

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

**DAVID E. MEALY; MEALY EXCAVATING
and CONSTRUCTION, INC. and
BROOK TI, LLC,**

COMPLAINANTS,

v.

**CLARION COUNTY AIRPORT
AUTHORITY**

RESPONDENT.



FAA Docket No. 16-18-06

DIRECTOR'S DETERMINATION

I. INTRODUCTION

This matter before the Federal Aviation Administration (FAA) is based on a complaint filed under Title 14 of the Code of Federal Regulations, Part 16 (14 CFR Part 16) by David Mealy (Complainant or Mealy) against the Clarion County Airport Authority (Authority), sponsor of the Clarion County Airport (Airport).

Mealy alleges the County violated Grant Assurance 22, *Economic Nondiscrimination* and Grant Assurance 23, *Exclusive Rights* by granting another hangar tenant preferential treatment through inequitable and substantially favorable lease terms. (FAA Exhibit 1, p. 1).¹ In its Motion to Dismiss and Answer, the Authority argues that it has not discriminated against Mealy and denies violating Grant Assurance 22 or Grant Assurance 23. (FAA Exhibit 3, pp. 1-4); FAA Exhibit 5, pp. 1-4).

With respect to the allegations presented in this Complaint, under the specific circumstances at the Clarion County Airport (AXQ) discussed in this Determination and based on the evidence of record in this proceeding, the Director, FAA Office of Airport Compliance and Management Analysis (Director) finds that Clairon County is not currently in violation of its Grant Assurances.

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.

II. THE PARTIES

A. Complainant

Mr. Mealy is the President and owner of Mealy Excavating and Construction, Inc., a commercial construction/excavation company who previously entered into a now expired aircraft storage lease for undivided space in Hangar “C” at AXQ. (FAA Exhibit 1, Item 3, para. #1).

Mealy’s relationship to Brook TI, LLC – identified as a co-complainant – is not described in the complaint, and Brook TI, LLC’s relationship to the Clarion County Airport is unclear. Court filings supplied by the Authority indicate that Mealy is “the managing member” of Brook TI, LLC, who “owns the aircraft housed in Hangar “C”.” (FAA Exhibit 3, Item 1, para. #3). Brook TI, LLC is not named in any lease of record at the airport, but the County confirms that Mealy had been a paying tenant of AXQ since at least November 2015 but the subject lease is no longer valid (FAA Exhibit 5, p. 1, para. #3).

B. Respondent

Clarion County Airport is a public use, general aviation airport owned and operated by the Clarion County Commission through the Clarion County Airport Authority. The airport consists of 219 acres, one runway (06/24). The airport has 14 based aircraft and accommodates approximately 2,700 operations annually. (FAA Exhibit 8). Airport development has been financed, in part, with funds provided to the sponsor under the Airport Improvement Program (AIP), authorized by the Airport and Airway Improvement Act of 1982, as amended, 49 U.S.C. § 47101, *et seq.* Since 1983, the Authority has accepted more than \$2,100,000 in Federal grants for airport development and related investments (FAA Exhibit 7).² As a result of accepting AIP funds, the sponsor is obligated to comply with FAA sponsor assurances and related Federal law, *see* 49 U.S.C. § 47107.

III. PROCEDURAL HISTORY

Procedural History

1. FAA received Mealy’s Complaint alleging the Authority violated Grant Assurances 22, *Economic Nondiscrimination* and 23, *Exclusive Rights*. (September 28, 2018)
2. FAA issued a Notice of Docketing (October 18, 2018)
3. Authority filed a Motion to Dismiss (November 7, 2018)
4. Mealy filed a response to the Authority’s Motion to Dismiss (November 19, 2018)
5. Authority filed its Answer (February 4, 2019)

² The Pennsylvania Department of Transportation Bureau of Aviation participates in a Congressionally-authorized state block grant program, which receives and prioritizes Federal airport development funding in the state. These figures represent funds received by AXQ from the FAA from 1983-1995. Airport development funding from the state block grant program is not reflected here.

6. Mealy filed a Reply to the Authority's Answer (March 18, 2019)

Refer to the Index of the Administrative Record for other administrative filings related to this proceeding.

