

**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 ON RECONSIDERATION

Adopted: February 22, 2005**Released: February 23, 2005**

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

1. *Introduction.* On July 12, 2004, Richard L. Wright (Wright) submitted a petition for reconsideration (Petition)¹ of an *Order* by the Public Safety and Critical Infrastructure Division (Division), Wireless Telecommunications Bureau, denying Wright's petition to deny the above-captioned application filed by Pepperell Airport (Pepperell)² for a new aeronautical advisory (unicom)³ station.⁴ We dismiss the Petition for the reasons set forth below.

2. *Background.* 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 the frequency 123.05 MHz. The Pepperell application, which was filed six months after the Knox County application was granted, requested authorization to operate on that same frequency. Although Pepperell Airport had been served for many years by unicom Station KJN8, the license for that station had expired on January 18, 2002, as a result of the licensee's failure to file a timely application to renew the license. Accordingly, the application sought an authorization that would permit the restoration of licensed unicom service to Pepperell Airport.

3. In his petition to deny, Wright argued that Pepperell should be assigned a unicom frequency other than 123.05 MHz in order to avoid interference between the Pepperell Airport unicom and the Knox County Regional Airport unicom.⁵ Wright argued that the public interest would be served by assigning a

¹ Richard L. Wright Petition for Reconsideration (received July 12, 2004). The Petition is dated July 7, 2004.

² FCC File No. 0001292949 (filed Apr. 30, 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 Pepperell Airport, *Order*, 19 FCC Rcd 9939 (WTB PSCID 2004) (*Order*).

⁵ *Order*, 19 FCC Rcd at 9939-40 ¶¶ 4-6. Wright stated that Knox County had migrated to the frequency 123.05 MHz from another unicom frequency because the other frequency had become congested, and had chosen 123.05 MHz as its new frequency because it was not being used by any nearby airport at that time. Wright added that Knox County implemented unicom operation on the frequency 123.05 MHz at considerable expense, only to discover that

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different frequency to Pepperell Airport in order to better ensure that unicom communications at both airports were as interference-free as possible.⁶

4. In an *Order* released June 4, 2004, the Division denied the petition to deny because nothing in the Commission's Rules or policies precludes the licensing of a unicom on 123.05 MHz at Pepperell Airport, notwithstanding the prior licensing of the same frequency for a unicom at Knox County Regional Airport, approximately 150 miles distant.⁷ The Division explained that the Commission's Rules do not provide unicom licensees with protected service areas and do not specify minimum co-channel separation distances between unicom stations.⁸ The Division accordingly concluded that Knox County is not entitled to interference protection from the subsequently licensed co-channel unicom station at Pepperell Airport, and that Wright's allegations therefore did not provide any basis to deny the application.⁹ The Pepperell application was granted on June 10, 2004 under Call Sign WQAI961.

5. On July 12, 2004, Wright submitted his Petition seeking reconsideration of the *Order*. The Petition was submitted to the Chief of the Division. Wright principally contends that the Division erred by failing to consider the requirements of Section 87.217(a) of the Commission's Rules¹⁰; failing to appreciate that skydiving aircraft at Pepperell Airport are performing unicom functions at an altitude of up to 20,000 feet and with a transmitter power of fifty-five watts, causing co-channel interference at great distances; ignoring evidence of unauthorized operation of the Pepperell Airport unicom following expiration of the license for Station KJN8; and failing to acknowledge that Wright and other pilots researched the Commission's license database with the help of Commission staff in order to ascertain which unicom frequency would best minimize interference to unicom operations at Knox County Regional Airport.¹¹

6. *Discussion.* Section 405(a) of the Act, as implemented by Section 1.106(f) of the Commission's Rules, requires that a petition for reconsideration be filed within thirty days from the release

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its unicom transmissions were experiencing interference from communications on that same frequency at Pepperell Airport.

⁶ See *id.* at 9940 ¶ 5. Wright also contended that unicom frequencies should not be used to support high-altitude parachute operations, as he claimed the Pepperell Airport unicom was being used. *Id.*

⁷ See *id.* at 9940 ¶ 6.

⁸ *Id.* (citing Skypark Airport Association, L.L.C., *Order on Reconsideration*, 18 FCC Rcd 16306, 16307 n.16 (WTB PSPWD (2003))).

⁹ See *id.* The Division declined to address Wright's contention that the Commission should revisit its rules governing interference between unicom stations and perhaps set aside specific non-unicom channels for communications relating to high-altitude parachute operations, because Wright had offered little information to support such changes and, in any event, such suggestions should be raised in a petition for rulemaking rather than in a petition to deny. *Id.* at 9940-41 ¶ 6.

