Alaska; and K285EG, Seward, Alaska. On August 2, 2004, Peninsula filed an application to assign the license of K292ED from Peninsula to Turquoise Broadcasting Company LLC (Turquoise). FCC File No. BALFT-20040802BKI (K292ED Assignment Application); *Broadcast Applications*, Public Notice, Report No. 25793 (MB Aug. 8, 2006). On August 23, 2004, NRI filed a petition to deny the K292ED Assignment Application (K292ED NRI Petition). On September 7, 2004, KSRM filed a petition to deny the K292ED Assignment Application (K292ED KSRM Petition). On September 7, 2006, Turquoise filed an opposition to the K292ED NRI Petition. On September 9, 2004, Peninsula filed an opposition to the K292ED NRI Petition, to which NRI replied on October 6, 2004. On September 27, 2004, Turquoise filed an opposition to the K292ED KSRM Petition, to which KSRM replied on October 4, 2004. We defer action on the K292ED Assignment Application pending final resolution of the 2005 and 2013 Renewal Applications.

<sup>5</sup> 2005 KGTL Renewal Application; 2005 KXBA Renewal Application; 2005 KPEN Renewal Application; and 2005 KWVV Renewal Application (collectively, 2005 Renewal Applications).

<sup>6</sup> 2013 KGTL Renewal Application; 2013 KXBA Renewal Application; 2013 KPEN Renewal Application; 2013 KWVV Renewal Application (collectively, 2013 Renewal Applications).

<sup>7</sup> On March 6, 2006, Peninsula filed an opposition to the NRI Petition (NRI Opposition). Also on March 6, 2006, Peninsula filed an opposition to the KSRM Petition (KSRM Opposition). On March 15, 2006, NRI filed a reply to the NRI Opposition (NRI Reply). On March 23, 2006, KSRM filed a reply to the KSRM Opposition (KSRM Reply).

<sup>8</sup> FCC File No. BPFT-20141112AMU (K272CN Modification Application). On December 2, 2014, Kenai filed an informal objection to the K272CN Modification Application (K272CN Informal Objection). On December 16, 2014, the K272CN Modification Application was granted. *See Broadcast Actions*, Public Notice, Report No. 48390 (MB Dec. 19, 2014). On January 8, 2015, Peninsula filed an opposition to the K272CN Petition for Reconsideration (K272CN Opposition).

have the above-referenced modification application filed by Peninsula on December 19, 2014, seeking to reduce the effective radiated power (ERP) for KWVV from 100 kW to 25 kW.<sup>9</sup>

As set out in detail below, we find that eight of Peninsula's co-owned other area translator stations violate Section 74.1232(d) of the Commission's rules (Rules).<sup>10</sup> We also find that the record raises a substantial and material question of fact whether some or all of Peninsula's other area translator stations also violate Section 74.1231(b) of the Rules.<sup>11</sup> Therefore, we: (1) grant the 2005 Renewal Petitions to the extent indicated herein; (2) unconditionally grant the 2005 and 2013 KGTL and KXBA Renewal Applications, which do not involve the above rule violations; and (3) grant the 2005 and 2013 KPEN and KWVV Renewal Applications subject to the following conditions: (i) within 60 days of the date of this letter, Peninsula must file any necessary assignment and/or modification applications that, once granted and completed, will bring all translator stations associated with KPEN and KWVV into full compliance with Section 74.1232(d) as well as any other applicable rules, statutes, and case law; and (ii) separate affidavits of compliance for KPEN and KWVV, each executed by an officer or director, certifying under penalty of perjury that all translator stations associated with the 2005 and 2013 KPEN and KWVV Renewal Applications, respectively, are now operating in compliance with Section 74.1231(b), stating in detail how such compliance was achieved (i.e., the method by which each translator currently receives its rebroadcast signal), and/or certifying that any non-compliant translator stations have ceased operations. For the reason stated below, we also grant the K272CN Petition for Reconsideration and rescind grant of the K272CN Modification Application, although we defer further action on the K272CN Modification Application pending final resolution of the KPEN and KWVV Renewal Applications and related compliance matters.

## I. BACKGROUND

*Purpose of FM translator service.* The basic principle underlying our translator rules is that the most appropriate and efficient means of providing nationwide FM service is the establishment and development of full service FM broadcast stations.<sup>12</sup> Translators are intended to provide "supplementary service to areas in which direct reception of [full service] stations is unsatisfactory due to distance or intervening terrain barriers."<sup>13</sup> Due to the potential competitive impact that translator stations can have on full service stations, and thus on the development of full service radio in less populated areas, the

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<sup>9</sup> FCC File No. BPH-20141219AAA (KWVV Modification Application). On January 5, 2015, Kenai filed an informal objection to the KWVV Modification Application (KWVV Informal Objection). On January 15, 2015, Peninsula filed an opposition in response to the KWVV Informal Objection (KWVV Opposition). On February 13, 2009, Peninsula filed requests for special temporary authority (STA) for stations KGTL, KXBA, KPEN-FM, and KWVV-FM, seeking to reduce each station's ERP. FCC File Nos. BSTA-20090213CPS; BSTA-20090213DAT; BSTA-20090213DAX; and BSTA-20090213DAZ (collectively, the STA Requests). We defer action on the STA Requests pending final resolution of the 2005 and 2013 Renewal Applications. To the extent that the information contained in the STA Requests may be out of date, we remind Peninsula to amend as necessary with updated information. See 47 CFR § 1.65.

<sup>10</sup> 47 CFR § 74.1232(d) (Section 74.1232(d)). The non-compliant translators are: K257DB, Anchor Point, Alaska; K272CN, Homer, Alaska; K272DG, Seward, Alaska; K274AB, Kodiak, Alaska; K285EF, Kenai, Alaska; K283AB, Kenai/Soldotna, Alaska; K285AA, Kodiak, Alaska; and K285EG, Seward, Alaska.

<sup>11</sup> 47 CFR § 74.1231(b) (Section 74.1231(b)).

<sup>12</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 Order*).

<sup>13</sup> *Translator Order*, 5 FCC Rcd at 7232; see also *Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations*, Report and Order, 4 FCC Rcd 9642 (2009) (adopting changes to FM translator rules allowing AM stations to use FM translators to rebroadcast AM programming as a fill-in service).

Commission authorizes FM translators on a secondary basis only, under rules that restrict their service, ownership, sources of financial support, and program origination.<sup>14</sup>

*Eligibility and signal delivery rules.* In 1990, the Commission substantially amended the Rules to ensure that FM translator stations remain restricted to their intended secondary role, so that “FM radio broadcast stations are not adversely affected by translator operations.”<sup>15</sup> Because translators were never intended as a means for full service commercial stations to expand beyond their primary service areas into the service area of competitors,<sup>16</sup> Section 74.1232(d) of the Rules prohibits the common ownership of primary stations and translator stations whose 60 dBu signal contour extends beyond that of the primary station (known as “other area” translators).<sup>17</sup> Only “fill-in” stations—those located entirely within the protected service contour of the primary station—are permitted to be co-owned. This rule became effective on June 1, 1991, with pre-existing translator licensees required to come into compliance no later than June 1, 1993.<sup>18</sup> Peninsula did not do so, however, and to the present continues to own eight other area FM translators along with their primary stations. Also at issue in this case is Section 74.1231(b), which provides that commercial other area translator stations may only retransmit signals that are received directly off-air (fill-in translators may use any terrestrial facilities to receive the signal that is being rebroadcast).<sup>19</sup>

*Seward Translators.* Two of Peninsula’s co-owned other area translator stations (K272DG, Seward, Alaska, and K285EG, Seward, Alaska (Seward Translators)) were originally granted waivers of Sections 74.1231(b) and 74.1232(d) in 1992, and are therefore in a slightly different procedural posture than Peninsula’s other translators.<sup>20</sup> At first, in 1997, the Bureau determined that continuation of the Seward Translators co-ownership waivers was not warranted and—along with Peninsula’s other translators—granted the 1995 and 1997 renewal applications for the Seward Translators conditioned on assignment of its other area translator licenses to unrelated parties.<sup>21</sup> However, when the required assignments were not consummated,<sup>22</sup> in the 2001 *Cancellation Order*, the Commission rescinded grant of Peninsula’s other translator renewal applications but unconditionally renewed the Seward Translators’ licenses, reasoning that Section 316 of the Communications Act of 1934, as amended (Act) and Section

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<sup>14</sup> *Translator Order*, 5 FCC Rcd at 7212.

<sup>15</sup> *Translator Order*, 5 FCC Rcd at 7213-15.

<sup>16</sup> *Peninsula Communications, Inc.*, Initial Decision, 18 FCC Rcd 12349, 12352 (2005) (*Initial Decision*).

<sup>17</sup> 47 CFR § 74.1232(d) (“An authorization for an FM translator whose coverage contour extends beyond the protected contour of the commercial primary station will not be granted to the licensee or permittee of a commercial FM radio broadcast station. Similarly, such authorization will not be granted to any person or entity having any interest whatsoever, or any connection with a primary FM station.”); *Translator Order*, 5 FCC Rcd at 7215. A primary station is the full service station whose signal a translator retransmits.

<sup>18</sup> 47 CFR § 74.1232(d).

<sup>19</sup> 47 CFR § 74.1231(b) (“An FM translator may be used for the purpose of retransmitting the signals of a primary AM or FM radio broadcast station or another translator station the signal of which is received directly through space, converted, and suitably amplified . . . [h]owever, an FM translator providing fill-in service may use any terrestrial facilities to receive the signal that is being rebroadcast.”); *Translator Order*, 5 FCC Rcd at 7221.

<sup>20</sup> *Peninsula Communications, Inc.*, Letter, Ref. No. 8930-MER (MMB, Feb. 18, 1992) (*1992 Waiver Letter*).

<sup>21</sup> *Peninsula Communications, Inc.*, Letter, Ref. No. 1800B4AJS (Sept. 11, 1996) (*Deferral Letter*); *Peninsula Communications, Inc.*, Letter, Ref. No. 1800B3-BSH (Nov. 6, 1997) (*Conditional Renewal Letter*). The Bureau did not address Peninsula’s signal delivery rule waivers in either letter.

<sup>22</sup> The initial assignment applications filed by Peninsula were denied by Bureau staff because the purchase agreement included impermissible seller-financing provisions. *Initial Decision*, 18 FCC Rcd at 12357. After the assignment applications were refiled without these provisions, “nothing more was done to finalize and complete the assignments.” *Id.*

1.87 of the Commission's Rules provided a more appropriate avenue for resolving compliance issues relating to the Seward Translators.<sup>23</sup> Accordingly, the Commission ordered Peninsula to show cause why the Seward Translators' licenses should not be modified to discontinue the previously granted waivers of Sections 74.1231(b) and 74.1232(d).<sup>24</sup> In 2003, citing changed circumstances, policy objectives, and the risk of discriminatory application of the Rules, the Commission formally terminated the Seward Translators' co-ownership and signal delivery waivers, ordering Peninsula to either come into compliance with both rules or cease operation.<sup>25</sup> Although Peninsula did cease operation of the Seward Translators after the 2003 *Seward Waiver Termination Order* (except for "intermittent" broadcasts intended to avoid automatic expiration under Section 312(g) of the Act), it resumed full operation in 2005.<sup>26</sup> On April 1, 2003, Peninsula filed an application to assign the licenses of the Seward Translators to the Moody Bible Institute of Chicago.<sup>27</sup>

*Non-Seward Translators.* In the 2001 *Cancellation Order*, the Commission rescinded grant of Peninsula's remaining renewal applications for failure to meet the divestiture condition, cancelled the non-compliant translators' licenses, and ordered Peninsula to cease operation on those stations (K285EF, K283AB, K257DB, K265CK, K272CN, K274AB, and K285AA (Non-Seward Translators)).<sup>28</sup> Peninsula did not comply with the *Cancellation Order* and continued to operate all seven translators while it challenged the *Cancellation Order* in Court.<sup>29</sup> In 2001, the Commission warned Peninsula that further operation of the Non-Seward Translators might raise serious questions about its qualification to be a Commission licensee.<sup>30</sup> However, Peninsula continued to operate the translators, even after the Commission found Peninsula liable for a forfeiture of \$140,000 for willful and repeated operation of the Non-Seward Translators in defiance of a direct Commission order.<sup>31</sup> It also continued to operate the Non-Seward Translators after failed attempts to obtain a stay from the Commission and the D.C. Circuit, until August 2002, when an injunction to cease operations issued by the U.S. District Court for Alaska was affirmed by the Ninth Circuit.<sup>32</sup>

*Primary stations.* In 2002, as a result of Peninsula's prolonged illegal operation of the Non-Seward Translators, the Commission commenced a hearing proceeding to determine whether all of

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<sup>23</sup> *Peninsula Communications, Inc.*, Memorandum Opinion and Order and Order to Show Cause, 16 FCC Rcd 11364, 11370 (2001) (*Cancellation Order*).

<sup>24</sup> *Cancellation Order*, 16 FCC Rcd at 11370.

<sup>25</sup> *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, 18 FCC Rcd 4027, 4029-30 (2003) (*Seward Waiver Termination Order*). No further enforcement action was taken on the Seward Translators.

<sup>26</sup> Opposition to NRI at 6; *Letter from Jeffrey D. Southmayd to Marlene H. Dortch, Secretary* (July 21, 2005); 47 U.S.C. § 312(g) (Section 312(g)).

<sup>27</sup> FCC File No. BALFT-20030401CJG (Seward Translators Assignment Application); *Broadcast Actions*, Public Notice, Report No. 25460 (Apr. 9, 2003). We defer action on the Seward Translators Assignment Application pending final resolution of the 2005 and 2013 Renewal Applications and remind Peninsula to submit any amendments required by 47 CFR § 1.65.

<sup>28</sup> *Cancellation Order*, 16 FCC Rcd at 11370.

<sup>29</sup> *Peninsula Communications, Inc.*, Initial Decision, 18 FCC Rcd 12349, 12351 (2005) (*Initial Decision*).

<sup>30</sup> *Peninsula Communications, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 16 FCC Rcd 16124, 16128 (2001).

<sup>31</sup> *Peninsula Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 2832 (2002) (*Forfeiture Order*).

<sup>32</sup> *Initial Decision*, 18 FCC Rcd at 12351; *United States v. Peninsula Communications, Inc.*, 287 F. 3d 832 (9<sup>th</sup> Cir. 2002). The D.C. Circuit ultimately upheld the *Cancellation Order*. See *Peninsula Communications, Inc. v. FCC*, No. 01-1273, *per curiam Judgment and Memorandum* filed January 30, 2003.

Peninsula's broadcast licenses should be revoked.<sup>33</sup> In 2003, an administrative law judge (ALJ) revoked Peninsula's licenses for the primary stations (KPEN and KWVV) involved in the unauthorized operation of the Non-Seward Translators.<sup>34</sup> In the *Initial Decision*, the ALJ summarized the situation as follows:

Contrary to [Peninsula principal] Mr. Becker's claim of an "agonized" act of disobedience, PCI [Peninsula] operated from an economic motive to avoid the [*Cancellation Order*] for as long as possible. Through a carefully crafted "network," PCI captured revenues that otherwise would have gone to competing full-service licensees operating properly within their assigned service areas. Through the seven offending translators, PCI placed its own economic interests ahead of the Commission's regulatory scheme and the public interest in having honest competition. After losing an extended joust with the staff on waiver authorizations and then failing to effect an assignment, PCI turned to the appeal process to postpone compliance with the [*Cancellation Order*]. This was a particularly cynical abuse of the fairness shown by the Commission and the Commission staff in giving PCI the benefit of several doubts.<sup>35</sup>

Citing a Commission policy to revoke only "offending licenses," the ALJ concluded that revocation of other Peninsula licenses, including KGTL, KXBA, K292ED, K285DU, K285EG, and K272DG, would be inappropriate in the circumstances.<sup>36</sup>

*Reinstatement.* In 2004, two amendments to the Act were adopted as part of the Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA).<sup>37</sup> The following provision was added to Section 312(g) of the Act: "Any broadcast license revoked or terminated in Alaska in a proceeding related to broadcasting via translator, microwave, or other alternative signal delivery is reinstated." A new section was added to the Act, Section 307(f)(2), which stated that "any holder of a broadcast license who has broadcast to an area of Alaska that did not have access to over the air broadcasts via translator, microwave, or other alternative signal delivery may continue providing such service even if another holder of a broadcast license begins broadcasting to such an area, and shall not be fined or subject to any other penalty forfeiture, or revocation related to providing such service including any fine, penalty, forfeiture, or revocation for continuing to operate notwithstanding orders to the contrary."<sup>38</sup> In the 2005 *Hearing Termination Order* and *Reinstatement Order (Orders)*, the Commission carried out the new language in Section 312(g) by terminating the hearing proceeding, vacating the *Initial Decision*, and reinstating the licenses of the Non-Seward Translators.<sup>39</sup> Both *Orders* expressly relied on Section 312(g) and did not reach Section 307(f)(2).<sup>40</sup>

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<sup>33</sup> *Peninsula Communications, Inc.*, Order to Show Cause, 17 FCC Rcd 2838 (2002).

<sup>34</sup> *Initial Decision*, 18 FCC Rcd at 12368-71.

<sup>35</sup> *Id.* at 12372.

<sup>36</sup> *Id.* at 12372.

<sup>37</sup> Consolidated Appropriations Act of 2005, Pub. Law 108-447. Title IX of that Act is the Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA). Section 213 of SHVERA modified Section 312(g) of the Act, 47 U.S.C. § 312(g) and adds new Section 307(f)(2), 47 U.S.C. § 307(f)(2) (collectively, SHVERA Amendments).

<sup>38</sup> 47 U.S.C. § 307 (f)(2) (Section 307(f)(2)).

<sup>39</sup> *Peninsula Communications, Inc.*, Memorandum Opinion and Order, 20 FCC Rcd 11408 (2005) (*Hearing Termination Order*); *Peninsula Communications, Inc.*, Memorandum Opinion and Order, 20 FCC Rcd 16919, 16921 (2005) (*Reinstatement Order*). The *Reinstatement Order* also ended the forfeiture proceeding against Peninsula. *Reinstatement Order*, 20 FCC Rcd at 16922.

<sup>40</sup> *Reinstatement Order*, 20 FCC Rcd at 16922, n.12; *Hearing Termination Order*, 20 FCC Rcd at 11410, para. 8.

After reinstatement, Peninsula continued to operate its translator network as before,<sup>41</sup> on the theory that the SHVERA Amendments, as implemented by the Commission in the *Orders*, “modified . . . the Commission’s FM Translator rules and policies with regard to the operations of the Licensee’s FM Translator Stations in Alaska”<sup>42</sup> so that “any and all proceedings and allegations against [Peninsula] were of no cause and effect, and were not to be pursued any further.”<sup>43</sup> Therefore, in considering Peninsula’s renewal and modification applications, we must determine the scope and effect of Sections 312(g) and 307(f)(2). Ultimately, as discussed below, we clarify that neither statutory provision gives Peninsula, as Kenai puts it, “carte blanche to operate outside of the rules of the FCC in perpetuity.”<sup>44</sup>

*Renewal pleadings.* In the KSRM Petition and KSRM Reply, KSRM claims that Peninsula is currently in violation of several Commission Rules. First, KSRM argues that Peninsula’s translator “network” violates the co-ownership rule of Section 74.1232(d).<sup>45</sup> Second, KSRM contends that Peninsula stations K292ED and K285DU violate the requirement that an applicant for more than one FM translator proposing to serve the same area provide a showing of technical need.<sup>46</sup> Third, KSRM alleges that Peninsula does not maintain the requisite main studio for stations KXBA or KPEN but obtains programming from—and stations all station personnel at—its Homer studios.<sup>47</sup>

KSRM argues that these “numerous serious violations” indicate that Peninsula not only falls short of the Section 309(k)(1) standard for renewal, but also establish that Peninsula lacks the character qualifications to be a Commission licensee.<sup>48</sup> KSRM asserts that the two SHVERA Amendments do not insulate Peninsula from the consequences of its rule violations because: (1) Section 307(f)(2) applies only to translator stations that originally served a white area<sup>49</sup>; and (2) Section 312(g) required that [Peninsula]’s revoked or terminated licenses be reinstated but did not mandate “that the licenses were to be held in perpetuity or are entitled to automatic renewal.”<sup>50</sup> KSRM urges that, even if Section 312(g) did present Peninsula with a “clean slate” regarding its pre-SHVERA rule violations, Peninsula’s subsequent translator operations should be assessed using the same criteria applicable to any other renewal application.<sup>51</sup> In any case, KSRM argues, Section 312(g) does not apply to Peninsula’s licenses that were never revoked or terminated (namely, KGTL, KXBA, K292ED, and K285DU), and therefore the renewal applications for those stations should be assessed in light of all Peninsula’s actions during the entire preceding license term.<sup>52</sup>

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<sup>41</sup> KSRM Opposition at 5.

<sup>42</sup> 2005 Renewal Applications, Exh. 34.

<sup>43</sup> NRI Opposition at 6-7.

<sup>44</sup> KWVW Informal Objection at 8.

<sup>45</sup> KSRM Petition at 5.

<sup>46</sup> KSRM Petition at 5 (citing 47 CFR § 74.1232(b) (Section 74.1232(b))). The original permits for these translator stations were granted in 1986 and 1979, respectively, and are long since final. Therefore, we find this argument untimely and do not consider it further here.

<sup>47</sup> KSRM Petition at 4 (citing 47 CFR § 74.1125(a)).

<sup>48</sup> KSRM Petition at 8; 47 U.S.C. § 309(k) (Section 309(k)).

<sup>49</sup> KSRM Petition at 5. KSRM states that the Commission has already found that K285EF, K283AB, K257DB, K265CK, and K272CN have never served a white area. *Id.*

<sup>50</sup> KSRM Petition at 3.

<sup>51</sup> KSRM Petition at 3; KSRM Reply at 2.

<sup>52</sup> KSRM Reply at 4.

In the NRI Petition and NRI Reply, NRI addresses only the renewal applications of the Seward Translators. NRI contends that Peninsula is currently operating the Seward Translators without authority, because it was ordered to cease operation in the 2003 *Seward Waiver Termination Order*.<sup>53</sup> In addition, NRI alleges that Peninsula's current operations violate the co-ownership provision of Section 74.1232(d) and the signal delivery and program origination provisions of 74.1231(b).<sup>54</sup> NRI notes that Peninsula's waivers of Sections 74.1232(d) and 74.1231(b) for the Seward Translators were terminated, and it has not sought or been granted new waivers. Moreover, NRI argues, the Seward Translators were not part of the 2005 *Reinstatement Order* and are not subject to the protections of either Section 312(g) or 307(f)(2).<sup>55</sup> In particular, NRI contends that Section 307(f)(2) applies only to licensees who originally broadcast to an area of Alaska that did not have access to any over the air broadcasts.<sup>56</sup> Therefore, according to NRI, Section 307(f)(2) does not apply to the Seward Translators because, at the time they were originally licensed, Seward was already served by AM station KSWD, Seward, Alaska.<sup>57</sup> Finally, NRI claims that the Seward Translator licenses were automatically forfeited under Section 312(g) when they ceased operating between 2003 and 2005.<sup>58</sup>

Like KSRM, NRI argues that Peninsula not only fails to meet the Section 309(k) standard, but also lacks the character qualifications to be a Commission licensee. In addition to misrepresenting in its renewal applications that it was in compliance with Section 74.1232(d), according to NRI, Peninsula's "established past history of defying direct Commission orders," should disqualify it from holding any broadcast licenses.<sup>59</sup>

In its KSRM Opposition, Peninsula does not dispute the allegation that its translators technically violate Sections 74.1231(b), 74.1232(b), and 74.1232(d). Rather, Peninsula claims that the Commission tacitly sanctioned these operations in the 2005 *Orders*, which "affirmed the regulatory legality of their operation by terminating the license renewal hearing proceedings that were begun to investigate those exact operations."<sup>60</sup> Peninsula also states that KPEN and KXBA each have a fully staffed main studio in accordance with the requirements of Section 73.1125(a).<sup>61</sup>

In its NRI Opposition, Peninsula argues that Section 307(f)(7) "reinstated the alternative delivery operation" of the Seward Translators, making further waivers unnecessary.<sup>62</sup> Although Peninsula does not provide an analysis of how the language of Section 307(f)(7) applies to the Seward Translators, it asserts that the original waivers for the Seward Translators were "based in part on the fact [that] there were no other local broadcast stations serving the community of Seward, Alaska."<sup>63</sup> Regarding its

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<sup>53</sup> NRI Petition at 1-4.

<sup>54</sup> NRI Petition at 4-6. NRI alleges that the Seward Translators receive their rebroadcast signals via DSL, citing eyewitness testimony that the Seward Translators' transmitters appeared to have no other signal connections. *Id.* at 10 (Declaration of Wolfgang Kurtz). Section 74.1231(b) prohibits translator stations from originating programming, except under certain circumstances not applicable here. *See* 47 CFR § 74.1231(b),(f)-(h).

<sup>55</sup> NRI Petition at 3.

<sup>56</sup> NRI Reply at 3.

