

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

In the Matter of)	
)	
THOMAS H. MURPHY)	FCC File No. 0002932217
)	
Application for a New Industrial/Business Pool)	
Station in Las Vegas, Nevada)	

ORDER ON RECONSIDERATION

Adopted: January 14, 2008

Released: January 14, 2008

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction.* We have before us a Petition¹ submitted by Thomas Murphy (Murphy), seeking reconsideration of the August 1, 2007 decision by the Wireless Telecommunications Bureau, Mobility Division (Division), dismissing Murphy's application for authorization to operate a new Industrial/Business Pool station on eight pairs of airport terminal use (ATU) frequencies at McCarran International Airport (McCarran) in Las Vegas, Nevada.² For the reasons discussed below, we deny the Petition.

2. *Background.* Pursuant to Section 90.35(c)(61) of the Commission's Rules, ATU frequencies are available within ten miles of specified airports (including McCarran) only to "persons furnishing commercial air transportation service or, pursuant to § 90.179, to an entity furnishing radio communications service to persons so engaged."³ On March 2, 2007, Murphy filed the above-captioned application for authorization to operate with an effective radiated power (ERP) of one hundred watts on eight pairs of ATU frequencies at a site 2.4 miles from McCarran. The application stated that Murphy would offer radio communications service to eligible entities at the airport, and at certain off-site locations. Three airlines operating at McCarran filed petitions to deny the application.⁴

3. On August 1, 2007, the Division granted the petitions, and dismissed Murphy's application. The Division concluded that Murphy had failed to establish his eligibility for ATU frequencies because the application did not indicate that any carrier had agreed to receive service, or even expressed interest in the service.⁵ The Division also concluded that Murphy failed to justify the number of channels requested,⁶ as required by Section 90.35(e) of the Commission's Rules.⁷ In addition, the

¹ Petition for Reconsideration (filed August 29, 2007) (Petition).

² See Thomas H. Murphy, *Letter*, 22 FCC Rcd 13999 (WTB MD 2007) (*Decision*).

³ 47 C.F.R. § 90.35(c)(61)(i). These frequencies were set aside for ATU use so that aircraft at designated airports could readily communicate with each existing air terminal system. See Amendment of the Commission's Rules Concerning Airport Terminal Use Frequencies in the 450-470 MHz Band of the Private Land Mobile Radio Services, *Report and Order*, WT Docket No. 02-318, 20 FCC Rcd 1966, 1969 ¶ 6 (2005) (citing Amendment of Parts 89, 91, 93, and 95 (Formerly 10, 11, 16, and 19) of the Commission's Rules to Reduce the Separation Between the Assignable Frequencies in the 450-470 Mc/s Band, *Second Report and Order*, Docket Nos. 13847, 11959, 11991, 11994, 11 F.C.C. 2d 648, 655 ¶ 20 (1968)).

⁴ See United Airlines Petition to Deny (filed March 15, 2007); Skywest Airlines Petition to Deny (filed March 20, 2007); Southwest Airlines Petition to Deny (filed March 21, 2007).

⁵ See *Decision*, 22 FCC Rcd at 14000.

⁶ See *id.*

Division noted that Murphy's proposed operation with an ERP of one hundred watts would likely cause interference to co-channel ATU licensees operating at McCarran with an ERP of twenty-five watts or less.⁸

4. On August 28, 2007, Murphy filed the Petition seeking reconsideration of the dismissal of his application. Two airlines operating at McCarran filed oppositions to the Petition.⁹

5. *Discussion.* Reconsideration is appropriate only where the petitioner either demonstrates a material error or omission in the underlying order or raises additional facts not known or not existing until after the petitioner's last opportunity to present such matters.¹⁰ The Petition filed by Murphy fails to satisfy this requirement.

6. We note first that the Petition does not at all address the Division's conclusion that the application failed to justify the number of channels requested, as required by Section 90.35(e). With respect to Murphy's eligibility for ATU frequencies, the Petition inconsistently asserts both that the application substantiated Murphy's eligibility and that the Division should have permitted Murphy to supplement the application to substantiate his eligibility.¹¹ Neither assertion is persuasive. Murphy has been afforded ample opportunity to demonstrate his eligibility in the application, the opposition to the petitions to deny the application, and the Petition. While more than forty airlines and more than thirty Aviation Support Service companies operate at McCarran,¹² Murphy has yet to provide any evidence that any have expressed interest in utilizing his proposed service. Returning the application for supplementation would serve no apparent purpose.

7. Finally, we note that the Petition fails to adequately address the issue of anticipated interference to existing ATU licensees at McCarran, stating only that any technical concerns should have been directed to Murphy's frequency coordinator.¹³ We remind Murphy that successful coordination of an application by a certified frequency coordinator does not guarantee the grant of a license.¹⁴ Moreover, Section 90.173(b) of the Commission's Rules explicitly requires applicants (not coordinators) and licensees to cooperate in the selection and use of frequencies in order to reduce interference.¹⁵

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

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⁷ 47 C.F.R. § 90.35(e).

⁸ See *Decision*, 22 FCC Rcd at 14000.

⁹ See Opposition of United Airlines, Inc. to Petition for Reconsideration (filed September 24, 2007); Opposition of SkyWest Airlines to Petition for Reconsideration (filed September 24, 2007). Because Murphy failed to serve the Petition on all parties to the proceeding, in violation of Section 1.106(f) of the Commission's Rules, 47 C.F.R. § 1.106(f), the Division notified the airlines that had filed petitions to deny Murphy's application of the filing of the Petition, and granted extensions to permit the filing of oppositions more than ten days after the filing of the Petition, see 47 C.F.R. § 1.106(g).

¹⁰ See *WWIZ, Inc.*, 37 FCC 685, 686 ¶ 2 (1964), *aff'd sub. nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966).

¹¹ See Petition at 1-2.

¹² Data available at <http://www.mccarran.com/doingbusiness/Aviation.html>.

¹³ See Petition at 2.

¹⁴ See 47 C.F.R. § 90.175(h) (stating that any recommendation by a frequency coordinator "is advisory in character and is not an assurance that the Commission will grant a license for operation on that frequency").

¹⁵ See 47 C.F.R. § 90.173(b).

Commission's Rules, 47 C.F.R. § 1.106, the petition for reconsideration submitted by Thomas H. Murphy on August 29, 2007 IS DENIED.

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
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau