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KMKS - FM
Texas Hot Country K-102.5

JAN 24 2000

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January 21, 2000

CERTIFIED MAIL

**Ms. Magalie R. Salas, Secretary
Allocations Branch, Mass Media Bureau
Federal Communications Commission
Portals II, TW-A325, 445 Twelfth Street, S.W.
Washington, D.C. 20554**

**Re: MM Docket 99-331; RM -9728
Amendment of Section 73.202(b)
Table of Allotments,
FM Broadcast Stations Madisonville / College Station Texas**

Dear Ms. Salas,

Transmitted herein on behalf of Sandlin Broadcasting Co., Inc. are an original and four (4) copies of its Reply Comments in response to the Comments and Counterproposal filed by Garwood Broadcasting Company of Texas on January 10, 2000 in the above mention proceeding.

Please contact me should any addition information be required.

Respectfully Submitted,

Margaret K. Sandlin

**Margaret K. Sandlin, President
Sandlin Broadcasting Co., Inc.**

P.O. Box 789 Bay City, TX 77484-0789 Ph. (409) 244-4242 Fax (409) 245-0107 e-mail: kmks@kmks.com

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, DC 20554

In the Matter of)	Docket No. 99- 331
)	
Amendment of Section 73.202(b))	RM-9728
Table of Allotments))	
FM Broadcast Stations)	
(Madisonville, and)	
College Station, Texas))	

**To: The Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau**

REPLY COMMENTS

Sandlin Broadcasting Co., Inc. ("Sandlin"), by its undersigned president and one hundred percent (100%) shareholder and the owner/operator of Radio station KMKS, Margaret K. Sandlin, hereby submits its Reply Comments in the above-captioned proceeding. Sandlin's Reply Comments respond to the "Comments and Counterproposal" filed on January 10, 2000 by Garwood Broadcasting Company of Texas ("Garwood"). Sandlin opposes as fatally flawed that part of the Garwood Counterproposal which relates to the substitution of Channel 259C2 for Channel 273C2 and deleting 273C1 from Bay City, Texas as reflected in the Commission's database, and then reassigning Channel 273C1 at Columbus, Texas. In addition, apart from the procedural and technical flaw, there are strong public interest reasons why the proposal should not be adopted.

**1. The Proposal for Channel Changes in Bay City, Texas and Columbus, Texas
Cannot Be Considered a Valid Counterproposal in this Proceeding.**

To the extent that Garwood's Counterproposal addresses channel changes in Bay City, Texas, Palacios, Texas and Columbus, Texas, it is fatally flawed and must be dismissed or denied without consideration on its merit. Simply stated, as forth herein the portion of Garwood's Counterproposal that relates to channel changes for Bay City, Texas, Palacios, Texas and Columbus Texas (1) has nothing whatsoever to do with the subject matter of this rulemaking proceeding as initiated by Sunburst Media, LP ("Sunburst") in its June 25, 1999 petition for rulemaking, which only proposed seeking to move the facilities of KAGG(FM) from Madisonville, Texas to College Station, Texas, deleting Channel 241A at Madisonville and allocating Channel 241C2 to College Station, released as Notice of Proposed Rule Making ("NPRM"), DA 99-2564, on November 19, 1999 by the Chief, Allocations Branch. The counterproposed to change channels at Bay City, Texas, Palacios, Texas and Columbus, Texas does not qualify as a valid counterproposal in this proceeding, because it is not an "alternative and mutually exclusive allotment or set of allotments in the context of a proceeding in which a proposal is made.

As such, the counterproposal Garwood is an entirely distinct and unrelated proposal that has no proper place in this proceeding, the subject matter of which is Madisonville and College Station, Texas. It cannot qualify as a counterproposal in this proceeding.¹ Accordingly, it should be dismissed or denied without consideration on its merits.

¹ See, e.g., In the Matter of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Llano and Marble Falls, Texas), MM Docket No. 95-49, RM -8558, 1998 WL 879843 (rel. December 18, 1998).

1. There are Compelling Public Interest Reasons for Dismissing or Denying Garwood's Proposal relating to Bay City, Texas and Columbus, Texas.

In addition to this fatal procedural flaw, there are strong public interest reasons for denying or dismissing the portion of Garwood's Counterproposal that concerns Bay City, Texas, Palacios, Texas and Columbus, Texas. FM Broadcast Station KMKS, Bay City, Texas, which occupies channel 273, is the Emergency Broadcast Station in Bay City and its environs, and is part of the official Emergency Plan for Matagorda County, Texas. As such, there has been a tremendous investment in public and private money and time to establish safety procedures involving tuning to 102.5 (KMKS' current Channel 273) for safety-related information. There are also fixed-frequency tone alert radios keyed to this frequency which cannot easily or inexpensively be retune. There are serious and recurrent safety concerns relating to the hurricanes and flooding experienced by residents and businesses in the Bay City area, and there is an urgent need to have prompt safety information due to the operation of the nearby South Texas Nuclear project. The considerable public expense involved in incorporating the current KMKS channel into the area's emergency procedures would be jeopardized by a move to Columbus, Texas. Not only would areas of coverage crucial to maintaining public order and safety be neglected by moving the channel to Columbus, but the close working interrelationship between the Sheriff's Department (*See Exhibit 1*) and other emergency services and the local broadcaster in Bay City would be lost. This would place the public in Bay City, and especially its elder residents, at considerable risk, as well as incurring untoward expense to retool to another frequency in the area's Emergency Plan and all persons involved with

it. Garwood would not cover such expenses in its reimbursement of expenses to cover the proposed KMKS channel change.

