

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In re Applications of)	
)	
GREEN VALLEY BROADCASTERS, INC.)	File No. BNP-20000201ADK
)	Facility ID No. 122407
For a New AM Broadcast Station)	
at Sahuarita, Arizona)	
)	
and)	
)	
NELSON MULTIMEDIA, INC.)	File No. BNP-20000201AGY
)	Facility ID No. 122544
For a New AM Broadcast Station)	
at Las Vegas, Nevada)	
)	
and)	
)	
KEMP COMMUNICATIONS, INC.)	File No. BNP-20000201AFX
)	Facility ID No. 122525
For a New AM Broadcast Station)	
at Las Vegas, Nevada)	

MEMORANDUM OPINION AND ORDER ON RECONSIDERATION

Adopted: December 9, 2005

Released: December 9, 2005

By the Chief, Media Bureau:

1. We have before us a Petition for Reconsideration (“Petition”), filed August 16, 2004, by Green Valley Broadcasters, Inc. (“GVB”). GVB seeks reconsideration of the decision in *Green Valley Broadcasters, Inc., Nelson Multimedia, Inc., and Kemp Communications, Inc.* (“*Green Valley*”),¹ in which the Commission denied GVB’s application for review of the Media Bureau’s (“Bureau”) decision awarding a dispositive preference under Section 307(b) of the Communications Act of 1934, as amended (“Section 307(b”),² to the mutually exclusive application of Kemp Communications, Inc. (“Kemp”) for a new AM broadcast station at Las Vegas, Nevada. For the reasons set forth below, we grant the Petition.³

¹ 19 FCC Rcd 13341 (2004).

² 47 U.S.C. § 307(b) (“Section 307(b”).

³ On November 4, 2005, the Media Bureau (“Bureau”) released an Order on Reconsideration dismissing the Petition. *Green Valley Broadcasters, Inc., Nelson Multimedia, Inc. and Kemp Communications, Inc.*, DA 05-2922 (MB rel. Nov. 4, 2005). On December 5, 2005, the Bureau set aside the dismissal per 47 C.F.R. § 1.113(a). *Public Notice*, “Broadcast Actions,” Report No. 26126 (MB rel. Dec. 7, 2005).

2. **Background.** GVB, Kemp, and Nelson Multimedia, Inc. (“Nelson”) filed mutually exclusive (“MX”) applications to participate in Broadcast Auction No. 32 for new AM broadcast stations.⁴ GVB proposed a new AM station at Sahuarita, Arizona,⁵ and Kemp and Nelson proposed new AM stations at Las Vegas, Nevada.⁶ The three applications were designated MX Group AM 4. The Bureau dismissed Nelson’s application, and awarded Kemp a dispositive preference under Section 307(b), finding that Kemp’s Las Vegas proposal would provide new reception service to a substantially larger population than would GVB’s Sahuarita proposal.⁷ GVB filed an application for review of the Bureau’s decision, arguing that the Bureau failed to evaluate correctly the respective needs of Sahuarita and Las Vegas for an additional local service, and asserting that Commission precedent mandated a dispositive Section 307(b) preference for a second local transmission service at Sahuarita over additional local transmission service at Las Vegas. In *Green Valley* the Commission denied review, holding that while a proposal for second local transmission service is properly considered under Priority (4) of the Commission’s allotment priorities,⁸ the substantially greater number of persons to be served by Kemp’s Las Vegas proposal warranted a dispositive Section 307(b) preference for Las Vegas.

3. **Discussion.** We believe that the public interest is served by reconsideration of the Commission’s decision in *Green Valley*.⁹ In arguing for reconsideration, GVB contends that the Commission committed error in awarding a dispositive Section 307(b) preference to Las Vegas based solely upon the greater population to be served by Kemp’s proposal.¹⁰ GVB argues that the Commission failed to consider the relative needs of Sahuarita and Las Vegas for new service, specifically the need of Sahuarita for a second local transmission service versus a “20th [local transmission] service” at Las Vegas.¹¹

4. Section 307(b) determinations are made by applying the priorities set forth in *FM Assignment Policies*.¹² The Commission in *Green Valley* correctly stated that the *FM Assignment Policies* do not include a specific priority for second local transmission service, which is instead considered under Priority (4), “other public interest matters.”¹³ Upon reconsideration, however, we are convinced that

⁴ See *Public Notice*, “AM Auction Filing Window and Application Freeze,” 14 FCC Rcd 19490 (MMB/WTB 1999).

⁵ File No. BNP-20000201ADK.

⁶ File No. BNP-20000201AGY (Nelson); File No. BNP-20000201AFX (Kemp).

⁷ See *Letter to Green Valley Broadcasters, Inc., Kemp Communications, Inc., and Nelson Multimedia, Inc.*, Ref. No. 1800B3-TSN (MB June 26, 2002). Accordingly, Kemp filed its long-form Form 301 application on July 26, 2002, File No. BNP-20020726ACT. The application was granted September 15, 2003, and the station assigned the call sign KBTB(AM). *Public Notice*, “Broadcast Applications,” Report No. 45573 (MB rel. Sept. 18, 2003). GVB’s short-form application (File No. BNP-20000201ADK) was also dismissed on September 15, 2003.

