UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

Wilson Air Center, LLC	)	
	)	
COMPLAINANT	)	
v.	)	
	)	**Docket No. 16-99-10**
Memphis and Shelby County Airport Authority	)	
	)	
RESPONDENT	)	
	)	

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, 14 C.F.R. Part 16 (Part 16).

Wilson Air Center, LLC, (WAC) through its counsel, has filed a complaint against the Memphis and Shelby County Airport Authority (MSCAA). The Complaint alleges that the Respondent, in operating the Memphis International Airport (Airport), has engaged in activity contrary to its Federal obligations.

The Complainant alleges that the sponsor violated Federal grant assurance #22 that prohibits unjust economic discrimination under 49 U.S.C. §47107(a)(1), by providing preferential treatment to a competing Fixed-base operator (AMR)[1] at the Airport. The Complainant also alleges the granting of an exclusive right, in violation of grant assurance #23 and 49 U.S.C. §§47107(a)(4) and 40103(e), by the Sponsor's preferential treatment of the competing Fixed-base operator (FBO) at the Airport. Specifically, the Complainant alleges the following:

[1] WAC's competitor FBO has had three owners. Originally, the leaseholder for the properties and operation in question was Memphis Aero. In 1987, Memphis Aero merged into AMR Combs, and AMR succeeded to Memphis Aero's interests. In 1999, Signature Flight Support purchased AMR's interests at the Airport.

- "The AMR lease terms, conditions, and rates place Respondent in violation of the Federal Grant Assurance provisions prohibiting, economic discrimination and exclusivity." [FAA Exhibit 1, Item 1, page 5][2]

- "The rent incentives and abatements Respondent offered to AMR regarding the General Aviation terminal, a part of the South Complex, violate the Federal Grant Assurance provisions prohibiting economic discrimination when the rent terms are substantially more favorable to AMR than are the rent terms offered to Complainant for another building, although the two buildings will be subject to the same usage." [FAA Exhibit 1, Item 1, page 5]

- "The land options granted to AMR by Respondent place Respondent in violation of the Federal Grant Assurance provisions prohibiting economic discrimination and exclusivity when Respondent granted the options to AMR while denying Complainant's request for additional similar rental land." [FAA Exhibit 1, Item 1, page 5]

The decision in this matter is based on applicable law and FAA policy, review of the arguments and supporting documentation submitted by the parties.

With respect to the allegations presented in this Complaint, under the specific circumstances at the Memphis International Airport as discussed below, and based on the evidence of record in this proceeding, we find that the Memphis and Shelby County Airport Authority is not currently in violation of its Federal obligations.

II. THE AIRPORT

Memphis International Airport is a public-use, commercial-service airport located in Shelby County, Tennessee, approximately 3 miles south of Memphis, Tennessee. The Memphis and Shelby County Airport Authority owns and operates the Airport. The Airport has approximately 154 based aircraft and 375,992 operations annually at the Airport. (See FAA Exhibit 2)

The development of the Airport has been financed, in part, with funds provided to the City 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.* (See FAA Exhibit 3) The MSCAA is the recipient, through other prior sponsors, of land donated by the Federal government under the Surplus Property Act, 49 U.S.C. § 47151, *et seq.* Some of these donated parcels of land underlay the FedEx facility, portions of WAC's leasehold and a parcel of land under negotiation between the parties, the Northwest Airlink Building, discussed below. [FAA Exhibit 1, Item 29, Attachment 16]

[2] An index of the administrative record is attached as FAA Exhibit 1.

III. BACKGROUND

A. Prior Leases

On December 1, 1979, MSCAA entered into a consolidated and restated lease with AMR's predecessor FBO, Memphis Aero (1979 Lease) for a leasehold located in the central part of the airfield, referred to herein as the "South Complex." The 1979 Lease provided for a lease term through 2005, with stated lease rates throughout the 25-year term. The premises were estimated to comprise an area of 1,163,648 square feet. [FAA Exhibit 1, Item 1, Attachment B] The square footage figures were estimated figures, because no survey of the acreage was performed until 1998. [FAA Exhibit 1, Item 13, page 5] These estimates were later determined to be inaccurate.[3]

Memphis Aero (AMR's predecessor) leased other parcels of the Airport for its FBO business. On December 30, 1985, Memphis Aero supplemented a previous, apparently separate, lease agreement from January 27, 1978 for a parcel described as the "Old Tower Building" by adding another casually described parcel, referred to as "the General Aviation Building (old terminal building)," referred to herein as the ("GAB"). [FAA Exhibit 1, Item 10, Attachment C, tab 19] MSCAA states that "a 1998 survey shows that the actual area of the relevant parcel is 5.097 acres." [FAA Exhibit 1, Item 13, page 8]

Again, on November 13, 1986, Memphis Aero gained extended use of Airport property, entering into a Consolidated and Restated Lease Agreement for parcels known as the "North Complex" (North Complex Lease). Upon review of the North Complex Lease, it appears that Memphis Aero had previously obtained use of the property by assignment. With an exercised extension option, the original term of the North Complex Lease was until January 31, 1998. [FAA Exhibit 1, Item 1, Attachment C] Rental rates through the initial period to January 31, 1993 were stated in the North Complex Lease, totaling $78,666.63 per annum for what appears to be approximately 13 acres of unimproved and improved land upon which are located eight hangars and associated office space.[4] The North Complex Lease sets the rental rates for the option period, February 1, 1993 through January 31, 1998: "During option period beginning February 1, 1993, rental at the prevailing rates then in effect for each category of space or concession at Memphis International Airport." [FAA Exhibit 1, Item 1, Attachment C, page 4]

By letter dated February 12, 1987, Memphis Aero requested extension of its North lease to co-terminate with its 1979 Lease in 2005. Memphis Aero requested "terms and conditions during the period of this extension to be the same as are set forth for our final five year renewal option

[3] Respondent admits that upon a survey of the property thought to be under the 1979 Lease (and remaining after some parcels had been deleted), the area exceeded that estimated in 1979 by 4.25 acres. That inaccuracy was corrected in a subsequent 1998 lease agreement. [FAA Exhibit 1 Item 13, page 24] FAA review of the record does not reveal any areas, parcels or sub-parcels added to the South Complex in 1998, apart from two small parcels not considered in the underestimation and admitted to by the Respondent. The lease terms and parcels are discussed further below.

[4] The FAA notes that the Sponsor appears to be consistently casual with estimating acreage of properties under lease during the 1970's and 1980's.

on the North lease which begins in 1993." [FAA Exhibit 1, Item 10, Attachment C, tab 20] In response on March 19, 1987, the MSCAA Board of Commissioners resolved "that approval be and is hereby granted to the extension of the leases as herein described, with rates and terms to be negotiated." The Board's resolution recognized that Memphis Aero had invested approximately $2 million in the leasehold[5] and that its "long-range plans will require additional expenditures to their leased areas." [FAA Exhibit 1, Item 10, Attachment C, tab 21] As admitted by the Respondent, the actual finalization of the terms of this approved extension of lease term to 2005 was not accomplished until October 27, 1993, as set forth in the Supplemental Lease Agreement #1 to Consolidated and Restated Lease Agreement North Complex.[6] (North Complex Lease Extension) [FAA Exhibit 1, Item 13, page 8]

In 1987, Memphis Aero merged into AMR Combs, and AMR succeeded to Memphis Aero's interests in the 1979 Lease, GAB Lease and the North Complex Lease. [FAA Exhibit 1, Item 13, page 8] From the various documents submitted, the FAA concludes that AMR's leasehold in 1987 was thought to consist of 26.683 acres estimated for the parcels under the 1979 Lease for the South Complex[7], plus 5.097 acres actual for the GAB parcel adjacent to the South Complex, plus 13.36 acres of the North Complex, totaling 45.14 acres. The 1979 Leasehold was reduced by 6.679 acres[8] in 1993, as parcels were removed from the South Complex leasehold and returned to the MSCAA. [FAA Exhibit 1, Item 13, page 7]

In July 1993, MSCAA entered into a Lease and Concession Agreement for General Fixed Base Operator with WAC for approximately 12 acres of "undeveloped ground, located in the west central sector of the airport property." (WAC Lease) [FAA Exhibit 1, Item 1, page 4 and Attachment G] The WAC Lease established an annual rental rate of $0.12 per square foot for the unimproved parcel. [FAA Exhibit 1, Item 1, Attachment G, page 4] At that time, the rental rate for unimproved land under the 1979 Lease for WAC's FBO competitor was $0.066 per acre, having been established 14 years earlier. According to Exhibit B of the 1979 Lease, rates were scheduled to rise to $0.0759 in 1994 and to $0.0949 in 1999, as they subsequently have. [FAA Exhibit 1, Item 1, Attachment B, exhibit b] The Complainant does not allege that the 1979 Lease was invalid or improper at the time of WAC's decision to enter into the WAC Lease.

