

**UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC**

**R.L.S. Rental Company, Inc.,
d/b/a Mizzou Aviation**

COMPLAINANT

v.

City of Joplin, Missouri,

RESPONDENT



Docket No. 16-13-06

DIRECTOR'S DETERMINATION

I. INTRODUCTION

This matter is before the Federal Aviation Administration (FAA) based on a complaint filed under Title 14 of the Code of Federal Regulations (CFR) Part 16¹ against the City of Joplin Missouri (City/Respondent) regarding its management of the Joplin Regional Airport (Airport), a federally obligated airport, owned and operated by the City.

R.L.S. Rental Company, Inc., d/b/a Mizzou Aviation (RLS/Complainant) filed a complaint alleging the City violated its federal obligations imposed by 49 United States Code (U.S.C.) § 40103(e) and § 47107(a)(1), and FAA Grant Assurance 22, *Economic Nondiscrimination*, and Grant Assurance 23, *Exclusive Rights*. The Complainant contends the City failed to equally enforce the Airport's minimum standards for Fixed Base Operators (FBO),² and alleges the City is in violation of its federal grant obligations by allowing a competitor, Alpha Air Center, LLC (Alpha Air) to emerge and continue to operate, despite not meeting minimum standards.³

¹ Enforcement procedures regarding airport compliance matters may be found at FAA Rules of Practice for Federally Assisted Airport Enforcement Proceedings (14 CFR Part 16). These enforcement procedures were published in the Federal Register (61 FR 53998, October 16, 1996) and became effective on December 16, 1996. These enforcement procedures were updated on September 12, 2013, effective November 12, 2013 (See 78 FR 56135), however, as this complaint was filed before the effective date of the updated Part 16 rules, it will be adjudicated under the previously published rules.

² A fixed-base operator (FBO) is a commercial entity providing aeronautical services such as fueling, maintenance, storage, ground and flight instruction, etc., to the public.

³ Exhibit 1, Item 1, page 2, para 4.

Regarding the allegations presented in this complaint, under the specific circumstances at the Airport as discussed below and based on the evidence of record in this proceeding, the Director finds the City is currently in compliance with Grant Assurance 22, *Economic Nondiscrimination*, and Grant Assurance 23, *Exclusive Rights*. The Director's decision in this matter is based on applicable Federal law and FAA policy, as well as the Director's review of the pleadings and supporting documentation submitted by the parties, which comprises the administrative record contained in the attached FAA Exhibits 1-10.

II. PARTIES

Airport

The Joplin Regional Airport (JLN/Airport) is a public-use, non-hub commercial service airport owned and operated by the City of Joplin, Missouri (City, or Respondent). The 970-acre airport is located four miles north of the City.⁴ The Airport has 23,329 annual enplanements,⁵ 26,822 annual operations, and 113 based aircraft.⁶ The development of the Airport was financed, in part, with FAA Airport and Improvement Program (AIP) funding, authorized by the *Airport and Airway Improvement Act of 1982*, as amended, 49 U.S.C. § 47101, et seq.⁷ Under the provisions of this Act, the sponsor is obligated to comply with the FAA sponsor grant assurances and related Federal law, 49 U.S.C. § 47107. Since 1983, the City has accepted 31 grants totaling \$33,344,336, for various improvements at the Airport. The City received its last Federal grant in 2015 for \$457,399 to construct a taxiway.⁸

Complainant

R.L.S. Rental Company, Inc., d/b/a Mizzou Aviation (RLS), is an existing FBO at JLN. The business has been in existence since 1961 and provides aircraft fueling, air charter, aircraft maintenance, and flight training.⁹

III. BACKGROUND AND PROCEDURAL HISTORY

A. Background

Alpha Air Center, LLC

While not a party to the formal complaint, Alpha Air Center, LLC (Alpha Air) is another FBO operating at the Airport since 2011, and the primary competitor to the Complainant. Alpha Air is involved in this complaint because Complainant contends that Alpha Air does not meet the

⁴ Exhibit 9, Item 1.

⁵ Passenger Boarding (Enplanement) and All-Cargo Data for U.S. Airports 2013 at http://www.faa.gov/airports/planning_capacity/passenger_all_cargo_stats/passenger/index.cfm?year=2013.

⁶ Exhibit 9, Item 1.

⁷ The Airport Improvement Program (AIP) provides grants to public agencies — and, in some cases, to private owners and entities — for the planning and development of public-use airports that are included in the National Plan of Integrated Airport Systems (NPIAS). Joplin Regional Airport (JLN) is in the NPIAS.

⁸ Exhibit 9, Item 2.

⁹ Exhibit 1, Item 1, page 1, para 1.

Airport's existing minimum standards¹⁰ set forth by the City's *Airport Use and Operating Agreement*.¹¹

The Complainant (RLS) has operated as a full service FBO at JLN continuously since 1961.¹² In 2009, Jeff Asbell, a private hangar tenant, formed Alpha Air for the purpose of operating an FBO at the Airport.¹³ Shortly after learning of Alpha Air's intentions to operate a second FBO at the Airport, RLS voiced concerns that "it would be unfair and discriminatory to allow Alpha Air to sell fuel at the Airport without a basis to evaluate whether Alpha Air was qualified to do so."¹⁴ RLS states that it urged the City to create minimum standards for commercial businesses selling fuel at the Airport. Complainant (RLS) also contended that it would be unjustly discriminatory for the City to allow a new FBO to primarily sell fuel without being required to offer the other services required of the incumbent FBO.¹⁵

On November 22, 2010, RLS filed a 14 CFR Part 13 informal complaint (Exhibit 10, Item 7)¹⁶ with Missouri Department of Transportation (MoDOT), alleging economic discrimination by the City.¹⁷ RLS stated that the informal complaint was a result of inadequate responses by the City regarding the development and implementation of minimum standards at JLN.¹⁸

On October 17, 2011, Joplin City Council voted to approve Alpha Air to operate as an FBO at the airport.¹⁹ According to the record, on October 21, 2011, RLS filed a second 14 CFR Part 13 informal complaint with MoDOT alleging that the submission provided by Alpha Air is an incomplete proposal and does not follow airport sponsor guidelines.²⁰

On November 1, 2011, in an email directed to the Airport Advisory Board, the Joplin Regional Airport Manager stated that all FBO applicants would be required to meet the minimum standards.²¹ Additionally, the Airport Manager requested that both the Complainant and Alpha

¹⁰ Exhibit 1, Item 1, page 2, para 4.

¹¹ Exhibit 1, Item 1, Exhibit 6.

¹² Exhibit 1, Item 1, para 1, para 53.

¹³ Exhibit 1, Item 1, para 33.

¹⁴ Exhibit 1, Item 1, para 34.

¹⁵ Exhibit 1, Item 1, para 34.

¹⁶ Under 14 CFR § 13.1:

(a) Any person who knows of a violation of the Federal Aviation Act of 1958, as amended, the Hazardous Materials Transportation Act relating to the transportation or shipment by air of hazardous materials, the Airport and Airway Development Act of 1970, the Airport and Airway Improvement Act of 1982, the Airport and Airway Improvement Act of 1982 as amended by the Airport and Airway Safety and Capacity Expansion Act of 1987, or any rule, regulation, or order issued thereunder, should report it to appropriate personnel of any FAA regional or district office.

(b) Each report made under this section, together with any other information the FAA may have that is relevant to the matter reported, will be reviewed by FAA personnel to determine the nature and type of any additional investigation or enforcement action the FAA will take. [].

¹⁷ Exhibit 10, Item, 7, Exhibit 3, Item 1, Exhibit A, and Exhibit 10, Item 6. Because Missouri is a State Block Grant state, the FAA has delegated to MoDOT (Missouri Department of Transportation) several oversight functions, including the handling of informal complaints under 14 CFR Part 13.

¹⁸ Exhibit 10, Item, 7, exhibit 1, Item 1, para 35.

¹⁹ Exhibit 1, Item 1, para 37.

²⁰ Exhibit 10, Item 8

²¹ Exhibit 1, Item 1, Para 40 and Exhibit 1, Item 1, Exhibit 3.

Air complete an “FBO Compliance Form,” a questionnaire produced by the City to ensure that all FBOs would meet the newly drafted minimum standards.²² RLS claims to have submitted these documents sometime in November 2011.²³ In a letter dated January 19, 2012, the Airport acknowledges that Alpha Air had in fact submitted these documents.²⁴

On December 7, 2011, MoDOT responded to the October 21, 2011 Part 13 Complaint, providing its position regarding the open informal complaints. In summary, the MoDOT letter advised that the existing Airport Use and Operating Agreement contained the minimum standards for any entrant desiring to become an FBO. The letter further stated that as long as an FBO enters into this agreement, the MoDOT “does not see a further need to pursue this issue.”²⁵ On January 19, 2012, the Airport Manager issued a “conditional” approval to Alpha Air to provide FBO services on the airport.²⁶

On February 4, 2012, Alpha Air filed a *Pre-Application Statement of Intent* (PASI) with the Kansas City Flight Standards District Office (FSDO) for a 14 CFR Part 135 Air Carrier Certificate.²⁷ The PASI documentation included a note by the FSDO stating that Alpha Air intended to apply for an approved pilot school certificate at a later date.²⁸

On April 16, 2012, the Kansas City FSDO notified Alpha Air that due to budgetary issues, the air carrier certificate application was on hold and could not be considered prior to October 2012.²⁹ On January 9, 2013, in a follow-up action to a pre-application meeting from January 8, 2013, the FSDO directed Alpha Air to submit all documents necessary to proceed with the certification process.³⁰

It would appear that between January 2013 and May 2013, Alpha Air had submitted the required air carrier certification documentation to the Kansas City FSDO. This is because as part of an email exchange on May 16, 2013, Alpha Air had asked the FSDO to provide a follow-up to a previous phone conversation, for the purpose of documenting the existing status of the air carrier application.³¹ This forwarded email, was provided to the City by Alpha Air on July 16, 2013, in response to a request for a status update.³²

On July 19, 2013, Alpha Air forwarded a response from the National Site Manager of PSI Services, LLC (a contractor supporting FAA airman testing activities) to the City. This correspondence indicated that PSI was unable to open any new FAA test sites due to the government sequestration event occurring at the time.³³ Even though the minimum standards did

²² Exhibit 1, Item 1, Exhibit 1 and 2.

