



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

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***In Reply Refer to:
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In re: K272DG, Seward, Alaska
Facility ID No. 52160
File Nos. BALFT-20161129AFE
BRFT-20050919AEQ
BRFT-20130830AMU
BPFT-20170925AAG

K285EG, Seward, Alaska
Facility ID No. 52158
File Nos. BALFT-20161129AFF
BRFT-20050919AEX
BRFT-20130830AMP

**Applications for Renewal of Licenses
Applications for Assignment of Licenses**

Dear Counsel and Petitioners:

We have before us a "Certification of Compliance" (Seward Compliance Certification) regarding FM translators K272DG and K285EG, both Seward, Alaska (Seward Translators), submitted on September 29, 2017, by Peninsula Communications, Inc. (Peninsula) in response to a September 5, 2017, letter decision by the Audio Division, Media Bureau (Bureau) (*Assignment Decision*).¹ We also have the above-referenced modification application filed by Peninsula on September 25, 2017, seeking to relocate K272DG from Seward, Alaska, to Ninilchik, Alaska (K272DG Modification Application).² As explained more fully below, we find that Peninsula has now satisfied the condition imposed on the grants of the above-referenced assignment applications (Seward Assignment Applications), that it certify that each

¹ Jeffrey D. Southmayd, Esq., Letter, DA 32 FCC Rcd 6786 (MB 2017).

² File No. BPFT-20170925AAG. See *Broadcast Applications*, Public Notice, Report No. 29079 (MB Sept. 27, 2017).

Seward Translator complies with the signal delivery rule of Section 74.1231(b).³ Because we thus formally concur with the Seward Compliance Certification, the grants of the Seward Assignment Applications are now effective. Consummation of the transactions proposed in the Seward Assignment Applications must take place within 60 days from the date of this letter.⁴ Failure to consummate as directed will result in rescission of the grant of the relevant Seward Assignment Application and cancellation of any non-compliant license for failure to comply with a condition of renewal.⁵ Finally, we dismiss the K272DG Modification Application because it proposes a major change to K272DG's licensed facilities outside of a filing window, in violation of Section 74.1233(d)(2)(i) of the Commission's Rules.⁶

Background. In the September 2016 *Renewal Decision*,⁷ the Bureau required Peninsula, as a condition of the grant of the above-referenced renewal applications, to: (1) bring the Seward Translators into compliance with 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);⁸ and (2) certify that the Seward Translators are "now operating in compliance with [the signal delivery rule of] 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."⁹ On November 29, 2016, Peninsula filed the Seward Assignment Applications, which, if consummated, would bring the Seward Translators into compliance with 74.1232(d). However, Peninsula requested waivers of the signal delivery rule for certain of its translators, including the Seward Translators. In the *Assignment Decision*, the Bureau denied these waiver requests and conditioned grant of the Seward Assignment Applications on Peninsula certifying

³ 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* . . .") (emphasis added).

⁴ See *Assignment Decision*, 31 FCC Rcd at 6803 (conditioning grant of the Seward Assignment Applications on the proposed transactions being consummated within 60 days of the Bureau's formal concurrence to the required certifications).

⁵ *Assignment Decision*, 31 FCC Rcd at 6803; see also *Renewal Decision*, 31 FCC Rcd at 10926.

⁶ 47 CFR § 74.1233(d)(2)(i) (Section 74.1233(d)(2)(i)) (The FCC will specify by Public Notice, pursuant to § 73.5002(a) of this chapter, a period for filing non-reserved band FM translator applications for a new station or for major modifications in the facilities of an authorized station. FM translator applications for new facilities or for major modifications, whether for commercial broadcast stations or noncommercial educational broadcast stations, as described in 47 U.S.C. 397(6), will be accepted only during these specified periods. Applications submitted prior to the window opening date identified in the Public Notice will be returned as premature. Applications submitted after the specified deadline will be dismissed with prejudice as untimely."); see also 47 CFR § 74.1233(a)(1) (Section 74.1233(a)(1)) ("For FM translator stations, a major change is any change in frequency (output channel) except changes to first, second or third adjacent channels, or intermediate frequency channels, and any change in antenna location where the station would not continue to provide 1 mV/m service to some portion of its previously authorized 1 mV/m service area.").

⁷ *Jeffrey D. Southmayd, Esq.*, Letter, 31 FCC Rcd 10912, 10926 (MB 2016) (*Renewal Decision*) (conditioning grant of the Seward Translators' renewal applications on the condition that each come into compliance with 47 CFR § 74.1232(d) and 74.1231(b)).

⁸ 47 CFR § 74.1232(d) (Section 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.").

⁹ *Renewal Decision*, 31 FCC Rcd at 10926. Although the *Renewal Decision* and *Assignment Decision* also disposed of applications relating to other Peninsula translator stations, we limit our discussion herein to applications and actions directly relating to the Seward Translators.

compliance with the signal delivery rule within 30 days of the issuance of the *Assignment Decision*.¹⁰ Accordingly, on September 29, 2017, Peninsula submitted the Seward Compliance Certification.

