UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

LANGA AIR, INC	)
v.	) Docket No. 16-00-07
ST. LOUIS REGIONAL AIRPORT AUTHORITY	)

DIRECTOR'S DETERMINATION

I. INTRODUCTION

This matter is before the Federal Aviation Administration (FAA) based on the formal complaint filed in accordance with the FAA Rules of Practice for Federally Assisted Airport Proceeding (FAA Rules of Practice), 14 CFR Part 16.

Langa Air, Incorporated (hereinafter Complainant) has filed a formal complaint, pursuant to 14 CFR Part 16 against the St. Louis Regional Airport Authority (hereinafter Respondent) operator of St. Louis Regional Airport, alleging that the Airport Authority is engaged in economic discrimination and failed to comply with 49 U.S.C. 47107(a)(1),(5) and Federal grant assurances 22(a) and (c).

Complainant is a corporation with its business at St. Louis Regional Airport, East Alton, Illinois. The Complainant is engaged in the business of being a fixed-based operator[1] and alleges that:

- The Respondent has unreasonably discriminated between the rents charged the Complainant and those charged to another FBO;
- The Respondent has a provision for the repair and maintenance of buildings leased to another FBO and the Complainant's lease does not enjoy the same lease terms;
- The Respondent assesses fuel flowage fee charges on the Complainant's company owned aircraft and exempts all such charges of another FBO

[1] A "fixed base operator, (FBO) is an individual or form operating at an airport and providing general aircraft services such as maintenance, storage, ground and flight instruction. FAA Order 6190.6A, Airport Compliance Requirements, Appendix 5

- The Complainant's FBO competitor enjoys a prime location on the airport at a lower rental rate.

II. ISSUES

Upon review of these allegations and the relevant airport-specific circumstances, summarized below in the Background Section, the FAA has determined that the following issues require analysis in order to provide a complete review of the Sponsor's compliance with applicable Federal law and policy:

- Whether the differences in lease terms, conditions and rates between those agreed to by the Complainant and its FBO competitor constitute unjust discrimination by the Respondent in violation of title 49 U.S.C. § 47107(a)(1)(5) and Federal grant assurance # 22, regarding unjust economic discrimination.

- Whether the differences in lease terms, conditions and rates between those agreed to by the Complainant and its FBO competitor constitute the granting of a constructive exclusive right to the Complainant's FBO competitor in violation of title 49 U.S.C. § 40103(e) and its Federal grant assurance #23, regarding exclusive rights.

Our decision in this matter is based on the applicable Federal law and FAA policy, review of the arguments and supporting documentation submitted by the parties and other interested persons, interviews with the parties and other interested persons, and the administrative record reflected in the attached FAA Exhibit 1.[2]

III. THE AIRPORT

The planning and development of the airport has been financed, in part, with funds provided by the FAA under the Airport Improvement Program (AIP), authorized by the Airport and Airway Improvement Act of 1982, as amended, 49 U.S.C. § 47101, *et seq.*

The Airport is a public-use airport located in Alton, Illinois, providing passenger service and certified under Title 14 Code of Federal Regulations Part 139. The airport is owned and operated by the Saint Louis Regional Airport Authority. During a twelve-month period ending in March 1999, there were 116-based aircraft and 88,440 operations annually at the airport.[3] Since 1983, the Airport Sponsor has entered into six AIP grant agreements with the FAA and has received a total of $8,783,072 in federal airport development assistance. In

[2] FAA Exhibit 1 provides the Index of the Administrative Record in this proceeding.
[3] FAA Exhibit 1, Item 1 provides a copy of the most recent FAA Form 510 for the Airport.

1989, the Airport Sponsor received its most recent AIP grant for $2,926,090 to conduct a master plan study and complete a number of airfield improvements.[4]

IV. BACKGROUND

The Complainant is an assignee of a November 15, 1984 lease between Horizon Air Academy d/b/a/ National Jetronics and the St. Louis Regional Airport Authority, the Respondent. The Complainant took possession of the FBO operation consisting of Hangars 6, 17, 18 and associated office space on October 1, 1994. [FAA Exhibit 1, items 6(b) and 9]. The Complainant and its competitor, Premier Air Center are the only two FBOs operating on St. Louis Regional Airport.[5]

In 1999, the Respondent commenced negotiations for lease renewals, providing draft agreements for both FBO operators. [FAA Exhibit 1, items 6 (f), (i) and (ee)]. Premier Air Center's lease with its three-5 year options expires in May 2004. The Complainant's lease expired November 1999. Between November 30, 1999 and May 15, 2000, the Complainant operated in a "hold/over" period and with the requirement to negotiate terms and conditions mutually agreeable to the both parties in order to exercise its option to extend the lease for three (3) additional ten (10) year periods.

The Complainant responded to the December 6, 1999 draft version of the Hangar Lease agreement by outlining, in a memorandum to the Respondent, a number of items in the lease that the Complainant requested the Respondent reconsider. These included the issue of rent disparity with Premier Air Center, overpayment of fuel flowage fees, and the disparity of repair and maintenance services as well as a number of other items not pertinent to the Complaint. [FAA Exhibit 1, item 6 (p)].

Rent Disparity

The Complainant requested to be assessed the same square footage rate as Premier Air Center. Presently, the Complainant is paying $6,402.14 per month for 26,991 square feet (an annual square foot rate of $2.85); while Premier Air Center is paying $4,238.74 per month for 37,817 square feet (an annual square foot rate of $1.35). The Complainant also indicated that Premier's draft lease renewal showed no significant increase in its square foot rate.

[4] FAA Exhibit 1, Item 2 provides the Airport Sponsor's AIP Grant History listing the federal airport improvement assistance provided by the FAA to the Airport Sponsor from 1982 to the Present.
[5] AOPA's (Aircraft Owners and Pilots Association) Airport Director, 2001-2002 edition.

The Respondent in its March 9, 2000 reply refused to make any changes in the base rent and in a subsequent letter indicated that there is no rent disparity between the Complaint and Premier Air Center. [FAA Exhibit 1, items 6(q) and (t)]. Providing justification for its position the Respondent stated:

> The buildings have a depreciated value and as you are aware Premier's buildings are 30 years or more older than ours. Secondly, your lease rates were determined by the debt service to be paid following the construction of those facilities as related to [FAA Order] 5190.l6A Section 4-14(5).[6]
>
> Soon Premier will be paying the debt service on their new hangar plus a land lease. Estimates now put that rental rate at $5.60/square foot. I would also like to point out that Premier Air has invested close to $500,000 in improvements in the Airport Authority hangars. I would be interested to know what improvements you have made to buildings 6, 17, and 18. Again I would like to emphasize we do not have rents based on a square foot basis but on the negotiated amount derived initially using the debt service as a base line. [FAA Exhibit 1, item 6(t)].

Maintenance and Repair Costs

The Complainant took exception to the Respondent paying for the majority of the repair costs associated with Premier's facilities, while it had to pay for the majority of the repair cost for its buildings.

Under the Complainant's existing lease, the Respondent provides maintenance repair for foundation, structure and roof of hangars 6, 17, and 18 except hangar doors and any damage due to Complainant's willful neglect and destruction. [FAA Exhibit 1, item 6(b), page 5, Article XIII]. The December 1999 draft lease agreement did not change the Complainant's maintenance responsibilities. [FAA Exhibit 1, item 6(i), paragraph 9]. The Complainant retained responsibility for door maintenance and repair. The Respondent is obligated for exterior and roof structure maintenance of the hangar.

Premier Air Center's 1986 leases for hangars 2, 10, and 16 require the Respondent to provide maintenance and repair of the exterior roof, doors, heating, and air conditioning, electric and plumbing. Premier was responsible for the maintenance and repair of the building's interior, heating, air conditioning and utilities. Any item involving the maintenance or repair of heating, air conditioning, electricity and plumbing costing over $200 is

[6] FAA Order 5190.6A, Section 4-14, paragraph 5 reads, "The basics for rates and charges is usually related to costs incurred by the airport owner. Rarely can it be established that an actual or proposed rate is so high that it would recover to the owner an amount unreasonable and in excess of costs. More often the FAA will be required to determine whether the rate structure, as applied, will result in discrimination.

considered an expense of the Respondent, anything under $200 is Premier's expenses. [FAA Exhibit 1, items 6(c) and 9(b), Article III]

Premier's 2000 draft lease for hangar 2 and 10 made it responsible for repairs to heating, air conditioning system up to $300.00; the Respondent assumes the cost of repairs above $300. [FAA Exhibit 1, item 6(ee), Article 10]. Premier is also responsible for the repair of the exterior and roof structure, hangar door repair, electric and plumbing and any other maintenance increased under the 2000 draft, it still receives a maintenance subsidy.

The Respondent provided no justification for the maintenance subsidy to Premier other than to say that Premier's building structures were 30 years older than the Complainant's. [FAA Exhibit 1, item 6(t)]. The Complainant believes that the repair provision negates the age of the building as justification for lower lease rates for Premier. [FAA Exhibit 1, item 6(p)].

Fuel Flowage Fee Disparity

The Complainant also requested that its terms for paying a fuel flowage fee be adjusted to equal that of Premier. The Complainant presently pays for all fuel purchased, while Premier is only required to pay for fuel sold. [FAA Exhibit 1, items 6(b), Article V Fees and 6(c) Article V Lessee's Obligations (3)]. This permits Premier to exclude its company owned aircraft from the fuel flowage charges while the Complainant is forced to pay for fuel used in Langa Air owned aircraft, an excess of $14,000 in fuel flowage charges. [FAA Exhibit 1, item 6(j)].

The Respondent in its March 9, 2000 reply refused to consider adjustments in the fuel flowage "at least until fuel audits from both FBO's have been reviewed." [FAA Exhibit 1, item 6(q)]. In a letter dated March 28, 2000 to the Complainant, the Respondent indicated,

> The issue regarding the flowage fee is misrepresented. The flowage fee is not a charge to the FBO but a free charged to the user of the airport. This fee is .07 per gallon, there is no other fee rate. The FBO's sole purpose with respect to the fuel flowage rate is to collect those fees that are owed to the Airport Authority. The Airport Authority is considering a fee structure as well as repair responsibility for the users of the fuel farm. This will be an "across the board agreement" for any user of the farm. [FAA Exhibit 1, item 6(t)].

Complaint

In a March 3, 2000, letter to Paul Kramer, State of Illinois Division of Aeronautics (IDOT, the Complainant raised the concern that it was not being charged an equal lease rate as the other FBO on the field, although both were making similar use of the airport and using similar facilities. [FAA Exhibit 1, item 6(u)]. After reviewing the proposed leases of both FBOs, IDOT advised the Complainant that they might have a case for filing a complaint with the FAA. IDOT advised both parties to meet in an effort to resolve the issues [FAA Exhibit 1, item 6(x)]. The Respondent believing there is no economic discrimination regarding rent or any other item in the current lease, elected not to meet with representatives of Langa Air and IDOT. [FAA Exhibit 1, item 6(hh)].

On May 15, 2000, the Respondent advised the Complainant that it decided not to extend its November 15, 1984, lease because no negotiations of any substance were made during the "holdover" period of the lease. Respondent also cited the Complainant's failure to pay lease payments in a timely manner. Respondent ordered the Complainant to vacate the premises by November 30, 2000. [FAA Exhibit 1, item 6(ff)].

On May 17, 2000, Complainant filed a complaint with the FAA under title 14 CFR Part 16 against the St. Louis Regional Airport Authority. On May 26, 2000, the FAA dismissed the complaint without prejudice because it was not complete. [FAA Exhibit 1, item 4]. The complaint was refiled June 5, 2000, and docketed as Number 16-00-07. [FAA Exhibit 1, item 7].

The Complainant alleges that Premier Air Center's rental rate is lower, it has greater benefits, i.e., repair and maintenance under the lease, it is exempt from fuel flowage fee charges, and its location on the airport is far superior. [FAA Exhibit 1, item 6].

The Respondent in its answer claims fuel flowage fees were negotiated by different Airport boards and managers and do not apply to the Complainant in past or present because they do not own any company aircraft. [FAA Exhibit 1, item 9].

The Respondent also claims that Premier's buildings are decades older and that Premier upgraded its facilities at a cost of $500,000, while the Complainant's improvements were nominal. Neither Premier nor National Jetronics and its assignment to the Complainant reference square foot computations. Earlier Airport boards and managers negotiated prior leases and the Respondent is unable to consequently determine the "market facts" in the least determinations, i.e., the Premier lease was dated October 20, 1986, and was a basic continuation of the prior tenant, Walston Air's lease negotiated in the 1950s.

[FAA Exhibit 1, item 9].

Premier's new lease is based upon the new hangar construction costs guaranteed by the Airport and does not reference square footage as a basis, although it does reference $.14 per square for for land lease only. [FAA Exhibit 1, item 9].

The Respondent alleges that the Complainant's attempt to show discrimination based upon differing square foot costs as applied to buildings that are decades older and younger is improper. According to the Respondent, the Complainant's unilateral method to attempt to break down lease payments by square footage factors is not material or relevant. Complaint fails to show discrimination, it reflects leases negotiated during substantially different times, with different tenants, under different market conditions with different airport boards and manager. The Respondent terminated the Complainant's holdover lease and option to extend because both parties could not reach mutual agreement. [FAA Exhibit 1, item 9].

The Complainant, in its Reply, requests the FAA to authorize discovery pursuant to 14 CFR 16.213 and a hearing to its complaint.

Lease Summary

Langa Air, Incorporated

November 15, 1984 Lease Agreement. [FAA Exhibit 1, item 6b]. Horizon Air Academy d/b/a National Jetronics subsequently assigned to Langa Air. The leased premises consist of (a) Hangars #6 (3,155sqft)[7]; (b) Hangar 17 (6,142.5sqft) and associated real estate totaling 1 acre; (c) Hangar 18 (16,632sqft) and real estate totaling ninety-four hundredths of an acre on which hangar 18 is situated; (d) Adjacent aircraft parking areas to hangars #6, 17 and 18; (e) Three (3) 10,000 fuel tanks.[8]

Lessee can use the premises for the establishment of a full service fixed base operator as set forth in Ordinance 1984. Any other use requires the prior written consent of the Authority.

Authority's obligations consist of providing maintenance to foundation, structure (excepting doors), and roof of hangars 6, 17, 18 except damage caused by will full neglect and destruction causes by Lessee.

[7] Building square footages, FAA Exhibit 1, item 6e.
[8] The Complainant also leased two T-hangars, #37 and #43 for aircraft storage. The term of both lease agreements was from October 1, 1994 to September 30, 1995. The Respondent provided maintenance for the foundation, structure, doors and roof except repairs due to willful neglect or destruction.

The term of the least is December 1, 1984 until November 30, 1999 for a 15-year term. Lessee has the option to extend the lease for three (3) additional ten (10) periods on terms mutually agreed upon by both parties.

Lessee agrees to pay: (a) Land rent for hangar 18 $2,820.62 annually or $235 per month; (b) An amount equal to the annual bond payment plus 2% premium payable in equal monthly installments for hangar #18; (c) $12,000 annual payable monthly at $1,000 for hangar #17 and associated land; (d) $5,400 annually payable monthly at $450 for hangar 6; (d) A rental fee of $0.02 per gallon for each gallon of fuel purchased by the Lessee for the use of the fuel farm; fuel flowage of $0.03 per gallon of Aviation fuel purchased by Lessee; Authority reserves the right to adjust fuel flowage fees annually; (f) $52.00 to lessor for the purchase of 2 refuelers and 1 tow tractor as identified in Exhibit F to the Lease. (At the expiration of the initial term, the equipment revers to the Authority); (g) 40% of the established minimum fees collected monthly, for the parking and/or storage of any aircraft, not owned by lessee or any of its subsidiaries.

Rents go into effect February 1, 1985. Lease payments for all facilities except lease payments applied to the bond issue for hangar #18 will increase annually by an amount equal to 6% of the total rent of the previous year.

Revised December 6, 1999 Draft Lease Agreement
[FAA Exhibit 1, item 6(i). The leased premises consist of (a) Hangar #17; (b) Hangar #18. Under the lease, the premises cannot be used for any unlawful purpose.

The premises would be leased to the Lessee until November 30, 2009, and the Lessee shall have the right to lease the premises for an additional two- (10) year terms mutually agreed upon by both parties. Rent will be adjusted annually according to the St. Louis Urban Consumer price index, not to exceed 5%.

Lessee is responsible for door maintenance and repair. Lessor will be responsible for exterior and roof structure maintenance of the hangar.

Lessee agrees to pay (a) $2,132.93 per month for hangar #17; (b) $3,309.39 per month for hangar #18.

Premier Air Center, Incorporated

October 20, 1986 Lease Agreement. [FAA Exhibit 1, item 6(c)]. The leased premises consists of (a) Service hangar, building #2; (b) Four buildings utilized as t-hangars and identified as buildings #3, 4, 7, and 8; (c) Cold storage hangar, building #10; (d) Fuel tanks and pumps; (e) Tie-downs, concrete and grass.

Under the lease, Premier is authorized to provide a range of Fixed Base Operator services, including flight school, repair shop, storage, servicing, rental and sale of aircraft, charter services, and the sale of gasoline, aviation fuel and oil.

The Authority provides maintenance and repair of hangars 2 and 10 regarding exterior roof, doors heating, air conditioning, electric and plumbing. Any item involving the maintenance or repair of heating, air conditioning, electricity and plumbing costing over $200 is considered an expense of the Authority; anything under $200 is considered the lessee's expense.

The lease term is October 20, 1986 until May 31, 1989. The lease (excluding building # 3, 4, 7 and 8, t-hangars) can be renewed for three five (5) year options terminating in calendar year 2004. Rental payments for the first option period remain unchanged. For each additional option, the rent increases according to the prime rate of a local bank not to be less than 6% or more than 12%.

Lessee agrees to pay: (a) $1,390.62 per month for hangar #2; (b) $2,570.82 per month for hangar #10 (c) Two-thirds on the bond issue payments which terminate November 1986, less any payments made by previous lessee; (d) 50% of the established minimum fees[9] collected for the parking and/or storage of any aircraft, not owned by lessee or any of its subsidiaries; (e) 40% of the established minimum fees collected monthly for the parking and/or storage of any aircraft, not owned by lessee or any of its subsidiaries; (e) 40% of the established minimum fees collected monthly for the parking and/or storage of any aircraft, not owned by lessee or any of its subsidiaries; (f) Fuel flowage of $0.03 per gallon of fuel sold excluding fuel used by lessee.

October 20, 1986 Lease Agreement for Hangar #16. [FAA Exhibit 1, item 9(b)]. Under the lease Premier is authorized to use the premises for the storage, serving, repair and painting of aircraft.

Authority must provide maintenance and repair of hangar 16 regarding exterior roof, doors heating, air conditioning, electric and plumbing. Any item involving the maintenance or repair of heating, air conditioning, electricity and plumbing costing over $200 is considered an expense of the Authority; anything under $200 is considered the lessee's expense.

The term of the lease is October 20, 1986 until May 31, 1989. The lease can be renewed for three (3) five (5) year options terminating in calendar year 2004. Rental payments for the first option period remain unchanged and the bond issue must be paid off. For each additional option, the rent increases according to the prime rate of a local bank not to be less than 6% or more than 12%. Lessee agrees to pay $2,845.00 per month for hangar #16.

[9] Established minimum fees are set by the airport.

July 27, 1989 Lease Addendum. [FAA Exhibit 1, item 9(c)]. This addendum provided for the renovation of building #2 and required the lessee to pay additional rent of $197,093.14 over a five-year period.

September 30, 1999 Lease Addendum. [FAA Exhibit 1, item 6(f)]. This unexecuted lease, revised September 30, 1989, is for unimproved land for the building and construction of an aircraft hangar. The lease is for a term of five (5) years with forty-five (45) additional successive terms of one (1) year with automatic renewal options. Lessor will provide exterior and roof structure maintenance of the hangar. Door maintenance and repair is the responsibility of the lessee. Lessee pays $.14/square foot/year for a parcel of land, adjusted annually according to the St. Louis Consumer price index not to exceed 5%, and amortized fee associated with the structure constructed amortized over 25 years and including a principle, interest and all associated fees, and a monthly rent of $1100 adjusted annually according to the St. Louis consumer price index not to exceed 5%. This lease agreement is unexecuted.

May 11, 2000 Lease Agreement. [FAA Exhibit 1, item 6 (ee)]. In this unexecuted draft lease, the leased premises consist of (a) Service hangar, building #2 and (b) Cold storage hangar, building #10. Under the lease, Premier is authorized to use the hangar for aviation-oriented purposes.

The premises are currently leased to the Lessee until May 2004 and Lessee shall have the right to lease the premises for an additional five-year term. Lessee shall have nine additional successive 5-year terms with automatic renewal. Rent will be adjusted annually according to the St. Louis Urban Consumer price Index, not to exceed 5%.

Lessee will be responsible for repairs to hearing, air conditioning system up to $300.00; Authority assumes the cost of repairs above $300. Lessee is also responsible for repair of exterior and roof structure, hangar door repair and replacement, electric and plumbing and any other building system above ground.

Lessee agrees to pay (a) $1,500.00 per month for hangar #2 and (b) $2,750.00 per month for hangar #10.

V. APPLICABLE FEDERAL LAW AND FAA POLICY

The Federal role in civil aviation has been augmented by various legislative actions that authorize programs for providing Federal funds and other assistance to local communities for the development of airport facilities. In each such program, the airport sponsor assumes certain obligations, either by contract or by restrictive covenants in property deeds and conveyance instruments, to maintain and operate its airport facilities safely 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 Airport Improvement Program

Title 49 U.S.C. § 47101, *et seq.*, provides for Federal airport financial assistance for the development of public-use airports under the Airport Improvement Program (AIP) established by the Airport and Airway Improvement Act of 1982, as amended. 49 U.S.C. § 47107, *et seq.*, sets forth assurances to which an airport sponsor agrees as a condition of receiving Federal assistance. Upon acceptance of an AIP grant, the assurances become a binding contractual obligation between the airport sponsor and the Federal government. The assurances made by airport sponsors in AIP grant agreements are important factors in maintaining a viable national airport system.

The FAA has a statutory mandate to ensure that airport owners comply with these sponsor assurances. See, *e.g.*, the Federal Aviation Act of 1958, as amended and recodified, 49 U.S.C. §§ 40101, 40113, 40114, 46101, 46104, 46105, 46106, 46110, and the Airport and Airway Improvement Act of 1982, as amended and recodified, 49 U.S.C. §§ 47105(d), 47106(d), 47107(k), 47107(l), 47111(d), 47122. FAA Order 5190.6A *Airport Compliance Requirements* (Order), issued on October 2, 1989, provides the policies and procedures to be followed by the FAA in carrying out is legislatively mandated functions related to federally obligate airport owners' compliance with their sponsor assurances.

Airport Sponsor Assurances

As a condition precedent to providing airport development assistance under the Airport Improvement Program 49 U.S.C. § 47107, *et. seq.*, the Secretary of Transportation and, by extension, the Federal Aviation Administration (FAA) must receive certain assurances from the airport sponsor. 49 U.S.C. § 47107(a) sets forth the statutory sponsorship requirements to which an airport sponsor receiving Federal financial assistance must agree.

These sponsorship requirements, or assurances, 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, Sec. 1, "Sponsor Assurances and Certification." Upon acceptance of an AIP grant by an airport sponsor, the assurances become a contractual obligation between the airport sponsor and the Federal government. The FAA has a statutory mandate to ensure that airport owners comply with these sponsor assurances. 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.

The FAA Airport Compliance Program

The FAA discharges its responsibilities for ensuring airport owners' compliance with their Federal obligations through its Airport Compliance Program. The FAA's airport compliance efforts are based on the contractual obligations, which 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 public interest is being served. FAA Order 5190.6A, 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 basis 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 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.

Enforcement of Airport Assurances

FAA Order 5190.6A covers all aspects of the airport compliance program except enforcement procedures.

Enforcement procedures regarding airport compliance matters, absent the filing of a complaint under *FAA Rules of Practice for Federally-Assisted Airport Proceedings* (14 CFR Part 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, Sec. 5-3, and FAA Order 5190.6A, Sec.

6-2. *FAA Rules of Practice for Federally Assisted Airport Proceedings* (14 CFR Part 16) were published in the Federal Register (61 FR 53998, October 16, 1996) and were effective on December 16, 1996.

Public Use of the Airport

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. Assurance 22, Economic Nondiscrimination, of the prescribed sponsor assurances implements the provisions of 49 U.S.C. § 47107(a)(1) through (6), and requires, in pertinent part, that the sponsor of a federally obligated airport

> will make its airport available as an airport for public use on reasonable terms, and without unjust discrimination, to all types, kinds, and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport. 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 that would be detrimental to the civil aviation needs of the public.

However, in all cases involving the airport owner imposing restrictions on the use of the airport for safety and efficiency reasons, the FAA will make the final determination of the reasonableness of the airport owner's restrictions that deny or restrict use of the airport. (FAA Order 6A, para. 4-8).

The owner of an airport developed with Federal assistance is responsible for operating the aeronautical facilities for the benefit of the public. *See* FAA Order 5190.6A, Sec. 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, Secs. 4-7 and 4-8.

Reasonable, and Not Unjustly Discriminatory Terms

Assurance 22, Economic Nondiscrimination, of the prescribed sponsor assurances satisfies the requirements of 49 U.S.C. 47107(a)(5). The statute provides that FBOs similarly using the airport must be subject to the same charges. The assurance provides, in pertinent part, that the sponsor of a federally obligated airport will ensure 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(c)

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, Secs. 4-14(a)(2) and 3-1.

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, Sec. 3-8(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, Sec. 4-13(a).

Exclusive Rights

Title 49 U.S.C. § 40103(e), provides, in relevant part, that "there shall be no exclusive right for the use of any landing area or air navigation facility upon which Federal funds have been expended."

49 U.S.C. § 47107(a)(4), similarly provides, in pertinent part, that "there will be no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public."

Assurance 23, "Exclusive Rights", of the prescribed sponsor assurances requires, in pertinent part, that the sponsor of a federally obligated airport

"…will permit no exclusive right for the use of the airport by any persons providing, or intending to provide, aeronautical services to the public…and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under the Airport and Airway Improvement Act of 1982."

In FAA Order 5190.1A, Exclusive Rights, the FAA published its exclusive rights policy and broadly identified aeronautical activities as subject to the statutory prohibition against exclusive rights. While public use airports may impose qualifications and minimum standards upon those who engage in aeronautical activities, we have taken the position that the application of any unreasonable requirement or standard that is applied in an unjustly discriminatory manner may constitute a constructive grant of an exclusive right. Courts have found the grant of an exclusive right where a significant burden has been placed on one competitor that is not placed on another. See e.g. Pompano Beach v. FAA, 774 F.22 1529 (11th Cir., 1985).

FAA Order 5190.6A provides additional guidance on the application of the statutory prohibition against exclusive rights and FAA policy regarding exclusive rights at public-use airports. See Order, Ch. 3.

Fee and Rental Structure

Assurance 24, "Fee and Rental Structure," of the prescribed sponsor assurances satisfies the requirements of 49 U.S.C. 47107(a)(13). 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."

FAA Order 5190.6A describes the responsibilities under Assurance 22, Economic Nondiscrimination, and Assurance 23, Exclusive Rights, 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 and without granting an exclusive right of use. See Order, Secs. 4-14(a)(2) and 3-1.

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. See Order, Sec. 4-14(a).

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 using the same or similar facilities. See Order, Sec. 4-14(a)(2).

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, Sec. 4-14(d)(2).

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 shall be subject to the same rates, fees, rentals and other charges. See Order, Sec. 4-14(d)(2).

FAA policy further provides that, all leases with terms exceeding five years, should provide for periodic review and adjustment of the rates and charges based on an acceptable index. This periodic lease review is expected to facilitate parity of rates and charges between new commercial aeronautical tenants and long-standing tenants making the same or similar use of airport facilities and to assist in making the airport as self-sustaining as possible under the circumstances existing at the airport. See Order, Sec. 4-14(d)(2).

VI. ANALYSIS AND DISCUSSION

Complainant alleges that the Respondent engages in unjust discrimination when Respondent (i) charges Complainant and its FBO competitor, Premier Air Center, different rates for similarly used leased property and facilities; (ii) provides a maintenance subsidy only to Complainant's FBO competitor for repair and maintenance on airport hangars and Complainant is required to pay for similar repair and maintenance on airport hangars; (iii) assesses differing fuel flowage fee charges between the Complainant and the Complainant's FBO competitor; (iv) provides the Complainant's FBO Competitor a prime location at a lower rate.[10]

Respondent, it its defense, claims that lease charges are based on a negotiated amount derived initially using the debt service as a baseline. According to the Respondent, fuel flowage charges are not discriminatory because the Complainant has no company owned aircraft. Leases were negotiated during substantially different

[10] The Complainant provides no evidence or information to support the allegation that Premier Air Center enjoys a better location on the airport. Therefore the FAA is dismissing the Complainant's allegation regarding Premier's location.

times, with different tenants, under different market conditions, with different airport boards and managers.

Grant assurance # 22 provides protection from unjust economic discrimination to aeronautical activities. Specifically, grant assurance 22(a) provides that the sponsor of a federally obligated airport

> will make its airport available as an airport for public use on reasonable terms, and without unjust discrimination, to all types, kinds, and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport

Grant assurance 22(c) is specific to FBOs, stating:

> Each fixed-based operator at the airport 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. See also 49 U.S.C. 47107(a)(5).

Grant assurance #22 at (c), provides that the airport may treat dissimilarly, dissimilar aeronautical uses of the Airport. 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. Additionally, FAA Order 5190.6A provides that "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." See Order, para. 4-14(d)(1)1(c).[11]

The records supports a finding that both Langa Air and Premier are full service fixed base operators, similarly using the airport.

Against this background, the FAA considers the following allegations made by the Complainant in regard to allegations of unjust economic discrimination.

Issue 1: Whether the differences in lease terms, conditions and rates between those agreed to by the Complainant and its FBO competitors constitute unjust discrimination by the Respondent in violation of Federal grant assurance # 22, regarding unjust economic discrimination.

[11] The FAA notes that this guidance appears under the sub-heading "At air carrier airports." The FAA has accepted that this guidance is generally applicable to the circumstances of FBO's and air carriers at air carrier and general aviation airports.

Rent Disparity

Respondent claims that the lease payments are not assessed on a square footage rate basis for airport facilities. Lease payments are based upon a negotiated amount derived initially from cost of debt service used as a baseline. Respondent also claims Complainant has failed to show any discrimination. According to the Respondent, the differences in the leases simply demonstrate that the leases were negotiated during substantially different times, with different tenants, under different market conditions, with different airport boards and managers. [FAA Exhibit 1, item 9].

As a part of its justification, the Respondent cites FAA Order 5190.6A, Section 4-14, paragraph 5 which reads,

> "The basis for rates and charges is usually related to costs incurred by the airport owner. Rarely can it be established that an actual or proposed rate is so high that it would recover to the owner an amount unreasonable and in excess of costs. More often, the FAA will be required to determine whether the rate structure, as applied, will result in discrimination.

The prohibition of unjust discrimination does not prevent a sponsor from accepting differing lease rates resulting from differing time frames of lease terms. A sponsor does not have an obligation to equalize the terms of use, but can pursue agreements with the more recent leaseholders that more nearly serve the interests of the public. The FAA does not require that a sponsor maintain equal lease rates over time between competing FBOs.
See e.g., Penobscot Air Services LTD v FAA, 164 F.3d 713, 726 (1st Cir., 1999).

FAA permits different rental and fee structures in a number of circumstances, i.e., tenant leasing facilities as opposed to a tenant constructing facilities at its own expense, or rental differentials recognizing one FBO's prime location on the airport compared to another FBO's less advantageous location and leases separated by time, even though a sponsor has an obligation to facilitate parity of rates and charges between new FBO services coming on the airport and long standing operators. See FAA Order 5190.6A, para. 4-14(d)(2).

However, the FAA does not concur with the sponsor that the differences in the leases simply demonstrate that the leases were negotiated during substantially different times, with different tenants, under different market conditions, with different airport boards and managers. Both leases, the Complainant and Premier Air Center are presently in negotiations for renewal of similarly situated FBO facilities, by the same airport boards and same airport manager. The sponsor may have had cause to charge dissimilar lease payments under the Complainant's assigned 1984 lease agreement and Premier Air Center's 1986 lease agreement; however, the FAA cannot accept this argument when the

Respondent is presently negotiating new terms for both FBO operators. The sponsor should be working to achieve rate parity in lease contracts.

Moreover, the FAA does not accept the Respondent's assertion that its fee structure is consistent with its Federal obligations simply because the rental rates are derived from the debt service incurred to construct those facilities. The Respondent cites FAA policy in stating that the basis for rates and charges is usually related to costs incurred by the airport sponsor. The Respondent also cites FAA policy to support its methodology for determining its fee rental structure. However, we disagree that the methodology used by the Respondent is consistent with FAA policy, which requires the methodology to be one of non-discriminatory cost recovery. FAA's Final Policy Regarding Airport Rates and Charges states that when an airport proprietor uses a cost based methodology to assess aeronautical fees, those fees imposed on any aeronautical user or user group may not exceed the costs allocated to that user or user group under a transparent, reasonable, and not unjustly discriminatory rate-setting methodology. [FAA's Final Policy Regarding Airport Rates and Charges, 61 Federal Register 31994, 32021 (June 21, 1996)].[12] We find the Respondent's position is neither transparent nor reasonable in a ratemaking system that seeks to recover costs. The Respondent's methodology uses the cost of debt service for establishing buildings constructed more than 30 years ago to determine fees for leases that are projected 45 years into the future. It appears that, the Respondent is attempting to estimate the current value of the facilities using the initial cost of debt service.

We find the Respondent's position is neither transparent nor reasonable in a ratemaking system that seeks to recover costs. The Respondent's methodology uses the cost of debt service for establishing buildings constructed more than 30 years ago to determine fees for leases that are projected 45 years into the future. It appears that the Respondent is attempting to estimate the current value of the facilities using the initial cost of debt service.

The FAA does not believe the initial cost of retired debt service provides a transparent or direct indication of the current value of the facilities. The initial debt service is not a cost that can be allocated to the user in a cost based rate-setting methodology, in this case, because there is no remaining debt service on the facilities at issue.[13] In addition there is no evidence of any new debt service on the facilities leased to the Complainant and its FBO competitor, which could be properly allocated to the users.

The Respondent notes that the competitor FBO's facilities are 30 years older than the Complainant's facilities and argues that the difference in age accounts for the difference in lease rates. While there are recognized differences in the ages of the facilities, the Respondent provides no argument or analysis to support a correlation between the

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[12] On appeal, the United States Court of Appeals for the District of Columbia vacated and remanded portions of the Final Policy setting forth guidance on fair and reasonable airfield and nonairfield fees. See Air Transport Association of America v. Dept. of Transportation, 119 F.32 38 (D.C. Cir. 1997), as modified on rehearing, order of October 15, 1997. None of the vacated sections have been cited or applied herein.

[13] In a conversation with an FAA Compliance Specialist on March 8, 2001, Marion Richardson, A.A.E. Airport Manager for St. Louis Regional Airport indicated that the debt service was paid off several years ago on Langa Air buildings and Premier Air Center buildings.

initial cost of debt service and the current cost of maintaining and operating the facilities.

As an example, while the competitor FBO's facilities may well have cost less than the Complainant's facilities at the time they were constructed, one would expect that the cost of necessary repairs and improvements to the competitor's facilities would be substantially higher than those of the Complainant because of the age difference. In fact, the Respondent has agreed to incur more repair costs for the competitor FBO than for the Complainant based solely on the fact that the competitor FBO's facilities are substantially older. The Respondent has provided a fee structure that allows lower rates for the older facilities based on initial cost of debt service without taking into account the higher cost of maintenance and repair. Using the initial debt service cost incurred for the construction of the facilities does not account for, or adjust for, recognized disparities in maintenance and repair costs.

The FAA agrees with the Complainant that the Respondent's decision to help pay the costs of repairs to the competitor FBO's facilities, at least in part, negates the Respondent's argument that the age of the facility and the initial cost for construction justifies the difference in lease rates, with the older facilities receiving a lower rental rate. We are not persuaded that the age of a facility directly correlates to its condition and could, therefore, account for differing lease rates.

Based on the foregoing, we find the Respondent's methodology for applying lease rates is not based strictly on cost recovery and is not transparent and reasonable. In addition, we find the Respondent's methodology using the initial cost of debt service as a basis for lease rates to be unjustly discriminatory.

When an airport sponsor employs a rate-setting methodology that is not based strictly on cost recovery, FAA policy requires that the airport sponsor seek parity in its lease rates between new FBO services and long-standing operators. Specifically, FAA Order 5190.6A provides, in relevant part, that

> 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 . . . shall be subject to the same rates, fees, and other charges. Para. 4-14(a)(2)
>
> All leases with a term exceeding 5 years shall provide for periodic review of the rates and charges for the purpose of any adjustments to reflect the then current values, based on an acceptable index. This periodic lease review procedure will facilitate parity of rates and charges between new FBO services coming on the airport and long-standing operators. It will also assist in making the airport self-sustaining as possible under the circumstances existing at that particular airport. Para. 4-14-(f)

The methodology used by the Respondent is neither a methodology that seeks to recover current costs nor a methodology that seeks to facilitate parity in rental rates between FBOs. Since both tenants are currently in lease negotiations with the Respondent, the FAA would expect that the Respondent would employ a reasonable methodology to establish comparable lease rates that provides for objective and quantitative differences in valuation based on the age of the facilities and location on the airport. One acceptable methodology is to obtain an appraisal of the Complainant's and competitor FBO's leasehold facilities. This was not done in this case.

We note that Premier Air Center made $500,000 in tenant improvements to its leased facilities. It is permissible for the Respondent to issue rent credits sufficient to permit Premier to recapture its investment. However, a similar arrangement must be offered to Langa Air, it if offers to make capital improvements to the leased premises.

Maintenance and Repair Costs

Premier Air Center's 1986 lease agreement requires the Respondent to assume responsibility for the maintenance and repair of the heating, air conditioning, electricity and plumbing costs over $200 for Premier's leased facilities. The new lease imposes a liability on the Respondent for repairs to the hearing, ventilating, air conditioning system and cooling for repairs above $300. In its 1984 and drafted 1999 lease agreement, Complainant is responsible for all repairs associated with similar systems. The Respondent's only argument is that Premier Air Center's the building are 30 years older or more. Under the new agreement, Premier Air Center continues to enjoy a maintenance subsidy that is not enjoyed by the Complainant. It is common industry practice that the cost of tenant provided repairs is reflected in the market value of the leased property. FAA finds that the maintenance provision also violates Grant assurance 22(c).

Fuel Flowage Fee Disparity

The Complainant pays for all fuel purchased, while Premier pays for fuel sold. The Respondent argues that the fuel flowage fee is a "pass through" charge collected by the FBO on behalf of the Respondent and the charge does not apply to the Complainant because the Complainant does not own aircraft.

The FAA is not convinced by this argument. Under the Respondent's method of assessing fuel flowage charges, in a given month, the Complainant is required to pay flowage fees on delivery of fuel and carries this expense until completion of retail sales for the month. On the other hand, Premier does not pay in advance of fuel retail sales and does not pay fees for fuel personally consumed. For Premier this represents benefit and an advantage not enjoyed by the Complainant. This approach is discriminatory and violates Grant Assurance 22c:

> Each fixed-based operator at the airport 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. See also 49 U.S.C. 47107(a)(5).

FAA is concerned that exempting certain users from airport charges disproportionately reallocates the "common costs" of the airport (costs not directly attributable to a specific user group or cost center) among airport users and user groups. Fuel flowage fees are typically charged at airports as a means to recover "common costs" of general aviation use of the airfield, the sponsor has an obligation to ensure that an aeronautical user or user group does not pay costs properly allocable to other users or user groups. (See, Section 12. Allocation of Shared Costs, Policy Regarding Airport Rates and Charges, 61 Fed. Reg.3 1994 (June 21, 1996); see Air Transport Association of America v. Department of Transportation, 119 F.3d 38 (D.C. Cir. 1997), as modified on rehearing, order of Oct. 15, 1997. [See footnote 12]. An exemption in its present form violates the FAA Policy Regarding Airport Rates and Charges.

The Record indicates that the administration of fuel flowage fees was removed from the FBO leases during the lease negotiations and developed under a separate agreement. Neither the Complainant nor the Respondent provided a copy of the new agreement regarding fuel flowage fees. We recommend that the Respondent avoid incorporating into its leases any exemptions to policies and standards of airport use that could be changed by future airport management and potentially result in significant economic disadvantages to new airport tenants. Such exemptions to airport policies and standards are more appropriately applied through the Airport's "minimum standards."

FAA finds that there is disparity in airport charges and lease terms and conditions that the Respondent imposes for similarly situated airport facilities and the differences in lease terms, conditions and rates between those agreed to by the Complainant and its FBO competitors constitute unjust discrimination by the Respondent in violation of title 49 U.S.C. 47107(a)(1)(5) and Federal grant assurance # 22(a) and (c), regarding unjust economic discrimination.

Issue 2: Whether the differences in lease terms, conditions and rates between those agreed to by the Complainant and it FBO competitors constitute the Respondent granting a constructive exclusive right to Premier Air Center in violation Title 49 Section 40103(e) and Federal grant assurance # 23, regarding the prohibition on exclusive rights.

An airport owner accepting federal funds assumes the obligation to make the airport facilities and services available on fair and reasonable terms without unjust discrimination. When an airport owner grants special privileges or

monopoly rights to one airport user, it places a significant burden on the other airport user and results in the airport sponsor granting a constructive exclusive right to the airport user receiving the benefits. The Complainant bears a significant burden to conduct an FBO business at the airport from similarly situated facilities because the airport's rate structure requires him to pay more money for fewer facilities than his competitor. Complainant must pay for all the maintenance on his facilities, unlike his competitor; and he must pay a disproportionate share of the airport's common cost while his competitor enjoys an exemption from the same charges.

Assurance 23, "Exclusive Rights" of the prescribed sponsor assurances requires, in pertinent part, that the sponsor of a federally obligated airport

"…will permit no exclusive right for the use of the airport by any persons providing, or intending to provide, aeronautical services to the public…and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under the Airport and Airway Improvement Act of 1982

FAA finds that the differences in lease terms, conditions and rates between those agreed to by the Complainant and its FBO competitors constitute the Respondent granting a constructive exclusive right to Premier Air Center in violation Title 49 Section 40103(e) and Federal grant assurance # 23, regarding the prohibition on exclusive rights.

We note from the record that the Complainant and the Illinois Department of Transportation (IDOT) state block grantor made several attempts to reach resolution of these issues. St. Louis Regional Airport Authority believing it was right, refused to discuss these issues with IDOT and the Complainant. We encourage all sponsors to seek assistance and policy guidance on issues concerning their grant assurance obligations. Both the FAA and its state block grantors are available to provide assistance.

Evidentiary Hearing

Complainant requests that an evidentiary hearing be held in this matter and that discovery be authorized

As explained in the preamble to the FAA Rules of Practice, 14 CFR § Part 16, "While complainants are entitled to having their complaints investigated they do not have a property interest sufficient to require an oral evidentiary hearings as part of that investigation even when the investigation leads to dismissal of a complaint." 61 Fed. Reg. 53998, 53999 (December 16, 1996). The FAA Rules of Practice, 14 CFR Part 16, apply the procedural structure of 49 USC §46101(a) to complaints filed with the FAA under 14 CFR Part 16. As in this case, once the

complaint was filed it was investigated by the FAA under 14 CFR § 16.29. Subsequently, the initial determination is issued under 14 CFR § 16.31 by the Director, FAA Office of Safety and Standards, containing "a concise explanation of the factual and legal basis for the Director's determination on each claim made by the complainant." *See* 14 CFR § 16.31. If the Director's determination finds no violations, the complaint is dismissed without the opportunity for hearing. If the Director's Determination proposes to withhold approval of an application for a Grant apportioned under §47114(c) and (e) then the Respondent will have the opportunity for a hearing at which the complainant will be a party. See 49 USC §47106(d). The Director's determination may be appealed to the Associate Administrator for Airports under 14 CFR § 16.31(c), whose final decision may be appealed to a United States Court of Appeals. See 14 CFR §16.247. Courts have held that the Part 16 hearing rules are consistent with 49 USC 46101. See e.g. Penobscot Air Services LTD v FAA, 164 F.3d 713, 720 (1st Cir., 1999). Lange v FAA, 208 F.3d 38.9, 391 (2nd Cir. 2000). Under Part 16 discovery is not available during the investigation or prior to the Director's Determination. See 14 CFR Par 16.213.

VII. FINDINGS AND CONCLUSIONS

Upon consideration of the submissions and responses by the parties, and the entire record herein, and the applicable law and policy and for the reasons stated above, the Director of the FAA Office of Airport Safety and Standards finds and concludes as follows:

1. The differences in lease terms, conditions and rates between those agreed to by the Complainant and its FBO competitors constitute unjust discrimination by the Respondent in violation of Federal grant assurance # 22, regarding unjust economic discrimination.

2. The differences in lease terms, conditions and rates between those agreed to by the Complainant and its FBO competitors, constitute the Respondent granting a constructive exclusive right to Premier Air Center in violation Title 49 Section 40103(e) and Federal grant assurance # 23, regarding the prohibition on exclusive rights.

ORDER

ACCORDINGLY, the FAA finds the St. Louis Regional Airport Authority is in violation of applicable Federal law it is Federal grant obligations.

St. Louis Regional Airport Authority is hereby, required to submit a corrective action plan for FAA approval within 30 days that will ensure leases for aeronautical use of the airport are offered on terms consistent with the principles discussed in this determination and lease provisions that provide for a subsidy of

maintenance and repair and its method of assessing fuel flowage fees. The plan should be submitted to the Manager, Airport Compliance Division.

Furthermore, FAA will withhold approval of any application by the St. Louis Regional Airport Authority for grants authorized under Title 49 U.S.C. §§ 47114(d), 47115 or 47116 pending approval of the corrective action plan by the FAA.

RIGHT OF APPEAL

This Director's Determination is an initial agency determination and does not constitute final agency action and order subject to judicial review. 14 CFR 16.247(b)(2). A party adversely affected by the Director's Determination may appeal the initial determination to the FAA Associate Administrator for Airports pursuant to 14 CFR 16.33(b) within thirty (30) days after service of the Director's Determination.

J.R. White for

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

Dated: MAR 29 2011