²³ Exhibit 1, Item 1, Para 42.

²⁴ Exhibit 3, Item 1, Exhibit D

²⁵ Exhibit 1, Item 1, Exhibit 4.

²⁶ Exhibit 3, Item 1, Exhibit D.

²⁷ Exhibit 5, Item 1, Exhibit 2.

²⁸ Exhibit 5, Item 1, Exhibit 1.

²⁹ Exhibit 3, Item 1, Exhibit B, page 3.

³⁰ Exhibit 3, Item 1, Exhibit B, page 4.

³¹ Exhibit 3, Item 1, Exhibit B, page 7.

³² Exhibit 3, Item 1, Exhibit B, page 5.

³³ Exhibit 3, Item 1, Exhibit B, page 11.

not require an FBO applicant to offer FAA airmen testing, Alpha Air claimed it provided this information as evidence that it was attempting to establish its flight training department.³⁴

On July 11, 2013, RLS emailed the City alleging that the City was in violation of its Federal obligations.³⁵ In its response to RLS on August 6, 2013, the City notified RLS that it had “determined that Alpha is, in good faith, [was] trying to obtain the required certificates, but is working on the FAA’s schedule. The holdup seems to be from the FAA. As a result, the City does not, at this time, think that it is being discriminatory to [RLS].”³⁶

On September 7, 2013, the then president of Alpha Air was killed in an accident.³⁷ On September 18, 2013, RLS filed the 14 CFR Part 16 Formal Complaint.³⁸ Alpha Air indicates that on November 4, 2013, they met with the Kansas City FSDO regarding the 14 CFR Part 135 air carrier certificate.³⁹ During this meeting Alpha Air informed the FAA that as a result of the president’s death, they were now going to utilize the former president’s personal aircraft on their requested Part 135 certificate.⁴⁰ On May 19, 2014, the Kansas City FSDO issued Alpha Air an Air Carrier Certificate (FAA Form 8430-18) for its Part 135 operations.⁴¹

On July 25, 2014, the Kansas City FSDO sent a letter to Alpha Air acknowledging receipt of their July 7, 2014, application for Pilot School Certification (under 14 CFR Part 141).⁴²

On November 25, 2014, the application was moved internally in the FSDO from the wait-list to the pre-application phase, and an inquiry on January 8, 2015, revealed that the application was still under review by the FSDO.⁴³ On June 12, 2015, Alpha Air received approval for its Part 141 Pilot School certificate (for private pilot certification), from the Kansas City FSDO. The certificate expires on June 30, 2017.⁴⁴

B. Procedural History

On September 19, 2013, FAA received the formal complaint (Complaint) filed under 14 CFR Part 16.⁴⁵

On October 22, 2013, FAA docketed the Complaint as FAA Docket No. 16-13-06.⁴⁶

On November 13, 2013, FAA received *Respondent’s Answer to Complainant’s Complaint*.⁴⁷

³⁴ Exhibit 3, Item 1, Exhibit B, email dated July 19, 2013.

³⁵ This email (Exhibit 3, Item 1, Exhibit B, page 14) references “a letter,” purported to have been sent to the FAA. The parties did not submit this letter in their pleadings, so it is not included in the administrative record of the formal complaint.

³⁶ Exhibit 3, Item 1, Exhibit B, page 14.

³⁷ Exhibit 1, Item 1, para 50.

³⁸ Exhibit 2, Item 1.

³⁹ Exhibit 6, Item 1, Exhibit B

⁴⁰ Exhibit 6, Item 1, Exhibit B.

⁴¹ Exhibit 7, Item 1, Exhibit A.

⁴² Exhibit 7, Item 2, Exhibit A and Exhibit 10, Item 9.

⁴³ Exhibit 9, Item 3.

⁴⁴ Exhibit 10, Item 7, Exhibit 9, Item 4.

⁴⁵ Exhibit 1, Item 1.

⁴⁶ Exhibit 2, Item 1.

On November 19, 2013, FAA received *Complainant's Motion for Extension of Time to Submit Reply*, dated November 18, 2013.⁴⁸

On December 6, 2013, FAA received *Complainant's Reply and Opposition to Motion to Dismiss*, dated December 5, 2013.⁴⁹

On April 14, 2014, FAA received *Complainant's Motion to Admit Material Facts*, dated April 9, 2014.⁵⁰

On May 2, 2014, FAA issued a *Notice of Extension of Time for issuance of Director's Determination* to August 1, 2014.⁵¹

On June 23, 2014, FAA received *Respondent's Motion to Supplement*, dated June 16, 2014.⁵²

On July 21, 2014, FAA issued a *Notice of Extension of Time for issuance of Director's Determination* to October 31, 2014.⁵³

On August 12, 2014, FAA received *Respondent's Motion to Supplement*, dated August 4, 2014.⁵⁴

On November 13, 2014, FAA issued a *Notice of Extension of Time for issuance of Director's Determination* to February 13, 2015.⁵⁵

On February 18, 2015, FAA issued a *Notice of Extension of Time for issuance of Director's Determination* to April 14, 2015.⁵⁶

On March 11, 2015, FAA issued a *Notice of Extension of Time for issuance of Director's Determination* to April 14, 2015.⁵⁷

On April 17, 2015, FAA issued a *Notice of Extension of Time for issuance of Director's Determination* to June 15, 2015.⁵⁸

On July 30, 2015, FAA issued a *Notice of Extension of Time for issuance of Director's Determination* to September 30, 2015.⁵⁹

⁴⁷ Exhibit 3, Item 1.

⁴⁸ Exhibit 4, Item 1.

⁴⁹ Exhibit 5, Item 1.

⁵⁰ Exhibit 6, Item 1.

⁵¹ Exhibit 8, Item 1.

⁵² Exhibit 7, Item 1.

⁵³ Exhibit 8, Item 2.

⁵⁴ Exhibit 7, Item 2.

⁵⁵ Exhibit 8, Item 3.

⁵⁶ Exhibit 8, Item 4.

⁵⁷ Exhibit 8, Item 5, Document appears to be duplicative error to Exhibit 8, Item 4.

⁵⁸ Exhibit 8, Item 6.

⁵⁹ Exhibit 8, Item 7.

On September 28, 2015, FAA issued a *Notice of Extension of Time for issuance of Director's Determination* to November 30, 2015.⁶⁰

On December 3, 2015, FAA issued a *Notice of Extension of Time for issuance of Director's Determination* to January 14, 2016.⁶¹

On February 3, 2015, FAA issued a *Notice of Extension of Time for issuance of Director's Determination* to April 1, 2016.⁶²

On July 15, 2015, FAA received *Respondent's Second Motion to Supplement*, dated, July 6, 2015.⁶³

On April 4, 2016, FAA issued a *Notice of Extension of Time for issuance of Director's Determination* to May 28, 2016.⁶⁴

Upon review of the allegations and the relevant airport-specific circumstances summarized above, the Director has determined that the following issues require analysis to provide a complete review of the Respondent's compliance with applicable Federal law and policy:

- **Issue 1 - Whether the City's actions concerning Alpha Air's FBO operations at JLN, including the manner in which it applied minimum standards, are in violation of Grant Assurance 22, *Economic Nondiscrimination*.**
- **Issue 2 - Whether the City's actions concerning Alpha Air's FBO operations at JLN, including the manner in which it applied minimum standards, granted an exclusive right to Alpha Air in violation of Grant Assurance 23, *Exclusive Rights*.**

IV. APPLICABLE FEDERAL LAW AND FAA POLICY

A. FAA Enforcement Responsibilities

The Federal Aviation Act of 1958, as amended, 49 U.S.C. § 40101, et seq., assigns the FAA Administrator broad responsibilities for the regulation of air commerce in the interests of safety, security, and development of civil aeronautics. The Federal role in encouraging and developing civil aviation has been augmented by various legislative actions, which authorize programs for providing funds and other assistance to local communities for the development of airport facilities. In each such program, the airport sponsor assumes certain obligations, either by contract or by restrictive covenants in property deeds and conveyance instruments, to maintain and operate its airport facilities safely, efficiently, and in accordance with specified conditions.