IV. BACKGROUND

1. On November 1, 2015, Mealy signed a lease agreement with the Authority for a period of one year, with a one-year extension entitlement, for \$200/month per aircraft, or \$2200/per year if paid in full at lease execution. The lease provided for one undivided space in a community hangar for single aircraft (N644ME) storage. No square footage or specific space within the hangar are noted in the lease.³ (FAA Exhibit 1, Item 3, pp. 1-2).
2. On December 15, 2016, Mealy exercised the one-year renewal of his space within Hangar "C" for 2017, which expired on October 31, 2017 per the terms of the lease. (FAA Exhibit 3, Item 1, paragraph 13).
3. In April 2017, The Center for Emergency Medicine of Western Pennsylvania, Inc. (d/b/a STAT MedEvac)(STAT) entered into a two-year hangar lease, with two-year extension option, for \$500/month granting STAT exclusive use of one quarter of the space within Hangar "C" for aircraft storage and accessory use in support of its medical evacuation service/business. The lease also provided land for the placement and occupancy of a mobile crew quarters building. The lease commenced effective May 1, 2017 and expired (unless further renewed) on April 30, 2019. (FAA Exhibit 1, Item 4, para. #1.1).
4. Mealy claims that after commencement of the STAT lease he "began observing dangerous and hazardous conditions created by STAT" concerning the use of the "preferential and exclusive space [that] it was provided." Safety issues identified by Mealy include blocked hangar doors preventing other lessees from using their aircraft and equipment blocking ingress/egress through doors necessary for use in case of emergency evacuation. (FAA Exhibit 1, p. 3) The Authority claims that it "examined the leased space and did not see any safety hazard as alleged by Mr. Mealy." (FAA Exhibit 5, p. 2)
5. On August 27, 2017, Mealy voiced these concerns to the Airport Manager, which allegedly resulted in a verbal and physical confrontation between Mealy and the manager and resulted in Mealy being asked to leave the premises by local law enforcement. Subsequently, the Airport Manager filed a criminal trespass complaint against Mealy. Both sides allege the other initiated the assault. (FAA Exhibit 1, p. 3 and FAA Exhibit 5, p. 3).
6. Mealy alleges that the Authority prepared a "new" lease including an "unusual provision requiring a contractual "Code of Conduct" with the specific intention of suppressing Mr. Mealy's complaints." Mealy further alleges that the Authority "wrongfully terminated" his lease as of August 27, 2017, depriving him of his "lawfully leased space" and the inability to "access...aircraft and belongings without fear of escalated physical confrontation, criminal allegations, and further harassment." (FAA Exhibit 1, p. 4).

³ Mealy claims that both of his aircraft are housed in Hangar "C." (FAA Exhibit 1, p. 2) The County denies that Mealy ever entered into a lease agreement to store more than one aircraft at the airport. Mealy did not provide to the record a lease for more than one aircraft.

7. On September 25, 2017, Mealy's counsel had a telephone discussion with the Authority's counsel requesting information about the County Board of Commissioner's discussion of Mealy's lease options and to "resolve the issues underlying this dispute." (FAA Exhibit 1, p. 1 and FAA Exhibit 1, Item 1, pp. 1-2). On September 28, 2017, Mealy's counsel sent a letter to the Authority's counsel proposing new lease options, acceptable to Mealy, to resolve the matter. (FAA Exhibit 1, Item 2).
8. The Authority denies it terminated Mealy's lease in August 2017 and states that Mealy continued to access his aircraft. The Authority indicates in court filings that the lease expired in November 2017 and thus refused to accept Mealy's October 2017 payment for an additional one-year lease of Hangar "C" (to November 2018) due to Mealy refusing to sign an updated lease containing a Code of Conduct. The Authority notes that every other leaseholder at AXQ "has executed and agreed to this Code of Conduct, except for [Mealy]" and that Mealy has refused to agree to follow the Authority's Code of Conduct. (FAA Exhibit 5, pp. 2-3).
9. On November 30, 2017, the Clarion County Court of Common Pleas held a hearing on Mealy's request for a preliminary injunction to reinstate his lease. On April 9, 2018, the Court ruled that Mealy's lease expired in 2017 and denied Mealy an injunction to reinstate the lease. (FAA Exhibit 3, Item 2, pp. 1-12).

