

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

JUL 3 2002

FCC - MAILROOM

In the Matter of Applications of)	WT Docket No. 02-179
)	
RESORT AVIATION SERVICES, INC.)	File No. 0000628303
)	
For Renewal of Aeronautical Advisory Station)	
WYT9, Coeur d'Alene Airport, Hayden, Idaho)	
)	
and)	
)	
KOOTENAI COUNTY COEUR D'ALENE)	File No. 0000663272
AIRPORT)	
)	
For A New Aeronautical Advisory Station at)	
Coeur d'Alene Airport, Hayden, Idaho)	

HEARING DESIGNATION ORDER

Adopted: July 1, 2002

Released: July 2, 2002

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

1. On October 15, 2001, Resort Aviation Services, Inc. (Resort Aviation) filed the above-captioned application for renewal of aeronautical advisory (unicom) Station WYT9, Hayden, Idaho. Unicom stations provide information concerning flying conditions, weather, availability of ground services, and other information to promote the safe and expeditious operation of aircraft.¹ On November 5, 2001, Kootenai County Coeur d'Alene Airport (Kootenai County) filed the above-captioned application for a new unicom station at the same location. Both applicants propose to provide service at Coeur d'Alene Airport, where there is no control tower or FAA flight service station. Under Section 87.215(b) of the Commission's Rules, only one unicom station may be licensed at such airports.² Accordingly, the applicants are basically qualified, but these applications are mutually exclusive and must

¹ See 47 C.F.R. § 87.213(b)(1).

² 47 C.F.R. § 87.215(b). The rule states that "[a]t an airport which has a part-time or full-time control tower, RCO [control tower remote communications outlet] or FAA flight service station, the one unicom limitation does not apply . . ." *Id.* Kootenai County argues that the limitation does not apply in this case because Coeur d'Alene Airport has a RCO station. See Letter, dated April 29, 2002, from Coeur d'Alene Airport General Manager Greg Delavan to Michael Connelly, Esq., Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau. For its part, Resort Aviation counters that the Coeur d'Alene Airport does not have a qualifying RCO. See Letter, dated April 29, 2002, from Scott W. Reed, Esq., to Michael Connelly, Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau. At most airports, there are published frequencies for all communications related to the airport, including the common traffic advisory frequency (CTAF). See Reorganization and Revision of Part 87 of the Rules Governing the Aviation Services, *Notice of Proposed Rule Making*, PR Docket No. 87-214, 2 FCC Rcd 4069, 4070 ¶ 11 (1987). The one unicom per airport restriction has been lifted only at those airports where there is no need for a specified CTAF or the air traffic control facility frequency serves as the CTAF. *Id.* at 4070 ¶ 12. The published CTAF for Coeur d'Alene Airport is 122.80 MHz. That is the frequency on which the unicom operates. Therefore, the one unicom per airport restriction applies to Coeur d'Alene Airport.

therefore be designated for comparative hearing.³

2. Accordingly, IT IS ORDERED that, pursuant to Section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. § 309(e), and Section 1.221(a) of the Commission's Rules, 47 C.F.R. § 1.221(a), the above-captioned applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING before an FCC Administrative Law Judge to resolve the following issues:⁴

a. To determine which applicant would provide the public with better unicom service based on the following considerations:

- (1) location of the fixed-based operation and proposed radio station in relation to the landing area and traffic patterns;
- (2) hours of operation;
- (3) personnel available to provide unicom service;
- (4) experience of applicant and employees in aviation and aviation communications;
- (5) ability to provide information pertaining to primary and secondary communications as specified in Section 87.257 of the Commission's Rules;
- (6) proposed radio system including control and dispatch points; and
- (7) the availability of the radio facilities to other fixed-based operators;

b. To determine, in light of the evidence presented, which application, if any, should be granted to best serve the public interest, convenience, and necessity.

3. IT IS FURTHER ORDERED that the burden of proceeding with the introduction of evidence with respect to all the issues listed here shall be upon Resort Aviation and Kootenai County with respect to their applications.⁵

³ See 47 C.F.R. § 1.945(f). Although the parties had settlement discussions prior to the release of this hearing designation order, they were unable to resolve their mutual exclusivity. See Letter, dated May 9, 2002, from Scott W. Reed, Esq., counsel for Resort Aviation Services, Inc., and John Cafferty, Esq., counsel for Kootenai County Coeur d'Alene Airport, to John Schauble, Esq., Chief, Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.

⁴ We will not designate an issue to determine whether Resort Aviation should receive a renewal expectancy for its operation during the prior license term. There does not appear to be any basis in the Commission's Rules or in precedent for the award of a renewal expectancy for an incumbent unicom operator. In previous hearing designation orders involving unicom stations, the Commission has not designated a renewal expectancy issue. See *Great Western Aviation, Inc., Hearing Designation Order*, 16 FCC Rcd 18061 (WTB PSPWD 2001); *Branstine Flying Service, Inc., Hearing Designation Order*, 6 FCC Rcd 2787 (PRB 1991); *J.W. Miller Aviation, Inc., Hearing Designation Order*, 6 FCC Rcd 2151 (PRB 1991). The Commission's Rules currently do not authorize the award of a renewal expectancy for unicom stations. *But see* Review of Part 87 of the Commission's Rules Concerning the Aviation Service, *Notice of Proposed Rule Making*, WT Docket 01-289, 16 FCC Rcd 19005, 19024 ¶ 49 (2001) (seeking comment on whether to provide unicom licensees a renewal expectancy). If a party wishes to submit evidence demonstrating that Resort Aviation had an unusually good or unusually poor record during the prior license term, or that Resort Aviation violated the Commission's Rules during the prior license term, that party must first file a motion to enlarge issues with the presiding administrative law judge. See 47 C.F.R. § 1.229.

⁵ See 47 C.F.R. § 1.254.

4. IT IS FURTHER ORDERED that, to avail themselves of the opportunity to be heard, the applicants, Resort Aviation and Kootenai County, must each file with the Commission, within 20 days of the mailing of this Hearing Designation Order, a written notice of appearance in triplicate, stating their intentions to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order, in accordance with Sections 1.221(c), (f) and (g) of the Commission's Rules, 47 C.F.R. § 1.221(c), (f), (g). The written notice of Resort Aviation must be accompanied by a processing fee of \$9,020.00.⁶ Because it is a governmental entity, Kootenai County is exempt from the processing fee.⁷

5. IT IS FURTHER ORDERED that the Chief, Enforcement Bureau is made a party to the proceeding.

6. IT IS FURTHER ORDERED that the Commission's Reference Information Center SHALL SEND a copy of this *Order*, via Certified Mail - Return Receipt Requested, to Resort Aviation Services, Inc., c/o Scott W. Reed, Esq., 401 Front Avenue - Suite 205, Post Office Box A, Coeur d'Alene, Idaho 83816, and to Kootenai County Coeur d'Alene Airport, 11401 Airport Drive, Building 27, Hayden Lake, Idaho 83835.

7. IT IS FURTHER ORDERED that the Secretary of the Commission SHALL CAUSE to have this *Hearing Designation Order* or a summary thereof published in the Federal Register.

8. The time and place of the comparative hearing will be specified in a subsequent Order.

9. 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

⁶ 47 C.F.R. § 1.1104.

⁷ 47 C.F.R. § 1.1114(f).