

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

In the Matter of Applications of)	
)	
CLARKLIFT OF SAN JOSE, INC., and)	
MOORE MATERIAL HANDLING GROUP)	File Nos. 504730
)	D083335
To Assign and Modify the License for Private)	
Land Mobile Station WYE538)	

ORDER ON FURTHER RECONSIDERATION

Adopted: January 16, 2001

Released: January 18, 2001

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. We have before us a petition for further reconsideration¹ filed by Moore Material Handling Group (MMHG) on April 3, 2000. MMHG seeks reconsideration of the Public Safety and Private Wireless Division's (Division) March 2, 2000 *Order on Reconsideration*.² The Division denied Moore's petition for reconsideration³ of the dismissal of MMHG's name change application and its petition for declaratory ruling that the assignment of Station WYE538, Santa Clara, California to Champion Communications Services, Inc. (Champion) is void *ab initio*.⁴ For the reasons set forth below, we deny MMHG's petition for further reconsideration.

II. BACKGROUND

2. In the 1990s, Clarklift of San Jose, Inc. (Clarklift) was granted a license for Station WYE538, a conventional 800 MHz General Category station, with sites at Mt. Chual (New Almaden, Santa Clara County) and Mt. Diablo (Danville, Contra Costa County) California.⁵ The licensee address

¹Moore Material Handling Group Petition for Further Reconsideration (filed April 3, 2000) (2000 Petition).

²Clarklift of San Jose, Inc. and Moore Material Handling Group, *Order on Reconsideration*, DA 00-473 (WTB PSPWD rel. March 2, 2000) (*March 2 Order*).

³Petition for Reconsideration and Petition for Declaratory Ruling, FCC File No. D083335 (Oct. 22, 1997) (1997 Petition).

⁴See *March 2 Order* at ¶ 1.

⁵*Id.* at ¶ 2; License for Station WYE538 (issued Mar. 21, 1995).

for Clarklift specified Pat Moore as the licensee's contact person.⁶ Clarklift was a community repeater customer of Champion.⁷ On March 14, 1995, Champion contacted Clarklift and proposed licensing each of its community repeaters under a blanket license.⁸ Champion agreed to assume responsibility for ensuring that its customers were properly licensed, including filing applications for license renewals and modifications and the associated fees.⁹ To take advantage of this "licensing opportunity," Champion requested that Clarklift sign and date an Assignment of Authorization form, FCC Form 1046, and return the form to Champion.¹⁰

3. Shortly after receiving this letter, Clarklift's office manager signed the Assignment of Authorization and returned it to Champion.¹¹ On June 9, 1995, Champion submitted the Assignment of Authorization to the Commission, and an Application for Mobile Radio Service Authorization, FCC Form 600, requesting assignment of the license for Station WYE538 from Clarklift to Champion.¹² During the time frame that Champion obtained a signature from Clarklift's office manager to assign Station WYE538 from Clarklift to Champion, it appears that MMHG began prosecuting an application to change the name of the licensee of Station WYE538 from Clarklift to MMHG.¹³ Pat Moore, Clarklift's listed contact on its license, signed the name-change application, which was filed on June 15, 1995.¹⁴

4. On September 28, 1995, the Division's Licensing and Technical Analysis Branch (Branch) granted the assignment application.¹⁵ On December 1, 1995, MMHG notified the Commission that it never intended to assign its license to Champion.¹⁶ On June 9, 1997, MMHG filed a modification application for Station WYE538.¹⁷ On September 22, 1997, the Branch dismissed the modification application for lack of or faulty coordination.¹⁸

⁶March 2 Order at ¶ 2. In addition to his position with Clarklift, Pat Moore is also the President of MMHG. *March 2 Order* at n.2.

⁷*Id.* at ¶ 2.

⁸*Id.*

⁹*Id.*

¹⁰*Id.*

¹¹*Id.* at ¶ 3.

¹²*Id.*

¹³*Id.*

¹⁴*Id.* See also File No. 504730 (filed June 15, 1995).

¹⁵*Id.* at ¶ 4.

¹⁶*Id.*

¹⁷FCC File No. D083335 (filed June 9, 1997).

¹⁸*March 2 Order* at ¶ 4. See also Notice of Application Dismissal, File No. D083335, dated Sept. 22, 1997.