As stated by the Complainant, "In August 1993, Respondent deleted three parcels of land from the lease (South Complex Lease), identified as Hangar 4, Hangar 5, and Fuel Farm Area plots 2 and 4. (See FAA Exhibit 1, Item 10, page 9 and Item 10, Attachment C, exhibits 6 and 7.) According to these records, when MSCAA took possession of these parcels of Memphis Aero's original leasehold by amendment to the 1979 Lease in 1983 and 1993, MSCAA did not pursue changing, much less raising, the 1979 Lease's stated rental rates on Memphis Aero's remaining

[5] Memphis Aero's request lists expenditures on the North Complex leasehold, totaling $1,962,993.
[6] Upon review of the documents, it would appear that the extension had been formally granted by the MSCAA in March 1987. The finalization of the lease rates and actual execution of the Supplemental Lease Agreement #1 occurred several years later, during which time Memphis Aero changed hands and the MSCAA entered into negotiations with Wilson and executed an FBO lease agreement with Wilson.
[7] As stated, this estimation was later determined to be deficient by 4.241 acres that AMR was actually occupying.
[8] This figure was also estimated in 1979.

leasehold. Rather, it honored its commitment to lease the remaining parcels at the stated rates for a term of 25 years, when amending the 1979 Lease to delete land. As stated in the Supplemental Agreement No. 2:

> In consideration of the taking of the above-referenced property by the Lessor for essential airport purposes, Lessee is hereby granted a rent credit against the rent set forth on Exhibit B with regard to the South Complex in the amount of $5,297.78 per month during the period from 2/1/93 through 1/31/95.... [FAA Exhibit 1, Item 10, Attachment C, exhibit 7]

As stated above, the October 1993 North Complex Lease Extension (pursuant to the MSCAA Board action of February 12, 1987) provided a more definitive accounting of the acreage at 13.36 acres for the North Complex, now under lease to AMR. It provided for extension periods to make the lease term consistent with the South Complex expiration of June 30, 2005. It included an increased rental rate for approximately the same area to $159,877.80 per annum.[9] Furthermore, the North Complex Lease Extension stated:

> The rentals for the option period from February 1, 1998, through June 30, 2005, will be based upon the fair market rental rates per square foot as of February 1, 1998, as determined by a qualified M.A.I. appraiser. The Lessor will obtain such appraisal at its cost and furnish Lessee a copy thereof at least 120 days prior to the commencement of the option period. [FAA Exhibit 1, Item 10, Attachment C, tab 25, page 3]

According to an affidavit of Larry D. Cox, President of MSCAA,

> Sometime prior to 1995, AMR informed the Airport Authority that it had begun planning the development of its FBO business at the Airport, and requested that the Airport Authority consider extending the termination date for the AMR North Lease beyond 2005. Because AMR's request would have interfered with FedEx's future expansion at the Airport, the Airport Authority declined to consider the requested extension.
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> On June 5, 1995, after advising AMR that it would not extend the AMR North Lease, the Airport Authority received a letter from AMR stating its desire to terminate the AMR North Lease and relocate its entire operation to the South Complex. For the next three years, the Airport Authority negotiated the terms by which AMR would surrender the property in the North Complex (thus making this area available for the future expansion of the FedEx hub) and relocate its operations to the South Complex. The negotiations with AMR necessarily took into consideration AMR's loss of revenue from

[9] As stated above, the original North Complex Lease required a reassessment of rental rates in February 1993 to bring the rates up to "prevailing rates then in effect for each category of space or concession at Memphis International Airport."

> the facilities (hangar, office space, etc.) it leased in the North Complex and would be relinquishing to the Airport Authority. [FAA Exhibit 1, Item 4, Attachment 17][10]

WAC cites AMR's June 5, 1995 letter as evidence that AMR independently wished to abandon the North Complex leasehold and its approximately $2 million worth of leasehold improvements without being motivated by the knowledge that MSCAA would not consider extending the North Complex Lease beyond 2005. [FAA Exhibit 1, Item 1, Attachment P] WAC cites an internal email, dated July 18, 1995, that includes the recommendation of a MSCAA staff person regarding an approach to consolidating AMR's lease-holdings at the Airport. It recommends that AMR be allowed to cancel its North Complex Lease upon the relocation of AMR's North Complex tenants to the South Complex, and that AMR's lease rates should be the same as WAC's rates. [FAA Exhibit 1, Item 1, Attachment K]

As stated by the Complainant and admitted to by the Respondent, MSCAA commissioned an appraisal of the South Complex in 1997 (See, FAA Exhibit 1, Item 1, Attachment I)

> This appraisal found that the acreage leased to AMR was substantially more valuable than reflected in the rates negotiated in the old 1979 lease. Further, that appraisal's 'Highest and Best Use Analysis' found that the AMR South Complex land was superior in value to the land on which Complainant's FBO was situated... Accordingly, the appraiser, for instance, assigned an 'unimproved' land value of $.18/sf to the AMR premises, and a value of $.25/sf for ramp and apron on the AMR complex. The appraisal described the AMR South Complex as consisting of 30.34 acres.[11] [FAA Exhibit 1, Item 1, page 6]

On December 1, 1997, WAC increased its leasehold to 16.04 acres, leasing a small adjacent parcel at the unimproved rate of $0.12 per square foot.

