

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

In the Matter of Application of)
SKYPARK AIRPORT ASSOCIATION, L.L.C.) FCC File No. 0000981994
For New Aeronautical Advisory Station at Woods)
Cross, Utah (Call Sign WPVV295))

ORDER ON RECONSIDERATION

Adopted: August 6, 2003

Released: August 7, 2003

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

1. Introduction. On September 24, 2002, the Salt Lake City Department of Airports (Salt Lake) submitted a letter to the Federal Communications Commission (Commission)1 protesting the grant of the above-captioned application filed by Skypark Airport Association, L.L.C. (Skypark) for a new aeronautical advisory (unicom) station2 licensed at Skypark Airport in Woods Cross, Utah.3 For the reasons stated below, we treat the Salt Lake letter as a petition for reconsideration, and dismiss it for the reasons set forth below.

2. Background. The Salt Lake Airport Authority4 holds a unicom license for Station KWZ2, authorizing operation on the frequency 123.0 MHz at Bolinder Field - Tooele Valley Airport in Erda, Utah. On July 15, 2002, Skypark filed its application requesting a unicom license to operate on the frequency 123.00 MHz at Skypark Airport.5 The application was granted on September 11, 2002, and public notice of the grant was provided on September 18, 2002.6 On September 24, 2002, Salt Lake filed the Petition with the Commission's Gettysburg, Pennsylvania office. In the Petition, Salt Lake requests

1 Letter, dated Sept. 24, 2002, from Kenneth D. Imber, Electronic Systems Supervisor, Salt Lake City Department of Airports, to Federal Communications Commission (Petition).

2 Unicom stations are used to provide safety-related and other information to aircraft, primarily general aviation aircraft. Unicom transmissions are limited to the necessities of safe and expeditious operation of aircraft, including runway conditions, types of fuel available, wind conditions, weather information, dispatching, and other necessary safety information. However, unicom stations may also transmit, on a secondary basis, information pertaining to the efficient portal-to-portal transit of an aircraft, such as information concerning available ground transportation, food, and lodging. 47 C.F.R. § 87.213.

3 FCC File No. 0000981994 (filed July 15, 2002).

4 Apparently, the Salt Lake City Airport Authority and the Salt Lake City Department of Airports are the same entity, for they have the same address.

5 The Petition states that Skypark Airport is located in Bountiful, Utah. However, the Skypark application indicates that Skypark Airport is located in nearby Woods Cross, Utah.

6 See Wireless Telecommunications Bureau Site-By-Site Action, Public Notice, Report No. 1286 at 1 (rel. Sep. 18, 2002).

that the Commission take “appropriate measures” to move Station WPVV295 to another frequency.⁷ Salt Lake claims that there will be interference to and from the two unicom stations by virtue of their using the same frequency at airports in such close proximity to each other.⁸ Salt Lake states that such interference can be expected because it experienced interference in 1991, due to the fact that both it and several other unicom stations serving nearby airports in the Wasatch Front area were operating on the frequency 122.8 MHz.⁹ Salt Lake adds that it was this interference problem that prompted it to file a modification application to switch frequencies from 122.8 MHz to 123.0 MHz in January 1992, and that the airport spent a considerable amount of money to implement the frequency change.¹⁰

3. *Discussion.* Although Salt Lake does not call its letter a petition for reconsideration, we will treat its letter as a petition for reconsideration because it clearly seeks review of the action granting Skypark’s application. We will dismiss the Petition because it was not filed at the correct location. Section 1.106(i) of the Commission’s Rules provides that a petition for reconsideration must be submitted to the Secretary, Federal Communications Commission, Washington, D.C. 20554.¹¹ The Commission maintains different offices for different purposes, and persons filing documents with the Commission must take care to ensure that their documents are filed at the correct location specified in the Commission’s Rules.¹² Applications and other filings not submitted in accordance with the correct addresses or locations will be returned to the filer without processing.¹³ A document is filed with the Commission upon its receipt at the location designated by the Commission.¹⁴ Accordingly, the plain language of the Commission’s Rules states that a petition for reconsideration submitted to the Commission’s Gettysburg, Pennsylvania, office is not properly filed.¹⁵

4. The Petition was never filed with the Office of the Secretary. Therefore, we find that the Petition was not timely filed in the proper location. Moreover, Salt Lake did not request a waiver to file the Petition in Gettysburg, as opposed to filing it with the Office of the Secretary. Consequently, absent a waiver, we conclude that Salt Lake’s Petition should be dismissed as improperly filed.¹⁶

⁷ Petition at 1.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ 47 C.F.R. § 1.106(i).

¹² 47 C.F.R. § 0.401.

¹³ *Id.*

¹⁴ 47 C.F.R. § 1.7; First Auction of Interactive Video and Data Service (IVDS) Licenses, Request for Waiver of Applications Deadline, *Memorandum Opinion and Order*, 11 FCC Rcd 1134, 1135 (1996); Complaints Regarding Cable Programming Services Prices, *Amended Order on Reconsideration*, 10 FCC Rcd 12778, 12780 n.14 (CSB 1995).

¹⁵ *See, e.g.*, Memorandum of Agreement between the Federal Communications Commission and Elkins Institute Inc., *Order on Reconsideration*, 14 FCC Rcd 5080 (WTB 1999) (determining that a facsimile copy to a division office neither complied with the Commission’s Rules nor ameliorated the late filing with the Secretary’s office); Columbia Millimeter Communications, LP, *Order on Reconsideration*, 14 FCC Rcd 2782 (WTB PSPWD 1999) (finding that a petition for reconsideration sent to the Commission’s lock box at Mellon bank neither complied with the Commission’s Rules nor ameliorated the late filing with the Secretary’s office), *aff’d.*, *Order on Reconsideration*, 15 FCC Rcd 10251 (WTB PSPWD 2000). *See also* Petition for Reconsideration Filing Requirements, *Public Notice*, 15 FCC Rcd 19473 (WTB 2000).

¹⁶ If we considered the merits of the Petition, we would deny the Petition. Salt Lake in effect asserts a right as a “primary incumbent licensee” to foreclose other unicom licensees from operating on the same frequency at nearby airports because of potential interference. Petition at 1. However, incumbent unicom licensees are not entitled to

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5. Accordingly, IT IS ORDERED that pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the petition for reconsideration filed by the Salt Lake City Department of Airports on September 24, 2002, IS DISMISSED.

6. 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

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such interference protection. The unicom rules do not specify minimum co-channel separation distances. Rather, concerns about interference between unicom stations are addressed by the one unicom per airport restriction at uncontrolled airports. 47 C.F.R. § 87.215(b); see also Reorganization and Revision of Part 87 of the Rules Governing the Aviation Services, *Report and Order*, PR Docket No. 87-214, 3 FCC Rcd 4171, 4172 ¶ 9 (1988) (indicating that the one unicom per airport restriction "was considered necessary for reasons of flight safety and potential interference"). Although the Commission endeavors to assign unicom frequencies based on maximum geographic co-channel separation, it also takes into account the frequency requested by the applicant, 47 C.F.R. § 87.217(a), and nothing in the Commission's Rules provides a unicom licensee with a protected service area. In any event, Salt Lake's concerns about interference from Skypark's unicom operation are entirely speculative. Salt Lake offers no evidence to demonstrate that it is experiencing actual interference from Skypark, but simply argues that its experience more than a decade earlier suggests that such interference will occur. Under these circumstances, we decline to initiate a proceeding to modify Skypark's license to specify another frequency.