

Kootenai County Department of Legal Services
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Coeur d'Alene Airport

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Applications of)	WT DOCKET NO. 02-179
)	
RESORT AVIATION SERVICES, INC.)	
)	
For Renewal of Aeronautical Advisory)	
Station WYT9, Coeur d'Alene Airport,)	OPPOSITION TO
Hayden, Idaho)	SUMMARY DECISION
)	
and)	
)	
KOOTENAI COUNTY COEUR)	
D'ALENE AIRPORT)	
)	
For a New Aeronautical Advisory)	
Station at Coeur d'Alene Airport,)	
Hayden, Idaho)	
_____)	

COMES NOW, Kootenai County Coeur d'Alene Airport, by and through its attorney of record, John A. Cafferty, Kootenai County Department of Legal Services, pursuant to 47 CFR §1.251 and hereby Opposes Resort Aviation Services Inc.'s Motion for Summary Decision.

Summary Decision is not appropriate in this case as there are genuine issues of material fact in dispute which preclude granting Summary Decision, and

must be determined at the hearing on January 27, 2003, where a factual determination can be made.

I. LEGAL STANDARD

FRCP 56(c), while not controlling on this tribunal, clearly lays out the applicable standard to be applied in this case for a Motion for Summary Decision under 47 CFR §1.251. The legal standard for a grant of Summary Judgment under Federal Rule of Civil Procedure 56(c) was laid out by the Supreme Court in *Celotex v. Catrett* 477 U.S. 317, 106 S.Ct. 2548 (1986), wherein the Court stated:

Under Rule 56(c), summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." In our view, the plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be "no genuine issue as to any material fact," since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. The moving party is "entitled to a judgment as a matter of law" because the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof.

Of course, a party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any," which it believes demonstrate the absence of a genuine issue of material fact.
Celotex v. Catrett, 477 U.S. 317, 321, 106 S.Ct. 2548 (1986)

II. FACTS

On October 10, 2001, Resort Aviation Services, Inc. (hereafter "Resort") filed its application for renewal of the Unicom frequency, frequency 122.80, at the Coeur d'Alene Airport. There is a dispute as to whether or not Resort gave Kootenai County Coeur d'Alene Airport (hereafter "Kootenai") notice of its application for renewal of the Unicom License, WYT9, as required by the FCC Rules. It is Resort Aviation Services, Inc.'s contention that notice was sent to Kootenai on September 28, 2001, see Affidavit of Kathlean Garren filed in support of Motion for Summary Decision. Kootenai denies ever receiving the notice, see affidavits of J. Stark and M. Hopkins filed in Opposition to Motion for Summary Decision.

In October and November counsel for the parties engaged in dialogue with the goal of stipulating to the taking of the depositions of the applicant's representatives. Due to several factors including pending discovery responses and the availability of the parties, the depositions of Resort's representatives did not take place. The depositions of Kootenai's representatives occurred on December 5, 2002.

Resort and Kootenai both have fixed based operations on the Coeur d'Alene Airport. Resort and Kootenai both have regular hours of operation and qualified employees available for the routine operation of the Unicom. Resort and Kootenai both have experience in aviation and aviation communications. Both have the ability to comply with 47 CFR §87.213.

III. DISCUSSION

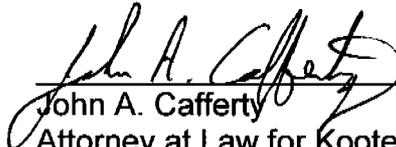
Both applicants have the necessary equipment, facilities, personnel, and abilities to perform the Unicom services required. The issue that this tribunal must determine is which applicant will most benefit the public. This determination will be based upon the evidence presented to the tribunal, and is not an issue that can be determined as a matter of law. Resort takes issue with the fact that Kootenai does not, at this time, have the procedures in place to fully implement all of Kootenai's proposals. Whether or not the proposals of Kootenai are adequate is a factual determination for this tribunal to make after it has heard all of the relevant facts. Resort through its briefing has at best shown that Kootenai would not be a good Unicom provider, it has not shown that the public would benefit by Resort holding the license.

IV. CONCLUSION

There are numerous material factual issues still in dispute that preclude the granting of Resort's Motion for Summary Decision. At the very least if this Tribunal determines that Resort failed to give the necessary notice as required by 47 CFR 87.215, then Resort's application must fail. This issue alone precludes the granting of Resort's Motion. Additionally it must be determined, by weighing the facts and determining the credibility of the witnesses which applicant will most benefit the flying public if granted the Unicom license at the Coeur d'Alene Airport.

For the reasons articulated above Kootenai respectfully request that
Resort's Motion for Summary Decision be denied

DATED this 6 day of January, 2003.



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CERTIFICATE OF SERVICE

I HEREBY certify that on this 6 day of January, 2003, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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By:



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