
**Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations.
(Bay City, Texas)**

**6 FCC Rcd 6985, 1991 FCC LEXIS 6869
(November 26, 1991)**

DA 91-1412

MM Docket No. 91-242, RM-7329

Released: November 26, 1991

Adopted: November 7, 1991

REPORT AND ORDER

(Proceeding Terminated)

By the Assistant Chief, Allocations Branch

RUGER

1. At the request of Sandlin Broadcasting Company, Inc. ("petitioner"), licensee of Station KMKS-FM, Channel 273C2, Bay City, Texas, the Commission has before it the Notice of Proposed Rule Making, 6 FCC Rcd 5005 (1991), proposing the substitution of Channel 273C1 for Channel 273C2 at Bay City, and the modification of Station KMKS-FM's license to specify operation on the higher powered channel. Petitioner filed comments stating its intention to apply for the channel, if allotted. No other comments were received.

2. We believe the public interest would be served by the substitution of Channel 273C1 for Channel 273C2 at Bay City, since it would provide the community with a wider coverage area FM service. Channel 273C1 can be allotted to Bay City in compliance with the Commission's minimum distance separation requirements with a site restriction of 47.0 kilometers (29.2 miles) west of the community in order to avoid short-spacing conflicts with Station KMJQ-FM, Channel 271C, Houston, Texas, and the pending applications for the vacant but applied for Channel 273C2 at Beaumont, Texas. As proposed, we will also modify petitioner's license for Station KMKS-FM to specify operation on Channel 273C1 in accordance with the provision of Section 1.420(g) of the Commission's Rules.

3. 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 January 10, 1992, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Bay City, Texas	221A, 273C1, 241C2

4. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Sandlin Broadcasting Company, Inc., for Station KMKS-FM, Bay City, Texas, IS MODIFIED to specify operation on Channel 273C1, in lieu of Channel 273C2, subject to the following conditions:

(a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301).

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

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

6. For further information concerning this proceeding, contact Pamela Blumenthal, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger

Assistant Chief, Allocations Branch

Policy and Rules Division

Mass Media Bureau

Footnotes

1. The coordinates for Channel 273C1 at Bay City are North Latitude 29-06-00 and West Longitude 96-26-00.

EXHIBIT 2

FCC LETTER RETURNING SANDLIN APPLICATION FORM 301, 8-12-92

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

12 AUG 1992

IN REPLY REFER TO:
1800B3-JDB

Margaret K. Sandlin
Sandlin Broadcasting Co., Inc.
P.O. Box 789
Bay City, TX 77404

In re: KMKS (FM), Bay City, TX
Sandlin Broadcasting Co., Inc.
BPH-920407IA

Dear Ms. Sandlin:

This letter is in reference to the above-captioned minor change application to change effective radiated power, antenna height, and class, pursuant to MM Docket No. 91-242.

An engineering study has revealed that your proposal is short-spaced by 6.8 kilometers to the licensed facility of first adjacent channel Class A FM station KPCB, Rockport, Texas. The proposed site is 126.2 kilometers from the licensed facility of KPCB (FM), while the required spacing pursuant to 47 C.F.R. § 73.207 is 133 kilometers. Therefore, your proposal is in violation of 47 C.F.R. § 73.207. You have recognized the violation of § 73.207 and have requested processing pursuant to the provisions of 47 C.F.R. § 73.215. However, your proposal is also short-spaced by 13.6 kilometers to KPCB's Construction Permit BPH-920302IG for Channel 272C2 and by 9.3 kilometers to the allotment for Channel 272C2 in Rockport, Texas. Your engineering discussion did not request § 73.215 processing with respect to the Channel 272C2 allotment nor the Construction Permit BPH-920302IG.¹ Therefore, your proposal is in violation of 47 C.F.R. § 73.207 and will be returned.²

¹ Construction Permit BPH-920302IG was granted on August 11, 1992. Therefore, any future proposals must only protect that Construction Permit, and not the allotment coordinates.

² Our study reveals that your proposal would be acceptable under the provisions of 47 C.F.R. § 73.215. However, you would have to request waiver of the note to § 73.215 that restricts the amount of short-spacing to 8 kilometers. Waivers of this note are routinely granted for applicants who propose to upgrade at their currently licensed site.

EXHIBIT 3

CONSTRUCTION PERMIT TO SANDLIN FOR CHANNEL 273C1, 5-12-93



FM BROADCAST STATION CONSTRUCTION PERMIT

Official Mailing Address:

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

Authorizing Official

Dale E. Bickel
Dale E. Bickel
Supervisory Engineer, FM Branch
Audio Services Division
Mass Media Bureau

Grant Date: 10/11/93

Call sign: KMKS

This permit expires 3:00 am.
local time 18 months after
grant date specified above

Permit File No.: BPH-9302101A

Subject to the provisions of the Communications Act of 1934, as amended, subsequent acts and treaties, and all regulations heretofore or hereafter made by this Commission, and further subject to the conditions set forth in this permit, the permittee is hereby authorized to construct the radio transmitting apparatus herein described. Installation and adjustment of equipment not specifically set forth herein shall be in accordance with representations contained in the permittee's application for construction permit except for such modifications as are presently permitted, without application, by the Commission's Rules.

This permit shall be automatically forfeited if the station is not ready for operation within the time specified (date of expiration) or within such further time as the Commission may allow, unless completion of the station is prevented by causes not under the control of the permittee. See Sections 73.3598, 73.3599 and 73.3534 of the Commission's Rules.

Equipment and program tests shall be conducted only pursuant to Sections 73.1610 and 73.1620 of the Commission's Rules.

Name of permittee:

SANDLIN BROADCASTING CO., INC.

Station Location:

TX-BAY CITY

Frequency (MHz): 102.5

Channel: 273

Class: C1

Accordingly, in light of the above, Application BPH-920407IA is unacceptable for filing and IS HEREBY DISMISSED. This action is taken pursuant to 47 C.F.R. § 73.3566(a).

Sincerely,

Dennis Williams

Dennis Williams
Chief, FM Branch
Audio Services Division
Mass Media Bureau

EXHIBIT 4

FCC LETTER CANCELLING CONSTRUCTION PERMIT TO SANDLIN
FOR SANDLIN FAILURE TO CONSTRUCT, 1-12-95

Jan 17 2 05 PM '93

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, DC 20554

January 12, 1993

IN REPLY REFER TO:
180083-JDB
RETURN RECEIPT REQUESTED
FEE PAID

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Sandlin Broadcasting Co., Inc.
P.O. Box 789
Bay City, TX 77404



CERTIFIED MAIL
No. 46019

In re: KMKS (FM), Bay City, TX
Sandlin Broadcasting Co., Inc.
BPH-930210IA

Dear Licensee:

This letter refers to the above-captioned construction permit.

Section 73.3599 of the Commission's Rules (in pertinent part) provides that a construction permit shall be automatically forfeited if the station is not ready for operation within the time specified therein or within such time as the Commission may have allowed for construction.

Your construction permit BPH-930210IA was granted on May 12, 1993. Construction was to have been completed and program test operations commenced prior to November 12, 1994. To date, no FCC 302-FM license application has been filed to cover this construction permit, nor has an FCC Form 307 application requesting extension of time to construct been received.

Consequently, in accordance with Section 73.3599 of the Commission's Rules, construction permit BPH-930210IA IS HEREBY CANCELLED.¹ This action is taken pursuant to Section 0.283 of the Commission Rules.

Sincerely,

for Dennis Williams
Chief, FM Branch
Audio Services Division
Mass Media Bureau

¹ This action has no effect on your licensed operation as authorized by
RLH-900820KA.

GARWOOD ENGINEERING EXHIBIT

**Garwood Broadcasting Company of Texas
and
Roy E. Henderson
1110 West William Cannon Drive
Austin, TX 78745**

**Engineering Statement
Informal Complaint Filed by Margaret Sandlin
June 2002**

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F. W. Hannel, PE
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STATE OF ILLINOIS)
)
COUNTY OF PEORIA) 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.



June 25, 2002

F. W. Hannel, P.E.

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

Garwood Broadcasting Company of Texas
and
Roy E. Henderson
1110 West William Cannon Drive
Austin, TX 78745

Engineering Statement
Informal Complaint Filed by Margaret Sandlin
June 2002

This firm has been retained by Garwood Broadcasting Company of Texas and Roy E. Henderson to prepare this engineering statement in the above captioned proceeding in response to a filing styled "Informal Complaint" with the Enforcement Bureau of the Federal Communications Commission. Garwood Broadcasting Company of Texas is the proponent of a counterproposal it filed in MM Docket 99-331. Sandlin is the licensee of Radio Station KMKS(FM), Bay City, Texas and Henderson is the licensee of several radio stations in Texas and Michigan. Sandlin is requesting, through the filing of an "Informal Complaint", that the Enforcement Bureau find that Henderson engaged in an abuse of the Commission's processes and that it be awarded damages of \$2,000.00 per day for the time that Henderson has interfered with Sandlin's ability to construct a facility on FM Channel 273C1 at Bay City, Texas. The allegations are totally without merit and the engineering arguments are baseless, as will be shown below.

**History of FM Channel 273C1
Bay City, Texas**

Radio Station KMKS(FM) was originally licensed to operate on FM Channel 221A at Bay City, Texas. In an allotment proceeding in about 1986, the operating

channel was changed, with Sandlin's consent¹, to FM Channel 273C2 and Sandlin was subsequently licensed on that channel. After being licensed on FM Channel 273C2, Sandlin initiated a rulemaking proceeding, MM Docket 91-242, which requested a change in channel for KMKS(FM) from FM Channel 273C2 to FM Channel 273C1. That rulemaking was routinely processed and a Report and Order was issued on November 7, 1991 implementing the changes requested by Sandlin and Sandlin was ordered to submit a minor change application to implement the rulemaking within 90 days of the effective date of the Order, (the Order was effective on January 10, 1992). On April 7, 1992 Sandlin filed an application, File No. BPH-9204071A, seeking to implement the changes requested. That application was defective, and on August 12, 1992 the Commission dismissed the application.²

On February 10, 1993, over a year after the effective date of the Order and about 6 months after the dismissal of the first application, Sandlin filed another application for use of FM Channel 273C1, File No. BPH-930210IA, specifying a new tower site and different operating parameters. The Commission routinely processed this application and granted a Construction Permit for the new facilities on May 12, 1993. Sandlin, however, never implemented the Construction Permit and never built the station on FM Channel 273C1 as authorized, and on January 17, 1995 the Commission, by letter, cancelled the KMKS(FM) Construction Permit. Sandlin did not file for an extension of time to construct, nor has it filed any application since that time

¹ In the proceeding, the petitioner, Roy Henderson, could not have proposed an upgraded channel without Sandlin's consent. Absent that consent, Sandlin would have been moved to FM Channel 273A, (an alternate equivalent channel), which would have required Henderson to pay the reasonable and prudent costs in accomplishing the change in Sandlin's channel), and would have had to initiate its own rulemaking proceeding to upgrade the channel from Class A to Class C2. Sandlin chose to join the rulemaking and support the assignment of FM Channel 273C2 to Bay City, Texas and to have her operating authority amended to specify operation on the upgraded channel. In seeking the upgrade Sandlin was to be responsible for any expenses associated with operation on FM Channel 273C2 and that position is consistent with Commission Policy in Rulemaking cases.

² That application had a number of deficiencies. Sandlin prepared it without benefit of professional assistance or review and no reconsideration petition was filed in connection with the dismissal of the application.

in which it sought to implement the change in channel that it had requested and received in the original rulemaking proceeding.

On January 10, 2000, (4 years after the KMKS(FM) Construction Permit was cancelled), Garwood filed a counterproposal in MM Docket 99-331 seeking a number of changes in the FM Table of Allotments, including the substitution of an alternate equivalent channel for KMKS(FM). The rulemaking proposal documented why the public interest would be better served by the adoption of the proposal with supporting documentation. It was accepted by the Commission and placed on Public Notice on April 11, 2000, FCC Report No. 23002. As a part of that filing, it was noted that Sandlin had warehoused FM Channel 273C1 at Bay City, Texas for a number years and that the public interest would be served by the realignment of FM Channels outlined in the rulemaking proposal which did include the fallow FM Channel 273C1 at Bay City. Sandlin has filed several pleadings in that docket noting its objections to the Garwood proposal. That proposal is still being considered and remains pending before the Allocations Branch. It is apparent that the proposal met the threshold of technical acceptability and was published as a valid proposal and if the Commission agrees that the proposal better serves the public interest and results in a preferential alignment of the FM services in southeast Texas, the proposal should be granted.

