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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of) MM Docket No. 99-331
)
Amendment of Section 73.202(b)) RM-9848
Table of Allotments)
FM Broadcast Stations)
(Madisonville, and)
College Station, Texas))

To: The Secretary, and then

DOCKET FILE COPY ORIGINAL

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

REPLY TO "COMMENTS"

On January 11, 2002, Garwood Broadcasting Company of Texas (hereinafter "Garwood") filed an Amendment to its Counterproposal in this proceeding, deleting a channel upgrade request and simplifying the basic proposal. In its Amendment, it did not seek to "add" any new proposals and limited its Amendment to scaling back and simplifying what had already been proposed in its Counterproposal as filed on January 10, 2000. Nonetheless, on February 15, 2002, a pleading entitled "Comments" was filed by Sandlin Broadcasting Company, Inc., licensee of radio station KMKS-FM in Bay City, Texas (hereinafter "Sandlin") purportedly addressed to the Garwood Amendment.

Aside from the fact that the Sandlin Comments are procedurally defective and unacceptable since they were filed grossly out of time (22 days late) without any request for

Transmitted to List ABCDE 014

acceptance, they were also substantively defective in failing to address any aspect of the Amendment to which they were purportedly addressed and instead seeking to add new arguments to their basic opposition to the Counterproposal. This is not only untimely and inappropriate at this stage of the proceeding but also substantively wrong in every way. In short, the Sandlin Comments are procedurally and substantively defective and, as will be shown below, in several respects raise serious questions about Sandlin's own actions.

I. The Comments Were Untimely And The Date of Service Certified by Sandlin is in Conflict With the Actual Date of Service as Conclusively Verified by the U.S. Post Office Postmark.

Initially we note that the Garwood Amendment was filed on January 11, 2002, and service completed on that date as indicated. As such, pursuant to FCC Rule 47 CFR 1.45, any Opposition or "Comments" was due for filing at the FCC on or before January 24, 2002. None was filed by that date.

Subsequently, undersigned counsel for Garwood received a certified mail package from Sandlin containing its Comments dated February 13, 2002, and including a Certificate of Service as executed by Margaret K. Sandlin, specifically certifying that the Comments were "served by United States Mail, postage prepaid, this 13 day of February, 2002". Even if that were true, which it apparently is not, that would mean that the Comments were filed 20 days late after the due date. Such being the case and without any request for leave to file such a profoundly late filing, the

Comments are inherently defective and unacceptable and should be rejected on that basis alone.

But there is even more. Examination of the envelope in which the Comments were mailed and received by Counsel for Garwood indicates that they were personally mailed at a U.S. Post Office with postage affixed at that time and dated February 15, 2002, two days **AFTER** the date certified by Sandlin as the service date of the pleading. A copy of the envelope in which the Comments were received, along with an enlarged copy of the stamp mailing date as indicated by the Post Office is attached hereto as Exhibit 1.

As the Commission is aware, service dates on pleadings are of substantial importance since they establish rights and obligations for other parties and other pleadings. Reply date times are already short (only 5 days as set forth in 47 CFR 1.45) and taking two of those days out by misdating the true mailing date of the pleading is a matter of no small consequence and meaning and, aside from being grossly prejudicial to the other parties in this proceeding, would also seem to be flatly contrary to 47 CFR 1.17 which requires truthful written statements in all matters filed with the Commission. Sandlin is a long-time Commission licensee and no stranger to FCC pleadings. Sandlin should have known better than to do this. We leave it to the Commission as to what further action it may wish to take on this matter but at the very least we suggest that Sandlin should be severely admonished as to its actions here.

II. The Comments Are Inappropriate Since They Were Not Directed In Any Way To The Amendment As filed, Seek to Introduce New Matter Which Should Have Been Presented Earlier, If Ever, And Which Matter Is Substantively Devoid of any Basis in Fact.

In the first line of its Comments (starting at the second paragraph), Sandlin starts with "Garwood's counterproposal does not..." and continues throughout the end of its Comments in the same vein, attacking the basic counterproposal as filed on January 10, 2000. It says nothing about the Amendment to which the "Comments" were purportedly addressed, and as such the pleading is totally irrelevant to the Garwood Amendment and nothing more than an attempted further Opposition by Sandlin to the original Counterproposal, filed about two years late.

Moreover, to the extent that Sandlin now tries to raise, for the first time, a new argument alleging a short-space problem in the Garwood proposal she is simply wrong, as conclusively demonstrated by the attached Engineering Statement (Exhibit 2) submitted by Garwood's Consulting Professional Engineer. Sandlin does not include any credentials in the engineering field nor did she offer any possible basis for the erroneous engineering claims that she made. We submit that it is reckless, to say the least, for anyone to offer such utterly baseless statements as "fact" in any Commission proceeding.

III. The Comments Inappropriately Included A Separate "Informal Complaint" Against Garwood And Its Principal As Directed to the Enforcement Bureau.

At the bottom of page one of its Comments, Sandlin claims that Garwood's proposal does not propose an "equivalent channel for Bay City and is not a bona fide counterproposal and must be

denied". It then refers to "Exhibit 1 'Informal Complaint' attached)". Reference to Sandlin's Exhibit 1 finds not a reasoned analyses or basis for Sandlin's "equivalent channel" argument (for the simple reason that no such argument exists, see above) but an ad hominem attack upon Garwood and its principal as directed to the Chief of the Enforcement Bureau as an "Informal Complaint". Despite the fact that this "informal Complaint" was directed to the Enforcement Bureau as a matter separate and distinct from the instant proceeding, and contained its own Certificate of Service, it was **NOT** separately served upon counsel for Garwood and was only found here as an "exhibit" to the Comments filed in this proceeding.

Moreover, in the Certificate of Service included with the "Informal Complaint" exhibit, Sandlin includes the same misrepresentation as to a service date of "February 13" when the U.S. Post Office verifies the package not sent until February 15, as referred to above relative to Sandlin's "Comments". It is wholly improper for Sandlin to mix two pleadings, directed to two different offices of the Commission together as it has done here. Garwood's Reply as submitted here is done so pursuant to the provisions of 47 CFR 1.45 which governs such Reply pleadings, and timely filed in reply to the actual February 15 service date of the Comments. 1/

1/ Computation of the time consistent with 47 CFR 1.45 and 1.4 which apply, computes to a required Reply filing date of February 28, 2002.

As to Sandlin's "informal Complaint", aside from noting here and now its clear lack of merit, consistent with the same lack of merit in its "Comments", we can only assume that Sandlin has filed this Informal Complaint under 47 CFR 73.3587 governing informal objections and Garwood will respond accordingly to the Chief of the Enforcement Bureau to whom Sandlin's informal complaint was directed.

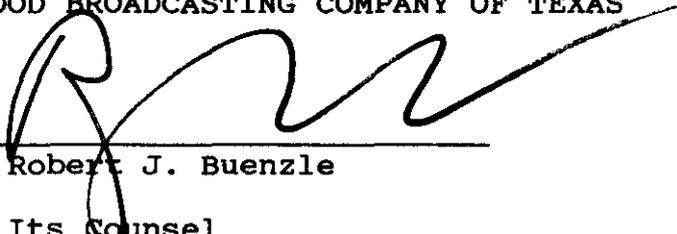
IV. Conclusion

Wherefore it is respectfully submitted that the Sandlin Comments are procedurally defective in being filed 22 days late, include an alleged service date that is disputed by the U.S. Postal Service date which conclusively verifies that the pleading was actually not mailed until two days after the date as certified by Sandlin, that the Comments did not relate in any way to the Amendment filed by Garwood and that the Comments included engineering claims that were factually wrong. As such, the Comments by Sandlin are fatally defective, both procedurally and in substance, and should be dismissed as such or, if considered, denied.

Respectfully submitted,

GARWOOD BROADCASTING COMPANY OF TEXAS

by


Robert J. Buenzle

Its Counsel

Law Offices
Robert J. Buenzle
12110 Sunset Hills Road
Suite 450
Reston, Virginia 22090
(703) 715-3006

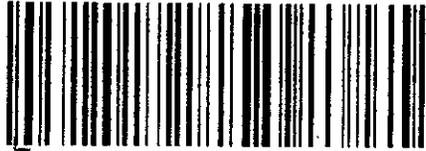
February 27, 2002

EXHIBIT 1

**COPY OF SANDLIN SERVICE ENVELOPE WITH
U.S. POSTAL DATE OF FEBRUARY 15, 2002**

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS. FOLD AT DOTTED LINE

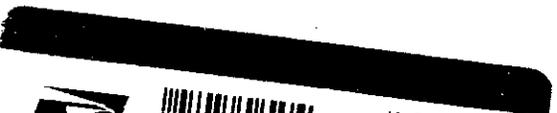
CERTIFIED MAIL



7001 2510 0004 4756 6378

K102.5 FM
P.O. BOX 789
BAY CITY, TX 77404-0789

▶ Robert J. Buenzle, Attorney
12110 Sunset Hills Road
Suite 450
Reston, Virginia 20190-3223

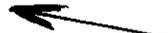


9264

20190

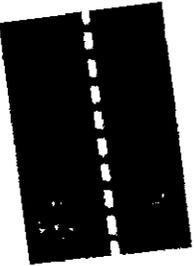
U.S. POSTAGE
PAID
BAY CITY, TX
77414
FEB 15, 02
AMOUNT

\$4.63
00024372-07



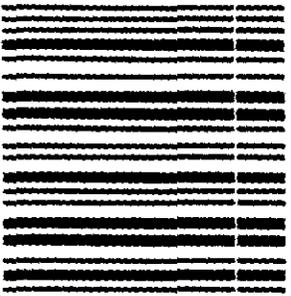
**RETURN RECEIPT
REQUESTED**

FIRST CLASS



UNITED STATES
POSTAL SERVICE

9264



20190



U.S. POSTAGE

PAID

BAY CITY, TX

77414

FEB 15: 02

AMOUNT



\$4.63

00024372-07

EXHIBIT 2

GARWOOD ENGINEERING EXHIBIT

Garwood Broadcasting Company of Texas

REPLY COMMENTS
MM Docket 99-331
February 2002

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F. W. Hamel, PE
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STATE OF ARIZONA)
)
COUNTY OF MARICOPA) SS:

F. W. Hannel, after being duly sworn upon oath,
deposes and states:

He is a registered Professional Engineer, by
examination, in the State of Illinois;

He is a graduate Electrical Engineer, holding Bachelor
of Science and Master of Science degrees, both in Electrical
Engineering;

His qualifications are a matter of public record and
have been accepted in prior filings and appearances requiring
Scrutiny of his professional qualifications;

The attached Engineering Report was prepared by him
personally or under his supervision and direction and;

The facts stated herein are true, correct, and
complete to the best of his knowledge and belief.

February 26, 2002



F. W. Hannel, P.E.

F. W. Hannel, PE
10733 East Butherus Drive
Scottsdale, AZ 85259
480) 585-7475
Fax (815) 327-9559
<http://www.fwhannel.com>

Garwood Broadcasting Company of Texas

REPLY COMMENTS
MM Docket 99-331
February 2002

ENGINEERING STATEMENT

This firm has been retained by Garwood Broadcasting Company of Texas to prepare this engineering statement in support of its Reply Comments in response to a filing in this proceeding by Sandlin Broadcasting Co., Inc., licensee of Radio Station KMKS(FM), Bay City, Texas. On January 14, 2002 Garwood Broadcasting Company of Texas filed a slight modification to its proposal in this proceeding and the Sandlin response to that minor change was allegedly filed by Sandlin on February 13, 2002 although the facts indicate that it could not have been filed any earlier than February 15, 2002.¹

Initially it should be noted that KMKS(FM) operates on FM Channel 273C2 at coordinates N28-47-47, W96-09-17 with a power of 50 kw at 147 meters HAAT.² It has no other applications pending before the Commission according to the Commission database where it may be seeking to upgrade or otherwise make any changes in its licensed operation. The last authorization held by KMKS(FM) was a construction permit for construction of FM Channel 273C1, however, the licensee did not construct the facility as authorized and that Construction Permit was subsequently revoked by the Commission over 8 years ago, as is reflected by the record in this case.

The Sandlin pleading of February 15, 2002 claims that the proposed changes by Garwood do not comply with Commission Rules, specifically that FM Channel 259C2 cannot be assigned to Bay City, Texas at the KMKS(FM) authorized site. In support of

¹ There is some confusion as to exactly when the Sandlin filing was made as the Certificate of Service has a date of February 13, 2002, yet the service copy has a Post Office date of February 15, 2002. As of the date of this Statement the Commission's database has no record of the filing.

² In its pleading, Sandlin claims to be operating at "corrected co-ordinates" of N28-47-49, W96-09-20. While it is unclear as to where this site data came from, it is certain that the Commission files do not reflect any move in the tower site for KMKS(FM) since a license was issued to the station in 1990. See File No. BLH-19900820KA attached as Exhibit E-1. If the licensee has moved the site without prior FCC authorization and/or notification, it has done so at its own peril.

that statement the Sandlin pleading contains a number of errors, both factual and technical, as well as several sets of co-ordinates that bear no relation to the operation of FM Channel 259C2 at the present KMKS(FM) tower site.³ For example, Sandlin claims that "Channel 259C2 can not be allotted at the current KMKS tower site as proposed by Garwood or at the KMKS C1 allocation site because it does not satisfy allotment standards." Sandlin is correct in saying that FM Channel 259C2 will not satisfy the Commission's criteria at the C1 allotment site, but not for the reasons given by Sandlin. FM Channel 259C2 cannot be assigned at the channel 273C1 allotment site at Bay City because FM Channel 259C2 cannot illuminate Bay City, Texas with the required 70 dbu signal, (there may be other reasons why an allotment on FM Channel 259C2 at that site will not satisfy the Commission's Rules as well). However, there is no proposal before the Commission that suggests that the assignment of FM Channel 259C2 be made at the FM Channel 273C1 allotment site. It appears that there is some substantial technical confusion and/or misunderstanding as reflected in the Sandlin pleading with regard to the specific changes proposed by Garwood.

In a similar fashion Sandlin refers to the licensing of KROY(FM) at Palacios, Texas under the provisions of Section 73.215 of the Commissions Rules as if that were somehow decisionally significant in the proposal to assign FM Channel 259C2 to Bay City, Texas.⁴ It does not, as the only relevant factor is whether or not FM Channel 259C2 can be assigned at the presently licensed site of KMKS(FM) in compliance with all of the Commission's Rules.⁵ Attached as Exhibit E-2 is a channel study for FM

³ Sandlin is apparently under the impression that Garwood must replace Channel 273C1 with an alternate equivalent channel, however, this is not correct as Sandlin abandoned construction of FM Channel 273C1 when it failed to construct the facility as authorized by the Commission. As noted, the Commission revoked that authority and FM Channel 273C1 has been effectively warehoused by Sandlin for at least 8 years while Sandlin took no action whatsoever to improve its service to Bay City by applying for the upgraded vacant channel. Since KMKS(FM) is licensed as a C2 facility on FM Channel 273, Garwood simply proposes to replace that channel with FM Channel 259C2, an equivalent alternate channel, that can be licensed as a fully spaced facility at the present KMKS(FM) transmitter site.

⁴ The Sandlin pleading also claims that the proposed allotment of FM Channel 259C2 is short spaced to KUST(FM), Huntsville, Texas, however, that facility does not appear on the FM Channel Study for FM Channel 259C2 at Bay City. Since Sandlin chose not to do any channel studies or other competent technical analysis in its pleading, it is not clear what facts Sandlin relied upon when it refers to that short-spacing. Insofar as the "corrected co-ordinates" used in the Sandlin pleading may have been used, and with no other technical documentation, there is no way for Garwood to determine how Sandlin reached its erroneous conclusions.

⁵ In fact, the removal of a short spacing in the FM Table of Allotments could be considered a substantial public interest factor favoring the changes proposed by Garwood.

Channel 259C2 at the presently licensed site of KMKS(FM) which clearly shows that the change proposed by Garwood at Bay City, Texas is in full compliance with the Commission's Rules.

In conclusion, it is obvious that FM Channel 259C2 can be assigned as a replacement channel for the presently assigned FM Channel 273C2, and that FM Channel 259C2 meets all of the Commission's Rules for assignment to Bay City, Texas and that the changes proposed by Garwood are in full compliance with all of the Commission's technical requirements. The Garwood proposal is in the public interest as it provides southeast Texas with expanded service and no community is deprived of an aural service.

Garwood Broadcasting Company of Texas

REPLY COMMENTS

MM Docket 99-331

February 2002

Exhibit E-1



United States of America
FEDERAL COMMUNICATIONS COMMISSION
FM BROADCAST STATION LICENSE

Authorizing Official:

Official Mailing Address:

SANDLIN BROADCASTING CO., INC.
P.O. BOX 789
BAY CITY TX 77404

Robert D. Greenberg
Supervisory Engineer
Audio Services Division
Mass Media Bureau

Facility Id: 58979

Call Sign: KMKS

License File Number: BLH-19900820KA

This license covers Permit No.: BPH-19880721TB

Grant Date: May 15, 1991

This license expires 3:00 a.m.
local time, August 01, 1997.

Subject to the provisions of the Communications Act of 1934, subsequent acts and treaties, and all regulations heretofore or hereafter made by this Commission, and further subject to the conditions set forth in this license, the licensee is hereby authorized to use and operate the radio transmitting apparatus herein described.

This license is issued on the licensee's representation that the statements contained in licensee's application are true and that the undertakings therein contained so far as they are consistent herewith, will be carried out in good faith. The licensee shall, during the term of this license, render such broadcasting service as will serve the public interest, convenience, or necessity to the full extent of the privileges herein conferred.

This license shall not vest in the licensee any right to operate the station nor any right in the use of the frequency designated in the license beyond the term hereof, nor in any other manner than authorized herein. Neither the license nor the right granted hereunder shall be assigned or otherwise transferred in violation of the Communications Act of 1934. This license is subject to the right of use or control by the Government of the United States conferred by Section 606 of the Communications Act of 1934.

