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Jeffrey D. Southmayd, Esq.
Southmayd & Miller
4 Ocean Ridge Boulevard South
Palm Coast, FL 32137

Charles F. Dunham
Kenai Broadcasting, LLP
10914 E 46th Ave
Spokane, WA 99206

David Tillotson, Esq.
4606 Charleston Terrace NW
Washington, DC 20007

Gregg P. Skall, Esq.
1401 I Street NW
Seventh Floor
Washington, DC 20005

Seward Media Partners, LLC
12358 Roundtable Dr
Seward, AK 99664

Alaska Educational Radio System, Inc.
12415 Merlin Dr
Seward, AK 99664

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

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

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

KWVV-FM, Homer, AK
Facility ID No. 52145
File Nos. BRH-20050919AES

BRH-20130830AMK
BPH-20141219AAA

K257DB, Anchor Point, Alaska

Facility ID No. 52162
File Nos. BALFT-20161129AEZ
BRFT-20050919AEN
BRFT-20130830AMS

K272CN, Homer, Alaska

Facility ID No. 52148
File Nos. BALFT-20161129AFA
BRFT-20050919AEO
BRFT-20130830AMT
BPFT-20141112AMU

K285EF, Kenai, Alaska

Facility ID No. 52161
File Nos. BALFT-20161129AFB
BRFT-20050919AEV
BRFT-20130830AMO

K274AB, Kodiak, Alaska

Facility ID No. 52151
File Nos. BALFT-20161129AFC
BRFT-20050919AER
BRFT-20130830AMV

K285AA, Kodiak, Alaska

Facility ID No. 52164
File Nos. BALFT-20161129AFD
BRFT-20050919AET
BRFT-20130830AMM

K285DU, Homer, Alaska

Facility ID No. 52157
File No. BRFT-20050919AEU
BRFT-20130830AMN

K272DG, Seward, Alaska

Facility ID No. 52160
File Nos. BALFT-20161129AFE
BRFT-20050919AEQ
BRFT-20130830AMU

K285EG, Seward, Alaska

Facility ID No. 52158
File Nos. BALFT-20161129AFF
BRFT-20050919AEX
BRFT-20130830AMP

K292ED, Kachemak City, Alaska

Facility ID No. 52150

File Nos. BALFT-20040802BKI

BRFT-20050919AEY

BRFT-20130830AMQ

K283AB, Soldotna, Alaska

Facility ID No. 52155

File Nos. BALFT-20161129AFG

BRFT-20050919AEW

BRFT-20130830AML

**Applications for Renewal of Licenses
Petition for Reconsideration**

**Applications for Assignment of Licenses
Petition to Deny**

Dear Counsel and Petitioners:

We have before us: (1) the above-referenced applications (Assignment Applications) filed by Peninsula Communications, Inc. (Peninsula) on November 29, 2016, for consent to the proposed assignment of the licenses for eight FM translator stations (Stations) from Peninsula to Turquoise Broadcasting Company LLC (Turquoise) and associated pleadings;¹ (2) an application filed by Peninsula on August 2, 2004, for consent to the proposed assignment of the license for FM translator station K292ED, Kachemak City, Alaska, from Peninsula to Turquoise (K292ED Assignment Application) and associated pleadings;² (3) a petition for reconsideration (Petition for Reconsideration) filed by KSRM on October 31, 2016, of the Commission's September 30, 2016,³ grant of the above-captioned renewal applications for stations KGTL(AM), Homer, Alaska (KGTL);⁴ KXBA(FM), Nikiski, Alaska (KXBA);⁵ KPEN-FM, Soldotna, Alaska (KPEN);⁶ and KWVV-FM, Homer, Alaska (KWVV),⁷ filed by Peninsula

¹ The eight stations proposed to be assigned are: K257DB, Anchor Point, Alaska; K272CN, Homer, Alaska; K272DG, Seward, Alaska; K274AB, Kodiak, Alaska; K285EF, Kenai, Alaska; K283AB, Soldotna, Alaska; K285AA, Kodiak, Alaska; and K285EG, Seward, Alaska. File Nos. BALFT-20161129AEZ-AFG. On December 20, 2016, Alaska Educational Radio System, Inc. (AERS) and Seward Media Partners, LLC (SMP) jointly filed a petition to deny the Assignment Applications (Assignment Petition to Deny). On January 4, 2017, Peninsula filed an opposition to the Assignment Petition to Deny (Assignment Opposition).

² File No. BALFT-20040802BKI; *Broadcast Applications*, Public Notice, Report No. 25793 (MB Aug. 6, 2004). On August 23, 2004, NRI filed an informal objection to the K292ED Assignment Application (K292ED NRI Informal Objection). On September 7, 2004, KSRM, Inc. (KSRM) filed a petition to deny the K292ED Assignment Application (K292ED KSRM Petition) (collectively, K292ED Petitions to Deny). On September 7, 2004, Turquoise filed an opposition to the K292ED NRI Informal Objection. On September 9, 2004, Peninsula filed an opposition to the K292ED NRI Informal Objection, 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.

³ *Jeffrey D. Southmayd*, Letter, 31 FCC Rcd 10912 (MB 2016) (*Renewal Decision*).

⁴ File Nos. BR-20050919AEZ (2005 KGTL Renewal Application) and BR-20130830AMW (2013 KGTL Renewal Application). The 2013 KGTL Renewal Application included the renewal of KGTL fill-in FM translator station K265CK, Kachemak City, Alaska.

⁵ File Nos. BRH-20050919ACU (2005 KXBA Renewal Application) and BRH-20130830AMJ (2013 KXBA Renewal Application).

⁶ File Nos. BRH-20050919AEM (2005 KPEN Renewal Application) and BRH-20130830AMR (2013 KPEN Renewal Application). The 2005 and 2013 KPEN Renewal Applications included the renewals of the following

on September 19, 2005,⁸ and August 30, 2013,⁹ and associated pleadings.¹⁰ In connection with the Assignment Applications and KWVV and KPEN Renewal Applications, Peninsula requests waivers of the translator signal delivery rule¹¹ to permit four of the Stations to receive signals via “alternate signal delivery” rather than directly over the air (Waiver Requests).¹²

For the reasons set out below, we: (1) dismiss the Petition for Reconsideration; (2) deny the Waiver Requests; (3) grant in part and deny in part the Assignment Petition to Deny; (4) grant the Assignment Applications for stations K272CN, K274AB, K257DB, K285EF, K283AB, and K285AA, subject to a 60 day consummation deadline; (5) unconditionally grant the K292ED Assignment Application; and (6) conditionally grant the Assignment Applications for K272DG and K285EG (Seward Translators) subject to a 60 day consummation deadline and a certification requirement.¹³ Specifically, we direct Peninsula to certify that the Seward Translators comply with the translator signal delivery rule within 30 days of the date of this letter decision. As first set out in the *Renewal Decision*, such certifications must be submitted in the form of separate affidavits of compliance, executed by an officer or director, certifying under penalty of perjury that each Seward Translator is 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 station has ceased operations.¹⁴ If Peninsula fails to submit the Seward Translator compliance certifications or timely consummate the proposed assignments as directed, we will rescind grant of the relevant Renewal and Assignment Applications and cancel the relevant Station license for failure to comply with a condition of renewal.¹⁵

four FM translator stations: K257DB, Anchor Point, Alaska; K272CN, Homer, Alaska; K272DG, Seward, Alaska; and K274AB, Kodiak, Alaska.

⁷ 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 six FM translator stations: K285EF, Kenai, Alaska; K283AB, Soldotna, Alaska; K285DU, Homer, Alaska; K285AA, Kodiak, Alaska; K292ED, Kachemak City, Alaska; and K285EG, Seward, Alaska.