Commitments assumed by airport sponsors in property conveyance or grant agreements are important factors in maintaining a high degree of safety and efficiency in airport design,

⁶⁰ Exhibit 8, Item 8.

⁶¹ Exhibit 8, Item 9.

⁶² Exhibit 8, Item 10.

⁶³ Exhibit 7, Item 3.

⁶⁴ Exhibit 8, Item 11.

construction, operation, and maintenance, as well as ensuring the public reasonable access to the airport. Pursuant to 49 U.S.C. § 47122, the FAA has a statutory mandate to ensure that airport owners comply with their grant assurances.

B. FAA Airport Compliance Program

The FAA discharges its responsibility for ensuring that airport sponsors comply with their Federal obligations through its Airport Compliance Program. Sponsor obligations are the basis for the FAA's airport compliance effort. The airport owner accepts these obligations when receiving Federal grant funds or when accepting the transfer of Federal property for airport purposes. The FAA incorporates these obligations in grant agreements and instruments of conveyance to protect the public's interest in civil aviation and to ensure compliance with Federal laws. The FAA designed the Airport Compliance Program to ensure the availability of a national system of safe and properly maintained public-use airports that airport sponsors operate in a manner consistent with their Federal obligations and the public's interest in civil aviation. The Airport Compliance Program does not control or direct the operation of airports. Rather, it monitors the administration of valuable rights, which airport sponsors pledge to the people of the United States in exchange for monetary grants and donations of Federal property, to ensure that airport sponsors serve the public interest.

FAA Order 5190.6B, *FAA Airport Compliance Manual*, September 30, 2009, (Order) sets forth policies and procedures for the FAA Airport Compliance Program. The Order establishes the policies and procedures for FAA personnel to follow in carrying out the FAA's responsibilities for ensuring airport compliance. It provides guidance for FAA personnel in interpreting and administering the various continuing commitments airport owners make to the United States as a condition for the grant of Federal funds or the conveyance of Federal property for airport purposes. The Order, *inter alia*, analyzes the various obligations set forth in the standard airport sponsor assurances, addresses the application of the assurances in the operation of public-use airports, and facilitates interpretation of the assurances by FAA personnel.

Therefore, in addressing allegations of noncompliance, the FAA will make a determination as to whether an airport sponsor is *currently* in compliance with the applicable Federal obligations. Consequently, "the FAA will consider the successful action by the airport to cure any alleged or potential past violation of applicable Federal obligation to be grounds for dismissal of such allegations."⁶⁵

C. Statutes, Sponsor Assurances, and Relevant Policies

As a condition precedent to providing airport development assistance under the Airport and Airway Improvement Act of 1982 (AAIA), codified at Title 49 U.S.C. § 47101, et seq., the Secretary of Transportation receives certain assurances from the airport sponsor. The AAIA, 49 U.S.C. § 47101, et seq., sets forth assurances to which an airport sponsor receiving Federal financial assistance must agree as a condition precedent to receipt of such assistance. These sponsorship requirements are included in every airport improvement program (AIP) grant

⁶⁵ *Wilson Air Center v. Memphis and Shelby County Airport Authority*, FAA Final Agency Decision and Order, Docket No. 16-99-10, (August 30, 2001) page 5.

agreement. Upon acceptance of an AIP grant by an airport sponsor, the assurances become a binding obligation between the airport sponsor and the Federal government. The following grant assurances apply to the specific circumstances of this complaint:

D. Assurance 22, Economic Nondiscrimination

The owner of any airport developed with Federal grant assistance is required to operate the airport for the use and benefit of the public and to make it available to all types, kinds, and classes of aeronautical activity on fair and reasonable terms, and without unjust discrimination. Federal Grant Assurance 22, *Economic Nondiscrimination* deals with both the reasonableness of airport access and the prohibition of adopting unjustly discriminatory conditions as a potential for limiting access. Grant Assurance 22 of the prescribed sponsor assurances implements the provisions of 49 U.S.C. § 47107(a) (1) through (6), and requires, in pertinent part:

- a) [The airport owner or sponsor] will make the airport available as an airport for public use on reasonable terms, and without unjust discrimination, to all types, kinds, and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.⁶⁶
- b) In any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or to engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to 1) furnish said services on a reasonable, and not unjustly discriminatory basis to all users thereof, and 2) charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.⁶⁷
- c) Each fixed-base operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-base operators making the same or similar uses of such airport and using the same or similar facilities.⁶⁸
- d) Each air carrier using such airport shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such air carriers that make similar use of such airport and use similar facilities, subject to reasonable classifications such as tenants or non-tenants and signatory carriers and non-signatory carriers. Classification or status as tenant or signatory shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on air carriers in such classification or status.⁶⁹

⁶⁶ Assurance 22(a).

⁶⁷ Assurance 22(b).

⁶⁸ Assurance 22(c).

⁶⁹ Assurance 22(e).

- e) [The airport sponsor] will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees (including, but not limited to maintenance, repair and fueling) that it may choose to perform.⁷⁰
- f) In the event the sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by commercial aeronautical service providers authorized by the sponsor under these provisions.⁷¹
- g) [The airport sponsor] may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.⁷²
- h) [The airport sponsor] may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.”⁷³

Order 5190.6B describes the sponsor’s responsibilities under Grant Assurance 22 assumed by the owners or sponsor of public use airports developed with Federal assistance. Among these is the obligation to treat in a uniform manner those users making the same or similar use of the airport and to make all airport facilities and services available on reasonable terms without unjust discrimination.⁷⁴

E. Assurance 23, Exclusive Rights

Grant Assurance 23, *Exclusive Rights*, (Assurance 23) implements the provisions of 49 U.S.C. §§ 40103(e) and 47107(a) (4), and states, in pertinent part, that the owner or sponsor of a federally obligated airport:

“...will permit no exclusive right for the use of the airport by any persons providing, or intending to provide, aeronautical services to the public.”

“... will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities...”

“...will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under Title 49 United States Code.”

In Order 5190.6B, the FAA discusses its exclusive rights policy and broadly identifies aeronautical activities as subject to the statutory prohibition against exclusive rights. While public-use airports may impose qualifications and minimum standards upon those who engage in

⁷⁰ Assurance 22(f).

⁷¹ Assurance 22(g).

⁷² Assurance 22(h).

⁷³ Assurance 22(i).

⁷⁴ Order 5190.6B, Chapter 9.1.

aeronautical activities, FAA has taken the position that the application of any unreasonable requirement or any standard that is applied in an unjustly discriminatory manner may constitute the constructive grant of an exclusive right. Courts have found the grant of an exclusive right where a significant burden has been placed on one competitor that is not placed on another.⁷⁵ An owner or sponsor is under no obligation, however, to permit aircraft owners to introduce onto the airport equipment, personnel, or practices which would be unsafe, unsightly, detrimental to the public welfare, or which would affect the efficient use of airport facilities.⁷⁶

Leasing all available airport land and improvements planned for aeronautical activities to one enterprise will be construed as evidence of intent to exclude others unless it can be demonstrated that the entire leased area is presently required and will be immediately used to conduct the activities contemplated by the lease.⁷⁷ FAA Order 5190.6B provides additional guidance on the application of the statutory prohibition against exclusive rights and FAA policy regarding exclusive rights at public-use airports.⁷⁸

F. Minimum Standards

Advisory Circular (AC) 150/5190-7, *Minimum Standards for Commercial Aeronautical Activities* (August 28, 2006) provides basic information pertaining to the FAA's recommendations on commercial minimum standards and related policies. Although minimum standards are optional, the FAA highly recommends their use and implementation as a means to minimize the potential for violations of Federal obligations at federally obligated airports. In accordance with U.S.C. § 47101, et seq., and the AIP Sponsor Assurances, the owner or operator of any airport that has been developed or improved with Federal grant assistance or conveyances of Federal property assistance is required to operate the airport for the use and benefit of the public and to make it available for all types, kinds, and classes of aeronautical activity.

These Federal obligations involve several distinct requirements. Most important is that the airport and its facilities must be available for public use as an airport.⁷⁹ The FAA suggests that airport sponsors establish reasonable minimum standards that are relevant to the proposed aeronautical activity with the goal of protecting the level and quality of services offered to the public. Once the airport sponsor has established minimum standards, it should apply them objectively and uniformly to all similarly situated on-airport aeronautical service providers.⁸⁰

The FAA recommends the development of minimum standards to promote safety in all airport activities, protect airport users from unlicensed and unauthorized products and services, maintain and enhance the availability of adequate services for all airport users, promote the orderly development of airport land, and ensure efficiency of operations.⁸¹ Therefore, airport sponsors should strive to develop minimum standards that are fair and reasonable to all on-airport

⁷⁵ See, e.g., *City of Pompano Beach v FAA*, 774 F.2d 1529, 1544 (11th Cir, 1985).

⁷⁶ Order 5190.6B Section 11.5.c.

⁷⁷ Order 5190.6B Section 8.9.d *Space Limitation*.

⁷⁸ See Order 5190.6B Chapter 8, Exclusive Rights, generally.

⁷⁹ 49 U.S.C. § 47107(a).

⁸⁰ The failure to do so may result in a violation of the prohibition against exclusive rights and/or a finding of unjust economic discrimination for imposing unreasonable terms and conditions for airport use. (AC150/5190-7, Para 1.1).

⁸¹ Advisory Circular AC 150/5190-7, Para 1.2

aeronautical service providers and relevant to the aeronautical activity to which it is applied.⁸² In past decisions, the FAA has found that it is not a violation of grant assurances for airport sponsors to increase minimum standards.

The FAA recognizes that frequent changes in an airport's minimum standards may lead to the appearance of manipulating the standards to protect the interest of one or a few businesses at the expense of others.⁸³ It is through the sponsor's objective and uniform application of its minimum standards that allows it to meet the standard of compliance. The FAA expects airport sponsors to apply their minimum standards consistently through their interactions with aeronautical users and service providers.⁸⁴ With that said, the standard of compliance does not require that airport sponsors enforce minimum standards so rigidly as to require identical tone and posture toward all airport users that have different records and history with the sponsor.⁸⁵

G. The Complaint Process

Pursuant to 14 CFR § 16.23, a person directly and substantially affected by any alleged noncompliance may file a complaint with the FAA. The complainant shall provide a concise but complete statement of the facts relied upon to substantiate each allegation. The complaint shall also describe how the complainant was directly and substantially affected by the things done or omitted by the respondents.⁸⁶ If, based on the pleadings, there appears to be a reasonable basis for further investigation, the FAA will investigate the subject matter of the complaint.

In rendering its initial determination, the FAA may rely entirely on the complaint and the responsive pleadings provided. Each party shall file documents it considers sufficient to present all relevant facts and arguments necessary for the FAA to determine whether the sponsor is in compliance.⁸⁷ The proponent of a motion, request, or order has the burden of proof. A party who has asserted an affirmative defense has the burden of proving the affirmative defense. The complainant must submit all documents then available to support his or her complaint.⁸⁸ Title 14 CFR § 16.31(b-d) provides, in part, that "the Director's determination will set forth a concise explanation of the factual and legal basis...on each claim made by the complainant."

In accordance with 14 CFR § 16.33(b) and (e), upon issuance of a Director's Determination, "a party adversely affected by the Director's Determination may file an appeal with the Associate Administrator for Airports within 30 days after the date of service of the initial Determination;" however, "if no appeal is filed within the time period specified in paragraph (b) of this section, the Director's Determination becomes the final decision and order of the FAA without further

⁸² Advisory Circular AC 150/5190-7 (09/28/2006).

⁸³ See *Royal Air, Inc. v. City of Shreveport through the Shreveport Airport Authority*, FAA Docket No. 16-02-06, (January 9, 2004,) pages 28-29.

⁸⁴ See *Rick Aviation, Inc. v. Peninsula Airport Commission*, FAA Director's Determination, Docket No. 16-05-18, (May 8, 2007) page 16; *Rick Aviation, Inc. v. Peninsula Airport Commission*, FAA Final Agency Decision and Order, Docket No. 16-05-18, (November 6, 2007); page 9, and *Springfield Flight Academy v. City of Springfield*, FAA Director's Determination, Docket No. 16-10-03, (August 25, 2011), page 15.

⁸⁵ *Id.*, page 15.

⁸⁶ 14 CFR § 16.23(b) (3, 4).

⁸⁷ 14 CFR § 16.29.

⁸⁸ 14 CFR §§ 16.23, 16.29.

action.” A Director's Determination that becomes final because there is no administrative appeal is not judicially reviewable. Title 14 CFR § 16.247(a) provides for judicial review of the Associate Administrator for Airports' final decision and order, as provided in 49 U.S.C. §§ 46110, 47106(d) and 47111(d).

V. ANALYSIS AND DISCUSSION

Issue 1 - Whether the City's actions concerning Alpha Air's FBO operations at JLN, including the manner in which it applied minimum standards, are in violation of Grant Assurance 22 Economic Nondiscrimination.

RLS alleges the City is in violation of Grant Assurance 22, *Economic Nondiscrimination*, by “failing to equally enforce the Airport's Minimum Standards on similarly-situated aeronautical service providers.”⁸⁹ To support their argument, RLS alleges that (1) City was initially resistant to institute minimum standards,⁹⁰ and (2) once the City established minimum standards, it did not apply them objectively and uniformly to all similarly situated aeronautical businesses on the airport.⁹¹ In considering the allegations by RLS, the Director organized the analysis of Issue 1 as follows:

- A. Application of Minimum Standards
- B. Conditional Compliance with Minimum Standards/Legality of Waiver
- C. Efforts to Come Into Compliance With Minimum Standards

A. Application of Minimum Standards

Minimum Standards, FBO Compliance Form, and Conditional Approval Letter

The Complainant alleges that its competitor, Alpha Air does not meet the minimum standards that were instituted by the City in November of 2011.⁹² Section 3.02 of the minimum standards entitled *Privileges and Minimum Requirements*⁹³ describes the services an FBO is required to provide in order to conduct business at the airport, including:

- A) Fuel, Oil and Transient Aircraft Services;
- B) Line Service and Pilot/Passenger Facilities;
- C) Airframe and Powerplant Maintenance; and
- D) Aircraft Charter, Rental and Pilot Training

Based on the pleadings, neither party questioned Alpha Air's ability to provide (A) or (B). However, RLS argues that Alpha Air fails to meet minimum standards because it is unable to comply with provisions 'C' and 'D.'

⁸⁹ Exhibit 1, Item 1, para 31.

⁹⁰ Exhibit 1, Item 1, para 33-36.

⁹¹ Exhibit 1, Item 1, para 64.

⁹² Exhibit 1, Item 1, para 4, para 5.

⁹³ Exhibit 3, Item 1, Exhibit C.

Specifically, subsection 3.02. C, *Airframe and Powerplant Maintenance*, requires the following of an FBO:

1. "Provide aircraft and engine maintenance by qualified A&P⁹⁴ licensed mechanics. At a minimum, Operator shall have one (1) mechanic on site at the Airport Monday through Friday 7:00 a.m. to 5:00 p.m., and on call at all other times, and on the weekends, with the ability to respond to maintenance calls within one (1) hour;
2. Operator may subcontract such services upon written approval by the Director, which shall not be unreasonably withheld;
3. At all times the aircraft shop shall be operated and maintained in accordance with standards set forth for an FAA approved repair station as outlined in FAA Regulation Part 145, or as it may be amended or superseded, or as an alternative, the aircraft shop shall employ an A&P mechanic that the FAA has granted Inspection Authorization. "

Subsection 3.02.D, *Aircraft Charter, Rental and Pilot Training*, requires the following of an FBO:

"Operator must hold the following certifications and licenses required on the specified FAA regulations for the following Services. Operator must hold the certifications and licenses in its name, and may not subcontract said services.

1. Aircraft charter and air taxi; -- IAW⁹⁵ required per FAA Part 135;
2. Aircraft rental and sales; -- IAW required per FAA Part 91;
3. Flight training; -- required per FAA Part 141 Certificate. "

Additionally, subsection 3.02.E, states that, "Before [an operator] can commence operations as a Fixed Base Operator, operator must show that it is in conformance and compliance with the minimum and mandatory requirements as set forth above. Director [Airport Director] may request compliance reports from operator at any time during the term of this agreement to ensure operator is in compliance and conformance with the minimum and mandatory requirements."⁹⁶

The record shows that at the time the minimum standards were introduced, the City requested that both FBOs complete an *FBO Compliance Form*.⁹⁷ This was a questionnaire produced by the City to ensure that FBO applicants meet the minimum standards. Both RLS and Alpha Air submitted responses to the questionnaire. The record indicates that RLS responded to the

⁹⁴ Airframe and Powerplant.

⁹⁵ Stands for "in accordance with."

⁹⁶ Exhibit 3, Item 1, Exhibit C.

⁹⁷ Exhibit 1, Item 1, Exhibit 1.

questionnaire in November 2011.⁹⁸ Alpha Air's response, dated December 2, 2011, is included in the records.⁹⁹

Based on the response provided by Alpha Air, the City issued a conditional approval to Alpha Air to provide FBO services on the Airport. The approval included the following conditions:¹⁰⁰

1. "Alpha Air Center will expedite all requirements to obtain the above mentioned certifications within the guidelines from the FAA per the reference in the letter from Mr. Richard Carlson, Manager, Kansas City Flight Standards;
2. Under the direction of the Airport Manager and the Joplin City Attorney there will be a review every 90 days of the certification process until full certification compliance, within the FAA timeline, has been met. Alpha Air will submit a progress report with backup from the FAA for this review;
3. If Alpha Air fails to meet the progress requirements you will have 30 days to correct the action. Failure to meet the progress requirements or corrective action of the 90 day review will result in the immediate loss of ability to provide FBO services at the Joplin Regional Airport."

The approval letter noted that according to the information provided, Alpha Air did not hold either a 14 CFR Part 135¹⁰¹ or Part 141¹⁰² certificate, but had submitted applications with the FAA, and was contracting with a third party to provide those services until the certificates were obtained.¹⁰³

B. Conditional Compliance with Minimum Standards/Legality of Waivers

Equal and Fair Enforcement of the Minimum Standards

RLS takes the position that the City's waiver of the minimum standards was "unauthorized." Complainant cites to a previous Part 16 case, *Asheville Jet*,¹⁰⁴ in which the FAA approved an Airport Sponsor's waiver of certain Minimum Standards that allowed an FBO to temporarily begin fuel services without meeting the Minimum Standards. FAA noted however, that in *Asheville Jet* the City's Minimum Standards allowed for the granting of waivers.¹⁰⁵ In *RLS vs. JLN* however, the Complainant notes that in contrast, the City's minimum standards do not allow for waivers of the requirements, but nonetheless, the City granted Alpha Air a waiver of all of the substantive requirements for aeronautical services other than fueling. Complainant

⁹⁸ Exhibit 1, Item 1, para 41.

