

ATTACHMENT 1B

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

EXHIBIT #8
5/22/97

IN REPLY REFER TO:

18 FEB 1992

8930-MER

Peninsula Communications, Inc.
P.O. Box 103
Homer, Alaska 99603

In re: FM Translator Stations (New)

BPFT-910513TG
102.3 MHz, Channel 272
Seward, Alaska

BPFT-910513TH
104.9 Channel 285
Seward, Alaska

Dear Applicant:

This refers to the above-referenced applications for construction permits for proposed new FM translator stations to serve Seward, Alaska and your request for waiver of various Commission rules. You are the licensee of commercial Stations KPEN-FM and KWVV-FM, Soldotna and Homer, Alaska, respectively. The proposed translators will rebroadcast the signals of these stations. You request waiver of the rules so the stations can be fed by microwave or satellite facilities. In addition, you request waiver of the 10 watt transmitter power output (TPO) limitation of the rules so the stations can operate with 100 watts TPO.

In support of your waiver request, you assert that the translator will provide a first commercial FM service to the community of Seward which has a population of 3,921. You state that Seward is a "somewhat isolated area for radio due to the mountainous terrain." You propose to feed the translators via Alascom Aurora II C-Band satellite or via the State of Alaska microwave system because "off-the-air reception is impossible due to the terrain obstructions." You assert that these translators will "bring a much needed important new service to the community.

On June 1, 1991, the revised FM translator rules became effective. See In the Matter of Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations, ("Report and Order") 5 FCC Rcd. 7212 (1990), as modified by Order, 6 FCC Rcd. 2334 (1991). Section 74.1235 provides that translator operating power levels will be based on an effective radiated power (ERP) standard and not on the TPO standard previously used. The maximum ERP permitted pursuant to the new rules is 250 watts. We will grant your application with an authorized ERP of 250, the maximum permitted pursuant to the revised rules. Your request for waiver of the 10 watt power limitation is therefore moot.

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You also request waiver to feed the proposed translator stations via satellite or microwave. Under 47 CFR § 74.1231, only noncommercial educational translators operating on the reserved band (Channels 201-220) are authorized to receive input signals via satellite or microwave, except in limited circumstances not present here. In addition, you seek waiver of Section 74.1232(d), which provides that an authorization for an FM translator station 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. Thus, since you are the licensee of the proposed primary stations and the translator stations would be located outside the primary service contour of those FM stations, you are not eligible under the rule for an authorization for an FM translator station.

The Commission has, however, on a number of occasions recognized the unique nature of the communications industry in Alaska and the distinct lack of adequate communications services in the state. In Wrangell Radio Group, 75 FCC 2d 404 (1979), the Commission noted that Alaska contains numerous small, isolated, and remote villages. Many of these remote native villages are more than 500 miles apart. As a result, broadcast signals are not readily available off-the-air in most Alaskan communities, such as Seward. After careful consideration of your requests, I am of the view that the Commission's special concern for the availability of broadcast services in Alaska and the number of people who will receive full-service programming from the translator justify your waiver requests. Therefore, we think grant of your application will serve the public interest. Hence, we will grant your request for waiver of the rules, waive the appropriate rules and grant the applications.

Accordingly, for the reasons set forth above and pursuant to Section 0.283 of the Commission's Rules, your request for waiver of the Commission's Rules IS GRANTED and the requirements of Section 74.1231(b) and Section 74.1232(d) of the Commission's Rules, to the extent set forth above, ARE WAIVED and the above-referenced applications ARE GRANTED.

Sincerely,



Alan J. Schneider, Chief
Auxiliary Services Branch
Audio Services Division
Mass Media Bureau

cc: Jeffrey D. Southmayd, Esq.

⁵² We underscore the statutory requirement that an independently owned translator, providing fill-in service or service to other areas, must obtain the permission of the primary station to rebroadcast its programming. See 47 U.S.C. § 325(a).

⁵³ On July 28, 1989, Turro filed a request for waiver of Section 74.1231 of the Commission's Rules to permit his FM translator station to originate local programming. By Public Notice, DA 89-933, released August 3, 1989, the Commission requested comment on this waiver petition.

⁵⁴ See *FM Broadcast Rules (First Report and Order)*, 40 FCC 662, 664, 665 (1962); *AM Station Assignment Standards (NPRM)*, 25 Rad. Reg. (P & F) 1615, 1617-1618 (1963); *Cf. Pillar of Fire*, 2 FCC Rcd 519 (1987); *Plainview Radio*, 24 FCC 405, 421 (1958), citing *North Plains Broadcasting*, 7 Rad. Reg. (P & F) 93, 106a (1951).

⁵⁵ See 47 CFR §§ 74.1231(f) and (g).

⁵⁶ 47 CFR § 74.1231(b).

⁵⁷ See *Memorandum Opinion and Order* in MM Docket No. 86-112, *supra*. A proposal to expand this authority to independently owned NCE-FM translators is contained in the *Further Notice of Proposed Rule Making* in MM Docket No. 86-112, 3 FCC Rcd 2202 (1988).

⁵⁸ Association of Federal Communications Consulting Engineers (AFCCE), Brill, Cowan, CBS, Capital Broadcasting et al., Electronic Communication Service (ECS), FM Technology, Kneller, Northland, Seven Ranges, TBA, and Corinthians XIII are among the commenters supporting the Commission's proposal. KBBU supports the Commission's proposal and also recommends that all FM translators should be permitted to use terrestrial microwave transmission facilities.

⁵⁹ Proposals by NAB, NPR, and Temple that we revisit the NCE-FM satellite delivery authority decision made in MM Docket No. 86-112 are beyond the scope of this proceeding. Furthermore, the comments presented by NPR asking that we overturn the exception that permits NCE-FM translators owned by their primary stations to receive signals using any technical means do not offer any new substantive reasons to revisit the issue at this time.

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.

⁶⁰ See 47 CFR § 74.1231(b) and *Memorandum Opinion and Order* in MM Docket No. 86-112, *supra*. These frequencies are primarily available for aural intercity relay and studio transmitter links (STL) usage, but may be used on a secondary basis by FM booster stations and NCE-FM translator stations assigned to reserved channels and owned and operated by their primary station.

⁶¹ Authorization on a secondary basis would mean that aural intercity relay frequencies could be used to deliver signals to FM translators only where such use would not interfere with or preclude the use of those channels by full service radio broadcast stations.

⁶² 47 CFR § 74.1231(b) and (c).

⁶³ AFCCE, CBS, TBA, Corinthians XIII, du Treil, McKenzie, Seven Ranges, WTI and Vernier.

⁶⁴ 47 CFR § 74.1232(b).

⁶⁵ Supporting commenters include AFCCE, Seven Ranges, TBA, Jones, WTI, and McKenzie. AFCCE qualifies its support as it is opposed to multiple FM translators serving the same area on different frequencies carrying one station's signal.

⁶⁶ ABES and Capital Cities-ABC support this proposal.

⁶⁷ TBA offers a similar proposal.

⁶⁸ Comments submitted into the record of this proceeding by the Bureau of Economics of the United States Federal Trade Commission, August 15, 1988.

⁶⁹ See BC Docket No. 80-130, 90 FCC 2d 88 (1982). The Commission employs four criteria to compare proposals to amend the FM Table of Allotments. These criteria are: 1) first full-time aural service; 2) second full-time aural service; 3) first local service; and 4) other public interest matters. Consideration of "other public interest matters" includes the number of aural services received in the proposed service area, the number of local services, the need for or lack of public radio service and other matters such as the relative size of the proposed communities and their growth rate. We proposed to employ these criteria to evaluate mutually exclusive applications for FM translator stations, with the exception of the "local service" criterion. Since FM translators have no program origination authority, we stated that we would not consider whether an applicant will be providing a local service. Thus, we proposed that the third criterion would not be considered, and "the number of local services" would not be considered as one of the "other public interest matters."

⁷⁰ Jones states that the primary station should not receive a priority for translator licenses, and all applications should be processed on a first-come-first-served basis. This will prevent the licensee of a primary station from obtaining translator licenses in order to preclude competitive entry of other FM translators. Tower supports the idea that a lottery system should be used to grant FM translator licenses.

⁷¹ 47 CFR § 73.3573(a)(1). As long as the community or area of service (some translator stations are licensed to rural areas with no defined communities) which was initially served continues to be served, and there is only an incidental expansion of service, a proposed modification has been interpreted as a "minor" change.

⁷² This percentage cut-off to define a "major change" in area of coverage was first set forth in *Ted Tucker and Jana Tucker*, 4 FCC Rcd 2816 (1989) (*San Manuel, AZ*).

⁷³ Klimek opposes this proposal, stating that a change in primary station does not affect any of the technical characteristics of the FM translator and therefore should not be considered.

⁷⁴ Capital Cities-ABC also states that a change in primary station should be considered a major change.

⁷⁵ The Commission emphasizes that, in calculating coverage area changes for major change applications, only the gain area may be included in the measurement.

⁷⁶ In response to the comments expressing concern regarding the potential abuses through cumulative minor change applications, we believe that the review procedure in the existing application process in conjunction with the observations of commentators will adequately monitor excessive changes.

⁷⁷ See 47 CFR § 73.3555.

⁷⁸ See *First Report and Order* in MM Docket No. 87-7, 4 FCC Rcd 1723 (1989). The Commission modified the radio contour overlap rules so that common ownership of two or more commercial stations in the same broadcast service is prohibited if their principal city contours overlap -- i.e., a 5 mV/m contour for AM stations and a 3.16 mV/m contour for FM stations.