Engineering Statement

As an initial matter, it should be noted that the pleading styled "Informal Complaint" filed by Sandlin Broadcasting Company, Inc., contains a large number of unfounded conclusory statements related to technical matters. Normally a separate technical statement would be provided along with a summary of the technical qualifications of the person making the statements. While this does not insure that the technical statements are correct, a recitation of the technical qualifications of the writer does provide some evidence that the writer possesses the essential technical background necessary to offer logical and technically correct comments on the complicated subject matter under discussion. In this "Informal Complaint" no technical

qualifications are provided, no separate statement is provided attesting to the accuracy and completeness of its technical content is provided and the technical material, (factual in nature as opposed to argumentative), is intermingled with a somewhat disjointed narrative. In such a narrative sprinkled with statements like "Sandlin believes",³ "I surmise",⁴ "Sandlin believes",⁵ "Sandlin believes",⁶ "Sandlin believes",⁷ it is very difficult to extract the unsupported "facts" from the equally wild unsupported "conjecture". Neither is very useful or reliable. It is painfully obvious that the writer does not have any basic understanding of theoretical engineering, the allotment process, the requirements of channel equivalency, channel replacement requirements, the minimum mileage separation requirements of the Rules, or any fundamental understanding of Commission procedures. That lack of understanding leads the writer to make statements that are not only dead wrong in an engineering sense, but dead wrong in other material respects as well.⁸

The first reference to technical matters appears on Page 4 of the Informal Complaint, where Sandlin states:

"Non of the Petitions or Counterproposals filed by Fort Bend, directly or indirectly for its benefit can be considered bona fide. All were technically and procedurally flawed." (*spelling errors included from original statement*)

And there follows a long narrative alleging errors involving channel substitutions, short spacing and other technical matters apparently relating to a filing in MM Docket 99-311 on January 10, 2000. This proposal was filed in response to a request to reallocate FM Channel 241C2 from Madisonville, Texas to College Station, Texas made by Sunburst

³ See Informal Complaint, page 2.

⁴ See Informal Complaint, Page 3.

⁵ See Informal Complaint, Page 8.

⁶ See Informal Complaint, Page 8.

⁷ See Informal Complaint, Page 11.

⁸ For example, (See Informal Complaint, Page 3), Sandlin claims that "Henderson has been involved in abuse of the Commissions Processes as illustrated below...." She then cites 4 filings over the course of one year, none of which involve a dismissal of an expression of interest in an allotment by Henderson, none of which involve Henderson voluntarily dismissing a proposal, and none of which involve a failure to file an application for a requested allotment by Henderson, (all required elements of an abuse of

Media, LP. A counterproposal was filed in that proceeding by Garwood Broadcasting of Texas where it offered the Commission an alternate allotment alignment which it thought better served the public interest. After initial engineering review, the Commission, on April 11, 2000 issued a Public Notice that the Garwood proposal was accepted and set a date for filing comments regarding that proposal. That proceeding remains pending. The Commission routinely receives allotment proposals and, as part of its initial review, conducts its own engineering evaluation to make sure the proposal complies with the Commission's Rules regarding mileage separations, equivalent channel substitutions, and other technical matters. If it finds the proposal is technically acceptable, it then issues a Public Notice seeking comments on the public interest portion of the proposal, as it did in this proceeding. Sandlin's personal conclusion that the Garwood proposal is "technically flawed" is misplaced as is evidenced by the Commission's own analysis and publication of the proposal. In that proceeding, however, Sandlin did take the Commission to task on its conclusion that the proposal was technically acceptable, using the same sort of faulty engineering analysis that appears in its "Informal Complaint". Clearly this affiant disagrees with Sandlin's flawed analysis, as would be expected, but more importantly, so does the Commission. The Commission published the proposal after reviewing its technical content for accuracy which should conclude the debate. Sandlin may continue to "believe" that the Commission is wrong and proceed with an attack on the proposal as it desires. That, however, is between Sandlin and the Commission, not between Sandlin and Garwood. The Garwood proposal has substantial public interest benefits, is technically sound, and the proposal was filed in full compliance with the Commission's Rules, notwithstanding any unsupported claim of Sandlin.