Name of Licensee: SANDLIN BROADCASTING CO., INC.

Station Location: TX-BAY CITY

Frequency (MHz): 102.5

Channel: 273

Class: C2

Hours of Operation: Unlimited

Call sign: KMKS

License No.: BLH-19900820KA

Transmitter: Type Accepted. See Sections 73.1660, 73.1665 and 73.1670 of the Commission's Rules.

Transmitter output power:

Antenna type: (directional or non-directional): Not Reported

Description:

Antenna Coordinates: North Latitude: 28 deg 47 min 47 sec

West Longitude: 96 deg 09 min 17 sec

	Horizontally Polarized Antenna	Vertically Polarized Antenna
Effective radiated power in the Horizontal Plane (kW):	50	50
Height of radiation center above ground (Meters):	147	147
Height of radiation center above mean sea level (Meters):	154	154
Height of radiation center above average terrain (Meters):	150	150

Antenna structure registration number: Not Required

Overall height of antenna structure above ground: 156 Meters

Obstruction marking and lighting specifications for antenna structure:

It is to be expressly understood that the issuance of these specifications is in no way to be considered as precluding additional or modified marking or lighting as may hereafter be required under the provisions of Section 303(q) of the Communications Act of 1934, as amended.

None Required

*** END OF AUTHORIZATION ***

Garwood Broadcasting Company of Texas

REPLY COMMENTS
MM Docket 99-331
February 2002

FM Channel Study
FM Channel 259C2
Bay City, Texas
N28-47-47
W96-09-17

Exhibit E-2

CALL	CITY	ST	CHN	CL	S	DIST	SEPN	BRNG	CLR
KODA	HOUSTON	TX	256	C	U	106.8	105.0	36.0°	1.8
KODA	HOUSTON	TX	256	C	L	131.3	105.0	35.6°	26.3
KODA	HOUSTON	TX	256	C	L	106.8	105.0	36.0°	1.8
KISS-F	SAN ANTONIO	TX	258	C	U	212.2	188.0	284.5°	24.2
KISS-F	SAN ANTONIO	TX	258	C	L	212.2	188.0	284.5°	24.2
ALC	BAY CITY	TX	259	C2	A	0.0	190.0	0.0°	-190.0
ALC	PALACIOS	TX	259	C2	D	9.5	190.0	139.0°	-180.5
KKOS	PALACIOS	TX	259	C2	U	11.2	190.0	130.0°	-178.8
KKOS	PALACIOS	TX	259	C2	L	9.5	190.0	139.0°	-180.5
890511	HALLETTSVILLE	TX	260	A	U	95.7	106.0	317.1°	-10.3°
KSAB	ROBSTOWN	TX	260	C1	U	179.1	158.0	231.7°	21.1
KSAB	ROBSTOWN	TX	260	C1	C	186.0	158.0	231.5°	28.0
KSAB	ROBSTOWN	TX	260	C1	L	184.0	158.0	230.5°	26.0
KTXM	HALLETTSVILLE	TX	260	A	L	105.9	106.0	314.2°	-0.1
KILT-F	HOUSTON	TX	262	C	U	106.8	105.0	36.0°	1.8
KILT-F	HOUSTON	TX	262	C	L	106.8	105.0	36.0°	1.8

All Distances in Kilometers

⁶ Sandlin is apparently under the mistaken belief that the allotment site for FM Channel 260A at Hallettsville, Texas must be protected. The licensed site is the only site for which protection is required.

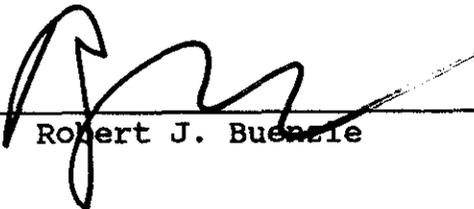
CERTIFICATE OF SERVICE

I, Robert J. Buenzle, do hereby certify that copies of the foregoing Reply to 'Comments' have been served by United States mail, postage prepaid this 27th day of February, 2002, upon the following:

*John A. Karousos, Esq.
Chief, Allocations Branch
Policy and Rules Division, Mass Media Bureau
Federal Communications Commission
Portals II, Room 3-A266
445 12th Street SW
Washington, D.C. 20554

Sandlin Broadcasting Co., Inc.
P.O. Box 789
Bay City, Texas 77404
Licensee of KMKS(FM)

Helen E. Disenhaus, Esq.
Swidler & Berlin, Chartered
3000 K Street, N.W., Suite 300
Washington, D.C. 20007-5116
Counsel for KMKS(FM)


Robert J. Buenzle

* Also Sent By Fax