

SALEM COMMUNICATIONS CORP /DE/
Form 8-K
September 27, 2005

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549**

FORM 8-K

**CURRENT REPORT
PURSUANT TO SECTION 13 OR 15(D) OF THE
SECURITIES EXCHANGE ACT OF 1934**

Date of Report (Date of earliest event reported): September 26, 2005

SALEM COMMUNICATIONS CORPORATION

(Exact Name of Registrant as Specified in its Charter)

Delaware (State or Other Jurisdiction of Incorporation)	000-26497 (Commission File Number)	77-0121400 (IRS Employer Identification No.)
4880 Santa Rosa Road, Camarillo, California (Address of Principal Executive Offices)		93012 (Zip Code)

Registrant's telephone number, including area code: (805) 987-0400

Not Applicable
(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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ITEM 1.01

ENTRY INTO A MATERIAL DEFINITIVE AGREEMENT

On September 26, 2005, Salem Communications Holding Corporation (Salem Holding) entered into a new Employment Agreement (the Agreement) with David A.R. Evans. The Agreement is effective as of September 1, 2005, and it provides that Mr. Evans shall serve as the Executive Vice President, Business Development and Chief Financial Officer of Salem Communications Corporation (the Company) and Salem Holding.

The Agreement is an at-will employment agreement and it provides for the following annual base salary, provided the Agreement remains in effect, as follows:

- From September 1, 2005, through August 31, 2006, Mr. Evans shall be paid at the rate of Four Hundred Thirty Thousand Dollars (\$430,000) annually;
- From September 1, 2006, through August 31, 2007, Mr. Evans shall be paid at the rate of Four Hundred Fifty Thousand Dollars (\$450,000) annually; and
- From September 1, 2007, through August 31, 2008, Mr. Evans shall be paid at the rate of Four Hundred Seventy-Five Thousand Dollars (\$475,000) annually.

In addition to the base salary described above, the Agreement grants the following benefits to Mr. Evans: (a) Mr. Evans shall be eligible for an annual bonus (payable in cash, stock options or a combination thereof), in an amount to be determined at the discretion of the Board of Directors of the Company, (b) reimbursement for reasonable, bona-fide employer-related entertainment and travel expenses incurred by Mr. Evans, (c) health care coverage for Mr. Evans and his dependents in accordance with any health plan available to executive level employees of the Company, and (d) if Mr. Evans' employment is terminated without cause, he is entitled to receive severance in an amount equal to the base salary Mr. Evans would otherwise have received for nine months and professional outplacement assistance for twelve consecutive months.

ITEM 9.01 FINANCIAL STATEMENTS AND EXHIBITS

c)

Exhibits. The following exhibit is furnished with this report on Form 8-K:

Exhibit No.	Description
99.1	Memorandum Of Terms Of Employment effective as of September 1, 2005, and signed by Salem Holding and Mr. Evans on September 26, 2005

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

SALEM COMMUNICATIONS CORPORATION

Date: September 27,
2005

By: /s/ EVAN D. MASYR

Evan D. Masyr

Vice President of Accounting and Corporate Controller

EXHIBIT INDEX

Exhibit No.	Description
99.1	Memorandum Of Terms Of Employment effective as of September 1, 2005, and signed by Salem Holding and Mr. Evans on September 26, 2005

Exhibit 99.1

MEMORANDUM OF TERMS OF EMPLOYMENT

THIS MEMORANDUM OF TERMS OF EMPLOYMENT (Memorandum), is made and entered into as of September 1, 2005, by and between Salem Communications Holding Corporation, (hereinafter referred to as Employer), and **Mr. David A. R. Evans** (hereinafter referred to as Executive), upon the following terms and conditions:

1. EXECUTIVE S RESPONSIBILITIES. Executive agrees to devote his or her entire business time, attention and energies to the business of Employer. Executive also agrees to perform all services hereunder in a manner loyal and faithful to Employer. With the written consent of the Board of Directors, Executive may accept paid board or trustee positions for other entities and may accept fees for public speaking and published writings. Executive may reasonably participate as a member in community, civic, similar organizations and may pursue personal investments that do not interfere with the normal business activities of Salem. Executive s titles shall be *Executive Vice President Business Development* and *Chief Financial Officer* reporting directly to President & Chief Executive Officer of the Employer. Executive agrees to perform all duties reasonable and consistent of a person with the titles of *Executive Vice President Business Development* and *Chief Financial Officer* as the President & Chief Executive Officer of the Employer may assign to Executive from time-to-time.