⁸ 2005 KGTL Renewal Application; 2005 KXBA Renewal Application; 2005 KPEN Renewal Application; and 2005 KWVV Renewal Application.

⁹ 2013 KGTL Renewal Application; 2013 KXBA Renewal Application; 2013 KPEN Renewal Application; 2013 KWVV Renewal Application.

¹⁰ On November 14, 2016, Peninsula filed an opposition to the Petition for Reconsideration (Reconsideration Opposition), and on December 1, 2016, KSRM filed a reply to the Reconsideration Opposition (Reconsideration Reply).

¹¹ 47 CFR § 74.1231(b) (Section 74.1231(b) or signal delivery rule).

¹² KWVV and KPEN Renewal Applications, Affidavits of Compliance, filed by Peninsula on November 29, 2016 (KWVV Compliance Affidavit and KPEN Compliance Affidavit) (collectively, Compliance Affidavits). The Compliance Affidavits are substantially identical; therefore, citations herein to “Compliance Affidavits” mean the same page number in each document.

¹³ We continue to defer further action on: (1) The K272CN Modification Application (File No. BPFT-20141112AMU); (2) the KWVV Modification Application (File No. BPH-20141219AAA); and (3) Peninsula’s requests for special temporary authority for stations KGTL, KXBA, KPEN, and KWVV, seeking to reduce each station’s ERP (File Nos. BSTA-20090213CPS; BSTA-20090213DAT; BSTA-20090213DAX; and BSTA-20090213DAZ) pending resolution of the present renewal proceeding.

¹⁴ *Renewal Decision*, 31 FCC Rcd at 10926.

¹⁵ See *Peninsula Communications, Inc.*, Order to Show Cause, 17 FCC Rcd 2838, 2841 (2002) (“Peninsula had received and accepted a conditional grant of its 1995 renewal applications for the translators in 1997. Having failed to fulfill the condition despite having years to do so, Peninsula forfeited its licenses and has no entitlement to a

Background. This renewal proceeding is the latest development in more than three decades of Commission enforcement actions relating to Peninsula's network of "other area" FM translator stations on Alaska's Kenai Peninsula and Kodiak Island.¹⁶ These translators extend the signal coverage of Peninsula's primary stations KPEN and KWVV into other markets, in violation of Section 74.1232(d), which prohibits the common ownership of primary stations and "other area" translator stations (stations whose 60 dBu signal contour extends beyond that of the primary station).¹⁷ Underlying these proceedings is the fundamental principle that FM translators were never intended as a means for full service commercial stations to expand beyond their primary service areas into new markets.¹⁸ Rather, the translator service is intended to provide "supplementary service to areas in which direct reception of [full service] stations is unsatisfactory due to distance or intervening terrain barriers."¹⁹ Therefore, the Commission has consistently sought to "prevent unfair competition by [translators rebroadcasting] distant commercial FM stations."²⁰

Cancellation and reinstatement. In 2001, after prolonged enforcement efforts had failed to bring Peninsula's translator network into compliance with the rules, the Commission cancelled six of Peninsula's other area translator licenses for failure to meet a condition of their license renewals (namely, divestiture of non-compliant stations).²¹ However, Peninsula continued to operate the cancelled translator stations, in disregard of the *Cancellation Order*, from May 19, 2001, to August 28, 2002.²² As a result, in 2003, an administrative law judge also revoked Peninsula's licenses for the two primary stations associated with the cancelled translators (KPEN and KWVV).²³ However, in 2004, Congress adopted two

hearing."); *P&R Temmer v. FCC*, 743 F.2d 918, 928 (D.C. Cir. 1984) (termination of license for failure to meet license condition does not require hearing).

¹⁶ Peninsula was originally required to divest these translators by June 1, 1993. For a comprehensive history of the various Commission and court proceedings relating to this matter, see *Peninsula Communications, Inc.*, Initial Decision, 18 FCC Rcd 12349, 12352 (2005) (*Initial Decision*). Although the *Initial Decision* was later vacated, this action was based purely on the reinstatement mandate of Section 312(g) and does not repudiate the factual findings developed on the record in the *Initial Decision* proceeding.

¹⁷ 47 CFR § 74.1232(d) (Section 74.1232(d) or rule prohibiting co-ownership of other area translators) ("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."); *Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations*, Report and Order, 5 FCC Rcd 7212, 7215 (1990) (*Translator Order*). A primary station is the full service station whose signal a translator retransmits. Section 74.1232(d) permits "fill-in" stations—those located entirely within the protected service contour of the primary station—to be co-owned.

¹⁸ See, e.g., *Initial Decision*, 18 FCC Rcd at 12352; *Monroe County Comm'n's.*, 72 FCC 2d 683, 685 (1979) ("The purpose of the [VHF translator co-ownership rule] is to prevent VHF licensees from using translators as competitive weapons by extending their signals beyond their primary service area into the service area of competitors. The rule is consistent with the purpose of translators to provide service to communities without it, and to improve reception within a station's primary service area."); *BER-TEC Broadcasting, Inc.*, Memorandum Opinion and Order, 101 FCC 2d 570, 573 (1985) (*BER-TEC*) ("The underlying rationale for [Section 74.1232(d)(1)'s] inclusion was to prevent FM station licensees from using FM translators as a competitive means for extending their stations' service areas.").

¹⁹ *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).

²⁰ See, e.g., *BER-TEC*, 101 FCC 2d at 573.

²¹ *Peninsula Communications, Inc.*, Memorandum Opinion and Order and Order to Show Cause, 16 FCC Rcd 11364, 11369-70 (2001) (*Cancellation Order*).

²² *Initial Decision*, 18 FCC Rcd at 12369.

²³ *Id.* at 12368-71.

amendments to the Act as part of the Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA).²⁴ One of these provisions, Section 312(g) of the Act, required the Commission to reinstate “[a]ny broadcast license revoked or terminated in Alaska in a proceeding related to broadcasting via translator, microwave, or other alternative signal delivery.”²⁵ In accordance with this statutory mandate, in 2005, the Commission reinstated Peninsula’s cancelled translator and primary station licenses.²⁶ The other SHVERA provision, Section 307(f)(2), provides that a translator station that initially broadcast to a white area be allowed to continue to provide such service even if another (full service) licensee begins broadcasting to the area.²⁷

Renewal Decision. After the 2005 reinstatements, Peninsula continued to own and operate its non-compliant translators as before, on the theory that the SHVERA Amendments, as implemented by the Commission in the *Reinstatement Orders*, “modified ... the Commission's FM Translator rules and policies with regard to the operations of the Licensee's FM Translator Stations in Alaska” such that “any and all proceedings and allegations against [Peninsula] were of no cause and effect.”²⁸ In 2016, the Bureau rejected this argument when it granted Peninsula’s 2005 and 2013 Renewal Applications, reasoning that: (1) the retrospective language of Section 312(g) only required the Commission to reinstate any Alaskan licenses that had been revoked or terminated in a translator-related proceeding prior to December 8, 2004—a mandate it had satisfied in the *Reinstatement Orders*;²⁹ and (2) Section 307(f)(2) does not apply to Peninsula’s translator stations because none of them originally “broadcast to an area of Alaska that did not have access to over the air broadcasts,” i.e., a white area.³⁰ Therefore, the Bureau concluded, neither SHVERA Amendment gave Peninsula “carte blanche to operate outside of the rules of the FCC in perpetuity.”³¹

Accordingly, the Bureau granted Peninsula’s 2005 and 2013 Renewal Applications but conditioned grant of the KPEN and KWVV renewals (and those of their associated translators) on Peninsula coming into compliance with Section 74.1232(d) and the signal delivery rule of Section 74.1231(b), which requires “other area” translator stations to receive their input signals directly over-the-air.³² In doing so, the Bureau exercised its discretion, in the absence of an unresolved basic qualifications

²⁴ 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).

