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

In the Matter of	)
	)
FEDERAL AVIATION ADMINISTRATION	)
	)
Request Regarding Aeronautical Enroute Stations and Air Traffic Control	)

ORDER

Adopted: June 15, 2018 **Released: June 15, 2018**

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

1. *Introduction*. The Federal Aviation Administration (FAA) has requested that we confirm that the Commission's part 87 rules permit aeronautical enroute stations to transmit both aircraft operational control (AOC) and air traffic control (ATC) communications in the frequency band 136.4875-137.000 MHz, provided that priority is accorded to ATC communications.[1] For reasons discussed below, we grant the request.

2. *Background*. Section 87.5 of the Commission's rules defines an aeronautical enroute station an "[a]n aeronautical station which communicates with aircraft stations in flight status or with other aeronautical enroute stations."[2] Section 87.261(a) of the rules provides, "Aeronautical enroute stations provide operational control communications to aircraft along domestic or international air routes. Operational control communications include the safe, efficient, and economical operation of aircraft, such as aircraft performance, fuel, weather, position reports, essential services, and supplies. Public correspondence is prohibited."[3] The part 87 table of frequencies reflects that 136.4875-137.000 MHz frequencies are assignable to aeronautical enroute stations.[4]

3. The frequency table also reflects that certain frequencies, including the 136.000-136.475 MHz band, may be used for ATC communications, but the listing for the 136.4875-137.000 MHz band frequencies does not expressly reference ATC.[5] ATC communications concern "the safe, orderly, and expeditious flow of air traffic."[6] They are intended to ensure the adequate separation of aircraft[7] and include

[1] Letter from Lorelei Peter, Assistant Chief Counsel for Regulations, FAA, to Scot Stone, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau, Federal Communications Commission (Aug. 21, 2017) (Request).

[2] 47 CFR § 87.5. Airlines and other companies that maintain fleets of aircraft use these stations to satisfy certain FAA requirements; large trunk air carriers use aeronautical enroute stations to maintain reliable communications between each aircraft and the appropriate dispatch office, while small airlines and large commercial aircraft operations use the stations to maintain flight-following systems. *See Review of part 87 of the Commission's Rules Concerning the Aviation Radio Service*, Third Report and Order, 25 FCC Rcd 7610, 7613, para. 4 & n.17 (2010).

[3] 47 CFR § 87.261(a).

[4] *See* 47 CFR § 87.173(b); *see also* 47 CFR § 87.263(a), (c).

[5] *See* 47 CFR § 87.173(b).

[6] 14 CFR § 1.1.

[7] *See Review of Part 87 of the Commission's Rules Concerning the Aviation Radio Service*, Notice of Proposed Rule Making, 16 FCC Rcd 19005, 19010, para. 12 & n.25 (2001).

aircraft routing information and departure/landing clearances.[8] Thus, ATC communications, like AOC communications, relate to aviation safety.

4. The FAA requests that we confirm its understanding that the part 87 rules permit aeronautical enroute stations to transmit both AOC and ATC communications in the 136.4875-137.000 MHz band.[9] The FAA is currently implementing the Next Generation Air Transportation System (NextGen) program, one component of which is Data Communications (Data Comm), which will augment the existing analog voice system for aviation communications with a digital communications system to offload repetitive and routine communications from the voice frequencies and to transmit complex instructions for which voice transmission would be cumbersome and time-consuming.[10] Data Comm will use aeronautical enroute stations for transmission of digital data that includes both ATC and AOC traffic, with ATC automatically accorded priority.[11]

5. The FAA interprets section 87.261(a) as permitting ATC communications by aeronautical enroute stations, because the rule prohibits only public correspondence communications.[12] Such an interpretation, it adds, is consistent with the international approach adopted by the International Civil Aviation Organization, which allows channels used for ATC communications also to transmit AOC communications, provided that the AOC transmissions do not interfere with ATC and no other channels are available for AOC.[13] The FAA also states that "there has been a decades-long practice of aeronautical enroute stations transmitting both AOC and ATC communications…."[14] It requests confirmation of its understanding in order to facilitate the implementation of Data Comm operations.[15]