As stated in the Cox affidavit, the negotiations with AMR regarding the circumstances of their relinquishment of the North Complex to allow for the expansion of FedEx continued. On February 1, 1998, AMR and MSCAA entered into the First Amendment to Consolidated and Restated Lease Agreement, which provided for AMR's abandonment of most of the North Complex in increments, before December 30, 1999. [FAA Exhibit 1, Item 4, Attachment 2] On March 1, 1998, MSCAA executed a Lease Agreement with Federal Express Corporation to lease the same parcels upon their incremental release from AMR, resulting in the sub-parcels being under lease at all times.

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[10] WAC's Motion for Limited Discovery [FAA Exhibit 1, Item 8, page 2] specifically requests the FAA to compel MSCAA to produce documents substantiating these paragraphs of the Cox affidavit quoted here (paragraphs 8 and 9). That motion was denied. See FAA Order (FAA Exhibit 1, Item 26) As discussed below, the FAA finds that this affidavit evidence is not highly relevant to the Complainant's claim of unjust economic discrimination. Therefore, the investigator finds insufficient cause to request additional information regarding the intent of AMR regarding its surrender of its investments in its North Complex leasehold.

[11] This figure included the GAB lease and erroneous estimates.

On April 14, 1998, Jackson Person & Associates presented a Lease Survey of AMR's holdings in the South Complex (1998 Survey).[12] The FAA notes that the survey appears to include the same general areas considered to be under lease in the 1979 Lease. [FAA Exhibit 1, Item 13, Attachment C] Complainant does not point to any parcel that it claims was not under the 1979 Lease but which is now subject to the 1979 lease rates in the new lease signed in 1998, discussed below. Three parcels not under lease, but contiguous with the 1979 leasehold, (Option Parcels) were also surveyed. A review of these parcels reveals a total acreage of 13.533 [FAA Exhibit 1, Item 13, Attachment C][13]

B. 1998 AMR Lease

On May 21, 1998, the MSCAA resolved to approve the leasing of the surveyed South Complex to AMR for 27 years. This recognized AMR's commitment to "expend a minimum of $4,500,000 in capital investments to construct a minimum of two (2) new 10,000 square foot hangars and rehabilitate the General Aviation Building over a period of seven (7) years beginning June 1, 1998 with a completion date of June 30, 2005." [FAA Exhibit 1, Item 10, Attachment F] A review of the Resolution confirms that "the 1998 Lease maintained the rental rates set out in the 1979 Lease through the original term of that lease—that is, through June 2005." [FAA Exhibit 1, Item 13, page 14] In a Lease and Concession Agreement for General Fixed Base Operator dated June 1, 1998 (1998 Lease), MSCAA consolidated AMR's lease agreements for the South Complex. The Respondent characterizes this agreement:

> With respect to AMR's existing leasehold, the 1998 Lease maintained the rental rates set out in the 1979 Lease through the original term of that lease – that is, through June 2005. As mentioned, the 1998 Lease added two small parcels totaling 1.519 acres to that AMR had previously leased in the South Complex. The addition of the 1.519 acres brought the AMR's South Complex base leasehold to its current size. [FAA Exhibit 1, Item 13, page 14][14]

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[12] FAA's review of the 1998 survey reveals a total of 30.869 acres comprising the properties generally thought to be under the 1979 Lease (25.772 acres) and the GAB Lease (5.097 acres). This results in a 5.769-acre difference between that estimated in 1979 and that surveyed in 1998 and constituting the 1979 leasehold (25.772- 20.003= 5.769). [FAA Exhibit 1, Item 13, Attachment C] As stated by the Respondent, upon physical inspection of the parcels, this difference included two non-contiguous sub-parcels, within parcels A and M, not previously considered under lease to AMR and not used by it (1.519 acres). [FAA Exhibit 1, Item 13, page 12] This leaves an unaccounted for difference of 4.25 acres (30.869- 5.097- 1.519- 20.2003 = 4.25). The Respondent reveals these two sub-parcels, not independently identified on the 1998 Survey.

[13] An earlier version of the survey included an error, overestimating the Option Parcels' acreage by about 3 acres. This inaccurate survey was included as Attachment J to the Complaint. A visual review of the survey confirms that the corrected version, attachment C to the Rebuttal appears more nearly accurate. This error persisted in various places 1998 Lease documents for several months, but appears to be fully corrected in a February 1999 amendment to the 1998 Lease, reflecting new timetables for AMR's development of the Option Parcels, discussed below. [FAA Exhibit 1, Item 4, Attachment 15]

[14] The 1998 Lease documents appear to be consistent with this explanation that these small sub-parcels were included in the descriptions of parcels A and M and charged according to the 1979 rate schedule, described below [FAA Exhibit 1, Item 1, Attachment D].

