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In Re: KAHM(FM), Spring Valley, Arizona
Facility ID Number: 61510

Gentlemen:

This letter refers to the above-captioned minor change application (the "Application") of Southwest FM Broadcasting Co., Inc. ("Southwest"), licensee of Station KAHM(FM), Channel 271C, Prescott, Arizona. The Application proposes a city of license modification for Station KAHM(FM) from Prescott, Arizona, to Spring Valley, Arizona. Kemp Communications, Inc. ("Kemp"), licensee of Station KFMG-LP, filed an Informal Objection. For the reasons discussed below, we deny the Informal Objection and grant the Application.

Background. The Application was filed pursuant to Section 73.3573(g) of the Commission's Rules,¹ which sets forth the requirements for modification of an FM Station license to specify a new community of license without providing an opportunity for competing expressions of interest. Among other requirements, an application for such a minor modification must demonstrate that the proposed change of community constitutes a preferential arrangement of allotments in comparison to its current service.² We make this determination using the FM allotment priorities set forth in Revision of FM Assignment Policies and Procedures.³

¹ 47 C.F.R. § 73.3573(g).

² See *Modification of FM and TV Authorizations to Specify a New Community of License*, Report and Order, 4 FCC Rcd 4870 (1989) ("Community of License"), recon. granted in part, Memorandum Opinion and Order, 5 FCC Rcd 7094 (1990) ("Community of License Reconsideration Order").

³ *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88, 90-93 (1982) ("FM Assignment Policies"). The FM allotment priorities are: (1) First fulltime aural service, (2) Second fulltime aural

In its Application, Southwest proposes to change the community of license for Station KAHM(FM) from Prescott, Arizona, to Spring Valley, Arizona, a census designated place (“CDP”) with a population of 1,019 persons, located within the Prescott Urbanized Area. Following the change of community, Station KAHM(FM) would continue to provide service to 100 percent of the Prescott Urbanized Area (“UA”). In order to facilitate its change of community, Southwest asks the Commission to issue to Kemp Communications, Inc. (“Kemp”), licensee of Station KVGG, Salome, Arizona, an order to show cause why its license should not be modified from Channel 270A to Channel 231A, and to Marvin Vosper, licensee of Station KBUX, Quartzsite, Arizona, an order to show why his license should not be changed from Channel 232A to Channel 243A.⁴ In compliance with our *Circleville* policy,⁵ Southwest states that it will reimburse the licensees of Station KVGG and KBUX, respectively, for their reasonable expenses associated with the specified channel changes

Following release of the Second Report and Order in *Rural Radio*,⁶ Southwest submitted a supplementary Section 307(b) analysis. Although Southwest had initially claimed that its proposal satisfied Priority 3 of the FM allotment priorities, it withdrew that claim in the supplemental filing. In addition, Southwest notes that a reduction in service to underserved areas is only disfavored if the population in the net underserved area would constitute 15 percent or more of the population in the station’s current protected contour. It states that this would not be the case with the proposed change of community from Prescott to Spring Valley.

Kemp filed comments and an informal objection opposing the proposed change of community. Kemp contends that Spring Valley is not a licensable community. Kemp also argues that the change of community is impermissible because it would create a small “gray” area (area receiving one reception service), and would leave other areas with fewer than five reception services. In its response to Kemp, Southwest presents evidence that no gray area would be created, and argues that that the number of persons who would be left with fewer than five reception services is very small, compared to the large number of persons receiving an additional service. Kemp, in reply, emphasizes that *Rural Radio* prohibits the creation of “gray areas,” and argues that an increase in population coverage should not be a determinative factor in support of a change of community proposal. Kemp also filed a supplement to its informal objection, claiming that Spring Valley, a Census Defined Place, is a mere housing development with no other characteristics of a community. Kemp further argues that the service losses that would be caused by the proposed change of community should result in denial of the proposal under Priority 4. In the technical exhibit to its supplement, Kemp alleges that the proposed change of community would leave 3,367 persons underserved, with fewer than five reception services.

service, (3) First local service and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3).

⁴ These orders to show cause were issued on March 21, 2012, and neither party responded to the order. Kemp and Vosper are therefore deemed to have consented to the proposed channel substitutions.

⁵ *Circleville, Ohio*, Memorandum Opinion and Order, 8 FCC 2d 159 (1967) (“*Circleville*”).

⁶ *Policies to Promote Rural Radio Service and to Streamline Allotment an Assignment Procedures*, Second Report and Order, First Order On Reconsideration, and Second Further Notice of Proposed Rule Making, 26 FCC Rcd 2556 (2011) (“*Second R&O*”). We also will refer to the proceeding generally as “*Rural Radio*.”

Discussion. Under Section 309(e) of the Communications Act of 1934, as amended (the “Act”),⁷ informal objections, like petitions to deny, must provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with the public interest, convenience and necessity.⁸

Community of license. We agree with Southwest that Spring Valley, Arizona, is a licensable community. Spring Valley is a Census Designated Place and contains businesses, churches, and a school. We have consistently held that a Census Designated Place listed in the U.S. Census is a licensable community;⁹ we therefore reject Kemp’s objection in this respect.

Section 307(b) analysis. A station may change its community of license without subjecting the license to other expressions of interest if (1) the proposed allotment is mutually exclusive with the current allotment; (2) the current community of license will not be deprived of its only local service; and (3) the proposed arrangement of allotments is preferred under the Commission’s FM allotment priorities.¹⁰ Station KAHM’s proposed move to Spring Valley is mutually exclusive with its current operations at Prescott, and Prescott will not be deprived of its only local service. We turn therefore to analysis under the FM Allotment Priorities.