¹⁰ 47 C.F.R. § 87.217(a). During the period in which the Pepperell application was granted and Wright filed his Petition, Section 87.217(a) provided in relevant part that the Commission generally "will assign a [unicom] frequency based on maximum geographic co-channel separation. However, applicants may request a particular frequency which will be taken into consideration when the assignment is made." 47 C.F.R. § 87.217(a) (2003). The Commission subsequently amended Section 87.217(a), effective September 13, 2004, to delete the reference to "maximum geographic co-channel separation," and instead provide instead that unicom applicants must request a particular frequency, "which will be taken into consideration when the assignment is made." 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, 21499 (2003) (*Part 87 R&O*).

¹¹ Petition at 1-4.

date of the Commission's action.¹² Computation of the thirty-day period is determined in accordance with Section 1.4 of the Commission's Rules.¹³ Since the *Order* was released on June 4, 2004, the last day for filing a petition for reconsideration was Monday, July 5, 2004.

7. Wright's Petition was received by the Division on July 12, 2004. Therefore, we find that the Petition was filed late.¹⁴ The Commission has consistently held that it is without authority to extend or waive the statutory thirty-day filing period for filing petitions for reconsideration specified in Section 405(a) of the Communications Act.¹⁵ The filing requirement of Section 405(a) of the Act applies even if the petition for reconsideration is filed only one day late.¹⁶ Consequently, we conclude that the Petition must be dismissed as untimely filed.¹⁷

8. 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 Richard L. Wright on July 12, 2004, IS DISMISSED.

¹² 47 U.S.C. § 405(a); 47 C.F.R. § 1.106(f).

¹³ 47 C.F.R. § 1.4.

¹⁴ In addition, we note that the petition was filed in the wrong location. The Commission's Rules require that petitions for reconsideration be filed with the Office of the Secretary in Washington, D.C., 47 C.F.R. § 1.106(i), and warn persons filing documents with the Commission that filings submitted to the wrong location will not be processed. 47 C.F.R. § 0.401; *see also* 47 C.F.R. § 1.7 ("documents are considered to be filed with the Commission upon their receipt at the location designated by the Commission"). Thus, even if the petition were timely, it would be subject to dismissal as improperly filed. *See In the Matter of Memorandum of Agreement Between the Federal Communications Commission and Elkins Institute, Inc., Order on Reconsideration*, 14 FCC Rcd 5080, 5081 ¶ 3 (WTB 1999) (*Elkins*); *Columbia Millimeter Communications, LP, Order on Reconsideration*, 14 FCC Rcd 2782, 2784-85 ¶ 9 (WTB PSPWD 1999), *aff'd*, *Order on Reconsideration*, 15 FCC Rcd 10251 (WTB PSPWD 2000).

¹⁵ *See Reuters Ltd. v. FCC*, 781 F.2d 946, 951-52 (D.C. Cir. 1986). *See also* Petition for Amendment of the Commission's Rules to Establish First and Second Class Radiotelephone Operator Licenses, *Order*, 10 FCC Rcd 3196 (1995).

¹⁶ *See, e.g.,* Panola Broadcasting Co., *Memorandum Opinion and Order*, 68 FCC 2d 533 (1978); Metromedia, Inc., *Memorandum Opinion and Order*, 56 FCC 2d 909, 909-10 (1975); *Elkins*, 14 FCC Rcd at 5081 ¶ 3.

¹⁷ Moreover, if we were to consider the merits of the Petition, we would deny the Petition. The former language in Section 87.217(a) specifying that the Commission will assign unicom frequencies based on maximum geographic co-channel separation did not accord to any unicom licensee any right or entitlement to absolute interference protection, and is not inconsistent with a determination that unicom licensees do not have protected service areas. Indeed, the rule was amended to reflect the weight that the Commission affords to each airport's judgment regarding the most appropriate frequency for its operations. *See Part 87 R&O*, 18 FCC Rcd at 21460 ¶ 57. Furthermore, it is of no consequence that Wright selected the frequency 123.05 MHz in reliance on the absence in the Commission's licensing database of any indication that the frequency was then being used at a nearby airport. Whether or not the frequency was then in use at a nearby airport, Knox County could not reasonably interpret the Commission's Rules as precluding any future licensing of the frequency 123.05 MHz at a nearby airport after Knox County acquired its own license. The remainder of Wright's contentions are repetitive of the arguments raised in his petition to deny or, as in the case of his observation that Pepperell is a private airport, simply irrelevant. Finally, we note that the Enforcement Bureau has investigated the allegations of unauthorized unicom operation at Pepperell Airport, and that the investigation culminated in a consent decree with targets of the investigation. *See RW Shop, Inc. and Donald Mayer, Order*, 19 FCC Rcd 21956 (EB 2004). If the Pepperell Airport unicom is operated in the future in a manner contrary to Section 87.213 or any other rule, the Commission retains authority to take remedial action.

9. 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
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