

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

In the Matter of Application of)	
)	
STARBASE AVIATION INCORPORATED)	FCC File No. 0001334098
)	
For New Aeronautical Advisory Station at)	
Durango, Colorado)	

ORDER ON RECONSIDERATION

Adopted: November 1, 2004

Released: November 3, 2004

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

1. *Introduction.* On June 23, 2003, Starbase Aviation Incorporated (Starbase) requested reconsideration of the June 4, 2003 action of the Licensing and Technical Analysis Branch of the Public Safety and Critical Infrastructure Division (Division)¹ returning Starbase's application² for a license to operate a new aeronautical advisory (unicom) station³ to serve the Durango/La Plata County Airport in Durango, Colorado.⁴ We dismiss the request for the reasons set forth below.

2. *Background.* Starbase filed the captioned application for a new unicom station on June 3, 2003. On the following day, the Division returned the application.⁵ The Return Letter explained that the Durango/La Plata County Airport was restricted to a single unicom license under the Commission's Rules,⁶ and that the airport was already served by an incumbent unicom licensee, Durango Air Service

¹ The Commission reorganized the Wireless Telecommunications Bureau effective November 13, 2003, and the relevant duties of the Public Safety and Private Wireless Division were assumed by the Public Safety and Critical Infrastructure Division. *See* Reorganization of the Wireless Telecommunications Bureau, *Order*, 18 FCC Rcd 25414, 25414 ¶ 2 (2003).

² FCC File No. 0001334098 (filed June 3, 2003).

³ 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. *See* 47 C.F.R. § 87.213.

⁴ Letter dated June 19, 2003 from Douglas L. Lashley, President, Starbase Aviation Incorporated, to the Federal Communications Commission (FCC or Commission), Wireless Telecommunications Bureau, Gettysburg, PA. The letter specifically requests "reconsideration of our application." *Id.* at 1.

⁵ *See* Letter dated June 4, 2003, from FCC to Starbase Aviation Incorporated (Reference Number 1930717) (Return Letter).

⁶ *Id.* Section 87.215(b) of the Commission's Rules, 47 C.F.R. § 87.215(b), provides that "[o]nly one unicom will be authorized to operate at an airport which does not have a control tower, RCO [remote communications outlet] or FAA flight service station. At an airport which has a part-time or full-time control tower, RCO or FAA flight service station, the one unicom limitation does not apply...." An RCO is an unmanned aeronautical radio station at a small airport located near a large airport with a control tower. The RCO is connected via landlines to the control

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(Durango Air), under Call Sign WKX5, the license for which was still active.⁷ The Return Letter further advised Starbase that Durango Air could apply to renew the license within ninety days of the February 16, 2004 expiration date.⁸ The Return Letter also specified that Starbase had sixty days from the date of the Return Letter to amend the application to cure its defects, and that the application would be dismissed if no response was received within the sixty days.⁹

3. On June 23, 2003, Starbase requested reconsideration of the return of its application. Starbase argues that the Division's licensing staff erred in determining that the Durango/La Plata County Airport was an uncontrolled airport subject to the one unicom per airport restriction set forth in Section 87.215(b) of the Commission's Rules.¹⁰ According to Starbase, the airport is in fact served by an RCO, and as a consequence is not subject to the one unicom limitation.¹¹ Starbase therefore contends that there is no impediment to granting its application to operate a second unicom at the airport.¹²

4. Starbase did not file an amendment to its application within sixty days of the Return Letter. The Division licensing staff accordingly dismissed the application on August 25, 2003.¹³ Starbase has not filed a petition for reconsideration of the dismissal of its application.

5. *Discussion.* We will dismiss the reconsideration request because it was premature, was not filed at the correct location, and has now been rendered moot by the dismissal of Starbase's application. To begin with, Section 1.106(f) of the Commission's Rules specifies that a petition for reconsideration may be filed within thirty days from the date of public notice of a *final* Commission action.¹⁴ The return of an application is not a final Commission action.¹⁵ The return of an application simply triggers a sixty-day period in which the applicant has an opportunity to remedy any defects in the application. Final Commission action occurs if and when the application is dismissed.¹⁶ In this case, Starbase's application was not dismissed until August 25, 2003, *after* Starbase filed its Petition. The request is therefore subject

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tower (or other FAA control facility). See Review of Part 87 of the Commission's Rules Concerning the Aviation Radio Services, *Notice of Proposed Rule Making*, WT Docket No. 01-289, 16 FCC Rcd 19005, 19022-23 n.99 (2001).

⁷ Return Letter at 1.

⁸ *Id.*

⁹ *Id.* In 1999, the Wireless Telecommunications Bureau (Bureau) adopted a policy that defective applications that are not dismissed immediately will be returned to the applicant by letter and will clearly state that failure to respond within sixty days will result in dismissal of the subject application. If at the end of the sixty-day period the Bureau is still unable to process the application (whether or not it has been amended), the Bureau may dismiss the application pursuant to Section 1.934(c) of the Commission's Rules, 47 C.F.R. § 1.934(c), for failure to prosecute. See, e.g., Wireless Telecommunications Bureau Revises and Begins Phased Implementation of Its Unified Policy for Reviewing License Applications and Pleadings, *Public Notice*, 14 FCC Rcd 11182, 11186-87 (WTB 1999).

