

James Vernon Ricks, Jr.,)
Michael Matthew Ricks,)
Valley E. Ricks,)
dba)
Millington Aviation, LLC)

Docket No. 16-98-19

Millington Municipal Airport Authority)

DIRECTOR'S DETERMINATION

I. INTRODUCTION

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

James Vernon Ricks, Michael Matthew Ricks, Valley E. Ricks, dba Millington Aviation (Ricks) filed a complaint against the Millington Municipal Airport Authority (MMAA), sponsor of the Millington Municipal Airport, alleging that MMAA, in its operation of the Millington Municipal Airport, has engaged in activity contrary to its Federal obligations.

The Complaint presents numerous examples of actions on the part of the MMAA, which, the complainant alleges, establish that the MMAA has violated the exclusive rights prohibition, 49 USC 40103(e). The complainant alleges:

Tulsair was secretly chosen to be given a monopoly on NQA [Millington Municipal Airport], outside, and in advance of, regular business sessions of the MMAA, or 'Lease Committee.'

The complainant also alleges that the sponsor violated Federal grant assurance #22, prohibiting unjust economic discrimination, under 49 U.S.C. §47107(a)(1) through (6):

This action was at the expense of the Ricks' with whom the MMAA had not bargained fairly, misled, lied-to, then excluded, from a lease-hold on NQA [Airport].

A review of Ricks' allegations as well as the record raises the following issues for FAA consideration and resolution:

1. Whether the MMAA's denial of an FBO leasehold to Ricks was reasonable and nondiscriminatory based upon the facts in the record, and did not violate the exclusive rights prohibition or the prohibition of unjust economic discrimination;
2. Whether the MMAA, by leasing hangars N-798, one-half of N-126, and N-7 to Tulsair exclusively, has violated the exclusive rights prohibition, 49 U.S.C. § 40103(e), and the related sponsor assurance made binding on the MMAA as a result of its receipt of Federal grant funds.

Ricks alleges various malfeasance and corruption on the part of MMAA in numerous circumstances, which Ricks maintains violated the MMAA's Federal sponsor obligations. However, our review of this matter is based solely on the applicable Federal law and FAA policy prohibiting a sponsor's granting of an exclusive right or practicing unjust economic discrimination, and review of the arguments and supporting documentation submitted by the parties to the administrative record in this proceeding. [FAA Exhibit 1] This decision also addresses Ricks' Motion to Dismiss Answer of MMAA filed during the investigation.

With respect to the allegations presented in this Complaint, under the specific circumstances at the Millington Municipal Airport as discussed below, and based on the evidence of record in this proceeding, we find that the Millington Municipal Airport Authority is not currently in violation of its Federal obligations. This Director's Determination contains recommendations and advisories to MMAA to assist its efforts to remain in compliance.

II. THE AIRPORT

Millington Municipal Airport (Airport) is a public-use, general aviation airport located in Shelby County, Tennessee, approximately 25 miles north of Memphis International Airport. The Airport is owned by the Department of Defense/U.S. Navy and leased and operated by the Millington Municipal Airport Authority (MMAA) under a joint use agreement. The MMAA is preparing to formally apply to acquire title to the site to be used for public airport purposes. The MMAA is on track to have the property conveyed to it before March 2000. The planning and development of the Airport has been

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

The Airport has approximately 28 based aircraft and 16,254 operations annually at the Airport. [FAA Exhibit 2] The planning and development of the Airport has been financed, in part, with funds provided by the FAA to MMAA as the Airport sponsor under the Airport Improvement Program (AIP), authorized by the Airport and Airway Improvement Act of 1982, as amended, 49 U.S.C. § 47101, et seq. [FAA Exhibit 3] The MMAA has received grants totaling \$3,798,668. In 1998, MMAA received \$1,275,200 in grants to remove pavement, to conduct a storm drainage system study, to grade a taxiway safety area and to renovate a hangar.

The Airport was originally built and operated by the Federal government as a Naval Support Facility. In 1996, the Navy leased the property to the MMAA for redevelopment as a civilian, public-use airport. [FAA Exhibit 1, Item 1, page 2] MMAA states, "Pursuant to the lease agreement and a subsequent license agreement, MMAA received, among other buildings, Building N-798, which has 19,000 square feet of hangar space, and Building N-126, which has 36,000 square feet of hangar space." [FAA Exhibit 1, Item 3, page 2]

III. APPLICABLE LAW AND POLICY

The Federal Aviation Act of 1958, as amended (FAA Act), 49 U.S.C. Section 40101, et seq., assigns the FAA Administrator broad responsibilities for the regulation of air commerce in the interests of safety, security, and development of civil aeronautics. The Federal role in encouraging and developing civil aviation has been augmented by various legislative actions which authorize programs for providing funds and other assistance to local communities for the development of airport facilities. In each such program, the airport sponsor assumes certain obligations, either by contract or by restrictive covenants in property deeds and conveyance instruments, to maintain and operate its airport facilities safely, efficiently, and in accordance with specified conditions. Commitments assumed by airport sponsors in property conveyance or grant agreements are important factors in maintaining a high degree of safety and efficiency in airport design, construction, operation and maintenance as well as ensuring the public reasonable access to the airport. Pursuant to 49 USC § 47122, the FAA has a statutory mandate to ensure that airport owners comply with their sponsor assurances.

FAA Order 5190.6A, *Airport Compliance Requirements*, (hereinafter Order) provides 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.

The Airport Sponsor Assurances

As a condition precedent to providing airport development assistance under the AAIA, the Secretary of Transportation receives certain assurances from the airport sponsor.

The AAIA, 49 USC § 47107(a), *et seq.*, sets forth requirements to which an airport sponsor receiving Federal financial assistance must agree as a condition precedent to receipt of such assistance. These sponsorship requirements are included as assurances in every airport improvement grant agreement. Upon acceptance of an AIP grant by an airport sponsor, the assurances become a binding obligation between the airport sponsor and the Federal government.

Airport Owner Rights and Responsibilities

Assurance 5, "Preserving Rights and Powers," of the prescribed sponsor assurances implements the provisions of the AAIA, 49 USC Section 47107(a), *et seq.*, and requires, in pertinent part, that the sponsor of a federally obligated airport "...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."

FAA Order 5190.6A, *Airport Compliance Requirements*, (Order) describes the responsibilities under 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 Order, Secs. 4-7 and 4-8.

Use on Reasonable and Not Unjustly Discriminatory Terms

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

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

"...may establish such fair, equal, and not unjustly discriminatory conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport." Assurance 22(h)

"...may...limit any given type, kind, or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public." Assurance 22(i)

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

FAA Order 5190.6A describes the responsibilities under Assurance 22 assumed by the owners of public use airports developed with Federal assistance. Among these is the obligation to treat in a uniform manner those users making the same or similar use of the airport and to make all airport facilities and services available on reasonable terms without unjust discrimination. See Order, Secs. 4-14(a)(2) and 3-1.

The FAA considers it inappropriate to provide Federal assistance for improvements to airports where the benefits of such improvements will not be fully realized due to inherent restrictions on aeronautical activities. See Order, Sec. 3-8(a).

The owner of any airport developed with Federal grant assistance is required to operate the airport for the use and benefit of the public and to make it available to all types, kinds and classes of aeronautical activity on reasonable terms, and without unjust discrimination. See Order, Sec. 4-13(a).

The Prohibition Against Exclusive Rights

Section 308(a) of the FAA Act, 49 USC § 40103(e), provides, in relevant part, that "there shall be no exclusive right for the use of any landing area or air navigation facility upon which Federal funds have been expended."

Section 511(a)(2) of the AAIA, 49 USC § 47107(a)(4), similarly provides, in pertinent part, that "there will be no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public."

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

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

In FAA Order 5190.1A, *Exclusive Rights*, the FAA published its exclusive rights policy and broadly identified aeronautical activities as subject to the statutory prohibition against exclusive rights. While public use airports may impose qualifications and minimum standards upon those who engage in aeronautical activities, we have taken the position that the application of any unreasonable requirement or any standard that is applied in an unjustly discriminatory manner may constitute the constructive grant of an exclusive right. See FAA Order 5190.1A, Para. 11.c.

