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February 4, 2013

FILED/ACCEPTED

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FEB 4 2013

Federal Communications Commission  
Office of the Secretary

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\*not admitted in MD

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

Re: KAHM(FM), Spring Valley, 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 Petition for Reconsideration of a letter (DA 13-33) issued January 11, 2013 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 with respect to this matter, please communicate with this office.

Very truly yours,

  
James A. Koerner  
Counsel for  
Kemp Communications, Inc.

Cc: Will Kemp  
Jeff Reynolds

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

In the Matter of	)	
	)	
SOUTHWEST FM BROADCASTING CO., INC.	)	File No. BPH-20100813BHN
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	)	

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

**PETITION FOR RECONSIDERATION**

Kemp Communications, Inc. ("Kemp"), by its attorneys, hereby seeks reconsideration of the letter dated January 11, 2013 to Lawrence N. Cohn, Esq., *et al.*, DA 13-33 ("Staff Letter")<sup>1</sup> granting the above-referenced application of Southwest FM Broadcasting Co., Inc. and ordering Kemp's license to be modified to specify operation on FM Channel 231A in lieu of FM Channel 270A.<sup>2</sup> In support hereof, the following is submitted.

The FCC letter was issued January 11, 2013. This petition is filed within 30 days of such issuance, and is accordingly timely pursuant to Section 405 of the

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<sup>1</sup> A copy of the Staff Letter is attached as Attachment A.

<sup>2</sup> The Staff Letter also ordered a license modification for Station KBUX, Quartzsite, AZ.

Communications Act of 1934, as amended<sup>3</sup> and Section 1.106 of the Rules and Regulations.<sup>4</sup> Since the Staff Letter denied Kemp's Informal Objection filed against the referenced application, Kemp is clearly a party to this proceeding who has participated in earlier stages of the proceeding. Additionally, since the Staff Letter purports to change the operating channel of Kemp's Station KVGG, Kemp is a party in interest. All of the procedural conditions for a petition for reconsideration have been met.

In the first paragraph of the Staff Letter, Kemp is identified as the "licensee of Station KFMG-LP". According to the Commission's Consolidated Database System (CDBS), Station KFMG-LP is a low power FM station in Des Moines, Iowa licensed to The Des Moines Community Radio Foundation (Newly Formed). This may have been an inadvertent or careless error or it may have had some bearing on the decision reached. Kemp cannot determine which.

Further, in footnote 4 of the Staff Letter, it is stated that neither Kemp nor Martin Vosper (the licensee of Station KBUX) responded to show cause orders issued on March 21, 2012, and are deemed to have consented to the proposed channel substitutions. Attached hereto as Attachment B is a copy of a Response to Order to Show Cause, filed by Kemp and duly stamped as Received by the Office of the Secretary on April 19, 2012. It is obvious that the Staff Letter gave no consideration to Kemp's comments in response to the Order to Show Cause, and the order to change channels deprived Kemp of its day in court.<sup>5</sup>

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<sup>3</sup> 47 U.S.C. § 405.

<sup>4</sup> 47 C.F.R. § 1.106.

<sup>5</sup> A Motion for Stay is being filed simultaneously herewith.

Kemp's population loss calculations were not "incorrect" as stated in the Staff Letter. Rather, the "independent engineering analysis" referenced in the Staff Letter was conducted using an irrational procedure announced in the *Second Order on Reconsideration* in the *Rural Radio* proceeding, released well after Kemp's Informal Objection was filed.<sup>6</sup> There is no rational reason for not counting daytime-only AM stations (which do not provide a full-time, i.e., nighttime, service) in determining the areas and populations receiving no or one service, but counting them as full-time stations for determining the areas and populations receiving two or more services.

In any event, the Staff Letter acknowledges that the KAHM move will create gray area. While that area may not have had population at the time of the 2010 Census, it is not an uninhabitable area, such as area entirely over water or otherwise not capable of supporting population. There is potential for population in that area.

The 15% benchmark for determining whether service loss to underserved areas is contrary to the public interest was clearly meant to be a "bright line" test. The example offered by the Commission is enlightening. "For example, an applicant will not only be required to detail that it is providing 500,000 listeners with a 21<sup>st</sup> reception service, and removing the sixth reception service from 50,000 listeners, but also to provide a rationale to explain how this service change represents a preferential arrangement of allotments or assignments."<sup>7</sup> A mere difference, even a substantial difference between gain and loss is not sufficient in and of itself to support a requested site change.

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<sup>6</sup> *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, Second Order on Reconsideration, FCC 12-127, released October 12, 2012. (*Rural Radio Proceeding*)

<sup>7</sup> *Rural Radio Proceeding*, Second Report and Order, 26 FCC Rcd 2556, 2577.

Using the figures supplied by KAHM in its August 27, 2012 amendment to the referenced application, there would be 27,242 listeners facing loss of 10 or fewer services, while only 3,439 listeners would gain a tenth service. The number of listeners losing a 20<sup>th</sup> or fewer service would be 118,335, while the number gaining a 20<sup>th</sup> service would be only 13,866. More than 99% of the listeners in the gain area already enjoy 21 or more reception services.<sup>8</sup>

The Staff Letter cites *Gearhart, Oregon*, Report and Order, 26 FC Rcd 10259,10264 (MB 2011) in support of its decision here because the station "will be able to provide service to a greater area and population" within the urbanized area. What is omitted, however, is the immediately following sentence in the Report and Order which specifically mentions that there will be "no loss of service". In short, there was only a gain of service, without any loss.

The applicant here has not supplied a rationale, nor has the Staff Letter supplied one, why the gain of a 21<sup>st</sup> or greater service to 99% of the gain population outweighs the loss of a 20<sup>th</sup> or fewer service to nearly 10% of the gain population.

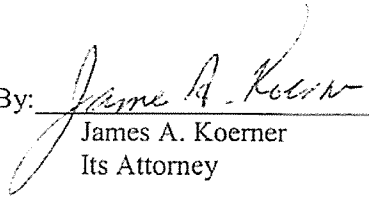
Accordingly, it is requested that the Staff Letter be reconsidered, that the captioned application be denied, and that the orders modifying the FM assignment at Salome, Arizona and requiring the filing of an application by Kemp be rescinded.

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<sup>8</sup> August 27, 2012 amendment, Exhibit 1, Table 1.

Respectfully submitted

KEMP COMMUNICATIONS, INC.

By:   
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Its Attorney

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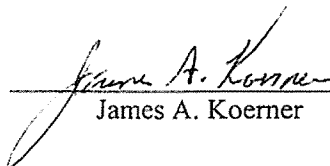
February 4, 2013

**CERTIFICATE OF SERVICE**

I, James A. Koerner, do hereby certify that a copy of the foregoing "Petition for Reconsideration" was served this 4<sup>th</sup> day of February, 2013, 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.*

Marvin Vosper  
4613 Sleeping Indian Road  
Fallbrook, CA 92028

  
James A. Koerner