Technical Showing

The FCC's NPRM in MM Docket No. 99-331, RM-9728, set January 10, 2000 as the deadline to file Comments in the instant proceeding, and January 25, 2000 as the Reply date.

Sandlin is in receipt of a counterproposal, dated January 10, 2000 the *cutoff* date for comments, which was filed by Garwood Broadcasting Company of Texas in above mention proceeding, originally filed by Sunburst Media, LP. ("Sunburst"), licensee of Station KAAG, Channel 241C2, Madisonville, Texas, proposing the reallocation of Channel 241C2 from Madisonville, Texas to College Station, Texas and modification of its license to specify operation at College Station. The Garwood's counterproposal has not yet appeared on Public Notice portions of which are entirely unrelated and should not be considered a "counterproposal" in MM Docket 99-331. KMKS currently listed in the FCC database at 28-47-47 and 96-09-17 and is **135.9** miles/218.736Km from the proposed College Station coordinates 30-45-26 and 96-24-33. KMKS, Bay City operates on channel 273, the Madisonville/ College Station proposal is for channel 241, separated **by thirty-two (32) channels.**

Sunburst original proposal, specified in the NPRM , was simply the reallocation of Channel 241C2 from Madisonville, Texas to College Station Texas, this original Petition for Rulemaking is entirely unrelated to the Garwood counterproposal to move KMKS to another frequency and should not be considered in MM Docket 99-331.

If, for some reason, Garwood's January 10, 2000 "counterproposal" appears on Public Notice, a timely Petition to Deny will be filed citing these and additional procedural, technical and public safety issues in the Garwood preferred arrangement of allotments.

Garwood's counterproposal proposed to change channels in Bay City, Texas, Palacios, Texas, and Columbus Texas has a severe public interest detriment that cannot, and in actuality, would not, be addressed simply by the expenditure of money. For the above reasons, it is respectfully submitted that Garwood's counterproposal *is not in the public interest*. The Commission should take this important public interest issue into account, as well as the procedural and technical flaws and should deny or dismiss Garwood's Counterproposal as it concerns Bay City, Palacios and Columbus, Texas.

KMKS does plan to upgrade its facility from C2 to C1, upon Commission approval, as soon as possible.

Respectfully submitted,

By Margaret K. Sandlin
Margaret K. Sandlin, President
Sandlin Broadcasting Co., Inc.
P.O. Box 789
Bay City, TX 77404-0789
409-244-4242
FAX 409-245-0107

Area Code will change to 979 beginning March 1, 2000

January 21, 2000

Exhibit 1

MATAGORDA COUNTY SHERIFF'S DEPARTMENT

James D. Mitchell, Sheriff

R. Wayne Frieda, Chief Deputy

2323 Avenue E • Bay City, Texas 77414

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JAN 24 2000

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Magie Roman Salas
Secretary
Federal Communications Commission

Re: Counterproposal of Garwood Broadcasting Company of Texas
MM Docket No. 99-331

Dear Secretary Salas,

On behalf of the Sheriff's Office of Matagorda County, I am writing you to oppose the Counterproposal of Garwood Broadcasting Company of Texas in the above-captioned rulemaking proceeding. My understanding is that this Counterproposal will have the effect of substituting FM Channel 259C2 (99.7MHZ) for the presently assigned FM Channel 273C2 (102.5 MHZ) at Bay City, Texas, at the site of Radio Station KMKS (FM).

Pursuant to the Counterproposal, FM Channel 273 would be moved to Columbus, Texas, and upgraded to C1 class.

My primary concern in this matter is the safety and security of the citizens of Bay City and surrounding areas. Although the Counterproposal would seem at first glance to be simply the substitution of one frequency for another in Bay City, it is not that simple. In fact, if this Counterproposal is allowed to go forward, it will create significant safety problems for residents of Bay City and its surrounding areas, and I must therefore register my strongest objection to it.

The commission should be aware that Bay City, Texas is located southwest of Houston, Texas near the Gulf of Mexico, and it is subject to seasonal hurricanes and flooding. Sometimes very violent storms arise that threaten the lives and property of the residents of Bay City and surrounding areas. In these circumstances, it is essential for the safety and security of Bay City that a local FM broadcast station be available to work with public officials to give emergency guidance to local citizens in their homes, offices and automobiles.

This recently became crucial due to the very violent Tropical Storm Francis, which assaulted the Texas coast with damaging winds and flooding. During this storm, as with other previous storms, the Sheriff's Office worked closely with KMKS(FM) and its owner/operators to furnish essential information that saved local lives. KMKS(FM) Channel 102.5 is the designated local emergency broadcast station, and has been for many years. Local residents know to turn to that channel for instructions in turbulent times, and I am confident that lives and property have been saved by this relationship. KMKS(FM) was the only radio station broadcasting emergency

instructions during
Tropical Storm Francis.