²⁵ 47 U.S.C. § 312(g).

²⁶ *Peninsula Communications, Inc.*, Memorandum Opinion and Order, 20 FCC Rcd 11408 (2005); *Peninsula Communications, Inc.*, Memorandum Opinion and Order, 20 FCC Rcd 16919, 16921 (2005) (collectively, *Reinstatement Orders*).

²⁷ 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.”

²⁸ See *Renewal Decision*, 31 FCC Rcd at 10920.

²⁹ *Id.* at 10921-22.

³⁰ *Id.* at 10923.

³¹ *Id.* at 10918.

³² *Renewal Decision*, 31 FCC Rcd at 10918; 47 CFR § 74.1231(b) (Section 74.1231(b) or signal delivery rule) (“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

issue,³³ to cure or remedy a rule violation rather than designate the matter for a hearing.³⁴ Regarding Peninsula's character qualifications, the Bureau emphasized that there was no evidence that Peninsula had attempted to deceive or mislead the Commission. Rather, it observed that Peninsula had openly and repeatedly maintained that the SHVERA Amendments and *Reinstatement Orders* gave it ongoing immunity from the Commission's rules, a position that was not "wholly unreasonable—it is a possible, if erroneous, interpretation of the SHVERA Amendments and 2005 *Orders*."³⁵ The Bureau also concluded that the record did not raise a substantial and material question of fact whether Peninsula had complied with the main studio or program origination rules.³⁶

Petition for Reconsideration. In the Petition for Reconsideration and Reconsideration Reply, KSRM argues that the Bureau erred in concluding that there were no unresolved character qualifications issues or serious violations by Peninsula of the Communications Act or the rules and regulations of the Commission which, taken together, would constitute a pattern of abuse. According to KSRM, the record shows a more than twelve-year pattern of rule violations by Peninsula since the enactment of the SHVERA Amendments.³⁷ Citing *Jefferson Radio*, KSRM concludes that the Renewal Applications should have been designated for hearing until Peninsula's "basic character qualifications" can be determined.³⁸ KSRM states that Peninsula knew, since the *1998 Omnibus Order* and the SHVERA

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.

³³ See *Jefferson Radio Co. v. FCC*, 340 F.2d 781 (D.C. Cir. 1964) (*Jefferson Radio*) (holding that action on an assignment or transfer application generally must be deferred where there are unresolved basic character qualifications issues concerning the seller in a renewal proceeding for the station sought to be transferred); *Virginia RSA 6 Cellular Ltd. Partnership*, Memorandum Opinion and Order and Notice of Apparent Liability, 6 FCC Rcd 405, 407 (1991) (issuing a notice of apparent liability for premature construction on the basis that not all rule violations warrant a hearing to determine the licensee's basic character qualifications).

³⁴ 47 U.S.C. § 303(r) (authorizing the Commission to "prescribe such restrictions and conditions" as may be necessary to carry out its duties); *The Petroleum V. Nasby Corp.*, 10 FCC Rcd 6029, 6030 (Rev. Bd. 1995) (conditioning grant of license renewal and transfer applications on divestiture of stock ownership and corporate membership resulting from illegal transfers); *Spanish Int'l Communications Corp.*, Memorandum Opinion and Order, 1 FCC Rcd 92, 92 (1987) (renewing license despite violation of Section 310(b) alien ownership restrictions conditioned upon prompt transfer to qualified, unrelated buyers); *Fox Television Stations, Inc.*, Memorandum Opinion and Order, 10 FCC Rcd 8452 (1995) (renewing license despite violation of Section 310(b) alien ownership restrictions conditioned upon submission by licensee of public interest showing justifying non-compliance or statement demonstrating future compliance).

³⁵ *Renewal Decision*, 31 FCC Rcd at 10925.

³⁶ 47 CFR § 73.1125(a) and 47 CFR § 74.1231(b), respectively.

³⁷ Petition for Reconsideration at 6.

³⁸ Petition for Reconsideration at 6, 9 (citing *Jefferson Radio*, 340 F.2d at 783 (prohibiting the assignment of a license while basic qualifications issues raised against the licensee remain unresolved, thus serving as a deterrent to licensee misconduct by preventing a licensee from "selling out" from under a potential disqualification)). See also, e.g., *Cellular System One of Tulsa, Inc.*, Memorandum Opinion and Order, 102 FCC 2d 86, 89-90 (1985).

Amendments, that its behavior was unlawful.³⁹ KSRM also disputes the Bureau's conclusion regarding the main studio rule and submits additional evidence on this issue.⁴⁰

In its Reconsideration Opposition, Peninsula contends that the KSRM Petition for Reconsideration relies on arguments that have been fully considered and rejected by the Commission within the same proceeding and thus do not warrant reconsideration.⁴¹ Peninsula disputes KSRM's allegation that the KXBA/KPEN main studios violate the Rules and provides additional evidence to support its position.

Waiver history and requests. Although the divestitures proposed in the Assignment Applications would, once completed, resolve Peninsula's non-compliance with Section 74.1232(d), the rule prohibiting common ownership of other area translators, they do not resolve compliance issues relating to the signal delivery rule of Section 74.1231(b). In its Compliance Affidavits, submitted in response to the *Renewal Decision*, Peninsula concedes that the Seward Translators currently violate the signal delivery rule and have since they were first licensed in 1993.⁴² Accordingly, Peninsula requests a "continuation" of the signal delivery waivers granted in 1992 by the then-Auxiliary Services Branch of the Audio Services Divisions (Seward Waivers).⁴³ However, as discussed in detail below, the Seward Waivers were terminated by Commission order in 2003.⁴⁴ As that action is long since final, Peninsula's request for "continuation" of the Seward Waivers is actually a request for new signal delivery waivers.

Peninsula also requests new signal delivery waivers for its two translator stations located on Kodiak Island, K274AB and K285AA (Kodiak Translators).⁴⁵ Although Peninsula certifies that the Kodiak Translators currently receive their input signal directly over-the-air from their respective primary stations (or, in the case of K274AB, over-the-air via intermediate translator K257DB),⁴⁶ it argues that a signal delivery waiver is justified because the Kodiak Translators' current antenna receive site, on Pillar Mountain near the community of Kodiak, has become unusable due to environmental hazards.⁴⁷

In its Waiver Requests, Peninsula relies on a 1980 Commission decision, *Wrangell*, in which the Commission granted waivers to television translator licensees permitting them to use video tape cassettes in lieu of over-the-air signals.⁴⁸ The Bureau cited *Wrangell* when it granted the Seward Waivers in 1992.⁴⁹ However, in 1998, the Commission found that the Bureau had granted the Seward Waivers in error, stating that "*Wrangell* provides no justification for waiver of the translator rules for other area

³⁹ Petition for Reconsideration at 4.

⁴⁰ Petition for Reconsideration at 8-9; Reconsideration Reply at 7-8.

⁴¹ Reconsideration Opposition at 2-3.

⁴² Compliance Affidavits at 2.

⁴³ *Peninsula Communications, Inc.*, Letter Decision, Ref. No. 8930-MER (MMB 1992) (*Seward Waiver Letter*) (granting waivers of Sections 74.1232(d) and 74.1231(b)).

⁴⁴ *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*).

⁴⁵ The Kodiak Translators never received a signal delivery waiver. See Compliance Affidavits at 10.

