U.S. Department
of Transportation
**Federal Aviation
Administration**

Office of Airport Safety and
Standards

800 Independence Ave., SW.
Washington, DC 20591

AUG 16 1999

Certified-Return Receipt

Mr. Michael E. Cavanaugh
Fraser, Trebilock, Davis & Foster, P.C.
1000 Michigan National Tower
Lansing, MI 48933

Mr. Timothy Hughes, Chairman
Capital Region Airport Authority
Capital City Airport
Lansing, MI 48906

Re: General Aviation Inc. v.
Capital Region Airport Authority
Formal Complaint No. 13-94-24

Dear Messrs. Cavanaugh and Hughes:

Enclosed is a copy of the final decision of the Federal Aviation Administration (FAA) with respect to the above-referenced formal complaint.

The FAA has reviewed the allegations contained in the above-referenced complaint. We have decided that the complaint warrants no further FAA action and will be dismissed.

Based on the record in this proceeding, we find that the Capital Region Airport Authority is not in violation of its Federal obligations regarding economic nondiscrimination.

The reasons for dismissal are set forth in the enclosed Record of Decision. This Record of Decision is the FAA's final agency action with respect to this matter.

Sincerely,

David L. Bennett
Director, Airport Safety and Standards

Enclosure

General Aviation, Inc.
v
Capital Region Airport Authority

Formal Complaint Docket Number 13-94-24

RECORD OF DECISION

I. INTRODUCTION

This matter is before the Federal Aviation Administration (FAA) based on the formal complaint filed by Mr. Michael E. Cavanaugh of Fraser, Trebilcock, Davis & Foster, P.C. on behalf of General Aviation, Inc., against the Capital Region Airport Authority (CRAA), owner of Capital City Airport (LAN) of Lansing, Michigan in accordance with FAA Investigative and Enforcement Procedures, 14 CFR Part 13.

The issue presented for decision by the complainant is whether the CRAA, by various alleged actions, is in violation of provisions prohibiting economic discrimination set forth in 49 U.S.C. 47107 (a)(1) and (5), and the CRAA's Federal grant assurances. Our decision in this matter reflects the consideration of this claim, in view of the assurances entered into by the CRAA and the FAA's primary jurisdiction over the safe and efficient management of navigable airspace set forth in 49 U.S.C. 40103(b). This decision is based on applicable law and FAA policy, review of the arguments and supporting documentation submitted by the parties, and the attached administrative record.

Seven specific discriminatory actions were alleged in this complaint. They are as follows:
1) Discrimination in the collection of fuel flowage fees.
2) Discrimination in apron (ramp) rent requirements.
3) Discrimination in site improvements for T-hangars.
4) Discriminatory treatment in paying for ramp improvements.
5) Discrimination in funding automatic gates.
6) Discrimination in terms, charges, rentals and fees.
7) Discrimination in imposing building restriction lines.

Based on the record in this proceeding, we find that the CRAA is not in violation of its Federal obligations regarding economic nondiscrimination in regard to any of the allegations brought by the complainant.

II. THE AIRPORT

LAN, a controlled, primary commercial service, public-use airport is owned and operated by the Capital Region Airport Authority and holds an FAA Part 139 airport operating certificate. It is located 3 nautical miles northwest of the business district of Lansing,

Michigan and encompasses 2,150 acres of land. As reported by a FAA Form 5010 inspection conducted on September 18, 1998, LAN supports a wide variety of commercial, military and general aviation activities. For the 12 months ending on September 18, 1998, LAN accommodated approximately 8356 air carrier operations, 34,227 air taxi operations, 74,541 general aviation operations and 3269 military operations. The airport had 105 based aircraft. [FAA Exhibit 2]

LAN has received grants under the Airport Improvement Program. Since 1982 the Airport has received approximately $22 million in Federal airport improvement grant funds. These funds were used for various planning, expansion, rehabilitation, security, noise mitigation, marking and lighting projects. In Fiscal Year 1998, the airport received its most recent grants, totaling $2.66 million, programmed to rehabilitate a runway and taxiways. [FAA Exhibit 3]

III. BACKGROUND

General Aviation, Inc. (GA) had opened its business as a fixed-base operator (FBO) at the Airport in May 1963. [FAA Exhibit 1, Item 1, page 2] In 1971 the State of Michigan transferred ownership and control of the Airport to the CRAA, at which time it also transferred its existing leases to the CRAA. One of those leases was with GA. [FAA Exhibit 1, Item 4, page 3]

In December 1974, GA and the CRAA entered into a Lease Agreement that gave GA the right to provide services at the Airport. [FAA Exhibit 1, Item 1, page 2] By 1975, through its exercise of Options and Rights of First Refusal, GA had increased its land holdings above its initial leasehold. By 1979, GA had expanded its land holdings to an amount in excess of those held by other existing FBO tenants. Those FBO tenants have since ceased operations. [FAA Exhibit 1, Item 4, page 2] Documentation submitted to the record, consisting of a "First Right of Refusal" document with an attached sketch, appears to show that by the end of the 1970's, GA's leasehold had expanded to approximately the dimensions that it occupied at the time of the complaint. [FAA Exhibit 1, Item 6, exhibit C] In its formal complaint filing, GA stated that its leasehold totaled 567,412 sq. ft. [FAA Exhibit 1, Item 1, page 3]

In February 1975, the CRAA adopted minimum standards to guide its lease and use agreements as well as operations on the Airport in its "Rules and Regulations of the Capital Region Airport Authority" (1975 Rules). Among other things, this document addresses aviation operations and includes a requirement that the fuel supplier will "pay to the Authority a flowage fee as determined from time to time by the Authority Board for each gallon of fuel delivered to the premises and submit monthly supporting invoices and payment to the Authority office." Also the document requires that persons engaged in more than one commercial operation must "provide at least 15,000 square feet of apron space for aircraft in front of or adjacent to the hangar." [FAA Exhibit 1, Item 4, exhibit 1-A, page 24]

Subsequently, in regards to the issue of fuel flowage fees, the CRAA adopted practices that differed from its 1975 Rules. It verbally exempted airlines that pay landing fees from having to pay the fuel flowage fee for fuel uplifted into aircraft. Also, the CRAA verbally allowed lessees to directly remit the flowage fee to the CRAA instead of the adhering to the 1975 Rules requirement that the supplier remit the payment. [FAA Exhibit 1, Item 4, page 5]

Superior Aviation Inc. (SA) became a tenant of the airport in September of 1988, providing fuel and aircraft services as per its Lease Agreement with the CRAA, and operating as both an FBO and a certificated air carrier under Part 135. [FAA Exhibit 1, Item 1, page 3] SA's air carrier operations were exempt from the flowage fee as per CRAA's verbal exemption discussed above. [FAA Exhibit 1, Item 4, page 7] This 1988 lease provided to SA a 60,000 sq. ft parcel of land upon which to operate its business, away from GA's leasehold complex. The Lease-Concession Agreement, signed on September 16, 1988, was unusual in that it included a provision that 20,000 sq. ft. of the leasehold parcel would be designated as public use ramp, that was NOT for the exclusive-use of SA, and that SA would NOT pay rent of this 20,000 sq. ft. parcel:

> The remainder of Parcel "A", constituting 100' by 200' shall be used as a ramp area to be constructed by SECOND PARTY at no additional rent, which ramp shall be considered a public ramp. [FAA Exhibit 1, Item 6, exhibit E, page 4]

In September 1991, SA amended this Lease-Concession Agreement once to expand its holdings to include land for which it had obtained a Right of First Refusal, increasing its holdings by 75,000 sq. ft. This amendment did not address the 20,000 sq. ft. public-use ramp constructed by SA discussed above. [FAA Exhibit 1, Item 6, exhibit E]

In September 1993, SA again amended its Lease-Concession Agreement to add to its lease, for its exclusive use, the 20,000 sq. ft. of public-use apron which it had paved, but for which it had not paid rent, discussed above. The Lease-Concession Agreement was amended so that the above quoted section was replaced by the following language:

> The remainder of "Parcel A", constituting 100' by 200' shall be used as an exclusive use ramp area to be constructed by SECOND PARTY at the rent specified in paragraph 1.C. hereunder, which ramp shall be considered an exclusive use ramp of SECOND PARTY. [FAA Exhibit 1, Item 6, exhibit E]

By September 1993, SA's exclusive-use leasehold totaled 135,000 sq. ft., all of which was included in its lease payments to CRAA. [FAA Exhibit 1, Item 6, exhibit E]

Effective July 1, 1993, the CRAA instituted updated minimum standards in its "Capital City Airport Rules and Regulations" (1993 Rules). This document expanded on the 1975 Rules and codified standard practices and the verbal exceptions discussed above that had

developed over the years since adoption of the 1975 Rules. It states that "a flowage fee... will be paid to the Authority by the Lessee for each gallon of avgas or jet fuel delivered to the Lessee's storage facilities, except fuel uplifted into aircraft operated by an airline which... pays landing fees." [FAA Exhibit 1, Item 4, exhibit 1-B, page 27]

It also made explicit its requirements for tenants providing multiple commercial aeronautical activities, such as FBOs. These include:

a) Land: The Leasehold for multiple activities shall contain 87,120 square feet of land to provide space for specific-use area requirements established for the service to be offered [as found under individual headings for specific activities](specific use spaces need not be added where combination use can be reasonably and feasibly established), aircraft parking, paved ramp area, employee parking, and customer parking.
b) Buildings: Lease or construct a building which will provide 15,000 square feet of properly lighted and heated space for work and office space, storage, and a public waiting area that includes indoor rest room facilities and a public telephone.

"Specific-use area," as referred to in Item a) above, is an area set aside for a specific activity, such as fueling, hangar rental, flight training, etc., which each have individual land minimums. [FAA Exhibit 1, Item 4, ex. 1-B]

As early as 1991, GA had engaged the FAA in informal complaint procedures involving many of the issues presented in this case. The Detroit Airport District Office investigated these complaints, consulted with airport management, and ultimately found, in a letter dated March 17, 1992, "that the actions of the Capital Region Airport Authority, in this case, are consistent with its agreements with the Federal Aviation Administration." [FAA Exhibit 1, Item 38] These findings of the informal complaint process followed an earlier preliminary finding by the Detroit Airport District Office on January 7, 1992 that had identified areas of CRAA non-compliance in connection with allegations of economic discrimination made by GA. [FAA Exhibit 1, Item 5, exhibit a] Upon appeal by the CRAA of these conclusions and the submission of additional information by the CRAA, the Detroit Airport District Office issued its March 17 letter retracting its previous preliminary findings of nondiscrimination. [FAA Exhibit 1, Item 41][1] This information is included in the record as background only. The prior findings do not influence this investigation as to whether the CRAA is or is not currently in compliance with its grant agreements. The FAA has conducted the investigation of GA's Part 13 complaint de novo.

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[1] The Office of Inspector General of the Department of Transportation (OIG) issued Report No. E5-FA-6-005, dated August 13, 1996, responding to a complaint received by the OIG from GA, alleging that the FAA improperly reversed the original informal investigation findings due to Congressional influence. In this report, included in the record as FAA Exhibit 1, Item 41, the OIG found no evidence of Congressional influence.

On November 21, 1994, GA filed a complaint against the CRAA. It was GA's contention that the CRAA had given other airport tenants, in particular, SA, more favorable leases, had allowed for more liberal enforcement of airport rules and regulations for other airport tenants, and as a result had violated the prohibition against unjust economic discrimination as found in its grant assurance agreements. [FAA Exhibit 1, Item 1] The complainant made several specific allegations, listed in the Introduction to this Record of Decision, and discussed in detail in the Analysis and Discussion Section below.

IV. APPLICABLE LAW AND POLICY

The Federal Aviation Act of 1958, as amended (FAAct), 49 U.S.C. 40101, *et seq.,* as amended by Pub. L. No. 104-264 (October 9, 1996), assigns the FAA Administrator broad responsibilities for the regulation of air commerce in the interests of safety and security. Under these broad powers, the FAA seeks to achieve safety and efficiency of the total airspace system through direct regulation of airmen, aircraft, and airspace.

The Federal role in developing airports 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 agreement or by restrictive covenants in property deeds and conveyance instruments, to maintain and operate its airport facilities safely and 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, construction, operation and maintenance as well as ensuring the public fair and reasonable access to the airport.

The planning and development of Capital City Airport has been financed, in part, with funds provided by the FAA under the Airport Improvement Program, authorized by the Airport and Airway Improvement Act of 1982, as amended (AAIA) [FAA Exhibit 3], 49 U.S.C. 47101, *et seq.* This program provides financial assistance to an airport sponsor for airport development in exchange for binding commitments designed to assure that the public interest will be served. These commitments are set forth in the sponsor's applications for Federal assistance and in the grant agreement as sponsor assurances, *i.e.,* a list of applicable Federal laws, regulations, executive orders, statute-based assurances, and other requirements, binding the sponsor upon acceptance of the Federal assistance.

The FAA has a statutory mandate to ensure that airport owners comply with these sponsor assurances. See 49 U.S.C. §§ 40101, 40103(e), 40113, 40114, 46101, 46104, 46105, 46106, 46110, and 49 U.S.C. §§ 47105(d), 47106(d), 47107(a), 47107(k), 47107(l), 47111(d), 47122.

The Airport Sponsor Assurances

As a condition precedent to providing airport development assistance under the AAIA, the Secretary of Transportation must receive certain assurances from the airport sponsor. 49 U.S.C. 47107(a) sets forth assurances to which an airport sponsor receiving Federal financial assistance must agree as a condition precedent to receipt of such assistance. 49 U.S.C. 47107(g)(1) and (i) authorize the Secretary to prescribe project sponsorship requirements to insure compliance with § 47107(a).

These sponsorship requirements are included in every airport improvement grant agreement as set forth in FAA Order 5100.38A, Airport Improvement Program (AIP) Handbook, issued October 24, 1989, Ch. 15, § 1, "Sponsor Assurances and Certification." Upon acceptance of an AIP grant by an airport sponsor, the assurances become a binding consensual obligation between the airport sponsor and the Federal government.

The FAA Airport Compliance Program

The FAA discharges its responsibility for ensuring airport sponsor compliance with Federal obligations through its Airport Compliance Program. The FAA's airport compliance efforts are based on the consensual obligations that an airport owner accepts when receiving Federal grant funds or the transfer of Federal property for airport purposes. These obligations are incorporated in grant agreements and instruments of conveyance in order to protect the public's interest in civil aviation and to ensure compliance with Federal laws.

The FAA Airport Compliance Program is designed to ensure the availability of a national system of safe and properly maintained public-use airports operated in a manner consistent with the airport owners' Federal obligations and the public's investment in civil aviation. The Airport Compliance Program does not control or direct the operation of airports; rather, it monitors the administration of the valuable rights pledged by airport sponsors to the people of the United States in exchange for monetary grants and donations of Federal property to ensure that the public interest is being served.

FAA Order 5190.6A, Airport Compliance Requirements, issued October 2, 1989, (hereinafter Order) sets forth policies and procedures for the FAA Airport Compliance Program. The Order is not regulatory and is not controlling with regard to airport sponsor conduct; rather it establishes the policies and procedures to be followed by FAA personnel in carrying out the FAA's responsibilities for ensuring airport compliance. It provides basic guidance for FAA personnel in interpreting and administering the various continuing commitments made to the United States by airport owners 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 nature of those assurances,

addresses the application of these assurances in the operation of public-use airports, and facilitates interpretation of the assurances by FAA personnel.

The Order covers all aspects of the airport compliance program except enforcement procedures. Enforcement procedures regarding airport compliance matters, absent the filing of a formal complaint under Federal Aviation Regulations (FAR) Part 16 (14 CFR 16), continue to be set forth in the predecessor order, FAA Order 5190.6 issued August 24, 1973, and incorporated by reference in FAA Order 5190.6A. See FAA Order 5190.6, § 5-3, and FAA Order 5190.6A, § 6-2.[2]

Economic Nondiscrimination

Assurance 22, "Economic Nondiscrimination," of the prescribed sponsor assurances satisfies the requirements of § 511(a)(1)(2)(3)(5)(6) of the AAIA as amended, 49 U.S.C. 47107(a). It provides, in pertinent part, that the sponsor of a federally obligated airport

> "...will make its airport available as an airport for public use on fair and reasonable terms, and without unjust discrimination, to all types, kinds, and classes of aeronautical uses." Assurance 22(a)
>
> "...may establish such fair, equal 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." Assurance 22(h)
>
> "...may...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." Assurance 22 (i).

Subsection (h) qualifies subsection (a) and subsection (i) represents an exception to subsection (a) to permit the sponsor to exercise control of the airport sufficient to preclude unsafe and inefficient conditions which would be detrimental to the civil aviation needs of the public.

Assurance 22(c) provides that "each fixed-based operator at any airport owned by the sponsor shall be subject to the same rates, fees, rentals and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities."

Assurance 22(g) provides that "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

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[2] Before the effective date of FAR Part 16 (December 16, 1996), complaints regarding airport compliance were filed under FAR Part 13.

same conditions as would apply to the furnishing of such services by contractors or concessionaires of the sponsor under these provisions."

The FAA considers it inappropriate to provide Federal assistance for improvements to airports where the benefits of such improvements will not be fully realized due to inherent restrictions on aeronautical activities. See Order, § 4-8(a).

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. See Order, § 4-13(a).

The owner of an airport developed with Federal assistance is responsible for operating the aeronautical facilities for the benefit of the public. See Order, § 4-7(a). This means, for example, that the owner should adopt and enforce adequate rules, regulations, or ordinances as necessary to ensure the safe and efficient operation of the airport. See Order, § 4-7 and § 4-8.

The Order describes the responsibilities under Assurance 22 assumed by the owners 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 fair and reasonable terms without unjust discrimination. See Order, § 4-14 and § 3-1.

As included in Assurance 22(c), FBOs must be making the same or similar uses of identical or similar facilities at an airport to require that a sponsor charge the same rates, fees, rentals and other charges to all such FBOs, in order for the sponsor to remain in compliance with this assurance. In regard to air carrier airports, the Order states:

> An air carrier who is willing to sign a contract (signatory carrier) with the airport and assume appropriate financial obligations may be granted a lower fee schedule... .
>
> In respect to a contractual commitment, a sponsor may charge different rates to similar users of the airport if the differences can be justified as nondiscriminatory and such charges are substantially comparable. These conclusions must be based upon the facts and circumstances involved in every case.
>
> Differences in values of properties involved and the extent of use made of the common use facilities are factors to be considered. Seldom will each user have properties of the same value nor will their use of the common facilities be the same. However, the airport in order to justify noncomparable rates must show that the differences are substantial. See Order §4-14(d)(1).

