

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

In the Matter of)	
)	
Amendment of Section 73.202(b), Table of Allotments,)	MM Docket No. 99-331 RM-9728
FM Broadcast Stations.)	RM-9847
(Madisonville and College Station, Texas, Giddings, Texas, and Bay City, Columbus, Edna, Garwood, Palacios and Sheridan, Texas))	RM-9848

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: January 15, 2003

Released January 21, 2003

By the Assistant Chief, Audio Division:

1. In response to a Petition for Rule Making filed by Sunburst Media, LP, ("Sunburst"), the Commission has before it for consideration the *Notice of Proposed Rule Making*, **requesting** the reallocation of Channel 241C2 from Madisonville, Texas to College Station, Texas, and modification of the license for Station KAAG to specify operation on Channel 241C2 at College Station.¹ Sunburst filed comments withdrawing its proposal to reallocate Channel 241C2 to College Station.² Counterproposals were filed by Giddings Community Broadcasting Company ("Giddings Community") and Garwood Broadcasting Company of Texas ("Garwood Broadcasting").³ Reply comments were filed by Sandlin Broadcasting Co., Inc. ("Sandlin"), Giddings Community and Garwood Broadcasting. Late-filed comments were received from Garwood Broadcasting, Giddings Community and Sandlin.

2. Giddings Community counterproposed the allotment of Channel 240A at Giddings, Texas, as its first local FM service. Giddings states that the community of Giddings was previously served by Station

¹ The communities of Giddings, Bay City, Columbus, Edna, Garwood, Palacios and Sheridan, Texas, have been added to *the* caption

² See *Madisonville and College Station, Texas*, 14 FCC Rcd 19404 (M.M. Bur. 1999).

³ On January 10, 2000, Sunburst Media withdrew its proposal for Madisonville and College Station in accordance with Section 1.420(j) of the Commission's Rules. On January 27, 2000, Sunburst Media filed a retraction of its withdrawal stating that the withdrawal was accidentally filed as **the** result of a miscommunication. However, on March 24, 2000, Sunburst Media again filed a withdrawal of its proposal for Madisonville and College Station in compliance with Section 1.420(j). Therefore, no further consideration will be given to the reallocation of Channel 241C2 from Madisonville, Texas, to College Station, Texas

⁴ The counterproposals filed by Giddings (RM-9847) and Garwood Broadcasting (RM-9848) were put on Public Notice on April 11, 2000, Report No. 2402.

KROX(FM). However in MM Docket 99-69⁵, Station KROX(FM) was reallocated to Buda, Texas, from Giddings, leaving the community without a local FM commercial service.⁶ In support of its proposal; Giddings Community states that Giddings is located in Lee County, Texas, with a population of 4,093 people according to the 1990 U.S. Census. Giddings Community further states that Channel 240A can be allotted to Giddings in compliance with the Commission's spacing requirements, providing service to the entire community. Giddings Community states that it will file an application for Channel 240A at Giddings should the channel be assigned to the community.

3. The counterproposal filed by Ganwood Broadcasting involves six Texas communities. Ganwood Broadcasting requests the allotment of Channel 241A at Ganwood, Texas, as its first local service. In support of the allotment, Garwood Broadcasting states that Ganwood, located in Colorado County, is a census designated place with its own zip code, a population of over 600 persons according to the 1998 edition of the *Rand McNally Road Atlas*, and is located 80 miles from Houston and 130 miles from San Antonio. Further, Ganwood has its own school, volunteer fire department and annual festivals which bring people into the town. To accommodate the allotment of Channel 241A at Ganwood, Ganwood Broadcasting requests the substitution of Channel 252C3 for Channel 241C3 at Edna, Texas, reallocation of Channel 252C3 to Sheridan, Texas, and modification of the license for Station KGUL accordingly. The reallocation could provide a first local service for Sheridan while Edna would continue to be served by AM Station KTMR. In support of this substitution and change of community, Ganwood Broadcasting states that Sheridan is a census designated place with its own zip code, population of 450 people according to the 1990 U.S. Census, located approximately 90 miles from Houston and 120 miles from San Antonio. Sheridan has its own elementary and secondary school, volunteer fire department, churches, businesses and a major water park for summer recreation. The licensee of Station KGUL, Hill Country Radio, and the proposed assignee, Fort Bend Broadcasting Company, have consented to the proposed change. To accommodate the allotment at Sheridan, Garwood Broadcasting requests the substitution of Channel 273C1 for Channel 252A at Columbus, Texas and modification of the authorization for Station KULM at a new transmitter site.⁷ Equicom, Inc., licensee of Station KULM and the proposed assignee, Roy E. Henderson, have consented to the proposed changes for Station KULM. According to Garwood Broadcasting, the substitution of channels at a new transmitter location will provide service to a much larger area and population. Garwood Broadcasting states that the proposed change is mutually exclusive with the current operating channel of Station KULM. To accommodate Channel 273C1 at Columbus, Garwood Broadcasting requests the substitution of Channel 259C2 for Channel 273C2 at Bay City, Texas and modification of the authorization for Station KMKS to specify operation on Channel 259C2 at its existing transmitter site. Garwood Broadcasting has committed to reimburse Station KMKS for expenses incurred for changing channels. Finally, to accommodate the substitution at Bay City, Garwood Broadcasting requests the substitution of Channel 264A for Channel 259C2 at Palacios, Texas, at a new transmitter site and modification of the license for Station KKOS to

