

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
PENINSULA COMMUNICATIONS, INC.)
)
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)

MEMORANDUM OPINION AND ORDER

Adopted: October 17, 2005

Released: October 19, 2005

By the Commission:

1. By this order, we reinstate the above-captioned seven FM translators formerly licensed to Peninsula Communications, Inc. (PCI). We conclude that such action is warranted by recent amendments to the Communications Act.

BACKGROUND

2. The stations at issue constituted a network of translators, established by the mid-1980s, to transmit the programming of KWVV-FM, Homer, Alaska, and KPEN-FM, Soldotna, Alaska, to communities on Alaska's Kenai Peninsula.¹ After the Commission amended its FM translator rules in 1990, the Commission concluded that PCI's operation of the translators violated the translator rules and renewed the translators' licenses conditioned on PCI's divestiture of the translators. Peninsula Communications, Inc., 12 FCC Rcd 23992 (1998). When PCI subsequently indicated that it was unable to consummate the divestiture, the Commission rescinded the conditional renewal of the licenses, ordered cancellation of the licenses, and ordered PCI immediately to terminate its operation of the translators. Peninsula Communications, Inc., 16 FCC Rcd 11364 (2001), aff'd, Peninsula Communications, Inc. v. FCC, 55 Fed. Appx. 1, 2003 WL 242660 (D.C. Cir. Jan. 30, 2003).

¹ A more extensive description of this matter may be found in EB Docket No. 02-21, a related enforcement proceeding. See Peninsula Communications, Inc., 18 FCC Rcd 12349 (ALJ 2003). EB Docket No. 02-21 was terminated pursuant to the same statutory provisions discussed in this order. See paragraph 8, below.

3. On December 8, 2004, the President signed into law the 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 modifies section 312(g) of the Communications Act, 47 U.S.C. § 312(g), to read as follows (added language in bold):

If a broadcasting station fails to transmit broadcast signals for any 12-month period, then the station license granted for the operation of that broadcast station expires at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary, **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 other 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.**²

4. The Office of General Counsel informally sought comment on the impact of the legislation on PCI. PCI, the Commission's Enforcement Bureau (EB), and an entity called Kodiak Island Broadcasting Company, Inc. (Kodiak) filed comments, which among other things, addressed PCI's translator licenses.³

5. PCI argues that the SHVERA legislation requires reinstatement of the translator licenses. PCI argues that the last sentence of subsection 312(g) applies to the translators because: (1) the translators are Alaska stations, (2) the licenses for them were revoked or terminated, and (3) the relevant proceeding was related to broadcasting via translator. Accordingly, PCI argues, the translator licenses should be reinstated.⁴

6. EB notes that it could be argued that the new last sentence of 312 (g) is linked to the first sentence and that only licenses revoked or terminated for failure to broadcast for one year are reinstated. EB does not, however, take a position on this argument and concedes that, if the last sentence is not linked to the first sentence, the provision would apply to the translators and require their reinstatement.⁵

² SHVERA also added new § 307(f) to the Communications Act, but as described below, that provision is not outcome determinative given our reading of section 312(g).

³ Enforcement Bureau's Further Comments on Request to Reopen the Record and for Official Notice, filed January 14, 2005; Comments of Peninsula Communications, Inc., filed January 14, 2005; Comments of Kodiak Island Broadcasting Company, Inc. on Enforcement Bureau's Further Comments, filed January 19, 2005. PCI, EB, and an entity called KSRM, Inc. previously filed comments that did not directly address the issues here. See Request to Reopen the Record and for Official Notice, filed December 14, 2005, by PCI; Enforcement Bureau's Comments on Request to Reopen the Record and for Official Notice, filed December 17, 2004; Comments of KSRM, Inc., filed December 17, 2004.

⁴ PCI 1-14-2005 Comments at 4-5 ¶ 6.

⁵ EB 1-14-2005 Further Comments at 3 ¶ 4.