<sup>57</sup> NRI Petition at 4.

<sup>58</sup> NRI Petition at 5.

<sup>59</sup> NRI Petition at 6-7; NRI Reply at 3.

<sup>60</sup> KSRM Opposition at 5.

<sup>61</sup> KSRM Opposition at 5-6.

<sup>62</sup> NRI Opposition at 4-5.

<sup>63</sup> NRI Opposition at 3, Attachment B.

character qualifications, Peninsula argues that although the ALJ found that it was unqualified to hold certain of its licenses, the *Reinstatement Order* nullified that finding.<sup>64</sup> Finally, Peninsula contends that the Seward Translator licenses did not automatically expire under Section 312(g), because they “intermittently returned to operation” during the time they had been ordered off the air.<sup>65</sup> In any case, according to Peninsula, Section 312(g) reinstated any license for a station in Alaska that may have terminated by operation of Section 312(g). Finally, Peninsula reiterates its basic position that the *Reinstatement Order* placed a “regulatory imprimatur” on Peninsula’s translator operations, establishing that “any and all proceedings and allegations against [Peninsula] were of no cause and effect.”<sup>66</sup>

*Modification applications pleadings.* In the K272CN Petition for Reconsideration, Kenai seeks reconsideration of the Bureau’s grant of the K272CN Modification Application on the basis that Bureau staff acted without addressing Kenai’s K272CN Informal Objection. In the K272CN Informal Objection and KWVV Informal Objection, Kenai argues that Peninsula is in apparent violation of Sections 74.1232(d) and 74.1231(b) of the Rules.<sup>67</sup> Accordingly, Kenai requests that the Commission either enforce the Rules or clarify whether the SHVERA Amendments and implementing *Orders* grant Peninsula—or all Alaskan broadcasters—immunity from the translator rules.<sup>68</sup> In the KWVV Informal Objection, Kenai briefly analyzes each translator station rebroadcasting KWVV and concludes that, taking into account the distances and terrain barriers involved, it is very doubtful from a technical standpoint that any of the KWVV other area translators can receive its primary station directly off air.<sup>69</sup> This situation would only be exacerbated, Kenai predicts, by the reduced ERP proposed in the KWVV Modification Application. Kenai also questions whether Peninsula can legally rebroadcast an over-the-air signal relayed from another translator that is itself operating in violation of the Commission’s Rules.<sup>70</sup>

In its Opposition to the K272CN Petition for Reconsideration and Opposition to KWVV Informal Objection, Peninsula does not contest the factual allegations raised in Kenai’s pleadings. Rather, it claims that Kenai lacks standing to file an informal objection against either application because: (1) Kenai’s station KKNi-FM, Sterling, Alaska (KKNi), does not place a signal over Homer, Alaska, the community of license of K272CN;<sup>71</sup> and (2) KKNi and KWVV do not have overlapping coverage areas and therefore do not compete for listeners.<sup>72</sup> Peninsula further objects that both the K272CN Informal Objection and KWVV Informal Objection impermissibly contain a petition for declaratory ruling and informal objection in the same document.<sup>73</sup>

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<sup>64</sup> NRI Opposition at 5-6.

<sup>65</sup> NRI Opposition at 6.

<sup>66</sup> NRI Opposition at 6-7.

<sup>67</sup> K272CN Informal Objection at 2-3; KWVV Informal Objection at 2, 4.

<sup>68</sup> Kenai also questions whether Peninsula received a waiver in 1986 of Section 74.1232(d) for K272CN. It did not. See *1996 Deferral Letter* at 6, 9 (finding that Peninsula had never received a waiver under the previous Section 74.1232(d), that it had never requested or received a waiver under new Section 74.1232(d), and that no prospective waiver was warranted).

<sup>69</sup> KWVV Informal Objection, Exh. 3.

<sup>70</sup> KWVV Informal Objection, Exh. 3. This issue is mooted by our decision to require Peninsula to come into compliance with the translator rules. We note that the Rules permit FM translators to engage in retransmission by one translator of the signal of another FM translator, if the relaying translator is not used solely to relay the signal of the primary station to a more distant facility. 47 CFR § 74.1231(b), (c).

<sup>71</sup> K272CN Opposition at 1-2.

<sup>72</sup> KWVV Opposition at 2.

<sup>73</sup> K272CN Opposition at 2, KWVV Opposition at 2 (both citing 47 CFR §§ 1.2, 1.41, 1.44).

## II. DISCUSSION

In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k) of the Act.<sup>74</sup> Section 309(k)(1) provides that if, upon consideration of the application and pleadings, we find that (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Commission's Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.<sup>75</sup> If, however, the licensee fails to meet that standard, the Commission may deny the application—after notice and opportunity for a hearing under Section 309(e) of the Act—or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”<sup>76</sup>

In order to assess the merits of a petition to deny, a two-step analysis is required. First, the petition must make specific allegations of fact sufficient to demonstrate that the petitioner is a party in interest and that a grant of the application would be prima facie inconsistent with the public interest, convenience, and necessity.<sup>77</sup> If the petition meets this threshold requirement, the Commission must then determine “whether the totality of the evidence raises a substantial and material question of fact justifying further inquiry.”<sup>78</sup> If no such question is raised, the Commission will deny the petition and grant the application if it concludes that such grant otherwise serves the public interest, convenience, and necessity.

The main issue raised by Peninsula's applications and associated pleadings is the scope and effect of the 2004 SHVERA Amendments, Sections 307(f)(2) and 312(g). As a threshold matter, we do not find it necessary or appropriate to base our renewal analyses on Peninsula's conduct prior to 2005. The previous enforcement proceedings against Peninsula were concluded by the 2005 *Orders*, which are long since final. We are not persuaded by KSRM's argument that, because the 2005 *Orders* did not directly involve the KGTL, KXBY, or the Seward Translators, Peninsula's renewal applications for those licenses must be assessed in light of Peninsula's pre-2005 conduct. In the *Initial Decision*, the ALJ concluded that Peninsula's misconduct did not call for revocation of its “non-offending licenses.”<sup>79</sup> We decline to deny any of the 2005 and 2013 Renewal Applications on the basis of that same prior misconduct as a backdoor means of imposing sanctions that were either rejected by the ALJ or nullified when Congress amended Section 312(g) in 2004.<sup>80</sup> Finally, as a practical matter, the rule violations at issue now are substantially the same as those that occurred before 2005 (namely, co-ownership, technical need, and alternative signal delivery), so limiting our deliberations to Peninsula's post-2005 conduct still will require us to fully address the statutory issues and alleged rule violations before us.