In my opinion, the Counterproposal being considered by the Commission would strike a severe blow to public safety in Bay City and its environs, because it would (1) change the frequency to the local station to 99.7 MHZ, a frequency which is not currently used for emergency broadcast purposes, causing potential confusion and requiring at the very least expensive re-education of the public; and (2) take the frequency currently used for emergency broadcasts in Bay City, 102.5 MHZ inland to Columbus.

My understanding is that, even with additional power, the station in Columbus would not be able to serve the service area presently covered by KMKS(FM). And even if it could, the station would not be located in Bay City, so it would not be possible in an emergency to coordinate directly with the owner/operators of the station to protect the residents of Bay City and its surroundings. In past disasters, representatives of the Sheriff's Office were actually on the premises of KMKS(FM), helping to provide information that saved lives and property. This would not be possible if the station were located at Columbus.

The Commission might well ask why it is possible simply to advise Bay City residents and residents of surrounding areas within the current service area of KMKS(FM) to simply to a different location on their FM dials in the event of an emergency. Although this might be a partial solution, it does not really address the full problem, because the situation in Bay City is somewhat unusual.

Not only is KMKS(FM 102.5) MHZ published in the Matagorda County Emergency Plan as the primary frequency to turn to in the event of an emergency (and is therefore part of the instructions furnished to every office in the agency responsible for taking action in an emergency), but also there are nearly two thousand fixed frequency tone alert radios tuned to this emergency frequency within ten miles of the South Texas Nuclear Project. These fixed-frequency radios cannot simply be "re-tuned" by turning a dial. They will have to be retrofitted or replaced, or abandoned leaving these two thousand families without the level of notification they have today.

Moreover, during the past ten years, thousands of dollars have been spent by the South Texas Project and by Matagorda County educating the public, circulating literature, issuing tone alert radios, holding town meetings, and putting up posters and signs. The prospect of starting this process all over again is a daunting one. Also, what is an emergency occurs during the transition period?

Although it is my understanding that the proponent of the Counterproposal would reimburse the owner/operators of KMKS for their move to another channel, this is just the tip of the iceberg: who will reimburse Matagorda County, The South Texas Nuclear Project and other adversely affected parties for the tremendous cost of such a conversion? Is simply does not address the problem to cover to cost of the radio station: the public in Bay City/Matagorda County, and the various agencies charged with maintaining the safety of the public would suffer

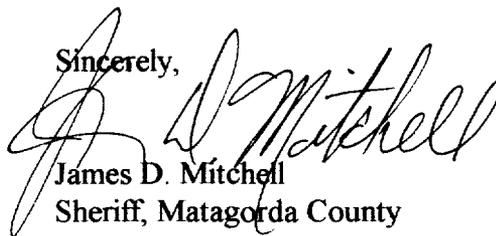
severe, and very expensive, reconstruction.

In my opinion, as one charged the maintaining public order and safety in a region plagued by dangerous storms and flooding, the public interest benefits of allowing the station in Columbus to use 102.5 MHZ to upgrade its power, and the additional local services to Palacios and Matagorda are simply not worth it. The Sheriff's Office has worked very closely with the owner/operators of KMKS(FM) in the public interest, and I do not believe 102.5 with its Columbus location, will have the same incentive to provide these essential services to Bay City and its surrounding area. At any rate, it is an unnecessary risk, and there is a great deal at stake. Even if the County and other adversely affected parties were fully reimbursed for the cost of making this change, it would still not be a good idea.

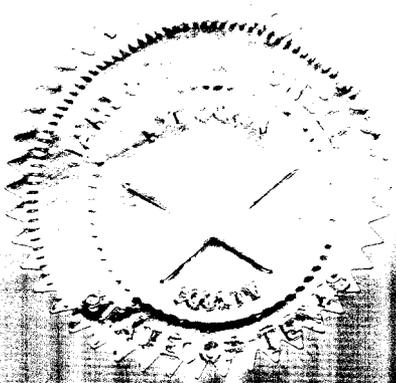
Accordingly, I must stress as strongly as possible that the contemplated move of 102.5 MHZ away from Bay City puts the safety of our region at risk, and the situation could only be remedied with the expenditure of hundreds of thousand of dollars of public money, and many man-hours of effort to re-educate local residents. If this were simple as telling Bay City residents to find their Hot Country formats on a different dial button, I would not be entering any objection-despite the inconvenience, it would be a matter for concern for my department. Is only because the public safety and security are involved that I must note my strong opposition.

If you have any questions, please do not hesitate to contact me directly.

Sincerely,



James D. Mitchell
Sheriff, Matagorda County



CERTIFICATE OF SERVICE

I, Margaret K. Sandlin, do hereby certify that copies of the foregoing Reply Comments have been served by Certified United States First Class Mail, postage prepaid, this 21st day of January, 2000, upon the following:

**Ms. Magalie R. Salas, Secretary
Allocations Branch, Mass Media Bureau
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Portals II, TW-A325,
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