¹⁰ Petition at 1-3.

¹¹ *Id.*

¹² *Id.* at 3.

¹³ See Letter dated August 25, 2003, from FCC to Starbase Aviation Incorporated (Reference Number 2292083).

¹⁴ See 47 C.F.R. § 1.106(f).

¹⁵ See Niagara Mohawk Power Corporation, *Order on Reconsideration*, 17 FCC Rcd 19588, 19590 ¶ 3 (WTB PSCID 2002).

¹⁶ See *id.*

to dismissal as premature.¹⁷

6. In addition, Starbase filed the request at the Bureau's office in Gettysburg, Pennsylvania. 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. 20554.¹⁸ 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.¹⁹ Applications and other filings not submitted in accordance with the correct addresses or locations will be returned to the filer without processing.²⁰ A document is filed with the Commission upon its receipt at the location designated by the Commission.²¹ Accordingly, the plain language of the Commission's Rules makes clear that a petition for reconsideration submitted to the Wireless Telecommunications Bureau in Gettysburg is not properly filed.²²

7. The request was never filed with the Office of the Secretary. Therefore, we find that it was not timely filed at the proper location.²³ Moreover, Starbase did not request a waiver to file it with the Bureau's Gettysburg office, as opposed to filing it with the Office of the Secretary. Consequently, absent a waiver, we conclude that Starbase's reconsideration request is subject to dismissal as improperly filed.

8. Finally, the request has been rendered moot by the dismissal of Starbase's application. Even if the request did not have any other procedural deficiencies and we were to agree with Starbase's substantive argument that multiple unicom may be licensed at the Durango/La Plata County Airport due to the presence of an RCO at the airport, we could not provide Starbase with the relief it seeks: grant of its application.²⁴ The application was properly dismissed because of Starbase's failure to respond to the

¹⁷ As noted above, Starbase did not seek reconsideration of the dismissal of its application.

¹⁸ 47 C.F.R. § 1.106(i).

¹⁹ 47 C.F.R. § 0.401.

²⁰ *Id.*

²¹ 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).

²² *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).

²³ Even if the Petition had been filed at the correct location, moreover, it would still be subject to dismissal as late-filed. Public notice of the *Order* was provided on June 4, 2004, the day of its release. *See* 47 C.F.R. § 1.4(b)(2). Pursuant to Section 405(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 405(a), and Section 1.106(f) of the Commission's Rules, petitions for reconsideration of the *Order* could be filed only within 30 days after that release date, *i.e.*, no later than July 5, 2004. *See* 47 C.F. § 1.4(b)(2), (j). As noted above, the Petition was not filed until July 12, 2004.

²⁴ Although Starbase has not advised the Commission that it is abandoning its effort to acquire a unicom license at the Durango/La Plata County Airport, we observe that on February 25, 2004, Starbase filed a letter with the Commission expressing support for an application filed by the City of Durango for a unicom license at the airport. *See* Letter dated February 24, 2004 from Douglas L. Ashley, President, Starbase Aviation Incorporated, to Debra Dick, WTB, FCC.

Return Letter within sixty days, and that dismissal has now become final. We thus conclude that the reconsideration request is subject to dismissal as moot.²⁵

9. 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 Starbase Aviation Incorporated on June 23, 2003, IS DISMISSED.

10. 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

Scot Stone
Deputy Chief
Public Safety and Critical Infrastructure Division
Wireless Telecommunications Bureau

²⁵ If we considered the merits of the request, we would deny it. Contrary to Starbase's contention, the one unicom per airport limitation does apply to the Durango/La Plata County Airport. The limitation applies, notwithstanding the existence of the RCO at the airport, because the unicom frequency 122.8 MHz is also the published common traffic advisory frequency (CTAF) at the airport. See Review of Part 87 of the Commission's Rules Concerning the Aviation Radio Service, *Report and Order and Further Notice of Proposed Rule Making*, WT Docket No. 01-289, 18 FCC Rcd 21432, 21459 ¶ 56 n.211 (2003) (*Part 87 R&O*); see also Resort Aviation Services, Inc., *Hearing Designation Order*, WT Docket No. 02-179, 17 FCC Rcd 12816, 12816 n.2 (WTB PSPWD 2002) (citing Reorganization and Revision of Part 87 of the Rules Governing the Aviation Services, *Notice of Proposed Rule Making*, PR Docket No. 87-214, 2 FCC Rcd 4069, 4070 ¶¶ 11-12 (1987)). The purpose of Section 87.215(b) is to prevent the licensing of more than one unicom at an uncontrolled airport in the interest of public safety. See *Part 87 R&O*, 18 FCC Rcd at 21459 n.211. Accordingly, the Commission has interpreted the rule's statement that the limitation does not apply to airports that have a control tower, FAA flight service station (FSS), or RCO to mean only that the limitation does not apply to airports with a control tower, FSS, or RCO that effectively controls traffic at that airport. At airports with a unicom frequency as the published CTAF, such as the Durango/La Plata County Airport, the one unicom per airport limitation applies even if the airport has an FSS or RCO. *Id.*