

KOERNER & OLENDER, P.C.

Attorneys at Law
11913 Grey Hollow Court
North Bethesda, MD 20852-5706

Tel. (301) 468-3336
Fax (301) 468-3343

**STAMP & RETURN
COPY**

Robert L. Olender *
rolender.law@comcast.net

June 20, 2014

James A. Koerner
jkoerner.law@comcast.net

*not admitted in MD

Accepted/Files

JUN 20 2014

*Federal Communications Commission
Office of the Secretary*

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

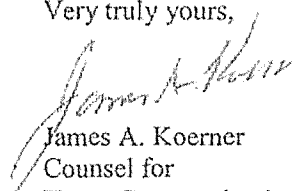
Re: KAHM(FM), Prescott, AZ
Facility ID No. 61510
File No. BPH-20100813BHN

Dear Ms. Dortch:

On behalf of Kemp Communications, Inc., there are transmitted herewith an original and four (4) copies of a Reply to Opposition to Application for Review with respect to a letter (DA 14-562) issued April 29, 2014 by the Chief, Audio Division, Media Bureau regarding the above-referenced application.

Should additional information be necessary in connection with this matter, please communicate with this office.

Very truly yours,


James A. Koerner
Counsel for
Kemp Communications, Inc.

Cc: Will Kemp

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

In re Application of)	
)	
SOUTHWEST FM BROADCASTING)	File No. BPH-20100813BHN
CO., INC.)	
)	
For Construction Permit for Minor Change)	
Of Station KAHM(FM), Facility ID 61510,)	
Prescott, AZ)	

To: Office of the Secretary
Attn: The Commission

REPLY TO OPPOSITION TO APPLICATION FOR REVIEW

Kemp Communications, Inc. ("Kemp"), by its attorneys, pursuant to Section 1.115(d) of the Rules¹ hereby responds to the Opposition to Application for Review ("Opposition"), filed in this proceeding on June 10, 2014 by Southwest FM Broadcasting Co., Inc. ("Southwest FM").

In fact, the Opposition is really only a partial opposition. While Southwest FM believes the Bureau's decision was correct, it acknowledges that the Bureau only cites as precedent its own interpretations of *Rural Radio*.² Southwest FM also acknowledges that the Bureau did not base its decision on anything more than a net population gain, a factor which the Commission has held inappropriately promotes "efficiency" over "fairness".³

¹ 47 C.F.R. § 1.115(d).

² *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, Second Report and Order, First Order on Reconsideration and Second Further Notice of Proposed Rule Making, 26 FCC Red 2556 (2011) ("*Rural Radio*").

³ *Rural Radio* at ¶ 37.

that, in the past, net population gain was the only metric applicants needed to provide in order to succeed. This is precisely the test that the Commission decried in the very next sentence as being “efficient” but not “fair”.⁷ Yet, this is precisely what the Bureau has done in *Gearhart* and its successors, including the instant case.⁸

As noted in Kemp’s Application for Review, the Commission should either (1) explicitly state that the “revised Section 307(b) priorities” do not apply to intra-urbanized area moves, or (2) re-emphasize that all applications for changes to community of license must explain how the proposal advances those priorities, thus overturning the rationale of *Gearhart*, or (3) provide guidance as to how much, if any, net population gain and how many reception services in the gain and loss areas will suffice for “efficiency” to overcome “fairness” in the allotment of spectrum.

For all of the reasons noted herein, the Application for Review should be granted.

⁷ *Rural Radio* at ¶ 38.

⁸ The Bureau also apparently is of the opinion that the number of reception services in the gain and loss areas is irrelevant so long as those areas have more than five reception services. See *Marissa G. Repp, Esq. and Gary S. Smithwick, Esq.* at fn. 34 and the Staff Letter in this proceeding at the fifth (unnumbered) paragraph of the “Discussion” section.

CERTIFICATE OF SERVICE

I, James A. Koerner, do hereby certify that a copy of the foregoing "Reply to Opposition to Application for Review" was served this 20th day of June, 2014, via first class US mail, postage prepaid, upon the following:

Lawrence N. Cohn, Esq.

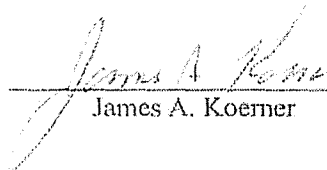
Cohn & Marks LLP

1920 N Street, N.W.

Suite 300

Washington DC 20036

Counsel for Southwestern FM Broadcasting Co., Inc.


James A. Koerner