

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

FCC 03M-03

01893

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 AIRPORT)	File No. 0000663272
For a New Aeronautical Advisory Station at Coeur d'Alene Airport, Hayden, Idaho)	

JAN 31 2003

MEMORANDUM OPINION AND ORDER

Issued: January 21, 2003

Released: January 23, 2003

1. Under consideration are: (a) a Motion of Resort Aviation Services, Inc. for Summary Decision, filed on December 24, 2002, by Resort Aviation Services, Inc. ("Resort"); (b) an Opposition to Summary Decision, filed on January 6, 2003, by Kootenai County Coeur d'Alene Airport ("Kootenai"); (c) a Motion to Suppress, filed on January 6, 2003, by Kootenai; (d) a Memorandum of Resort Aviation Services, Inc. in Opposition to Motion to Suppress, dated January 7, 2003, submitted by Resort; (e) Kootenai County Coeur d'Alene Airport's Request for Permission to File Summary Decision Pursuant to 47 USC §1.251(a)(2), filed on January 9, 2003, by Kootenai; and (f) Kootenai County Coeur d'Alene Airport Motion for Summary Decision, filed on January 9, 2003, by Kootenai.'

2. Resort seeks summary decision in its favor on the comparative issues designated for hearing in this proceeding. In support, Resort contends that the discovery responses and the depositions in this case show that there is no genuine issue of material fact remaining for determination at the hearing, and that Resort is the more qualified applicant for the Aeronautical Advisory Station at the Coeur d'Alene Airport. Kootenai opposes Resort's motion.

3. Kootenai also seeks summary decision in its favor. In support, Kootenai alleges that Resort did not give notice in writing of the filing of its renewal application, as required by Section 87.215(d) of the Commission's Rules. Kootenai argues that such notice was "a condition precedent" to Resort's filing for the facility in question, and that "Resort's application should be dismissed for noncompliance." Since Kootenai would then be the sole remaining qualified applicant, Kootenai maintains that its application should be granted by summary decision.

¹ Since time is of the essence—the hearing in this proceeding is scheduled to commence on January 27, 2003—a ruling on Kootenai's summary decision motion will be made without waiting for responsive pleadings.

4. Resort's motion for summary decision will be denied. The purpose of the summary decision rule is to avoid a useless hearing or the needless adduction of evidence as to issues when there is no dispute as to the facts. The Commission has made it clear that the moving party's papers should be carefully scrutinized while the opposing party's papers should be treated with considerable indulgence. *Big Country Radio, Inc.*, 50 FCC 2d 967, 968 (Rev. Bd. 1975), *citing Summary Decision Procedures*, 34 FCC 2d 485 (1972). In order to sustain a summary decision motion, the burden is on the moving party to establish that the truth is clear, that the basic facts are undisputed, and that the parties are not in disagreement regarding material factual inferences that may be properly drawn from such facts. *Big Country* at 968. In the particular circumstances of this case, it must be concluded that it would be inappropriate to grant summary decision to Resort. Suffice it to say, it is apparent that there is a substantial dispute as to certain material facts and a further dispute as to the inferences which might be drawn from such facts.

5. Kootenai's summary decision motion will also be denied. Kootenai is requesting the summary disqualification of Resort, and the immediate dismissal of its application, for the purported violation of one of the Commission's rules. However, that matter is completely beyond the scope of the existing issues in this proceeding, which are strictly limited to comparative factors. See *Hearing Designation Order*, 17 FCC Rcd 12816 (WTB 2002), at para. 2. In this connection, note 4 of the *Hearing Designation Order* specifically stated that any allegation of rule violations on the part of Resort must first be presented in a petition to enlarge issues filed in accordance with Section 1.229 of the Commission's Rules. Under these circumstances, summary decision in Kootenai's favor is neither warranted nor appropriate.

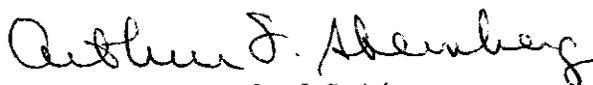
Accordingly, IT IS ORDERED that the Motion of Resort Aviation Services, Inc. for Summary Decision, filed by Resort on December 24, 2002, IS DENIED.

IT IS FURTHER ORDERED that Kootenai County Coeur d'Alene Airport's Request for Permission to File Summary Decision Pursuant to 47 USC §1.251(a)(2), filed by Kootenai on January 9, 2003, IS GRANTED.

IT IS FURTHER ORDERED that Kootenai County Coeur d'Alene Airport Motion for Summary Decision, filed by Kootenai on January 9, 2003, IS DENIED.

IT IS FURTHER ORDERED that the Motion to Suppress, filed by Kootenai on January 6, 2003, IS DISMISSED?

FEDERAL COMMUNICATIONS COMMISSION



Arthur I. Steinberg
Administrative Law Judge

² Kootenai's Motion to Suppress seeks to strike certain attachments from Resort's Motion for Summary Decision. Since Resort's summary decision motion has been denied, Kootenai's Motion to Suppress is moot.