

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

In the matter of)
)
Assignment of Call Sign WPFX961,)
From Elaine Hough, Assignor, to)
Chadmoore Wireless Group, Inc., Assignee)
)
FCC File No. 0000350815)

Order

Adopted: February 12, 2003

Released: February 13, 2003

By the Chief, Commercial Wireless Division:

I. INTRODUCTION

1. On August 3, 2001, Chadmoore Wireless Group, Inc. (“Chadmoore”) filed a Petition for Reconsideration (“Petition”) requesting that the Commission reverse its dismissal of the above-captioned application (“Application”) to assign a single-channel 800 MHz Specialized Mobile Radio station at Portsmouth, Virginia, call sign WPFX961 (“License”), from Elaine Hough (“Hough”) to Chadmoore. Chadmoore claims that the Commission’s dismissal of the Application was untimely and, further, that the dismissal was erroneous because it was based on impermissible *ex parte* communications regarding private contractual matters made by Hough to the Commission’s licensing staff. For the reasons stated herein, we grant Chadmoore’s Petition and reinstate the application, the consent, and the consummation notification.

II. BACKGROUND

2. Hough and Chadmoore executed a contract, dated May 31, 1995, and an amended contract, dated October 7, 1997, providing Chadmoore with the option to acquire the License and setting forth payment terms.¹ At some point, Chadmoore exercised the option, and an application to assign the License from Hough to Chadmoore was filed on January 30, 2001. Before the Application was filed, however, the Commission received two letters from Hough and her husband, Don Hough, requesting that the Commission stop any assignment of the License to Chadmoore because Chadmoore had failed to pay money allegedly owed to Hough.² Nevertheless, on January 29, 2001, some time after sending these letters to the Commission, Hough provided Chadmoore with her Taxpayer Identification Number (TIN)

¹ See Petition at 2.

² See Letter from Elaine and Don Hough to Kathryn M. Garland, Chief, Consumer Assistance Branch, Federal Communications Commission (Aug. 17, 2000); Letter from Don F. Hough and Elaine Hough to Kathryn M. Garland, Chief, Consumer Assistance Branch, Federal Communications Commission (Nov. 9, 2000). Chadmoore states that it never received copies of these letters. Petition at 4, 9. We note that it is a matter of dispute whether the money allegedly owed pertains to the License, or to other business arrangements between the parties, or both. See, e.g., Letter from Don F. Hough to Chadmoore Communications (Jan. 29, 2001) (citing “\$60,000 in unpaid brokerage commissions”).

and authorized Chadmoore in writing to file the Application.³ The Commission consented to the Application on March 19, 2001.⁴ On April 3, 2001, and again on May 8, 2001, Chadmoore notified the Commission of the consummation of the assignment.⁵

3. On April 16, 2001, and on June 16, 2001, Hough sent additional letters asking the Commission to block the assignment of this license.⁶ On June 28, 2001, licensing staff dismissed the Application based on this second set of letters. Chadmoore was notified of the dismissal by letter dated June 28, 2001 (“Dismissal Letter”),⁷ stating that the Application was dismissed “per letter requests from the Assignor indicating that she does not want to assign WPFX961.”⁸ Public notice of the dismissal of the Application was given on July 5, 2001.⁹

4. Chadmoore filed its Petition on August 3, 2001, asserting that the Application was erroneously dismissed because: (1) the dispute between it and Hough is a private contractual matter that should not involve the Commission; (2) Hough’s letters, the bases upon which the application was dismissed, were not served on Chadmoore and therefore constitute impermissible *ex parte* communications with the Commission; and (3) the dismissal was untimely and contravenes the doctrine of administrative finality. Hough responded to the Petition by sending a letter, dated August 15, 2001, to Commission licensing staff in Gettysburg,¹⁰ arguing that the Petition was not timely filed, but otherwise not addressing the allegations raised in the Petition.¹¹

III. DISCUSSION

5. We find that Chadmoore’s Petition was timely filed, and that the dismissal of the Application was in error. Petitions for reconsideration of an action taken on delegated authority may be filed within thirty days of the release of public notice of the action for which reconsideration is requested.¹² The June 27, 2001 dismissal of the Application appeared on public notice on July 5, 2001.

³ See Petition at 3, 9, Exhibit K.

⁴ Wireless Telecommunications Bureau Assignment of Authorization and Transfer of Control Applications Action, *Public Notice*, Rep. No. 817 (Mar. 28, 2001).

⁵ Notification of Consummation, file no. 0000416486 (Apr. 3, 2001); Notification of Consummation, file no. 0000452370 (May 8, 2001). Chadmoore states that it filed the second consummation notification because it had received no response from the Commission with respect to the first. Petition at 3-4.

⁶ Letter From Don and Elaine Hough to Sue Rogers, Federal Communications Commission (Apr. 16, 2001); Letter from Elaine L. Hough to Terry L. Fishel, Chief, Licensing Branch, Federal Communications Commission (June 23, 2001). Chadmoore states that it never received copies of these letters. Petition at 4, 9.

⁷ See Notice of Application Dismissal from Federal Communications Commission, Wireless Telecommunications Bureau to Chadmoore Wireless Group, Inc., Reference No. 962882 (June 28, 2001).

⁸ *Id.*

⁹ Wireless Telecommunications Bureau Assignment of Authorization and Transfer of Control Applications Action, *Public Notice*, Rep. No. 904 (July 5, 2001).

¹⁰ Letter From Don and Elaine Hough to Terry L. Fishel, Chief of Licensing, Federal Communications Commission (Aug. 15, 2001) (“Hough August 15, 2001 Response”). See *id.* (“They filed this petition on August 3rd. Is there not a 30-day time limit to such requests?”).

¹¹ Hough’s August 15, 2001 letter should not be considered an opposition to the Petition under the Commission’s rules, because it was untimely filed and was not served on Chadmoore. See 47 C.F.R. § 1.106(g). Further, it was not filed with the Commission’s Office of the Secretary as required by the Commission’s rules. See *id.* § 1.106(i).

¹² See 47 C.F.R. § 1.106(f). Section 1.4(e) of the Commission’s rules, 47 C.F.R. § 1.4(e), provides that when a filing date falls on a non-business day, such as in this case, the filing is due the next business day. In this case, the

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Chadmoore's Petition was filed on August 3, 2001, which was within thirty days of the final Commission action, and therefore timely.

6. We agree with Chadmoore that the Commission's dismissal of the application was not proper. First, to the extent that the dismissal was a *sua sponte* reconsideration of the Commission's consent, it was taken beyond the period allowed to the Commission for such reconsideration.¹³ Second, to the extent that the Commission's dismissal of the Application was based upon the Houghs' letters, such dismissal was improper because those letters had not been served on Chadmoore.

7. We note that the Houghs' April 16, 2001 letter came to the Commission during the 30-day reconsideration period following the Commission's grant of the Application. However, even were we to consider this letter a timely filed petition for reconsideration, and even were we to cure the service defect by now serving this letter upon Chadmoore with an appropriate amount of time to reply, the letter raises no issue (such as the competitive effect of the assignment, character qualifications, or fraud on the Commission in the filing of the assignment application) which would undermine the basis of the Commission's grant of the Application. Absent such an issue, we agree with Chadmoore that dismissing the application on the basis of Hough's letter would unduly involve the Commission in the resolution of a private, contractual matter. Such matters are historically and consistently left to local courts of appropriate jurisdiction to resolve, and the Commission has declined on numerous occasions to act under similar circumstances.¹⁴ The Commission has maintained that "[a]bsent a final court judgment raising issues within the Commission's jurisdiction, we would not ordinarily act on matters resulting from private contracts."¹⁵ Moreover, "[a]bsent a prior court injunction [the Commission] would not ordinarily withhold consent to an otherwise acceptable transaction."¹⁶ Consistent with previous decisions, however, we stress that our decision here does not foreclose any relief to which Hough ultimately may be entitled based on the outcome of any subsequent civil litigation.¹⁷ Thus, we grant Chadmoore's Petition and reinstate the Application as consented and consummated.

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thirtieth day fell on Saturday, August 4, 2001. Therefore, the petition was due no later than the next business day, which was Monday, August 6, 2001.

¹³ See 47 C.F.R. § 1.108, 1.117. Exceptions are allowable in cases of administrative error, which is not at issue in this matter. See, e.g., *American Trucking Ass'n v. Frisco Transportation Co.*, 358 U.S. 133, 145-46 (1958); *Chlorine Institute v. OSHA*, 613 F.2d 120, 123 (5th Cir. 1990).

¹⁴ See, e.g., *Listener's Guild, Inc. v. FCC*, 813 F.2d 465, 469 (D.C. Cir. 1987); *Applications of Northwest Broadcasting, Inc.*, *Memorandum Opinion and Order*, 12 FCC Rcd. 3289, 3293, at ¶ 10 (1997) ("Northwest Broadcasting"); *Application of WorldCom, Inc. and MCI Communications Corporation*, *Memorandum Opinion and Order*, 13 FCC Rcd. 18,025, 18,148, at ¶ 214 (1998); *Applications of PCS 2000*, *Memorandum Opinion and Order*, 12 FCC Rcd. 1681, 1691, at ¶ 23 (1997); *Application of Los Angeles Cellular Telephone Company*, 13 FCC Rcd. 4601, 4605, at ¶ 7 (CWD 1998); *Applications of Pueblo MSA Limited Partnership*, *Order*, 13 FCC Rcd. 131, 133, ¶ 5 (CWD 1997) ("Pueblo MSA"); *Application of RVC Services, Inc.*, 11 FCC Rcd. 12,136, 12,145, ¶ 20 (CWD 1996) (citing *Application of MCI Communications Corporation*, 10 FCC Rcd. 1072, 1074, ¶ 11 (CCB 1994); *Applications of Caribbean SMR, Inc.*, *SMR Digital PR, Inc.*, *Island Communications, Inc.*, *Order*, 16 FCC Rcd. 15,663, 15,664-65, ¶ 5 (CWD, PARB 2001) ("Caribbean SMR"); *AirTouch Paging, Inc.*, *Order*, DA 99-1175, at ¶ 5 (CWD PARB rel. June 16, 1999); cf. *In the Matter of S.A. Dawson d/b/a Dawson Associates*, *Memorandum Opinion and Order*, 17 FCC Rcd. 472, 474, at ¶ 7 & n.15 (WTB 2002).

¹⁵ See, e.g., *Northwest Broadcasting*, 12 FCC Rcd. at 3293, ¶ 10; *Caribbean SMR*, 16 FCC Rcd. at 15,664-65, ¶ 5.

¹⁶ See, e.g., *Northwest Broadcasting*, 12 FCC Rcd. at 3293, ¶ 10; *Pueblo MSA*, 13 FCC Rcd. at 133, ¶ 5; *Caribbean SMR*, 16 FCC Rcd. at 15,665, ¶ 6.

¹⁷ See, e.g., *In the Matter of AirTouch Paging, Inc.*, *Order*, DA 99-1175, at ¶ 6 (CWD June 1999); *Pueblo MSA*, 13 FCC Rcd. at 134, ¶ 6; *Caribbean SMR*, 16 FCC Rcd. at 15,665, ¶ 6.

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the Petition for Reconsideration filed by Chadmoore Wireless Group, Inc. on August 3, 2001 is hereby GRANTED.

9. IT IS FURTHER ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, the Application, the Commission's consent, and the consummation notifications are hereby REINSTATED.

FEDERAL COMMUNICATIONS COMMISSION

William W. Kunze
Chief, Commercial Wireless Division
Wireless Telecommunications Bureau