

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

In the matter of)	
)	
AMERICAN INDUSTRIAL DOOR, INC,)	
Assignor)	
)	
and)	DA 01-2089
)	
NORCOM COMMUNICATIONS CORP.,)	
Assignee)	
)	
for Conventional Business/Industrial Radio)	
Service Station WIK617)	

Order on Reconsideration

Adopted: September 4, 2001

Released: September 5, 2001

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

I. INTRODUCTION

1. We have before us a petition for reconsideration filed by American Industrial Door, Inc. (AID).¹ AID seeks reconsideration of the December 7, 1999, grant of an assignment application in which the license of Conventional Business/Industrial Radio Service Station WIK617 was transferred from AID to Norcom Communications Corp. (Norcom). For the reasons set forth below, we dismiss AID’s reconsideration petition because it was filed in the wrong location. Additionally, after reviewing the record, we decline to take any action to undo the assignment on our own motion because we find that AID neither alleged nor demonstrated that the assignment was procured by fraud on the Commission’s processes.

II. BACKGROUND

2. AID was authorized to operate Station WIK617 at Glen Oaks, Queens County, New York on the frequency pair 472/475.7875 MHz. In July, 1978, the Commission received a FCC Form 600 application requesting the assignment of the license of Station WIK617 from AID to Norcom. The assignee’s certification on the completed FCC Form 600 was signed by Norcom’s president, Douglas Nopper, on July 2, 1998. In addition, the assignor’s certification on the completed FCC Form 600 was undated, the name of the assignor was handwritten and not readily legible and the signature of the assignor was likewise not readily legible. Pursuant to that application, the Commission granted the assignment application on December 7, 1999, with an expiration date of June 28, 2000. Subsequently, on January 6, 2000, the Commission received a letter from AID addressed to its Gettysburg, Pennsylvania offices. That letter, signed by Edward C.

¹ Letter from Edward C. Jurman, President, American Industrial Door, Inc. to Federal Communications Commission, Gettysburg, Pennsylvania, received January 6, 2000 (Petition). We are treating the letter as a timely, but improperly, filed petition for reconsideration, but note that it is not accompanied by a service list or other indication that the filing was served on the other party to this proceeding. See 47 C.F.R. § 1.106(f).

Jurman, AID's president, protested the "illegal transfer" of the Station WIK617 license, alleged that the "assignment to Norcom Communication was not done with American Industrial Door authorization," and requested "return of the license back to our name."² In October of 2000, the Commission's Public Safety and Private Wireless Division of the Wireless Telecommunications Bureau referred the Station WIN617 assignment matter to the Commission's Enforcement Bureau for investigation. The Enforcement Bureau then transmitted a copy of the Petition to Norcom. Norcom opposed the Petition by letter of February 28, 2001,³ in which it made a general denial of AID's allegations and urged various sanctions against AID. The Enforcement Bureau made numerous attempts to contact AID to obtain more particulars of the alleged irregularity of the assignment of the AID license to Norcom but received no response from AID.⁴

III. DISCUSSION

3. We dismiss AID's petition because it was not filed at the correct location. Section 1.106(i) of the Commission's Rules provides that a petition for reconsideration must be submitted to the Secretary, Federal Communications Commission, Washington, DC 20554.⁵ The Commission maintains different offices for different purposes, and persons filing documents with the Commission must take care to ensure that their documents are filed at the correct location specified in the Commission's Rules.⁶ Applications and other filings not submitted in accordance with the correct addresses or locations will be returned to the filer without processing.⁷ A document is filed with the Commission upon its receipt at the location designated by the Commission.⁸ Accordingly, the plain language of the Commission's Rules indicates that a petition for reconsideration submitted to the Commission's Gettysburg, Pennsylvania office is not properly filed.⁹

² Petition at 1.

³ Letter received February 28, 2001, from Russell Fox, Esq. and Russ Taylor, Esq., counsel to Norcom, to Charles Kelley and Judy Lancaster of the Commission's Enforcement Bureau. We note that the letter does not meet the 10 day filing deadline contained in 47 C.F.R. § 1.106(g) for an opposition to a petition for reconsideration inasmuch as 35 days elapsed from the time Norcom was on actual notice of the Petition to the time it opposed it. We will consider the opposition nonetheless in the interest of our reviewing a comprehensive record regarding this matter.

⁴ On January 24, 2001, the Enforcement Bureau sent a letter to AID's president, Mr. Jurman, enclosing a copy of the Assignment of Authorization form and requested that Mr. Jurman verify whether or not the signature on the assignor's certification was his. Mr. Jurman did not respond. On June 12, 2001, the Enforcement Bureau sent a letter to Mr. Jurman, via facsimile, enclosing copies of the prior correspondence, again asked him to state whether the signature on the assignor's certification was his. Mr. Jurman was also asked, if he did sign the certification, whether, in doing so, he did not intend to transfer ownership. Mr. Jurman did not respond. In addition, the Enforcement Bureau twice attempted to contact Mr. Jurman by telephone and left messages for Mr. Jurman to return the call. Mr. Jurman did not do so.