⁹⁹ Exhibit 3, Item 1, Exhibit D.

¹⁰⁰ Exhibit 1, Item 1, Exhibit 7.

¹⁰¹ 14 CFR Part 135 Air Carrier Operating Certificate for on-demand charter operations.

¹⁰² 14 CFR Part 141 pilot school certificate.

¹⁰³ Exhibit 1, Item 1, Exhibit 7.

¹⁰⁴ *Asheville Jet, Inc. d/b/a Million Air Asheville v. Asheville Regional Airport Authority; City of Asheville, North Carolina; and Buncombe County*, FAA Final Agency Decision and Order, Docket No. 16-08-02, (October 1, 2009), pages 25-26.

¹⁰⁵ Exhibit 5, Item 1, para 25.

also alleges that City waived these requirements for Alpha Air for an undefined and potentially unlimited amount of time.¹⁰⁶ Complainant further referred to Asheville Jet and added that:

“...in Asheville Jet, the Airport Sponsor waived the requirements while the FBO’s facilities, which were under construction at the time, would be completed and would allow for the requirements to be met. In the present matter, the Respondent’s issuance of a waiver to Alpha Air was not based on substantive efforts that were underway. The Respondent’s waiver was based only upon Alpha Air’s empty assertion that it would pursue air charter, flight training, and maintenance services to the same standards.”¹⁰⁷

Regarding an airport sponsor's noncompliance with its Federal obligations, FAA has opined that the standard “is not the simple fact of a tenant's noncompliance with its lease terms, or the sponsor’s minimum standards.” FAA asserts that enforcing minimum standards is the “recommended, not mandated,” manner for a sponsor “to deal with the expected friction among competing aeronautical service providers, in an environment of leases entered into at different times, under different circumstances, and reflecting changing management priorities.”¹⁰⁸ FAA further asserts that the standard of compliance “does not require that airport sponsors enforce minimum standards so rigidly as to require identical tone and posture toward all competitors that have different records and history with the sponsor.”¹⁰⁹

In Rick Aviation, Inc. vs. Peninsula Airport Commission (PAC), the complainant (Rick Aviation) alleged that PAC was unjustly discriminatory in requiring Complainant to comply with the airport minimum standards while permitting another FBO to operate without doing so.¹¹⁰ In Rick Aviation vs. PAC, the sponsor was in the process of updating its original minimum standards and attempting to appropriately apply them to both the incumbent FBO (Rick Aviation)¹¹¹ and the new FBO entrant (Mercury Air Centers).¹¹² The Rick Aviation case is only similar to RLS vs. JLN in that complainants in both cases allege unfair application of minimum standards. However, in the Rick Aviation case, the Director was ultimately persuaded that the complainant’s allegations were motivated by lack of understanding of the requirements stated in the minimum standards.¹¹³ The Director found that the sponsor was not in violation of the grant assurances.¹¹⁴

While the minimum standards at JLN did not have a specific provision for a waiver from standards, the City, as the airport sponsor, might have done so in an effort to prevent the potential creation of an exclusive right for RLS. It is not unreasonable to believe that any FBO that did not previously hold the required certificates might potentially face the same delays and

¹⁰⁶ Exhibit 5, Item 1, para 26 (*emphasis in original*).

¹⁰⁷ Exhibit 5, Item 1, para 27.

¹⁰⁸ Rick Aviation, Inc. v. Peninsula Airport Commission, FAA Director’s Determination, Docket No. 16-05-18, (May 8, 2007), page

16.

¹⁰⁹ *Id.*, page 16.

¹¹⁰ *Id.*, page 1.

¹¹¹ *Id.*, page 3.

¹¹² *Id.*, page 5.

¹¹³ *Id.*, page 41.

¹¹⁴ *Id.*, page 2.

potential pitfalls that Alpha Air faced. The fact is that the City's approval of certain Alpha Air activities was conditional, and that these conditions were eventually met, as discussed above and in more detail in the sections below.

With respect to subsection 3.02.C, *Airframe and Powerplant Maintenance*, the record reflects that, though Alpha Air did not possess a Part 145 certificate on any dates specified throughout the record, it was compliant with the alternate structure permitted in the minimum standards. Specifically, by employing at least one individual who maintains an A&P Certificate and Inspection Authorization, Alpha Air was, and could indefinitely remain in compliance with this particular aspect of the published minimum standards.¹¹⁵

Regarding the requirements in subsection 3.02.D, *Aircraft Charter, Rental and Pilot Training*,¹¹⁶ the record reflects that Alpha Air was not initially in compliance with the minimum standards. Specifically, the third party contractual relationship approved in Alpha Air's January 19, 2012, FBO letter,¹¹⁷ was contradictory to the policy in the *Airport Use and Operating Agreement*, subsection 3.02D, *Aircraft Charter, Rental and Pilot Training*. That policy clearly states that the "Operator must hold the certifications and licenses in its name, and may not subcontract said services."¹¹⁸

A separate copy of the *Airport Use and Operating Agreement*, signed by both Alpha Air and the City/Airport, also on January 19, 2012,¹¹⁹ discusses the same prohibition against subcontracting Parts 135 and 141 services. Yet, the City and Airport approved Alpha Air's subcontracting of Parts 135 and 141 services for their FBO operations.¹²⁰

This begs the question as to why the City and Airport seemingly ignored the published minimum standards to this extent. Alpha Air could have conducted a limited FBO business within its certificated capabilities, until at which time it received approval for all requested certificates, and then expand its capabilities thereafter. Instead, whether intentional or not, and regardless of Alpha Air's actual status, this literal "stroke of the pen" instantly legitimized and elevated Alpha Air's posture, even if only "conditional," to that of a full service FBO.¹²¹ In Royal Air, Inc., v. City of Shreveport, the FAA found the Shreveport Airport Authority in violation of Grant Assurance 22, *Economic Discrimination*, for failing to apply its minimum standards consistently among all tenants at the Shreveport Downtown Airport.¹²² Specifically, the Director found that the Airport's actions in applying minimum standards, created conditions that led to differences in personnel staffing levels, leased spaced requirements, and insurance requirements among competing tenants.¹²³ These situations resulted in some documented disparities in the actual

¹¹⁵ Exhibit 3, Item 1, Exhibit C, pages 6-7.

¹¹⁶ Exhibit 3, Item 1, Exhibit C, page 7.

¹¹⁷ Exhibit 3, Item 1, Exhibit D.

¹¹⁸ Exhibit 3, Item 1, Exhibit C.

¹¹⁹ Exhibit 3, Item 1, Exhibit C.

¹²⁰ Exhibit 3, Item 1, Exhibit D.

¹²¹ Exhibit 3, Item 1, Exhibit D.

¹²² Royal Air, Inc. v. City of Shreveport through the Shreveport Airport Authority, FAA Director's Determination, Docket No. 16-02-06, (January 9, 2004), page 53.

¹²³ *Id.*, page 53.

expenses incurred by competing tenants, relative to their obligations to stated requirements in the airport minimum standards.¹²⁴ In *RLS v. JLN*, however, no such evidence is presented by the Complainant. The record reflects that Alpha Air was required to perform the FBO services required in the minimum standards.¹²⁵ However, the actual methodology, and to what expense it chose in initially providing those services, was of direct consequence to Alpha Air alone.

Until receiving the Part 135 and Part 141 certificates, Alpha Air did not meet the specific published requirements for FBO operations at JLN. While Alpha Air has since received FAA approval for its Part 135 and Part 141 certificates (May 19, 2014,¹²⁶ and June 12, 2015,¹²⁷ respectively), the City and Airport's actions were in this specific instance contrary to the minimum standards. However, the Director is not persuaded that the evidence indicates a competitive advantage was given to Alpha Air during the period it awaited FAA approval of its Part 135 and 141 Certificates. Alpha Air was still required to perform these services during that period, but through alternate means. Nonetheless, the sponsor is advised to be more consistent in enforcing established minimum standards.

C. Efforts to Come Into Compliance With Minimum Standards

14 CFR Part 135 Certification

RLS notes that the City may have “understood that the certification process for Alpha Air to obtain its Part 135 air charter certificate would take a long time,” therefore, RLS argues, that the City’s January 19, 2012 waiver issued to Alpha Air, which “required Alpha Air to expedite all requirements to obtain the above mentioned certifications....”¹²⁸ is meaningless because “it... shows that the Airport intentionally and knowingly allowed a startup FBO to begin operations selling fuel without any timeline for complying with the minimum standards.”¹²⁹

RLS argues that the City’s “basis for allowing Alpha Air to continue its operations primarily only selling fuel is based upon superficial and *de minimis* efforts to obtain Part 135 charter certification.”¹³⁰ RLS rejects the City’s position that Alpha Air provides service through third party contractors. RLS explains that the City “has no knowledge of whether the contracting (with a third party to provide services) relationships actually exist because it has not exercised reasonable monitoring or oversight over Alpha Air, and has never asked Alpha Air to provide any documentation or records to show that these services are actually provided....”¹³¹

RLS also rejects the City’s assertion “that it has monitored Alpha Air and that Alpha Air is in compliance with the Airport’s Minimum Standards and characterizes this as “a misrepresentation

¹²⁴ *Id.*, page 51.