⁵ See *Giddings and Buda, Texas*, 14 FCC Red 9508 (M.M.Bur. 1999).

⁶ Station KANJ(FM), Channel 21.8 is licensed to Giddings

⁷ In late-filed comments, Ganwood Broadcasting modified this aspect of its counterproposal to propose a Channel 273A substitution at Columbus instead of Channel 273C1. In view of the fact that this proposal is untimely and was not accompanied by a Motion to Accept, this modification will not be considered in the context of this proceeding.

specify operation on Channel 264A at a new location. The licensee of Station KKOS supports the change in channel and transmitter site.

4. Sandlin, licensee of Station KMKS, Bay City, Texas, submitted comments in response to the counterproposal filed by Garwood Broadcasting. Sandlin objects to the proposed substitution of Channel 259C2 for Channel 273C2 at Bay City, and modification of its license for Station KMKS. According to Sandlin, the counterproposal to change channels at Bay City, Palacios and Columbus, Texas, does not qualify as a valid counterproposal because it is not an alternative and mutually exclusive set of allotments in the context of this proceeding and that the proposal for Garwood is an entirely distinct and unrelated proposal that has no proper place in this proceeding. In addition, Sandlin points out that Station KMKS, Channel 273, is the Emergency Broadcast Station in Bay City and part of the Emergency Plan for Matagorda County, Texas, as well as the primary emergency broadcast station for the South Texas Nuclear Power Plant near Bay City. As such, there has been a tremendous investment in public and private time and money to establish safety procedures involving tuning to Station KMKS for safety-related information. In a separate vein, Sandlin states that Station KMKS currently operates on Channel 273C2 but was modified from Channel 273C2 to Channel 273C1 in MM Docket No. 91-242. Channel 273C1 is now reflected in the FM Table of Allotments. Sandlin correctly notes that the counterproposal makes no reference of replacing Channel 273C1 with an equivalent channel. In comments, Sandlin stated its intention to upgrade its station from a C2 facility to a C1 facility. According to Sandlin, Channel 259C2 cannot be allotted to Bay City at the current KMKS tower site or allocation site as it does not satisfy allotment standards.⁸ Sandlin acknowledges that Garwood Broadcasting has stated its intention to reimburse Sandlin for expenses but has not specifically stated that it would cover expenses incurred by the Matagorda County and the South Texas Nuclear Plant as part of its obligation as specified in the Commission's guidelines set forth in *Circleville and Columbus, Ohio*. Sandlin also believes that grant of Garwood Broadcasting's proposal will cause service to be lost or reduced in other communities. Here Sandlin points out that Edna, Texas, County Seat of Jackson County, will lose its only local FM service while regional Channel 259C2 would be deleted at Palacios to be replaced with Channel 264A, reducing service to that community. Sandlin argues that the counterproposal to move Channel 273 to Columbus is technically flawed with severe public interest detriments which would not be addressed adequately through the reimbursement process. Sandlin requests that the counterproposal be denied or dismissed with respect to the requested changes at Bay City and Columbus.