2. TERM. Executive s employment with the Employer is voluntarily entered into, and Executive is free to resign at any time. It is understood that this Memorandum shall not create a contract for any specific term, expressed or implied, of employment. ***The relationship of the Employer to Executive shall be one of voluntary employment "at will," with no definite period of employment, regardless of the date or method of payment of wages or salary. The relationship may be terminated by either Executive or Employer at any time, with or without cause and with or without prior notice.*** No person, other than the President & Chief Executive Officer of the Employer has authority to enter into an agreement for employment for any specified period of time or to make any agreement contrary to the foregoing, and then, only by an agreement in writing signed by them. Subject to the foregoing, the period of time from the date this Memorandum is entered into (Commencement Date) until the date it terminates (Termination Date) shall be referred to herein as the Term .

3. COMPENSATION. For all of the services rendered by Executive in any capacity under this Memorandum, Employer shall compensate Executive, less applicable deductions and withholding taxes, in accordance with

Employer's payroll practices as they may exist from time-to-time and as such compensation elements may be amended, suspended or discontinued to the extent permitted by applicable law at Employer's sole option or discretion, as follows:

3.1

Annual Base Salary. Executive's annual base salary shall be as follows:

(i)

In the first year of employment, Four Hundred Thirty Thousand Dollars (\$430,000),

(ii)

In the second year of employment, Four Hundred Fifty Thousand Dollars (\$450,000), and,

(iii)

In the third year of employment, Four Hundred Seventy Five Thousand Dollars (\$475,000).

3.2

Annual Bonus. In addition to the annual base salary Executive shall be eligible for an annual merit bonus in an amount to be determined at the discretion of the Board of Directors of Salem; provided that such merit bonus may be paid in cash, stock options or a combination thereof. The amount of the annual bonus, if applicable, is not earned until the date of its determination and distribution.

3.3

Travel and Entertainment Expenses. Reasonable, bona-fide Employer-related entertainment and travel expenses incurred by Executive in accordance with the *Employee Handbook*, *Code of Ethical Conduct* and written policies, all as issued by Employer, relating thereto shall be reimbursed or paid by Employer.

3.4

Fringe Benefits. Except as otherwise set forth in this Section, Executive shall be eligible to participate in all benefit plans that are available to all executive level Salem employees from time to time pursuant to the terms of such plans. The availability and terms of such fringe benefits shall be set by the Board of Directors and may change from time to time. Executive shall be required to comply with all conditions attendant to coverage by the fringe benefit plans hereunder and shall be entitled only in accordance with the terms and conditions of such plans as they may be enumerated from time to time.

3.5

Professional License Fees. Salem will pay the reasonable expenses associated with maintaining Executive's CPA License as well as the reasonable expenses associated with any Continuing Professional Education required to maintain the license.

3.6

Health Insurance. Executive shall be entitled to health care coverage for himself and his dependents in accordance with any health plan available to executive level employees of Salem.

3.7

Vacation. Notwithstanding such vacation time as allocated in Salem's Employee Handbook, Executive shall accrue four (4) weeks of vacation.

3.8

Stock Options. For avoidance of doubt only, executive acknowledges that on September 1, 2005, Salem granted Executive the option to purchase up to 100,000 shares of Salem stock for \$19.02 per share and that such grant was a material part of the negotiations between the company and executive.

4. Termination

4.1 In the event of Executive's resignation or termination for Cause, Executive shall be entitled only to the compensation earned through the date of termination. In the event of Executive's termination without Cause, in addition to Executive's base salary earned through the date of termination, and upon execution of the then existing form separation and release agreement of Employer, Executive shall be entitled to receive: (1) severance in an amount equal to the base salary Executive would otherwise have received for nine (9) months and (2) professional outplacement assistance for twelve (12) consecutive months. In the event that Executive is terminated and such

termination is without Cause (provided that, for purposes of this sentence only, termination resulting from Executive's death or Disability, as defined in Section 4.2 hereof, shall not be considered for Cause), and notwithstanding anything in the applicable Stock Option Grant to the contrary: (a) those certain options granted to Executive on December 14, 2001, with a purchase price per share of \$22.42, shall be deemed to have vested in eight (8) equal installments commencing as of December 14, 2002 (i.e. 12.5% per year), and (b) the unexercised portion of such options shall expire and become unexercisable one (1) year from the date of Executive's termination. Termination, with or without cause, or resignation, shall not affect any rights of Executive that have become vested under any benefit plan, stock option plan or arrangement.