The leasing to one enterprise of all available airport land and improvements planned for aeronautical activities will be construed as evidence of an intent to exclude others unless it can be demonstrated that the entire leased area is presently required and will be immediately used to conduct the activities contemplated by the lease. (See Order, Section 2[c].)

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

The FAA Airport Compliance Program

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

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

FAA Order 5190.6A sets forth policies and procedures for the FAA Airport Compliance Program. The Order is not regulatory and is not controlling with regard to airport sponsor conduct; rather it establishes the policies and procedures to be followed by FAA personnel in carrying out the FAA's responsibilities for ensuring airport compliance. It provides basic guidance for FAA personnel in interpreting and administering the various continuing commitments made to the United States by airport owners as a condition for the grant of Federal funds or the conveyance of Federal property for airport purposes. The Order, *inter alia*, analyzes the various obligations set forth in the standard airport sponsor assurances, addresses the nature of those assurances, addresses the application of these assurances in the operation of public-use airports, and facilitates interpretation of the assurances by FAA personnel.

IV. BACKGROUND

This Section describes the FAA's understanding of the relevant facts as deemed clear and credible by the FAA after review of the information presented in the record¹.

For the sake of clarity, this section is divided into four parts: the preliminary discussions between the parties to the complaint; the facts and circumstances relevant to MMAA's process of qualifying potential FBO leaseholders; accusations of alleged discriminatory treatment considered individually; and the facts and circumstances of Tulsair's current tenancy at the Airport.

The FAA notes that not all of the information submitted by Ricks was deemed to be relevant to our inquiry. Ricks² has submitted voluminous information to the record. The FAA carefully reviewed this information to determine its relevancy; however, much of it appears to be inapposite to a claim of unjust economic discrimination or to a claim of a violation of the exclusive rights prohibition.

Preliminary Discussions

The parties' individual accounts of the preliminary discussions between Ricks and Millington Municipal Airport Authority (MMAA) reveal the basis for apparently persistent misunderstandings among individuals within the parties.

MMAA had previously entered into an FBO lease agreement with Millington Aviation Services, Inc. [MAS]³. [FAA Exhibit 1, Item 1, page 2] Ricks states, "From the onset, I [James Vernon Ricks] made it clear to Noble [Airport Manager] that Matt wanted to have the business opportunity that Deaton [MAS] had at NQA [Airport]." [FAA Exhibit 1, Item 1, exhibit 1, page 3] According to the MMAA, MAS had long struggled with its business at the Airport, causing Airport management to consider contingency plans for the eventuality of MAS ceasing operations. These plans included discussions with James Vernon Ricks and Michael Matthew Ricks beginning in the summer of 1997.

However, the record reflects an apparent, basic misunderstanding among the various actors within the two parties, about the intentions of MMAA and Ricks. Ricks alleges that Ricks was pursuing the possibility of permanently replacing MAS as a general FBO, while MMAA contends that Ricks' dealings with Frank Ryburn, former Chairman of

¹ Many of the allegations submitted by Ricks involve alleged personal, verbal behavior on the part of several officials of MMAA. These accounts are disputed by MMAA. Consequently, there is little agreement as to the facts of the case. Also, much of the information presented by Ricks lacks sufficient coherence or documentary support to determine its validity.

² "Ricks" is used throughout this Director's Determination to refer to the Complainant, James Vernon Ricks, Michael Matthew Ricks, Valley E. Ricks, dba Millington Aviation. This is done in order to avoid confusion among the Airport (Millington Municipal), a prior tenant of the Airport (Millington Aviation Services) and the Complainant (Millington Aviation, LLC). When referring to an individual Ricks, the full name will be used: Michael Matthew Ricks or James Vernon Ricks or Valley E. Ricks. Quoted references sometimes only refer to first names.

³ MAS was the only FBO on the Airport at this time, until it was evicted in July 1999, and employed Michael Matthew Ricks.

MMAA and Russ Noble, Airport Manager were in pursuit of a contingency plan to provide services to the public, in the event of a cessation of operations by MAS.

The MMAA characterizes these preliminary discussions with Ricks:

In the late summer and early fall of 1997, it appeared that MAS was not going to survive as the fixed based operator at Millington Municipal Airport for much longer. In order to protect the interests of the airport and maintain continuous service for its patrons, Frank Ryburn, then the Chairman of MMAA, spoke with Vernon Ricks about his ability to perform FBO activities at the airport in the event MAS was evicted. In response, Ricks provided financial information and references to Mr. Ryburn. [FAA Exhibit 1, Item 3, page 3]

Ricks' detailed description, submitted in an Affidavit of James Vernon Ricks, Jr. ⁴, of these events is roughly consistent with that of the MMAA's:

At 9:30 A.M. on August 27, 1997, Frank Ryburn phoned me at my Office. The purpose of the call was for Ricks to provide substantiation to the MMAA of financial capability and business expertise so that Ricks could take over the function of the MAS at NQA [Airport]. I responded immediately by means of a letter with information on four bank Presidents, all of whom had intimate knowledge of my financial status and business dealings, along with the Mayor of Greenwood, MS, who has known me for many years and would have been able to have given advice regarding Ricks' ability to successfully and continuously deal with an Airport and its Authority....

Per the references, no person from the MMAA ever contacted them. [FAA Exhibit 1, Item 1, exhibit 1, page 4]

MMAA states,

In November 1997, while on the verge of eviction, MAS was granted a reprieve pursuant to a financial guaranty.... The termination date of the guaranty turned out to be May 26, 1998. ...MAS failed to pay its financial obligations to MMAA. Again, it appeared that MMAA would soon be without a general fixed base operator and, consequently, vital services necessary to maintain the viability of the airport. At this time, contact with Vernon Ricks was renewed by Mr. Ryburn." [FAA Exhibit 1, Item 3, page 3]

Ricks roughly concurs, stating that, "On March 18, 1998, Airport Manager, Russ Noble, contacted Matt Ricks and me and provided Matt with a 'Millington Municipal Airport Authority Application for Real Property Lease' set of instructions.... The application

⁴ The FAA includes intact quotes from Ricks to avoid misinterpreting the complainant's points by paraphrasing. Many of the quotes come from the Complaint's Exhibit 1, (one of 131 Exhibits with numerous sub-exhibits, submitted with the Complaint). This Exhibit 1 is a 56-page Affidavit of James Vernon Ricks, Jr. After a complete review, the FAA has determined that this document is the most credible, clear and coherent document submitted by the complainant.

was completed and hand delivered to Russ Noble by Matt Ricks on March 23, 1998 with no indication of any further requirements by Noble." [FAA Exhibit 1, Item 1, exhibit 1, page 5] A review of this Application for Real Property Lease, submitted by Ricks shows that, "the intended uses of the property include general FBO activities including rental/lease of hangar/parking space, selling aviation fuels and oil, providing maintenance to aircraft and FBO equipment." [FAA Exhibit 1, Item 1, exhibit 36, page 4]

The FAA accepts from the record, as summarized above, that the same verbal exchanges may have been perceived so differently by the parties involved as to set the stage for the conflicts summarized below. In any event, the FAA is unconvinced by the record that the above-summarized exchanges constitute MMAA deception.

Process of Qualifying and Selecting FBO Leaseholders

The following accounts are most relevant to the claim that MMAA established an exclusive right through the actions described in the complaint regarding Ricks interest in doing business on the Airport. As generally stated by Ricks,

Tulsair was secretly chosen to be given a monopoly on NQA [Airport], outside, and in advance of, regular business sessions of the MMAA, or 'Lease Committee.'