As had been the case historically, the 1998 Lease treated the GAB parcel, (Parcel E) differently. Parcel E had been leased under a separate document since 1985 and contained the General Aviation Building, or old terminal building. Parcel E had also contained an old control tower that had been demolished. According to a consultant's rent analysis in the 1997 South Complex Rent Analysis, the "old GAB Building... was originally constructed in 1937, and contains a total building area of 13,500 square feet. Although it is the consultant's understanding that unimproved ground rent only will be applicable for this facility in exchange for major capital improvements to the facility by AMR, a market rent will be estimated for the structure on an 'as-is' basis." [FAA Exhibit 1, Item 1, Attachment I, page 8] That "as-is" value was determined to be $0.75 per sq. ft. [FAA Exhibit 1, Item 1, Attachment I] According to the 1998 Lease rent schedule, Parcel E was rented at an "improved" rate of $0.1891 per square foot per year, through 2010, at which point it is subject to re-appraisal. [FAA Exhibit 1, Item 4, Attachment 3] This amount was originally established in the original 1985 lease of the Parcel E. Regarding the GAB Parcel (Parcel E), Larry D. Cox, President of the MSCAA, stated in his affidavit:

> The Airport Authority agreed to abate the rent for a period not to exceed one year from August 1, 1998, to July 31, 1999 during which time AMR could rehabilitate (and continues to rehabilitate) the GAB including asbestos and lead removal; electrical, plumbing and HVAC systems update; and other general reconditioning. The Airport Authority's rent abatement (which has now terminated) was in consideration for AMR's GAB rehabilitation investment in excess of $3.2 million. Because of the condition of the building, the Airport Authority considered the building to be virtually worthless and gave AMR the choice to demolish it and construct a new building or renovate the old one. The renovated building and two newly built adjacent hangars (for a total investment of at least $4.5 million) will revert to the Airport Authority at the termination of the 1998 Restated Lease. [FAA Exhibit 1, Item 4, Attachment 17, page 7]

As stated by the Respondent, in its Rebuttal, both the continuation of the lower rate through 2010 for Parcel E and the temporary abatement of rent during renovation were agreed to "in consideration of AMR's substantial expenditures and their value to the Authority." [FAA Exhibit 1, Item 13, page 17]

In addition to the South Complex leasehold (the 1979 Lease parcels, the GAB Lease parcel, plus the 1.519 unused parcels, totaling 30.869 acres), MSCAA granted AMR options to lease three adjacent parcels. As stated above, the corrected 1998 Survey identifies these parcels as totaling 13.533 acres. On February 1, 1998, AMR agreed to incrementally release their North Complex leasehold. [FAA Exhibit 1, Item 4, Attachment 2] According to the First Amendment to Lease and Concession Agreement for General Fixed Base Operator (First Amendment to 1998 Lease) signed in February 1999, the option fee for the three parcels calculates to $1,283 per month or $0.026 per square foot per annum. This document also provides for a development schedule that AMR has to meet to retain the Option Parcels, requiring the exercise of the options and subsequent development substantially in the time frames set: Phase 1- 1999; Phase 2- 2000-2001; Phase 3- 2003-2004; and Phase 4- 2005. [FAA Exhibit 1, Item 4, Attachment 15] According to the 1998 Lease and confirmed by subsequent correspondence between AMR and MSCAA, the lease rates upon exercise of the options is as set forth generally in the lease: $0.12 per square foot

for unimproved land and $0.18 per square foot for improved land through 2005; $0.22 per square foot for unimproved land and $0.30 per square foot for improved land for the five year period beginning June 1, 2005; to be set by appraisal thereafter. [FAA Exhibit 1, Item 13, Attachment D] The lease rates are consistent with those applied to WAC through 2005.

Also in 1998, MSCAA and AMR entered into an agreement by letter, requiring AMR to pay rent on 6.09 acres of taxilane. The letter, dated July 27, 1998 and signed by MSCAA and AMR officials, establishes an annual rental rate of $0.18 per square foot for the 6.09 acre improved parcel. [FAA Exhibit 1, Item 1, Attachment E] As stated by the MSCAA, in its Rebuttal, the taxilane became unusable by entities other than AMR, inspiring MSCAA to insist that AMR pay rent at the then going rate for improved land. [FAA Exhibit 1, Item 13, page 17] As stated in the letter, the taxilane lease must be added to the main 1998 Lease by 2005. [FAA Exhibit 1, Item 1, Attachment E]

C. Current WAC Lease Negotiations

In addition to the above-summarized facts, the parties present the circumstances surrounding lease negotiations between WAC and MSCAA regarding parcels adjacent to WAC's leasehold, but presently not used for FBO purposes. The record only reflects positions taken up to MSCAA's offer on August 9, 1999. [FAA Exhibit 1, Item 4, Attachment 9] This Complaint was filed on August 13, 1999.