*Section 312(g).*<sup>81</sup> We find that neither Section 312(g) nor the implementing *Orders* apply to Peninsula's renewal and modification applications. The retrospective language of Section 312(g) simply

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<sup>74</sup> 47 U.S.C. § 309(k).

<sup>75</sup> 47 U.S.C. § 309(k)(1).

<sup>76</sup> 47 U.S.C. §§ 309(k)(2), 309(k)(3).

<sup>77</sup> 47 U.S.C. § 309(d)(1); *Astroline Communications Co. v. FCC*, 857 F.2d 1556, 1561 (D.C. Cir. 1988).

<sup>78</sup> 47 U.S.C. § 309(d)(2), (e); *Citizens for Jazz on WRVR v. FCC*, 775 F.2d 392, 395 (D.C. Cir. 1985).

<sup>79</sup> *Initial Decision*, 18 FCC Rcd at 12378.

<sup>80</sup> This reasoning applies equally to the Seward Translators. We find that even if the Seward Translators' licenses had automatically expired as a matter of law under Section 312(g) between 2003 and 2005, they would have been required to be reinstated under amended Section 312(g). Therefore, we find that it would be inequitable at this late date to revisit Peninsula's pre-2005 operation of the Seward Translators.

<sup>81</sup> 47 U.S.C. § 312(g) reads in relevant part: “Any broadcast license revoked or terminated in Alaska in a proceeding related to broadcasting via translator, microwave, or other alternative signal delivery is reinstated.”

required the Commission to reinstate any Alaskan licenses that had been revoked or terminated in a translator-related proceeding prior to December 8, 2004. In the 2005 *Orders*, the Commission carried out this directive, terminating the Peninsula revocation proceeding and reinstating Peninsula's revoked licenses. In doing so, the Commission did not: dispose of Peninsula's pending renewal applications, make a determination as to Peninsula's character qualifications, provide Peninsula with permanent immunity from the Commission's translator rules, or grant Peninsula waivers of the translator rules. Likewise, the *Orders* are based solely on Section 312(g) and do not address the scope or effect of Section 307(f)(2). Peninsula may have interpreted the Commission's silence regarding the future of its FM translators in the 2005 *Orders* as a form of tacit approval, but this interpretation cannot be attributed to, and hence cannot bind, the Commission.

*Section 307(f)(2)*.<sup>82</sup> Section 307(f)(2) applies only to any licensee that is "holder of a broadcast license who has broadcast to an area of Alaska that did not have access to over the air broadcasts via translator, microwave, or other alternative signal delivery."<sup>83</sup> The language of this provision is ambiguous, because it lacks a clear antecedent for the clause "via translator, microwave, or other alternative signal delivery." If that clause were read to modify the phrase immediately preceding it, i.e., "over the air broadcasts," then Section 307(f)(2) would apply to any type of broadcast station that had initially broadcast to an area that had no access to *translator* service specifically (introducing the novel concept of a translator-only "white area"). This interpretation is not advanced by any party to the proceeding. Alternatively, if the clause is interpreted to modify the main verb of the sentence, "broadcast," then Section 307(f)(2) would apply to any translator station that had initially broadcast to an area that did not have access to at least one over-the-air aural broadcast service, i.e., a white area as commonly understood in Commission precedent.<sup>84</sup> We conclude that the second interpretation is correct, for the following reasons.

First, we construe the ambiguous language of Section 307(f)(2) in a way that harmonizes with the relevant statutory framework.<sup>85</sup> In particular, we take into account that, since 1934, Congress has imposed upon the Commission the "obligation of providing a widely dispersed radio and television service" with a "fair, efficient, and equitable distribution" of service among the "several States and communities."<sup>86</sup> The Commission has carried out this core mission by encouraging the provision of full service radio broadcasting in unserved areas, but neither the Commission nor Congress has ever expanded the fair distribution policy to include universal *translator* coverage. To the contrary, because of the economic threat to full service stations, the Commission has deliberately constrained the FM translator service to a supplementary role; i.e., for areas where full-power signals have difficulty reaching

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<sup>82</sup> 47 U.S.C. § 307(f)(2) states that "any holder of a broadcast license who has broadcast to an area of Alaska that did not have access to over the air broadcasts via translator, microwave, or other alternative signal delivery may continue providing such service even if another holder of a broadcast license begins broadcasting to such an area, and shall not be fined or subject to any other penalty forfeiture, or revocation related to providing such service including any fine, penalty, forfeiture, or revocation for continuing to operate notwithstanding orders to the contrary."

<sup>83</sup> For convenience, we may refer simply to "translators" when discussing "translator, microwave, or other alternative signal delivery."

<sup>84</sup> See, e.g., *Translator Order*, 5 FCC Rcd at 7216.

<sup>85</sup> See, e.g. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Assoc.*, 484 U.S. 365, 371 (1988) ("A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme ... because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law.") (citations omitted).

<sup>86</sup> See, e.g., *United States v. Southwestern Cable Co.*, 392 U.S. 157, 173-74 (1968) (citing 47 U.S.C. § 307(b) (Section 307(b))).

or where full service coverage is not available.<sup>87</sup> Therefore, we interpret Section 307(f)(2) in a way that avoids conflict with the Commission's primary obligation under Section 307(b) of the Act. Moreover, this reading is consistent with Congress' reference to "unserved" areas in the title of Section 213 of SHVERA: "Authorizing Broadcast Service in Unserved Areas of Alaska" and with the phrase "even if another [licensee] begins broadcasting to such area," which implies that no licensee previously broadcast to the area in question. Finally, without the benefit of legislative history, we find it reasonable to conclude that Congress intended to protect Alaskan translator operators making groundbreaking investment in unserved areas.

We briefly address Peninsula's earlier contention, which it does not renew in this proceeding, that the phrase "an area of Alaska that did not have access to over the air broadcasts" refers to areas that did not receive *multiple* broadcast signals, as opposed to areas that did not receive *any* broadcast signals.<sup>88</sup> Claiming that "the term 'unserved' is not to be found anywhere in the statute," Peninsula concludes that "broadcasts" must denote an "underserved" area.<sup>89</sup> Such an interpretation is inconsistent both with the SHVERA Section 213 title reference to "unserved areas" and with the reference to initiation of service by another licensee in the phrase, "even if another holder of a broadcast license begins broadcasting to such an area." Moreover, we find that the most natural and meaningful reading of "broadcasts" is that it refers to broadcast programs, rather than separate broadcast signals or stations.<sup>90</sup>

For these reasons, we conclude that Section 307(f)(2) applies to any translator station that initially broadcast to an area that did not have access to at least one over-the-air aural broadcast service. The record indicates that Peninsula's translators did not serve a white area when they were originally authorized.<sup>91</sup> Therefore, Section 307(f)(2) does not exempt Peninsula from compliance with the Rules discussed herein.

