

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

In the Matter of Applications of)	
)	
CRABTREE AIRCRAFT COMPANY INC.)	FCC File No. 0001278243
)	
For Renewal of Aeronautical Advisory Station)	
KGW6, Guthrie, OK)	
)	
SPIRIT WING AVIATION SERVICES LTD.)	FCC File No. 0001300645
)	
For New Aeronautical Advisory Station at)	
Guthrie, OK)	

ORDER

Adopted: November 24, 2004

Released: November 29, 2004

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

1. We have before us an application¹ filed by Crabtree Aircraft Company, Inc. (Crabtree) on April 14, 2003 to renew its license for aeronautical advisory station (unicom)² Station KGW6, authorizing the provision of service at Guthrie Municipal Airport in Guthrie, Oklahoma, and an application³ filed by Spirit Wing Aviation Services Ltd. (Spirit Wing) on May 6, 2003, for a new unicom license to serve the same airport. For the reasons set forth below, we dismiss the Spirit Wing application and order processing of the Crabtree application.

2. On October 6, 2003, the Commission adopted a *Report and Order* in WT Docket No. 01-289, in which it amended Section 87.215 of the Commission's Rules⁴ to limit eligibility for new unicom licenses to government entities or their designees.⁵ The Commission reasoned that "[t]his public service eligibility nexus will ensure that new licensees have a vested interest in public safety, and will maximize the possibility that adequate ongoing resources will be made available for operating unicom stations in a manner that promotes public safety."⁶ The Commission determined not to impose the same eligibility requirement on incumbent unicom licensees seeking renewal of their licenses, and in fact granted

¹ FCC File No. 0001278243.

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. See 47 C.F.R. § 87.213.

³ FCC File No. 0001300645.

⁴ See 47 C.F.R. § 87.215(c)-(d).

⁵ 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, 21462 ¶ 63 (2003) (*Part 87 Report and Order*).

⁶ *Id.* at 21463 ¶ 63.

incumbent unicom licensees a renewal expectancy that ensures approval of the renewal application in the absence of a showing by a petitioner to deny that the renewal applicant's performance as a unicom licensee has been inadequate.⁷ These rule amendments took effect on September 13, 2004,⁸ and apply to all unicom applications pending on and after that date.⁹

3. Spirit Wing is not a government entity or the designee of a government entity. As a consequence, it is not eligible for a new unicom license.¹⁰ We must therefore dismiss its application. This removes the mutual exclusivity that was the only impediment to the processing of Crabtree's renewal application, and we will therefore direct the Division's licensing staff to process that application.

4. 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) and 303(r), and Sections 1.934(d) and 87.215(c) of the Commission's Rules, 47 C.F.R. §§ 1.934(d) and 87.215(c), that the application, FCC File No. 0001300645, filed by Spirit Wing Aviation Services Ltd on May 6, 2003 IS DISMISSED.

5. 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) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r), and Section 87.215(b) and (e) of the Commission's Rules, 47 C.F.R. § 87.215(b) and (e), that application, FCC File No. 0001278243, filed by Crabtree Aircraft Company, Inc. on April 14, 2003, SHALL BE PROCESSED.

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

Michael J. Wilhelm
Chief, Public Safety and Critical Infrastructure Division
Wireless Telecommunications Bureau

⁷ *Id.* at 21462 ¶ 62.

⁸ *See* 69 Fed. Reg. 32877 (2004).

⁹ *See Part 87 Report and Order*, 18 FCC Rcd at 21462 n.235 (stating that "[a]pplications that are pending when our new requirements take effect and which do not meet our new eligibility criteria, will be dismissed").

¹⁰ Although Spirit Wing was eligible for a new unicom license under the rules that were in effect when it filed its application, it is well settled that the Commission may apply modified rules to applications that are pending at the time of a rule modification. Notwithstanding that it may result in an applicant's expectations being frustrated, the application of changed eligibility criteria to pending applicants does not constitute retroactive rulemaking. *See, e.g., Review of the Pioneer's Preference Rules, First Report and Order*, ET Docket No. 93-266, 9 FCC Rcd 605, 610 n.24 (1994), and cases cited therein.