One of these facilities is known as the Northwest Airlink Building and parcel (NWA Building). It is immediately west and south of WAC leasehold and is described as:

> ...a one-story office building containing approximately 12,562 square feet. This facility is owned by the Memphis-Shelby County Airport. Subject property is situated along the north side of Winchester Road.... The site area upon which the subject property is located contains 54,555 square feet, or 1.252 acres. Also included would be related asphalt paved drives and parking areas. The property being appraised is located immediately east of Memphis International Airport and south of the Federal Express Corporation's main warehouse/handling facility.... [FAA Exhibit 1, Item 1, Attachment N, page 1]
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> This square footage is devoted mainly to office space, with some classroom and training areas as well. In addition, ample restroom and break facility areas are also found at subject property.... Subject property was originally constructed during the time period between August 1982 and August 1983.... The exterior of subject is corrugated metal panels with a standing rib metal roof. Also included would be a galvanized aluminum guttering system. Forced air central heating and air conditioning provides air comfort during the different seasons. The condition of subject property would be rated average, with the exception of some evidence of minor roof leakage.... The functional adequacy of subject, building and parking areas, would be rated as average. [FAA Exhibit 1, Item 1, Attachment N, pages 30-33]

The above description is contained in an appraisal, dated July 25, 1995, that values the NWA Building at $410,000. [FAA Exhibit 1, Item 1, Attachment N, page 2] The Complainant states that that appraisal is flawed or discriminatory in that it compares the facility to non-aeronautical uses unlike the MSCAA's valuation of the GAB, described above.[15] However, the record does not reflect that MSCAA has relied upon this appraisal in its negotiations of a rental rate for the NWA Building. [FAA Exhibit 1, Item 10, page 13] The MSCAA appears to have relied upon another document provided to it by the same consultant that prepared the 1997 South Complex Rent Analysis (Michael A. Hodges, MAI). This document provides a market-rent analysis of both the NWA Building and another parcel, discussed below. Annual current market rent for the NWA Building is stated as $6.00 to $6.50 per square foot, based on "an extensive market study of the local, regional and national general aviation and real estate markets relative to rental rates for similar properties." [FAA Exhibit 1, Item 4, Attachment 7]

Another parcel that is adjacent to and immediately east of WAC's leasehold is known as the Hurricane Creek Parcel (HCP) and was included in negotiations between MSCAA and WAC for possible lease to WAC. This parcel is separated by a storm sewer-like structure that flows underneath the airfield but is open at WAC's leasehold. [FAA Exhibit 1, Item 10, page 17 and Attachment B] It is bridged at other points on the airport, apparently by leaseholders. [FAA Exhibit 1, Item 13, page 53 and Attachment F] As stated by the Respondent and not disputed by the Complainant, the HCP "is currently leased to FedEx, but the Airport Authority has negotiated with FedEx to relocate its leasehold and leasehold improvements to accommodate Wilson's needs for expansion, at a cost to the Airport Authority of approximately $1.4 million. [FAA Exhibit 1, Item 4, Attachment 12 and Item 13, page 18] Furthermore, the Respondent states that it "has offered to lease the ten acre parcel for 12 cents per square foot- the same rate as that reflected in the 1993 Wilson Lease, as well as the same rate that will be paid by AMR upon its exercise of the recently acquired land options. Wilson has not accepted the Airport Authority's offer; nor has it provided any plan for development of the additional acreage." [FAA Exhibit 1, Item 13, page 19] As stated by the Complainant, "this land, unlike the 16.65 acres[16] of option land available to Signature, does not have direct runway access and would require an estimated one-half million dollars in taxi-lane and ramp construction in order to obtain runway access." [FAA Exhibit 1, Item 10, page 17] FAA review of the Airport Layout Plan shows access from the airfield to the parcel, however, there is no paved access to the airfield. Also, the FAA cannot find any proposal for WAC's planned development of the HCP in the record, other than a list of lease terms and demanded improvements to the HCP.

On August 16, 1999, WAC filed a complaint under 14 C.F.R. Part 16 alleging that the MSCAA was in violation of its Federal obligations prohibiting unjust economic discrimination and the granting of an exclusive right, in regard to the events described above. On September 7, 1999 the FAA issued a notice advising the parties that the complaint had been docketed and that prescribed pleadings were to be accepted under 14 C.F.R. § 16.23. Subsequently, the parties filed the pleadings prescribed under § 16.23 and numerous other pleadings. These included

[15] The Complainant states, "The NWA Building has not previously experienced GA usage, but, if Complainant rented the building, it would be used for GA tenants and GA-related services." [FAA Exhibit 1, Item 1, page 10]
[16] As stated, this figure appears to be inaccurate, overstating the AMR/Signature Option Parcels by about 3 acres.