5. On October 22, 1997, MMHG requested reconsideration of the dismissal and a declaratory ruling that the assignment to Champion was void *ab initio*.¹⁹ MMHG argued that its office manager lacked authority to assign its station to Champion, and that Champion fraudulently induced the assignment.²⁰ MMHG also argued that the assignment was otherwise defective because it related to only one of Station WYE538's two sites, and the Commission's Rules do not permit partial assignments of conventional Specialized Mobile Radio (SMR) systems.²¹

6. On March 2, 2000, the Division denied MMHG's petition. The Division found that a determination concerning whether the actions of the office manager were within the scope of his employment was outside the Commission's jurisdiction, and was appropriate for a court of competent jurisdiction.²² Accordingly, the Division declined to issue a declaratory ruling to examine the Champion assignment application.²³ Our *March 2 Order* also affirmed the Branch's dismissal of MMHG's request to change the name of the licensee for Station WYE538, on grounds that the licensee of record for Station WYE538 was Champion and not MMHG.²⁴

7. On April 3, 2000, MMHG filed its petition for further reconsideration. MMHG argues that further reconsideration is appropriate because our *March 2 Order* relied upon a legal rationale that was not provided previously and failed to address significant issues raised in MMHG's earlier petition.

III. DISCUSSION

8. In its petition for further reconsideration, MMHG argues that the Division 1) improperly failed to address the argument that the purported assignment of license to Champion is void *ab initio* on grounds that Champion obtained the license by fraud; 2) incorrectly concluded that the Commission lacks jurisdiction to determine whether MMHG's office manager was authorized to assign its license; and, 3) improperly failed to address the argument that the application was for a partial assignment which is not permitted under the rules. We conclude that none of these arguments warrants reversal of our decision in the *March 2 Order*.

9. First, MMHG asserts that our *March 2 Order* failed to discuss the fraud issue raised in the 1997 petition.²⁵ MMHG argues that the Commission will reconsider actions it might otherwise consider "final" in cases where there is fraud upon the Commission's processes.²⁶ We find that the doctrine

¹⁹1997 Petition at 1.

²⁰*Id.* at ¶ 9.

²¹*Id.* at 9 n.8

²²*March 2 Order* at ¶ 6.

²³*Id.*

²⁴*Id.* at ¶ 7.

²⁵2000 Petition at ¶ 1.

²⁶*Id.* (citing *The Pikes Peak Broadcasting Company, Memorandum Opinion and Order*, 14 FCC Rcd 17620, 17621 ¶ 4 (1999) (*Pikes Peak MO&O*)).

cited by MMHG is not relevant to the present matter, however, because there is no claim of fraud *upon the Commission*.²⁷ The issue of fraud solely concerns an allegation of misrepresentation by Champion whereby it allegedly fraudulently induced an MMHG employee to sign an Assignment of Authorization, FCC Form 1046. Thus, the issue of fraud does not touch upon the Commission processes, but, rather, solely involves interactions between and actions by Champion and/or MMHG employees.

10. Moreover, we are not persuaded that the record reflects any activity by Champion rising to the level of fraud. For instance, Champion's March 14, 1995, letter states, in pertinent part, as follows:

With new rules, new forms (FCC Form 600), and increased fees, many radio users are seeking expert help to ensure that their radio systems are properly licensed.

As a valued service to our community repeater customers, we are licensing each of our community repeaters under a blanket license in the GX radio service. This means that you will no longer have to contend with license renewals, modifications and fees.

We will take responsibility for ensuring that each of our customers is properly licensed at no costs to you.

The enclosed Assignment of Authorization, FCC Form 1046, is the document by which licenses are transferred from one party to another. To take advantage of this licensing service opportunity, please sign and date this form.²⁸

11. Clarklift's manager voluntarily signed the enclosed Assignment of Authorization and returned it to Champion. He now states that he understood that Champion was merely offering a licensing service in conjunction with its role as site manager and would keep MMHG advised as to what was needed to be done to keep MMHG's station properly licensed, and not that Champion would take MMHG's license.²⁹ In this connection, we note, however, that he signed a form clearly entitled "Assignment of Authorization," and that the Champion letter accurately described the form's effect. That Clarklift's office manager misconstrued this information does not render Champion's actions fraudulent.

12. In addition, MMHG argues that we erred, in our *March 2 Order*, in declining to determine whether Clarklift's office manager had authority to assign its license for Station WYE538.³⁰ MMHG asserts that we erred in concluding that we did not have jurisdiction to determine whether the subject Assignment of Authorization was properly signed, pursuant to Section 1.743(a) of the Commission's

²⁷See e.g., TV-8, INC., *Memorandum Opinion and Order*, 2 FCC Rcd 1218, 1220 n.10 (1987). See generally Edison Cellular, *Memorandum Opinion and Order on Reconsideration*, 8 FCC Rcd 2736, 2737 n.9 (CCB 1993).

²⁸1997 Petition at Attachment 4 (emphasis added).

²⁹*Id.* at Attachment 5.

³⁰See 2000 Petition at ¶ 2.

Rules.³¹ Specifically, MMHG argues that our conclusion in our *March 2 Order* missed the mark.³² MMHG contends that the Commission has often ignored technicalities of state law in determining if an applicant meets the Commission's policy goals.³³ MMHG also argues that the Commission's has a duty to determine whether the grant of an application is in the public interest,³⁴ and that state law provisions may be disregarded where they do not further the Commission's mission of determining whether grant of pending applications would best serve the public interest.³⁵

13. We disagree with MMHG's reasoning on this point. First, we believe that MMHG's contentions are inapposite. The issue here does not involve determining if an applicant meets the Commission's policy goals, whether Commission grant of an application is in the public interest, or whether the Commission may disregard state law statutory provisions if they do not further the Commission's mission in serving the public interest. Rather, the question before us is whether Clarklift's office manger had actual or apparent authority to act on behalf of the corporation. We believe that such a question is one that would be resolved under state corporation or agency law. The Commission generally does not have the expertise or resources to resolve questions of state or federal law outside its principal area of jurisdiction, and it is generally more efficient to allow other forums to resolve such matters.³⁶ Thus, contrary to MMHG's assertions we believe that our *March 2 Order* was consistent with Commission policy and precedent.

14. Finally, MMHG argues that our *March 2 Order* failed to address its argument that even if Champion properly obtained Moore's signature on the subject Assignment of Authorization, Champion's assignment application only concerns the Mt. Chual site.³⁷ MMHG states that while the Commission has authorized the partial assignment of trunked Specialized Mobile Radio (SMR) systems,³⁸ it could not find that the Commission had authorized the partial assignment of conventional SMR systems.³⁹ Thus, MMHG argues that the Assignment of Authorization was defective and should be rescinded.⁴⁰ Alternatively, MMHG argues that if partial assignments are permitted, the Commission's records nonetheless should be

³¹*Id.*

³²*Id.*

³³*Id.* (citing *Marlin Broadcasting of Central Florida, Inc. v. Federal Communications Commission*, 952 F.2d 507, 512 (D.C. Cir. 1992)).

³⁴*Id.*

³⁵*Id.* (citing *Alreg Cellular Engineering*, 9 FCC Rcd 5098, 5128 (1994))

³⁶Policy Regarding Character Qualifications in Broadcasting Licensing, *Memorandum Opinion and Order*, 6 FCC Rcd 12 at 3448-49 (1991).

³⁷2000 Petition at ¶ 4.

³⁸*Id.* (citing Amendment of Part 90, Subparts M and S, of the Commission's Rules, *Report and Order*, docket # 86-404 ,3 FCC Rcd 1838, 1847 ¶ 78 (1988)).

³⁹*Id.*

⁴⁰*Id.*

corrected to reflect that MMHG is still licensed at the Mt. Diablo site.⁴¹

15. We again disagree with MMHG's reasoning. Contrary to MMHG's implication, the Commission allows partial assignment of both "trunked" and "conventional" specialized SMR systems.⁴² Moreover, there is no evidence that the assignment of the license for Station WYE538 was a partial assignment. The Assignment of Authorization referenced the entire authorization, and was not limited to either the transmitter site located at Mt. Chual or the site located at Mt. Diablo. Indeed, neither transmitter site is referenced in the Assignment of Authorization. The Branch's approval of the Assignment of Authorization confirms this, removing MMHG as an authorized licensee of Station WYE538 at both Mt. Chual and Mt. Diablo.⁴³ Thus, we conclude that MMHG's argument is inapposite.

V. CONCLUSION

16. For the foregoing reasons, we conclude that MMHG's arguments supporting a reconsideration of our *March 2 Order* are without merit. We therefore affirm our *March 2 Order*. We find no reason to disturb it.

VI. ORDERING CLAUSES

17. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, Moore's Petition for Further Reconsideration, filed April 3, 2000, **IS DENIED**.

18. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau

⁴¹*Id.* at ¶ 4.

⁴²47 C.F.R. § 90.609 (c) (1999).

⁴³On June 9, 1995, Champion submitted the Assignment of Authorization to the Commission, along with its Application for Mobile Radio Service Authorization, FCC Form 600, to operate at Mt. Chual. Application for Mobile Radio Service Authorization, FCC Form 600, dated June 9, 1995. As Champion did not request the license to use Station WYE538 at the Mt. Diablo transmitter site, the Branch deleted that transmitter site from the license.