⁵ 47 C.F.R. § 1.106(i).

⁶ See 47 C.F.R. § 0.401.

⁷ *Id.*

⁸ 47 C.F.R. § 1.7. See First Auction of Interactive Video and Data Service Licenses, Request for Waiver of Applications Deadline, *Memorandum Opinion and Order*, 11 FCC Rcd 1134, 1135 (1996); Complaints Regarding Cable Programming Services Prices, *Amended Order on Reconsideration*, 10 FCC Rcd 12778, 12780 n.14.

⁹ See, e.g., Memorandum of Agreement Between the Federal Communications Commission and Elkins Institute, Inc. *Order on Reconsideration*, 14 FCC Rcd 5080 (WTB 1999) [holding that a facsimile copy to a division office neither complied with the Commission's Rules nor ameliorated a late filing with the
(continued...)]

4. Based on a review of our records, it does not appear that the Petition was ever filed with the Office of the Secretary. Therefore, we find that the Petition was not timely filed in the proper location. Moreover, AID did not request a waiver to allow it to file its reconsideration petition in Gettysburg as opposed to filing it with the Office of the Secretary. Consequently, absent a waiver, we conclude that AID's Petition should be dismissed as improperly filed.

5. Even when a proper petition for reconsideration is not filed, we will consider taking action on our own motion in cases where there is possible fraud on the Commission's processes.¹⁰ In this case, however, there is insufficient evidence before us to conclude that the assignment of license from AID to Norcom was procured by fraud on the Commission's processes. As an initial matter, the application form, on its face, appears regular except for the absence of a date following the assignor's signature, an omission easily attributable to inadvertence. We also deem it significant that Mr. Jurman has not denied that it is his signature that appears on the assignor's certification. Rather than present evidence that the transaction worked a fraud on the Commission's processes, Mr. Jurman has made only the bare allegation that the assignment of license from AID to Norcom was "illegal" and "not done with American Industrial Door authorization." That allegation has been denied by Norcom. Moreover, Commission efforts to obtain additional information that might support these allegations have been unavailing because Mr. Jurman has not responded to several Commission inquiries on the subject. Assuming *arguendo* that Mr. Jurman's signature on the assignment application is genuine, but was procured by fraud, that does not touch upon the Commission's processes. Rather, it is solely a matter between assignor and assignee, justiciable, if at all, in a court with civil jurisdiction and not by the Commission.¹¹ Therefore, based on the record before us, we find that AID has not alleged or demonstrated fraud on the Commission's processes that would warrant our taking action on our own motion to undo the assignment of the license for Station WIK617 from AID to Norcom.

IV. CONCLUSION

6. We dismiss AID's petition for reconsideration because it was filed in the wrong location. Additionally, we decline to take action on our own motion to undo the assignment of the license of Station WIK617 from AID to Norcom because AID has neither alleged nor demonstrated that the assignment was procured by fraud on the Commission's processes. Given our disposition of this matter, we decline to act on Norcom's request for an investigation of, and sanctions against, AID. As a result, we now consider this matter to be resolved with no further FCC action warranted or necessary.

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Secretary's office]; Columbia Millimeter Communications, L.P., *Order on Reconsideration*, 14 FCC Rcd 1482 (WTB PSPWD 1999) [holding that a petition for reconsideration sent to the Commission's lock box at Mellon bank neither complied with the Commission's Rules nor ameliorated a late filing with the Secretary's office], *aff'd*, *Order on Reconsideration*, 15 FCC Rcd 11730 (WTB PSPWD 2000).

¹⁰ See, e.g., Champion Communications Services, Inc., *Order*, 15 FCC Rcd 12832 (WTB PSPWD 2000); Comtex Communications, Inc., *Order*, 15 FCC Rcd 11730 (WTB PSPWD 2000). *C.f.* Rule 60, F.R.Civ.Pr. (Rule does not limit the power of a court to set aside a judgment if there has been fraud upon the court.)

¹¹ See Cal Western Termite and Pest Control, Inc., *Order on Reconsideration*, DA 01-1728 (PSPWD, July 20, 2001); Clarklift Of San Jose, Inc., and Moore Material Handling Group, *Order on Reconsideration*, 15 FCC Rcd 4616 (PSPWD, WTB 2000); *Order on Further Reconsideration*, DA 01-116 (WTB PSPWD Jan. 18, 2001); *Second Order on Further Reconsideration*, DA 01-1835 (WTB Aug. 1, 2001).

V. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the petition for reconsideration submitted by American Industrial Door, Inc. on January 6, 2000, **IS DISMISSED**.

8. This action is taken pursuant to 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