K272DG. In the Seward Compliance Certification, Peninsula states that it has ceased non-compliant operation of K272DG and applied for special temporary authority for K272DG to remain silent.¹¹ Peninsula also states that, by the K272DG Modification Application, it proposes to bring K272DG into compliance with Sections 74.1232(d) and 74.1231(b) by relocating it 126 kilometers from Seward to Ninilchik, Alaska, to serve as a fill-in translator for co-owned primary station KGTL(AM), Homer, Alaska. Upon grant of the K272DG Modification Application, Peninsula asserts, it will not complete the proposed sale of K272DG to Turquoise but will instead substitute translator station K292ED, Kachemak City, Alaska,¹² for K272DG in the relevant asset purchase agreement.¹³

K285EG. Peninsula also certifies that, on September 28, 2017, it changed K285EG's input signal source for primary station KPEN-FM, Soldotna, Alaska, to an over-the-air signal relayed by K236CC, Seward-Woodrow. However, on October 5, 2017, K236CC ceased operation due to reported mutual interference with K276FF, Seward, Alaska.¹⁴ Accordingly, Peninsula has also now ceased operation of both K236CC and K285EG.¹⁵

Discussion. Upon review of the Seward Compliance Certification and the record, we conclude that Peninsula has satisfied the signal delivery certification conditions set out in the *Renewal Decision* and *Assignment Decision* with respect to each Seward Translator, as follows.

K272DG. The K272DG Modification Application proposes a major change as defined by Section 74.1233(a)(1) because it specifies an antenna location where the station would not continue to provide 1 mV/m service to some portion of its previously authorized 1 mV/m service area. Section 74.1233(d)(2)(i) prohibits the filing of such a major change outside of a filing window. Therefore, we dismiss the K272DG Modification Application as an impermissible application for a major change. However, Peninsula also certifies that K272DG has ceased operations as of October 3, 2017, and has received special temporary authority to remain silent. Therefore, we find that the Seward Compliance Certification is acceptable with respect to K272DG because it satisfies the alternative requirement that Peninsula "certify[] that any non-compliant translator stations have ceased operations."

K285EG. In the K285EG STA Request, Peninsula states that K285EG has ceased operations as of October 5, 2017. Therefore, K285EG is likewise in compliance with the terms of the *Assignment Decision* under the alternative requirement that Peninsula "certify[] that any non-compliant translator stations have ceased operations."

We remind Peninsula that the license of any station that is silent for 12 consecutive months will forfeit automatically pursuant to Section 312(g) of the Communications Act of 1934, as amended (Act).¹⁶ Operation in violation of the signal delivery rule will be considered unauthorized operation and thus "no better than silence" for the purposes of Section 312(g).¹⁷ Additionally, we emphasize that our finding of

¹⁰ *Assignment Decision*, 31 FCC Rcd at 6803.

¹¹ See File No. BLSTA-20170926ADB, granted on October 5, 2017.

¹² Peninsula's previous application to assign K292ED to Turquoise, File No. BALFT-20040802BKI, was unconditionally granted in the *Assignment Decision*, 31 FCC Rcd at 6804.

¹³ See File No. BALFT-20161129AEZ (the lead file number for the Seward Assignment Applications), Exh. 4.

¹⁴ File No. BLSTA-20171010AAR, accepted for filing October 10, 2017.

¹⁵ *Id.*; File No. BLSTA-20171010ACC, granted October 11, 2017 (K285EG STA Request).

¹⁶ 47 U.S.C. § 312(g).

¹⁷ *James McCluskey, Ph.D.*, Letter Decision, 27 FCC Rcd 6252, 6254-55 (MB 2012).

compliance here does not prejudice the disposition of any related modification applications filed in the future, which will be processed on the merits and in accordance with our standard requirements and procedures. In this respect, we note that Section 74.1231(c) of the Rules 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.¹⁸ Moreover, the over-the-air signal delivery requirement of Section 74.1231(b) applies equally to translator stations being used for relay purposes.

Conclusion/Actions. For the reasons stated above, we hereby notify Peninsula that, pursuant to the terms set forth in the *Renewal Decision* and *Assignment Decision*, we concur with the Seward Compliance Certification and find that Peninsula has demonstrated that it is currently in compliance with the signal delivery rule by ceasing operation on the Seward Translators.

Therefore, IT IS ORDERED that the grants of the Seward Assignment Applications, File Nos. BALFT-20161129AFE and BALFT-20161129AFF, ARE EFFECTIVE. The transactions proposed in the Seward Assignment Applications must be consummated within 60 days of the date of this letter. Failure to consummate as directed will result in rescission of the grant of the relevant Seward Assignment Application and cancellation of any non-compliant license for failure to comply with a condition of renewal.

IT IS FURTHER ORDERED that the modification application filed by Peninsula on September 25, 2017, File No. BPFT-20170925AAG, IS DISMISSED.

Sincerely,



Peter H. Doyle
Chief, Audio Division
Media Bureau

¹⁸ 47 CFR 74.1231(c).