6. *Discussion*. We agree that the part 87 rules permit aeronautical enroute stations to transmit ATC as well as AOC communications in the 136.4875-137.000 MHz band. Indeed, the Commission stated when it adopted what is now section 87.261 that aeronautical enroute stations are authorized to transmit ATC communications, for "[w]e consider such uses (as we have in the past) to be related to the safe operation of aircraft as provided for in the subject rule."[16] The Commission explained that while the description of authorized aeronautical enroute station communications in section 87.261(a) "is more specific and provides examples, the section is not intended to be all-inclusive."[17] In addition, nothing in the part 87 definition of aeronautical enroute service stations suggests any limitation on their provision of ATC communications. As noted above, section 87.5 broadly defines an aeronautical enroute station as "[a]n aeronautical station which communicates with aircraft stations in flight status or with other aeronautical

[8] Request at 2.

[9] *Id*. at 1. The request is supported by Aviation Spectrum Resources, Inc. (ASRI), which holds the majority of aeronautical enroute station licenses in the United States and represents that it speaks for the aviation industry on this issue. Letter from Kris E. Hutchinson, President, and Andrew C. Roy, Director of Engineering, Aviation Spectrum Resources, Inc., to Scot Stone, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau, Federal Communications Commission (Aug. 31, 2017) (ASRI Letter).

[10] Request at 1.

[11] *Id*. The data is expected to consist of approximately 20% ATC traffic and 80% AOC traffic. *Id*.

[12] *Id*. at 2.

[13] *Id*. (citing Convention of the International Civil Aviation Organization, Annex 10, para. 5.1.8.6).

[14] *Id*. The FAA says that aeronautical enroute stations providing AOC communications are also used to transmit ATC data messages such as departure and pre-departure clearances, oceanic clearances, Controller-to-Pilot Data Link Communications, and Contract-Based Automatic Dependent Surveillance service. *Id*.

[15] *Id.* at 3; *see also* ASRI Letter at 1.

[16] *See Amendment of part 87 to clarify the aeronautical enroute station rules and provide two additional frequencies for use by small aircraft operating agencies*, Report and Order, 87 FCC 2d 382, 391, para. 32 (1981).

[17] *See id.* The prior version of the rule was more general. *See* 47 CFR § 87.291(a) (1980) ("Aeronautical en route stations shall provide all necessary non-public service, HF and VHF, of the particular class authorized ….").

enroute stations." That definition, standing alone, clearly encompasses ATC communications, and the language in section 87.261 stating that aeronautical enroute stations provide AOC communications does not state that they must do so exclusively. Moreover, as noted by FAA, no part 87 rule prohibits aeronautical enroute stations from transmitting ATC communications. Elsewhere in part 87, where the Commission has intended to limit or prohibit ATC communications by a class of aeronautical station, it has done so expressly.[18]

7. *Conclusion*. After careful consideration of the factors discussed above, we conclude that the language of the relevant rules and the cited precedent support the view that the part 87 rules permit aeronautical enroute stations to provide ATC as well as AOC communications in the 136.4875-137.000 MHz band. We therefore grant the FAA's request that we confirm that aeronautical enroute stations may transmit both AOC and ATC communications in the band, provided that priority is accorded to ATC communications.[19]

8. Accordingly, IT IS ORDERED that the request of the Federal Aviation Administration dated August 21, 2017, IS GRANTED.

9. This action is taken under delegated authority pursuant to sections 0.131 and 0.331 of the Commission's Rules, 47 CFR §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

[18] *See* 47 CFR §§ 87.213(c) (prohibiting aeronautical advisory (unicom) stations from transmitting ATC communications, except in limited circumstances and then only with respect to certain information), 87.237(b) (prohibiting aeronautical multicom stations from transmitting ATC communications, except in similar circumstances and with similar limitations), 87.323(c) (prohibiting aviation support stations from transmitting ATC communications).

[19] Since the Request includes a proviso that priority shall be accorded to ATC communications, and the FAA and ASRI both represent that such priority will be provided, we incorporate that proviso into our ruling that such operations are permitted. We do not reach the question of whether the part 87 rules mandate such priority. To grant the Request, it is only necessary to determine that the part 87 rules do not prohibit it.