The Commission emphasizes the importance of the first two allotment priorities, first fulltime aural service and second fulltime aural service, in *Rural Radio*, where it prohibits proposals that would remove a first or second fulltime aural service.¹¹ We disagree with Kemp’s contention that the proposed move would conflict with *Rural Radio* processing standards. Although our analysis shows that there is a small unpopulated area that would be left with only one service, the Commission clearly bars only proposals that “would leave *populations* with no or only one reception service [emphasis added].”¹² Because no population within Station KAHM’s existing community service contour would be left with no or only one service, we find that the proposal is permissible under *Rural Radio*. Neither Priority 1 nor 2 is applicable to this proposed move, and Southwest has withdrawn its Priority 3 claim. In these circumstances, the Commission analyzes the proposed move under Priority 4.

With regard to Priority 4 considerations, Kemp argues that we should deny the application based on the loss of a third, fourth or fifth reception service to listeners who reside with the current KAHM(FM) service contour. Kemp is correct that some areas losing service under the proposal would be left with fewer than five reception services. Its population loss calculations, however, are incorrect. Our independent engineering analysis, applying the methodology specified by the Commission in *Rural Radio*

⁷ 47 U.S.C. § 309(e).

⁸ See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990), *aff’d sub nom. Garden State Broadcasting L.P. v. FCC*, 996 F.2d 386 (D.C. Cir.), *reh’g denied* (D.C. Cir. Sept. 10, 1993); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) (holding that informal objection must contain adequate and specific factual allegations sufficient to warrant the relief requested).

⁹ See *FM Assignment Policies*, 90 FCC2d at 101 (“it is sufficient that the community ... is listed in the census”). See also *Greenwood, South Carolina*, Report and Order, 2 FCC Rcd 3583 (MMB 1987); and *Essex, New York*, Report and Order, 4 FCC Rcd 5775 (MMB 1989).

¹⁰ See *Community of License*, 4 FCC Rcd at 4872-74.

¹¹ Second R&O, 26 FCC Rcd at 2564-65 and 2577.

¹² *Id.*, 26 FCC Rcd at 2564-65.

for calculating gain and loss,¹³ shows that 40 persons would be left with three services and 279 persons would be left with four services, for a total of 319 persons. As Southwest correctly points out, these population losses are very small in comparison with the population either currently receiving service or potentially gaining an additional service. The total population left with fewer than five services (319) is approximately 0.002 percent of the population within the station's current protected contour (1,456,187), far less than the 15 percent benchmark which the Commission established for determining whether such service losses would be contrary to the public interest.¹⁴ In contrast, the relocation would result in a net gain of 1,364,507 listeners. Under these circumstances, we find that the public interest would be better served by the proposed relocation than by requiring Station KAHM to remain at its current city of license.¹⁵ We therefore will grant the Application.

Conclusion. Accordingly, IT IS ORDERED that the Informal Objection filed by Kemp Communications, Inc., IS DENIED.

IT IS ORDERED that the application for change of community submitted by Southwest FM Broadcasting Co., Inc., File No. BPH-20100126AGR, IS GRANTED.

IT IS FURTHER ORDERED, that effective on the date of this letter, the FM assignments ARE MODIFIED as follows:

<u>Community</u>	<u>Channel Number</u>
Salome, Arizona	Add 231A, Delete 270A
Quartzsite, Arizona	Add 243A, Delete 232A

IT IS FURTHER ORDERED, that the license of Kemp Communications, Inc. for FM Station KVGG, Channel 270A, Salome, Arizona, File No. BLH-20091016ADL, IS MODIFIED to specify operation on Channel 231A, subject to the following conditions:

Within 30 days of the effective date of this letter, Kemp shall submit to the Commission a minor change application for construction permit (Form 301). Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Commission's Rules. Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

IT IS FURTHER ORDERED, that the license of Marvin Vosper for FM Station KBUX, Channel

¹³ *Rural Radio*, Second Order on Reconsideration, 27 FCC Rcd 12829, 12836-12840 (2012). Specifically, the Commission clarified, *inter alia*, that (1) when determining gain and loss areas for an FM station changing its community of license, an applicant should calculate the contours using transmitter coordinates for the current facility and the transmitter coordinates specified for the proposed new or modified facility; and (2) when determining the number of reception services in the gain and loss areas, an applicant should use the signal strengths set forth in Section 73.215(a)(1) for FM stations, taking into account actual terrain, and generally use the 2.0 mV/m ground wave contour for AM stations.

¹⁴ *Id.*, 26 FCC Rcd at 2577.

¹⁵ See *Gearhart, Oregon*, Report and Order, 26 FCC Rcd 10259, 10264 (MB 2011) (finding that change of community within urbanized area is a preferential arrangement of allotments, because the station "will be able to provide service to a greater area and population" within the urbanized area).

232A, Quartzsite, Arizona, File No. BLH-19880919KC, IS MODIFIED to specify operation on Channel 243A, subject to the following conditions:

Within 30 days of the effective date of this letter, Marvin Vosper shall submit to the Commission a minor change application for construction permit (Form 301). Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Commission's Rules. Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

IT IS FURTHER ORDERED, that Southwest FM Broadcasting Co., Inc., reimburse the licensees of Stations KVGK and KBUX, respectively, for the reasonable costs of implementing the channel changes specified herein.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau