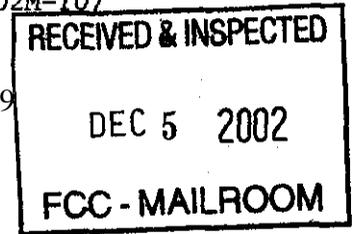


Before the  
Federal Communications Commission  
Washington, D.C. 20554

FCC 02M-107



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

MEMORANDUM OPINION AND ORDER

Issued November 26,2002 ; Released November 27,2002

Under consideration **are** a Motion for Protective Order, dated November 25, 2002, submitted by Kootenai County Coeur d'Alene Airport ("Kootenai"); an Objection to the Taking of the Deposition of **Larry** Booher, dated November 25,2002, submitted by Kootenai; and a Motion to Vacate the Deposition of Larry Booher, dated November 25,2002, submitted by Kootenai.<sup>1</sup>

**On** November 13, 2002, Resort Aviation Services, Inc. ("Resort"), filed a Notice of Deposition of Larry Booher. Resort stated that:

The subject matter upon which witness **Larry** Booher is to be examined shall include the **nature** of operations of **Larry** Booher, Southfield Fuel, Inc. and HeliProp Aircraft, Inc. on the Coeur d'Alene **Airport**, the relationship of said person and businesses with Coeur d'Alene Airport Manager Greg Delavan and other employees of Kootenai County at the airport, their knowledge, experience and competence with Unicorn operations and their expectations toward becoming an authorized Unicorn operator at the Coeur d'Alene Airport if the results of these proceedings so allow.

Notice of Deposition at 2. The deposition is scheduled to be **taken** on December 5,2002.

In its motions, Kootenai alleges that the subject matter of the Notice of Deposition is at variance with a **subpoena** directed to Mr. Booher which was purportedly issued by the Presiding Judge on November 21, 2002. Thus, Kootenai claims that the subpoena requires Mr. Booher to produce at his deposition certain documents, and that those documents **differ** greatly from the subject matter specified in the Notice of Deposition. Kootenai further maintains that the subpoena

<sup>1</sup> Since time is of the essence, **this ruling has** been based on courtesy copies **of** these pleadings faxed **to** the Presiding Judge's offices on November **25,2002**.

is directed to **matters** which are outside the scope of the issues in this proceeding, and that the purpose of the deposition is simply to annoy and embarrass Kootenai. Therefore, **Kootenai** seeks the issuance of an order vacating the deposition of **Mr. Booher**.

The deposition of **Mr. Booher** shall not **take** place absent further order of the Presiding Judge. It is first noted that **Resort** has the right to respond to the motions filed by Kootenai before they are ruled on, and there is not sufficient time to permit such response, and a ruling on the motions, prior to the scheduled **start** of **Mr. Booher's** deposition. In this connection, Resort will be directed to file responses to Kootenai's motions on **or** before December 5, 2002. Second, it must be noted that the Presiding Judge did *not* issue the subpoena in question. Indeed, the Presiding Judge first became aware of the existence of this subpoena when he saw it **as** an attachment to Kootenai's Motion for Protective Order. Consequently, the subpoena is without force **or** effect. In addition, in light of these extraordinary circumstances, Resort will also be directed to provide in its **response** to Kootenai's motions a complete and detailed explanation **as** to how **this** subpoena, and any other subpoena "issued" in the Presiding Judge's **name**, came to be issued, and the reasons such issuance did not comply with Sections 1.331 and 1.333 of the Commission's Rules. Finally, a telephone conference call among counsel for the parties and the Presiding Judge was tentatively scheduled for December 3, 2002. This conference **will** be cancelled.

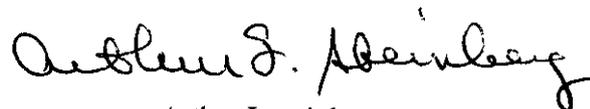
Accordingly, IT **IS ORDERED** that the deposition of Larry Booher, scheduled to commence on December 5, 2002, **SHALL NOT TAKE PLACE**.

IT **IS FURTHER ORDERED** that, **on** or before December 5, 2002, Resort **SHALL RESPOND to** Kootenai's Motion for Protective **Order**, Objection to the Taking of the Deposition of Larry Booher, and Motion to Vacate the Deposition of Larry Booher.

IT **IS FURTHER ORDERED** that Resort's response **SHALL INCLUDE** a complete and detailed explanation as to how the November 21, 2002, subpoena directed to Larry Booher, and any **other** subpoena "issued" in the Presiding Judge's name, **came** to be issued, and the reasons such issuance did not comply with Sections 1.331 and 1.333 of the Commission's Rules.

IT **IS FURTHER ORDERED** that the telephone conference call tentatively scheduled to ~~take~~ place on December 3, 2002, **IS CANCELLED**.

FEDERAL COMMUNICATIONS COMMISSION



Arthur I. Steinberg  
Administrative Law Judge