WAC's motion for limited discovery, filed on October 21, 1999. Thereafter, MSCAA filed an opposition to the motion for limited discovery, which was followed by WAC's motion for leave to file a reply and proposed reply to the opposition, and MSCAA's opposition to the motion for leave to file a reply. In addition the parties filed numerous pleadings regarding amendments to previous pleadings. These included WAC's "First Amended Complaint" filed on January 12, 2000 and subsequent filings, ending with WAC's Motion for Leave to File a Reply to (MSCAA's) Renewed Objections, filed on February 22, 2000.

In the FAA's Order of February 25, 2000, WAC's Motion for Limited Discovery was denied; WAC's Motion for Leave to File First Amended Complaint was granted; MSCAA's Motion to Strike additional "enlargements" of previously submitted material was granted in part, unless WAC serves the "enlargements" on MSCAA within 10 days; and the record was closed upon FAA's receipt of MSCAA's amended answer. WAC did serve the documents, and therefore the filings were not stricken from the record. Finally, on March 16, 2000 MSCAA filed its Amended Answer and Motion to Dismiss, in response to WAC's "First Amended Complaint." [FAA Exhibit 1, Item 26]

IV. ISSUES

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

1. Whether the actions of the MSCAA regarding its treatment of WAC and its FBO competitor(s) constitute unjust economic discrimination in violation of Federal grant assurance #22. Specifically:

   A. Whether the differences in lease terms, conditions and rates between the Complainant and its FBO competitor (AMR) constitute unjust discrimination by the MSCAA in violation of Federal grant assurance #22.

   B. Whether the differences between the rent terms for a building used by AMR upon its FBO leasehold and the lease-terms under negotiation between the parties for a building adjacent to the Complainant's leasehold constitute unjust discrimination by the MSCAA in violation of Federal grant assurance #22.

   C. Whether the provision of land options to AMR by MSCAA for the continued growth of AMR's FBO operations and the alleged denial of rental land to the Complainant constitute unjust discrimination by the MSCAA in violation of Federal grant assurance #22.

2. Whether any of the above-alleged actions, individually or cumulatively, have resulted in the MSCAA having granted an exclusive right to conduct an aeronautical activity at the Airport in violation of Federal grant assurance #23.

3. Whether the alleged favorable treatment of AMR by MSCAA constitutes a failure by MSCAA to pursue a financially self-sustaining business strategy, considering airport specific circumstances, in violation of grant assurance #24.[17]

V. APPLICABLE LAW AND POLICY

The Federal Aviation Act of 1958, as amended (FAAct), 49 U.S.C. § 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.

The planning and development Memphis International Airport has been financed, in part, with funds provided by the FAA under the Airport Improvement Program, authorized by the Airport and Airway Improvement Act of 1982, (AAIA), 49 U.S.C. § 47101 *et seq.* This program provides financial assistance to an airport sponsor for airport development in exchange for binding commitments designed to assure that the public interest will be served. These commitments are set forth in the sponsor's applications for Federal assistance and in the grant agreement as sponsor assurances, *i.e.*, a list of applicable Federal laws, regulations, executive orders, statute-based assurances, and other requirements, binding the sponsor upon acceptance of the Federal assistance. The Sponsor is also bound to the terms of the Quitclaim Deed of January 25, 1949, issued pursuant to the Surplus Property Act of 1944, as amended. Pursuant to 49 U.S.C. § 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.

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:

[17] The Complainant briefly mentions that the lease and development agreements provided to AMR constitute a failure of MSCAA to be self-sustaining; however, Complainant argues that it should receive rent abatements, as well. See FAA Exhibit 1, Item 1, pages 11 and 13.

"...will make its airport available as an airport for public use on reasonable terms, and without unjust discrimination, to all types, kinds, and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport." Assurance 22(a)

"...may establish such 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." Assurance 22(h)

"...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." 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.

The grant assurance specifically addresses the issue of the treatment of fixed-based operators (FBOs), stating that "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." Assurance 22(c). Subsection (c) specifies the application of subsection (a) to the treatment of FBOs, providing additional specific guidance as to the sponsor obligations.

The Order describes the responsibilities under Assurance 22 assumed by the owners of public use airports developed with Federal assistance. Among these is the obligation to treat in a uniform manner those users making the same or similar use of the airport and to make all airport facilities and services available on 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 of the Establishment of an Exclusive Right

Section 308(a) of the FAAct, 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 the Order, the FAA discusses 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. However, a sponsor is under no obligation to permit aircraft owners to introduce on the airport equipment, personnel, or practices which would be unsafe, unsightly, detrimental to the public welfare, or which would affect the efficient use of airport facilities. See Order, Sec.3-9(e).