*Co-ownership rule.* As mentioned above, Peninsula currently owns eight other area FM translators along with their primary stations, in apparent violation of Section 74.1232(d). Because we find that neither Section 312(g) nor Section 307(f)(2) exempts Peninsula from the co-ownership rule, our

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<sup>87</sup> See, e.g., *Translator Order*, 5 FCC Rcd at 7212. This approach is also reflected in the Commission's favorable treatment of translator waiver requests that propose to serve "white areas" beyond the protected contour of any full-time aural service. *Translator Order*, 5 FCC Rcd at 7213.

<sup>88</sup> *Hearing Termination Order*, 20 FCC Rcd at 11410.

<sup>89</sup> Peninsula Comments, EB Docket No. 02-21 (filed Jan. 28, 2005) at 5-6.

<sup>90</sup> Peninsula also defends its interpretation of "broadcasts" as a codification of the former *Wrangell* policy. However, the so-called *Wrangell* policy was ill-defined and obscure. *Wrangell* itself granted waivers of the TV translator rules for service to remote Alaskan native villages that lacked access to *any* off-air signals. *Wrangell Radio Group*, 46 RR2d 1329 (1980), para. 10. In relying on *Wrangell* to grant waivers to Peninsula, a branch of the former Mass Media Bureau's Audio Services Division extrapolated from that "broadcast signals are not readily available off-the-air in most Alaskan communities, such as Seward," essentially treating all of Alaska as a remote village. See *1992 Waiver Letter* at 2. Subsequently, however, the Commission concluded that the staff had relied on *Wrangell* in error, and that "*Wrangell* provides no justification for waiver of the translator rules for other area translators operating in non-'white' areas." *Peninsula Communications, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 23992, 23998 n.12 (1998) (*1998 Omnibus Order*). Thus, Peninsula's interpretation of Section 307(f)(2) requires reading into the statute a policy that was applied only at the staff level, that the staff applied in error, that the Commission publicly disavowed long before the passage of Section 307(f)(2), and that would effectively abrogate the FM translator rules in Alaska.

<sup>91</sup> *1998 Omnibus Order*, 13 FCC Rcd at 23997-98 (finding that none of Peninsula's translators eligible for a "white areas" waiver). Although translators K257DB, Anchor Point, Alaska, and K272CN, Homer, Alaska, are not discussed individually in the *1998 Omnibus Order*, we note that Station KBBI(AM), Homer, Alaska, initiated service in 1981, well before either translator was originally authorized.

grant of the KPEN and KWVV Renewal Applications is conditioned on Peninsula divesting its non-compliant translators or otherwise coming into compliance with Section 74.1232(d).

*Signal delivery rule.* We find that the record raises a substantial and material question of fact whether some or all of Peninsula's other area translator stations do not currently receive their signals directly off air as required by Section 74.1231(b). Therefore, as a condition of grant, we also require Peninsula to amend the 2013 KPEN and KWVV Renewal Applications to include an affidavit executed by an officer or director certifying under penalty of perjury that all associated translator stations are now operating in compliance with Section 74.1231(b) and any other applicable law, stating in detail how such compliance was achieved (i.e., the method by which each translator currently receives its rebroadcast signal), and/or certifying that any non-compliant translator stations have ceased operations.<sup>92</sup>

*Modification Applications.* We agree with Kenai that the K272CN Modification Application was granted in error (i.e., without due consideration of the rule violations raised in the K272CN Informal Objection) and therefore rescind grant of the application and return it to pending status. We reject Peninsula's argument that Kenai lacks standing to file an informal objection to the K272CN Modification Application. First, standing is not required to file an informal objection.<sup>93</sup> Second, Kenai has standing to object to the K272CN and KWVV Modification Applications because, as the licensee of KKNL, it directly competes with K272CN's primary station, KPEN-FM, and also directly competes with KWVV through the translator stations K283AB, K257ER, K285EH, and K291BH, which rebroadcast KWVV within KKNL's protected service contour.<sup>94</sup>

We find that neither of Kenai's Informal Objections constitutes a petition for declaratory ruling that "terminates a controversy or removes uncertainty" under Section 554(e) of the Administrative Procedure Act.<sup>95</sup> Rather, these pleadings concern an agency adjudication on a pending case. Neither the self-styled (*pro se*) titles of the Informal Objections nor Kenai's observation that the outcome of the adjudication will affect other broadcasters transform this adjudication into a declaratory ruling proceeding. Accordingly, we consider Kenai's objections on the merits.

We find, as detailed above, that the record raises a substantial and material question of fact whether KWVV's translator stations are operating in violation of Sections 74.1232(d) and 74.1231(b) of the Rules. Therefore, in addition to other remedial measures required herein, if Peninsula chooses to prosecute the KWVV and K272CN Modification Applications, it must also amend the Modification Applications to include an affidavit stating that all translator stations affected by the proposed modification will continue to be compliant post-modification, stating in detail how such compliance will be achieved (i.e., the method by which each translator will receive its rebroadcast signal), and/or certifying that any non-compliant translator stations have ceased operations. We defer action on the Modification Applications pending resolution of these compliance issues.

*Sanctions and character qualifications.* Although we have concluded herein that Peninsula erroneously relied on Section 307(f)(2) to justify non-compliance with the Commission's translator rules, we have also recognized that Section 307(f)(2) is less than a model of clarity. Given its ambiguity and the silence of the 2005 *Orders* on the meaning of Section 307(f)(2) and the future of Peninsula's translator "network," we decline to sanction Peninsula for falsely certifying compliance with the translator rules in

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<sup>92</sup> If Peninsula chooses to prosecute the Modification Applications, this compliance certification should also expressly address the post-modification compliance of any relevant translators.

<sup>93</sup> See, e.g., *Chapin Enterprises, LLC*, Memorandum Opinion and Order, 29 FCC Rcd 4250, 4251 (2014).