¹²⁵ Exhibit 3, Item 1, Exhibit C.

¹²⁶ Exhibit 7, Item, Exhibit A.

¹²⁷ Exhibit 9, Item 4.

¹²⁸ Exhibit 5, Item 1, para 15.

¹²⁹ Exhibit 5, Item 1, para 16.

¹³⁰ Exhibit 5, Item 1, para 17.

¹³¹ Exhibit 5, Item 1, para 18

to the point of being disingenuous.”¹³² Complainant adds that the City “did not inquire into Alpha Air’s certification status until eighteen months after it waived the minimum standard requirements, when on July 11, 2013, [RLS advised the City] that it was considering filing a Part 16 Complaint.” Complainant also rejects the City’s claims that it had requested updates concerning Alpha’s Air certificate (July 11, 2013 request by the Airport Manager to FAA¹³³ and July 15, 2013 request by the Airport Manager to Alpha Air to provide an update).¹³⁴ Finally, RLS asserts that Alpha Air’s intent was to only sell fuel and is “nothing more than a gas station,”¹³⁵ and that “Alpha Air has never put forth any meaningful effort to obtain the required certifications.”¹³⁶

The City contends that Alpha Air has made good faith efforts to meet the minimum standards, but that the process is subject to the schedule of the FAA, which is ultimately responsible for issuing the necessary certificates.¹³⁷ Specifically, on August 6, 2013, the City notified RLS that it “determined that Alpha is, in good faith, trying to obtain the required certificates, but is working on the FAA’s schedule. The holdup seems to be from the FAA. As a result, the City does not, at this time, think that it is being discriminatory to [RLS].”¹³⁸

As mentioned above, the City issued Alpha Air a “conditional” approval to provide FBO services on the airport on January 19, 2012.¹³⁹ This conditional authorization stated that “there will be review every 90 days of the certification process until full certification compliance, within the FAA timeframe, has been met. Alpha Air will submit a progress report with backup from the FAA for this review.”¹⁴⁰

The Director expects that based on the conditional authorization letter, the record would discuss several reviews by the City during the period from January 19, 2012 (when the conditional authorization was granted to Alpha Air) until the summer of 2013 (when the formal complaint was filed), with the initial review conducted on or about April 18, 2012. As indicated below, it appears the City made an earnest effort to conduct these reviews.

The record indicates that on February 4, 2012, Alpha Air filed a *Pre-Application Statement of Intent* (PASI) with the Kansas City Flight Standards District Office (FSDO) for a 14 CFR Part 135 Air Carrier Certificate.¹⁴¹ The City provided evidence of the first review, an April 16, 2012

¹³² Exhibit 5, Item 1, Para 11.

¹³³ The director presumes that based on Exhibit 3, Item 1, Exhibit B, Page 12, the Complainant meant to state “that Airport Manager asked the [Kansas City FSDO] for a certificate update on Alpha Air.”

¹³⁴ Exhibit 5, Item 1, Para 12. On this issue, RLS affirms that “these progress reports [to the City]...did not exist and that “prior to the filing of the Complaint in this matter, [RLS] filed a records request with Joplin City Clerk for copies of any correspondence, documentation and records pertaining to the Respondent’s monitoring of Alpha Air while it was supposedly seeking part 135 air charter certification. No records were provided to Complainant to show that the Respondent ever conducted any monitoring of Alpha Air until Complainant contacted Respondent on July 11, 2013.” Exhibit 5, Item 1, Para 13.

¹³⁵ See, e.g., Exhibit 1, Item 1, Para 4; Exhibit 1, Item 1, Para 7; Exhibit 1, Item 1, Para 58; Exhibit 1, Item 1, Para 76; Exhibit 5, Item 1, Para 18.

¹³⁶ Exhibit 1, Item 1, para 51.

¹³⁷ Exhibit 3, Item 1, page 9.

¹³⁸ Exhibit 3, Item 1, Exhibit B, page 14.

¹³⁹ Exhibit 3, Item 1, Exhibit D.

¹⁴⁰ Exhibit 1, Item 1, Exhibit 7.

¹⁴¹ Exhibit 5, Item 1, Exhibit 2.

letter from the Kansas City FSDO stating that due to budgetary issues, they were not able to consider the application until after October 1, 2012.¹⁴²

The Director considers it reasonable for the City to assume the application would not change for the following two reporting periods (July 17, 2012 and October 15, 2012) based on the same justification related to FAA's fiscal year ending on or about September 30. Based on this, the Director would expect the City to conduct its next review on or about January 13, 2013, and indeed the City provided a copy of a January 9, 2013 letter from the Kansas City FSDO following up with Alpha Air from a previous day's pre-application meeting.¹⁴³ The next update to this timeline occurred approximately 30 days after the next review date of April 15, 2013 was due. A communication provided by the City includes a May 16, 2013 email, from the Kansas City FSDO responding to another Alpha Air inquiry for a status update. This update included the FSDO informing Alpha Air that providing periodic written status updates was inconsistent with office policy.¹⁴⁴ The May 2013 update was followed by a series of exchanges between the parties into August, all appearing to support efforts at status updates.¹⁴⁵ The Part 16 Complaint was then filed in September.

The Director disagrees with RLS' premise that the City contradicted its statement by both acknowledging that the certification process would take time and requiring that Alpha Air expedite all requirements to obtain the necessary certificates. In the context of the conditional authorization, "expediting" is solely the FSDO's response for processing the certificate. Since Alpha Air (or any other certificate applicant) had little control over the FSDO's time lines, it would be unreasonable to expect Alpha Air to expedite the process beyond being responsive to the FSDO during the process. Moreover, and notwithstanding the timeline of updates provided above, the Director rejects Complainant's allegations that the City failed to meet its Federal obligations because it did not ask Alpha Air to provide documentation, in part, because the minimum standards permit the City to request compliance reports from the FBOs, but do not require such reports.¹⁴⁶

Some documented delays can be identified in the City's monitoring of the certification process, however, the fact remains that the City did substantial monitoring to the extent reasonable and consistent with the FSDO's cooperation. Against this background, the Director rejects RLS's claim that the City failed to monitor Alpha Air's progress to acquire its 14 CFR Part 135 certificate. Further, the Director is not persuaded that the City's actions constitute any violation of the City's Federal obligations.

Deferment of 14 CFR Part 141¹⁴⁷ and 14 CFR Part 145¹⁴⁸ Certification

¹⁴² Exhibit 3, Item 1, Exhibit B, page 3.

¹⁴³ Exhibit 3, Item 1, Exhibit B, page 4.

¹⁴⁴ Exhibit 3, Item 1, Exhibit B, page 7.

¹⁴⁵ Exhibit 3, Item 1, Exhibit B, (Aug 6, 2013 email).

¹⁴⁶ Exhibit 1, Item 1, Exhibit 6, page 7, subsection 3.02(E).

¹⁴⁷ 14 CFR §141.1. This part prescribes the requirements for issuing pilot school certificates, provisional pilot school certificates, and associated ratings, and the general operating rules applicable to a holder of a certificate or rating issued under this part.

¹⁴⁸ 14 CFR §145.1 Applicability. This part describes how to obtain a repair station certificate. This part also contains the rules a certificated repair station must follow related to its performance of maintenance, preventive maintenance, or alterations of an

RLS argues that “Alpha Air never applied for Part 141 flight training certification or Part 145 maintenance certification, and it does provide on-site maintenance services through an alternative subcontractor.”¹⁴⁹ RLS also states that the City provided “no support for its assertion that the FAA asked Alpha Air to defer application for Part 141 flight training or Part 145 maintenance certification until after it had obtained Part 135 air charter certification.” Finally, Complainant alleges that “documentation that was provided in response to the Complainant’s record request to the regional FAA office shows that Alpha Air did not defer an application for Part 141 flight school certification based on FAA request; it elected to do so for its own convenience.”¹⁵⁰

The Director disagrees with the Complainant’s assertion that Alpha Air had to pursue both certificates concurrently. Because Alpha Air and the City received information that delays were a result of limited resources at the FSDO,¹⁵¹ it is unreasonable to believe that applying for additional certificates concurrently would result in any substantial time savings or result in a different response by the FSDO. On April 16, 2012, the Kansas City FSDO informed Alpha Air that budgetary issues within their office, was precluding the processing of air carrier certificates. In this same letter, the FSDO also advised Alpha Air that “When these issues are resolved, we will contact you.”¹⁵²

Further, Alpha Air’s Part 135 PASI notes that Alpha Air intended to apply for an approved pilot school certificate at a later date, so it is clear to the Director that Alpha Air expressed its intentions to the FSDO at the time of filing.¹⁵³ In any event, the Director confirmed with the Kansas City FSDO that on July 7, 2014, Alpha Air did in fact submit an application for a Part 141 Pilot School Certification. On July 25, 2014, the FSDO advised Alpha Air, in a letter that strongly implied that its resources were tasked; “we are currently evaluating our resources in order to determine if and/or when we can support your application for certification.”¹⁵⁴ Alpha Air’s Certificate for Pilot School Certification was eventually approved on June 12, 2015.¹⁵⁵

Finally, with regards to RLS’ challenge of the subcontracting of Part 145 maintenance, the Director notes that, as stated in Section 3C (6) of the minimum standards, having a Part 145 Repair Station is not a requirement to meet the minimum standards. To meet this requirement in the published minimum standards, an FBO needs only to employ at least one A&P mechanic with Inspection Authorization.¹⁵⁶ The contract maintenance issue is further discussed below.

aircraft, airframe, aircraft engine, propeller, appliance, or component part to which 14 CFR Part 43 applies. It also applies to any person who holds, or is required to hold, a repair station certificate issued under this part.

