

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Southwest FM Broadcasting Co., Inc)	File No. BPH-20100813BHN
)	Facility ID No. 615100
Application for Construction Permit for Minor)	
Change of Station KAHM(FM), Spring Valley,)	
Arizona)	

MEMORANDUM OPINION AND ORDER

Adopted: July 16, 2015

Released: July 16, 2015

By the Commission:

1. The Commission has before it an Application for Review (“AFR”) filed May 28, 2014, by Kemp Communications, Inc. (“Kemp”), licensee of Station KVGGM(FM), Salome, Arizona. Kemp seeks review of the Media Bureau’s (“Bureau”) April 29, 2014, decision¹ denying Kemp’s Petition for Reconsideration of a prior *Letter Decision*.² In the *Letter Decision*, over Kemp’s objection, the Bureau granted the captioned application (“Application”) of Southwest FM Broadcasting Co., Inc. (“Southwest”) to: (1) change Station KAHM(FM)’s (“Station”) community of license from Prescott, Arizona, to Spring Valley, Arizona, and (2) relocate the Station’s transmitter site³ pursuant to Section 73.3573(g) of the Commission’s Rules (“Rules”).⁴ From either of these communities, the Station would provide a 70 dBu signal over 100 percent of the Prescott, Arizona, urbanized area. For the reasons set forth below, we deny the AFR and dismiss Kemp’s Motion for Stay.

2. On review, Kemp argues that the Bureau failed to apply or wrongly interpreted *Rural Radio* by basing its decision on the total number of people who would receive a net gain in service and not taking into account the difference in overall service levels in the gain and loss areas. Kemp states that 99 percent of the population in the “gain” area enjoys 20 or more services, while no one in the loss area receives 21 or more services, more than 120,000 people receive fewer than 20 services, and more than 27,000 people receive 10 or fewer services. Kemp argues that the Bureau’s decision may be an “efficient” use of spectrum, but the Bureau does not explain how the grant of the Application is more

¹ See Lawrence N. Cohn, Esq., and James A Koerner, Esq., Letter, 29 FCC Rcd 4799 (MB 2014) (“*Reconsideration Decision*”). Kemp also filed a Motion for Stay on May 28, 2014. Southwest filed an Opposition to Application for Review and an Opposition to Motion for Stay on June 10, 2014. Kemp filed a Reply to Opposition to Application for Review on June 20, 2014. In view of our action herein, we will dismiss the Motion for Stay as moot.

² See Lawrence N. Cohn, Esq., James A Koerner, Esq., and Marvin Vosper, Letter, 28 FCC Rcd 148 (MB 2013) (“*Letter Decision*”).

³ To accommodate the Application, the Bureau involuntarily modified the license of Station KVGGM(FM) to specify Channel 231A instead of Channel 270A, and Station KBUX(FM), Quartzsite, Arizona, to specify Channel 243A instead of Channel 232A.

⁴ 47 C.F.R. § 73.3573(g) (permitting the modification of an FM station’s authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest provided, *inter alia*, the reallocation would result in a preferential arrangement of allotments).

“fair” or represents a preferential arrangement of allotments under Section 307(b) and the dictates of *Rural Radio*.⁵

3. Upon review of the AFR and the entire record, we conclude that the Bureau properly decided the matters raised and uphold the *Reconsideration Decision* for the reasons stated therein. The Commission stated explicitly in the *Rural Radio* proceeding that a station proposing to move, as here, within the same urbanized area is required to make a showing under Priority 4 “by demonstrating from which of the two communities the station would provide service to a greater area and population within the urbanized area.”⁶ The gain and loss areas are well served.⁷ Accordingly, Kemp’s argument is without merit.⁸

4. Accordingly, IT IS ORDERED that, pursuant to Section 5(c)(5) of the Communications Act of 1934, as amended, and Section 1.115(g) of the Commission’s Rules, the Application for Review filed by Kemp Communications, Inc., IS DENIED.

5. IT IS FURTHER ORDERED, that the Motion for Stay filed by Kemp Communications, Inc., IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁵ In support of this position, Kemp cites *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, Second Report and Order, 26 FCC Rcd 2556, 2577 (¶ 39) (2011) (requiring “applicants not only to set forth the size of the populations gaining and losing service under the proposal, but also the numbers of services those populations will receive if the application is granted, and an explanation as to how the proposal advances the revised Section 307(b) priorities”).

⁶ See *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, Second Order on Reconsideration, 27 FCC Rcd 12829, 12841 (¶ 19) (2012) (“*Second Order*”). We note that Kemp’s AFR cited only the initial order in *Rural Radio* and did not take into account the Commission’s subsequent clarification in the *Second Order* of “intra-urbanized area move[s],” which was released more than a year before the filing of the AFR.

⁷ Although 40 persons would be left with three services and 279 persons would be left with four services, 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) and is far less than the 15 percent benchmark that the Commission established for determining whether such services losses would not be in the public interest. See *Letter Decision*, 28 FCC Rcd at 151, citing *Rural Radio*, 26 FCC Rcd at 2577. We also clarify that in some cases of intra-urbanized area moves, such as the instant one, there may be a lack of third, fourth, or fifth reception services to some areas or populations within the gain or loss areas. While these situations are likely to be rare, we will undertake a granular analysis with respect to those underserved areas and populations in accord with *Rural Radio*, for the purpose of determining whether the 15 percent benchmark has been exceeded. However, a granular analysis is not necessary in the other portions of the gain or loss areas that are considered “well served” with more than five services.

⁸ As a related matter, Kemp argues that *Gearhart, Madras, et al., Oregon*, Report and Order, 26 FCC Rcd 10259 (MB 2011) (“*Gearhart*”), which the Bureau relied upon in the *Reconsideration Decision*, was improperly decided. See Kemp Reply at 2-3. We disagree. First, it is too late to seek reconsideration of *Gearhart* because the time period for filing petitions for reconsideration has passed. Second, the Commission cited with approval *Gearhart* in establishing the standard for evaluating intra-urbanized area moves under Priority 4. See *Second Order*, 27 FCC Rcd at 12841 n.78.