4.2 For the purposes of this Agreement, Cause shall mean, without limitation, the following: (i) the death of Executive; (ii) any mental or physical impairment which prevents Executive from performing the essential functions of his full duties for a period of 90 days at anytime during the term of this Agreement (Disability); (iii) continued gross neglect, malfeasance or gross insubordination in performing duties assigned to Executive; (iv) a conviction for a crime involving moral turpitude; (v) an egregious act of dishonesty (including without limitation theft or embezzlement) in connection with employment, or a malicious action by Executive toward Salem, Company Affiliates or Related Entities; (vi) a violation of confidentiality provisions; (vii) a willful breach of this Agreement; (viii) disloyalty; and (ix) material and repeated failure to carry out reasonably assigned duties or instructions consistent with Executive's position.

5. EXECUTIVE'S OBLIGATIONS

5.1 Confidential Information. Executive agrees that, during the Term or at any time thereafter: (a) Executive shall not use for any purpose other than the duly authorized business of Employer, or disclose to any third party, any information relating to Employer or any of its affiliated companies which is proprietary to Employer or any of its affiliated companies ("Confidential Information"), including any customer list, contact information, rate schedules, programming, data, plans, intellectual property, trade secrets or any written (including in any electronic form) or oral communication incorporating Confidential Information in any way (except as may be required by law or in the performance of Executive's duties under this Memorandum consistent with Employer's policies) regardless of whether or not such information has been labeled as confidential ; and (b) Executive shall comply with any and all confidentiality obligations of Employer to a third party, whether arising under a written agreement or otherwise.

5.2 Work For Hire. (a) The results and proceeds of Executive's services to Employer, including, without limitation, any works of authorship resulting from Executive's services during Executive's employment with Employer and/or any of its affiliated companies and any works in progress resulting from such services, shall be works-made-for-hire and Employer shall be deemed the sole owner of any and all rights of every nature in such works, whether such rights are now known or hereafter defined or discovered, with the right to use the works in perpetuity in any manner Employer determines in its sole discretion without any further payment to Executive. If, for any reason, any of such results and proceeds are not legally deemed a work-made-for-hire and/or there are any rights in such results and proceeds which do not accrue to Employer under the preceding sentence, then Executive hereby irrevocably assigns and agrees to assign any and all of Executive's right, title and interest thereto, whether now known or hereafter defined or discovered, and Employer shall have the right to use the work in perpetuity in any location and in any manner Employer determines in its sole discretion without any further payment to Executive.

(b) Executive shall do any and all things which Employer may deem useful or desirable to establish or document Employer's rights in any such results and proceeds, including, without limitation, the execution of appropriate copyright, trademark and/or patent applications, assignments or similar documents and, if Executive is unavailable or unwilling to execute such documents, Executive hereby irrevocably designates the President & Chief Executive Officer of Employer or his designee as Executive's attorney-in-fact with the power to execute such documents on Executive's behalf. To the extent Executive has any rights in the results and proceeds of Executive's services under this Memorandum that cannot be assigned as described above, Executive unconditionally and irrevocably waives the enforcement of such rights.

(c) Works-made-for-hire do not include subject matter that meets all of the following criteria: (1) is conceived, developed and created by Executive on Executive's own time without using the Employer's equipment (other than the personal computer regularly used by Executive), supplies or facilities or any trade secrets of confidential information, (2) is unrelated to the actual or reasonably anticipated business or research and development of Employer of which Executive is or becomes aware; and (3) does not result from any work performed by Executive for Employer.

(d) Notwithstanding anything in this Agreement to the contrary, during the Term, Executive agrees that he shall, prior to exploiting a Corporate Opportunity (hereafter defined) for his own account or for the benefit of an immediate family member's account, offer the Employer a right of first refusal with respect to such Corporate Opportunity. For purposes of this Section 5.2, "Corporate Opportunity" shall be broadly defined to include any business opportunity that is in the same or a related business as any of the businesses in which the Company, Salem or any of its Affiliates is involved or in which Executive learned of or discovered in the course of performing his duties to Employer, Salem or any of its Affiliates. The determination as to whether a business opportunity constitutes a Corporate Opportunity shall be made by the Chairman of the Board and the President of Salem, and their determination shall be based on an evaluation of: (a) the extent to which the Corporate Opportunity is within the Company's or any of its Affiliates' existing lines of business or its existing plans to expand; (b) the extent to which the Corporate Opportunity supplements the Company's or any of its Affiliates' existing lines of activity or complements the Company's or any of its Affiliates' existing methods of service; (c) whether the Company has available resources that can be utilized in connection with the Corporate Opportunity; (d) whether the Company is legally or contractually barred from utilizing the Corporate Opportunity; (e) the extent to which utilization of the Corporate Opportunity by Executive would create conflicts of interest with the Company or any of its Affiliates; and (f) any other factors they deem appropriate under the circumstances.