¹⁴⁹ Exhibit 5, Item 1, para 17.

¹⁵⁰ Exhibit 5, Item 1, para 14.

¹⁵¹ Exhibit 3, Item 1 Exhibit B. Also, FAA implemented agency-wide furloughs of employees, including air traffic controllers, beginning April 21, 2013. FAA employees were told they would be required to take 11 furlough days through the remainder of FY2013. See *Sequestration at the Federal Aviation Administration (FAA): Air Traffic Controller Furloughs and Congressional Response*. Congressional Research Service, May 7, 2013.

¹⁵² Exhibit 3, Item 1 Exhibit B.

¹⁵³ Exhibit 5, Item 1, Exhibit 2.

¹⁵⁴ Exhibit 7, Item 2, Exhibit A

¹⁵⁵ Exhibit 7, Item 3, Exhibit A,

¹⁵⁶ Exhibit 3, Item 1, Exhibit C, page 6.

The record substantiates the use of a reasonable process by Alpha Air in seeking a 14 CFR Part 141 certificate and that, contrary to RLS' assertions, Alpha Air's actions with regards to the 14 CFR Part 145 certification, are not inconsistent with the requirements of and options for compliance in the minimum standards as written or contrary to the City's Federal obligations.

RLS argues, in the alternative, that

"Even if it eventually obtains a part 135 air charter certificate, Alpha Air will not really engage in actual air charter that is expected of a full service FBO. Alpha Air's application for air charter spells out that it plans to operate only during day-time in visual flight conditions and it will use a single-engine aircraft that carries a maximum of a pilot and three passengers. While this very limited aircraft and limited operations may technically meet the Airport's Minimum Standards, it does not serve the local aeronautical community as a full service FBO is expected to. It is literally the lowest level that the FAA will certify for part 135 air charter operations."¹⁵⁷

The minimum standards require Alpha Air to provide Aircraft Charter and Air Taxi services in accordance with 14 CFR Part 135. The minimum standards do not specify particular capabilities associated with the service offering.¹⁵⁸ Under these circumstances, the Director is not persuaded that a lower, yet permitted level of service constitutes a violation of the grant assurances.

Contract Maintenance

RLS challenges the City's "assertion that Alpha Air provides an on-site mechanic on a full-time basis" because it is "contradicted by the facts submitted by Complainant and is not supported by any evidence submitted by the [City]." According to the Complainant, an affidavit filed by an aeronautical user who sought maintenance services from Alpha Air, claims the individual "was told that Alpha Air does not have a mechanic on staff."¹⁵⁹ The Director would like to point out that the actual language in the affidavit stated that "Alpha Air advised me that a mechanic was not available."¹⁶⁰

More specifically, RLS challenges Alpha Air's claims that it provides Part 145 maintenance and adds that "a search of the FAA's database of Part 145 maintenance providers in Missouri does not list any company known under that name....there are three companies, including the Complainant, currently listed in the FAA's database of Part 145 certificated maintenance providers in Joplin Missouri."¹⁶¹ RLS cites an affidavit by Curt Carlisle, an aircraft operator at the Airport, that at 10:13 a.m.¹⁶² on August 19, 2013, he attempted to request maintenance services from Alpha Air and was told by a staff member that "a mechanic was not available."¹⁶³

¹⁵⁷ Exhibit 5, Item 1, para 19.

¹⁵⁸ Exhibit 1, Item 1, Exhibit 6, page 7, subsection 3.02(D).

¹⁵⁹ Exhibit 5, Item 1, para 20.

¹⁶⁰ Exhibit 1, Item 1, Exhibit 9.

¹⁶¹ Exhibit 5, Item 1, para 21.

¹⁶² Affidavit does not specify "a.m." or "p.m."; the Director assumes the inquiry took place at 10:13a.m on August 19 2013.

¹⁶³ Exhibit 1, Item 1, Exhibit 9.

Finally, RLS argues that “even though [the City] has been put on notice that Alpha Air does not provide any maintenance services at all, even under the alternative provisions of the Minimum Standards, the [City] has...failed to take any measures to require Alpha Air to provide maintenance services and therefore comply with the Minimum Standard’s maintenance provision requirements.”¹⁶⁴

First, although Twisted Wrench, LLC¹⁶⁵ (the service provider with which Alpha Air contracted out to provide maintenance services), may not hold a Part 145 certificate, as previously noted, the Minimum Standards stipulates that a Part 145 Repair Station is not required, if the FBO employs a mechanic with Inspection Authorization.¹⁶⁶ Alpha Air submitted evidence that it did, in fact, employ at least one mechanic who possessed both an A&P certificate, and Inspection Authorization.¹⁶⁷ Second, the affidavit presented by Mr. Carlisle, represents the entirety of the Complainant’s argument regarding the unavailability of maintenance at Alpha Air. The statement in the affidavit that “a mechanic was not available,” lends itself to broad interpretation, and lacks detail, so it is therefore inconclusive. Further, while Mr. Carlisle did file the affidavit with RLS, there is no evidence that the City or any other user of the Airport was notified by Mr. Carlisle, or anyone else, that Alpha Air was not truly providing maintenance services.¹⁶⁸

Against this background, the Director rejects Complainant’s claims that Alpha Air does not provide maintenance services, as there is sufficient evidence that Alpha Air’s maintenance services are consistent with the requirements specified in the Airport’s minimum standards. Therefore, the Director does not find the City to be in violation of Grant Assurance 22, *Economic Nondiscrimination*.

ISSUE 2 - Whether the City’s actions concerning Alpha Air’s FBO operations at JLN, including the manner in which it applied minimum standards, granted an exclusive right to Alpha Air in violation of Grant Assurance 23 Exclusive Rights

RLS alleges that the City has granted an exclusive right by “permitting Alpha Air to open up what is essentially a gasoline station, without being required to provide other aeronautical services,” and this “over time...will drive the [RLS] out of business.” RLS adds that, in part because both RLS and Alpha Air compete head to head at the Airport to provide fuel to based and transient aircraft, when RLS goes out of business, “Alpha Air will be the only FBO at the airport; a status it will have obtained with the assistance of City.”¹⁶⁹

RLS further states that although the City “took the right steps when it enacted Minimum Standards in 2011 and made compliance with the Minimum Standards a condition of approval for operating as a FBO for both Complainant and Respondent,” the City “has knowingly subjected [RLS] and Alpha Air to disparate requirements in order for the right to compete for

¹⁶⁴ Exhibit 5, Item 1, para 22.

¹⁶⁵ Exhibit 3, Item 1, Exhibit D, page 6, section C.

¹⁶⁶ Exhibit 3, Item 1, Exhibit C, page 6.

¹⁶⁷ Exhibit 3, Item 1, Exhibit D, Attachment G.

¹⁶⁸ Exhibit 1, Item 1, Exhibit 9.

¹⁶⁹ Exhibit 1, Item 1, page 26

fuel sales,” and that “this disparity places the Complainant at a competitive disadvantage.”¹⁷⁰ RLS adds that the City, “by waiving substantive Minimum Standard requirements for Alpha Air, for what has turned out to be an indefinite period of time, and failing to monitor or enforce compliance, has failed in its obligation to objectively and fairly uphold” Grant Assurance 23 Exclusive Rights.¹⁷¹

RLS further expands its exclusive rights argument by stating as “false,” a supposed allegation by the City that RLS was “opposed to any competition at the Airport and simply wanted to maintain a monopoly.” RLS adds that “the basis for [the] informal complaints and ongoing concerns was the [City’s] failure to establish any kind of standards for businesses to sell fuel at the airport.” RLS ties the exclusive rights argument to the minimum standards because the informal complaints state “that [RLS] was requesting the Airport to enact Minimum Standards in order to establish a fair and equal playing field for FBO competitors,”¹⁷² but that it took “two years after [RLS’] request for standards for new businesses at the airport” for “the City [to] finally enact Minimum Standards.”¹⁷³

Introducing competition at the Airport is not prohibited by the grant assurances. In fact, it is the FAA’s position that any exclusive right aeronautical activity at an airport “deprives the public of the benefits of competitive enterprise.”¹⁷⁴ The issue at hand is whether the City’s actions allowing competition on the airport resulted in the granting of an exclusive right to either party. Also, the Director only considers the actions by all parties rather than their intentions, because alleged motive or intent is not equivalent to a grant assurance violation. Under the standard for compliance discussed above, motive or ill will does not, alone, amount to non-compliance, even if established by the Complainant. Evidence is needed.¹⁷⁵

In BMI Salvage Corp & Blueside Services v. Miami-Dade County, the complainant alleged, in part that the sponsor’s intent was to deny BMI both public access and public use of the airport.¹⁷⁶ BMI alleged that intent was shown by a proposed NOTAM¹⁷⁷ which required 72-hours advance notice for all arrivals of aircraft weighing more than 100,000 lbs.¹⁷⁸ However, the sponsor’s specific purpose for requiring advance notice was related to the aircraft salvaging business that BMI conducted on the airport. The advance notice enabled the airport to better plan for and accommodate arrivals of such aircraft on the airport. It was not to deny access to the airport as alleged by BMI.¹⁷⁹ Further, BMI presents no evidence of an aircraft

¹⁷⁰ Exhibit 5, Item 1, para 28.