⁴⁶ Compliance Affidavits at 10. K272CN, which rebroadcasts KPEN in the Homer market, also receives the signal of primary station KPEN via K257DB. KPEN Compliance Affidavit at 1.

⁴⁷ Compliance Affidavits at 10-13.

⁴⁸ *Wrangell Radio Group*, Memorandum Opinion and Order, 75 FCC 2d 404, 407 (1980) (*Wrangell*).

⁴⁹ *Seward Waiver Letter* at 2.

translators operating in non-‘white’ areas.”⁵⁰ In 2003, the Commission terminated the Seward Waivers and ordered Peninsula to either come into compliance with the signal delivery rule or cease operation.⁵¹ Although Peninsula did cease operating the Seward Translators for a time after the 2003 *Seward Waiver Termination Order*, it resumed full operation in 2005.⁵² In the *Renewal Letter*, the Bureau summarized the history of *Wrangell* as follows:

[T]he 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. 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. 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.” 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.⁵³

In the Waiver Requests, Peninsula urges the Bureau to resurrect the defunct *Wrangell* waiver policy, at least with respect to the signal delivery rule. (As evidenced by the Assignment Applications, Peninsula appears to accept the Bureau’s determination that the *Wrangell* waiver policy does not justify waiver of the rule prohibiting the co-ownership of other area translators.) In support of this argument, Peninsula claims that Section 307(f)(2) was intended to reinstate the *Wrangell* waiver policy. To give effect to this presumed intent, Peninsula argues, the Commission should read the term “underserved” into the statutory language, thereby finding that Section 307(f)(2) applies not only to translators serving “an area of Alaska that did not have access to over the air broadcasts” (as the statute states), but also to any translator that has made a “groundbreaking investment” in an “underserved” area.⁵⁴ Peninsula goes on to contend that the Commission would then have to expand its signal delivery waiver policy to also include

⁵⁰ *Peninsula Communications, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 23992, 23998 n.12 (1998) (*1998 Omnibus Order*). Despite finding that “initial grant of a waiver would not be justified here absent a showing that the Seward Translators provide ‘white area’ service,” the Commission noted that six years had passed since the new rules had taken effect and thus extended the Seward Waivers in order to preserve “existing service,” with the caveat that “if and when the unbuilt, nonoperational full service FM station authorized in Seward commences operation . . . we may consider whether the circumstances under which the waivers were granted have so changed as to warrant termination of the Seward translator operations.” *1998 Omnibus Order*, at 23998-99.

⁵¹ *Seward Waiver Termination Order*, 18 FCC Rcd at 4029-31 (finding that “waiver of 47 CFR § 74.1231(b), permitting Peninsula to continue to deliver a distant signal to Seward, would be a clear detriment to the continued viability of full service broadcast stations licensed to Seward.”). The Commission initially terminated the Seward Waivers in 2000, when a new FM station licensed to Seward commenced operations. *Peninsula Communications, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 3293, 3295 (2000) (*Initial Waiver Termination Order*). However, after Peninsula challenged this and other Commission actions in court, the Commission took a different approach, deciding that “section 316 of the Act affords the most direct and expedient means of resolving the matter” and ordering Peninsula to show cause why the Seward translators’ licenses should not be modified. *Cancellation Order*, 16 FCC Rcd at 11370.

⁵² *Renewal Decision*, 13 FCC Rcd at 10916.

⁵³ *Renewal Decision*, 13 FCC Rcd at 10923, n.90 (internal citations omitted).

⁵⁴ Compliance Affidavits at 3, 5, 8-10. To the extent that, by this argument, Peninsula seeks reconsideration of the *Renewal Decision*, it is untimely. 47 CFR § 1.106(f), 1.4(b) (petitions for reconsideration must be filed within 30 days of the release date of a non-rulemaking document release by Commission or staff). Therefore, we consider Peninsula’s Section 307(f)(2) arguments purely in the context of its waiver requests.

underserved areas in order to “harmonize” with the broader interpretation of the statute.⁵⁵ The final result would be that the Kodiak and Seward Translators would qualify for signal delivery waivers because, although both communities had a local commercial AM full service station at the time these translators commenced operation, the Peninsula translators initially provided a first and second *commercial FM* signal to their respective communities.⁵⁶ Peninsula also notes that, at the present time, no commercial FM or AM full service station is licensed to Seward.⁵⁷

Also in support of its Waiver Requests, Peninsula cites to a footnote in the 1990 *Translator Order* that states, “We intend that our decisions herein not alter in any fashion the special treatment we accord Alaska. *Wrangell Radio Group*, 75 FCC 2d 404 (1980). Upon appropriate showing the Commission has accommodated Alaska’s unique lack of adequate communications services by granting waivers allowing program origination, alternative signal delivery, and cross-service translating.”⁵⁸ Regarding the Kodiak Translators specifically, Peninsula also makes a claim of technical necessity, asserting that a waiver of Section 74.1231(b) is the “only way [the Kodiak Translators] can technically remain on the air.”⁵⁹ Finally, Peninsula makes the equitable argument that it relied upon the 1992 Seward Waivers to invest “more than \$75,000” in building the two Seward Translators and its “own FCC licensed C-band satellite uplink and downlink facilities to link Seward.”⁶⁰

Assignment Petition to Deny. In the Assignment Petition to Deny, AERS and SMP object to the Assignment Applications on several grounds. First, AERS and SMP state that Peninsula’s network of “other area” translator stations deter development of local full service stations, to the point of creating a “unapproachable desert” in some markets.⁶¹ Second, AERS and SMP claim that Turquoise is essentially a Peninsula proxy—exclusively rebroadcasting Peninsula stations, refusing to consider rebroadcasting other primary stations, and participating in a “campaign of expansion of [Peninsula’s] commercial access to audiences.”⁶² Third, AERS and SMP argue that encouraging low cost “other area” translators is not in the public interest because they do not have the regulatory responsibilities of full service stations—for example, providing support to the public in the event of a local emergency.⁶³ According to AERS and SMP, each Peninsula translator must receive its signal directly off the air from its primary station.⁶⁴ Finally, AERS and SMP argue that Seward in particular already has “more than adequate” FM translator service from distant commercial originating facilities, including existing Turquoise translators that

⁵⁵ Compliance Affidavits at 3.

⁵⁶ Compliance Affidavits at 4, 10.

⁵⁷ Compliance Affidavits at 4. The license for KSEW(AM), Seward, Alaska, was terminated by the Commission on February 5, 2014. *Letter to Mr. Wolfgang Kurtz*, Ref. 1800B3-VM (MB rel. Feb. 5, 2014). Seward’s sole FM station, now KKNi-FM, Sterling, Alaska, relocated its community of license to Sterling on February 2, 2012. *See* File No. BLH-20120314ACN, Exh. 1; *Broadcast Actions*, Public Notice, Report No. 47706 (MB Mar. 30, 2012).

⁵⁸ *Translator Order*, 5 FCC Rcd at 7245.

⁵⁹ Compliance Affidavits at 11.

⁶⁰ Compliance Affidavits at 7.

⁶¹ Assignment Petition to Deny at 6.

⁶² Assignment Petition to Deny at 4-6.

⁶³ Assignment Petition to Deny at 2; *see also Translator Order*, at 7213 (“Emergency warnings of imminent danger remain permissible with no local service obligations.”).