5.3 Return of Property. All documents, data, recordings, equipment or other property, whether tangible or intangible, including all information stored in electronic form, obtained or prepared by or for Executive and utilized by Executive in the course of Executive's employment with Employer or any of its affiliated companies shall remain the exclusive property of Employer. Upon termination of employment, Executive shall promptly return all of Employer's property to Employer.

5.4 Use of Executive's Name, Image and Likeness. Employer may make use of Executive's name, photograph, drawing or other likeness in connection with the advertising or the giving of publicity to Employer, Salem Communications or a program broadcast or content provided by Employer, Salem Communications or any affiliated companies. In such regard, Employer may make recordings, transcriptions, videotapes, films and other reproductions of any and all actions performed by Executive in his or her capacity as an Executive of Employer, including without limitation any voice-over or announcing material provided by Executive (collectively Executive Performances). Employer shall have the right to broadcast, display, license, assign or use any Executive Performances on a royalty-free basis without additional compensation payable to Executive.

5.5

Non-Interference. While employed by the Employer and for a period of six (6) months thereafter, Executive agrees not to interfere with the business of the Employer by directly or indirectly soliciting, attempting to solicit, inducing, or otherwise causing any executive, material employee, contractor or client of Salem to terminate his, her or its relationship with Salem in order to enter into a relationship with any other employer or entity.

5.6

Cooperation. Executive agrees to cooperate with and provide assistance to Employer and its legal counsel in connection with any litigation (including arbitration or administrative hearings) or investigation affecting Salem Communications Corporation (Salem) or any of its subsidiaries, in which, in the reasonable judgment of Salem's counsel, Executive's assistance or cooperation is needed. Executive shall, when requested by Salem, provide testimony or other assistance and shall travel at Employer's reasonable request and at its reasonable expense in order to fulfill this obligation.

6.

PERSONAL CONDUCT. Executive agrees to promptly and faithfully comply with all present and future policies, requirements, directions, requests and rules and regulations of the Employer in connection with Employer's business, including without limitation the policies and requirements set forth in Salem's Employee Handbook, Code of Ethical Conduct and Financial Code of Conduct. Executive further agrees to comply with all laws and regulations pertaining to Executive's employment with Employer. Executive hereby agrees not to engage in any activity that is in direct conflict with the essential interests of Employer. Executive hereby acknowledges that nothing set forth in the Employee Handbook, Code of Ethical Conduct or Financial Code of Conduct or any other policy issued by Employer or Salem shall be deemed to create a separate contractual obligation, guarantee or inducement between Executive and Employer.

7.

INDEMNIFICATION. Executive shall be entitled to the protection of any insurance policies that Salem may elect to maintain generally for the benefit of its directors and officers against all costs, charges and expenses incurred or

sustained by him in connection with any action, suit or proceeding (other than any action, suit or proceeding arising under or relating to this Agreement) to which Executive may be made a party by reason of (i) his being or having been a director, officer or employee of Salem or any of its subsidiaries, or (ii) his serving or having served any other enterprise as a director, officer or employee at the request of Employer (the duties described in (i) and (ii) hereof are collectively referred to herein as the Indemnified Duties). Employer shall indemnify Executive against all costs, charges and expenses incurred or sustained by him in connection with any action, suit or proceeding to which Executive may be made a party by reason of the Indemnified Duties to the fullest extent permitted by law, in effect at the time of the subject act or omission, and shall advance to Executive reasonable attorneys fees and expenses as such fees and expenses are incurred (subject to an undertaking from Executive to repay such advances if it shall be finally determined by a judicial decision which is not subject to further appeal that Executive was not entitled to the reimbursement of such fees and expenses). Employer covenants to maintain during Executive s employment for the benefit of Executive (in his capacity as an officer of Employer) Directors and Officers Insurance providing benefits to Executive no less favorable, taken as a whole, than the benefits provided to the senior executives of Salem by the Directors and Officers Insurance maintained by Salem on the date hereof; provided, however, that the board of directors of Salem may elect to terminate Directors and Officers Insurance for all officers and directors, including Executive, if the board of directors of Salem determines in good faith that such insurance is not available or is available only at unreasonable expense.