In regard to general aviation airports, the Order states:

> If one operator rents office and/or hangar space and another builds its own facilities, this would provide justification for different rental and fee structures. These two operators would not be considered essentially similar as to rates and charges even though they offer the same services to the public.
>
> If one FBO is in what is considered a prime location and another FBO is in a less advantageous area, there could logically be a differential in the fees and charges to reflect this advantage of location. This factor would also influence the rental value of the property.
>
> If one FBO is providing primary commercial services (sale of aviation fuel and oil, providing tiedown and aircraft parking facilities, ramp services and some capability for minor aircraft repairs) and another FBO is conducting a flight training program, or aircraft sales, or a specialty such as avionics repair and service, these FBO's may not be considered essentially similar. They may have dissimilar requirements, i.e. space requirements, building construction, or location. Therefore, different rates may be acceptable, although the rates must be equitable.
>
> If the FAA determines that the FBOs at an airport are making the same or similar uses of such airport facilities, then such FBO leases or contracts entered into by an airport owner (subsequent to July 1, 1975) shall be subject to the same rates, fees, rentals and other charges.
>
> As an aid to uniformity in rates and charges applicable to aeronautical activities on the airport, management should establish minimum standards to be met as a condition for the right to conduct an aeronautical activity on the airport. See Order §4-14(d)(2).

In considering alleged unjust discrimination against FBO's at an air carrier airport, the FAA follows the guidance for general aviation airports, as set forth above.[3]

Minimum Standards

The FAA encourages airport management, as a matter of prudence, to establish minimum standards to be met by all who would engage in a commercial aeronautical activity at the airport. It is the prerogative of the airport owner to impose conditions on users of the airport to ensure its safe and efficient operation. Such conditions must, however, be fair, reasonable, and not unjustly discriminatory. They must be relevant to the proposed activity, reasonably attainable, and uniformly applied. See Order, § 3-12.

[3] The FAA is not applying its Policy Regarding Airport Rates and Charges to this case because the events and actions that are the subject of this complaint predate the policy's publication.

The FAA ordinarily makes an official determination regarding the relevance and/or reasonableness of the minimum standards only when the effect of a standard denies access to a public-use airport. Such determination is limited to a judgment as to whether failure to meet the qualifications of the standard is a reasonable basis for such a denial or the standard results in an attempt to create an exclusive right. See Order, § 3-17(b).

The airport owner may quite properly increase the minimum standards from time to time in order to ensure a higher quality of service to the public. Manipulating the standards solely to protect the interest of an existing tenant, however, is unacceptable. See Order, § 3-17(c).

While an airport sponsor may impose minimum standards on those engaged in aeronautical activities, an unreasonable requirement or any requirement which is applied in an unjustly discriminatory manner could constitute the grant of an exclusive right. See FAA Order 5190.1A, Exclusive Rights at Airports, issued October 10, 1985, § 11(c), "Imposition of Standards."

Airport Lease and Use Agreements

The FAA considers the prime obligation of a federally assisted airport owner to be the operation of the airport for the use and benefit of the public. The public benefit is not assured merely by keeping the runways open to all classes of users; rather, it is important that flight services and flight support services be available to users of the airport. While an airport owner is not required to construct hangars and terminal facilities, it has the obligation to make available suitable areas or space on reasonable terms to those who are willing and qualified to offer flight services to the public (i.e., air carrier, air taxi/charter, flight training, etc.) or support services (i.e., fuel, storage, tie-down, flight line maintenance, etc.) to aircraft operators. Unless it provides these services itself, the airport owner has a duty to negotiate in good faith for the lease of such premises as may be available for the conduct of aeronautical activities. See Order, § 4-15.

The FAA interest in lease and use agreements is confined to their impact on the owner's obligations to the Government. The FAA is concerned that the airport owner establish and maintain a fee and rental structure for facilities and services that will make the airport as self-sustaining as possible. The airport owner is obligated to make the facilities available on fair and reasonable terms without unjust discrimination. See Order, § 6-3(d).

Airport Fee and Rental Structure

49 U.S.C. 47107 (a)(13) requires, in pertinent part, that the sponsor of a Federally obligated airport "will maintain a fee and rental structure for the facilities and services being provided the airport users which will make the airport as self-sustaining as possible

under the circumstances existing at that particular airport." In addition, under §47107(a), fees must be reasonable and not unjustly discriminatory.

Assurance 24, "Fee and Rental Structure," of the prescribed sponsor assurances satisfies the requirements of §47107(a)(13) of the AAIA. It provides, in pertinent part, that the sponsor of a federally obligated airport "agrees that it will maintain a fee and rental structure consistent with Assurance 22 and 23, for the facilities and services being provided the airport users which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection."

FAA Order 5190.6A describes the responsibilities under Assurance 22 assumed by the owners 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 fair and reasonable terms without unjust discrimination. See Order, § 4-14(a)(2) and § 3-1, and the above discussion of "Economic Nondiscrimination." Each commercial aeronautical activity at any airport shall be subject to the same rates, fees, rentals and other charges as are uniformly applied to all other commercial aeronautical activities making the same or similar uses of such airport utilizing the same or similar facilities. FAA policy provides that, at general aviation airports, variations in commercial aeronautical activities' leasehold locations, leasehold improvements, and the services provided from such leasehold may be the basis for acceptable differences in rental rates, although the rates must be reasonable and equitable. See Order, § 4-14, and the above discussion of "Economic Nondiscrimination."

However, if the FAA determines that commercial aeronautical activities at an airport are making the same uses of identical airport facilities, then leases and contracts entered into by an airport owner subsequent to July 1, 1975, pursuant to the Airport and Airway Development Act of 1970, as amended, shall be subject to the same rates, fees, rentals and other charges. See Order, § 4-14(a)(2)(d).

The obligation of airport management to make an airport available for public use does not preclude the owner from recovering the cost of providing the facility through fair and reasonable fees, rentals or other user charges which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport.

FAA Regulation of Navigable Airspace at Airports

49 U.S.C. 40103 reserves "exclusive sovereignty" over the nations airspace to the United States Government. 49 U.S.C. 40103(b) provides that "the Administrator of the Federal Aviation Administration shall develop plans and policy for the use of the navigable airspace and assign by regulation or order the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace."

The FAA implements the mandate of §40103 in part through the promulgation of 14 C.F.R. Part 77 (Part 77), "Objects Affecting Navigable Airspace." Part 77, in pertinent part, establishes standards for determining obstructions in navigable airspace. The Administrator uses Part 77 standards in administering the Airport Improvement Program and developing technical standards and guidance in the design and construction of airports. See 14 C.F.R. Part 77.1 and 77.3.

49 U.S.C. 47105 outlines the required elements of an application for an AIP grant by an eligible sponsor. The law states:

> An application for a project grant under this subchapter-- (1) shall describe the project proposed to be undertaken; (2) may propose a project only for a public-use airport included in the current national plan of integrated airport systems; (3) may propose airport development only if the development complies with standards the Secretary prescribes or approves, including standards for site location, airport layout, site preparation, paving, lighting, and safety of approaches; and (4) shall be in the form and contain other information the Secretary prescribes. See 49 U.S.C. 47105(b)

Furthermore, as stated above, as a condition precedent to providing airport development assistance under the AAIA, the Secretary of Transportation[4] must receive certain assurances from the airport sponsor. 49 U.S.C. 47107(a) sets forth assurances to which an airport sponsor receiving Federal financial assistance must agree as a condition precedent to receipt of such assistance. Section 47107 (a)(16) states:

> The airport owner or operator will maintain a current layout plan of the airport that meets the following requirements: (A) the plan will be in a form the Secretary prescribes; (B) the Secretary will approve the plan and any revision or modification before the plan, revision, or modification takes effect; (C) the owner or operator will not make or allow any alteration in the airport or any of its facilities if the alteration does not comply with the plan the Secretary approves, and the Secretary is of the opinion that the alteration may affect adversely the safety, utility, or efficiency of the airport;... See 49 U.S.C. 47107(a)(16).

Each airport sponsor, as a condition of receiving Federal assistance, agrees to Assurance 29, Airport Layout Plan (ALP). This assurance implements the requirement of the Secretary outlined above. It states, in pertinent part, that the airport sponsor "will not make or permit any changes or alterations in the airport or any of its facilities which are not in conformity with the airport layout plan as approved by the Secretary and which

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[4] Through various laws, regulations and orders, the Secretary of Transportation has delegated authority over these matters to the Administrator of the FAA and has delegated administrative tasks associated with this authority to FAA staff.

might, in the opinion of the Secretary, adversely affect the safety, utility or efficiency of the airport.

Any airport sponsor, obligated to the Federal Aviation Administration through a grant agreement, will be subject to the review and approval of up-to-date- ALP's. Such FAA review and approval will include a review of airspace and obstruction issues as guided by Part 77. In this way, the actions of an obligated airport sponsor that affect navigable airspace come under the authority of the FAA to review and reject or approve.

V. ANALYSIS AND DISCUSSION

In this complaint, the role of the FAA is to determine whether the CRAA is in compliance with its Grant Agreement obligations or in non-compliance. If the sponsor is determined to be in pending non-compliance, the FAA's task is to bring the airport into a state of compliance. As in all cases, the judgment to be made is whether the airport sponsor is reasonably meeting the Federal commitments. It is the FAA's position that the airport sponsor meets commitments when: a) the obligations are fully understood, b) a program (preventive maintenance, leasing policies, operating regulations, minimum standards, etc.) is in place which in the FAA's judgment is adequate to reasonably carry out these commitments, and c) the owner satisfactorily demonstrates that such a program is being carried out. See Order, §5-6 (a)(2).

Similarly Situated Analysis

FAA policy provides that variations in commercial aeronautical activities' leasehold locations, leasehold improvements, and the services provided from such leaseholds may be the basis for acceptable differences in the sponsor's treatment of aeronautical service providers, although rates, charges and minimum standards must be reasonable and nondiscriminatory. See Order, § 4-14, and the above discussion of "Economic Nondiscrimination" in the Applicable Law and Policy Section. Conversely, in order to find a violation of the grant assurance prohibiting unjust discrimination, the FAA must find that a sponsor is inconsistently applying rates and standards to service providers that are "similarly situated" in terms of facilities used, activities conducted and the market conditions in which the airport management is operating.