V. ISSUES

After reviewing the allegations and relevant airport-specific circumstances summarized above, the FAA determined that the following three allegations from Mealy require analysis to provide a complete review of the Respondent's compliance with the applicable Federal law and policy:

- Issue 1 Whether the Authority unjustly discriminated against Mealy by allegedly giving preferential lease terms to another tenant of Hangar "C" in violation of Grant Assurance 22, *Economic Nondiscrimination*.**
- Issue 2 Whether the Authority unjustly discriminated against Mealy via a requirement to agree to the Authority's Code of Conduct as a condition of entering into a lease for hangar space at AXQ in violation of Grant Assurance 22, *Economic Nondiscrimination*.**
- Issue 3 Whether the Authority granted another tenant of Hangar "C" preferential lease terms resulting in the constructive granting of an exclusive right to the airport in violation of Grant Assurance 23, *Exclusive Rights*.**

VI. APPLICABLE FEDERAL LAW AND POLICY

A. Airport Sponsor Grant Assurances

As a condition precedent to providing airport development assistance under the AIP, the FAA must receive certain assurances from the airport sponsor. Title 49 U.S.C. § 47107(a) sets forth certain sponsorship requirements to which an airport sponsor

receiving Federal financial assistance must agree. The FAA has a statutory mandate to ensure that airport owners comply with these sponsor assurances. See Exhibit 14 in the Index for a link to the grant assurances.

B. FAA Enforcement Responsibilities

The Federal Aviation Act of 1958, as amended, 49 U.S.C. § 40101, assigns the FAA Administrator broad responsibilities for the regulation of air commerce in the interests of safety, security, and development of civil aeronautics. Commitments assumed by airport owners or sponsors in property conveyance or grant agreements are important factors in maintaining a high degree of safety and efficiency in airport design, construction, operation and maintenance, as well as ensuring the public reasonable access to the airport. Pursuant to 49 U.S.C. § 47107, the FAA may approve an application for a project grant only if it has received written assurances satisfactory to the Secretary that certain statutory obligations will be met. The FAA has both civil and administrative authorities to seek enforcement of the assurances. See, e.g., 49 U.S.C. § 47111(f) and 14 CFR § 16.109.

C. The Complaint and Investigative 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 should provide a concise but complete statement of the facts relied upon to substantiate each allegation and describe how the complainant was directly and substantially affected by the things done or omitted by the respondents. The regulations governing Part 16 proceedings provide that, if the parties' pleadings supply "a reasonable basis for further investigation," the FAA should investigate "the subject matter of the complaint." 14 CFR § 16.29(a).

In accordance with 14 CFR § 16.33(b) and (e), "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." 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 action.

VII. ANALYSIS AND DISCUSSION

Issue 1 Whether the Authority unjustly discriminated against Mealy by allegedly giving preferential lease terms to another tenant of Hangar "C" in violation of Grant Assurance 22, *Economic Nondiscrimination*.

1. Mealy's Position

Mealy alleges the Authority violated Grant Assurance 22 "by granting STAT MedEvac a lease that contains terms which are grossly and unfairly preferential to one private, corporate party" to his detriment and that of all other airport users. Mealy contends that 1) STAT pays "substantially lower" rental payments, 2) the rentals are "grossly disproportionate" to STAT's commercial use of airport facilities, 3) STAT has been granted exclusive use of a portion of Hangar "C" while Mealy has no demarcated space, and 4) the Authority allows STAT to "regularly create

dangerous conditions without consequence, while severely punishing others” for bringing the concerns to the Airport Manager for resolution. (FAA Exhibit 1, p. 6).

To support his claim, Mealy provides a signed copy of his lease with the Authority (executed November 1, 2015) and the STAT lease (executed May 19, 2017), both of which provide space for one aircraft in Hangar “C,” a community hangar having multiple tenants in an open floor plan. Mealy’s lease provides for a one-year term, with an additional one-year term renewal option, for \$200/month or \$2,200/year if paid in full. (FAA Exhibit 1, Item 3). The STAT lease provides for a two-year term, with an additional two-year term renewal option, for \$500/month and encompasses one-quarter (1/4) of the (unspecified) square footage of Hangar “C”, which is demarcated for aircraft storage and accessory ambulance service/business use. The lease also allows for a mobile crew quarters building on the (unspecified) airport ground area. (FAA Exhibit 1, Item 4).

Mealy argues the STAT lease “provides terms much more favorable than those afforded [Mealy] or any other lessees of the Authority.” Mealy cites the demarcated hangar space provided to STAT, the lease’s failure to limit the number of aircraft STAT can store in the hangar, and the location of the demarcated space in the front of the hangar and blocked hangar doors as evidence of preferential lease terms and treatment. (FAA Exhibit 1, pp. 2-3).