⁸ See *Revision of FM Assignment Policies and Procedures*, 90 F.C.C.2d 88 (1982) (“*FM Assignment Policies*”).

⁹ 47 C.F.R. § 1.106(d)(1).

¹⁰ As further support for its position, GVB filed a “Notification of Recent Authority” on March 14, 2005, and a “Notification of Additional Recent Authority” on July 22, 2005.

¹¹ Petition at 2.

¹² See *supra* note 8.

¹³ *Green Valley*, *supra* note 1, 19 FCC Rcd at 13346. See, e.g., *Bear Lake and Honor, Michigan*, 14 FCC Rcd 8799, 8801 (1999) (“[T]he Commission has previously determined that, in implementing the requirement of Section (continued next page)

undue emphasis was given to the differences in populations to be served under the respective GVB and Kemp proposals, without giving sufficient consideration to the significant disparity in transmission services licensed or permitted at the two respective communities. As the Commission stated in *Green Valley*,¹⁴ provision of second local transmission service is a factor to be considered in a Priority (4) Section 307(b) analysis.¹⁵

5. As of the release date of this *Memorandum Opinion and Order on Reconsideration*, there are nine AM and 16 FM stations permitted or licensed at Las Vegas, Nevada, a total of 25 local transmission services.¹⁶ Sahuarita, Arizona, has one currently licensed local transmission service. While we continue to regard provision of second local transmission service as a factor to be considered along with other public interest matters under Priority (4), we believe that under the unique facts of this case, where there is a significant disparity in local transmission services, the provision of a second local transmission service should be given dispositive effect.¹⁷ Accordingly, we find that Sahuarita should have received a dispositive Section 307(b) preference, and therefore grant GVB's Petition, set aside the action finding a dispositive preference for Las Vegas, and rescind the grant of a construction permit to Kemp for a new AM service at Las Vegas.

6. **Conclusion.** For the foregoing reasons, the Petition for Reconsideration filed by Green Valley Broadcasters, Inc. IS GRANTED. The grant of a construction permit to Kemp Communications, Inc., for station KBTB(AM) IS RESCINDED, and Kemp's Form 301 application¹⁸ IS RETURNED TO PENDING STATUS. The previously dismissed short-form application of Green Valley Broadcasters, Inc. IS REINSTATED AND RETURNED TO PENDING STATUS.¹⁹ IT IS ORDERED that Green Valley Broadcasters, Inc., within 30 days of the release date of this *Memorandum Opinion and Order on Reconsideration*, is to file Form 301 in connection with its application for a new AM broadcast station at Sahuarita, Arizona, pursuant to the procedures set forth in the Commission's rules.²⁰ With its application,

(continued from previous page)

307(b) of the Communications Act 'to provide a fair, efficient, and equitable distribution of radio service' among the States, a first local transmission service is more important than other public interest matters, such as a second local service or an upgrade of existing service.'").

¹⁴ 19 FCC Rcd at 13346.

¹⁵ See, e.g., *Valley Broadcasters, Inc.*, 104 F.C.C.2d 1549 (Rev. Bd. 1986), *review denied on other grounds*, 5 FCC Rcd 2785 (1990); *WHW Enterprises, Inc.*, 89 F.C.C.2d 799 (Rev. Bd. 1982), *aff'd in part, rev'd in part on other grounds, remanded, WHW Enterprises, Inc. v. F.C.C.*, 753 F.2d 1132 (D.C. Cir. 1985), *opinion after remand*, 1 FCC Rcd 295 (1986); *San Luis Obispo, Lost Hills, and Maricopa, California*, 20 FCC Rcd 12170 (MB 2005).

¹⁶ This does not include broadcast stations licensed or permitted at communities in the Las Vegas Urbanized Area that would properly be attributed to the Urbanized Area along with all stations licensed and permitted at Las Vegas. See *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988). For example, one FM and three AM stations are licensed or permitted at North Las Vegas, Nevada; one AM and three FM stations at Henderson, Nevada; and two AM stations at Winchester, Nevada.

¹⁷ See *FM Assignment Policies*, 90 F.C.C.2d at 92 n.8 (Commission observes that Priority (4) analyses "can take into account . . . the number of local services . . .").

¹⁸ File No. BNP-20020726ACT.

¹⁹ File No. BNP-20000201ADK.

²⁰ See 47 C.F.R. §§ 0.401(b), 1.1104, 1.1109, 73.5005(d), and 73.3512.

GVB must simultaneously submit the required filing fee for a new commercial AM radio station and an FCC Form 159, Remittance Advice. Failure timely to file the long-form application will result in dismissal of the application for failure to prosecute, pursuant to Section 73.3568 of the Commission's rules.²¹

FEDERAL COMMUNICATIONS COMMISSION

Donna C. Gregg,
Chief, Media Bureau

²¹ *Id.*, § 73.3568.