

61510

ORIGINAL

Before the
Federal Communications Commission
Washington, DC 20554

2013 FEB -6 A 5:58

In the Matter of)

SOUTHWEST FM BROADCASTING CO., INC.)
Spring Valley, AZ)

Application for minor modification for)
Station KAHM, Facility ID Number 61510)

KEMP COMMUNICATIONS, INC.)
Salome, AZ)

Order to Show Cause for Station)
KVGG, Facility ID Number 165984)

File No. BPH-20100813BHN

RECEIVED
FILED/ACCEPTED

FEB 4 2013

Federal Communications Commission
Office of the Secretary

To: Office of the Secretary, FCC
Attn: Chief, Audio Division, Media Bureau

MOTION FOR STAY

Kemp Communications, Inc. ("Kemp"), by its attorneys, hereby requests a stay of the grant of the above-captioned application of Southwest FM Broadcasting, Inc. ("Southwest") and of the effective date of modification of the license of Kemp's Station KVGG license and the date for submission of a minor change application to effectuate such modification. In support hereof, the following is submitted.

On January 11, 2013, the Chief, Audio Division, Media Bureau issued a letter, DA 13-33 ("Staff Letter") granting the above-captioned application of Southwest for minor modification of Station KAHM to change community of license and change transmitter site, and denying the Informal Objection filed by Kemp. The Staff Letter also ordered modification of the FM assignments to substitute FM Channel 231A for FM

Channel 270A at Salome, Arizona, and ordered Kemp to submit a minor change application to effectuate such channel substitution.

Simultaneously herewith, Kemp is filing a petition for reconsideration of the Staff Letter.

Kemp submits that all of the requirements for stay are satisfied in this instance. Such requirements are set forth in *Virginia Petroleum Jobbers, Assn. v. FPC*, 259 F.2d 921 (DC Cir. 1958) as modified by *Washington Metropolitan Area Transit Comm. v. Holiday Tours, Inc.*, 559 F.2d 841 (DC Cir. 1977).

The first requirement is the likelihood the movant will prevail on the merits. In this case, the Staff Letter did not make an informed decision in ordering Kemp to change channels at Station KVGG. Instead, the Staff Letter erroneously states that Kemp did not respond to an Order to Show Cause. Attached to Kemp's petition for reconsideration is a copy of a timely filed Response to Order to Show Cause. Since the Response was entirely overlooked, it is not possible to speculate on the outcome of the show cause proceeding. Kemp has not yet had its day in court on that matter.

Second, Kemp will be irrevocably harmed in the absence of a stay. The Staff Letter purported to change the FM assignments as of the date of the Staff Letter, and directed Kemp to submit an application within 30 days of the Staff Letter for the minor change. Filing such an application would be a concession that the channel change was properly decided. Nothing could be further from the truth. Kemp will have been forced to change channels without ever having had its day in court.

Third, there is no substantial harm to other parties. The Southwest application at issue here had been pending for over two years. Further, Kemp has filed a petition for

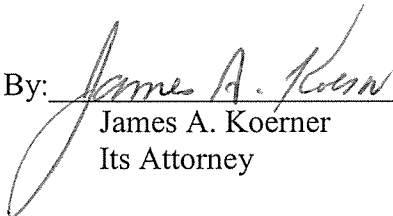
reconsideration. Until there is a final decision following the appeal, Southwest would be constructing its facility at its own peril. With the pendency of the petition for reconsideration, Southwest could request that its construction permit be tolled. A stay such as requested here simply relieves Southwest of having to seek tolling.

Finally, the public interest demands a stay. At issue here is the legitimacy of an agency decision. The public interest cannot be served with a decision having been made without consideration, or even a reading, of all of the relevant pleadings submitted by the parties to the proceeding.

Accordingly, it is requested that the actions taken by the Staff Letter be stayed pending a final decision on Kemp's petition for reconsideration.

Respectfully submitted

KEMP COMMUNICATIONS, INC.

By: _____
James A. Koerner
Its Attorney

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February 4, 2013

CERTIFICATE OF SERVICE

I, James A. Koerner, do hereby certify that a copy of the foregoing "Motion for Stay" was served this 4th day of February, 2013, via first class US mail, postage prepaid, upon the following:

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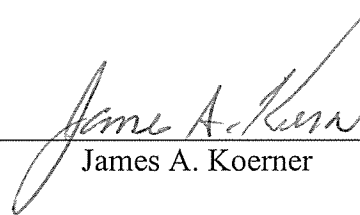
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