2. Authority’s Position

The Authority denies the allegations on the grounds that the Mealy lease is “no longer valid” and claims the “Stat Med Evac lease provides for different terms and provides different benefits to the Authority than any of the other leases and is not in any way similar to the Mealy lease.” (FAA Exhibit 5, paras. #3 and 7). The Authority cites precedent in *41 North 73 West, Inc., v. U.S. DOT* 408 Fed. Appx. 393, 2010 WL 4318655 (November 2010) as requiring Mealy to show the parties are similarly situated in order to establish a violation of Grant Assurance 22. (FAA Exhibit 3, p. 3). The Authority also claims the leased space is “usually vacant” due to ongoing helicopter medical evacuations, denied the leased space blocked hangar doors, and “denied that Stat Med Evac had one or more aircraft housed in the Hangar at any given time.” The Authority notes that Mealy provided no proof of the claims. (FAA Exhibit 5, paras. #10 and #12).

The Authority argues that Mealy is not “similarly situated” to STAT because: 1) STAT provides air ambulance services to the community; 2) agreed in its lease to purchase fuel from the Authority; and 3) agreed in its lease to pay 15% of the portion of the cost of the “monthly gas bill” the Authority incurs for providing gas utilities. (FAA Exhibit 3, p. 3)(FAA Exhibit 1, Item 4, paras. #4 and #22). The Authority argues that “none” of these terms are in the Mealy lease and therefore Mealy “fails to establish a violation of Grant Assurance 22.” (FAA Exhibit 5, Item 3, p. 3).

3. Director's Determination

Mealy contends that STAT received favorable lease terms and treatment in the form of lease rates and space within Hangar “C” that have not been extended to Mealy. The Authority claims that Mealy and STAT are not “similarly situated” and therefore the Authority has no burden to offer the same lease terms to Mealy.

A complainant does not establish a violation of Grant Assurance 22 (unjust discrimination) simply by showing differences between two leases. The FAA has found that differences in lease terms executed at different points in time can be justified by the market conditions present at the time of lease execution. (See *Wilson Air Center, LLC v. Memphis-Shelby County Airport Authority*, FAA Docket No. 16-99-10, Final Decision and Order (August 30, 2001)(pp. 16-17). Grant Assurance 22 prohibits only unjust economic discrimination, not all economic discrimination. Likewise, the Director in *Jim Hankins and Mike Plyler v. North Texas Regional Airport, Grayson County, TX*, FAA Docket No. 16-19-15 (September 4, 2020) found that lease rates alone cannot determine whether tenants are similarly situated. (p. 10).

Here, two different leases were executed at different times with different terms for different size leaseholds within the same hangar. Neither party provides aeronautical services to airport users, are not competitors in any aeronautical business, and each effectively make the same use of airport facilities (aircraft storage). As explained below, we need not even reach the determination of whether the parties are similarly situated. This is because, even if we assume such, we find no significant disparity. Rather, the overarching issue here is whether the Authority, in exercising its considerable discretion, established lease rates that are inequitable among the users of Hangar “C” and thus are unjustly discriminatory to Mealy.

The FAA review of airport facilities indicates that Hangar “C” is approximately 10,000 square feet. STAT pays \$6,000/year for one quarter of the square footage (approximately 2,500 sf). STAT is also contractually required to purchase fuel from the Authority (as is reasonably possible) and to pay 15% of gas utility costs. (FAA Exhibit 1, Item 4). Neither of these additional terms apply to Mealy. On the other hand, the record shows that Mealy – a 20-year tenant of the airport – pays \$2,400/year (or \$2,200/year upfront) for undetermined square footage in Hangar “C.” (The Authority does not dispute these facts.) Mealy claims – without evidence – that his “three aircraft” are in addition to “approximately six other aircraft” in the hangar, all of which have “terms identical or substantially similar to the Mealy lease.”⁴ (FAA Exhibit 1, p. 2).

Using the above assumptions, nine aircraft comprise the remaining three-quarters (~7,500 sf) of Hangar “C,” and pay approximately \$21,600 in annual rents for nine rental spaces at \$200/month per aircraft. This results in approximately \$2.88/sf per aircraft (less if paid upfront), compared to \$2.40/sf for STAT aircraft storage, ancillary uses, and mobile crew quarters. (\$6000 annually/ 2,500 sf). When STAT’s additional economic obligations (15% share of gas utility costs) are

⁴ The Authority disputes that Mealy has three aircraft occupying space in Hangar “C” and points out that the Mealy lease of November 1, 2015, subsequently renewed, references only one aircraft N644ME, a Robinson R44. The Authority claims no record of a Mealy lease for aircraft N5968J. The other aircraft Mealy claims is a fractional ownership arrangement related to an aircraft flight club Mealy participates in. In any case, the Authority “admits” that nine additional aircraft occupy Hangar “C.” (FAA Exhibit 5, p. 2).

factored in, the Hangar “C” rates for all parties are effectively the same, and therefore reasonable. The Director also notes that the STAT lease requires it to bear all costs and expenses for construction, use, and maintenance of the airport ground area and associated mobile crew quarters. (FAA Exhibit 1, Item 3, pp. 3-4).

Mealy provides no evidence or analysis whatsoever to support that the different spaces – his or those occupied by other tenants – should command different lease rates or that the existing rates are preferential to STAT and rise to a level of unreasonableness. Under 14 CFR § 16.23(k), “the burden of proof is on the complainant to show noncompliance.”

The Authority, as airport proprietor, has considerable discretion to establish rates and charges consistent with the type of airport facility use. While there are minor differences in the price per square foot, the differences do not justify a finding of unreasonableness. The Director has consistently concluded Grant Assurance 22 does not require sponsors to offer lease rates and terms that are identical to other leases negotiated at different points in time (See *Aerodynamics of Reading, Inc. v. Reading Regional Airport Authority*, FAA Docket No. 16-00-03, Final Decision and Order, (July 23, 2001.)(p. 17).

In consideration of the above, Mealy fails to substantiate that the rates differences here are unreasonable and unjustly discriminatory. The Director finds that the Authority is not in violation of Grant Assurance 22, *Economic Nondiscrimination*.

Issue 2 Whether the Authority unjustly discriminated against Mealy via a requirement to agree to the Authority’s Code of Conduct as a condition of entering into a lease for hangar space at AXQ in violation of Grant Assurance 22, *Economic Nondiscrimination*.

1. Mealy’s Position

Mealy alleges that “after the commencement of the [STAT] Lease [he] began observing dangerous and hazardous conditions created by [STAT’s] use of the premises and the storage of their supplies and equipment in the preferential and exclusive use space it was provided.” Mealy contends that STAT “would often block the Hangar doors such that others were unable to use their aircraft” and that “on more than one occasion” Mealy “voiced his concerns” to airport management. On another occasion, Mealy states that he observed STAT blocking man doors that provide emergency egress from the hangar. (FAA Exhibit 1, p. 3). Mealy further alleges that on August 27, 2017, he again expressed safety concerns to the Airport Manager who allegedly became “aggressive,” “assaulted” Mealy, and “forcibly dragg[ed] [Mealy’s] aircraft out of the hangar.” Mealy claims that “aggressive and illegal harassment” continued leading to the Pennsylvania State Police directing Mealy to leave the hangar. (FAA Exhibit 1, pp. 3-4).

Subsequently, the Airport Manager allegedly made a criminal complaint against Mealy, banned him from the airport premises, and “prepared a ‘new’ Lease...which included a new and unusual provision requiring a contractual “Code of Conduct.” (FAA Exhibit 1, pp. 3-4). Mealy alleges the Authority “wrongfully terminated the Mealy Lease as of August 27, 2017, depriving [him] from [his] lawfully leased space” and “unable to access” his aircraft or belongings “without fear

of an escalated physical confrontation, criminal allegations, and further harassment.” (FAA Exhibit 1, p. 4). Lastly, Mealy alleges the Authority “further breached the Mealy Lease by refusing to honor the renewal provisions” of the lease and “instead insisted that [he] sign a new lease, with a Code of Conduct specifically included to preclude [him] from expressing safety concerns.” (FAA Exhibit 1, p. 5).

2. Authority’s Position

The Authority denies that STAT created dangerous or hazardous conditions through the use of its leased space, but admits that Mealy “did not like the fact that [STAT] leased space in the hangar and made various complaints.” The Authority denies that STAT “blocked hangar doors any differently than other aircraft in the Hangar” and argues that Mealy “was confrontational and intimidating with [the Airport Manager] and others at the Authority when he did not agree with actions taken by the Authority.” (FAA Exhibit 5, p. 2). The Authority admits that on or about August 27, 2017 Mealy “complained” about the STAT space “posing a safety hazard” but upon inspection “did not see any safety hazard” as alleged. The Authority also admits that Mealy “became irate and confrontational” with the Airport Manager and other airport employees and was “removed from the premises” by the police. (FAA Exhibit 5, p. 2).

The Authority denies that the Airport Manager engaged in any illegal activity or damaged Mealy’s aircraft, but admits that Mealy was “charged with trespass by the police.” The Authority claims that it “has since requested all of its leaseholders to enter into a Code of Conduct wherein leaseholders agree to they [sic] will not engage in any physical or verbal harassment or abuse of any Authority employee or leaseholder.” (FAA Exhibit 5, pp. 2-3). The Authority points out that “every leaseholder has executed and agreed to this Code of Conduct, except the Complainant [Mealy]” and that it “has offered to renew the Mealy Lease (with modifications identifying the correct owner of the aircraft) so long as Mr. Mealy will execute and abide the Code of Conduct.” The Authority claims that Mealy is “extremely combative, abusive,” has refused to remove his aircraft from the Hangar, and “has refused to agree to follow the Authority’s Code of Conduct.” (FAA Exhibit 5, pp. 2-3). The Authority denies that its actions violate Grant Assurance 22, *Economic Nondiscrimination*.

3. Director’s Determination

The core issue here is Mealy’s belief that the Authority breached his lease by requiring him to agree to a Code of Conduct as a condition of entering into a new lease with the Authority. The Authority argues that it has not violated Grant Assurance 22.

A review of Mealy’s Second Amended Complaint filed in the Court of Common Pleas of Clarion County, PA (Court), indicates that after the August 27 confrontation, the Authority disseminated an email of the Authority’s version of events and advised him to “remove all of his belongings from Hangar “C” immediately.” (FAA Exhibit 3, Item 1, para. #31). The following day, August 28, 2017, Mealy received an electronic text message from the Airport Manager indicating his lease had been “terminated.” The Court’s ruling on the Second Amended Complaint found that “In order to rule on whether [Mealy has] a legally sufficient claim for Breach of Contract, it must be determined that there was a valid lease in place. (FAA Exhibit 3, Item 3, p. 7). The Court

determined that Mealy had a valid lease until November 1, 2017, and that the “Breach of Contract action should be limited to the period from August 27, 2017 to October 31, 2017.” (FAA Exhibit 3, Item 3, p. 7). The Court also found that “terminating the lease via text and calling the police on [Mealy]...are factual averments that support a Breach of Contract.” (FAA Exhibit 3, Item 3, p. 14).

The FAA is not a party to litigation proceedings between complainants and respondents involving contract disputes; nor does the FAA have jurisdiction over matters of contract law between airport tenants and sponsors. (See *Rick Aviation, Inc. v. Peninsula Airport Commission*, FAA Docket No. 16-05-18, (November 6, 2007) (Final Decision and Order)(p. 20). Accordingly, the FAA takes no position on the Court’s ruling. As a matter of timing, Mealy’s Part 16 Complaint was filed September 28, 2018, a full 13 months after being banned, and slightly more than 11 months after Mealy’s lease with the Authority expired on October 31, 2017. (FAA Exhibit 1). At that point, the Director had no ability to timely act administratively, even if the denial of access beginning August 27, 2017, could be deemed to conflict with the Authority’s Federal obligations. (14 CFR § 16.11) The FAA will intervene only when the contractual agreement is inconsistent with the sponsor’s Federal obligations. Mealy’s lease was expired prior to the filing of his complaint.

Regarding current access to the airport, the Authority claims that it has offered Mealy a lease containing its new Code of Conduct provision. (FAA Exhibit 5, para. #17). Mealy does not dispute he has been offered a lease opportunity. In fact, the core of Mealy’s argument is that the Authority insists that he sign a Code of Conduct as a condition of entering a lease – evidence that he has not been definitively denied access. Likewise, Mealy has failed to show that the Code of Conduct has been applied only to him; an assertion the sponsor denies. Per 14 CFR § 16.23(k), “the burden of proof is on the complainant to show noncompliance.”

The Director determines the Authority’s actions are a reasonable response to protect its legitimate proprietary interests as airport operator. Mealy has not shown that denying tenancy pending agreement with the Code of Conduct is unreasonable or unjustified. Crucially, Mealy fails to establish that the Authority’s code singles him out or is itself unjustly discriminatory. Lastly, Mealy has not – at the time of his Complaint filing – presented a willingness to abide by reasonable terms and conditions established by the Authority and thus denial of access, if shown, has probable justification. In consideration of the above, the Director finds that the Authority is not in violation of Grant Assurance 22, *Economic Nondiscrimination*.

