

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

In the Matter of)	
)	
WESTERN MANAGEMENT CORPORATION)	
)	
Application for Assignment of Authorization or)	FCC Form 490
Consent to Transfer of Control of Licensee for Call)	
Signs WNJN327, WPER274, WPET577 and)	
WPAF615)	
)	
Application for Renewal of Station WPER274)	FCC File No. R375195
)	
Applications for Modification of Stations)	FCC File Nos. D129494 and D129495
WPAF615 and WPET577)	
)	
Application for Cancellation of Station WPEK890)	FCC Form 405A

MEMORANDUM OPINION AND ORDER

Adopted: January 11, 2001

Released: January 16, 2001

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

I. INTRODUCTION

1. We have before us a "Petition to Dismiss or Deny/Informal Objection," filed on behalf of Communication Technologies, Inc. (ComTech), relating to the above-captioned application filed by Western Management Corporation, seeking assignment or transfer of Stations WNJN327, WPER274, WPET577 and WPA615.¹ These four stations are currently licensed to various licensees, including ComTech,² Western Management Corporation; America West C&E, Inc. dba Page Me,³ and Communication Technologies, Inc. dba Page Me.⁴ On our own motion, we are considering in this Order the renewal application for Station WPER274,⁵ and the modification applications for Stations WPAF615 and WPET577,⁶ as well as a cancellation request relating to Station WPEK890, filed on behalf of Page

¹ Petition to Dismiss or Deny/Informal Objection (filed Aug. 30, 1999) (Petition).

² Station WNJN327.

³ Stations WPER274 and WPET577.

⁴ Station WPAF615.

⁵ See FCC File No. R375195.

⁶ See FCC File Nos. D129494 and D129495, respectively.

Wyo, Inc.⁷ We note that certain contractual rights and interests of the aforementioned licensees and their principals are currently being litigated in the Wyoming State Court system.⁸ For the reasons set forth below, we will continue to hold the renewal application for Station WPER274 in abeyance, return without action the cancellation request relating to Station WPEK890, and dismiss the Petition and all remaining captioned applications without prejudice.

II. BACKGROUND

2. Stations WNJN327, WPER274, WPET577 and WPAF615 were originally licensed in the name of Western Management Corporation: America West C&E dba Page Me. On December 4, 1998, Stewart Powell and Donnajean Williamson dba Western Management Corporation, filed a complaint in the District Court for the Third Judicial District of Sweetwater County, Wyoming, against Ted Higgins, ComTech, and America West Communications and Electronics, Inc.⁹ In the complaint, Stewart Powell alleges, *inter alia*, that he is the owner of Western Management Corporation, and the operator of Page Me, a Wyoming partnership.¹⁰ On February 19, 1999, ComTech filed a complaint in the District Court for the Third Judicial District of Uinta County, Wyoming, against Western Management Corporation.¹¹ In its complaint, ComTech alleges, *inter alia*, that Page Me is a Wyoming partnership or joint venture, originally comprised of Western Management Corporation and America West Communications and Electronics, Inc. ComTech further alleges that Western Management Corporation acted as manager of the joint venture, and had sole custody and control of Page Me's and Page Wyo's books and records.¹² ComTech also alleges that it acquired ownership and title to America West Communications and Electronics, Inc.'s interests in Page Me and Page Wyo, Inc. by order of sale dated and filed on July 6, 1998, in the United States Bankruptcy Court for the District of Wyoming.¹³

3. On January 14, 1999, applications were filed to renew the licenses for Stations WNJN327 and WPAF615. The applications also requested a change of licensee name without change of ownership,

⁷ See FCC Form 405A relating to Station WPEK890, currently licensed to Communication Technologies, Inc. (dated July 23, 1999).

⁸ See *Western Management Corporation v. Communication Technologies, Inc.*, Civ. No. 98-660, District Court of the Third Judicial District, Sweetwater County, Wyoming (1998); *Communication Technologies, Inc. v. Western Management Corporation*, Civ. No. 99-45, District Court of the Third Judicial District, Uinta County, Wyoming (1999).

⁹ See Complaint in *Western Management Corporation v. Communication Technologies, Inc.*, Civ. No. 98-660, District Court of the Third Judicial District, Sweetwater County, Wyoming (filed Dec. 4, 1998).

¹⁰ *Id.* at 1.

¹¹ See Complaint in *Communication Technologies, Inc. v. Western Management Corporation*, Civ. No. 99-45, District Court of the Third Judicial District, Uinta County, Wyoming (filed Feb. 19, 1999).

¹² *Id.* at 1-2.

¹³ *Id.*

corporate structure or control.¹⁴ Ted S. Higgins of America West C&E dba Page Me signed those applications.¹⁵ Commission staff granted those applications on February 3, 1999.¹⁶

4. On March 16, 1999, Western Management Corporation: America West C&E filed a renewal application, seeking to renew the license for Station WPER274.¹⁷ On July 26, 1999, Western Management Corporation filed an application to assign Stations WNJN327, WPER274, WPET577 and WPAF615 from Western Management Corporation: America West C&E dba Page Me to Western Management Corporation.¹⁸ Stuart Powell signed the assignment application on behalf of both Western Management Corporation: America West C&E dba Page Me, the assignor, and Western Management Corporation, the assignee.¹⁹ On the same date, Western Management Corporation also filed applications to modify Stations WPAF615²⁰ and WPET577²¹ to change the radio service from the private radio service to the commercial radio service.²² Also on that same date, Page Wyo, Inc. filed a request to cancel Station WPEK890's license.²³ Stuart Powell signed that application.²⁴

5. On August 30, 1999, ComTech filed the Petition seeking the dismissal or denial of Western Management Corporation's assignment application.²⁵ In the Petition, ComTech argues that Stations WNJN327, WPER274, WPET577 and WPAF615 are held by a Wyoming partnership called Page Me, an entity formed between Western Management Corporation and America West C&E.²⁶ ComTech alleges that it purchased all of the stock of America West C&E, and is therefore entitled to a fifty percent interest in Stations WNJN327, WPER274, WPET577 and WPAF615.²⁷ ComTech further alleges that

¹⁴ See FCC File Nos. R359197 and R359162 (filed Jan. 14, 1999).

¹⁵ *Id.*

¹⁶ *Id.* (granted Feb. 3, 1999).

¹⁷ See FCC File No. R375195 (filed Mar. 16, 1999).

¹⁸ See FCC Form 490 (filed July 26, 1999). At the time of filing, Station WNJN327 was licensed in the name of Communication Technologies, Inc, and Station WPAF615 was licensed in the name of Communication Technologies, Inc. dba Page Me.

¹⁹ *Id.* at 4.

²⁰ See FCC File No. D129494.

²¹ See FCC File No. D129495.

²² See FCC File Nos. D129494 and D129495 at Schedule D.

²³ See FCC Form 405A (filed July 26, 1999).

²⁴ *Id.*

²⁵ Petition to Dismiss or Deny/Informal Objection (filed Aug. 30, 1999) (Petition).

²⁶ *Id.* at 1.

²⁷ *Id.* at 2.

Western Management Corporation did not have the authority to file an assignment application relating to the four stations on July 26, 1999, without ComTech's approval.²⁸

6. Western Management Corporation filed an opposition to the Petition on September 29, 1999.²⁹ In the Opposition, Western Management Corporation alleged that it was the sole entity remaining after a joint venture between America West C&E and Western Management Corporation dba Page Me had terminated. Western Management Corporation also alleged that ComTech had improperly filed the January 1999, renewal and name change applications relating to Stations WNJN327 and WPAF615 without Western Management Corporation's consent.³⁰

7. ComTech filed a response to Western Management Corporation's Opposition on October 15, 1999,³¹ contending that it had acted properly in filing the two renewal applications.³² In its Reply, Com Tech also requested that any pending applications relating to this matter be held in abeyance until the conclusion of the Wyoming State Court litigation.³³

8. ComTech sought summary judgment in the Uinta County court case, but its Motion for Summary Judgment was denied on August 17, 2000.³⁴ The court opinion stated that the case was very complex and convoluted, with almost every issue of material fact in dispute.³⁵ The opinion further stated that the "precise nature of the business entity formed in January 1997, and the business relationship between the parties is unclear, in dispute, and is the foundation of duties owed or not owed."³⁶ The opinion additionally noted that whether or not Ted Higgins was a member of a joint venture is also at issue.³⁷

III. DISCUSSION

9. When Western Management Corporation filed an application for assignment or transfer of control relating to Stations WNJN327, WPER274, WPET577 and WPAF615, the four licenses were held in the name of Western Management Corporation: America West C&E dba Page Me, a joint venture

²⁸ *Id.*

²⁹ Opposition to Petition to Dismiss or Deny (filed Sept. 29, 1999) (Opposition). The Opposition was timely filed. On Sept. 8, 1999, Western Management Corporation and ComTech filed a Joint Consent Motion for an extension of time until Sept. 29, 1999, in which to file an Opposition, and October 15, 1999, to file a Reply.

³⁰ *Id.* at 5.

³¹ Reply to Opposition to Petition to Dismiss or Deny (filed Oct. 15, 1999) (Reply).

³² *Id.* at 1-3.

³³ *Id.* at 1.

