

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

In the Matter of Application of)
PEPPERELL AIRPORT) FCC File No. 0001292949
For New Aeronautical Advisory Station at)
Pepperell, Massachusetts)

ORDER

Adopted: June 3, 2004

Released: June 4, 2004

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

1. Introduction. We have before us an application filed by Pepperell Airport1 for a new aeronautical advisory station (unicom)2 to serve the airport. We also have before us a Petition to Deny the Application filed by Richard L. Wright (Wright),3 a pilot who states that he is representing the views of pilots operating at Knox County Regional Airport in Rockland, Maine.4 For the reasons stated below, we deny the Petition and the Division's licensing staff will proceed with processing the Application.

2. Background. Pepperell Airport had been served for many years by a unicom licensed to RW Shop, Inc. under call sign KJN8. That license expired on January 18, 2002, after the licensee failed to file a timely application to renew the license. The instant Application for a new unicom station would, if granted, permit the resumption of licensed unicom service at Pepperell Airport. The Application seeks authorization to operate on the unicom frequency 123.05 MHz.

3. On October 15, 2002, the Commission granted an application filed by Knox County, Maine, to modify its unicom license for Station KHG7 at Knox County Regional Airport to operate on frequency 123.05 MHz. The distance between Pepperell and Rockland is approximately 159 miles (256 km).5

4. In the Petition, Wright argues that the Application, as submitted, should be denied, and that Pepperell Airport should be assigned a unicom frequency other than 123.05 MHz. Wright states that

1 FCC File No. 0001292949 (filed April 30, 2003) (Application).

2 Unicom transmissions 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 transmissions 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 Petition to Deny filed by Richard L. Wright (filed May 23, 2003) (Petition).

4 Petition at 1.

5 Wright states that Pepperell Airport's operations are approximately 150 nautical miles distant from Knox County Regional Airport. Id. at 2.

interference between the Pepperell Airport unicom and the Knox County Regional Airport unicom will occur if both unicoms operate on the frequency 123.05 MHz, and that such interference raises safety concerns.⁶ According to Wright, Knox County migrated to the frequency 123.05 MHz from another unicom frequency because the other frequency had become congested.⁷ In choosing 123.05 MHz as its new frequency, Knox County researched the Commission's license database and chose a frequency that it believed was not being used by any nearby airport. It was not aware that the frequency 123.05 MHz would be used at Pepperell Airport because the license authorizing such operation at Pepperell Airport was no longer active at the time Knox County undertook its database search.⁸ Wright further avers that, after significant expense and coordination, Knox County implemented unicom operation on 123.05 MHz, and soon discovered that its unicom transmissions were experiencing interference from communications on 123.05 MHz at Pepperell Airport.⁹ It experienced such interference, notwithstanding the distance between the two airports, Wright says, because the Pepperell Airport unicom supports high-altitude (approximately 14,000 feet) parachute operations at the airport.¹⁰

5. Wright states that Knox County would never have chosen the frequency 123.05 MHz as its unicom frequency had it been aware of the high-altitude parachute operations at Pepperell Airport using that frequency.¹¹ He argues that the public interest would be served by assigning a different frequency to Pepperell Airport in order to better ensure that unicom communications at both airports are as interference-free as possible.¹² Finally, Wright argues that unicom frequencies should not be used at all for high-altitude parachute operations, and that the Commission and the Federal Aviation Administration should consider alternative means of addressing the communications needs of high-altitude parachute operations.¹³

6. *Discussion.* We note, as an initial matter, that nothing in the Commission's Rules or policies precludes the licensing of a unicom on 123.05 MHz at Pepperell Airport, notwithstanding the co-channel unicom operations at Knox County Regional Airport. Incumbent unicom licensees are not entitled to interference protection from subsequently licensed unicom operations, and the unicom rules do not specify minimum co-channel separation distances.¹⁴ Rather, concerns about interference between unicoms are intended to be addressed by the one unicom per airport restriction at uncontrolled airports.¹⁵ Accordingly, Knox County's unicom license does not provide it with a protected service area, and, as a result, we have no basis to deny the Pepperell Airport application on the basis of the interference concerns raised in the Petition. Although Wright recommends that the Commission revisit its rules governing

⁶ *Id.* at 1-3.

⁷ *Id.* at 1.

⁸ *Id.* at 2.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 3. In this regard, Wright suggests one alternative of designating one or two non-unicom frequencies as "skydive frequencies" to support parachute operations nationwide.

¹⁴ See Skypark Airport Association, L.L.C., *Order on Reconsideration*, 18 FCC Rcd 16306, 16307 n. 16 (WTB PSPWD (2003)).

¹⁵ See 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").

interference between unicom, ¹⁶ and perhaps set aside specific non-unicom channels for communications relating to high-altitude parachute operations, ¹⁷ the Petition does not provide sufficient information to support immediate changes to our unicom rules and policies. Further, whatever merit they may have, these suggestions are more appropriately raised in a petition for rulemaking than in an adjudicatory proceeding such as this. ¹⁸ We therefore deny the Petition, and will process the Application.

7. Further, we address one additional matter. The allegations in the Petition, if true, appear to indicate that the unicom at Pepperell Airport has continued to operate even after the license for station KJN8 expired on January 18, 2002. Such operation would constitute unauthorized operation, and would be a violation of both the Communications Act of 1934, as amended, ¹⁹ and the Commission's Rules. ²⁰ We take such violations seriously. We will refer this matter to the Commission's Enforcement Bureau to take any further action it believes warranted. Our processing of the Application is without prejudice to the Enforcement Bureau taking appropriate enforcement action against RW Shop, Inc. and/or Pepperell Airport.

8. *Conclusion.* Although we urge unicom licensees to cooperate in the selection and use of unicom frequencies in order to best promote the safety of aviation, we do not provide unicom licensees with protected service areas. In recognition of the concerns raised in the Petition, we encourage the interested parties to negotiate a mutually satisfactory resolution to the extent feasible. The Petition has cited no Commission rule or policy that could serve as the basis for denying or dismissing the Application; moreover we are not aware of any such rule or policy. Accordingly, the Petition is denied. Our processing of the Application is without prejudice to future enforcement action if such action is warranted for unauthorized operation of the Pepperell Airport unicom.

9. Accordingly, IT IS ORDERED pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Section 87.215(b) of the Commission's Rules, 47 C.F.R. § 87.215(b), that the Petition to Deny filed May 23, 2003 by Richard L. Wright against the captioned application IS DENIED.

10. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Section 87.215(b) of the Commission's Rules, 47 C.F.R. § 87.215(b), that the licensing staff of the Public Safety and Critical Infrastructure Division SHALL PROCESS the captioned Application filed April 30, 2003, by Pepperell Airport consistent with the applicable Commission rules and policies, without prejudice to the imposition of sanctions by the Enforcement Bureau for unauthorized operation of a unicom.

¹⁶ Petition at 2 (stating that “[b]ecause of significant UNICOM flight safety issues, and accident history, the FCC should take this opportunity to examine some possible long-term solution in conjunction with the FAA”).

¹⁷ *Id.* at 3.

¹⁸ *See* 47 C.F.R. § 1.401

¹⁹ *See, e.g.*, 47 U.S.C. § 301.

²⁰ *See* 47 C.F.R. § 87.18.

11. 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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