Issue 3 Whether the Authority granted another tenant of Hangar “C” preferential lease terms resulting in the constructive granting of an exclusive right to the airport in violation of Grant Assurance 23, *Exclusive Rights*.

1. Mealy’s Position

Mealy argues that:

The rights, powers, and privileges granted to STAT MedEvac in the Lease and by the Airport’s lax enforcement of safety measures with regard to STAT MedEvac denied to all other users of the Airport, including but not limited to the

Complainants, constitutes the granting of an exclusive right specifically precluded by Grant Assurance 23.

(FAA Exhibit 1, p. 6).

And, in response to the Authority's Motion to Dismiss, that:

Grant Assurance 23 does not require the exclusive right to be an express agreement. An exclusive right may be created 'by imposition of unreasonable standards or requirements or by other means.' FAA Order 5190.6B, paragraph 8.1 The Authority's behavior towards [STAT] and other lessees of the space, demonstrated the exclusive right.

(FAA Exhibit 4, p. 4).

2. Authority's Position

The Authority argues against Mealy's interpretation of Grant Assurance 23 largely by discussion of the term "hangar space" and what constitutes a "landing area" and "navigation facility" for purposes of an exclusive right under 49 U.S.C. § 40103(e). (FAA Exhibit 3, pp. 3-4). The Authority contends that even if the Director "were to find that the exclusive rights provision applies to hangar space, it is clear from the leases attached to the complaint that the terms of the [STAT] lease do not exclude or prohibit any other lessee from enjoying or exercising similar rights." (FAA Exhibit 3, p. 4).

3. Director's Determination

The Director in *Issue 1* determined that Mealy provided no evidence to support that existing rates are preferential to STAT and thus are not unjustly discriminatory. Here, Mealy likewise provides no evidence that "rights, powers and privileges" were bestowed upon STAT that were otherwise denied to other Hangar "C" tenants in such a way as to establish a prohibited exclusive right. Under 14 CFR 16.23(k), "the burden of proof is on the complainant to show noncompliance with an Act or any regulation, order, agreement or document of conveyance issued under the authority of an Act."

While it is accurate that the STAT lease bestowed physically demarcated, exclusive use space within the hangar, the provision is not tantamount to conferring STAT an unreasonable right, power, or privilege. A physically demarcated space at the front of an open-floor hangar cannot be construed as granting exclusive right to a tenant – such as an air ambulance operator – having a demonstrated need for dedicated space. STAT was provided space to facilitate its operation just as Mealy was provided space to facilitate storage of his aircraft. Likewise, there is no evidence that Mealy 1) requires, and 2) requested similar access but was denied such by the Authority.

An exclusive rights violation occurs when the airport sponsor excludes others, either intentionally or unintentionally, from participating in an on-airport aeronautical activity. A prohibited exclusive right can be manifested by an express agreement, unreasonable minimum

standards, or by any other means. (See FAA Advisory Circular 150/5190-6, *Exclusive Rights at Federally Obligated Airports*, para. #1.2). In this case, the record provides no evidence to support Mealy's allegation that he has been unreasonably excluded from the airport, or that STAT has been provided preferential treatment to his detriment. In consideration of the above, the Director finds that the record does not support a violation of Grant Assurance 23, *Exclusive Rights*.

VIII. CONCLUSION AND FINDINGS

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 and concludes:

The Respondent did not give an air ambulance tenant of Hangar "C" preferential lease terms and is not currently in violation of Grant Assurance 22, *Economic Nondiscrimination*.

The Respondent's requirement to enter a Code of Conduct as a condition of entering into a lease for tenancy at AXQ is not unreasonable and is not currently in violation of Grant Assurance 22, *Economic Nondiscrimination*.

The Respondent did not grant another tenant of Hangar "C" preferential lease terms resulting in the constructive granting of an exclusive right to the airport and is not currently in violation of Grant Assurance 23, *Exclusive Rights*.

ORDER

ACCORDINGLY, it is ordered that:

1. The Complaint is dismissed.
2. All Motions not expressly granted in this Determination are denied.

IX. 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. 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 30 days after service of the Director's Determination.

KEVIN WILLIS

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Kevin C Willis
Director, Office of Airport Compliance
and Management Analysis

Date