⁶⁴ Assignment Petition to Deny at 3.

rebroadcast Peninsula stations KXBA and KPEN.⁶⁵ AERS and SMP emphasize that the Peninsula translators are “a deterrent to the future licensing of full service local facilities.”⁶⁶

In the Assignment Opposition, Peninsula challenges AERS’s and SMP’s standing to file the Assignment Petition to Deny, claiming that the objections raised therein relate only to Seward and that neither has media interests in that community. Specifically, Peninsula notes that AERS assigned the license for noncommercial educational (NCE) station KIBH-FM, Seward, Alaska (KIBH-FM), to Kenai Educational Media, Inc. in 2012 and that SRS’s license for KSEW(AM), Seward, Alaska, was terminated by the Commission on February 5, 2014.⁶⁷ Peninsula claims that only a resident of the service area of the station or a regular listener has standing to file a petition to deny a proposed assignment.⁶⁸ On the merits, Peninsula briefly states that AERS’s and SMP’s arguments are “irrational” and “don’t qualify for a serious response”—pointing out, for example, that out-of-market translators are not actually “foreign entities” as described in the Assignment Petition to Deny.⁶⁹

K292ED Assignment Application. The K292ED Assignment Application seeks Commission consent to assign the license of FM translator station K292ED (K292ED) from Peninsula to Turquoise. K292ED is a fill-in translator rebroadcasting the signal of primary station KWVW, and as such, has not been previously cancelled or reinstated. In the K292ED Petitions to Deny, NRI and KSRM claim that Turquoise, the assignee, has violated Section 73.1231(g) of the rules by selling commercial spot announcements for its translator station K290AA using a rate card.⁷⁰ In the K292ED Oppositions, Peninsula and Turquoise argue that NRI lacks standing to file a petition to deny the K292ED Assignment Application because it is neither a listener nor competitor in the Homer market.

Discussion. Procedural issues. In the broadcast regulatory context, standing is generally obtained by a petitioner in one of three ways: (1) as a competitor in the market suffering signal interference; (2) as a competitor in the market suffering economic harm; or (3) as a resident of the station's service area or regular listener of the station.⁷¹ In this case, AERS holds permits or licenses for broadcast stations in one or more of the markets involved in the Assignment Applications and therefore has standing as an economic competitor to file the Assignment Petition to Deny.⁷² Likewise, KSRM, as the licensee of stations in the Kenai/Soldotna market,⁷³ has standing to object to the K292ED Assignment

⁶⁵ Assignment Petition to Deny at 1-4. With respect to the allegation of AERS and SMP that K272DG is in violation of 47 CFR § 73.207(b) with respect to KIBH-FM, Seward, we observe that Section 73.207(b) does not apply to translators.

⁶⁶ Assignment Petition to Deny at 4.

⁶⁷ Assignment Opposition at 1-2, n.2.

⁶⁸ Assignment Opposition at 2.

⁶⁹ Assignment Opposition at 3.

⁷⁰ 47 CFR § 74.1231(g).

⁷¹ See, e.g., *Melodie Virtue, Esq.*, Letter Decision, 30 FCC Rcd 6045, 6049 (MB 2015) (citing 47 U.S.C. § 309(d)(1); 47 CFR § 73.3584(a); *MCI Communications Corp.*, Memorandum Opinion and Order, 12 FCC Rcd 7790, 7794 (1997)).

⁷² AERS is the licensee of: KABN-FM, Kasilof, Alaska (Kenai/Soldotna market); K223BJ, Eagle River, Alaska; K279BC, Kasilof, Alaska; K283AZ, Anchorage, Alaska; K300BY, Willow Creek, Alaska; K241CD, Moose Pass, Alaska; K246CD, Moose Pass, Alaska; and K291CP, Bear Creek, Alaska. AERS is also the permittee of: K296GW, Primrose, Alaska, and K260CY, Hope, Alaska. With the cancellation of the KSEW license, it appears that SMP no longer has any broadcast interests and therefore lacks standing to file a petition to deny the Assignment Applications. Therefore, we consider SMP an informal objector but accept the Assignment Petition to Deny based on the standing of joint petitioner AERS. See 47 CFR § 73.3587.

⁷³ KSRM is the licensee of stations KSRM(AM), Soldotna, Alaska; KFSE(FM), Kasilof, Alaska; KSLD(AM), Soldotna, Alaska; KWHQ-FM, Kenai, Alaska; and KKIS-FM, Soldotna, Alaska.

Application because KSRM directly competes with K292ED's primary station, KWVV, which also rebroadcasts in the Kenai/Soldotna market via translator stations K283AB and K285EF.⁷⁴ NRI, however, as a mere applicant for new stations that could potentially compete with Turquoise, lacks standing as a "direct and current competitor" to file a petition to deny the K292ED Assignment Application.⁷⁵ Therefore, we will consider the NRI pleading as an informal objection.⁷⁶

Petition for Reconsideration. Reconsideration is warranted only if the petitioner shows an error of fact or law in the Commission's original order, or raises additional facts not known or existing at the time of the petitioner's last opportunity to present such matters.⁷⁷ It is axiomatic that reconsideration will not be granted for the purpose of debating matters on which the Commission has already deliberated and spoken.⁷⁸ Here, KSRM's objections regarding Peninsula's character qualifications or the Section 309(k) renewal standard either were or could have been presented earlier in the proceeding and thus are impermissibly raised on reconsideration. Likewise, KSRM's additional evidence regarding Peninsula's compliance with the main studio rule is not admissible on reconsideration. It is axiomatic that a party may not "sit back and hope that a decision will be in its favor and, when it isn't, to parry with an offer of more evidence."⁷⁹ Therefore, we dismiss the Petition for Reconsideration for failure to meet the standard set out in Section 1.106 and affirm the Bureau's character qualifications analysis in the *Renewal Decision* for the reasons stated therein.

Signal delivery waivers in Seward and Kodiak. The Commission's rules may be waived only for good cause shown.⁸⁰ The Commission must give waiver requests "a hard look," but an applicant for waiver "faces a high hurdle even at the starting gate"⁸¹ and must support its waiver request with a compelling showing.⁸² Waiver is appropriate only if both: (1) special circumstances warrant a deviation from the general rule; and (2) such deviation better serves the public interest.⁸³

Regarding signal delivery waivers, the Commission will favorably consider waiver requests for translators that provide service to a white area, *i.e.*, an area outside the coverage contour of any full-time

⁷⁴ See *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.")

⁷⁵ See, e.g., *New World Radio*, 294 F.3d 164 (D.C. Cir. 2002) (holding that the seminal case on competitor standing, *FCC v. Sanders Brothers Radio Station*, 309 U.S. 470, 477 (1940), was "premised on the petitioner's status as a direct and current competitor whose bottom line may be adversely affected by the challenged government action"); *Taft Broadcasting Co. (WIBF)*, 17 FCC 2d 876 (1969) ("In our view, *Sanders* standing assumes an actual state of competition, not the future prospect thereof.")

⁷⁶ 47 CFR § 73.3587.

⁷⁷ 47 CFR § 1.106(c) and (d) (Section 1.106); *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964) (*WWIZ*).

⁷⁸ See, e.g., *WWIZ*, 37 FCC 685 at 686; *Shaw Communications*, Letter Order, 27 FCC Rcd 6995, 6996, para. 5 (MB 2012).

⁷⁹ See, e.g., *Canyon Area Residents for the Environment*, Memorandum Opinion and Order, 14 FCC Rcd 8152, 8154 (1999) (quoting *Colorado Radio Corp. v. FCC*, 118 F.2d 24, 26 (D.C. Cir. 1941)).

⁸⁰ 47 CFR § 1.3.

⁸¹ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) (subsequent history omitted).

⁸² *Greater Media Radio Co., Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 7090 (1999) (citing *Stoner Broadcasting System, Inc.*, Memorandum Opinion and Order, 49 FCC 2d 1011, 1012 (1974)).

⁸³ *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

aural broadcast service.⁸⁴ The Commission has held that the 1990 *Translator Order* “left no room for waiver of these rules for the operation of other area translators in Alaska or elsewhere in the absence of ‘white area’ showings.”⁸⁵ We have expressly refused to accept arguments that signal delivery waivers may be based on “either provision of a second service to a ‘gray’ area or the provision of an additional service to an underserved area which received fewer than five aural services.”⁸⁶ By restricting waivers of the signal delivery rule to “white area” situations, the Commission sought to “promote incentives for full service FM and AM broadcast development and prevent such stations from being forced to compete economically with translators.”⁸⁷ Since the mid-2000’s, the Bureau has in some cases made a distinction between areas served by noncommercial and commercial full-service stations, granting waivers of the signal delivery rule where the translator station would serve a “commercial white area”—i.e., an area “currently receiving no commercial aural signals.”⁸⁸ For the reasons stated below, we find that Peninsula has failed to demonstrate either “special circumstances” or public interest benefits that would warrant deviation from the Commission’s signal delivery rule or “white area” precedent. First, we address Peninsula’s arguments that either Section 307(f)(2) or Footnote 59 dictate the outcome of our waiver analysis.

Effect of Section 307(f)(2) on Waiver Requests. We affirm the Bureau’s conclusion in the *Renewal Decision* that Section 307(f)(2), by its terms, does not apply to any of the Peninsula Stations, because none of the translators “initially broadcast to an area that did not have access to at least one over-the-air aural broadcast service.”⁸⁹ There is no need to “harmonize” Section 307(f)(2) and our current signal delivery waiver policy. These two provisions are already consistent; both require a showing of service to a white area. Specifically, Section 307(f)(2) applies only to translator stations that have served “an area of Alaska that did not have access to over the air broadcasts”—i.e., a white area. Likewise, the Commission’s longstanding policy, as established in the 1990 *Translator Order*, is that signal delivery waivers are justified only for translators serving a white area (or, more recently, a “commercial white area.”).⁹⁰ Peninsula suggests that we “simply apply the conclusion” that Section 307(f)(2) also applies to *underserved*, or “gray” areas, and then change our waiver policy to “harmonize” with that interpretation.⁹¹ However, Peninsula fails to cite any precedent (other than the original, terminated Seward Waivers) or legislative history to justify such a departure from the language of Section 307(f)(2) and the Commission’s established signal delivery waiver policy and precedent. To the contrary—as discussed below, there are compelling public interest reasons against granting the Waiver Requests.

Effect of “Footnote 59” on Waiver Requests. In its Waiver Requests, Peninsula claims that, in Footnote 59 of the 1990 *Translator Order*, the Commission expressly exempted Alaska from the new waiver requirements. The Commission previously addressed this exact argument in 1998:

The Commission did state in a footnote to its signal delivery discussion in the Report and Order that “[w]e intend that our decisions herein not alter in any fashion the special treatment we accord

⁸⁴ *Translator Order*, 5 FCC Rcd at 7221;

⁸⁵ *1998 Omnibus Order*, 13 FCC Rcd at 23993; *Ernest Sanchez, Esq.*, Letter Decision, 32 FCC Rcd 2132, 2133-34 (MB 2017) (*Midland*).

⁸⁶ *Translator Order*, 5 FCC Rcd at 7221; *Seward Waiver Termination Order*, 18 FCC Rcd at 4028; *Kevin C. Boyle, Esq.*, Letter Decision, 11 FCC Rcd 2348, 2350 (MMB 1996).

⁸⁷ *1998 Omnibus Order*, 13 FCC Rcd at 23998.

⁸⁸ See *Turquoise Broadcasting Company, LLC*, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 2507, 2509 n.9 (2008) (*Rate Card Declaratory Ruling*).

⁸⁹ *Renewal Decision*, 31 FCC Rcd at 10923.

⁹⁰ *Translator Order*, 5 FCC Rcd at 7221; *Rate Card Declaratory Ruling*, 23 FCC Rcd at 2509 n.9.

⁹¹ Compliance Affidavits at 3.

Alaska[.]” citing *Wrangell*. Read in context, however, this statement expresses the Commission's willingness to allow Alaskan commercial translators providing fill-in service to use satellite rather than terrestrial delivery of signals upon an appropriate showing that no terrestrial means is available due to the lack of microwave, phone company circuits, dedicated fiber optic cable or other communications services. *Wrangell* provides no justification for waiver of the translator rules for other area translators operating in non-“white areas.”⁹²

We affirm this analysis and note that the Commission's resulting determination that waiver grants in either Kodiak or Seward were not justified absent a “white area” showing is long since final.⁹³ Therefore, because we reject Peninsula's arguments that waiver is presumptively justified by either Section 307(f)(2) or Footnote 59, we analyze the Waiver Requests under the Commission's current waiver policy, as established in the 1990 *Translator Order*, clarified with respect to Alaska in the 1998 *Omnibus Order*, and most recently applied by the Bureau in the *Midland Decision*.⁹⁴

Kodiak waivers. In the absence of a “white area” showing, Peninsula's waiver request for the Kodiak Translators rests on an argument of technical necessity. In 1998, we rejected an almost identical request for waiver of the signal delivery rule for the Kodiak Translators.⁹⁵ At that time, the proposed assignee of the Kodiak Translators had requested signal delivery waivers because “the two off-air reception antennas that were used to deliver the translators' signals to Kodiak for the past 12 years recently were destroyed,” so that a signal delivery waiver would be “the only means by which the translators can continue to retransmit their respective primary stations.”⁹⁶ The Commission denied these waiver requests on the basis that the Kodiak Translators did not provide service to a “white area.”⁹⁷ For the same reasons, Turquoise requested and was denied “technical necessity” signal delivery waivers for three of its Kodiak translators in 2008.⁹⁸ The situation has not changed. Kodiak is currently well served by both commercial and noncommercial full service stations, as well as numerous translators (including other Turquoise stations already rebroadcasting KPEN and KWVW).⁹⁹

Even if “technical necessity” were an adequate justification for waiver of the signal delivery rule, Peninsula has failed to support its Waiver Requests on that basis. Information contained in CDBS licensing records indicates that there are several other communications sites along Pillar Mountain Road that appear not to be affected by environmental contamination issues, including three currently used by Turquoise (K271BF, K282AU, and K300BZ). Moreover, Peninsula does not address the technical feasibility of alternative receive antenna sites other than on Pillar Mountain. Finally, we note that after the Commission previously denied the “technical necessity” signal delivery waiver request for the Kodiak Translators, Peninsula was able to make arrangements for alternative receive antenna facilities.¹⁰⁰ For all

⁹² 1998 *Omnibus Order*, 13 FCC Rcd at 23998, n.12 (internal citations omitted).

⁹³ 1998 *Omnibus Order*, 13 FCC Rcd at 23997-98 (extending the Seward Waivers for other reasons).

⁹⁴ See *supra*, note 85.

⁹⁵ 1998 *Omnibus Order*, 13 FCC Rcd at 23997-98.

⁹⁶ 1998 *Omnibus Order*, 13 FCC Rcd at 23997-98.

⁹⁷ 1998 *Omnibus Order*, 13 FCC Rcd at 23997-98.

⁹⁸ *Turquoise Broadcasting Company, L.L.C.*, Letter Decision, Ref. No. 1800B3-LH (Oct. 23, 2008) (finding that technical impediments to receiving a clear input signal do not justify waiver of the signal delivery rule).

⁹⁹ See, e.g., KBKO(FM) (NCE); KODK(FM) (NCE); KMXT(FM) (NCE); KRXX(FM) (commercial); as well as translators K210CF, K216DF, K254BA, K271BF (rebroadcasting KPEN), K282AU (rebroadcasting KWVW), K296DC, and K300BZ; all licensed to Kodiak, Alaska.

¹⁰⁰ 1998 *Omnibus Order*, 13 FCC Rcd at 23997.

of these reasons, we conclude that grant of signal delivery waivers for the Kodiak Translators is not warranted. Therefore, because the Kodiak Translators are currently in compliance with the signal delivery rule, there is no need for conditional grant of the Assignment Applications with respect to the Kodiak Translators.

Seward waivers. As with the Kodiak Translators, the Seward Translators do not serve, and have never served, a white area.¹⁰¹ Although it appears that Seward has now become a “commercial white area” in that its remaining full service stations are NCE stations, we nonetheless conclude that in these circumstances waiver is not warranted, for the following reasons.

The signal delivery rule imposes a geographic limitation on the expansion of primary stations into other markets via “other area” translators. The purpose of this and the other translator rules adopted or revised in 1990 was to ensure that the translator service “does not adversely affect the operation of [full service] FM radio broadcast stations.”¹⁰² The Commission has held that “to the extent that translator service is desirable beyond a station's predicted service contour, the over-the-air signal will generally be suitable for rebroadcast.”¹⁰³ For years, the Seward Translators operated in violation of this and other translator restrictions, placing “its own economic interests ahead of the Commission's regulatory scheme and the public interest in having honest competition.”¹⁰⁴ Predictably, these long term rule violations resulted in substantial economic damage to local full service stations in Seward, as amply demonstrated on the record by at least three different full service licensees.¹⁰⁵ Ultimately, the licensee of KPFN (now KKNI) moved KPFN to Sterling, Alaska, citing financial difficulties caused by, inter alia, translator competition for the “limited revenue” available in Seward.¹⁰⁶ The license for KSWD (now DKSEW) terminated on February 1, 2014, apparently also due to financial distress.¹⁰⁷ Given this history, we conclude that Peninsula should not be allowed to reap the benefit of a situation caused, at least in part, by its own non-compliant translator operations.

Moreover, Peninsula cannot now claim to provide first or even second commercial FM coverage

¹⁰¹ Compliance Affidavits at 4, 10; *Seward Waiver Termination Order*, 18 FCC Rcd 4027 at 4028.

¹⁰² *Translator Order*, 5 FCC Rcd at 7213.

¹⁰³ *Amendment of Part 74 of the Commission's Rules Regarding Translator Stations*, Memorandum Opinion and Order, 8 FCC Rcd 5093, 5098 (1993) (*Reconsideration Order*).

¹⁰⁴ *Initial Decision*, 18 FCC Rcd at 12372.

¹⁰⁵ In 1996, KSWD licensee White Falcon stated, “The “available radio advertising dollars in a community of this size are obviously limited. The local advertising dollars that Peninsula draws out of Seward with its two translators leave too few radio advertising dollars in the market to support Seward's local station, KSWD. Consequently, in mid-1995 White Falcon was forced to suspend broadcast operations by KSWD due to continuing financial losses.” Petition to deny filed by White Falcon on February 20, 1996, against Peninsula's 1995 renewal application for K285EG (File No. BRFT-951124ZK). In 1998, subsequent KSWD licensee Glacier Communications, Inc. testified that the Seward Translators took between \$4,000 and \$5,000 per month in radio revenues from Seward, and that “competition from the Seward translators makes it difficult for KSWD to survive and prosper in a community as small as Seward.” *1998 Omnibus Order*, 13 FCC Rcd at 23997. In 2003, Phoenix Broadcasting, Inc., then licensee of both KSWD and KPFN, stated that the Seward translators continue to have an adverse economic impact on Seward's full service stations, “siphoning” substantial advertising revenues out of Seward. *Seward Waiver Termination Order*, 18 FCC Rcd at 4031.

¹⁰⁶ File No. BPH-20071108AET, Exh. 36 (application for change in community of license from Seward to Sterling, Alaska). The construction permit was granted on February 2, 2009. *Broadcast Actions*, Public Notice, Report No. 46916 (Feb. 5, 2009). A license to cover was filed on March 14, 2012, and granted on March 27, 2012. File No. BLH-20120314ACN; *Broadcast Actions*, Public Notice, Report No. 47706 (March 30, 2012).

¹⁰⁷ *Wolfgang Kurtz*, Letter Decision, Ref. No. 1800B3-VM (Feb. 5, 2014); *Seward Media Partners, LLC*, Letter Decision, Ref. No. 1800B3-SS (Oct. 6, 2016). This termination is now final. See *Seward Media Partners, Inc.*, Letter Decision, Ref. No. 1800B3-SS (Apr. 11, 2017).

to Seward, as that community is currently served by at least four other commercial FM translators, including translators already rebroadcasting Peninsula primary stations KXBA and KPEN.¹⁰⁸ We find that the public interest in grant of a waiver to provide two additional translator signals to a community already well supplied with out-of-market programming is minimal, especially considering the concomitant risk to the viability of local full service stations.

Finally, we reject Peninsula's contention that its initial expenditures on the Seward translator and satellite facilities justify its Waiver Requests. First, these expenditures occurred well before the Commission terminated the Seward Waivers in 2003. Therefore, Peninsula's equitable reliance argument is more appropriately characterized as an untimely petition for reconsideration of the *Seward Waiver Termination Order* than a justification for a new waiver.¹⁰⁹ Moreover, it appears that the only C-band satellite earth station (SES) currently licensed to Peninsula is call sign E970280, Homer, Alaska (Homer SES).¹¹⁰ The Homer SES is co-located with Peninsula station KGTL, more than 80 miles from Seward across extremely mountainous terrain, and therefore cannot be said to "link Seward." The Homer SES was licensed in 1997, after the Commission had determined that "neither continuation of the ownership waivers previously granted to Peninsula's two Seward translators, nor a grant of waivers in the first instance to seven other translators, is warranted."¹¹¹ Therefore, we cannot credit Peninsula's assertion that it built its satellite facilities "without ever suspecting that FCC permission to serve Seward would ever be arbitrarily denied or rescinded in the future."¹¹² For these reasons, we find that Peninsula's equitable reliance argument does not support its Waiver Requests.

In conclusion, in the absence of a "white area" showing, we find that the Waiver Requests are not justified by Peninsula's remaining arguments, especially given the demonstrated risk to local full service stations. In this respect, we note record evidence that when Peninsula's Kodiak Translators were previously silent (or rebroadcasting programming of the Kodiak Community Church), competing full power commercial stations licensed to Kodiak increased their advertising revenues.¹¹³ In keeping with the Commission's longstanding policy that the translator rules "will best serve the public interest by promoting incentives for primary station development," we anticipate that our action today will help restore a healthy competitive ecosystem in Seward and facilitate the re-establishment of local full power radio service.¹¹⁴

Compliance affidavits. With respect to the Seward Translators, Peninsula has not yet satisfied the renewal condition that it certify "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

¹⁰⁸ Namely, Seward is served by: K224DX, Seward, Alaska (rebroadcasting KXBA); K236CC, Seward, Alaska (rebroadcasting KPEN); K276FF, Seward, Alaska (rebroadcasting KXBA); K281AZ, Seward, Alaska (rebroadcasting KXBA). The community is also served by NCE translators K201AO, Seward, Alaska (rebroadcasting NCE station KSKA, Anchorage, Alaska); K259BK, Seward, Alaska (rebroadcasting NCE station WJSO(FM), Pikeville, Kentucky); K291CP, Bear Creek, Alaska (rebroadcasting NCE station KIBH-FM); K296GW, Primrose, Alaska (also rebroadcasting KIBH-FM).