7. Kodiak argues that the SHVERA legislation provides no relief for PCI's translator licenses. Kodiak argues that the second sentence of 312 (g) does not reinstate the translator licenses (even if the second sentence is not linked to the first) because the translator licenses were not "revoked or terminated" within the meaning of the provision. Rather, Kodiak asserts that PCI's translator licenses expired when they were not renewed. In Kodiak's view, the Commission terminated PCI's unlicensed operation, not its licenses.⁶

8. In a related proceeding under section 312(g), the Commission recently vacated an Initial Decision by an Administrative Law Judge that would have revoked two of PCI's full power FM stations because PCI had not complied with the previous Commission order directing it to cease operation of the translators.⁷ The Commission found that section 312(g) required it to terminate the hearing proceeding because it was "related to broadcasting via translator" in Alaska. That decision did not address the translator licenses, since they were not at issue in the hearing proceeding.⁸

ANALYSIS

9. In our June 20, 2005 ruling in EB Docket No. 02-21, we rejected the argument that the new second sentence of section 312(g) is linked to the first sentence and is thereby limited to the reinstatement of licenses revoked or terminated for failure to broadcast for one year, *i.e.*, dark stations.⁹ Accordingly, we reaffirm our conclusion that the last sentence of section 312(g) is not limited to dark stations. The applicability of section 312(g) here, therefore, turns on the issue raised by Kodiak, whether the translator licenses were "revoked or terminated" within the meaning of the provision.

10. We disagree with Kodiak's argument that because the licenses expired they were not "terminated" within the meaning of section 312(g). As noted above, after issues were raised about whether operation of the translators complied with the Commission's rules, the Commission renewed the licenses of the translators subject to a condition that PCI divest the translators to a third party. Subsequently, Peninsula failed to consummate the required divestiture, and the Commission rescinded the conditional renewals of the license grants. We find that rescission of the conditional renewals constitutes "termination" of the licenses within the meaning of section 312(g). We would also consider the Commission's failure to renew the translator licenses to be "termination" within the meaning of the statute.

⁶ Kodiak 1-18-2005 Comments at 3-4.

⁷ Peninsula Communications, Inc., EB Docket No. 02-21, FCC 05-128 (Jun. 20, 2005).

⁸ See id. at n. 5.

⁹ See id. at ¶ 8.

11. We note that an argument could be made that PCI's translator licenses should not be deemed "broadcast licenses" subject to reinstatement under section 312(g). We conclude, however, that the better reading of "broadcast licenses," as used in section 312(g), includes translator licenses, since it contemplates that broadcasting may occur "via translator." Further, the Communications Act defines "broadcasting" as "the dissemination of radio communications intended to be received by the public, directly or by the intermediary of relay stations." 47 U.S.C. § 153(6). We think this indicates that "broadcasting," as used in the Communications Act, includes relay, *i.e.*, translator, operation. Finally, although translators are regulated under a different part of 47 C.F.R. than full power broadcasters and are licensed separately,¹⁰ our regulations support reading the statutory term "broadcast licenses" to include translator licenses. Those regulations specifically define an FM translator as a "station in the broadcasting service."¹¹ We therefore conclude that section 312(g) applies to translator licenses, and that, as such, PCI's translator licenses should be reinstated.¹²

12. Additionally, there is currently pending before the United States District Court in Alaska an action to enforce a \$140,000 forfeiture imposed by the Commission against PCI because of PCI's failure to comply with Commission orders directing it to cease operation of its translators. We direct the Office of General Counsel to inform the Department of Justice, which is representing the Commission in that proceeding, that the Commission sees no reason to continue to litigate the forfeiture proceeding given that the translators in question have now been reinstated.

ORDERING CLAUSE

13. ACCORDINGLY, IT IS ORDERED, That the licenses for former 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, ARE REINSTATED to licensee Peninsula Communications, Inc. for terms beginning as if they had not previously expired.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹⁰ See 47 C.F.R. § 74.1232(a).

¹¹ See 47 C.F.R. § 74.1201(a).

¹² Because we find that section 312(g) requires the reinstatement of PCI's translator licenses, we need not reach the issue of whether section 307(f)(2), added by SHVERA, compels the same result.