8.

MISCELLANEOUS PROVISIONS.

8.1

Venue; Choice of Law. Regardless of where it is signed, this Memorandum shall be deemed to be an agreement made in the city of Camarillo and state of California (Venue) and shall be interpreted as an agreement to be performed wholly in the State where the Venue is located. The laws of the State where the Venue is located shall be applied without regard to the principles of conflicts of laws.

8.2

Resolution of Disputes. Employer and Executive mutually agree to resolve any and all legal claims arising from or in any way or relating to Executive s employment with Employer through mediation or, if mediation does not resolve the claim or dispute within ten (10) days of notice demanding mediation, by binding arbitration under the Federal Arbitration Act subject to the terms and conditions provided below. Notwithstanding the foregoing, insured workers compensation claims (other than wrongful discharge claims) and claims for unemployment insurance are excluded from arbitration under this Memorandum. This Memorandum does not prevent the filing of charges with administrative agencies such as the Equal Employment Opportunity Commission, the National Labor Relations Board, or equivalent state agencies. Arbitration shall be conducted in the Venue in accordance with either of the following, at Executive s election: (a) the American Arbitration Association: Employment Rules of Procedure, (b) the Rules of Procedure for Christian Conciliation sponsored by the Christian Legal Society, or (c) the rules of procedure issued by another alternative dispute resolution service mutually acceptable to Executive and Employer. Any award issued in accordance with this Section 7.2 shall be rendered as a judgment in any trial court having competent jurisdiction.

Employer shall pay the arbitration fees and expenses, less any filing fee amount that Executive would otherwise have to pay to pursue a comparable lawsuit in a United States district court in the jurisdiction where the dispute arises or

state court in the jurisdiction where the dispute arises, whichever is less. All other rights, remedies, exhaustion requirements, statutes of limitation and defenses applicable to claims asserted in a court of law will apply in the arbitration. Executive expressly waives any presumption or rule, if any, which requires this Memorandum to be construed against Employer.

8.3

Injunctive Relief. Employer has entered into this Memorandum in order to obtain the benefit of Executive's unique skills, talent, and experience. Executive acknowledges and agrees that any violation of one or more subsections of Section 5 of this Memorandum will result in irreparable damage to Employer, and, accordingly, Employer may obtain injunctive and other equitable relief for any breach or threatened breach of such sections, in addition to any other remedies available to Employer, without being required to prove actual damages, post bond or furnish other security.

8.4

Integration. This Memorandum comprises the entire understanding of the parties with respect to the subject matter and shall supersede all other prior written or oral agreements, including without limitation that certain employment agreement entered into by and between Employer and Executive as of September 16, 2003.

8.5

Amendments and Waivers. No term or provision of this Memorandum may be amended, waived, discharged or terminated orally but only by an instrument in writing signed by the party against whom the enforcement of such amendment, waiver, discharge or termination is sought. Any waiver shall be effective only in accordance with its express terms and conditions. Notwithstanding anything in this Memorandum to the contrary, no person other than the President & Chief Executive Officer of Employer has the capacity to amend, waive, discharge or terminate the provisions of Section 2 relating to the at will nature of Executive's employment, and then, such action may only be taken in writing.

8.6

Severability. If any portion of this Memorandum shall be held to be illegal, invalid, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Memorandum shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. Additionally, in lieu of each such illegal, invalid or unenforceable provision, there shall be added automatically as part of this Memorandum a provision as similar to such former provision as shall be legal, valid and enforceable.

8.7

Survival; Modification of Terms. No change in Executive's duties or salary shall affect, alter, or otherwise release Executive from the covenants and agreements contained herein. All post-termination covenants, agreements,

representations and warranties made herein by Executive shall survive the expiration or termination of this Memorandum or employment under this Memorandum in accordance with their respective terms and conditions.

[Signatures only on the following page.]

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum effective as of September 1, 2005.

ACCEPTED AND AGREED:

Executive:

By: /s/ David A.R. Evans
David A.R. Evans
September 26, 2005

Employer:

Salem Communications Corporation

By: /s/ EDWARD G. ATSINGER III
Edward G. Atsinger III
President and Chief Executive Officer

By: /s/ ROLAND S. HINZ
Roland S. Hinz, Chairman
Compensation Committee
Salem Communications Corporation