According to MMAA, as supported by the record, MMAA published a Request for Proposals (RFP) for general fixed based operators at the Airport on April 12, 1998. Any interested party, including Ricks, was required to submit a timely response to the RFP. "In order to ensure that Ricks's proposal was properly submitted and considered, Russ Noble ("Noble"), the manager at the airport, had Matthew Ricks amend the submission date of the March 23, 1998, response to April 20, 1998. [FAA Exhibit 1, Item 3, page 4]

Ricks admits:

On April 20, 1998, I received a FAX message from the MMAA initiating a 'Request for Proposals for General Fixed Base Operator at Millington Municipal Airport, Millington, Tennessee'. Due to the apparent urgency that I sensed due to the FAX, I contacted Russ Noble and Matt Ricks by telephone on that day about the sufficiency of the application and material that Ricks had submitted to the MMAA on March 23, 1998. Russ Noble stated some changes that needed to have been made, primarily 'redating the March 23, 1998, submission, and modification of Section B.2. to remove the 30 day time period that Ricks had requested in the March 23, 1998, application. Noble told Ricks that "the MMAA would accept the March 23, 1998, proposal redated to April 20, 1998, and with a modified Section B.2. as a 'Proposal for a General Fixed Base Operator' (at Millington Municipal Airport, Millington, Tennessee) with no additional requirements for leasing, or operating on NQA [Airport], by Ricks". [FAA Exhibit 1, Item 1, exhibit 1, page 6]

Here, Ricks admits that it received the RFP, as would any party interested in becoming an FBO; however, Ricks continues to pursue interpersonal, rather than formal procedures.

During this time, the MMAA was moving ahead with the complicated process of evicting MAS, because of MAS's continued failure to meet its financial obligations. Also, "the Lease Committee moved forward with the evaluation process for new general fixed based operators." Due to bankruptcy law procedures, "the status of MAS's tenancy at Millington Municipal Airport continued to be as uncertain as it had been since the summer of 1997." [FAA Exhibit 1, Item 3, page 5]

In April and May of 1998, the Lease Committee evaluated responses to the RFP. The MMAA states that four responses were submitted and evaluated, including Tulsair and Ricks:

On May 12, 1998, Matthew Ricks, a principal of Millington Aviation, LLC, met with the full Lease Committee with respect to its response to the RFP. During that meeting, Matthew Ricks was specifically requested to provide a business plan, an audited financial statement, and proof of insurance. No detailed business plan or audited financial statement was ever produced by Ricks to MMAA.... Tulsair was requested to and did provide this information. Ricks was requested to but did not provide this information. [FAA Exhibit 1, Item 3, page 6]

Ricks affidavit partially supports the above summary:

On May 14, 1998, I received a call from Russ Noble that Frank Ryburn needed certified financial information on my financial statement that had been supplied to the MMAA, even though Ryburn had *cart blanche* access to my whole business and financial life for 260 days with no effort by Ryburn. Valley Ricks mailed that information to Frank Ryburn at the MMAA address on May 19, 1998, even though we had been promised to have no further obligations to lease or operate, on NQA [Airport] by the MMAA on April 20, 1998. [FAA Exhibit 1, Item 1, exhibit 1, page 7]

The FAA notes that Ricks admits to understanding that the MMAA required "certified financial information." The FAA also notes that the record does not contain an "audited financial statement" for the Ricks, nor does the record support that the Ricks ever submitted "audited financial statements." The FAA accepts MMAA's contention that it asked for audited financial statements and a business plan.

As reflected in the minutes to the May 12, 1998 Lease Committee meeting with Matthew Ricks (included in the record as FAA Exhibit 1, Item 3, exhibit c):

the Lease Committee concluded that Matthew Ricks's primary interests were to repair aircraft and build T-hangars and that he was not committed to being a

general fixed based operator. In a subsequent conversation with Jim Music⁵, Matthew Ricks confirmed that his primary interests were in maintaining aircraft and building T-hangars, but that he would assist in the transition upon the departure of MAS, if necessary. [FAA Exhibit 1, Item 3, page 6]

Regardless of the impression that Michael Matthew Ricks may have given during this meeting, as quoted in the following sub-section, MMAA states that "the Lease Committee had given the Ricks the same opportunity as the other three proposers." [FAA Exhibit 1, Item 3, page 9]

Ricks admits to being informed of Tulsair's impending tenancy, as reflected by the following:

During mid-afternoon on July 2, 1998, Russ Noble phoned me [James Vernon Ricks] and advised that [MAS] was being evicted on midnight, Friday, July 10, 1998, and that Ricks needed to 'get ready to start doing business'. Noble advised me that Tulsair Beechcraft, Inc. ("Tulsair") would be the best candidate to take over 'all of 798', ... 'that Tulsair wanted Building N7 as prop and engine overhaul shop' and 'that Matt could take over Building N126 and hangar the airplanes that Matt had in 798, which was the Ricks plan from the onset, since Tulsair only wanted the Eastern Aviation fuel trucks, fuel, and tank farm' (which would mean that Ricks had to find trucks, fuel, and storage immediately from another source, contrary to other agreements between Ricks and Noble about any transition from Deaton [MAS] to Ricks). Noble and I discussed MMAA's concern for 'continuity' of services between Deaton's [MAS] eviction and Rick's assumption of operation....

Noble and Ricks also discussed the Tee Hangars that the MMAA had been so adamant to have in earlier conversations with Matt Ricks. [FAA Exhibit 1, Item 1, exhibit 1 page 11]

The FAA notes that a careful review of Ricks' preceding account reveals a rough consistency, with obvious differences in interpretation, with MMAA's account:

Because of the uncertainty of the status of MAS, Noble was attempting to have in place a contingency plan in the event MAS left the airport and the new FBO had not been selected or could not be operational on short notice. The plan involved placing the former MAS employees on MMAA's payroll so that the airport could remain viable while an FBO was selected. It was merely a contingency or back up plan. Noble's conversations with Matthew Ricks, and then with Vernon Ricks, were separate and apart from the FBO evaluation and selection process. [FAA Exhibit 1, Item 3, page 8]⁶

⁵ The record reflects that the Chairmanship of the MMAA changed hands in June. Jim Music became the Chairman of MMAA, replacing Frank Ryburn, according to a copy of a portion of a newspaper article submitted by Ricks, apparently from The Star, dated July 8, 1998. [FAA Exhibit 1, Item 1, exhibit 50]

⁶ The record does not reflect exactly when the Lease Committee recommended Tulsair as an FBO; however, a portion of a newspaper article submitted by Ricks, apparently from The Star, dated July 8,

The FAA notes several aspects of Ricks' account, quoted above, that convince the FAA that the MMAA's intentions were to prepare Ricks as a contingency, as stated. Ricks admits that:

- Noble informed Ricks that Tulsair would be a tenant;
- Noble informed Ricks that Tulsair would be fueling aircraft with the apparently existing fueling equipment, leaving Ricks to make its own arrangements (if any);
- Noble discussed the continuity of service issue;
- Noble referred to "Matt" specifically about hangaring aircraft;
- Noble specifically discussed Tee hangars.

The FAA concludes that MMAA's account of these events and MMAA's intent is credible. However, the FAA does note that the record does not reflect that MMAA ever rejected Ricks' proposal clearly, formally, and in writing.

Based on the record, we conclude that the MMAA understood that Ricks did, in fact, intend to pursue a leasehold on the Airport, at the July 8, 1998 meeting between James Vernon Ricks and Russ Noble. According to the MMAA, "As Ricks alleges in this Complaint, he had come to the airport on July 8, 1998, to sign a lease; however, Noble had no authority to negotiate a lease or enter into a lease. Noble properly referred Ricks to the Lease Committee, which has the authority to recommend leases." [FAA Exhibit 1, Item 3, page 9]

The Ricks' account of the events of this day are lengthy. Generally, Ricks reports that Russ Noble, upon understanding that Ricks intended to sign a lease, acted "as if he were a different man in the same body." [FAA Exhibit 1, Item 1, exhibit 1, page 13] Ricks admits that Russ Noble referred Ricks to the Lease Committee that day, and meeting with its chairman, Tom Seale. Also, Ricks suggests that after Chairman Music⁷ had heard of Ricks' continued interest in being an FBO, they confronted Russ Noble in his office: "Noble was... cornered in his office by Music... with loud noises emanating from the office." [FAA Exhibit 1, Item 1, exhibit 1, page 15]

The FAA notes that Ricks account does not credibly contradict the MMAA's account, suggesting that Ricks' persistent misunderstanding and/or miscommunication within the MMAA contributed greatly to this conflict. The FAA understands, from the record, that on July 8, 1998, after the MMAA had selected Tulsair as a qualified FBO leaseholder, the MMAA came to the realization that Ricks still was expecting to be a leaseholder.

At the MMAA Board meeting July 10, 1998, the MMAA announced the selection of Tulsair as an FBO on the Airport. [FAA Exhibit 1, Item 1, exhibit 1, page 18] According to MMAA, Jim Music, Chairman of the MMAA, noted James Vernon Ricks' displeasure

1998, states, "The authority [MMAA] has since found a replacement [Tulsair] for Deaton's company [MAS].... Music said Monday night..." [FAA Exhibit 1, Item 1, exhibit 50] The MMAA states that it determined that MAS would be vacating its premises by July 10, 1998, and, "To prevent any interruption in service, MMAA desired to get Tulsair operating on July 11, 1998." [FAA Exhibit 1, Item 3, page 7]

⁷ As stated above, Mr. Music apparently assumed the Chairmanship in June, 1998.

at not being approved as an FBO and attempted to accommodate his concerns. As a result of this conciliation:

Ricks did submit a proposal dated July 13, 1998. The proposal was subject to an important contingency: 'the issuance of the novation of the Millington Aviation Services, Inc. Defense Fuels Military Fuel Sale Contract to the Ricks.' Not only was the Ricks's proposal subject to a contingency, but also it was deficient in that it did not include a detailed business plan or an audited financial statement. [FAA Exhibit 1, Item 3, page 9]

FAA review of the record confirms that the Ricks' application contained this contingency. Also, the FAA finds no evidence in the record that the Ricks ever submitted a detailed business plan or an audited financial statement.

MMAA summarizes its FBO qualification and selection process:

MMAA believes that it acted properly in the solicitation and selection process. ... MMAA gave each of the respondents, including Ricks, a meeting before the Lease Committee and an opportunity to provide additional information requested by the Lease Committee. Mr. Ricks refuses to acknowledge these indisputable facts. Contrary to Ricks's contention, the Lease Committee specifically asked Matthew Ricks for a business plan and audited financial statement (See Minutes of May 12, 1998, meeting between the Lease Committee and Matthew Ricks, Exhibit C to Answer.)

In the meeting between Tulsair and the Lease Committee on May 7, 1998, Tom Clark stated that he would provide a "final proposal as soon as possible." That final proposal is in the form of the "Millington FBO Business Plan" which is attached to the Answer as Exhibit J. Tulsair chose to provide the detailed information requested by the Lease Committee; Ricks chose not to provide such information. [FAA Exhibit 1, Item 7, pages 2-3]

Accusations of Allegedly Discriminatory Treatment

In addition to the allegation of an establishment of an exclusive right, the FAA notes Ricks allegations of discrimination. Ricks alleges or suggests specific examples of deception and discrimination that were to Ricks' detriment:

This action was at the expense of the Ricks' with whom the MMAA had not bargained fairly, misled, lied-to, then excluded, from a lease-hold on NQA [Airport].

Many of the allegations or suggestions are incomplete, unclear and/or irrelevant. However, the FAA recognizes these as allegations of unjust economic discrimination, apart from Ricks explicit allegation of the MMAA's establishment of an exclusive right.

Ricks specifically alleges that

- MMAA lied to and misled Ricks in their attempt to establish a leasehold/FBO concession at the airport;
- MMAA interfered with Ricks' attempt to novate the Defense Fuels Contract to itself;
- MMAA delayed producing documents related to the Tulsair lease to the Ricks.

Of course all of these allegations must be reviewed within the context of the persistent misunderstandings and informal, verbal, personal exchanges with MMAA officials apparently favored by Ricks.

Deception

As has been summarized above, most of Ricks allegations of MMAA's deception involve personal, verbal dealings that James Vernon Ricks and Michael Matthew Ricks had with Frank Ryburn, former Chairman of MMAA; Russ Noble, Airport Manager; Jim Music, current Chairman of MMAA and Tom Seale, Chairman of the Lease Committee, as well as other members of the Lease Committee.

Ricks states:

The public should be able to come to an airport and take a man with the title of 'Airport Manger', backed by another man titled 'Chairman of the Authority' at their word in business matters on an airport, especially when neither man never alleges 'no authority' to deal. ... This was how Ricks' dealt with the MMAA. [FAA Exhibit 1, Item 6, page 5]

According to Ricks, as summarized above, Ricks personal dealings with MMAA had encouraged Ricks, particularly James Vernon Ricks, to assume that they had fulfilled all requirements to be an FBO at the Airport. The latest allegedly positive encounter that Ricks reports occurred on Monday, July 6, 1998:

I [James Vernon Ricks] flew to NQA [Airport].... Matt Ricks and I met with Russ Noble in Noble's office. I had my notes from my telephone conversation with Noble on July 2, 1998, and covered the notes, item by item, with Noble; and I received the same responses from Noble as I had on the telephone on July 2nd. [FAA Exhibit 1, Item 1, exhibit 1, page 11-12]

As stated above, MMAA characterizes these conversations as Russ Noble's attempts "to have in place a contingency plan in the event MAS left the airport and the new FBO had not been selected or could not be operational on short notice." [FAA Exhibit 1, Item 3, page 8]

Ricks submits that the attitude of Noble changed at their July 8, 1998 meeting:

On Wednesday, July 8, 1998, I [James Vernon Ricks] arrived at NQA [Airport], found Matt Ricks, and Matt and I travelled to Russ Noble's office. We reported in Russ Noble's office at 10:30 A.M. to sign the lease and give a progress report on my activity to be 'ready to do business Saturday morning'. Russ Noble was as if he were a different man in the same body. Noble 'did not know anything about a lease'. 'You (Ricks) have to meet with the Lease Committee'. !! When I asked about all the ramifications of no lease, Noble 'didn't know anything about that...'. I asked, 'how do we go about meeting with this Lease Committee?'. Noble said that he would arrange a meeting for me at 3:00 P.M. that same day at some Tom Seale's home.... Noble said 'everything was fine' .. 'you just have a formality to make a proposal to the Lease Committee'.. 'let me know when you are finished with that meeting, and I will phone the Chairman and speak on your behalf'....

....Matt Ricks and I met with Tom Seale, the Chairman of the MMAA Lease Committee, only, ... in mid-afternoon on Wednesday, July 8, 1998.... I also stressed the urgency of our need for the leasehold due to the MMAA's demand for immediate assumption of MAS's duties, primarily the novation of Defense Fuels Agency contract⁸.... After having reviewed the Ricks plan, again, verbally, I asked Seale, 'is there anything else that we need to do, or say, or tell you?' Seale's answer was, 'no'. I asked if Ricks was 'approved', but I received no answer from Seale. There was no mention by Seale of any need for anything else from the Ricks, ie any additional proposals at any later date, etc. [FAA Exhibit 1, Item 1, exhibit 1, pages 13-16]⁹

Two days later, according to MMAA:

At the July 10, 1998, [Board] meeting with MMAA, Vernon Ricks voiced his displeasure with the actions of MMAA with respect to its not approving Ricks as an FBO. Because of the acrimonious attitude of Ricks at the Board meeting, Music requested Vernon Ricks to meet with him later that day.... Vernon Ricks complained that he had been denied due process and wanted to be an FBO. Music requested that Ricks submit a proposal. Music further confirmed that he would do three things for Vernon Ricks: (1) get with the Lease Committee about the selection process, (2) assist Matthew Ricks, if possible, in securing employment with Tulsair, and (3) not interfere with Ricks's chances to obtain the Department of Defense fuels contract.

