

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

ORIGINAL

2013 MAR 18 A 5:55

In re Application of)

SOUTHWEST FM BROADCASTING)
CO., INC.)

For Construction Permit for Minor Change)
Of Station KAHM(FM), Facility ID 61510,)
Prescott, AZ)

File No. BPH-2013-00813BHN

MAR 4 2013

Federal Communications Commission
Office of the Secretary

To: Office of the Secretary
Attn: Chief, Media Bureau

REPLY TO OPPOSITION TO PETITION FOR RECONSIDERATION

Kemp Communications, Inc. ("Kemp"), by its attorneys, hereby replies to the Opposition to Petition for Reconsideration ("Opposition"), filed February 20, 2013, by Southwest FM Broadcasting Co., Inc. ("Southwest FM").

In its Petition for Reconsideration, Kemp pointed out that neither Southwest FM, in its application and amendments thereto nor the Staff Letter, reconsideration of which is being sought, had complied with the instruction of the Commission "to provide a rationale to explain how this service change represents a preferential arrangement of allotments or assignments".¹ Both Southwest FM and the Staff Letter simply point to the number of persons who will lose service and the number who will gain service, and conclude that those numbers represent a preferential arrangement.

¹ *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, Second Order on Reconsideration, FCC 12-127, released October 12, 2012.

In the Second Order on Reconsideration, the Commission used an example of a situation in which 500,000 persons would gain a 21st reception and 50,000 persons would lose a sixth reception service. According to the Commission, that, in and of itself, does not provide the required rationale. Thus, reasons, not mere numerical differences, must underlie the determination of a preferential arrangement.

In its Opposition, Southwest FM again points to simple numbers, emphasizing the relatively few persons who would be underserved, i.e., left with five or fewer reception services. Note that the Commission's example deliberately uses a sixth reception service, a segment of the population supposedly well served. Kemp's Petition pointed out that 99% of the population gaining an additional service in this instance already enjoys 21 or more reception services, while a substantial number of listeners losing service presently have 10 or fewer services. What is the rationale to support this as a preferential arrangement?

Southwest FM attempts to overcome this defect by supplying a lengthy explanation to the effect that persons receiving, for example, a 25th additional service enjoy it less than a person receiving a seventh additional service. All this does is massage the raw numbers, without explaining why a significant number of people receiving far fewer services should suffer the loss of a comparatively rare commodity so that an additional unit of that commodity can be given to a greater number of people to whom it means less.

Southwest FM cites *Letter to Marissa G. Repp, Esq. and Gary S. Smithwick, Esq.* (WMNI-FM, Worthington, Ohio/WMNI(AM), Columbus, Ohio, 27 FCC Rcd 13090 Audio Services Division, Media Bureau (2012)). However, that does not support its

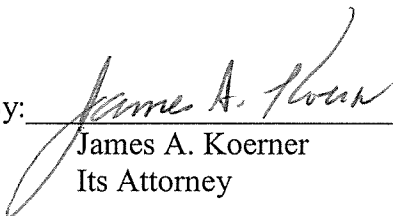
position. Southwest acknowledges that, unlike in the present case, there was no increase of underserved population. That letter also notes that “all affected listeners would continue to receive 14 or more interference-free services”.² Further, assuming, *arguendo*, that letter may have failed to provide a rationale in support of the rearrangement, it does not mean this proceeding should suffer the same failure.

Simply put, all Southwest has done is demonstrate that 99% of the people gaining a 21st service will enjoy it less than the 118,335 people who would lose a 20th or fewer service.

Since Southwest FM has failed to supply any rationale other than raw numbers in support of its proposal, the Staff Letter should be reconsidered, and the captioned application should be denied.

Respectfully submitted

KEMP COMMUNICATIONS, INC.

By: 
James A. Koerner
Its Attorney

Koerner & Olender, P.C.
11913 Grey Hollow Court
North Bethesda, MD 20852
(301) 468-3336

March 4, 2013

² 27 FCC Rcd at 13092.

CERTIFICATE OF SERVICE

I, James A. Koerner, do hereby certify that a copy of the foregoing "Reply to Opposition to Petition for Reconsideration" was served this 4th day of March, 2013, via first class US mail, postage prepaid, upon the following:

Lawrence N. Cohn, Esq.

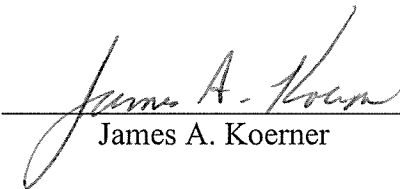
Cohn & Marks LLP

1920 N Street, N.W.

Suite 300

Washington DC 20036

Counsel for Southwestern FM Broadcasting Co., Inc.


James A. Koerner