The record in this case does not support a finding that GA and SA are "similarly situated." GA characterizes SA as a competitor. [FAA Exhibit 1, Item 1, page 3] However, the FAA notes the following significant differences between SA and GA which support the conclusion that the two are not "similarly situated" competitors:

a) The FAA notes that GA entered into its agreements with CRAA in the early 1970's and that GA had agreements for use of the airport predating the existence of the

CRAA.[5] SA came on the field in 1988, negotiating its agreement with different airport management under different market circumstances, and apparently choosing a different business strategy-- one that combined air carrier and FBO services, and with the minimum property investment allowed by the airport. [FAA Exhibit 1, Item 1, page 3]

b) The FAA notes that SA's and GA's facilities differ in size and location. GA states, "All tolled, General Aviation currently holds lease agreements totaling 567,412 square feet...." [FAA Exhibit 1, Item 1, page 3] As of September 9, 1993, it appears by the record, that SA was leasing for its exclusive use and paying rent on 135,000 sq. ft. [FAA Exhibit 1, Item 6, exhibit E]

c) The FAA notes that SA's and GA's facilities differ in use. The CRAA states that SA "is both a fixed-based operator and a scheduled air carrier. Specifically, its aircraft land, with packages, at the airport on a regular basis, as a feeder to UPS [United Parcel Service], which has facilities at the Airport." [FAA Exhibit 1, Item 4, page 7] CRAA states that this operation is a "Part 135 business." [FAA Exhibit 1, Item 6, page 4] Between 1988 and 1993, SA had been conducting its air carrier operations on public-use apron that it had "provided" by constructing said apron adjacent to its hangar.[6] [FAA Exhibit 1, Item 6, exhibit E] GA uses its exclusive use leasehold for a variety of activities, including aircraft fueling, hangar rental, freight handling, radio repair, deicing, storage, charter, tie down and other FBO services, but not scheduled air carrier operations. [FAA Exhibit 1, Item 1, page 2]

In light of the above differences between GA and SA noted by the FAA, as reflected in the record, and the economic nondiscrimination policy points discussed above (see Applicable Law and Policy Section), the FAA finds that SA and GA are not similarly situated.

GA claims that CRAA has provided preferential treatment in the paving of taxiway to other "competitors" of GA, two T-hangar concessionaires, at the Airport. [FAA Exhibit 1, Item 1, page 8] Upon review of the facts presented in the record, the FAA does not find these T-hangar concessionaires to be "similarly situated" to GA in their use of their respective T-hangar facilities. See sub-sections 3 and 6, below.

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[5] GA states, "General Aviation opened its business at the Capital City Airport in Lansing, Michigan during May of 1963.... Subsequent to [the transfer of the Airport from the State to the CRAA], General Aviation and the CRAA entered into a Lease Concession Agreement ("Lease Agreement") in December of 1974. Through that Lease Agreement and subsequent additions, General Aviation was given the right to provide services at the Capital City Airport including but not limited to fuel, hangers for rent, freight handling, radio repair, deicing, storage, charter, tie down and FBO services." [FAA Exhibit 1, Item 1, page 2]

[6] Between 1988 and 1993, SA had not been paying rent on this 20,000 sq. ft. apron that it had paved, in order to meet the 1975 Rules' requirement to "provide" at least 15,000 sq. ft. of apron, but the 1988 Lease designated this apron as public-use, not exclusive-use. [FAA Exhibit 1, Item 6, exhibit E]

The entirety of GA's T-hangar facility is not being rented as hangar space. According to GA's complaint, "Although GA uses its end hangar to construct WACOs [aircraft], the other eight (8) hangars continue to be offered for lease in direct competition with other T-hangar concessionaires." [FAA Exhibit 1, Item 5, page 8] The other T-hangar concessionaires at the Airport rent T-hangars, individually, to the general public for the storage of single-engine aircraft only. These facilities are situated in a T-hangar development area. GA's are located on its leasehold complex, apart from the T-hangar development area. According to CRAA, GA's facilities accommodate dual-engine aircraft or larger. [FAA Exhibit 1, Item 6, page 7]

In light of the above differences between GA and the two T-hangar concessionaires[7] noted by the FAA, as reflected in the record, and the economic nondiscrimination policy points discussed above (See Applicable Law and Policy Section), the FAA finds that GA and the other T-hangar concessionaires at the Airport are not similarly situated.

GA refers to UPS as a competitor of GA. [FAA Exhibit 1, Item 1, page 11] The CRAA states, "UPS is not a fixed-based operator, it is an air carrier and has signed an Air Carrier Lease Agreement, not a fixed-based operator 'Lease-Concession Agreement.'" [FAA Exhibit 1, Item 4, page 11] As stated above, GA is not a scheduled air carrier. In light of the above, the FAA does not consider GA and UPS to be similarly situated.

In summary, as discussed above, the FAA finds that the record does not support a finding that GA is similarly situated to SA, T-hangar concessionaires, or UPS, simply because these entities provide competition at the Airport to elements of GA's business.[8]

Analysis of Individual Allegations

1) Discrimination in the collection of fuel flowage fees.

Both parties to the Complaint agree that SA failed to make payment of fuel flowage fees to CRAA for a period of time commencing sometime in 1990. [FAA Exhibit 1, Item 4, page 7] CRAA and GA disagree as to the timeframe during which fees were uncollected, the amount of fees ultimately due, and the circumstances surrounding these events. There is no evidence, or allegation, that CRAA is currently discriminating against GA by failing to collect the appropriate amount of fuel flowage fees from SA. In fact, all of the accusations relate to actions predating GA's filing of its formal complaint (November 1994).

It appears from the record that Superior had made some fuel flowage fee payments to its supplier or to the CRAA at various points during its tenure of operations at the Airport.

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[7] Only one T-hangar concessionaire is identified by name: Leibler Construction. [FAA Exhibit 1, Item 6, page 7] GA does not allege that there is only one concessionaire in the T-hangar development served by the public, AIP-funded taxiway cited in the Complaint.

[8] The Record does not establish any competition between GA and UPS.

In a letter to Philip Blumenthal of SA dated March 5, 1995, Thomas Schmidt summarized these payments. Mr. Schmidt stated that SA flowage fee obligations had been paid through April 19, 1990. Also, he stated that the CRAA was in receipt of a check, dated February 13, 1992, from SA of $3,314.77 which was submitted by SA as a flowage fee payment. [FAA Exhibit 1, Item 5, exhibit E] However, the CRAA admits that some fuel flowage fees due the Airport were not submitted by SA. [FAA Exhibit 1, Item 4, page 7]

This lack of payment appears to have occurred, in part, because of the oral exception to the 1975 Rules allowing that flowage fees would not be due on fuel uplifted into aircraft of scheduled air carriers that were paying landing fees. [FAA Exhibit 1, Item 4, page 6] This exemption was explicitly included in the 1993 Rules. [FAA Exhibit 1, Item 4, exhibit 1-B, page 27] SA is a scheduled air carrier and a FBO, making it not similarly situated to GA, and contributing to some confusion as to the amount of flowage fees due from SA.

The circumstances surrounding the events of this controversy added to the confusion. The CRAA states that

> It is clear that, as of June of 1990, AVFuel (SA's supplier) was not going to pay the Fuel Flowage Fee, directly, for fuel it supplied SA. The then Deputy Director of the CRAA (Louis Bacon) undertook no action to collect those fees between June and October of that year, at which time he had a heart attack and was not working. Mr. Bacon never, thereafter, actively served in his position. His successor was unaware of the SA payment obligation. However, ultimately Thomas Schmidt discovered that the fees were not being paid by SA and undertook negotiations. [FAA Exhibit 1, Item 6, page 6]

In a previous filing, the CRAA dates the actions of Mr. Schmidt:

> The Airport Manager discovered this non-payment through a review of monthly statements in the fall of 1991 and immediately commenced negotiations with Superior Aviation for payment of back fuel flowage fees. Negotiations continued until August, 1992, but were unsuccessful. [FAA Exhibit 1, Item 4, page 7]

On August 31, 1992, the CRAA filed suit in the Clinton County Circuit Court against SA to collect back payment of these fees, after attempting to negotiate payment directly with SA. The CRAA then settled its lawsuit for approximately $30,000. [FAA Exhibit 1, Item 1, page 6] The CRAA states that "the settlement amount was based upon information and documents produced by Superior Aviation through its Answers to Interrogatories, as well as future costs of litigation." [FAA Exhibit 1, Item 4, page 7]

Having instituted legal action against SA, recovering back payment and codifying consistent procedures regarding the collection of flowage fees in its 1993 Rules, it is clear that the CRAA understands its Federal commitments, has a program in place to

reasonably carry-out these commitments, and has demonstrated the ability and willingness to implement this program effectively. Furthermore, there is no allegation of current non-compliance. In analyzing this issue, the FAA's focus is on CRAA's current compliance status. Therefore, the FAA finds that the CRAA is in compliance with its grant assurances regarding economic discrimination in regard to this matter.

2) Discrimination in apron (ramp) rent requirements.

The 1975 Rules required those tenants engaged in more than one commercial operation, such as GA and SA, to "provide at least 15,000 sq. ft. of apron space for aircraft in front of or adjacent to the hangar." [FAA Exhibit 1, Item 4, exhibit 1-A, page 24] At issue here is whether or not the CRAA is exercising unjust discrimination in that, allegedly, it required GA to lease and pave at least 15,000 sq. ft. of apron in the 1970's; while it did not require SA to pay rent for any portion of a 20,000 sq. ft. apron that SA paved in 1988.[9]

The Complainant admits facts that support a finding that CRAA is currently applying its minimum standards to both SA and GA, in compliance with its grant agreements prohibiting unjust discrimination. Specifically, the Complainant establishes that the allegations that it has made, in regard to this matter, have been resolved. Thus, the FAA sees no basis for further investigation of this allegation. Also, the FAA notes that the CRAA instituted new minimums in its 1993 Rules, which both SA and GA appear, by the record, to be meeting. However, due to the long-standing controversy on this point we will discuss FAA policy in regard to the allegations raised.

In its Complaint, dated November 21, 1994, GA characterizes events transpiring before its filing of this Complaint:

> General Aviation made repeated complaints to the CRAA that it was wrongfully refusing to collect rent from Superior on Superior's 15,000 square foot ramp and only after repeated complaints by General Aviation did the CRAA recently begin charging rent for the ramp, but the CRAA has continued its failure to collect back rent owed on Superior's apron (ramp). [FAA Exhibit 1, Item 1, page 7]

The CRAA disputes GA's characterization that back-rent is due: "There was no discrimination in favor of Superior Aviation as to the 15,000-20,000 square feet of apron space directly in front of its hangar." [FAA Exhibit 1, Item 4, page 5] The CRAA states that the ramp was designated as public-use space until it was leased as exclusive-use by SA in 1992. [FAA Exhibit 1, Item 4, page 6] The nature of SA's lease with CRAA

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[9] The 1993 Rules do not include this "provide apron" clause, but require that "multiple service" lessees' leaseholds "contain 87,120 square feet of land..." [FAA Exhibit 1, Item 4, exhibit 1-B, page 30] The record reflects that both GA and SA are "multiple service" lessees and that both lessees leaseholds exceed 87,120 square feet. However, the Complainant does not allege noncompliance with the 1993 Rules.

involving this apron, and the application of CRAA's Rules to GA and SA will be discussed further, below.

It is the prerogative of the airport owner to impose conditions on users of the airport, by lease provisions, minimum standards or operating rules, to ensure safe and efficient operation of the airport and to recover the costs of the airport. Such conditions must, however, be fair, reasonable, and not unjustly discriminatory. See Order, §3-12. The airport owner may quite properly increase these minimum standards from time to time in pursuit of airport management goals. See Order, §3-17. Airport management is not obligated to dictate the manner in which service providers meet these minimum standards, or to institute policies to discourage a provider from choosing to exceed these standards (i.e. by leasing more space from the sponsor than the standards require). Where airport management is guided by reasonable, non-discriminatory minimum standards governing the leasing of airport facilities, the FAA must find that these standards are being inconsistently applied, given the airport specific circumstances, in order to make a finding that a sponsor is violating its grant assurance prohibiting unjust discrimination.

The Complainant argues that the above quoted provision of the 1975 Rules requires SA to lease and provide apron space:

> ...Superior Aviation was not required to rent the 15,000-20,000 square foot of apron space directly in front of its hanger (sic) and outside of its front door in clear contravention of CRAA rules and past practice. General Aviation complained. The CRAA then made the ludicrous response that Superior was not required to rent the space because the apron outside Superior's front door was a "public" apron, not "exclusive" use. General Aviation responded that Superior was using this so called "public" apron to operate its daily business and park its fuel trucks in direct contravention of CRAA rules. [FAA Exhibit 1, Item 1, page 3][10]

The CRAA states that

> The rules in effect in 1988 (the year of SA's original lease) stated that a fixed-base operator must provide at least 15,000 square feet of apron space. Although GA calls this a "tortured interpretation" of the rules, it is, in fact, a literal reading of the rules, and is the same interpretation and application that was made in the lease offering to Custom Electronics in 1981. [FAA Exhibit 1, Item 6, page 7]

Of course, it is not the function of the FAA to resolve disputes over commercial lease terms. However, CRAA's claim that the requirement for a fixed-base operator to "provide" ramp space in the lease is not a requirement to lease space is reasonable, as is CRAA's position that SA met the requirement by paying for the construction of the ramp.

[10] The question of whether or not SA has used public ramp as exclusive ramp will be handled below and in sub-section 4.

Apparently, GA had also paved at least 15,000 sq. ft. of apron, but received exclusive use of the parcels for which it paid rent. [FAA Exhibit 1, Item 1, page 7] As presented in the record, the FAA agrees with the CRAA that the provision in question may be interpreted as not requiring multiple service providers to lease 15,000 square feet of apron space.

However, GA claims that it was forced to lease space to accommodate its daily business [FAA Exhibit 1, Item 1, page 2]:

> Richard Kettles, current President of GA, is the only person still employed by either of the parties who was present during the 1973 negotiations. Mr. Kettles unqualifiedly states that the representatives of the CRAA at the time of lease negotiations required GA to lease what the CRAA determined was adequate space to accommodate GA's proposed day-to-day operations without relying on public aprons or ramp areas. [FAA Exhibit 1, Item 5, page 3][11]

However, the CRAA maintains that GA voluntarily pursued the expansion of its leasehold through first rights of refusal in the 1970s.[12] The CRAA also states that

> GA, as with prior tenants and later tenants, conducted loading and unloading, and fueling, operations on public ramps and ramp areas.... GA was not prohibited from conducting business on public ramps, only from parking fuel equipment on a public ramp as a covert way of soliciting business— the same prohibition which is applied to SA and all other tenants. [FAA Exhibit 1, Item 6, page 3][13]

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[11] As per a documented telephone call between Jack Roemer, Project Manager with the FAA's Detroit Airport District Office (ADO) and former Capital City Airport manager Russell Brown dated October 19, 1995, Mr. Brown states that, in the 1970's, GA was "required to lease the amount of land required to construct the minimum sized hangar and apron required by the airport rules." It is unclear by the record whether this leasing of apron was required of GA in order for GA to obtain exclusive-use of this improved land, in order for GA to have sufficient leasehold to conduct day-to-day business, in order to prevent any established abuse of public-use apron, or in order for GA to do any business on the Airport. Also, in response to a question during that phone conversation, Mr. Brown stated that GA was not forced to exercise its right of first refusal for any additional parcel of land that it had acquired subsequent to its original lease agreement with the CRAA. [FAA Exhibit 1, Item 30]

[12] Signed letters from Richard S. Kettles of GA dated April 4, and August 27, 1973, list several parcels adjacent to GA's original leasehold west of the terminal for which GA was interested in obtaining a first right of refusal. The CRAA submitted copies of a document consisting of the granting by the CRAA to GA of a First Right of Refusal for several parcels of land adjacent to the original leasehold. [FAA Exhibit 1, Item 6] According to the complainant and the sponsor, these First Rights of Refusal were exercised by GA, increasing its leasehold by the end of 1975. [FAA Exhibit 1, Item 4] These facts support CRAA's assertion that GA voluntarily increased its exclusive leasehold, as a business decision on its part, well beyond the minimum requirements, in full understanding of the rental obligations. [FAA Exhibit 1, Item 6]

[13] The CRAA attached a Deposition of Dan Otto, an employee of the CRAA since June 9, 1975, dated October 7, 1993. Mr. Otto states that he has observed GA's "equipment and people on [public] ramp fueling aircraft, as well as servicing freight aircraft.... [That] is not a violation of the rules and regulations" In reference to the amount of usage of public ramp exhibited by SA and GA, Mr. Otto states, "Over time I would have to say they were approximately the same." [FAA Exhibit 1, Item 6, exhibit D].

Approximately 15 years after GA's first lease with CRAA, SA negotiated with CRAA to establish FBO and air carrier operations at the airport and signed a Lease-Concession Agreement on September 16, 1988. SA met the minimums set by the 1975 Rules by paving 20,000 sq. ft. of ramp. However, its Lease-Concession Agreement (1988 Lease) had provisions which contributed to confusion over rental rates, exclusive-use areas and public-use aprons.[14]

As discussed above, and according to the 1988 Lease between the CRAA and SA, presented in the record, it appears that SA had satisfied the minimum standards in effect at the time, as had GA. However, SA chose to meet the requirements of the 1975 Rules by leasing much less space than did GA, and not leasing for its exclusive-use the 20,000 sq. ft. of apron that it constructed adjacent to its hangar. [FAA Exhibit 1, Item 6] This choice does not render CRAA's lease to SA unjustly discriminatory. SA met the conditions of the 1975 Rules by providing at least 15,000 sq. ft. of apron. [FAA Exhibit 1, Item 4, page 8] SA also leased and paid rent on 40,000 sq. ft. Also, the FAA is not convinced that GA was forced to lease apron in order to do business at the Airport, in fact, the record reflects ample initiative on the part of the GA to expand its exclusive leasehold well beyond 15,000 sq. ft. of apron.[15] Furthermore, the record does not establish that any one user has so abused the use of public apron as to create an effective exclusive-use of the apron areas discussed in this sub-section.[16]

According to the latest Lease-Concession Agreement between the CRAA and SA presented in the record, and as admitted by the Complainant, it appears that SA is currently leasing, for its exclusive use, apron area in excess of the minimum requirements represented in either the 1975 Rules or the 1993 Rules. The lease documents included in the record reflect the leasing by SA of 135,000 sq. ft. as of September 1993. [FAA Exhibit 1, Item 6, exhibit E] In addition to the above, it would appear that SA's lease agreements reflect that SA's leasehold had included this 135,000 sq. ft. since before the filing of the formal complaint. This 135,000 sq. ft. parcel appears to include the 20,000 sq. ft. ramp that was added to SA's exclusive leasehold and included in the rent calculation with the 1993 Lease Amendment. SA had previously increased its leasehold on other land in a lease amendment in 1991. [FAA Exhibit 1, Item 6, exhibit E]

Therefore, in consideration of the Complainant's admission that the issue has been resolved; SA and GA not being similarly situated; and the CRAA applying its minimum

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[14] In the 1988 Lease, SA agreed to lease 60,000 sq. ft. SA was "granted the exclusive use of said demised premises, subject to the terms and conditions hereof." One of the terms and conditions included in the 1988 Lease stated that the "rental payment is based on a rental area of 40,000 square feet.... The remainder of Parcel 'A,' constituting 100' by 200' shall be used as ramp area to be constructed by [SA] at no additional rent, which ramp shall be considered public ramp."

[15] The FAA notes that GA has also "provided" paving for taxiways for the sole use of its tenants on land for which it has never paid rent. [FAA Exhibit 1, Item 6, page 5] See sub-section 3, below.

[16] The question of whether or not SA has used other public ramp as exclusive ramp will be discussed further in sub-section 4, in response to additional allegations of the Complainant.

standards consistently, in light of the opposing business strategies of GA and SA and the changing circumstances over nearly twenty years, the CRAA appears to be in compliance with its grant assurances at this time, as they apply to this item.

3) Discrimination in site improvements for T-hangars.

GA alleges that

> General Aviation was required by the CRAA to pay for the improvements to the site used for its T-hangars, including the cost of paving taxiways (or "fingers") to the T-hangars.... The CRAA has leased other space at the Capital City Airport to competitors of General Aviation.... The CRAA has discriminatorily paid for the cost of improvements to the T-hangar sites rented to General Aviation's competitors, including the cost of paving taxiways (fingers) to the T-hangars, electrical facilities, drainage facilities and similar items. [FAA Exhibit 1, Item 1, page 8]

In correspondence dated April 4, 1973 and August 27, 1973, GA expressed its "intention to lease or option to lease" several properties, including land for an E-shaped T-hangar complex to be operated by GA and leased to individual customers. In these documents, GA agreed to "provide taxiways to the tee hangars." [FAA Exhibit 1, Item 6, exhibit B] These taxiways provide access to the fingers of the E-shaped T-hangar complex on the E-shaped leasehold. GA did pay to construct the taxiways accessing its T-hangar facility; however GA has never leased the land upon which the taxiways were constructed and continues not to pay rent on this land, as of the date of this complaint. [FAA Exhibit 1, Item 6, page 5]

The CRAA recognizes "the business discretion of GA" to use its T-hangar facility for the construction of the WACO aircraft, or components thereof, and the storage of WACO planes, parts or supplies. [FAA Exhibit 1, Item 6, page 7] The CRAA further cites a 1987 amendment to the lease for the T-hangar parcel of land, "to permit the construction of aircraft in its T-Hangar building." [FAA Exhibit, Item 4, page 9] GA has also states that it uses "its end hangar to construct WACOs." [FAA Exhibit 1, Item 5, page 8]

Clearly, the record demonstrates that although GA has leased individual T-hangar units to individual tenants, management of this leasehold is under the discretion and exclusive control of GA. Revenue, in the form of rent or profits from manufacturing activities, generated by the operation of the facility accrues to the benefit of GA. GA is the exclusive-user of this facility.

GA does not allege and does not present any evidence in the record that the "competing" T-hangar development area is not a multi-concessionaire facility. The CRAA states that the taxiway improved with Federal funds in the T-hangar development area splits hangars leased to and operated by two distinct concessionaires. Furthermore, the CRAA states

that these concessionaires are not FBOs, but rather businesses providing only single-engine aircraft storage services to the public. [FAA Exhibit 1, Item 4, page 9]

Based on the record, the FAA finds that GA is the exclusive user of the taxiways accessing its T-hangar/manufacturing facility on its exclusive leasehold; that GA is not similarly situated with the T-hangar concessionaires utilizing the public taxiway;[17] that GA does not pay rent for its taxiway area; and that the taxiway built by the CRAA with Federal assistance does serve multiple tenants. The FAA further concludes that the CRAA's effective policy of not providing public taxiway to exclusive-use areas is consistent with its grant agreements.

The CRAA appears to be in compliance with its grant obligations at this time, as they apply to this item.

4) Discriminatory treatment in paying for ramp improvements.

GA states:

> General Aviation has been forced to pay land rent and the cost of ramp improvements for ramp space adjacent to its facility while the CRAA has wrongfully permitted General Aviation's competitor, Superior, to use public ramp space for the operation of its business, without requiring Superior to pay either rent for the use of said ramps or to pay for the cost of paving and improving the ramp space. [FAA Exhibit 1, Item 1, page 9]

CRAA responds:

> General Aviation has not 'been forced to pay land rent and the cost of ramp improvements for ramp space adjacent to its facility.' General Aviation voluntarily chose to lease, exclusively, all the land that it currently leases and the underlying correspondence and Lease documents demonstrate that. There has never been a CRAA Rule prohibiting the conducting of private business on public ramp space.... General Aviation, consistent with CRAA Rules, is – and has been – permitted to use public ramp space. [FAA Exhibit 1, Item 4, page 10]

This issue is intertwined with the conflict between GA and SA as to the use of public-use apron to conduct business. These allegations are similar to those presented by the complainant in issue #2 above. Questions implicit in this allegation are the following: a) whether minimum standards have been violated or inequitably enforced; b) whether GA is or was required to lease the square footage that it currently holds; c) whether GA is prohibited from conducting business on public apron; and d) whether SA has exclusive use of public apron. Also, the FAA has already found that, in regard to the use of apron, SA and GA are not similarly situated. SA uses public apron for its Part 135 air carrier

[17] See "Similarly Situated Analysis" above.

operation; GA is not a Part 135 operator, but rather an FBO, and aircraft manufacturer. See "Similarly Situated Analysis," above.

a) As established in issue #2, a review of the 1975 Rules makes clear that, as cited above, FBOs must "provide" for 15,000 sq. ft. of apron. [FAA Exhibit 1, Item 4, exhibit 1-A] The record demonstrates that both FBOs, GA and SA, have complied with that requirement at or soon after the signing of their lease agreements with the CRAA. See sub-section #2 above. Therefore, unjust discrimination in the enforcement of minimum standards can be disposed of as an issue in this aspect of the complaint.

b) GA has charged that it was required to lease apron space in the 1970s, for its exclusive use, to "accommodate GA's proposed day-to-day operations without relying on public aprons or ramp areas." [FAA Exhibit 1, Item 5, page 3] As per a documented telephone call between Jack Roemer, Project Manager with the FAA's Detroit Airport District Office (ADO) and former Capital City Airport manager Russell Brown dated October 19, 1995, Mr. Brown states that GA was "required to lease the amount of land required to construct the minimum sized hangar and apron required by the airport rules." It is unclear in the record whether this leasing of apron was required of GA in order for GA to obtain exclusive-use of this improved land, in order for GA to have sufficient leasehold to conduct day-to-day business or in order for GA to do any business on the Airport. [FAA Exhibit 1, Item 30] The record does establish that GA has paved at least 15,000 sq. ft. of apron. [FAA Exhibit 1, Item 1, page 3]

The CRAA asserts that the space that GA acquired for its exclusive use was done so voluntarily, through the exercise of options in the 1970's. [FAA Exhibit 1, Item 4, page 2] The CRAA submitted copies of a First Right of Refusal granted to GA for several parcels of land adjacent to its original leasehold. [FAA Exhibit 1, Item 6, exhibit B] According to the complainant and the sponsor, these First Rights of Refusal were exercised by GA, increasing its leasehold by the end of 1975. [FAA Exhibit 1, Item 4, page 3] As discussed in issue #2 above, these signed letters appear to demonstrate GA's willingness and initiative to propose expansion of its original leasehold, including obtaining space from a previous leaseholder. [FAA Exhibit 1, Item 6, exhibit B]

As concluded in issue #2 above, the FAA is unconvinced by the record that GA was forced into its current leasehold as a condition of doing business on the airport. Furthermore, since the written evidence supports CRAA's contention that GA entered into agreements for its current exclusive-use leasehold as a business decision, and since the verbal evidence supporting GA's allegation is less definitive and relies on the memory of events transpiring 20 years earlier, the FAA cannot find otherwise. Finally, the CRAA has stated that "the conduct of private business (such as fueling of aircraft and loading and unloading of cargo) on public ramps has always been permitted." [FAA Exhibit 1, Item 4, page 4]

c) GA contends that it was originally denied the right to use any public apron and has suggested that the previous airport manager, Mr. Brown, be contacted to confirm this

fact. [FAA Exhibit 1, Item 28] In response to a question posed by Mr. Roemer, "Was General Aviation Inc. denied the use of the public apron for its aircraft and the aircraft of its clients?," Mr. Brown said that occasionally they were allowed to use the itinerant apron but they were normally expected to use their own apron. [FAA Exhibit 1, Item 30]

Also, the FAA recognizes that airport specific circumstances require the use of airport management discretion in addressing leaseholder compliance with its lease agreements. Just as in the case of the CRAA enforcing operational requirements on SA[18] [FAA Exhibit 1, Item 40], it is not inconsistent with the record that the CRAA may have responded to incidental abuse of the operational rules by GA in the 1970s.

In any case, the CRAA has stated in numerous instances that it is the policy of the CRAA that business can be conducted on public-use apron. If at one time in the past, GA had been prohibited from using public-use ramp as described above, that is not necessarily in conflict with the CRAA's stated policy:

> There has been no CRAA Rule ever in existence, in writing or otherwise, prohibiting the conducting of private business on public ramps. Long term "parking" of planes or equipment is, however, prohibited. The conduct of private business (such as fueling of aircraft and loading and unloading of cargo) on public ramps has always been permitted. [FAA Exhibit 1, Item 4, page 4]

It would appear, by the record, that the conflict over the use of public apron revolves around the competitive nature of day-to-day business on the field, and the perception of inequitable enforcement. The balance of the evidence presented in the record is not sufficient for the FAA to conclude that the CRAA unjustly discriminated against GA by a blanket prohibition on GA's conducting business on public-use apron. Furthermore, the CRAA has made clear through this record what its current policy is regarding this matter.

d) GA alleges that SA had been conducting its business on apron designated for public-use for which SA did not pay rent.[19] GA complains that SA's practices in regard to this public-use ramp effectively constituted exclusive use.

To substantiate these claims, GA has presented names of several people who were present at times when GA was allegedly denied use of the southeast apron[20]. [FAA Exhibit 1, Item 20] The two witnesses to the alleged denial to GA for the use of the southeast apron

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[18] A letter from Michael E. Lynn, Deputy Director of Operations/Maintenance, CRAA, to Carl Muhs of SA, dated September 6, 1991, advised SA that "The aircraft parking ramp is public use area and consequently exclusive parking locations for fuel trucks, equipment, or aircraft is prohibited." [FAA Exhibit 1, Item 40]

[19] This is not the apron originally constructed by SA and designated as public-use. That apron has been absorbed into SA's exclusive-use leasehold and is subject to rent payments.

[20] The Southeast Apron, as depicted by the Airport 5010 sketch, included as Exhibit 2, to be apron along a taxiway that provides access to SA's leasehold. It appears to be separate from, but contiguous to, SA's leasehold.

were contacted. Both remember the meeting and that the southeast apron was mentioned as a possibility among others as a temporary location for GA's clients. Neither remembered, however, any firm denial, only a discussion which ended with GA apparently being satisfied with the arrangements which had been made. [FAA Exhibit 1, Items 25 & 26]

Furthermore, GA has notified the Detroit ADO of alleged exclusive use of public-use apron by SA. The FAA asked CRAA to respond to these allegations and to specifically state its policy on the use of the southeast apron. They advised that transient and local aircraft use the southeast apron on a daily basis and that no one has exclusive use of the apron. [FAA Exhibit 1, Item 32] The CRAA has provided the Detroit ADO with documentation of a meeting held with SA to discuss operational issues on the apron in question. The CRAA also provided a letter signed by CRAA Deputy Executive Director Michael E. Lynn to SA directing SA that "fuel trucks and other service equipment must be parked on the Superior Aviation leased premises. The aircraft parking ramp is public use area and consequently exclusive parking locations for fuel trucks, equipment, or aircraft is prohibited." Furthermore, the CRAA stated that its "Department of Public Safety will make routine inspections of the area." [FAA Exhibit 1, Item 40]

The record makes clear that the CRAA understood its obligations to prohibit exclusive use of public apron, had an enforcement program, and carried out this program by conducting routine inspections of public-use apron. Therefore, the FAA is unconvinced by the record that SA has exercised effective exclusive use of public-use apron, or that the CRAA has effectively granted SA such exclusive use.

Based on this review and analysis of the record, the CRAA appears to be in compliance with its grant assurances at this time, in regards to this matter.

5) Discrimination in funding automatic gates.

GA claims that it was forced to provide its own automatic gate while the authority provided gates for its competitors:

> The CRAA ordered General Aviation to secure its area by installing an automatic gate, permanently closing its gate or having a person stationed full time. The CRAA then required General Aviation to pay for the total cost of installing an automatic gate near its premises. A number of individuals not associated with General Aviation, other tenants of the airport and the CRAA staff use this gate. [FAA Exhibit 1, Item 1, page 9]

The record indicates that the CRAA did not require GA to install an automatic gate. The FAA advised that the gate must either be locked or attended in accordance with the security plan. GA installed the automatic gate as a method to comply with this requirement. [FAA Exhibit 1, Item 4, page 10]

The CRAA claims that gates paid for by the CRAA are multi-user gates on public land (with the exception of the Michigan State Police (MSP) gate, paid for by the MSP), while GA's gate has been determined to be a single-user gate on GA's exclusive leasehold. The CRAA states that GA has "sole control of the electronic device which operates the gate," allowing GA to monitor and restrict access to persons GA wishes to admit to its leasehold. [FAA Exhibit 1, Item 6, page 8]

It is clear by the record that this gate was installed for the exclusive use of GA and GA's clients. Other gates on the airport are multi-user gates, not similarly situated, and therefore were installed under different circumstances. The other gate that is for the exclusive-use of an Airport tenant (the MSP) was paid for on an equivalent basis to the gate on GA's leasehold.

Based on the record, the CRAA appears to be in compliance with its grant assurances at this time, as they apply to this item.

6) Discrimination in terms, charges, rentals and fees.

GA's claims under this item are broad and numerous:

> Subsequent to 1973, the CRAA entered into a number of land leases with other airport tenants at the Capital City Airport which offer the same type of services as offered by General Aviation. These services include, but are not limited to: fuel, hangers for rent, freight handling, deicing, storage, charter, tie down, and FBO services.... However, General Aviation's competitors have been granted special considerations... [FAA Exhibit 1, Item 1, page 10]...
>
> By these actions, the CRAA has in effect subsidized General Aviation's competitors' businesses to the detriment of General Aviation. Because of this subsidization, General Aviation's competitors' overhead cost for land rental is lower per square foot for necessary operating space. Some examples of current airport tenants who have been given unfair considerations by the CRAA in lease terms, fees and charges are: Superior Aviation, Inc.; Liebler Construction, Company; and United Parcel Services, Inc. In the case of Liebler Construction Company, the standard rent charges were abated for the years one, two, three and six. [FAA Exhibit 1, Item 1, page 11]

The FAA has determined that the record does not show that these "competitors" (SA, Liebler and UPS) are similarly situated to GA. See "Similarly Situated Analysis" section, above.

The portion of the complaint dealing with SA seems to deal with the non-payment of rent for the land under the apron. The allegations referring to SA and the use of ramp and improvements to ramp and leasehold exception of the complaints refer to issues discussed and disposed of under previous sub-sections #2 and #4.

The portion concerning the Liebler Construction Company, which acts as a concessionaire rather than an FBO, refers to an alleged rent abatement. CRAA states:

> Liebler Construction, like GA, was simply given a rent abatement/deferral in its lease— not an overall reduction on the rental amount. ...GA did receive a rental abatement for tearing down the Round Hangar building. ...GA continues to receive the benefit of reduced rates, resulting in an enrichment to GA of many thousands of dollars. GA further has two Leases under a reduced rent, originally entered into with the State of Michigan when it owned the Airport. [FAA Exhibit 1, Item 6, page 5]

GA does not establish how the nature of the rent abatement/deferral for Liebler was significantly different from the considerations it has received over the years. Considering the fact that GA and Liebler are not similarly situated, CRAA is not obligated by the grant assurances to impose substantially the same rates and charges. Therefore, these differences in treatment would have to be extreme, in order for the FAA to find unjust discrimination.

In a different section of its complaint, GA states, "The CRAA has also made special (i.e. reduced rental) arrangements with United Parcel Service for the use of its building and ramp space." [FAA Exhibit 1, Item 5, page 4] GA does not explain how the rate structure for an air carrier is discriminatory against GA, as an FBO. CRAA states in rebuttal to this section of the complaint, "Special Facility Revenue Bonds were issued by the CRAA to construct the UPS facilities. As is common in the airport industry, the guarantor (UPS) pays the debt service and administrative costs and also pays the full rental on the land involved." [FAA Exhibit 1, Item 6, page 5] GA in contrast is not a guarantor of special facility bonds; on this basis alone, GA and UPS are not similarly situated. Moreover, GA operates as an FBO and UPS as an air carrier, providing another basis to conclude that UPS and GA are not similarly situated.

The record reflects, in various sections under different headings, various special arrangements and considerations granted to the businesses mentioned in the record. The FAA believes that it would be unreasonable to expect that any two entities on an airport that are not similarly situated would receive the exact same treatment over the course of decades at an evolving airport and changing airport management. The record reflects that GA received consideration similar to that granted to other businesses from Airport management over the years that was responsive to the circumstances at the Airport and the needs of GA.[21]

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[21] As discussed in the sub-sections above, the record reflects that GA has made business decisions, over the years, to increase its exclusive leasehold; and that CRAA's policy is that the public use areas may be used by any business on the airport. The record does not establish that GA pays higher rental rates than other similarly situated entities at the Airport.

Based on the foregoing, the CRAA appears to be in compliance with its grant assurances at this time, as they apply to this item.

7) Discrimination in imposing building restriction lines.

GA claims that the CRAA discriminated against it by imposing new building restriction lines (BRLs)[22] on several of its rental properties. [FAA Exhibit 1, Item 1, page 11] GA alleges that the CRAA, and not the FAA, was responsible for this alleged reduction in usable leasehold space due to the redesignation of the runway adjacent to GA's leasehold:

> It is the CRAA that plans and identifies the runways which will be used for different size aircraft and purposes. The particular designation at issue was part of a new master plan designed and approved by the CRAA. It was the new designation of the runways, which designation was assigned by the CRAA, not the FAA changing existing restrictions, that caused the complained of building restrictions to come into effect. [FAA Exhibit 1, Item 5, page 10]

GA states, "The CRAA failed to reduce the rent due on these parcels even though their usefulness and value declined significantly. The CRAA failed to otherwise compensate General Aviation for this taking of its leased property." [FAA Exhibit 1, Item 1, pages 11-12]

CRAA responds that BRL's "are imposed pursuant to FAA Rules and Regulations relating to buildings and their relationship to runways."[23] The CRAA disputes that GA has suffered any loss of use of its leasehold, stating that no planned construction has been prevented, and that GA uses the affected parcels for "parking, tie-downs, and ramp space." [FAA Exhibit 1, Item 4, page 12] Furthermore, CRAA makes the point that "there is no discrimination of treatment by and between tenants in the matter of building restriction lines. The building restriction lines are imposed in relation to the runway and without regard to any tenant consideration." [FAA Exhibit 1, Item 4, page 12]

Upon examination of the record, the FAA notes that GA's allegations as to the circumstances and timing of the alleged increase in building restrictions on GA leasehold adjacent to the runway in question are unclear. GA states, "Sometime around 1990, the

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[22] FAA Advisory Circular, AC No. 150/5300-13, "Airport Design" (AC) presents the "airport geometric designs standards and recommendations to ensure the safety, economy, efficiency, and longevity of an airport," and generally defines a BRL as "a line which identifies suitable building area locations on airports." (page 1)

[23] FAA's guidance on BRL's has evolved over the time of the alleged discriminatory activity. FAA Advisory Circular, AC No. 150/5300-12, "Airport Design Standards- Transport Airports" was issued by the FAA on February 28, 1983, setting BRL's at 750' from the runway centerline with an allowance for a reduction to 500' for runways with no precision approach limited to operations of smaller aircraft in good visibility. (page 11) AC No. 150/5300-13, "Airport Design" was issued on September 29, 1989, replacing the 1983 AC and defining BRL's as a recommended feature of airport layout geometry, to be placed to encompass an area defined by other mandated areas, including elements of Federal Regulation (FAR Part 77 surfaces). (page 12)

CRAA redesignated a runway which in turn triggered new building restrictions on several parcels under lease to General Aviation." [FAA Exhibit 1, Item 1, page 11] Later, in its Reply, GA submits evidence suggesting that this increase in restriction occurred sometime between 1968 and 1987.[24] The reason for CRAA's alleged redesignation is not clearly stated, although it is suggested that the runway redesignation was to accommodate larger aircraft. The nature and degree of the alleged increased restrictions are not specific. Finally, GA fails to identify any similarly situated tenant at LAN that has been compensated for the loss of use of its leasehold.

Assuming GA's allegations as fact, an examination of this law and policy reveals that further investigation of the complex, historical circumstances surrounding this charge is unwarranted as the following three arguments establish.

First, the FAA has primary jurisdiction over the use of navigable airspace to ensure safety and efficiency. The FAA's primacy in reviewing airport sponsor compliance with Federal regulations regarding safe and efficient airport layout is based on its authority and responsibility for regulating navigable airspace under Section 49 U.S.C. §40103(b). In implementing this Federal law, the FAA reviews and approves the CRAA's Airport Layout Plan[25] (ALP) in conjunction with its application for Federal funds under the Airport Improvement Program. See "Applicable Law and Policy Section," above.

This ALP should contain information about the intended use of runways and reflect the appropriate FAA guidance regarding the safe and efficient use of airspace, including BRLs. An examination of past versions of AC No. 150/5300, would appear to suggest that BRL's, themselves, have become less restrictive. However, in 1989, AC No. 150/5300-13 recommended that BRL's be placed on an airfield in deference to a Federal Aviation Regulation (Objects Affecting Navigable Airspace, FAR Part 77). Among other things, FAR Part 77 establishes standards for determining obstructions in navigable airspace.

Any change in BRL's, either caused by a change in FAA guidance or by a change in runway usage (as discussed below), would be reflected on the sponsor's ALP, reviewed and approved by the FAA. Such approval would be granted only after the FAA determined that it was consistent with FAR Part 77 and other Federal guidance regarding the safe and efficient use of airspace.

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[24] In support of its argument that GA's leasehold had actually been effected by increased building restrictions, GA submitted a copy of a deposition from Daniel J. Otto, CRAA staff member, in a deposition taken on August 5, 1994. [FAA Exhibit 1, Item 5, exhibit e] In this excerpt Mr. Otto appears to admit that, at some point in time and for some reason, GA's leasehold had become subject to further restrictions. However, it is unclear from the record whether this resulted in a significant reduction in the utility of the parcels involved.

[25] An Airport Layout Plan is a graphic representation of existing and ultimate airport facilities, their location on the airport and the pertinent clearance and dimensional information required to show relationships with applicable standards.

Second, assuming that the CRAA initiated a change that was not required by the FAA and that resulted in a change in the location of BRLs, such a change would still have to be approved by the FAA as described above. Furthermore, as discussed in the Applicable Law and Policy Section, the owner of an airport developed with Federal assistance is responsible for operating the aeronautical facilities for the benefit of the public. See Order, § 4-7(a). This means, for example, that the owner should manage and develop the airport as necessary to ensure the safe and efficient operation of the airport. See Order, § 4-7 and § 4-8. According to Grant Assurance 22 (i), the CRAA "...may...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." This subsection permits the sponsor to exercise control of the airport sufficient to preclude unsafe and inefficient conditions that would be detrimental to the civil aviation needs of the public. On its face, an airport sponsor's redesignation or enhancement of a runway is a reasonable enhancement to the efficiency of the airport.

Third, the FAA notes that GA does not allege that any other entity on the airport was afforded more favorable treatment, or even that there is a similarly situated entity on the airport. In order to find a violation of economic discrimination, at the very least, the FAA would have to have evidence of a leaseholder that was compensated for the loss of the use of its leasehold, caused by the extension of the BRLs.

Therefore, the FAA finds that this element is not properly classified as a discrimination complaint. There is no claim, nor any evidence, that another similarly situated tenant has been given preferential treatment regarding loss of land-use rights by the imposition of the building restriction line. Without such a claim of preferential treatment and considering the ability of a sponsor to manage its airfield in pursuit of efficient service to the public, the CRAA's adoption of new uses may result in reduced access without violating its grant assurances. Finally, the FAA approves such changes to the airport layout, exercising its Federally mandated responsibility to manage the safe and efficient use of the navigable airspace. The allegation asserts that there has been a taking of a portion of the rights that had been leased to GA. This matter may be more appropriately addressed in civil court.

Based on the above, the CRAA appears to be in compliance with its grant assurance at this time, as they apply to this item.

Summary

The FAA has investigated each of the numerous and complex allegations made by the complainant, finding that the record in regard to each allegation fails to establish a case of current noncompliance by the CRAA. In order to be fair and thorough, the FAA has investigated each allegation on its own merits and analyzed each allegation in the context

of the applicable law and policy. Therefore the dismissal of each allegation stands on the analysis discussed above, individually.

The FAA notes that the complainant fails to establish a case of economic discrimination by the CRAA, in some part, because of a few basic reasons. Principally, the FAA was not able to find that any of the tenants at LAN named in GA's complaint were similarly situated to GA in regard to the alleged discrimination. The FAA is mindful that an FBO that entered into agreements with an airport in the 1960's and 1970's is unlikely to be similar situated to a FBO/certificated air carrier entering into agreements in the 1980's and 1990's. Also, many of the complained of actions of the CRAA occurred over a considerable period of time and ended years ago.

Finally, the FAA encourages airport sponsors to amend and improve their practices over time to move in the direction of compliance with their grant assurances. Considering the GA's early agreements with the CRAA and its predecessor, as reflected in the record, it is not unlikely that CRAA has done just this. The CRAA's instituting of new minimum standards (93 Rules), its entering into leases with new aeronautical service providers, and its alleged efforts to redesignate and/or enhance its airfield could demonstrate efforts to better serve the needs of the public in civil aviation.

In conclusion, there does not appear to be any basis for finding the CRAA in noncompliance with its grant assurances.

ORDER

Under the specific circumstances at the Capital City Airport as discussed, and based upon the evidence of record in its entirety, we find:

(1) that the CRAA's leasing arrangements with General Aviation, Superior Aviation and other airport tenants do not violate the provisions concerning economic nondiscrimination set forth in 49 U.S.C. 47107(a)(1)(5), and the CRAA's federal grant assurances.

(2) that the alteration of building restriction lines affecting GA's leasehold, whether initiated by the CRAA's redesignation of the adjacent runway or the evolution of FAA standards regarding the placement of building restriction lines, is a change affecting navigable airspace. Such a change falls under the authority of the FAA by force of 49 U.S.C. 40103(b), as implemented by 14 C.F.R. Part 77, and by 49 U.S.C. 47107(a)(16), as implemented in the CRAA's federal grant assurances.

(3) that the alteration of the building restriction lines was not carried out in an unjustly discriminatory manner.

ACCORDINGLY, we dismiss the complaint by Mr. Michael E. Cavanaugh of Fraser, Trebilcock, Davis & Foster, P.C., filed on behalf of General Aviation, Inc., against the Capital Region Airport Authority, owner of Capital City Airport of Lansing, Michigan.

These determinations are made under Sections 307, 308(a), 313(a), and 1006(a) of the Federal Aviation Act of 1958, as amended, 49 U.S.C. Sections 40103(b)(1), 44502, 44721, 40103(b)(2), 40103(e), 40113, 40114, 47122, 46104, and 46110 as amended by Pub. L. No. 103-305 (August 23, 1994), respectively, and Sections 511(a), 511(b), and 519 of the Airport and Airway Improvement Act of 1982, as amended, 49 U.S.C. Sections 47107(a)((1)(5), 47107(a)(4), 47107(g)(1), 47111(d), 47122 as amended by Pub. L. No. 103-305 (August 23, 1994), respectively.

RIGHT OF APPEAL

This order constitutes final agency action under § 1006(a) of the Federal Aviation Act of 1958, as amended, 49 U.S.C. § 46110, as amended by Pub. L. No. 103-305 (August 23, 1994). Any party to this proceeding having a substantial interest in this order may appeal the order to the Courts of Appeals of the United States upon petition, filed within 60 days after entry of this order, as set forth in § 1006 of the Federal Aviation Act of 1958.

David L. Bennett
Director, Office of Airport
Safety and Standards

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