Discussion

5. Sunburst Media, LP, licensee of Station KAAG, Channel 241C2, Madisonville, Texas, initiated this proceeding by requesting the reallocation of Channel 241C2 from Madisonville to College Station, Texas. In compliance with Section 1.420(j) of the Commission's Rules, Sunburst Media has since withdrawn its proposal for Station KAAG. Therefore, we need not consider an allotment for College Station. We received two counterproposals. Giddings Community has requested the allotment of Channel 240A at Giddings and Garwood Broadcasting requests the allotment of Channel 241A at Garwood with changes at Edna, Sheridan, Columbus, Bay City and Palacios, Texas. The proposed allotments at Giddings and Garwood are both in conflict with the proposed allotment of Channel 241C2 at College Station, Texas. Conflicting proposals, such

⁸ Commission records show the tower location for Station KMKS, Bay City, at 28-47-47 and 96-09-17. In comments, Sandlin states that its Lower site is 28-47-49 and 96-09-20. If Commission records are incorrect, it is the responsibility of the licensee or permittee to notify the Commission, correcting the discrepancy.

as have been filed ~~in~~ this proceeding, are comparatively considered under the guidelines set forth in *Revision of FM Assignment and Policies and Procedures*.⁹ As stated above, interest has been withdrawn for College Station and Madisonville, Texas. Therefore, we shall focus our attention on the two counterproposals.

6. Garwood Broadcasting has requested a substitution at Edna, Texas and reallocation to Sheridan, Texas, and substitutions at Columbus, Texas, and Palacios, Texas, to accommodate the allotment at Garwood. As such, the Columbus and Palacios proposals are part of a valid counterproposal. Our engineering analysis indicates that these proposed substitutions can be made in compliance with the Commission's spacing requirements, and the licensees or permittees of these stations have consented to the proposed changes. Additionally, the substitution of Channel 259C2 for Channel 273C2 at Bay City, Texas, has also been requested to accommodate the change at Columbus, Texas. According to Commission records, the license for Station KMKS, Bay City, was modified from Channel 273C2 to Channel 273C1 in MM Docker No. 91-242.¹⁰

Station KMKS currently operates on Channel 273C2, but the licensee, Sandlin Broadcasting, in response to Garwood Broadcasting's counterproposal, has stated its intention to file an application for Channel 273C1 at Bay City upon termination of this proceeding. As it is Commission policy not to downgrade a station to accommodate another station's desire to upgrade, absent an agreement from the affected station consenting to the downgrade, we will not favorably entertain the proposed substitution at Bay City." Accordingly, we deny the counterproposal filed by Garwood Broadcasting. Garwood Broadcasting did not provide an alternate C1 channel for use at Bay City. Had Garwood Broadcasting proposed the substitution of an alternate C1 channel for Channel 273C1 at Bay City, a separate Order to Show Cause could have been directed to Sandlin Broadcasting requesting a showing as to why the license for Station KMKS should not be modified to specify operation on a different channel. In the event Sandlin Broadcasting does not activate Channel 273C1 at Bay City as represented in this proceeding, we would consider a proposal to downgrade Station KMKS to specify operation on a class C2 channel."

7. After consideration of the information filed in this proceeding, we believe the public interest would be served by the allotment of Channel 240A at Giddings, Texas, providing the community with its first FM service and second aural service. Channel 240A can be allotted to Giddings in compliance with the Commission's spacing requirements with a site restriction 12.1 kilometers (7.5 miles) north of the community.¹³

⁹ The priorities are 1) first full-time aural service; 2) second full-time aural service; 3) first local service; and 4) other public interest matters. [Co-equal weight given to priorities 2) and 3)] See 90 FCC 2d 88 (1982)

¹⁰ Sandlin Broadcasting's construction permit for Channel 273C1 was cancelled on January 12, 1995. See BPH-199302101A.

¹¹ See *Shingle Springs and Quincy, California*, 7 FCC Rcd 3113 (MM Bur. 1992) and *Flora and Kings, Mississippi and Newellton, Louisiana*, 7 FCC Rcd 5477 (M. M. Bur. 1992).

¹² See *Billings and Lewistown, Montana*, 6 FCC Rcd 3632 (M. M. Bur. 1991)

¹³ The coordinates for Channel 240A at Giddings are 30-10-54 and 96-56-12

8. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective March 7, 2003, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules IS AMENDED for the community listed below, as follows:

community	Channel Number
Giddings, Texas	240A

9. A filing window for Channel 240A at Giddings will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent Order.

10. IT IS FURTHER ORDERED, That the counterproposal filed by Garwood Broadcasting Company of Texas (RM-9848), IS DENIED.

11. IT IS FURTHER ORDERED, That the Petition for Rule Making filed by Sunburst Media, LP (RM-9728), IS DISMISSED

12. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

13. For further information concerning this proceeding, contact Kathleen Scheuerle, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
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