³⁴ See Opinion Letter of District Judge Jere Ryckman, Communication Technologies, Inc. v. Western Management Corporation, Civ. No. 99-45, District Court of the Third Judicial District, Uinta County, Wyoming (dated Aug. 17, 2000).

³⁵ *Id.* at 2.

³⁶ *Id.*

³⁷ *Id.*

comprised of two partners: Western Management Corporation and America West C&E dba Page Me.³⁸ It is our understanding that the joint venture was subsequently terminated, and the ownership rights of the partnership are currently being litigated in the State of Wyoming.³⁹ ComTech seeks the dismissal or denial of Western Management Corporation's assignment application, alleging that it had purchased all of the stock of America West, and thereby has beneficial ownership of America West's partnership interest in the four licenses.⁴⁰ Western Management Corporation alleges that ComTech filed renewal requests relating to two of the stations, Stations WNJN327 and WPAF615, without Western Management Corporation's consent.⁴¹

10. Clearly, there is a dispute between the parties as to who has the authority with respect to these licenses. We note, as an initial matter, that other than the assignment applications referenced herein, we have not received any applications regarding a substantial change in control of the subject stations. The rights of the parties to a joint venture, upon the termination or dissolution of the joint venture, is a private contractual dispute.⁴² Under Wyoming law, the existence of a joint venture, is preeminently a question for the finder of fact.⁴³ It is the Commission's policy to defer to the determinations made by the appropriate state courts in such situations.⁴⁴ The parties are actively litigating the ownership issue before the Third Judicial District of the State of Wyoming.⁴⁵ As a result, we believe it would be inappropriate to grant any of these applications until the Wyoming state courts determine the respective rights of the parties. Against this backdrop, we believe the best course of action would be to dismiss all of the pending applications without prejudice to the rights of the parties to refile if, at the conclusion of the Wyoming State Court litigation, it is determined that they have ownership interests in the subject licenses. Accordingly, we will dismiss without prejudice the assignment and modification applications filed by Western Management Corporation. We will also return, without taking action, the application filed by Page Wyo, Inc. seeking cancellation of the license for WPEK890. We anticipate that no action will be taken on any application relating to these stations until we are notified that the litigation has been resolved.

11. Western Management Corporation: American West C&E filed a renewal application seeking renewal of Station WPER274 on March 16, 1999.⁴⁶ Dismissal of the renewal application prior to the conclusion of the state court litigation would result in the cancellation of the station authorization, without the opportunity to re-file at the conclusion of the litigation. The application will therefore be held in abeyance pending the conclusion of the litigation.

³⁸ See Petition at 1.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Opposition at 2.

⁴² See *In re Hoffman, Memorandum Opinion and Order*, FCC 00-387, ¶ 23 (rel. Nov. 8, 2000).

⁴³ *Id.* (citing *Romberger v. VFW Post 1881*, 918 P.2d 993, 995 (Wyo. 1996)).

⁴⁴ See *Listeners' Guild, Inc. v. FCC*, 813 F.2d 465, 469 (D.C. Cir. 1987).

⁴⁵ See note 8, *supra*.

⁴⁶ See note 18, *supra*.

IV. CONCLUSION AND ORDERING CLAUSES

12. Because questions of ownership exist, any pending applications, with the exception of the renewal application for Station WPER274, are dismissed without prejudice or returned without action. The renewal application relating to Station WPER274 is being held in abeyance pending the outcome of the Wyoming State Court litigation discussed herein.

13. Accordingly, IT IS ORDERED pursuant to Section 4(i) of the Communications Act of 1934, 47 U.S.C. § 154(i), and Sections 1.41 and 1.939 of the Commission's Rules, 47 C.F.R. §§ 1.939, 1.41, that the Petition to Dismiss or Deny/Informal Complaint filed by Communication Technologies, Inc. on August 30, 1999, IS DISMISSED WITHOUT PREJUDICE.

14. IT IS FURTHER ORDERED that the application to assign or transfer the licenses for Stations WNJN327, WPER274, WPET577 and WPAF615, filed by Western Management Corporation on July 26, 1999, FCC Form 490, IS DISMISSED WITHOUT PREJUDICE.

15. IT IS FURTHER ORDERED that the application for renewal relating to Station WPER274, FCC File No. R375195, IS TO BE HELD IN ABEYANCE, pending the conclusion of the related Wyoming State Court litigation.

16. IT IS FURTHER ORDERED that the applications for modification of Stations WPAF615 and WPET577, FCC File Nos. D129494 and D129495, filed by Western Management Corporation on July 26, 1999, ARE DISMISSED WITHOUT PREJUDICE.

17. IT IS FURTHER ORDERED that the application for cancellation of Station WPEK890, FCC Form 405A, filed by Page - WYO, Inc., IS RETURNED WITHOUT ACTION.

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