¹⁰⁹ The "show cause" procedure utilized by the Commission included notification to the affected licensee and 30 days within which to protest the proposed order of modification. *2001 Cancellation Order* at 11370 (citing 47 U.S.C. § 316; 47 CFR § 1.87).

¹¹⁰ Peninsula does not provide a call sign or other identifying information for its satellite facility.

¹¹¹ *Peninsula Communications, Inc.*, Letter, Ref. No. 1800B4-AJS (Sept. 11, 1996) at 9.

¹¹² Compliance Affidavits at 7.

¹¹³ *Initial Decision*, 18 FCC Rcd at 12358.

¹¹⁴ *See Reconsideration Order*, 8 FCC Rcd at 5094.

translator stations have ceased operations.”¹¹⁵ Although the *Renewal Decision*, by its terms, requires a single compliance showing covering all Stations, we consider it appropriate and equitable at this point to accept Peninsula’s compliance showings with respect to the non-Seward Translators and to address compliance issues relating specifically to the Seward Translators separately. Accordingly, we condition grant of the Seward Translators’ Assignment Applications on Peninsula submitting the required certifications within 30 days of the issuance of this letter decision.¹¹⁶ Grant of the Seward Translators’ Assignment Applications will not be effective until the Bureau receives and issues its concurrence to the required compliance certifications. Failure to submit these certifications as directed will result in rescission of the grant of the relevant Seward Translator’s Assignment and Renewal Applications and cancellation of any non-compliant Seward Translator license for failure to comply with conditions of renewal.

Consummation deadlines. In addition, as set out in the *Renewal Decision*, consummation of all the proposed transactions must take place within 60 days of the effective date of the grant of the Assignment Applications. In the case of the Seward Assignment Applications, that deadline is 60 days from the date that the Bureau issues its concurrence to the Seward compliance certifications. In the case of the remaining Assignment Applications, the consummation deadline is 60 days from the date of this letter decision. Failure to consummate as directed will result in rescission of the grant of the relevant Assignment and Renewal Application and cancellation of any non-compliant license for failure to comply with a condition of renewal.

Relationship between Peninsula and Turquoise. Section 74.1232(e) prohibits an “other area” translator station from receiving any support, before or after construction, either directly or indirectly, from the commercial primary FM radio broadcast station. In this case, albeit with some reservations, we find that the Petitioners have not provided sufficient evidence to raise a substantial and material question of fact that Peninsula exercises *de facto* control over the Turquoise stations or provides support in violation of Section 74.1232(e). Although all Turquoise translators rebroadcast Peninsula primary stations and in some cases are located on property or tower structures owned by Peninsula, Petitioners have not adduced any non-circumstantial evidence to show that these arrangements are not arm’s-length contracts at market rates.¹¹⁷ Therefore, we properly rely on Peninsula’s certifications in the Renewal Applications that it complies with Section 74.1232(e).¹¹⁸

Assignment Petition to Deny. In the discussion above, we agree with certain of the general public interest arguments set out in the Assignment Petition to Deny, such as the value of local full service broadcasting and the detriment posed to such service by translators rebroadcasting distant market stations. We also agree that Seward and Kodiak already have abundant FM translator service, including other translators rebroadcasting KXBA and KPEN. These considerations form part of the basis for our denial

¹¹⁵ See *Renewal Decision*, 31 FCC Rcd at 10926.

¹¹⁶ The record does not establish a substantial and material question of fact whether Peninsula is currently in violation of the translator relay rule, and we note that the 60 dBμ signal contour of relay station K257DB encompasses the community of Homer, Alaska. However, we remind Peninsula that that rule permits an FM translator to retransmit the signal of another FM translator only if the relaying translator is not used solely to relay the signal of the primary station to a more distant facility. See 47 CFR 74.1231(c).

¹¹⁷ See, e.g., *Gerald A. Turro*, Decision, 14 FCC Rcd 15649 (2000) (holding that a time brokerage agreement between translator and primary station licensees is permissible where: (1) the time brokerage contract is kept at the primary station and made available for Commission inspection upon request per 47 CFR § 73.3613(d); (2) there is a bona fide, arm’s-length transaction between the primary station and the translator; (3) the licensee of the translator station pays the primary station a rate charge comparable to the amount charged other purchasers of brokered airtime, or an amount consistent with such charges in the local broadcast community; and (4) at no time does the translator station receive financial support, directly or indirectly, from the primary station to cover any costs associated with the operation and maintenance of the translator station).

¹¹⁸ Renewal Applications, Section V, Exh. 33, Question 3.b.

of the Waiver Requests. However, as discussed in more detail above, we conclude that AERS and SMP's allegations of improper collusion between Peninsula and Turquoise lack an adequate legal or factual foundation. Moreover, to the extent that the Assignment Petition to Deny requests outright dismissal of the Assignment Applications for non-compliant Stations, it is denied in favor of the conditional grant approach described herein.

K292ED Assignment Application. The issues raised by the K292ED Assignment Application were fully addressed and resolved by the Commission in the 2008 *Rate Card Declaratory Ruling*, which governs our analysis here. In the *Rate Card Declaratory Ruling*, the Commission held that Turquoise's practice of using rate cards does not "constitute either a violation of the Rules or raise a substantial and material question of fact regarding TBC's qualifications to remain a Commission licensee . . . the use of rate cards by an FM translator station is not a *per se* violation of Section 74.1231(g) of the Rules."¹¹⁹ Therefore, we deny the K292ED Petitions to Deny.

Conclusion/Actions. For the reasons stated above, IT IS ORDERED that the joint Petition to Deny filed by AERS and SMP on December 20, 2016, IS GRANTED to the extent indicated above and denied in all other respects.

IT IS FURTHER ORDERED that Peninsula's Waiver Requests are DENIED.

IT IS FURTHER ORDERED that the Assignment Applications filed by Peninsula on November 29, 2016, for stations K272CN (File No. BALFT-20161129AFA), K274AB (File No. BALFT-20161129AFC), K285EF (File No. BALFT-20161129AFB), K283AB (File No. BALFT-20161129AFG), K257DB (File No. BALFT-20161129AEZ) and K285AA (File No. BALFT-20161129AFD) ARE GRANTED subject to the condition that the proposed transactions must be consummated within 60 days of the release of this letter decision.

IT IS FURTHER ORDERED that the Assignment Applications filed by Peninsula on November 29, 2016, for stations K272DG (File No. BALFT-20161129AFE) and K285EG (File No. BALFT-20161129AFF) (Seward Assignment Applications) ARE GRANTED subject to the following condition:

GRANT OF THE SEWARD ASSIGNMENT APPLICATIONS IS CONDITIONED on Peninsula certifying within 30 days of issuance of this letter decision that each Seward Translator is 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 station has ceased operation. Grant of the Assignment Applications will be effective once the Bureau issues its formal concurrence to the submitted certifications. Failure to submit these certifications as directed will result in rescission of the grant of the relevant Seward Assignment and Renewal Application and cancellation of any non-compliant Seward Translator license for failure to comply with conditions of renewal. Grant is likewise conditioned on the proposed transactions being consummated within 60 days of the Bureau's formal concurrence to the required certifications.

IT IS FURTHER ORDERED that the Petition for Reconsideration filed by KSRM on October 31, 2016, IS DISMISSED.

¹¹⁹ *Rate Card Declaratory Ruling*, 23 FCC Rcd at 2511.

IT IS FURTHER ORDERED that the informal objection filed on August 23, 2004, by NRI and the petition to deny filed on September 7, 2004, by KSRM ARE DENIED and the K292ED Assignment Application (File No. BALFT-20040802BKI) IS GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau