

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

In the Matter 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)	

SECOND ORDER ON FURTHER RECONSIDERATION

Adopted: July 30, 2001

Released: August 1, 2001

By the Deputy Chief, Wireless Telecommunication Bureau:

1. Introduction. We have before us a second petition for further reconsideration¹ filed by Moore Material Handling Group (MMHG) on February 16, 2001. MMHG seeks reconsideration of the Public Safety and Private Wireless Division's (Division) January 18, 2001, *Order on Further Reconsideration*.² The Division denied MMHG's petition for reconsideration³ of the Division's March 2, 2000, *Order on Reconsideration*⁴ which denied reconsideration of the dismissal of MMHG's name change application and denied MMHG's petition⁵ for declaratory ruling that the assignment of Station WYE538, Santa Clara, California, to Champion Communications Services, Inc., (Champion) is void *ab initio*.⁶ For the reasons set forth below, we deny MMHG's second petition for further reconsideration.

2. Background.⁷ On June 9, 1995, Champion filed an application to assign the license for Station WYE538 from Clarklift of San Jose, Inc. (Clarklift), an affiliate of MMHG, to Champion.⁸ The

¹Moore Material Handling Group Second Petition for Further Reconsideration (filed Feb. 16, 2001) (Second Petition for Further Reconsideration).

²Clarklift of San Jose, Inc. and Moore Material Handling Group, *Order on Further Reconsideration*, DA 01-116 (WTB PSPWD rel. Jan. 18, 2001) (*Jan. 18, 2001, Order*).

³Moore Material Handling Group Petition for Further Reconsideration (filed Apr. 3, 2000) (First Petition for Further Reconsideration).

⁴Clarklift of San Jose, Inc., and Moore Material Handling Group, *Order on Reconsideration*, 15 FCC Rcd 4616 (WTB PSPWD 2000) (*March 2, 2000, Order*).

⁵Moore Material Handling Group Petition for Reconsideration and Petition for Declaratory Ruling (filed Oct. 22, 1997) (1997 Petition for Reconsideration).

⁶See *Jan. 18, 2001, Order*, ¶ 1.

⁷For a comprehensive description of the background of this proceeding, see *Jan. 18, 2001, Order*, ¶¶ 2-7; *March 2, 2000, Order*, 15 FCC Rcd at 4616-17 ¶¶ 2-4.

⁸Application filed by Champion on June 9, 1995 (File No. 504424, Coordination No. 951380033).

application was signed on behalf of Clarklift by its office manager. On June 15, 1995, Pat Moore, Clarklift's listed contact on its license, and president of MMHG,⁹ filed an application to change the name of the licensee of Station WYE538 from Clarklift to MMHG.¹⁰ On September 28, 1995, the Division's Licensing and Technical Analysis Branch (Branch) granted the assignment application. The Branch subsequently dismissed the name change application filed by MMHG.

3. On October 22, 1997, MMHG filed a petition for reconsideration and a declaratory ruling that the assignment to Champion was void *ab initio*. MMHG argued, *inter alia*, that Clarklift's office manager lacked authority to assign its station to Champion.¹¹ 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.¹² The *March 2, 2000, Order* also affirmed the Branch's dismissal of MMHG's request to change the name of the licensee for Station WYE538, on the grounds that the licensee of record for Station WYE538 was Champion and not MMHG.¹³

4. On April 3, 2000, MMHG filed its petition for further reconsideration. It argued, *inter alia*, that the Division incorrectly concluded that the Commission lacks jurisdiction to determine whether Clarklift's office manager was authorized to assign its license.¹⁴ In August and September of 2000, MMHG filed supplements to its petition for the reconsideration, relating to the Division's July 20, 2000, *Champion Communications Service, Inc., (Champion Communications)* decision setting aside an assignment to Champion from Sagara Farms, Inc. (Sagara Farms).¹⁵ On January 18, 2001, the Division denied the petition for further reconsideration. It affirmed its conclusion that the question of whether Clarklift's office manager had actual or apparent authority to act on behalf of the corporation should be decided by a court of competent jurisdiction because it would be resolved under state corporation or agency law.¹⁶ The Division did not discuss the *Champion Communications* case.

5. On February 16, 2001, MMHG filed its second petition for further reconsideration. MMHG argues that our decision in *Champion Communications* compels us to either reverse the *Jan. 18, 2001, Order* or explain, as characterized by MMHG, why Sagara Farms's assertion of lack of authority to assign a license is accepted while MMHG's was not.¹⁷ In short, MMHG implicitly argues that we have treated an identical issue in a dissimilar way.