¹⁷¹ Exhibit 5, Item 1, para 29.

¹⁷² Exhibit 5, Item 1, para 29.

¹⁷³ Exhibit 5, Item 1, para 10.

¹⁷⁴ FAA Order 5190.6, para 8-4.

¹⁷⁵ BMI Salvage Corp & Blueside Services v. Miami-Dade County, Director’s Determination FAA Docket No. 16-05-16, (July 25, 2006), p. 16, and Final Agency Decision on Remand, (April 15, 2011) page 64.

¹⁷⁶ *Id.*, DD, page 13.

¹⁷⁷ Notice to Airmen. This is a notice in FAA publications to alert pilots to conditions and procedures at an airport.

¹⁷⁸ BMI Salvage Corp & Blueside Services v. Miami-Dade County, Director’s Determination FAA Docket No. 16-05-16, (July 25, 2006), page 13, and Final Agency Decision on Remand, (April 15, 2011) page 64.

¹⁷⁹ *Id.*, DD, page 13 and FAD on Remand, page 64.

ever being denied landing at the airport and FAA found no grant assurance violations on the part of the sponsor or evidence of intent.¹⁸⁰

The evidence in the case at hand, as discussed above under Issue 1, covers the purpose of and justification for minimum standards and related adjustments by the City (e.g., conditional approval, FSDO response to certification requests), which are reasonably explained. It is important to note that the lack of minimum standards in itself is not, per se, a violation of an airport sponsor's grant assurances.¹⁸¹ Although the FAA considers minimum standards the most effective way for airport sponsors to impose restrictions on aeronautical service providers intending to conduct business on an airport, not having them in place when a second FBO comes into the airport is not an "automatic" violation, nor is some flexibility in their application, as mentioned above. The Grant Assurances do not impose direct FAA oversight of the local or state process (including timeliness) governing the adoption of rules or requirements.

Finally, the complainant cites M. Daniel Carey and Cliff Davenport v. Afton-Lincoln County Municipal Airport Joint Powers Board, (Carey)¹⁸² in its assertion that the City is allowing discriminatory practices against RLS. Complainant further contends that as in Carey, this effectively creates an exclusive right for the Complainant's competitor. In Carey, the Director found that the airport sponsor was applying the minimum standards in such a manner to provide an advantage for one tenant to the detriment of others.¹⁸³

In Carey, the complainants alleged the airport sponsor was inconsistent in its application of the newly revised minimum standards because it enforced them against all tenants except one FBO.¹⁸⁴ The complainants also provided documents in their reply supporting the allegations that the particular FBO did not meet the revised minimum standards.¹⁸⁵ The sponsor did not address this specific allegation in either its answer or its rebuttal. The Director agreed with the complainant that the respondent was in violation of the grant assurances as a result of enforcing minimum standards inconsistently.¹⁸⁶ Unlike JLN, in Carey there is no evidence suggesting that any privileges granted to the FBO were temporary or "conditional" upon the FBO realizing some higher goal consistent with the minimum standards.¹⁸⁷

That is not the case here. The sponsor granted specific "conditional" FBO privileges to Alpha Air, but they were only related to the way Alpha Air would provide those services. Specifically, Alpha Air was allowed to temporarily utilize alternatives in providing services, until it could do so in accordance with the specific requirements of the minimum standards. As mentioned above, the analysis under Issue 1 discusses related deviations (or perceived deviations) and provides

¹⁸⁰ BMI Salvage Corp & Blueside Services v. Miami-Dade County, Director's Determination FAA Docket No. 16-05-16, (July 25, 2006), page 16, and Final Agency Decision on Remand, (April 15, 2011) page 64.

¹⁸¹ Advisory Circular 150/5190.7, Section 1.

¹⁸² M. Daniel Carey and Cliff Davenport v. Afton-Lincoln County Municipal Airport Joint Powers Board, FAA Director's Determination, Docket No. 16-06-06, (January 19, 2007) page 38.

¹⁸³ *Id.*, page 38.

¹⁸⁴ *Id.*, page 35.

¹⁸⁵ *Id.*, page 35.

¹⁸⁶ *Id.*, page 38.

¹⁸⁷ *Id.*, page 38.

reasonable justification for some actions taken by the City (e.g., conditional approval, progress with regards to certification). The Director has been presented with no evidence challenging the reasonableness of the minimum standards or their unjust application beyond what is discussed under Issue 1.

The evidence in this case does not support the allegation of granting of an exclusive right benefiting Alpha Air but rather progressive and reasonable steps by the City, to introduce competition at the Airport. Therefore, the Director finds that the minimum standards eventually instituted by the City are not inconsistent with the applicable Federal obligations nor, if properly applied, could they have resulted in the granting of an exclusive right in violation of Grant Assurance 23.

14 CFR Part 13 Informal Complaints

As mentioned previously, RLS filed two 14 CFR Part 13 complaints; one on November 22, 2010, the other on October 21, 2011.¹⁸⁸ As part of its arguments in this formal complaint, RLS challenges the findings of the prior Part 13 complaints. RLS contends that the City falsely asserted that the FAA found RLS' prior informal complaints were "determined to be unfounded or unsubstantiated." RLS adds that "the FAA never conducted an investigation or issued a determination in response to either of the Complainant's Part 13 complaints" filed with MoDOT. RLS argues that the "FAA did not participate in, or endorse, MoDOT's investigation or eventual response."¹⁸⁹

Regardless of the actual determinations in the informal complaints, the Director finds that RLS' stated and implied argument lacks merit. The Director notes that the State of Missouri, through MoDOT, participates in the State Block Grant Program,¹⁹⁰ a program established by Congress, whereby states assume certain administrative responsibilities under AIP. Among the responsibilities of a Block Grant State is enforcing compliance affecting airports in that state. Aviation Block Grant Program Assurance 5, *Compliance Responsibilities*, specifically provides that "the State shall take steps to enforce its agreement with each airport owner benefiting from the block grant program if noncompliance with the terms of the agreement is evident."¹⁹¹

Thus, MoDOT's possession of duty for the 14 CFR Part 13 complaints was, in each case, consistent with Aviation Block Grant Program Assurance 5, *Compliance Responsibilities*. Based on this, the Director considers it entirely appropriate that MoDOT conducted the investigations of the informal complaints filed by the Complainant. The argument that the FAA did not participate in the Part 13 investigations is without merit. The FAA delegated this responsibility to MoDOT under the congressional authority provided in 49 U.S.C. § 47128.¹⁹² Consistent with this delegation, FAA further affirmed to MoDOT in a letter dated January 7, 2011, that MoDOT

¹⁸⁸ Exhibit 1, Item 1, para 38.

¹⁸⁹ Exhibit 5, Item 1, para 8.

¹⁹⁰ 49 CFR § 47128.

¹⁹¹ Aviation Block Grant Program-Assurance 5, *Compliance Responsibilities*.

¹⁹² *Id.*

was responsible for the disposition of Part 13 informal complaints.¹⁹³ This letter accompanied the November 22, 2010 complaint when it was forwarded to MoDOT.

VI. FINDINGS AND CONCLUSIONS

Upon consideration of the submissions, responses by the parties, the record herein, applicable law and policy, and for the reasons stated above, the Director of the FAA Office of Airport Compliance and Management Analysis finds that The City of Joplin, Missouri is currently not in violation of Grant Assurance 22, *Economic Nondiscrimination* or Grant Assurance 23, *Exclusive Rights*.¹⁹⁴

VII. ORDER

Accordingly, it is ordered that:

1. The complaint is dismissed; and
2. All motions not expressly granted in this Determination are denied.

VIII. RIGHT OF APPEAL

The Director's Determination is an initial agency determination and does not constitute a final agency action subject to judicial review under 49 U.S.C. § 46110.¹⁹⁵ Any party to this proceeding adversely affected by the Director's Determination may appeal this initial determination to the FAA Associate Administrator for Airports pursuant to 14 CFR § 16.33(c) within thirty (30) days after service of the Director's Determination.



Robin K. Hunt
Acting Director, Office of Airport Compliance
and Management Analysis



Date

¹⁹³ Exhibit 3, Item1, Exhibit A.

¹⁹⁴ M. Daniel Carey and Cliff Davenport v. Afton-Lincoln County Municipal Airport Joint Powers Board, FAA Director's Determination, Docket No. 16-06-06, (January 19, 2007) page 36.

¹⁹⁵ 14 CFR § 16.247(b)(2).