In the Informal Complaint filed by Sandlin, it is clear that this licensee feels that it and it alone has squatters rights to FM Channel 273C1 at Bay City, Texas, notwithstanding the obvious fact that it has done nothing substantive to initiate service

process claim), yet Sandlin goes on to claim that a list of filings she provides is "evidence" of abuse of process.

on the channel that it asked the Commission to assign over 10 years ago. While Sandlin may claim otherwise, it takes more than the mere filing of a defective application, (that was dismissed), followed by the filing of another application, (that was granted but expired more than 6 years ago) with no other substantive attempt to implement service on the channel to demonstrate Sandlin's continuing interest in activating FM Channel 273C1 at Bay City, Texas. Only when another party found that the public interest might be better served by a reallocation of FM Channels in and around Bay City, Texas does Sandlin complain that it is being "gamed" or otherwise dealt with unfairly by the petitioner, the Commission, consulting engineers, lawyers and everyone in between. As a factual matter, Sandlin must come to understand and accept that it cannot eternally claim the unencumbered "right" to the warehoused FM Channel 273C1 that it has not implemented in over 10 years, notwithstanding its commitment, (in the Rulemaking proceeding), to build the facility if the Commission adopted, (which it did), the proposed change in channel initiated by Sandlin. The Enforcement Bureau offers no avenue of relief to Sandlin, or any other licensee for that matter, that simply fails to honestly fulfill commitments that the licensee willingly made to the Commission in a rulemaking proceeding. It would appear that failure to implement a rulemaking proposal for over 10 years would conclusively demonstrate that that this licensee gives short shrift to its own commitments before the Commission, yet it seeks sanctions against another licensee whose only misdeed has been to request an alignment of the FM Table of Allotments that would finally provide service to the public from the very channel that has been warehoused, unused, by Sandlin for the past ten years.

Summary

The filings of Henderson, (either through Garwood, Fort Bend Broadcasting or otherwise), were made in full compliance with the Commission's Rules. In MM Docket 99-13 the Commission disagreed with the Counterproposal and did not publish the proposal because it had no direct "nexus" to the proposal under consideration. In MM

Docket 99-331 the Commission accepted the proposal as filed and, through publication of a Public Notice, sought additional public Comments. That proposal is presently before the Commission awaiting a decision.⁹

Sandlin first sought the assignment of FM Channel 273C1 to Bay City, Texas more than 10 years ago. It has done nothing to implement the newly assigned channel to serve the public interest in southeast Texas, in contravention to its commitment to the Commission made in the course of the rulemaking proceeding.

There are no facts presented in the Sandlin "Informal Complaint" which, even if considered in a light most favorable to Sandlin, that even come close to supporting an Abuse of Process allegation. To the contrary, it would appear that Sandlin believes, misinformed and mistaken as that belief may be, that it has all future and unfettered right to stake its exclusive claim to an FM Channel that it has warehoused for its own exclusive use at Bay City, Texas for the past ten years, and if there is any abuse of the Commission's processes, that is where it is found. Garwood believes its proposal has merit and is convinced that its proposal, as filed, better serves the public interest than the present FM allotment scheme. It would appear that the Commission thus far finds merit with that position, as evidenced by the Commission's acceptance and publication of the Garwood counterproposal in MM Docket 99-331.

The Sandlin "Informal Complaint" is without merit and should be dismissed by the Enforcement Bureau.

⁹ Insofar as this proceeding remains pending before the Commission and the pleading cycle has closed, it is a restricted proceeding to which ex-parte rules apply. It would be improper to discuss the merits of the proposal, however, Complaints and Compliance can take official notice that the proposal was published as a valid proposal, an action that validates that it was properly filed with the Commission.

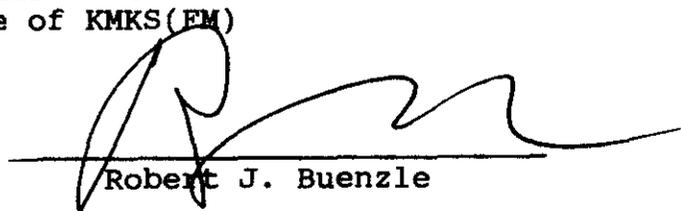
CERTIFICATE OF SERVICE

I, Robert J. Buenzle, do hereby certify that copies of the foregoing Reply To Informal Complaint have been served by United States mail, postage prepaid this 25th day of June, 2002, upon the following:

*John A. Karousos, Esq.
Assistant Chief, Audio Division
Office of Broadcast License Policy
Media Bureau
Federal Communications Commission
Portals II, Room 3-A266
445 12th Street SW
Washington, D.C. 20554

David H. Solomon, Chief
Enforcement Bureau
Office of the Bureau Chief
Federal Communications Commission
Portals II, Room
445 12th Street SW
Washington, D.C. 20554

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


Robert J. Buenzle

* Also Sent By Fax