Following their meeting, Music ... telephoned Seale. During that conversation, Seale confirmed that the Lease Committee had given the Ricks the

⁸ According to the record, the Defense Fuels Contract appears to be a contract to fuel Navy aircraft that was held by MAS. The record repeatedly reflects Ricks' interest in obtaining this contract; however, the record is unclear as to the degree to which Ricks expressed this interest to the MMAA prior to this time.

⁹ Within this lengthy account, Ricks relates its impression of an accidental lunchtime encounter with Jim Music and MMAA Lease Committee member, Linda Carter. The FAA had determined that the account does not shed additional light on the allegation, omitting it only for the sake of brevity.

same opportunity as the other three proposers and that the Lease Committee would not redo the process. [FAA Exhibit 1, Item 3, page 9]

After a review of the record, as summarized above, the FAA is not convinced that MMAA deceived Ricks. FAA will outline further the matter of MMAA's actions in regard to the Defense Fuels Contract, below.

Defense Fuels Contract

As quoted, Mr. Music told Ricks that he would "not interfere with Ricks's chances to obtain the Department of Defense fuels contract." [FAA Exhibit 1, Item 3, page 9]

In its Complaint, Ricks states, "...it has become very clear that the MMAA purposely, in every way possible to them, attempted to interfere with the novation of the Defense Fuels Contract so that the MMAA could obtain that contract and give it to whom they pleased." [FAA Exhibit 1, Item 1, page 9] Ricks presents various other instances, overheard by Ricks, that allegedly support this claim.

MMAA responds:

Despite Ricks's numerous contentions to the contrary, neither MMAA nor its attorney took any action to interfere with Ricks's alleged attempt to novate the Department of Defense fuels contract. Any actions taken by MMAA or its counsel involved general inquiries regarding the novation process and attempts to ensure that potential assets of the bankruptcy estate were properly accounted for and administered. As a significant creditor of MAS, MMAA acted completely within its rights. Obviously, the U.S. Attorney believed the Department of Defense fuels contract was within the jurisdiction of the Bankruptcy Court since she filed a Motion with the Court to lift the automatic stay so the contract could be terminated. [FAA Exhibit 1, Item 3, page 10]

The FAA is not convinced that MMAA actively undermined Ricks' attempts to novate the Defense Fuels Contract from MAS to Ricks. However, the FAA acknowledges that MMAA appears to have pursued its own creditor interests in MAS's bankruptcy proceedings, considering the Fuels Contract as an asset. The record is insufficient for the FAA to determine that MMAA lied to Ricks; however, MMAA may have not volunteered information as to MMAA's own actions with regard to MAS in its bankruptcy proceedings.

Document Production

Regarding events after July 10, 1998 and after Ricks' submission of his final application to the MMAA, Ricks states, "We had a great deal of difficulty in obtaining documents from the MMAA regarding their transactions with Tulsair. The degree of difficulty in getting documents was severe in each instance, ultimately necessitating travel to

Millington, presentation of photo identification, then being sequestered to view documents" [FAA Exhibit 1, Item 1, page 13]

MMAA responds, "Since July 10, 1998, MMAA has made its best efforts to accommodate Vernon Ricks and respond to the numerous inquiries and requests from him. MMAA has attempted to provide all documents requested by Ricks and has attempted to do so pursuant to and in accordance with the applicable statutes. MMAA was cautious in supplying Vernon Ricks with Tulsair's proprietary information. Following notification of Tulsair, MMAA produced the requested Tulsair information." [FAA Exhibit 1, Item 3, page 10]

The FAA discusses the above listed allegations that the FAA considers sufficiently relevant and coherent to be addressed in this proceeding, in the following Analysis Section, as part of its discussion of the MMAA's compliance with its Federal obligations.¹⁰

Current Circumstances of Tulsair's Tenancy at the Airport

Finally, the actual physical circumstance of Tulsair's leasehold and the terms of Tulsair's tenancy can be relevant to the potential establishment of an exclusive right. As stated by the MMAA:

As stated, all of the hangar space at Millington Municipal Airport is leased. There are only two hangars at the airport. Currently, Millington Municipal Airport does not have the financial resources to construct a new hangar....

In its Letter of Intent, Tulsair stated its intent to lease all of the hangar floor space in Building N-798 and some of the hangar space in Building N-126. Tulsair confirmed its understanding that the amount of space it could lease was subject to current availability and that such space would be leased to it only upon demonstrating that such space was presently required and will be immediately used to conduct activities that will be contemplated in the lease. Under the Occupancy Agreement, MMAA leased to Tulsair a portion of the terminal, all of the hangar floor space in Building N-798, a portion of Building N-126, and all of the hangar floor space in Building N-7¹¹, each with appropriate but necessary office space. [FAA Exhibit 1, Item 3, page 13]

...The Minimum Standards in effect during the selection process and the Minimum Standards now in effect require an FBO to lease or provide a minimum of 15,000 square feet of hangar space. Tulsair is currently occupying and using all of the hangar area in Building N-798 and one-half of the hangar area in N-126. The hangar space in both buildings is fully leased, but not just by

¹⁰ The FAA notes that many other allegations by Ricks are unclear, contradictory and irrelevant: Ricks' varying success in enlisting the assistance of numerous officials in city, state and Federal government; various other bits of statements allegedly demonstrating a Federal conspiracy and other allegedly illegal activity; accounts of threats, hostility and intimidation toward Matthew Ricks from Tulsair officials and from Vernon Ricks toward Russ Noble.

¹¹ Building N-7 is not directly accessible from the runway, and had been regarded as shop space. The record reflects that Ricks was interested in Building N-126.

Tulsair. One-quarter of Building N-126 is occupied by the U.S. Navy and one-quarter is occupied by another tenant (U.S. Aerospace). Tulsair is storing aircraft in its portion of N-126 and is performing maintenance in N-798. Tulsair is also storing aircraft in Building N-7, which is not directly accessible from the runway. MMAA limited Tulsair to available space that it could show was presently required and could be used immediately as provided for in FAA's Advisory Circular 150/5190-2A. All space leased to Tulsair is being used by it to conduct its FBO activities, aircraft storage and aircraft maintenance. Tulsair pays the same amount per square foot as MMAA's other tenants pay. There has been no agreement by MMAA to compensate Tulsair for refurbishment costs. [FAA Exhibit 1, Item 3, page 11]

In its Rebuttal, Ricks responds directly to MMAA's above quoted statement (the below quote is presented as written by Ricks):

"The Answer states, '... and one half of the hangar area in N-126.' 'One quarter of Building N-126 is occupied by the U.S. Navy and one quarter is occupied by another tenant (U.S. Aerospace).' [Answer Exhibit F to the contrary shows a floor plan map of N-126 hangar space with Tulsair with 50% of the hangar space.] [FAA Exhibit 1, Item 6, page 21]

Ricks characterizes this as "the first of several contradictory statements by the MMAA in its Answer." [FAA Exhibit 1, Item 6, page 21] It is unclear if Ricks is stating that the "one-half" admitted by MMAA is different from the "50%" noted by Ricks. In any case, the FAA is unable to find convincing evidence in the record to refute MMAA's description of Tulsair's tenancy.

V. ANALYSIS

Our decision in this matter is based solely on the applicable Federal law and FAA policy regulating the MMAA's obligations to the Federal government. These obligations prohibit a sponsor's granting of an exclusive right and prohibit the sponsor's practice of unjust economic discrimination. This Section discusses the FAA's understanding of the facts as submitted to the record in this proceeding as they apply to the relevant Federal law and FAA policy.

Ricks raises two allegations. First, by denying Ricks an FBO leasehold, the MMAA has violated the prohibitions against unjust economic discrimination and exclusive rights, Sponsor Assurances 22 and 23. Second, by leasing hangars N-798, one-half of N-126, and N-7 to Tulsair exclusively, the MMAA has violated the exclusive rights prohibition, 49 U.S.C. § 40103(e), and Sponsor Assurance No. 23.

For the reasons set forth below, we find that the MMAA has not acted in violation the Exclusive Rights prohibition, 49 U.S.C. § 40103(e), 49 U.S.C. § 47107(a)(4) or Assurance 23 of its grant agreement relating to exclusive rights. We also find that the

MMAA has not violated the terms of assurance 22 of its grant agreement relating to economic discrimination, codified at 49 U.S.C. § 47107(a)(1). However, as discussed below, we strongly urge the MMAA to seek the use of further aeronautical facilities from the airport owner, the United States Navy, so that the MMAA can accommodate other FBOs or aeronautical enterprises who meet the necessary qualifications.

The MMAA did not Unlawfully Deny an FBO Leasehold to Ricks

Since the enactment of the Civil Aeronautics Act of 1938, there have been statutory prohibitions against the grant of an "exclusive right" to conduct an "aeronautical activity" at an airport on which Federal funds have been expended.

As stated above, § 308(a) of the FAA Act, 49 U.S.C. § 40103(e), provides, in relevant part, that "[a] person does not have an exclusive right to use an air navigation facility [which includes an airport] on which Government money has been expended." 49 U.S.C. § 40103(e). In accordance with Sponsor Assurance No. 23, "Exclusive Rights," the MMAA is prohibited from directly or indirectly granting or permitting any person the exclusive right at the airport to conduct any aeronautical activities.

The relevant facts appear to be as follows. James Vernon Ricks and/or Michael Matthew Ricks had engaged in verbal discussions with the MMAA concerning the possibility of Ricks providing FBO and/or other services at the Airport.¹² Ricks filed an application on March 23, 1998 before the RFP was published for general FBOs at the airport. On April 12, 1998, the RFP was published. In order to ensure that Ricks's application was properly submitted, the MMAA worked with Ricks to amend the submission date so it could be properly considered. Along with Ricks, Hawthorne Aviation, US Aerospace, and Tulsair filed applications to operate an FBO on the airport. MMAA Lease Committee met with Tulsair and Ricks. [FAA Exhibit 1, Item 3, page 5] At the May 12, 1998 meeting with Michael Matthew Ricks, the leasing committee requested a business plan and an audited financial statement. [FAA Exhibit 1, Item 3, exhibit c] Based upon the interview with Michael Matthew Ricks and subsequent conversations, it became apparent to the MMAA that Ricks was not committed to becoming a full service, general FBO, which was the subject of the RFP. Thereafter, the MMAA selected Tulsair to be a general FBO because it considered Tulsair to be the best candidate. That selection was based upon Tulsair's experience and submitted materials including a detailed business plan and appropriate financial information. Among other things, Tulsair submitted audited financial statements for 1994 and 1995, and a Dun & Bradstreet Report dated May 15, 1998 (Containing 1996 Financial Results).¹³ [FAA Exhibit 1, Item 3, exhibit J]

¹² There is some question in the record as to whether Ricks actually desired to operate as a full-service FBO or engage in a limited number of aeronautical activities such as operating T-hangars and maintaining aircraft. In any case, the FAA accepts that there appears to be persistent miscommunication between Ricks and MMAA. However, the FAA cannot conclude that Ricks' misunderstanding amounts to unjustly discriminatory conduct by MMAA.

¹³ Ricks comments that Tulsair's audited financial information was "three and four years old." [FAA Exhibit 1, Item 1, page 21] An examination of Tulsair's financial information submitted in May 1998 reveals audited financial statements for calendar years 1994 and 1995, a Dun & Bradstreet report dated

Because of the departure of a bankrupt FBO, the MMAA was under pressure to get its selected FBO in place. As a result, the MMAA did not have time to negotiate a long-term lease (as is noted in its minimum standards). Instead, the MMAA accepted a letter of intent from Tulsair and very shortly thereafter completed an occupancy agreement with Tulsair.

As stated in the Introduction, the issue of concern to the FAA is

Whether the MMAA's denial of an FBO leasehold to Ricks was reasonable and nondiscriminatory based upon the facts in the record, and did not violate the exclusive rights prohibition.

In this case, the question comes down to whether MMAA's FBO selection process was reasonable, and not unjustly discriminatory toward Ricks. If it was, then no exclusive right could have been constructively granted to Tulsair.

The record indicates that Ricks was able to submit an application for the FBO leasehold. MMAA management assisted Ricks in making sure that his application was submitted in accordance with the RFP.¹⁴ The record also indicates that, despite MMAA's assistance, Ricks failed to demonstrate "financial responsibility" by providing certain financial information to the MMAA that it needed to properly evaluate Ricks' application. [FAA Exhibit 1, Item 3, page 6] In fact, it appears that Ricks' application was deficient because of Ricks' refusal to supply adequate financial documentation, after being requested to do so by MMAA. The record indicates that while Ricks did submit financial information (a listing of his assets and liabilities), he did not submit a business plan or an audited financial statement. [FAA Exhibit 1, Item 3, page 6] Finally, the FAA notes that the Ricks' final FBO proposal included a contingency-- the novation of the Defense Fuels Contract to Ricks. That contingency did not come to fruition, making further consideration of the proposal moot.

Ricks makes the point that the MMAA's Minimum Standards do not specifically require the submission of a business plan or an audited financial statement. However, the MMAA's Minimum Standards do require that one of the "Standard Requirements of all Operators" is that the applicant be "financially responsible and able to provide the facilities and services proposed." [FAA Exhibit 1, Item 1, exhibit 64, page 4] Certainly, the airport sponsor has discretion in what sort of financial information it deems necessary to review. In addition, airport sponsors customarily require business plans and audited financial statements when considering FBO applicants.

What matters here is that each applicant was required to provide similar information and that the type of information required was reasonable. The record indicates that, in fact, Tulsair was required to provide a business plan and an audited financial statement and did

May 15, 1998 which included a summary of 1996 financial activity. The FAA concurs that this submission reasonably fulfills MMAA's request and is consistent with MMAA's minimum standards.

¹⁴ As discussed, the FAA cannot conclude that MMAA officials encouraged an inadequate application by Ricks through verbal deception or manipulation.

so. See, FAA Exhibit 1, Item 3, exhibit J. Ricks was requested to provide similar documentation and failed to do so. On this basis alone, the MMAA had a right to select Tulsair as general FBO and reject Ricks.

Ricks further alleges that Tulsair did not provide the required amount of liability insurance, that MMAA interfered with Ricks' attempt to novate the Defense Fuels Contract from the bankrupt MAS to Ricks, and that Ricks met all of the MMAA's minimum standards. Tulsair did, in fact, provide the required \$5 million liability policy. See, FAA Exhibit 1, Item 3, exhibit I and FAA Exhibit 1, Item 7, exhibit B. The FAA is unconvinced that the MMAA interfered with the novation of the Defense Fuels Contract, as will be discussed in more detail below. Concerning compliance with the minimum standards, as discussed above, the MMAA's standards required submission of financial information. The MMAA has discretion to define what types of information need to be submitted. The actual types of financial information need not be actually stated in the standards, although it would be helpful if they were to be included.

The FAA accepts MMAA's description of its leaseholder and FBO selection process as summarized above and in the Background Section. The FAA notes that regardless of the quality and sincerity of the assistance offered to Ricks by Russ Noble and/or Frank Ryburn, Ricks had an opportunity to respond to the RFP as would any party interested in being an FBO at the Airport and in holding a fueling concession. No direct or credible indirect evidence¹⁵ has been submitted to the record to support the allegation that any other party received special treatment.

Because Ricks did not provide the required, reasonable financial information, the MMAA acted reasonably and in a nondiscriminatory manner when it denied Ricks' application.

The above discussion of the record supports the conclusion that MMAA's procedures do not constitute a violation of its Federal obligations, regarding the prohibition of an exclusive right. As in all cases, the judgment to be made is whether a sponsor is reasonably meeting its Federal commitments. It is the FAA's position that a sponsor

¹⁵ Ricks submits an unsupported accusation of corruption that the FAA deems not to be credible. Ricks states, "In retrospect, it is very clear that the [July 8, 1998 Lease Committee Meeting] was to be a one-on-one meeting, away from the MMAA business offices to engage Ricks in some sort of private bidding contest that must have occurred with Tulsair on the day before (July 7, 1998) to so change the business climate so drastically from Monday. ... Tom Seale was very nervous when the two Ricks appeared at his home for the appointment with the 'Lease Committee'... We met with Seale in a remote room in his house behind closed doors. Seale was absolutely mute, to the point of appearing incompetent, for the first minutes of the meeting. When Matt Ricks would not leave the room for Seale, Seale manipulated one of several 'controls' at his side, sat silently, and within 15 minutes, the secretary of the MMAA appeared, notebook in hand, to 'record' the meeting. It was a very taxing and uncomfortable situation for the Ricks." [FAA Exhibit 1, Item 6, pages 9-10]

MMAA rebuts: "What Mr. Ricks fails to state... is that Mr. Seale has a debilitating disease which has caused him to lose the use of his legs. Mr. Seale is confined to a wheelchair, the lounge chair in his study, and his bed. While Mr. Seale is capable of getting out of the house, some matters are handled at his house as a matter of convenience. The 'controls' about which Ricks speaks are to Mr. Seale's lounge chair in his study. These controls allow him to change his sitting position which he is required to do because he has no feeling in his legs." [FAA Exhibit 1 Item 7, page 3]

meets commitments when: a) the obligations are fully understood, b) a program (leasing policies, minimum standards, etc.) is in place which is adequate to reasonably carry out these commitments, and c) the owner satisfactorily demonstrates that such a program is being carried out. See Order, §5-6 (a)(2). The record supports the FAA's finding that the MMAA's FBO qualification and leaseholder selection process was reasonable; resulted in the qualification of one FBO candidate; and reasonably rejected Ricks' proposals.¹⁶

Other Alleged Discriminatory Actions

Ricks alleges that MMAA had verbally agreed to permit him to become an FBO; that MMAA interfered with Ricks' attempt to novate the Defense Fuels Contract from the bankrupt MAS to Ricks; and that MMAA failed to produce documents relevant to Ricks' attempt to gain tenancy and pursue a case against MMAA. Ricks alleges that these actions, as discussed in the Background Section above, prevented Ricks from being able to fairly compete with Tulsair to become an FBO on the airport. The FAA analyzes these allegations as potential examples of unjust economic discrimination.

Deception

In order to determine that MMAA was in noncompliance with its Federal obligation to make its airport available as an airport for public use on reasonable terms and without unjust discrimination, at the very least, the FAA would have to accept that MMAA provided assistance or some other benefit to Tulsair that it did not provide to Ricks, or that it disadvantaged Ricks by overt deception or reckless neglect.

Throughout Ricks' pleadings, Ricks maintains that Russ Noble had provided Ricks with bad information regarding the MMAA's procedures and intent. The FAA recognizes that Ricks may have misunderstood this information, as demonstrated by Ricks' Rebuttal in December 1998:

...Ricks merely wanted to lease space that MAS began with initially in 1996 versus the oversized property that it had occupied. Ricks did not intend to ever be in any competition for a 'concession', just a leasehold for a maintenance/fuelling fixed base operator.... [FAA Exhibit 1, Item 6, page 6]

However, the record does not convince the FAA that Russ Noble, Frank Ryburn or any other MMAA official conspired to create confusion on the part of Ricks, or otherwise caused Ricks to submit an inferior proposal. In fact, as shown from quotes summarized in the Background Section, in some case, the MMAA was careful to provide explicit instructions to the benefit of Ricks' application. MMAA appears to have followed its Lease Committee qualification procedures.

¹⁶ However, the FAA notes again, that the record does not reflect that MMAA has ever formally rejected Ricks' proposal in writing.

The FAA is also unable to refute MMAA's stated intent to prepare a contingency for the anticipated eviction of MAS. If Ricks had expected that MMAA officials would pursue qualifying Ricks to be general FBO in this informal fashion, then that expectation was incorrect. Furthermore, such informal qualification of a prospective tenant is certainly not required by any Federal obligation of MMAA.

Defense Fuels Contract

Ricks alleges that the MMAA deceived Ricks by stating that they would not interfere with the novation of the contract to Ricks. As quoted above, Jim Music advised Ricks that Music would "...not interfere with Ricks's chances to obtain the Department of Defense fuels contract." [FAA Exhibit 1, Item 3, page 9]

As stated in the Background Section, the FAA is not convinced by the record that the MMAA undermined the Ricks' attempts to novate the Fuels Contract with the Department of Defense. MMAA states, "the Defense Fuels Contract was tied up in the Bankruptcy Courts as a possible asset of the bankruptcy estate of MAS until an Order Granting the United States' Motion to Lift Stay to Terminate Contract with Debtor [FAA Exhibit 1, Item 3, exhibit E] was entered on October 23, 1998, almost four months after the eviction of MAS ." [FAA Exhibit 1, Item 3, page 10] It was reasonable for MMAA to pursue its rights as a creditor of MAS. The record is insufficient for the FAA to determine that MMAA lied to Ricks about its actions with regard to the Defense Fuels Contract and the MAS bankruptcy.

In any case, the FAA cannot conclude that MMAA's lawful pursuit of the Defense Fuels Contract for itself could constitute unjust economic discrimination against Ricks. The FAA cannot conclude that any truthful information provided to the Department of Defense regarding the status of the Defense Fuels Contract at the Airport constitutes unjust economic discrimination against Ricks. Also, the FAA cannot conclude that any omission of information regarding MMAA's actions for itself in MAS's bankruptcy proceeding could constitute unjust economic discrimination against Ricks.

Document Production

As summarized in the Background Section, Ricks alleges that, "MMAA has delayed and procrastinated in every possible way to not provide information to the Ricks." [FAA Exhibit 1, Item 6, page 20] Ricks is not precise as to how the MMAA's alleged reluctance to deliver material on Tulsair is discriminatory. Furthermore, the MMAA states, "Vernon Ricks was not required to do anything more than anyone else making such requests would be required to do to review MMAA's documents." [FAA Exhibit 1, Item 3, page 11]

Even if the record supported discriminatory treatment toward Ricks regarding document production, the FAA may not find such activity relevant to an allegation of unjust economic discrimination as embodied in MMAA's grant assurances. The FAA notes that MMAA's alleged delay occurred after Ricks' application had been finally submitted to

MMAA. Ricks does not allege that Ricks' application was disadvantaged because of the unavailability of certain documents. Certainly, now, Ricks has access to all the information about Tulsair included in the record to this proceeding. Also, Ricks does not allege that some other party received better treatment in a similar situation.

MMAA's actions appear to be reasonable and nondiscriminatory. The FAA cannot conclude, by the record, that the MMAA unjustly discriminated against the Ricks in the process of providing Ricks access to MMAA and Tulsair documents.

The MMAA Has Not Granted an Exclusive Right to Tulsair

The record indicates that at present, there are two aviation enterprises operating on the airport – Tulsair and U.S. Aerospace. Tulsair has been leased all of hangar N-798 (19,000 square feet), one-half of hangar N-126 (18,000 square feet), and all of hangar N-7¹⁷ (8,000 square feet). The remaining half of hangar N-126 is shared equally by U.S. Aerospace and a U.S. Navy flying club. Tulsair is a full service, general FBO. U.S. Aerospace is a limited aeronautical service provider.

In accordance with the MMAA's minimum standards, general FBOs are required to have, at a minimum, the following amount of aircraft storage space: 15,000 square feet of hangar space and tie-down spaces for at least 20 aircraft. This is in addition to office or terminal space. [FAA Exhibit 1, Item 1, Exhibit 64] Tulsair appears to have been allocated 45,000 (19,000 + 18,000 + 8,000) square feet of hangar space. [FAA Exhibit 1, Item 3, exhibit F] According to the record, there is no more available space to be leased on the airport at this time. The question is whether Tulsair's leasehold amounts to the granting of an exclusive right on the airport.

While Tulsair has been leased a majority of the existing, leaseable hangar space on the Airport, this fact is not necessarily indicative of the unlawful granting of an exclusive right. As FAA Order 5190.6A makes clear, a single FBO activity on an airport does not constitute an exclusive right if there is no understanding, commitment, express agreement, or apparent intent to exclude other reasonably qualified enterprises. In many instances, the volume of business may not be sufficient to attract more than one enterprise. So long as the opportunity to engage in a aeronautical activity is available to those meeting the reasonable qualifications and standards relevant to such activity, the fact that only one enterprise takes advantage of the opportunity does not constitute the grant of an exclusive right.

In addition, the leasing to one enterprise of all available airport land and improvements (which is not precisely the case here) planned for aeronautical activities will be construed as evidence of an intent to exclude others unless it can be demonstrated that the entire leased area is presently required and will be immediately used to conduct the activities contemplated in the lease. FAA Order 5190.6A, paragraph 3-9(c).

¹⁷Building N-7 is not directly accessible from the runway, and is regarded as shop space. Tulsair is using N-7 to store aircraft. The record reflects that Ricks was primarily interested in Building N-126.

The FAA's policy makes clear that when all or most of the available land and improvements have been leased to a single enterprise, an arbitrary division or restriction to create an opportunity for a competitive enterprise is not required merely to comply with the exclusive rights policy. *Id.* However, when additional space becomes available at a later date, it must be made available (through bidding or some other open process) not only to incumbent FBOs but also to all qualified proponents or bidders. Additionally, while a sponsor's obligation to arbitrarily divide or restrict a current leasehold is limited, actions by the sponsor to extend or protect a single leasehold that comprises all or most of the available facilities may be considered evidence of a violation of the exclusive rights prohibition. The FAA encourages a sponsor to retain adequate control over its tenants' leaseholds to be able to retrieve underutilized facilities.

The FAA cannot conclude, by the record, that Tulsair's current tenancy or operation at the Airport is in violation of the prohibition of exclusive rights. As quoted in the Background Section, MMAA states:

As stated, all of the hangar space at Millington Municipal Airport is leased. There are only two hangars at the airport. Currently, Millington Municipal Airport does not have the financial resources to construct a new hangar.... [FAA Exhibit 1, Item 3, page 13]

MMAA limited Tulsair to available space that it could show was presently required and could be used immediately as provided for in FAA's Advisory Circular 150/5190-2A. All space leased to Tulsair is being used by it to conduct its FBO activities, aircraft storage and aircraft maintenance. Tulsair pays the same amount per square foot as MMAA's other tenants pay. There has been no agreement by MMAA to compensate Tulsair for refurbishment costs. [FAA Exhibit 1, Item 3, page 11]

The FAA is unconvinced by the record that there is currently space available or that Tulsair is not utilizing all of its space. This conclusion is supported by a March 1999 FAA on-site inspection. Thus, in accord with FAA policy, we conclude that Tulsair has not been granted an exclusive right at this time.

However, we are concerned that most of the available space that is suitable for an FBO leasehold has been leased to a sole entity. As stated below, the FAA will monitor this situation. Several other factors support our findings. First, the airport is a relatively new civilian airport. Airport staff are gaining experience in airport planning, development and administration. Second, the MMAA does not have the usual control over the airport as would most other sponsors. That is because the MMAA is leasing the airport from the U.S. Navy. As stated in the Airport Section above, we understand that MMAA is in negotiation with the U.S. Navy concerning the acquisition of additional space to accommodate aeronautical activity. In other words, the FAA expects that Tulsair will not be the only full service FBO serving on the airport in the long term. The airport is currently in the process of transitioning from a military airfield to a civilian airfield. Many issues remain to be finalized.

The FAA is well aware that there is a demand to operate aviation enterprises on the airport. Not only does Ricks desire to operate on the airport, but several other enterprises as well have shown an interest in obtaining leaseholds on the airport. Three such enterprises have filed administrative complaints with the FAA in the past few years concerning FBO access on the airport. As indicated in the record, one of those complaints, *U.S. Aerospace v. Millington Aviation Authority*, was dismissed by the FAA on October 20, 1998 because the FAA found that an exclusive right had not been granted to competing FBO. The other two complaints are still being evaluated. In short, there appears to be demand for additional FBOs or other aeronautical use space. We therefore expect the MMAA to pursue increasing the aeronautical facilities to accommodate existing and forecast demand by seeking additional space from the U.S. Navy, reallocating presently leased space that becomes available, and/or developing MMAA controlled property for use by aeronautical service providers. Failure to pursue acquisition of additional aeronautical enterprise space on a large airport such as Millington could raise an issue in the future as to whether the MMAA has granted an exclusive right to Tulsair or any other incumbent FBO. The MMAA may not arbitrarily limit the airport to one general FBO. The only exception would be if the MMAA could provide direct and substantial evidence that it would be unreasonably costly, burdensome, or impracticable for more than one FBO to provide the services, and allowing more than one FBO would require a reduction in space leased. 49 U.S.C. 40103(e).

The FAA and the State of Tennessee are working with MMAA to create more space on the Airport so that additional FBOs or other aeronautical service providers can be accommodated. In the past, the FAA has assisted MMAA in improving its business practices, including the redrafting of its minimum standards.

Motion to Dismiss Answer

Ricks filed a Motion to Dismiss Answer of MMAA, stating that the MMAA's Answer exceeded the time allowed by 14 CFR Part 16 for filing an Answer. [FAA Exhibit 1, Item 4] MMAA states in its Response, "Under the rules governing Part 16 actions, the Answer of MMAA was timely filed." [FAA Exhibit 1, Item 5] The FAA concurs with MMAA. MMAA's Answer was filed in a timely manner. Complainant's motion is denied.

VI. FINDINGS AND CONCLUSIONS

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

1. The MMAA's denial of an FBO leasehold to Ricks was reasonable and nondiscriminatory based upon the facts in the record, and did not violate the exclusive rights prohibition or the prohibition of unjust economic discrimination;

2. The MMAA, by leasing hangars N-798, one-half of N-126, and N-7 to Tulsair exclusively, has not violated the exclusive rights prohibition, 49 U.S.C. § 40103(e), and the related sponsor assurance made binding on the MMAA as a result of its receipt of Federal grant funds.

The FAA recommends that the MMAA continue to refine its administrative and business procedures to improve communication to prospective leaseholders in the qualification process. The FAA encourages the MMAA to continue to consult with the Tennessee Department of Transportation, which administers the Tennessee state block grant program, and the FAA's Memphis Airport District Office (MEMADO) to assure that its qualification and selection processes are consistent with its grant assurances.

The FAA recommends that the MMAA consult with the MEMADO, and the Naval Facilities Engineering Command, Southern Division to seek acquisition of additional property and facility interests to accommodate aeronautical activity. Assistance is also available from the MEMADO in the application for grants to improve certain facilities, making them suitable for lease. Additionally, we recommend that MMAA refrain from extending the term of the current holdings of Tulsair and refrain from increasing Tulsair's leasehold, at this time. The FAA will be contacting the MMAA within 60 days for on-site conference to discuss these issues.

ORDER

Accordingly, it is ordered that:

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

These Determinations are made under Sections 313(a), 1002(a) and 1006(a) of the Federal Aviation Act of 1958, as amended, 49 U.S.C. §§ 40103(e), 44502, 40113, 40114, 46104, and 46110, respectively, and Sections 511(a), 511(b), and 519 of the Airport and Airway Improvement Act of 1982, as amended, 49 U.S.C. §§ 47105(b), 47107(a)(1)(2)(3) (5)(6)(7)(8)(17), 47107(g)(1), 47110, 47111(d), 47122, respectively.

RIGHT OF APPEAL

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



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

Date

JUL 1 1999