<sup>94</sup> See KWVV Informal Objection at 1; see also *Gregory L. Masters, Esq.*, Letter, 28 FCC Rcd 15881, 15882 (MB 2013) ("In this case, Backyard has properly alleged that its interests are adversely affected because it competes in the Olean Arbitron Metro with Station W254BQ's primary station, WBYB(FM), Eldred, Pennsylvania.")

<sup>95</sup> See 5 U.S.C. § 554(e); 47 CFR § 1.2.

its 2005 and 2013 Renewal Applications, in particular since it stated the basis for its belief in attachments to those Applications.

We also find that Peninsula's conduct since 2005 does not call into question its basic qualifications to be Commission licensee. Although any violation of the Communications Act or the Commission's Rules raises character concerns, all violations do not rise to the level of potentially disqualifying an applicant.<sup>96</sup> Here, there is no evidence that Peninsula attempted to deceive or mislead the Commission as to its compliance with Sections 74.1232(d) and 74.1231(b). Rather, as detailed herein, Peninsula stated repeatedly in its applications and pleadings that it is exempt from these provisions. We do not find this position to be wholly unreasonable—it is a possible, if erroneous, interpretation of the SHVERA Amendments and 2005 *Orders*. In the absence of an unresolved basic character qualifications issue, we may cure or remedy the rule violations we find herein by requiring divestiture or other measures necessary for Peninsula to come into compliance with the translator rules.<sup>97</sup>

*Main studio rule.* We find that the record does not raise a substantial and material question of fact whether Peninsula has failed to maintain a main studio as required by Section 73.1125(a) for KXBA and KPEN. KSRM's only evidence to substantiate that claim are statements made by Peninsula a decade ago and the assertion that "[w]e have people driving past that location and no one is ever there."<sup>98</sup> Accordingly, we properly rely on the sworn statement of Peninsula's president, David Becker, that "KPEN-FM and KXBA have a fully staffed main studio in full compliance with the requirements of Section 73.1125(a)."<sup>99</sup>

*Program Origination Rule.* We find that the record does not raise a substantial and material question of fact whether Peninsula has failed to comply with the program origination rule of Section 74.1231(b). The only evidence on record is a statement by the General Manager of KSWD and KPEN, Seward, Alaska, that upon disconnecting the DSL lines for the Seward Translators, programming continued on the translators.<sup>100</sup> NRI does not establish that this programming was not broadcast in accordance with one of the exceptions to the program origination rule set out in Section 74.1231 (f)-(h).<sup>101</sup>

*KGTL and KXBA.* The record does not establish that either KGTL or KXBA is currently operating in violation of the co-ownership rule of Section 74.1232(d) or the signal delivery rule of 74.1231(b). The 2013 KGTL Renewal Application includes one translator, K265CK, which is a fill-in station. The 2005 and 2013 KXBA Renewal Applications do not include any translator stations. We have found that the current (post-2005) operation of Peninsula's translator network does not raise character qualifications issues. Therefore, we will unconditionally grant the 2005 and 2013 KGTL and KXBA Renewal Applications.

### III. CONCLUSIONS

For the reasons set forth above, IT IS ORDERED, that the petitions to deny filed by KSRM, Inc. on January 3, 2006, and Northern Radio, Inc. on January 4, 2006, ARE GRANTED to the extent indicated herein and denied in all other respects.

IT IS FURTHER ORDERED that the petition for reconsideration filed by Kenai Broadcasting LLC on December 22, 2014, IS GRANTED and the grant of the modification application for FM

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<sup>96</sup> See 1998 *Omnibus Order*, 13 FCC Rcd at 23996.

<sup>97</sup> *Id.* at 23996.

<sup>98</sup> KSRM Petition at 10 (Declaration of John C. Davis).

<sup>99</sup> KSRM Opposition at 5-6.

<sup>100</sup> NRI Petition at 10 (Declaration of Wolfgang Kurtz).

<sup>101</sup> See 47 CFR § 74.1231(b), (f)-(h).

translator station K272CN, Homer, Alaska, filed by Peninsula Communications, Inc. on November 12, 2014 (FCC File No. BPFT-20141112AMU), IS RESCINDED and the application returned to pending status.

IT IS FURTHER ORDERED that the applications for renewal of station KGTL(AM), Homer, Alaska, filed by Peninsula on September 19, 2005, and August 30, 2013 (FCC File Nos. BR-20050919AEZ and BR-20130830AMW), ARE GRANTED.

IT IS FURTHER ORDERED that the applications for renewal of station KXBA(FM), Nikiski, Alaska, filed by Peninsula on September 19, 2005, and August 30, 2013 (BRH-20050919ACU and BRH-20130830AMJ), ARE GRANTED.

IT IS FURTHER ORDERED that the applications for renewal of stations KPEN-FM, Soldotna, Alaska and KWVV-FM, Homer, Alaska, filed by Peninsula on September 19, 2005, and August 30, 2013 (FCC File Nos. BRH-20050919AEM, BRH-20130830AMR, BRH-20050919AES, and BRH-20130830AMK), ARE GRANTED, subject to the conditions set forth below:

GRANT OF THE ABOVE-REFERENCED 2005 and 2013 KPEN and KWVV RENEWAL APPLICATIONS IS CONDITIONED on Peninsula filing, within 60 days from the date of this letter, (1) any necessary assignment and/or modification applications that, once granted and completed, will bring all associated translator stations into full compliance with Section 74.1232(d) as well as any other applicable rules, statutes, and case law; and (2) separate affidavits of compliance for KPEN and KWVV, each executed by an officer or director, certifying under penalty of perjury that all translator stations associated with the 2005 and 2013 KPEN and KWVV Renewal Applications, respectively are now operating in compliance with Section 74.1231(b), stating in detail how such compliance was achieved (i.e., the method by which each translator currently receives its rebroadcast signal), and/or certifying that any non-compliant translator stations have ceased operations. Such affidavits shall be filed electronically in the Consolidated Database System as “amendments” to the 2005 and 2013 KPEN and KWVV Renewal Applications.

GRANT OF THE ABOVE-REFERENCED 2005 and 2013 KPEN and KWVV RENEWAL APPLICATIONS IS FURTHER CONDITIONED on the consummation of any relevant assignments within 60 days of grant of any assignment applications and/or filing licenses to cover within 60 days of the grant of any relevant modification applications.

Sincerely,

Peter H. Doyle  
Chief, Audio Division  
Media Bureau