⁹See *Jan. 18, 2001, Order*, ¶ 2.

¹⁰File No. 504730 (filed June 15, 1995).

¹¹1997 Petition for Reconsideration at 4-5.

¹²*March 2, 2000, Order*, 15 FCC Rcd at 4618 ¶ 6.

¹³*Id.* at 4618 ¶ 7.

¹⁴First Petition for Further Reconsideration at 2-3.

¹⁵*Champion Communications Services, Inc., Order*, 15 FCC Rcd 12832 (WTB PSPWD 2000) (*Champion Communications*).

¹⁶*Jan. 18, 2001, Order*, ¶ 13.

¹⁷Second Petition for Further Reconsideration at 4-5.

6. Discussion. Based on our review of this matter, we find that MMHG is incorrect in its contention that the Division's decision in this proceeding is inconsistent with its decision in another licensing matter -- namely *Champion Communications*. In *Champion Communications*, the Branch granted an application to assign the license for Station WAC900, Esparto, CA, from Sagara Farms to Champion.¹⁸ The application was signed on behalf of Sagara Farms by an individual named Dale Sagara.¹⁹ The Commission's inquiry revealed, however, that Dale Sagara had no connection with Sagara Farms, other than being a cousin of and having the same surname as its principals. Champion later conceded that the application was signed by an unauthorized person.²⁰

7. As discussed in further detail below, we conclude that *Champion Communications* does not govern the present matter and is, in fact, inapposite to the instant matter. In *Champion Communications*, the Commission's investigation concluded that there was no factual or legal question that Dale Sagara was not authorized to act on behalf of Sagara Farms. In contrast, Clarklift's office manager, the person who signed the assignment application, had a professional relationship with the licensee. The facts in this matter are clear, so no further Commission investigation is needed or warranted. What is not clear in this case is the legal effect of the undisputed facts. It is this issue, which was not present in the *Champion Communications* matter, that the Division concluded that the Commission lacks the expertise or resources to resolve. Thus, we conclude MMHG is not situated similarly to Sagara Farms, and we further conclude that the Division has not accorded disparate treatment to MMHG. Therefore, we find that the Division correctly denied MMHG's requests for reconsideration.²¹

8. For the foregoing reasons, we conclude that MMHG's arguments for reconsideration of our *Jan. 18, 2001, Order* are without merit. We therefore deny its second petition for further reconsideration, and affirm the Division's *Jan. 18, 2001, Order*.

9. **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 Material Handling Group's Second Petition for Further Reconsideration, filed

¹⁸*Champion Communications*, 15 FCC Rcd at 12832 ¶ 2.

¹⁹*Id.*

²⁰*Id.* ¶ 3 (citing Letter from David Terman, President of Champion Communications Services, Inc. to William Knowles Kellett (sic), FCC, dated May 1, 2000).

²¹MMHG also urges in the current petition that the *Jan. 18, 2001, Order* should have addressed the argument in the first petition for further reconsideration that the fact that Pat Moore filed the name change application shows that Moore was unaware that Clarklift's office manager has executed the assignment application. Second Petition for Further Reconsideration at 5-6. This fact was not addressed in greater detail in the *Jan. 18, 2001, Order* because it is irrelevant. Pat Moore's awareness *vel non* of the actions of Clarklift's office manager does not define the scope of the office manager's actual or apparent authority to act on behalf of Clarklift. See Progressive Cellular III B-3, *Memorandum Opinion and Order*, 6 FCC Rcd 7178, 7178 ¶ 5 (1991); see also, e.g., *Reiss v. Societe Centrale Du Groupe Des Assurances Nationales*, 235 F.3d 738, 748 (2d Cir. 2000); *Proctor & Gamble Company v. Haugen*, 222 F.3d 1262, 1278 (10th Cir. 2000). We are not obligated to discuss every fact or legal theory, particularly when the import of which clearly is negated by other conclusions reached in the same decision. See, e.g., *Larry D. Henderson, Memorandum Opinion and Order*, 15 FCC Rcd 17073, 17075 ¶ 5 (2000); *State of Tennessee Department of Transportation, Order*, 15 FCC Rcd 9347, 9351 ¶ 11 (WTB 2000).

February 16, 2001, **IS DENIED.**

10. 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

Kathleen O'Brien Ham
Deputy Chief, Wireless Telecommunications Bureau