UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
WASHINGTON, DC

Roadhouse Aviation  )  Docket No. 16-05-08
Complainant  )
)  Final: Issued December 14, 2006

City of Tulsa & the  )
Tulsa Airport Improvements Trust  )
Respondents  )

DIRECTOR’S DETERMINATION

I. INTRODUCTION

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

Roadhouse Aviation (Complainant) has filed a formal complaint and six amendments to the complaint pursuant to 14 CFR Part 16 against the City of Tulsa & Tulsa Airports Improvement Trust (Respondent), owner of the Richard Lloyd Jones Jr. Airport in Tulsa, Oklahoma (also identified as Riverside Airport). Complainant, a fixed-base operator (FBO) on the Riverside Airport, alleges that Respondent violated Federal Grant Assurances, Rights and Powers; Operation and Maintenance; Economic Nondiscrimination and Exclusive Rights. Complainant

1 Tulsa Airports Improvement Trust (TAIT) leases land for operation at the Richard L. Jones Jr. Airport. While both the City of Tulsa and TAIT are considered the airport sponsors, the Record reflects that the airport tenant leases are between individual private entities and TAIT. TAIT’s lease agreements are called ‘subleases’ and will be referenced by ‘sublease’ from this point forward.

2 Complainant includes Mayor Bill LaFortune and the Tulsa Airport Authority as named respondents. These parties are not the airport sponsor and have not accepted applicable federal financial assistance or the grant obligations. Typically, FAA only exercises jurisdiction over airport sponsors named as respondents in 14 CFR Part 16 proceedings. In this case, the City of Tulsa and TAIT are the airport sponsors.

3 This decision only addresses claims against Federal grant assurances. [See SeaSands Air Transport Inc., v. Huntsville-Madison County Airport Authority, FAA Docket No. 16-05-17, Director’s Determination (August 28, 2006).] Complainant’s issues regarding ethics violations should be addressed in state forums as they are generally unrelated to the airport’s federal obligations and thus not properly included in the Part 16 process. Additionally, due to the abundant number of documents included in the record by both parties, the issues have been summarized.
believes that Respondent has given one FBO [Christiansen Aviation] special treatment and permitted a monopoly on the Airport. Complainant believes Respondent’s actions have created an environment on the Airport that economically discriminates against other FBOs.

With respect to the allegations presented in this complaint, under the specific circumstances at the Richard Lloyd Jones Jr. Airport as discussed below, and based on relevant facts and evidence, FAA finds that the Respondent is not in violation of its Federal obligations under the grant assurances.

In an effort to best adjudicate the issues and utilize agency resources, FAA granted Complainant’s Motions to Amend its Complaint and consolidated them into the Complaint under 14 CFR § 16.29. Accordingly, FAA provided Respondent an opportunity to reply to each Motion to Amend. [See FAA Exhibit 1, Item 21.]

II. AIRPORT

Richard Lloyd Jones Jr. Airport (Airport) is a public-use airport owned and operated by the City of Tulsa and the Tulsa Airports Improvement Trust (respectively). The Airport, located 5 miles south of Tulsa, is classified as a reliever airport with 515 based aircraft and 298,832 annual operations.

The Airport has three runways, Runway 01L/19R, a 5,102 foot long by 100 foot wide asphalt runway, Runway 01R/19L, a 4,208 foot long by 100 foot wide asphalt runway, and Runway 13/31, a 2,808 foot long by 50 foot wide asphalt crosswind runway.

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, codified at 49 U.S.C. § 47101 et seq. Specifically, the City of Tulsa is obligated under the assurances given in AIP grants since 1982. The Airport has been awarded a total of $11,678,940 in grant funding through 2004. [FAA Exhibit 2.]

III. BACKGROUND

Complainant is a fixed-base operator (FBO) at the R. L. Jones Jr. (Riverside) Airport in Tulsa, Oklahoma, operating since approximately 2002. [FAA Exhibit 1, Item 3, Attachment A.] Services provided by Complainant include aircraft rentals, flight

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4 FAA Exhibit 1 contains the Index of Administrative Record.
5 FAA Form 5010 “Airport Master Record” for Richard Lloyd Jones, Jr. Airport, Date: 8/19/05.
7 Respondent has received federal financial assistance through other grant and conveyance programs enacted before 1982. [FAA internal records.]
instruction, fuel sales, pilot supplies, charter services, and aircraft sales. [Source: www.roadhouseaviation.com] Complainant subleases multiple blocks of land at the Airport including three tie down blocks (Blocks 15, 16, and 17) located along the flight line; the Lot 1 Fuel Farm Area; Lot 8, Block 3; and Lot 1A, Block 4. [FAA Exhibit 1, Item 3, Attachment A.]
It appears that not all FBOs provide the same services at this airport. Only Christiansen Aviation and Roadhouse Aviation’s leaseholds are depicted above given their relevancy to the allegations in this Part 16.
In addition to Complainant, four other operators hold the status and classification of FBO on the Airport. These operators include Aviation Technologies Incorporated, Christiansen Aviation, Rivair, and Scat Air. [FAA Exhibit 1, Item 17, Attachment A-1.] Of the five FBOs, Christiansen Aviation is the largest and holds the most leased space. [FAA Exhibit 1, Item 3, pg. 2.] However, since starting operations on the Airport, Complainant has taken some of Christiansen Aviation’s market share. [FAA Exhibit 1, Item 3, pg. 2.]

Christiansen Aviation, a full service FBO, acquired much of its leasehold interests through assignments from other tenants and not through new leases offered by the Respondent. [FAA Exhibit 1, Item 3, pg. 2.] Similar to Complainant, Christiansen Aviation leases tie-down blocks and other property with improvements. [See FAA Exhibit 1, Item 3, Attachment A.] However, unlike Complainant, Christiansen Aviation holds the lease for Tracts I and II which are the only exclusive use apron areas on the Airport. Christiansen Aviation acquired Tracts I and II through an assignment from Bristol Aviation in June 2001. [id.]

With regard to leasing practices, Respondent typically leases the raw land of the Airport to commercial and private tenants. [FAA Exhibit 1, Item 3, Attachment A, pg. 2.] Improvements such as hangars are made by the tenant.

Respondent includes a number of provisions in its leases to subordinate them to the grant assurances and to ensure the protection of the Respondent’s rights and powers. [See FAA Exhibit 1, Item 3, Attachment B.] One such provision requires prior written approval for any assignment of a leasehold interest in Airport property. [id.]

Christiansen Aviation acquired the lease of Lot 1, Block 4 in a September 2004 assignment from Aviation Technologies. [FAA Exhibit 1, Item 3, Attachment A.] The improvements erected on Lot 1, Block 4 include a large bulk aircraft storage hangar. The property is also directly adjacent to Complainant’s leasehold on Lot 1A, Block 4, and behind the Complainant’s three tie down blocks (Tie-Down Blocks 15, 16, and 17.) [FAA Exhibit 1, Item 3, Attachment A.]

Respondent began its audit of Complainant’s fuel flowage records on September 27, 2005. [FAA Exhibit 1, Item 17, Attachment G-1.] However, Complainant terminated the audit on September 25, 2005, alleging improper auditing procedures. [See FAA Exhibit 1, Item 10, pg. 1 & Item 17, Attachment G-1.]

The Record reflects that Respondent has re-measured and marked Complainant’s tie-down blocks multiple times, but has not measured or marked any of the other airport tenant’s tie-down blocks. [FAA Exhibit 1, Items 6 & 17.]

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9 Respondent’s explanation of ‘exclusive use’ is detailed in the Analysis and Discussion.
IV. ISSUES

The issues upon examination are summarized as follows:

- Have Respondent’s actions permitting Christiansen Aviation’s access through Complainant’s subleased tie-down blocks violated applicable Federal obligations?
  - Has Respondent created a safety hazard in violation of Grant Assurance 19, *Operation and Maintenance*, by permitting access through Complainant’s tie-down blocks?
  - Has Respondent provided disparate lease terms in violation of Grant Assurance 22, *Economic Nondiscrimination*?

- Has Respondent violated applicable Federal obligations by permitting Christiansen Aviation’s purchase of the large bulk aircraft storage hangar?
  - Did Respondent’s approval of the assignment to Christiansen Aviation of the large bulk aircraft storage hangar after Christiansen Aviation had purchased the hangar without obtaining Respondent’s approval violate Grant Assurance 5, *Preserving Rights and Powers*?
  - Has Respondent permitted a monopoly and exclusive right when it permitted the assignment of the last remaining large bulk aircraft storage hangar on the flight line to Christiansen Aviation in violation of Grant Assurance 23, *Exclusive Rights*?

- Have Respondent’s actions toward Complainant amounted to disparate treatment and unjust discrimination in violation of applicable Federal obligations?
  - If Respondent’s treatment of FBOs is disparate with regard to enforcement of applicable Airport signage policies, is it unjustly discriminatory in violation of Grant Assurance 22, *Economic Nondiscrimination*?
  - Do the timing and conduct of Respondent’s audit of Complainant’s fuel flowage fees violate Grant Assurance 22, *Economic Nondiscrimination*?
  - If Respondent’s treatment of FBOs is disparate with regard to measuring and marking of tie-down leaseholds, is it unjustly discriminatory in violation of Grant Assurance 22, *Economic Nondiscrimination*?

Complainant also alleges Christiansen Aviation’s access through Complainant’s leasehold violates FAA Order 5190.6A, *Airport Compliance Requirements*. Complainant believes that Respondent must not permit access through Complainant’s leasehold because FAA Order 5190.6A provides that Respondent need not permit access as long as another means of access is available.\(^\text{10}\) [FAA Exhibit 1, Item 1, pg. 4.]

\(^\text{10}\) FAA notes Complainant’s interpretation of FAA Order 5190.6A (“Order”) is confused. As discussed in the Applicable Law and Policy, FAA Order 5190.6A is not regulatory and is not controlling with regard to airport sponsor conduct. Rather, it establishes policies and procedures to be followed by FAA personnel in
While there may be other means for access that would avoid passing through Complainant’s leasehold, Complainant ceded its rights when it signed a lease which expressly provides that taxilanes inside the leasehold are to remain free and clear for public access. Furthermore, FAA declines to investigate this issue at this point since the allegation is not related to a grant assurance violation.

V. APPLICABLE LAW AND 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 restrictive covenants in property deeds and conveyance instruments, to maintain and operate its airport facilities safely, efficiently and in accordance with specified conditions. Commitments assumed by airport sponsors in property conveyance or grant agreements are important factors in maintaining a high degree of safety and efficiency in airport design, construction, operation, and maintenance, as well as ensuring the public has fair and reasonable access to the airport.

The following is a discussion pertaining to the Airport Improvement Program, Airport Sponsor Assurances, the FAA Airport Compliance Program, the Enforcement of Airport Sponsor Assurances, and the Complaint Process.

Airport Improvement Program
Title 49 U.S.C. § 47101 et seq., provides for Federal financial assistance for the development of public-use airports under the Airport Improvement Program (AIP) established by the Airport and Airways Improvement Act of 1982, as amended. Title 49 U.S.C. § 47107, et seq., sets forth assurances to which an airport sponsor agrees as a condition of receiving Federal financial 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.

Airport Sponsor Assurances
As a condition to providing airport development assistance under AIP, 49 U.S.C. § 47107, et seq., the Secretary of Transportation and, by extension, the FAA must receive certain assurances from the airport sponsor. Title 49 U.S.C. § 47107(a) sets forth the carrying out FAA’s responsibilities for ensuring airport compliance. The Order 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 of receiving a grant of Federal funds or the conveyance of Federal property for airport purposes. The Order addresses the various obligations set forth in the standard airport sponsor assurances, and the nature of those assurances in the operation of public use airports. FAA may refer airport sponsors to the Order for guidance on compliance with particular obligations.
statutory sponsorship requirements to which an airport sponsor receiving Federal financial assistance must agree.

FAA has a statutory mandate to ensure that airport owners comply with these sponsor assurances.\footnote{See e.g., Federal Aviation Act of 1958, as amended and recodified, Title 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, Title 49 U.S.C. §§ 47105(d), 47106(d), 47107(k), 47111(d), 47122.} FAA Order 5190.6A, \textit{Airport Compliance Requirements} (Order 5190.6A), issued on October 2, 1989, provides the policies and procedures to be followed by the FAA in carrying out its legislatively mandated functions related to federally obligated airport owners’ compliance with their sponsor assurances. 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.


\textit{Grant Assurance 5, Preserving Rights and Powers}

Grant Assurance 5, “Preserving Rights and Powers” of the prescribed sponsor assurances implements the provisions of 49 U.S.C. § 47107(a), et seq., and requires, in pertinent part, that the sponsor of a Federally-obligated airport:

\begin{quote}

“will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.”

\end{quote}

Grant Assurance 5 also provides that the airport sponsor:

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“will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise compatibility program project, that portion of the property upon which Federal funds have been expended, for the duration of the terms, conditions, and assurances in the grant agreement without approval by the Secretary. If the transferee is found by the Secretary to be eligible under Title 49, United States Code, to assume the obligations of the grant agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor’s interest, and make binding upon the transferee all of the terms, conditions, and assurances contained in this grant agreement.”

\end{quote}
FAA Order 5190.6A, describes the responsibilities under Grant Assurance 5 assumed by the owners of public-use airports developed with Federal assistance. Among these is the responsibility for enforcing adequate rules, regulations, or ordinances as are necessary to ensure the safe and efficient operation of the airport. [See FAA Order 5190.6A, Sec. 4-7 & 4-8.]

Grant Assurance 19, Operation and Maintenance
Grant Assurance 19, “Operation and Maintenance,” implements 49 U.S.C. § 47107(a)(7), and requires, in pertinent part, that the sponsor of a Federally-obligated airport assure:

“a. The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal, state, and local agencies for maintenance and operation. It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes. It will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. Any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Secretary. In furtherance of this assurance, the sponsor will have in effect arrangements for:

(1) Operating the airport’s aeronautical facilities whenever required;
(2) Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and,
(3) Promptly notifying airmen of any condition affecting aeronautical use of the airport.

Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood, or other climatic conditions interfere with such operation and maintenance. Further, nothing herein shall be construed as requiring the maintenance, repair, restoration, or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the sponsor.

b. It will suitably operate and maintain noise compatibility program items that it owns or controls upon which Federal funds have been expended.”

Additionally, Order 5190.6A, provides that the owner should adopt and enforce adequate rules, regulations, or ordinances as necessary to ensure safety and efficiency of flight operations and to protect the public using the airport. In fact, the prime requirement for
local regulations is to control the use of the airport in a manner that will eliminate hazards to aircraft and to people on the ground. As in the operation of any public service facility, FAA advises airport sponsors to establish adequate rules covering, *inter alia*, vehicular traffic, sanitation, security, crowd control, access to certain areas, and fire protection. [Order 5190.6A, Sec. 4-7(b).]

*Grant Assurance 22, Economic Nondiscrimination*

Grant Assurance 22, “Economic Nondiscrimination,” of prescribed sponsor assurances implements the provisions of 49 U.S.C. § 47107(a)(1) and requires, in pertinent part, that the sponsor of a Federally-obligated airport:

“a. It will make the airport available as an airport for public use and 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.

b. In any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or to engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to-

(1) furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and

(2) charge reasonable, and not unjustly discriminatory prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

c. 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.

d. Each air carrier using such airport shall have the right to service itself or to use any fixed-based operator that is authorized or permitted by the airport to serve any air carrier at such airport.

e. Each air carrier using such airport (whether as a tenant, non-tenant, or subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such air carriers which make similar use of such airport and utilize similar facilities, subject to reasonable classifications such as
tenants or nontenants and signatory carriers and nonsignatory carriers. Classification or status as tenant or signatory shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on air carriers in such classification or status.

f. It will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees [including, but not limited to maintenance, repair, and fueling] that it may choose to perform.

g. In the event the sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by commercial aeronautical service providers authorized by the sponsor under these provisions.

h. The sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.

i. The sponsor may prohibit or limit any given type, kind, or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.”

FAA Order 5190.6A describes in detail the responsibilities under Grant Assurance 22 assumed by the owners of public use airports developed with Federal assistance.

Grant Assurance 23, Exclusive Rights
Grant Assurance 23, “Exclusive Rights” states:

“It will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public. For purposes of this paragraph, the providing of the services at an airport by a single fixed-based operator shall not be construed as an exclusive right if both of the following apply:

a. It would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services, and

b. If allowing more than one fixed-based operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-based operator and such airport.
It further agrees that it will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities, including, but not limited to charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activities which because of their direct relationship to the operation of the aircraft can be regarded as an aeronautical activity, 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 Title 49, United States Code.”

The FAA Airport Compliance Program
FAA discharges its responsibility for ensuring airport owners’ compliance with their Federal obligations through its Airport Compliance Program. FAA’s airport compliance efforts are based on the contractual obligations 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 is not regulatory and is not controlling with regard to airport sponsor conduct. Rather, it establishes policies and procedures to be followed by FAA personnel in carrying out 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 of receiving a grant of Federal funds or the conveyance of Federal property for airport purposes. The Order addresses the various obligations set forth in the standard airport sponsor assurances, and the nature of those assurances in the operation of public use airports.

The FAA Airport Compliance Program is designed to achieve voluntary compliance with Federal obligations accepted by owners and/or operators of public-use airports developed with FAA-administered assistance. Therefore, in addressing allegations of noncompliance, the FAA will make a determination as to whether an airport sponsor is currently in compliance with the applicable Federal obligations. Consequently, FAA will
consider applicable Federal obligations to be grounds for dismissal of such allegations. [See e.g., Wilson Air Center v. Memphis and Shelby County Airport Authority, FAA Docket No. 16-99-10, Final Agency Decision (August 30, 2001) and Director’s Determination (August 2, 2000); Steere v. County of San Diego, FAA Docket No. 16-99-15, Final Agency Decision (December 7, 2004) and Director’s Determination (July 21, 2004).]

Enforcement of Airport Sponsor Assurances
FAA Order 5190.6A covers all aspects of the Airport Compliance Program except enforcement procedures.

Enforcement procedures regarding airport compliance matters may be found at FAA Rules of Practice for Federally-Assisted Airport Proceedings (14 CFR Part 16). These enforcement procedures were published in the Federal Register (61 FR 53998, October 16, 1996) and made effective on December 16, 1996.

The Complaint Process
Pursuant to 14 CFR § 16.23, a person directly and substantially affected by any alleged noncompliance may file a complaint with the FAA. The complainant shall provide a concise but complete statement of the facts relied upon to substantiate each allegation. The complaint shall also describe how the complainant was directly and substantially affected by the things done or omitted by the respondents. [See 14 CFR § 16.3 and 16.23(b)(3,4).]

When a reasonable basis for further investigation is demonstrated in the complaint, FAA will investigate the subject matter of the complaint. [See 14 CFR § 16.29.] In rendering its initial determination, FAA may rely entirely on the complaint and the responsible pleadings provided. Each party may file documents that it considers sufficient to present all relevant facts and arguments necessary for the FAA to determine whether the sponsor is in compliance. [See 14 CFR § 16.29.]

The proponent of a motion, request, or order has the burden of proof. [See 14 CFR § 16.229(b).] A party who has asserted an affirmative defense has the burden of proving the affirmative defense. [See 14 CFR § 16.229(c).] Title 14 CFR § 16.23, requires that the complainant must submit all documents when available to support his or her complaint. Similarly, 14 CFR § 16.29 states that “each party shall file documents that it considers sufficient to present all relevant facts and arguments necessary for the FAA to determine whether the sponsor is in compliance.”

VI. ANALYSIS AND DISCUSSION

Complainant alleges Respondent has “grossly mismanaged RVS Airport and violated its sponsorship agreement.” [FAA Exhibit 1, Item 1, pg. 2.] Complainant states Respondent
“has allowed one FBO (Christiansen Aviation) to be given special treatment and allowed them to create a monopoly on the airport. It is also creating an environment of business that economically discriminates against any and all other like FBOs.” [FAA Exhibit 1, Item 1, pg. 2.]

Complainant links the allegations to specific events that include:

- Respondent’s permission for Christiansen Aviation’s access through Complainant’s subleased tie-down blocks.
- Christiansen Aviation’s purchase of the last remaining large bulk aircraft storage hangar on the flight line prior to Respondent’s approval.
- Unjust and unequal treatment of Complainant with regard to airport policies and procedures.

Through Respondent’s actions, Complainant alleges Respondent has violated its obligations under FAA Grant Assurances 5, Rights and Powers; 19, Operation and Maintenance; 22, Economic Nondiscrimination, and 23, Exclusive Rights. [FAA Exhibit 1, Item 1.]

To thoroughly analyze whether Respondent is in violation of its Federal obligations, each of the issues is discussed below with regard to the specific events cited in the case.

**Issue 1: Have Respondent’s actions permitting Christiansen Aviation’s access through Complainant’s subleased tie-down blocks violated applicable Federal obligations?**

Complainant subleases three tie-down blocks from Respondent; Tie-Down Blocks 15, 16, & 17. [FAA Exhibit 1, Item 17, Attachment B.] A large bulk aircraft storage hangar, which is currently owned by Christiansen Aviation, is directly adjacent to Complainant’s three tie-down blocks. [FAA Exhibit 1, Item 5, Attachment A.] The tie-down blocks lie between the hangar and the flightline, which provides access to the taxiway system. [FAA Exhibit 1, Item 5, Attachment A.] [See Figure 1 on page 4.]

Aircraft can ingress and egress the hangar through two opposing doors on either the east or west side of the hangar. [FAA Exhibit 1, Item 1.] The east side door provides the most direct access to the flightline. However, aircraft utilizing the east side door must traverse through Complainant’s subleased tie-down blocks, on a common use taxilane, in order to gain access to the public-use taxiway and appropriate runway.

Since Christiansen Aviation acquired the hangar, aircraft have utilized the east side hangar door and accessed the flightline on the taxilanes through Complainant’s tie-down blocks. Respondent admits that the common-use taxilane passes through the Complainant’s tie-down blocks and that according to Complainant’s sublease, these

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12 For further discussion regarding the ownership of this hangar, see page 20.
taxilanes are to be accessible at all times. [FAA Exhibit 1, Item 17, pgs. 1-2, see also Attachment B.]

Complainant alleges permitting access through his subleased area by his competitor is a safety hazard and is unjustly discriminatory since Christiansen Aviation has an ‘exclusive use ramp’ which does not include the provision of taxilane access. [FAA Exhibit 1, Item 1, pg. 3.] To rectify the situation, Complainant suggests that Christiansen Aviation use a second hangar door located on the west side of the hangar, which would preclude access through Complainant’s leasehold. [FAA Exhibit 1, Item 1.]

Since the issue includes multiple facets with different Grant Assurance obligations, each will be discussed separately.

Grant Assurance 19 - Safety Hazard
Complainant states “in the past two weeks Christiansen Aviation has started allowing their customers to move their own aircraft under power across these access lanes [taxilanes]…there has been no coordination with our staff and every time it has happened there have been customers of ours on the ramp with their aircraft.” [FAA Exhibit 1, Item 1, Attachment 9, pg. 1.] Complainant believes that this presents a dangerous situation that should be stopped and/or investigated by FAA. [id.] Complainant believes that the Respondent is responsible for general, safe operation of the airport.

In its defense, Respondent cites the guidance provided in FAA Advisory Circular 150/5300-13, Airport Design. AC 150/5300-13 depicts the acceptable taxilane separation standard from Airplane Design Group 1 as 39.5 feet, which is the required separation required from taxilane centerline to a fixed or movable object like a parked aircraft. This standard is for aircraft with wingspans of up to but not including 49 feet. [FAA Exhibit 1, Item 3, pg. 5.] Respondent states that the taxilane width in question is “generally laid out for Group 1 aircraft.” [FAA Exhibit 1, Item 3, pg. 5.]

Respondent admits, “of the aircraft based in the ATI hangar, all except one are Group I aircraft.” [FAA Exhibit 1, Item 3, pg. 5.] The one exception is a Cessna 441A with a wingspan of 49.3 feet, which is in Group II. [id.] FAA guidance permits an airport operator to accommodate accordingly. [See Appendix 9 of AC 150/5300-13.] Respondent calculated the actual taxilane width needed for the Cessna 441 aircraft using FAA’s design standards and came to the conclusion that the existing taxilane width was adequate and in accordance with applicable FAA design criteria. [FAA Exhibit 1, Item 3, pg. 5.]

In a June 26, 2005 letter, Respondent notes

“...It appears that the aircraft based at the ATI hangar, and the aircraft that you specifically identified in your letter, that use the non-exclusive use taxilanes identified in your lease, meet the FAA design criteria, and do not

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13 The category ‘Group’ refers to the airplane design group, which group aircraft based on wingspan for the purposes of airport design. [See FAA AC 150/5300-13, Chapter 1 Par. 2.]
pose a hazard. I will advise the owner of the ATI hangar of the separation standards for the taxilanes, so that they can plan the use of that building accordingly.” [FAA Exhibit 1, Item 4, Attachment I, pg. 9.]

Respondent denies the allegation that its taxiway clearances are unsafe.

It is true that Respondent has an obligation to ensure that the Airport’s operations are safe, including aircraft movements on public taxiways and taxilanes. Grant Assurance 19, Operation and Maintenance, provides in pertinent part:

"a. The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal, state and local agencies for maintenance or operation..."

FAA publishes various Advisory Circulars for use by sponsors in operating and maintaining their facilities in accordance with its regulatory and statutory obligations. In this case, AC 150/5300-13, Airport Design, provides applicable airport design standards for airport planning, development, and operations.

For taxilanes, FAA’s advisory guidance states:

“Taxilanes are located outside the movement area. Taxilanes provide access from taxiways (usually an apron taxiway) to airplane parking positions and other terminal areas. When the taxilane is along the edge of the apron, locate its centerline inward from the apron edge at a distance equal to one-half of the width of the taxiway structural pavement and satisfy other apron edge taxiway criteria...” [AC 150/5300-13, Par. 414(b).]

Appendix 9 of AC 150/5300-13 provides for flexibility regarding taxilane centerline separation.

“Reduced clearances are acceptable because taxi speed is very slow outside the movement area, taxiing is precise, and special operator guidance techniques and devices are normally present.”

Additionally, FAA recognizes the use of such techniques as wing-walkers that walk on either side of the wings when an aircraft is taxiing through a reduced width area.\(^\text{14}\) [See AC 150/5300-13 Appendix 9.]

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\(^{14}\) Wing-walkers are individuals that walk near or beside an aircraft that ensure clearance between wingtip and any objects.
Diagrams provided by Respondent show the approximate width to be 40.5 feet. [FAA Exhibit 1, Item 3, Attachment O.] Respondent posits that only one aircraft residing in the Christiansen Aviation hangar is outside of the taxilane design standards.

This taxilane was designed for Group I aircraft, these aircraft have a wingspan of up to but not including 49 feet. The aircraft in question, a Cessna 441A has a wingspan of 49.3 feet and would be considered in Group II. Respondent correctly identifies that FAA guidance permits reduced clearances for certain situations. In this case, the aircraft has a wingspan that puts it outside the standard by only .3 feet or 2 inches for each wing.

Based on AC 150/5300-13 Appendix 9, in this particular case, where there is a difference in wingspan less than a few inches on one aircraft that utilizes the hangar, FAA would not require Respondent to revise its taxilane design criteria for one aircraft that fails to meet the design category’s initial criteria.

However, to ensure a diligent review of this safety matter, FAA also relies on the findings of the Oklahoma City Flight Standards District Office (FSDO). Complainant’s April 7, 2005 letter regarding unsafe powered movements of aircraft too close to Complainant’s aircraft and fuel trucks was forwarded by the Southwest Region Airport Compliance Officer to the FSDO for proper investigation.

Upon investigation, which included a site visit, the FSDO found no evidence of operational violations. [FAA Exhibit 3, Item 1.] The FSDO inspector noted that he saw no operations violation when an aircraft, departing the hangar, started up and taxied between Complainant’s fuel trucks without coordinating the action with Complainant. The inspector states “the pilot exercised prudent judgment, there was no pedestrian traffic, and there was an estimated 13 feet clearance on either side of him.” [FAA Exhibit 3, Item 2.]

FAA has statutory authority in making determinations of safety. [See 49 U.S.C. § 40101, et seq., and 40103(b).] While Complainant may or may not agree with FAA’s safety determination, FAA is final arbiter of matters regarding aviation safety. [See Skydive Paris, Inc. v. Henry County, Tennessee, FAA Docket No. 16-05-06, Director’s Determination (January 20, 2006) & Glyn Johnson d/b/a Zoo City Skydivers v. Yazoo County, Mississippi, FAA Docket No. 16-04-06, Director’s Determination (February 9, 2006).] In this case, based on the facts as stated, and record herein, FAA has determined that the taxilane separation has not caused a safety hazard, nor a violation of Respondent’s obligations under Grant Assurance 19.

Grant Assurance 22 - Disparate Lease Terms & Rates
Complainant asserts its lease terms are different than other tie-down subleases because it is required to allow access by its competitor through its leasehold. [FAA Exhibit 1, Item

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15 When making 14 CFR Part 16 findings regarding matters of aviation safety, the Director may rely on other offices within the FAA for their safety expertise and experience. In this case, the Director relies on findings made by the Flight Standards Service of the FAA. [See Skydive Paris, Inc v. Henry County, Tennessee, FAA Docket No. 16-05-06, Director’s Determination (January 20, 2006).]
Complainant avers that Christiansen Aviation does not have to allow access through its ‘exclusive use’ leasehold. [FAA Exhibit 1, Item 1, pg. 4 & Item 4.] Complainant demands that Respondent provide it with terms like its competitor, Christiansen Aviation. [FAA Exhibit 1, Item 1, & Item 4, pg. 8.] Complainant also asserts that Christiansen Aviation has been afforded better lease rates than Complainant. [FAA Exhibit 1, Item 1, Attachment 4, pg. 1.]

Complainant’s three tie-down block agreements include the following terms:

“i. Leased Premises means the area described and illustrated on Exhibit ‘A’ consisting of Tie-Down Block [   ]. A Tie-Down Block consists of an area 115’ wide by 210’ long (more or less 24,150 square feet), provided, however, each Tie-Down Block includes one-half (1/2) of a taxilane on the North and South side of each block for shared access with the adjoining Tie-Down Blocks and lease areas at the Airport. Each taxilane is approximately 81’ wide (one-half of taxilane is thus 40.5’). Lessee understands and acknowledges that taxilanes, although a part of a Tie-Down Block, shall be used by Lessee on a non-exclusive use basis and taxilanes shall remain open and accessible to all authorized Airport tenants, licensees and users at all times...” [FAA Exhibit 1, Item 17, Attachment B.]

Respondent states that only Tie-Down blocks 6-8 and 15-17 have the terms and conditions that require taxilanes to remain open and accessible to all authorized Airport tenants because the tenants of the tie-down block are different from the tenants of the leaseholds directly behind the tie-down block. [FAA Exhibit 1, Item 17, pg. 2.] All other tie-downs exist in front of the tenants’ leased property. For example, Spartan Aviation’s four tie-down blocks encompass an area, which is directly in front of its hangars and other leased property – aircraft besides Spartan Aviation’s would not have a need to traverse the taxilanes. [See FAA Exhibit 1, Item 17, Attachment C.] Of those tie-down blocks that are currently not leased, Respondent claims that if the prospective tenant is different than the tenant who has the leased property adjacent to the block, then the access provisions would also be included in the tie-down block sublease. [FAA Exhibit 1, Item 17, pg. 2.]

Respondent also submits that it improperly termed the apron area leased by Christiansen Aviation as ‘exclusive use’ when in fact it is ‘exclusive-lease’ area. [FAA Exhibit 1, Item 17, pg. 2.] The apron Christiansen Aviation leases in front of his flightline hangar is leased on a per-square foot basis to a single tenant; so, it should be more appropriately termed ‘exclusive lease’ area. [FAA Exhibit 1, Item 17, pg. 3.]

Respondent argues that the exclusive lease area is the only leasehold on the Airport not requiring common public-use access taxilanes. [FAA Exhibit 1, Item 17, pg. 4.] Christiansen Aviation obtained the lease through assignment, not through direct negotiation with Respondent. [FAA Exhibit 1, Item 17, pg 4.] While the area is exclusively leased to Christiansen Aviation, Respondent submits that it “is still open and
available to general aviation and transient aircraft as required by FAA Administrative Order 5190.6A (§ 5, ¶ k).” [FAA Exhibit 1, Item 17, pg. 2.]

Respondent indicates it currently leases tie-down blocks at a rate of $350 per month, or 17.4 cents per square foot. [FAA Exhibit 1, Item 17, pg. 2.] Respondent states “the commercial land lease rate for exclusive land leases” is currently 27.1 cents per square foot. [FAA Exhibit 1, Item 17, pg. 3.] Therefore, tie-down blocks are leased on a ‘per block’ basis and exclusive-lease areas are leased on a per square foot basis.

FAA Grant Assurance 22, Economic Nondiscrimination, provides in pertinent part that,

“c. 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.”

FAA requested copies of all Airport sublease agreements including the tie-down block agreements in order to review their terms. [See FAA Exhibit 1, Item 11.] The six tie-down block leases requiring access provisions were identified. Tie-Down Block 6 is subleased to Deanna D. Robertson. Tie-Down Blocks 7 and 8 are subleased to Christiansen Aviation. Tie-Down Blocks 16, 17, and 18 are subleased to Complainant. [See FAA Exhibit 1, Item 17, Attachment B.]

Of these six tie-down block subleases, all but one include the access provision. Both Complainant’s and Christiansen Aviation’s tie-down subleases for the blocks in question include similar language that require taxilane access through the leasehold. Of the applicable fixed-based operators utilizing these tie-down blocks, Christiansen Aviation and Complainant, it appears that both have the same provisions with regard to taxilane access through the tie-down leaseholds.

As for Complainant’s argument that Respondent must provide it the same leasehold terms as Christiansen Aviation with regard to its ‘exclusive lease area’; FAA finds the leaseholds of these two parties are not similarly situated. [See Adventure Aviation v. City of Las Cruces, New Mexico, FAA Docket No. 16-01-14, Director’s Determination (August 7, 2002, were two operators may not be considered essentially similar even though they offer the same services to the public.] Applying the same leasehold terms of the Christiansen Aviation ‘exclusive lease area’ to the Complainant’s tie-down block leases would eliminate the public-use taxilanes and change the access to the Christiansen Aviation hangar. Respondent is not required to make Complainant’s lease equal to Christiansen’s lease or vice versa. [See Adventure Aviation & Aerodynamics of Reading, Inc. v. Reading Airport Authority, FAA Docket No. 16-00-03, Final Decision and Order (July 23, 2001).]

Furthermore, Respondent asserts that the exclusive lease area is the only area of its kind on the Airport that is suitable for this type of lease. FAA understands Respondent’s position that the tie-down blocks leased by Complainant are not conducive to an
exclusive lease area agreement since aircraft utilizing areas behind the tie-down blocks must be able to have access, via taxilane, to those areas and the flightline.

At this time, FAA can find no disparity between Christiansen Aviation and Complainant’s tie-down block subleases that rise to a violation of Grant Assurance 22. FAA also accepts Respondent’s refusal to offer exclusive lease area terms to Complainant at its current leased tie-down blocks.

It should be noted that Complainant contracted for its tie-down block sublease in writing with the provisions for taxilane access. Complainant was aware that its sublease included taxilanes. Complainant’s owner attended Respondent’s board meetings where discussion focused on the adjacent hangar owner’s concerns regarding access out of the east side hangar doors. [FAA Exhibit 1, Item 16, Attachment 4.] Complainant ensured that access would not be an issue. [id.]

During informal resolution between the parties, Respondent offered to reconfigure Roadhouse’s tie-down areas, eliminating the dual-use taxilanes. [FAA Exhibit 1, Item 3.] Respondent believes that reconfiguration would increase the sublease area available to Complainant from 21,420 square feet to 47,250 square feet. [FAA Exhibit 1, Item 3.]

FAA believes that Respondent’s offer presents a good faith effort at resolving the underlying taxilane configuration and access dispute between the parties. That said, reconfiguration is not an issue for FAA investigation through this Part 16 process. Should the parties wish FAA assistance in dispute resolution, they may contact the Arkansas/Oklahoma Airports Development Office (ADO) for assistance.

Respondent clearly identifies that the tie-down blocks and exclusive lease areas are priced differently to reflect the difference of public-use taxilane access in one leasehold and not in the other. A review of Respondent’s Active Billing Data clearly establishes that there is a difference in the lease rates for tie-down block leases and the exclusive lease area leases. [FAA Exhibit 1, Item 3, Attachment A.]

FAA can find no evidence of disparate lease practices for tie-down block subleases at the Airport. Therefore, Respondent is not in violation of Grant Assurance 22 with regard to this issue. In addition, FAA can find no violation of Grant Assurance 22 in Respondent’s actions to permit Christiansen Aviation to continue under the terms of its assigned sublease.

**Issue 2: Has Respondent violated applicable Federal obligations by permitting Christiansen Aviation’s purchase of the large bulk aircraft storage hangar?**

Complainant alleges that the large bulk aircraft storage hangar, as discussed in Issue 1, was purchased by Christiansen Aviation through assignment prior to Respondent’s approval. [FAA Exhibit 1, Item 1, pg. 2.] Provisions in the lease documents condition the transaction on prior written approval which must be granted by Respondent before
assignment of an Airport sublease. [FAA Exhibit 1, Item 17, Attachment B.] Complainant infers that this transaction is a violation of Respondent’s Federal obligations. [FAA Exhibit 1, Item 1, pg. 2.] Additionally, Complainant alleges that by approving the assignment, after the fact, Respondent permitted Christiansen Aviation to have a monopoly and exclusive right to the last remaining large bulk aircraft storage hangar on the flightline of the Airport. [id.]

Grant Assurance 5 – Approval of Assignment
Complainant alleges Respondent failed to follow established procedure with the approval of the Aviation Technologies Incorporated (ATI) hangar lease assignment to Christiansen Aviation. Complainant believes that approval was made after the transfer was complete, a violation of the terms of the lease.

Complainant believes that Respondent’s approval of the hangar transaction was made illegally, months after the initial transaction, and that Christiansen Aviation never established an immediate need for the hangar. [FAA Exhibit 1, Item 1, pg. 2.]

Respondent denies that it illegally approved the ATI hangar lease assignment. [FAA Exhibit 1, Item 3, pg. 5.] Respondent states “the sequence of events and TAIT’s actions throughout this process were in full compliance with the law.” [FAA Exhibit 1, Item 3, pg. 2.] Respondent places the sequence of events as follows:

1. ATI entered into a contract to sell the ATI hangar to Christiansen Aviation on August 30, 2004.
2. TAIT consented to ATI’s ‘partial assignment of its sublease’ to Christiansen Aviation during a public meeting of the board held on September 9, 2004.
3. The assignment from ATI to Christiansen Aviation occurred on September 27, 2004. [id.]

Following this sequence of events, Respondent asserts that it gave its “prior written approval” before the final assignment of the hangar from ATI to Christiansen Aviation. Respondent notes that its approval was a matter of public record since consideration was made during a public meeting on September 9, 2004.16 [FAA Exhibit 1, Item 3.]

Respondent also defends its actions regarding approval of the lease assignment, stating

“TAIT’s leases with these third parties obligated TAIT not to unreasonably withhold consent to these lease assignments, and no change in the permitted use of this property was requested when these leases were assigned. We therefore do not believe that TAIT had a legal basis to

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16 Respondent submits that Roadhouse agreed, as part of a legal settlement, to not pursue this issue. [FAA Exhibit 1, Item 3, pg. 3.] Respondent states “…Roadhouse has previously released TAIT from any claims arising out of TAIT’s consent to ATI’s partial assignment to Christiansen.” [id.] FAA will not adjudicate this case based on any agreements made during those proceedings since FAA was not a party to the lawsuit or the agreement. Additionally, to ensure compliance with all applicable Federal obligations, FAA would expect Respondent’s agreement be subordinate to the Grant Assurances.
withhold its approval of these lease assignments.” [FAA Exhibit 1, Item 3, Attachment A.] Respondent believes there is no evidence to validate Complainant’s claim that Christiansen Aviation closed on the ATI hangar before obtaining Respondent’s approval. [FAA Exhibit 1, Item 5, pg. 2.] Respondent provides a copy of the purchase agreement to the record. [FAA Exhibit 1, Item 5, Attachment 2.] This agreement, dated August 30, 2004 clearly states that the transaction was contingent upon Respondent’s approval. [id.]

In its Reply, Complainant maintains Christiansen Aviation illegally obtained the ATI hangar, before airport sponsor approval. [FAA Exhibit 1, Item 4.] Complainant alleges the ATI transaction was completed at least 6 months before Respondent’s approval. [FAA Exhibit 1, Item 4, pg. 2.] Complainant’s allegation based on ‘testimonials’ from third parties and implores FAA to:

“have its Inspector General request document production pursuant to an FAA subpoena for all relative documents pertaining but not limited to all settlement and closing documents, bank records, sales contracts and any other loan and sales records as necessary to make an evaluation of the sale and transfer of the ATI hangar to Christiansen Aviation, to prove that the purchase was made many months prior to the approval by the authority, a fact supported by our conversations with Wilson Busby.” [FAA Exhibit 1, Item 4, pgs. 5-6.]

Complainant further argues that if Respondent believed the transaction to be ‘clean’, then why would it have adopted a new policy dated July 14, 2005 regarding lease assignments? [FAA Exhibit 1, Item 4, see also FAA Exhibit 1, Item 4, Attachment B.]

The new policy, Assignment of Commercial Operator Leases (Policy No. 2005-01), specifies:

“No assignment of a commercial lease shall be approved by the Tulsa Airports Improvement Trust until the following steps have been taken:

1. Lessee must provide the Airport Director at least thirty (30) days written notice of its intent to assign a sublease agreement together with payment of the administrative assignment fee established in TAIT’s then current Rates, Fees, and Charges. Tenant is charged with responsibility for determining the additional time, which may be required for TAIT to consider the request due to scheduling of TAIT’s monthly meetings.

2. Notification must include the name of the proposed assignee. If the assignee is a limited liability company, a corporation, a partnership, or other association, the names of the controlling interest owners must be supplied.
3. Lessee must further provide any additional information requested by the Airports Director or his designee.

4. The Airports Director shall establish internal procedures to comply with this policy, which shall include notice to the Trustees of proposed commercial lease assignments prior to inclusion on an agenda for Trustee approval.

5. TAIT shall not approve any assignment of a commercial lease which would cause TAIT to violate Grant Assurance 23.” [FAA Exhibit 1, Item 4, Attachment B.]

Complainant believes that adoption of this policy is “an acknowledgement and admission by the authority that they are doing and have done transfers wrong…” [FAA Exhibit 1, Item 4, pg. 8.]

Respondent disputes Complainant’s claim that Respondent’s new assignment policy is an “acknowledgement and admission by the authority that they are doing and have done transfers wrong…” [FAA Exhibit 1, Item 5, pg. 4.] Respondent states that its adoption of the policy was an implementation of a recommendation made by its attorneys to “avoid confusion and make it easier for TAIT to show (for future assignments of aeronautical facilities) what TAIT has already demonstrated…” [FAA Exhibit 1, Item 5, pg. 4.] Respondent also cites a request by FAA for clarification of the policy. [FAA Exhibit 1, Item 5, pg. 4.]

Under Grant Assurance 5, *Preserving Rights and Powers*, airport sponsors must not “take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all terms, conditions, and assurances” and not “sell, lease, encumber or dispose of any part of its title or other interests in the property shown on Exhibit A.” [See Grant Assurance 5.]

Respondent’s latest action to amend its assignment policy does not necessarily mean Respondent is in noncompliance. Moreover, Respondent’s new assignment policy does not guarantee compliance with its Federal obligations. FAA recognizes that airport sponsors may change their policies and practices over time to reflect the current situation. [See FAA Order 5190.6A, Para 3-17(c) & Wilson Air Center, LLC. v. Memphis-Shelby County Airport Authority, FAA Docket No. 16-99-10, Final Decision and Order (August 30, 2001.) Respondent admits that it amended its policy at the recommendation of its counsel. This action does not represent a current violation of Grant Assurance 5.

During the pleadings, Respondent asserted that it could not “unreasonably withhold consent to these lease assignments” and it believed that it had no “legal basis to withhold approval of these assignments.” [FAA Exhibit 1, Item 3, Attachment A.]
Sponsor compliance with Grant Assurance 5 assures that it will maintain control over its property. FAA guidance provides that sponsors include provisions in their leases that subordinate them to the Grant Assurances. [See FAA Order 5190.6A, Par 4-17(k)(2).] Therefore, if a potential assignment conflicts with the sponsor’s Federal obligations, a sponsor may condition its approval of an assignment on compliance with its Federal obligations.

Sponsors must exercise caution when approval of a lease assignment either creates or appears to create an exclusive right or economic discrimination. The FAA notes Respondent’s new assignment policy does not address any contingency for such circumstances nor preserve its rights and powers under Grant Assurance 5. FAA believes Respondent was mistaken in that Respondent could reasonably withhold consent to these lease assignments. It is a sponsor’s right to determine if approval of an assignment will create an exclusive right or monopoly or be in noncompliance with its federal obligations on some other basis.

With regard to whether Respondent granted its approval before the actual assignment of the leased hangar, FAA is not persuaded by Complainant’s argument that approval was granted after the fact. It is clear that Christiansen Aviation and Aviation Technologies had some form of contingent agreement in progress before it came to Respondent for permission to assign the lease. Such a case is understandable for business enterprises wishing to have the particulars spelled out before they take their position to the airport sponsor/owner for approval.

Under the circumstances herein, FAA does not find a violation of Grant Assurance 5, Preserving Rights and Powers, regarding the timeliness of Respondent’s assignment approval.

Grant Assurance 23 – Exclusive Right to Hangar Storage on Flightline

Complainant infers that Respondent never provided it the opportunity to bid for the ATI hangar, which Complainant desired. [FAA Exhibit 1, Item 1, pgs. 2-3.] Complainant asserts the ATI hangar is the only remaining bulk hangar with airport frontage highly accessible to both runways and taxiways. [id.] Complainant alleges that Respondent violated its exclusive rights obligation when it permitted the assignment of the last existing bulk aircraft hangar to his competitor, Christiansen Aviation. [FAA Exhibit 1, Item 1, Attachment 7, pg. 1.] Complainant requests Respondent force Christiansen Aviation to dispose of the ATI hangar. [FAA Exhibit 1, Item 4, pg. 8.]

Opportunity to Bid.

Respondent maintains that Complainant could have bid on the assignment of the ATI hangar (or the hangar on Lot 20, Block 6). [FAA Exhibit 1, Item 3, pg. 3.]

Complainant claims that he originally requested a ‘right of first refusal’ on the ATI hangar from its owner by letter dated February 3, 2003. [FAA Exhibit 1, Item 4, Attachment 1.] Complainant claims that the owner of the ATI hangar responded to the request stating “he had other plans at that time and could not sell to [him].” [FAA
Exhibit 1, Item 4, pg. 2. One year later, Complainant again approached the owner of the ATI hangar, but alleges the owner stated that “[he] would never sell me the Avtech building.” [FAA Exhibit 1, Item 4, pg. 2.]

Respondent agrees that the owner of the ATI hangar “broke off the opportunity for [Roadhouse] to buy” the ATI hangar. [FAA Exhibit 1, Item 4, pg. 2.]

Respondent believes “Roadhouse has presented no evidence of either its own need for the hangar or its financial wherewithal to purchase the hangar.” [FAA Exhibit 1, Item 5, pg. 2.] Respondent does not feel that Complainant’s request for a right of first refusal to the ATI hangar presented a serious commercial offer ($1,000) given the value of the hangar, which has a market value of over $1 million. [id.]

Grant Assurance 23, Exclusive Rights, in pertinent part, assures that an airport sponsor will permit “no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public.” [See Grant Assurance 23.]

It appears that Complainant infers that by not being afforded an opportunity to bid on the ATI Hangar, Respondent indirectly granted an exclusive right to Christiansen Aviation.

The parties differ in opinion as to whether Complainant knew about and had opportunity to make an offer for the hangar. Whether Complainant made a serious offer or had the financial capacity to purchase the hangar is purely speculative and will not be considered when analyzing whether Respondent is in compliance with Grant Assurance 23.

FAA encourages airport sponsors, as a best leasing practice, to make aeronautical users aware of airport-owned assets that will become available for lease through various public notice or solicitation processes. That said, an airport sponsor cannot control the sale of private property it does not own. In this case, ATI contracted to sell the building or “improvements” to Christiansen Aviation with the lease assignment. Where the sponsor has provided adequate notice and a transparent process, it generally encourages a competitive sale process. In approving an assignment of a lease that includes privately-owned improvements, an airport sponsor is generally limited to ensuring the replacement tenant/purchaser has sufficient financial capability to perform and maintain the terms of the lease. This is a sale of privately owned improvements on public property. The sale of those improvements is dictated by the terms agreed upon by the parties to the sale. The airport sponsor is not a party to the sale but must address the issues tangential to the leasehold and its assignment. An airport sponsor could avoid claims such as Complainant’s with more involvement in the assignment process.

Approval of Assignment.

By permitting transfer of the hangar to Christiansen Aviation, Complainant avers that Christiansen Aviation now possesses all large bulk hangar space on the Airport. [FAA Exhibit 1, Item 1, pg. 2.] Complainant describes a large disproportion in physical size between the two FBOs. Complainant states that he has 2.7 acres of leased space while Christiansen Aviation has over 17 acres. [FAA Exhibit 1, Item 1, pg. 3.] Complainant
compares his 35 feet of frontage to Christiansen Aviation’s holdings along the runway. Complainant states “there is no reasonable possibility of obtaining any other space that would be **fiscally** [emphasis added by Complainant] acceptable for the investment along the front row.” [FAA Exhibit 1, Item 1, pg. 3.] Complainant fails to explain what “fiscally acceptable” means.  

Complainant also believes that Christiansen Aviation presented no evidence of established need for the building to Respondent prior to Respondent’s approval of the lease assignment. [FAA Exhibit 1, Item 1, pg. 2.] Complainant believes Christiansen Aviation was required to demonstrate its need for the building to Respondent in order for Respondent to approve assignment. [id.]

Respondent denies that it permitted an exclusive right and unjustly discriminated against Complainant when it allowed the assignment of the Aviation Technologies Hangar to Christiansen Aviation. [FAA Exhibit 1, Item 3, pg. 1.]

Respondent believes its actions were in full compliance with FAA Advisory Circular 150/5190-5, *Exclusive Rights and Minimum Standards for Commercial Aeronautical Activities*, and that it had no reason to refuse consent to the assignment. [FAA Exhibit 1, Item 3, pgs. 2-3.] Respondent relies upon FAA Advisory Circular 150/5190-5 which states “airport sponsors may be better served by requiring land leases to a single user be limited to the amount of land, that user can demonstrate is actually needed and can be put to immediate use.” [See Par 1-2 of Section 1.] It further argues that Complainant “has provided no evidence that anyone other than Christiansen had both the need and financial ability to purchase the ATI Hangar at the time of the transaction.” [FAA Exhibit 1, Item 3, pg. 3.]

With regard to demonstrated need, Respondent admits that

> “although need was not formally documented to TAIT prior to the assignment, it is evidenced by the Christiansen letter dated May 2, 2005. When Christiansen purchased the hangar at issue on September 27, 2004, its two other hangars were overcrowded and it had several new patrons seeking hangar space.” [FAA Exhibit 1, Item 3, pg. 3.]

Respondent further charges that “the new hangar was put to immediate use and was 90% full less than eight months after Christiansen acquired it…Christiansen’s other two hangars remained completely full during the same time period.” [FAA Exhibit 1, Item 3, pg. 3.]

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17 FAA notes that what may be “fiscally acceptable” to one tenant may not be “fiscally acceptable” to another. Additionally, there is no FAA requirement that a tenant’s business strategy be compatible to that of the airport sponsor’s.
18 Respondent references a May 2, 2005 letter from Christiansen Aviation regarding its hangar usage at the Airport. [FAA Exhibit 1, Item 3, Attachment H.]
19 It appears, Respondent continues to reference a May 2, 2005 letter from Christiansen Aviation regarding its hangar usage at the Airport. [FAA Exhibit 1, Item 3, Attachment H.]
Furthermore, Respondent points out that there are five licensed FBOs on the Airport. Contrary to Complainant’s assertion that Respondent has granted an exclusive right to Christiansen Aviation, five FBOs operating on the Airport make it somewhat improbable that Respondent has granted an exclusive right to anyone. Respondent also comments that Complainant has a “respectable” share of fuel sales at the Airport. [FAA Exhibit 1, Item 3 & see also Item 3, Attachment D.]

Respondent claims:

“TAIT has not allowed only one FBO, Christiansen, to use all of the available space capable of housing large aircraft. Rather, Lots 8 to 11, Block 6; the property highlighted to the east of Lot 8; Lot 15, Block 6 (subleased to Meridian Resources, LLC for a new hangar development on June 16, 2005); and Lot 15, Block 7, all as shown on the map attached hereto as Exhibit “B”, are suitable for development of hangars to support large aircraft. In addition, the lot boundaries shown on attached Exhibit “B” are not fixed, and Lots 8-11 could be converted into two larger lots, with approximate dimensions of 360’x231’ and 268’x200’. Those lot sizes would be adequate to construct hangar and apron facilities to support large aircraft.” [FAA Exhibit 1, Item 3, pg. 2.]

Moreover, Respondent states that “approximately one-third of the hangar owed by Scat Air on Lot 1, Block 6, is available for sublease…while not appropriate to hangar large aircraft, this facility could be used by Roadhouse to establish a more prominent flightline presence.” [FAA Exhibit 1, Item 3, pg. 2.] The Scat Air hangar is also located adjacent to five unleased tie-down areas. [id.]

Though Respondent explains that there are other suitable spaces available on Airport property for Complainant to build a similar large bulk hangar, Complainant argues that no such place physically exists on the Airport, ‘much less the front row’. [FAA Exhibit 1, Item 1, Attachment 7.]

Complainant states “the fact remains that there are no other available areas to build large bulk hangars on the front row of the airport; this is an important fact that the city continues to ignore.” [FAA Exhibit 1, Item 4, pg. 3.] Complainant refuses to believe Respondent’s options are viable proposals.

Complainant dismisses Respondent’s suggestion to consider the ‘Scat Air’ building. [FAA Exhibit 1, Item 4, pg. 3.] Complainant agrees that the ‘Scat Air’ building does not have space available for large aircraft storage. [id.] Complainant has repeatedly stated that it seeks large bulk hangar space on the flightline. [FAA Exhibit 1, Items 1 & 4.]

20 Christiansen Aviation is the largest of the five licensed FBOs. [FAA Exhibit 1, Item 3, pg. 2 & Item 17, Attachments A-1 & A-2.] Christiansen Aviation “acquired almost all of its existing subleased premises by assuming subleases that TAIT had originally granted to third parties.” [FAA Exhibit 1, Item 3, pg. 2.]
At issue is whether Respondent granted an exclusive right, a violation of Grant Assurance 23, Exclusive Rights, when it approved the assignment of the ATI Hangar to Christiansen Aviation. Again, Grant Assurance 23 provides that an airport sponsor will “permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public.” [See Grant Assurance 23.]

First, Respondent has not permitted an exclusive right with regard to providing general FBO services on the Airport. The Record clearly reflects that there are currently five entities on the Airport with rights to provide FBO services. [See FAA Exhibit 1, Item 17, Attachment A-2.] Regardless of how big or small these businesses are, they have the ability to provide similar commercial services on the Airport.

Next, Respondent assures FAA that the ATI hangar is not the last remaining leasehold available for large bulk hangar storage. [FAA Exhibit 1, Item 3.] For example, Respondent references Lots 8 to 11 Block 6; Lot 15, Block 6, and Lot 15, Block 7 as available for development of hangars to support large aircraft. [FAA Exhibit 1, Item 3, pg. 2.] Respondent also proffers that approximately one-third of the Scat air hangar on Lot 1, Block 6, is available for sublease. 21 [id.] Complainant’s arguments hinge on his belief that there are no more “fiscally acceptable” leaseholds on the flightline. In this instance, “fiscally acceptable” appears to mean what Complainant can afford.

Respondent appears to be making good faith efforts in accommodating Complainant’s desire for a leasehold to provide large bulk hangar space. At the moment, apparently the “Scat Air” building is the only available space on the flightline. While Complainant may desire “fiscally acceptable” leaseholds along the flightline, the grant assurances do not obligate Respondent to provide such space at a price acceptable to the Complainant. Moreover, Respondent cannot provide what it does not have.

FAA notes Respondent in the past appears to have put forth an effort to accommodate Complainant to ensure competition on the flightline. This point is supported by Complainant’s own submissions to the Record. [FAA Exhibit 1, Item 16, Attachment 4, see also Respondent’s submission in Item 17, pg.10.] While Complainant’s presence on the flightline may be smaller compared to Christiansen Aviation, it appears that Respondent has shown a willingness to accommodate the needs of the Complainant. Complainant’s argument that Respondent has added hurdles or made leasing processes more difficult is not supported by the Record. Moreover, it is not supported by the videos Complainant submitted as exhibits to his pleadings. It is clear that Respondent’s actions, including extensive questioning and discussion, present its desire to actively and responsibly manage the Airport, an act that FAA highly encourages.

Finally, with regard to demonstrated need, no grant assurance specifically requires that a demonstrated immediate need be proven before an airport approves an assignment of a lease. It appears Complainant’s allegation rests on the language in FAA Order 5190.6A, which provides:

21 Respondent admits that while the Scat Air building is not suitable for large bulk aircraft storage, the space would give Complainant more of a presence on the flightline. [FAA Exhibit 1, Item 3, pg. 2.]
“...A demonstrated immediate need for the space to be leased shall be documented by the FBO to preclude attempts to limit competition or to create an exclusive right.” [Par 4-17(k)(2).]

Again, FAA Order 5190.6A is not regulatory. [See pgs. 6 & 7 of the Issues.] Most importantly, FAA views ‘land grabbing’ as a potential violation of Grant Assurance 23. The intent of Grant Assurance 23 and companion guidance language in FAA Order 5190.6A is that an airport sponsor not lease all available land to one FBO, thereby granting an exclusive right. In this case, Christiansen Aviation has put the hangar into productive use and other space is available for rental.

Complainant’s statement that no financially viable leaseholds on the flightline exist for large bulk hangar space may be true with regard to Complainant’s financial status, but Respondent has met its obligations under the grant assurances for providing aeronautical leaseholds for FBOs. Therefore, FAA finds Respondent is not in violation of Grant Assurance 23.

**Issue 3:** Have Respondent’s actions toward Complainant violated applicable Federal obligations?

Complainant makes multiple accusations of economic discrimination violations including Respondent’s actions towards Complainant regarding enforcement of its Airport Sign Policy and the way in which it conducted Complainant’s fuel flowage fee audit. [FAA Exhibit 1, Items 7, 10, & 16.)] Specifically, that Respondent unequally enforced its Airport Sign Policy and that Respondent discriminatorily targeted it for audit after Complainant filed its Part 16 complaint. [id.] Both areas fall under the jurisdiction of Grant Assurance 22, Economic Nondiscrimination.

**Grant Assurance 22 – Airport Sign Policy**

Complainant infers Respondent has unjustly discriminated against it by unequally enforcing its Airport Sign Policy with Complainant when it did not enforce the old sign policy. [See FAA Exhibit 1, Item 1, Attachments 3 & 6.] Complainant believes that Christiansen Aviation has not been held to the same standards as Complainant, with regard to its signs and compliance with the Airport’s new Sign Policy. [FAA Exhibit 1, Item 1, pg. 5.]

In a January 15, 2003 letter to Respondent, Complainant states:

“It is my understanding that the Tulsa City Council has rejected unanimously the airport authority’s newest sign policy and its many revisions. It would appear to me then that the old sign policy that would have been superseded is still in force. I request of you then to properly enforce this policy unilaterally for **all** tenants as it is written. [FAA Exhibit 1, Item 1, Attachment 3, emphasis added by Complainant.]
Complainant also references a December 21, 2004 letter from FAA’s Southwest Region Airport Compliance Officer to Respondent, which provided:

“It is also alleged that the airport board in its implementation of its sign policy discriminates against all but one FBO (Christiansen). Implementation of the policy is the same as implementing a minimum standard for the airport. If the airport has minimum standards, they must be reasonably attainable, uniformly applied and relevant to the situation for the entire group of users.” [FAA Exhibit 1, Item 1, Attachment 5.]

FAA’s Southwest Region Airport Compliance Officer concedes in its February 14, 2005 letter, “this policy appears to be reasonable and relevant but not uniformly enforced.” [FAA Exhibit 1, Item 1, Attachment 8.] Complainant appears to interpret this letter as evidence of Respondent’s noncompliance with its federal obligations.

Respondent denies the allegation of unjust discrimination with regard to enforcement of its Airport Sign Policy. [FAA Exhibit 1, Item 17, pg. 10.] Respondent states “All commercial leaseholds at RVS are now subject to the sign policy…” approved by the Tulsa City Council on September 29, 2005. [FAA Exhibit 1, Item 17, pg. 9.]

Originally, Respondent had notified FAA’s Southwest Region Airport Compliance Officer by letter that it wanted to wait until Tulsa’s City Council approved the updated Sign Policy before it sought enforcement and compliance with the Airport’s Sign Policy. [See FAA Exhibit 1, Item 3, Attachment A, pg. 5] Respondent stated in its March 10, 2005 letter:

“TAIT would like to wait until a new sign policy has been adopted as an ordinance by the Tulsa City Council, as now required by the Tulsa City Charter, before initiating action to enforce that policy on a uniform basis against all tenants at RVS...TAIT just discovered that the Tulsa Airport Authority’s existing sign policy, which was adopted by that Authority in 1990...was never approved as a ‘rule or regulation’ by the City Commissioners of the City of Tulsa. My client believes that some tenants at RVS are currently in violation of the 1990 Policy, and TAIT had not been enforcing that policy since it believes many of those violations would be grandfathered into the new sign policy. [FAA Exhibit 1, Item 3, Attachment A, pg. 5.]

Grant Assurance 22, Economic Nondiscrimination, assures that an airport sponsor will make the airport available to all types, kinds, and classes of aeronautical users including those users wishing to conduct commercial aeronautical activities on the airport. [See Grant Assurance 22(a).] Additionally, “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 Grant Assurance 22(c).]
Complainant’s allegation appears to rest on Respondent’s enforcement of an August 14, 2003 Airport Sign Policy. However, this is not the current sign policy. The Record reflects that Respondent updated its Sign Policy effective September 29, 2005. [FAA Exhibit 1, Item 17, pg. 9.] The new Sign Policy reflects a ‘grandfather’ clause that allows signs not meeting the size limitations of the current policy to remain as long as they are not modified. [id.] It appears that the ‘grandfather’ clause applies to all tenants with signs on the Airport on the effective date of the policy.

FAA is interested in current compliance. [Wilson Air Center, LLC v. Memphis and Shelby County Airport Authority, FAA Docket No. 16-99-10, Director’s Determination (August 2, 2000).] Whether Christiansen Aviation or Complainant’s signs were a violation of the old Sign Policy is not a matter of current compliance. While Respondent may have previously enforced the provisions of its old sign policy unfairly and incorporated non-compliant signs by ‘grandfathering’ them into the September 29, 2005 Sign Policy, the current sign policy grandfathered all signs as of January 1, 2005, whether they were compliant or not. [FAA Exhibit 1, Item 17, Attachment K.]

Respondent’s inclusion of ‘grandfathering’ provisions in the current Sign Policy may have been an act to create a level playing field but also may have created a less than fair situation for those tenants forced to make changes under the previous Sign Policy. However, FAA’s role is to correct current non-compliance.

Part 16 is not a punitive process for past violations. The burden of proof rests with Complainant. The Record fails to present a persuasive case that the two FBOs were treated substantially differently under the current Sign Policy in effect.

Therefore, based on the documents and information submitted to the Record by the parties, FAA does not find Respondent in current violation of Grant Assurance 22 with regard to enforcement of its August 14, 2003 Sign Policy because that policy has been superseded by the current sign policy of September 29, 2005. The September 29, 2005 policy and enforcement appear to treat all existing tenants equally.

Grant Assurance 22 – Audit Procedures

Complainant alleges Respondent has discriminately targeted it for audit. [FAA Exhibit 1, Item 10.] Complainant believes Respondent chose to include it on Respondent’s auditing schedule because it filed a Part 16 complaint with the FAA. [FAA Exhibit 1, Item 10, pg. 3.]

During the Part 16 proceedings, Respondent began auditing Complainant’s fuel flowage fee records. In its Motion to Amend (5), Complainant alleges Respondent’s auditing procedures are discriminatory and a violation of Grant Assurance 22, Economic Nondiscrimination. [FAA Exhibit 1, Item 10, pg. 1.]

Complainant provides a 2005 audit schedule memorandum in which Complainant was not identified as a tenant that would be audited during the fiscal year. [See FAA Exhibit
1, Item 10, Attachment 3.] A Fiscal Year 2005-2006 Audit Plan, dated July 1, 2005, indicated Complainant had been selected for audit. [FAA Exhibit 1, Item 17, Attachment G-2.] Complainant further states, “Roadhouse Aviation has then been audited by an obvious harassing and discriminating last minute decision from the airport authority.” [FAA Exhibit 1, Item 10, pg. 3.]

Complainant also takes issue with Respondent’s auditing procedures, questioning the need for Respondent to take proprietary information out of its leasehold. [FAA Exhibit 1, Item 10, pgs. 1-2.]

Respondent denies these allegations and states:

“FBOs are not singled out for audit by the Airports Auditor, but are considered for audit along with all other self-reporting entities, which include entities that sell, consume, or dispense aviation fuel, the parking operator at TUL, and Airport concessionaires.” [FAA Exhibit 1, Item 17, pg. 4.]

Respondent admits that Tulsa Airport Authority’s audit staff plans and conducts the audits of self-reporting tenants. [FAA Exhibit 1, Item 17, pg. 7.]

Respondent provided a copy of its standard Audit Program for Aviation Fuel Flow Fees. [See FAA Exhibit 1, Item 17, Attachment F.] Respondent states “Each Reporting Entity/Auditee has its own unique information gathering and accounting systems, so the standard audit program has to be revised based on what the Auditor determines is necessary to achieve the purpose and objectives of the audit.” [FAA Exhibit 1, Item 17, pg. 5.]

Respondent states that its Airports Auditor prepares an Annual Audit Plan for auditing and reviewing self-reporting tenants. [id.] However, “identification of companies subject to audit by TAIT is an ongoing process.” [FAA Exhibit 1, Item 17, pg. 6.]

Respondent states that its “audit of Roadhouse occurred as a result of the normal application of TAIT’s audit policy.” [FAA Exhibit 1, Item 17, pg. 7.] Respondent agrees that Complainant was not on the audit schedule dated May 2005, which identified tenants to be audited in fiscal year 2004-2005. [FAA Exhibit 1, Item 10, Attachment 3.] Complainant was on the audit schedule for fiscal year 2005-2006. [FAA Exhibit 1, Item 17, Attachment G-2.]

Respondent also notes that Complainant “did not permit the audit to be completed…the auditor was unable to provide TAIT with an opinion regarding Roadhouse’s compliance with its payment obligation.” [FAA Exhibit 1, Item 17, pg. 7.]

Grant Assurance 22, Economic Nondiscrimination, assures that an airport sponsor will make the airport available on reasonable terms to all types, kinds, and classes of aeronautical activities. [See Grant Assurance 22(a).] In addition, “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 Grant Assurance 22 (c).] Airport sponsors “may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.” [Grant Assurance 22 (h).]

Here, Complainant alleges Respondent’s audit of its fuel flowage fees constitutes harassment and discrimination since Complainant was not originally scheduled for audit and only learned of the scheduling after it filed the Part 16 complaint with FAA.

Respondent’s authority to audit appears to stem from a reference to city code in its lease documents. [FAA Exhibit 1, Item 19.] Complainant admits that “the airport authority, by code, can audit my fuel records; on my property during normal working hours…” [FAA Exhibit 1, Item 19, pg. 5.]

What must be determined is whether Respondent’s decision to audit and the procedures by which it audited Complainant are unjustly discriminatory. The Record reflects that Complainant had never been subject to a fuel-flowage fee audit since beginning its operations on the Airport in 2002. [FAA Exhibit 1, Item 10, Attachment 3.] Reason dictates that Complainant was inevitably going to be the subject of an audit. The fact that Respondent selected Complainant after it filed its Part 16 may be suspect but appears well within Respondent’s contractual rights. FAA does not find the mere act of auditing Complainant unjustly discriminatory since the Record reflects that Complainant’s competitors have been subject to the same audits in the past.

Respondent’s right to audit fixed-based operators on the Airport that are collecting fuel flowage fees for Respondent has been established and admitted by Complainant. It follows that execution of the audit would also appear to be dictated by the city code. Any challenge to the ethics and administration of the audit thereof would be made in the appropriate local forum, not the Part 16 process. Complainant’s argument that Respondent’s actions, including the ‘unauthorized seizure of proprietary documents, is subject to civil or criminal actions are not within FAA’s Part 16 jurisdiction to adjudicate.

Therefore, with regard to Respondent’s audit of Complainant’s fuel-flowage fee records, FAA finds Respondent in not in violation of Grant Assurance 22.

Grant Assurance 22 – Measuring and Marking

Complainant alleges Respondent violated Grant Assurance 22, Economic Nondiscrimination, when Respondent only measured and marked Complainant’s tie-down leaseholds. [FAA Exhibit 1, Item 1, Attachments 2 & 7.] Complainant claims that Respondent measured and marked his tie-down ramps for compliance but did not do the same for “any other ramps nor have they enforced any other tenant.” [FAA Exhibit 1, Item 1, Attachment 7, pg. 1.] Complainant continues to allege favoritism and discrimination in its first Motion to Amend which details Respondent’s third measurement of Complainant’s tie-down leaseholds. [FAA Exhibit 1, Item 6.]
Respondent defends its action stating, “the only shared taxilanes causing conflict among tenants at RVS are those on Roadhouse’s tie-down areas 15, 16, and 17.” [FAA Exhibit 1, Item 3, Attachment A, pg. 7.] Respondent appears to also link its action to ensure compliance with a Temporary Restraining Order. [id.] The Order obtained by Christiansen Aviation against Complainant, prohibits Complainant from “parking any of its vehicles, including its aviation fuel trucks, on public taxilanes adjacent to Christiansen Aviation’s hangar, and from taking any other action which in any way impairs or obstructs any access to that hangar through or over public taxiways.” [FAA Exhibit 1, Item 3, Attachment A, pg. 8.]

FAA directed supplemental questions to Complainant regarding this issue. [FAA Exhibit 1, Item 11.] FAA asked what was the purpose of measuring and marking Complainant’s tie-down areas? Respondent answered:

“Measuring and marking the tie-down blocks leased by Roadhouse was done as part of TAIT’s response to the issues that were raised by Roadhouse and Christiansen. It was done so that all parties concerned could see the physical location of the leases as described in the lease documents. TAIT has not made similar markings on any other tie-down leases because there has not been any dispute or issue raised at those locations.” [FAA Exhibit 1, Item 17, pg. 11.]

Here, FAA must determine whether Respondent violated Grant Assurance 22, when it only measured and marked Complainant’s tie-down leasehold.

Grant Assurance 22, Economic Nondiscrimination, assures that an airport sponsor will make the airport available to all types, kinds, and classes of aeronautical users including those users wishing to conduct commercial aeronautical activities on the airport. [See Grant Assurance 22(a).] Additionally, “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 Grant Assurance 22(c).]

It appears that Respondent generally provides site information in the lease documents through both written description in the lease and pictorial depictions attached to the lease. Copies of Complainant’s tie-down leases reflect a written description of the lease boundaries and included public taxilanes.

The Record also reflects that Respondent provided clarification and possibly dispute resolution by measuring and marking Complainant’s tie-down leaseholds after it received complaints. Respondent’s actions to measure and mark Complainant’s tie-down leaseholds were appropriate and logical.

Respondent is not required to measure and mark all leaseholds on the Airport if it is only having disputes with one. Such action is unnecessary, time consuming, costly, and not
something that FAA requests for the given situation. If other similar disputes arise on the Airport, FAA would expect Respondent to measure and mark the leasehold in question. Complainant fails to demonstrate it has been treated differently than any other leasehold in similar dispute.

Accordingly, FAA finds that Respondent’s actions were not unjustly discriminatory and not a violation of Grant Assurance 22.

VII. FINDINGS AND CONCLUSIONS

Upon consideration of the record herein, applicable law and policy, and for the reasons stated above, the Director of FAA’s Office of Airport Safety and Standards finds and concludes as follows:

(i) Respondent’s actions permitting Christiansen Aviation’s access through Complainant’s subleased tie-down blocks conform to Complainant’s lease and such access do not create an FAA flight safety hazard. Thus, Respondent has not violated its applicable Federal obligations, including Grant Assurances 19, Operation and Maintenance; and 22, Economic Nondiscrimination. FAA also finds that Respondent has not provided Complainant with disparate lease rates and terms when compared to Christiansen Aviation.

(ii) Respondent has not violated Grant Assurances 5, Rights and Powers; 22, Economic Nondiscrimination, and 23, Exclusive Rights, when it approved the assignment of the ATI hangar to Christiansen Aviation. Christiansen Aviation is not the only provider of FBO services on the Airport. In addition, it appears there are other sites available to erect a large-bulk aircraft storage hangar on the Airport.

(iii) Respondent is not in violation of Grant Assurance 22, Economic Nondiscrimination, with regard to its enforcement of the current Airport Sign Policy or its fuel flowage fee audit. Respondent’s actions regarding measuring and marking Complainant’s tie-down leaseholds were not unjustly discriminatory and not a violation of Grant Assurance 22. Respondent’s actions were a means of clarifying and resolving a dispute between two tenants on the Airport.
ORDER

ACCORDINGLY, the Director finds the City of Tulsa and the Tulsa Airports Improvement Trust not currently in violation of applicable Federal law and Federal grant obligations.

1. The case is dismissed.
2. All motions not specifically granted herein are denied.

RIGHT OF APPEAL

This Director’s Determination is an initial agency determination and does not constitute final agency action 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.

David L. Bennett
Director
Office of Airport Safety and Standards