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May 28, 2014

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\*not admitted in MD

Accepted/Filed

MAY 28 2014

FCC Office of the Secretary

Marlene H. Dortch, Secretary  
Federal Communications Commission  
The Portals, TW-A325  
445 Twelfth Street, S.W.  
Washington, DC 20554

Re: KAHM(FM), Prescott, AZ  
Facility ID No. 61510

KVGG(FM), Salome, AZ  
Facility ID No. 165984

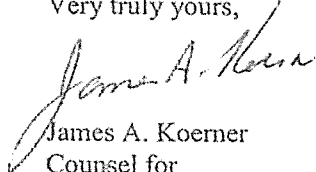
Dear Ms. Dortch:

On behalf of Kemp Communications, Inc., there are transmitted herewith an original and four (4) copies of a Application for Review of an letter (DA 14-562) issued April 29, 2014 by the Chief, Audio Division, Media Bureau with respect to the above-referenced stations.

Also transmitted herewith are an original and four (4) copies of a Motion for Stay with respect to the same stations and the same Media Bureau letter.

Should additional information be necessary in connection with this matter, please communicate with this office.

Very truly yours,



James A. Koerner  
Counsel for  
Kemp Communications, Inc.

Cc: Will Kemp

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In re Application of	)	
	)	
SOUTHWEST FM BROADCASTING	)	File No. BPH-20100813BHN
CO., INC.	)	
	)	
For Construction Permit for Minor Change	)	
Of Station KAHM(FM), Facility ID 61510,	)	
Prescott, AZ	)	
To: Office of the Secretary		
Attn: The Commission		

**APPLICATION FOR REVIEW**

Kemp Communications, Inc. ("Kemp"), by its attorneys, pursuant to Section 1.115 of the Rules<sup>1</sup> hereby seeks review of the decision of the Chief, Audio Division, Media Bureau denying Kemp's Petition for Reconsideration of an earlier decision granting the above captioned application.<sup>2</sup>

The captioned application seeks a change of city of license from Prescott, Arizona to Spring Valley, Arizona, and a change of transmitter site, with a requirement that Kemp change channel at its Station KVGG, Salome, Arizona. The application originally sought treatment as a Priority 3 application.<sup>3</sup> However, the applicant subsequently abandoned

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<sup>1</sup> 47 C.F.R. § 1.115.

<sup>2</sup> Letter to Lawrence N. Cohn Esq. and James A. Koerner, Esq., DA-14-562, released, April 29, 2014 ("Staff Letter").

<sup>3</sup> The FM allotment priorities are: (1) first fulltime aural service; (2) second fulltime aural service; (3) first local service; and (4) other public interest matters. Co-equal weight is given to Priorities (2) and (3). See *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC2d 88 (1982).

listeners with a 21<sup>st</sup> reception service while removing a 6<sup>th</sup> reception service to 50,000 listeners would be required to explain how this service change represents a preferential arrangement. In the example no mention is made of the population within the protected service contour or the percentage of loss, only that the loss of even a 6<sup>th</sup>--not a third, fourth or fifth-- service would need to be explained as opposed to ten times the population receiving a 21<sup>st</sup> service. The 15 percent figure seems to be used as an alternative to explaining how the service change represents a preferential arrangement.<sup>8</sup>

The Staff Letter cites *Marissa G. Repp, Esq. and Gary S. Smithwick, Esq.*, Letter, 27 FCC Rcd 13090 (2012) as precedent for its action here. That was also only a Bureau action and rested on the fact that there was a net gain of 260,000 persons. This is simply a different type of numbers game. Instead of a net gain of 10 persons being determinative, a net gain of 200,000 is determinative. This may explain that the present determination of use of the spectrum is more efficient than under the old regime, but it does not explain how it is more fair or represents a preferential arrangement under Section 307(b).

In the instant case, 99 percent of the population in the gain area already enjoys 21 or more reception services while no one in the loss area receives 21 or more services, while over 120,000 persons receive fewer than 20 services and over 27,000 persons receive 10 or fewer services. Yet the Staff Letter maintains that the sheer number of people in the gain area carries the day. It certainly is an efficient use of the channel, but there is not one word as to why or how it is a fair use of the channel.

If the Commission intended, in *Rural Radio*, to actually require an explanation of how the proposal represents a fair, and thus preferential, use of the channel, it should

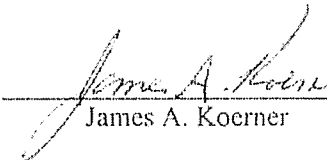
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<sup>8</sup> See, e.g., Staff Letter at fn. 10.

CERTIFICATE OF SERVICE

I, James A. Koerner, do hereby certify that a copy of the foregoing "Application for Review" was served this 28<sup>th</sup> day of May, 2014, via first class US mail, postage prepaid, upon the following:

Lawrence N. Cohn, Esq.  
Cohn & Marks LLP  
1920 N Street, N.W.  
Suite 300  
Washington DC 20036  
*Counsel for Southwestern FM Broadcasting Co., Inc.*

  
James A. Koerner