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, Sec. 3-9(c).

Fee and Rental Structure

Assurance 24, "Fee and Rental Structure," of the prescribed sponsor assurances satisfies the requirements of 49 U.S.C. 47107(a)(13). It provides, in pertinent part, that the sponsor of a federally obligated airport "agrees that it will maintain a fee and rental structure consistent with Assurance 22 and 23, for the facilities and services being provided the airport users which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport."

The obligation of airport management to make an airport available for public use does not preclude the owner from recovering the cost of providing the facility through fair and reasonable fees, rentals or other user charges which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport. See Order, Sec. 4-14(a).

Each commercial aeronautical activity at any airport shall be subject to the same rates, fees, rentals and other charges as are uniformly applied to all other commercial aeronautical activities making the same or similar use of such airport utilizing the same or similar facilities. See Order,

Sec. 4-14(a)(2). FAA policy provides that variations in commercial aeronautical activities' leasehold locations, leasehold improvements, and the services provided from such leasehold may be the basis for acceptable differences in rental rates, although the rates must be reasonable and equitable. See Order, Sec. 4-14(a)(2) and (d)(2).[18] Specifically, the Order states, "In respect to a contractual commitment, a sponsor may charge different rates to similar users of the airport if the differences can be justified as nondiscriminatory and such charges are substantially comparable. These conclusions must be based on the facts and circumstances in every case." See Order, Sec. 4-14(d)(1)(c).

Federal law does not require a single approach to airport rate-setting. Fees may be set according to a "residual" or "compensatory" rate-setting methodology, as long as the methodology used is applied consistently to similarly situated aeronautical users. Airport proprietors may set fees for aeronautical use of airport facilities by ordinance, statute or resolution, regulation, or agreement.

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.

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

[18] This guidance in the Order at Sec. 4-14(d)(2) appears under the sub-heading "At general aviation airports." The FAA has accepted that this guidance is generally applicable to the circumstances of FBO's at air carrier and general aviation airports.

VI. ANALYSIS

In this complaint, the role of the FAA is to determine whether the MSCAA is currently in compliance with its Federal obligations or in non-compliance.

1. UNJUST ECONOMIC DISCRIMINATION

Grant assurance #22 only provides protection from unjust economic discrimination to aeronautical activities. Grant assurance 22(c) is specific to FBOs, stating:

> Each fixed-based operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities. See also 49 U.S.C. 47107(a)(5).

Management issues such as economy of collection and efficient use of the airport's limited facilities can be justifications for differing treatment of users of the airport. [Order, Sec 4-14(b)] Furthermore, incidental or isolated failings to treat all users exactly the same are not sufficient to determine that the Sponsor is in noncompliance. The Order states:

> The judgment to be made in all cases is whether the airport owner is reasonably meeting the Federal commitments. It is the FAA's position that the airport owner meets commitments when: (a) the obligations are fully understood, (b) a program (preventive maintenance, leasing policies, operating regulations, etc.) is in place which in the FAA's judgement is adequate to reasonably carry out these commitments, and (c) the owner satisfactorily demonstrates that such a program is being carried out. [Order, Sec 5-6(a)(2)]

Two overriding concepts are of particular relevancy to the facts in this case regarding the allegations of unjust economic discrimination: the question of similarly situated aeronautical activities and the sponsor's discretion to manage the airport to efficiently serve the interests of the public.

Grant assurance #22 at (c), (h) and (i) provide that the airport may treat dissimilarly, dissimilar aeronautical uses of the Airport. As included in Assurance 22(c), FBOs must be making the same or similar uses of identical or similar facilities at an airport to require that a sponsor charge the same rates, fees, rentals and other charges to all such FBOs, in order for the sponsor to remain in compliance with this assurance. As cited above, the Order states that "a sponsor may charge different rates to similar users of the airport if the differences can be justified as nondiscriminatory and such charges are substantially comparable." See Order § 4-14(d)(1)(c).[19]

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

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

As stated above, 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). This obligation includes the obligation to make decisions about improving management practices and efficiently using limited aeronautical facilities in the interest of the public. As is clear from this case, the public has a variety of demanding aeronautical interests for the use of land at the Airport. One efficient use of airport property could be nonaeronautical revenue production property. Other important uses include FBO services, air carrier support and air cargo support. As discussed below, some of the parcels in question in this case volunteer themselves for all four kinds of use. Federal requirements for valuation of land for these uses differ. Also, contiguity of types of uses and contiguity of specific leaseholds can be reasonable goals of airport management in pursuit of the efficient operation of the airport.

No Federal obligation requires a sponsor to forgo improved business practices or efficient allocation of airport property, even if to do so would expose differing terms and conditions among users of the Airport. Of course, a sponsor must not unjustly discriminate; however, it should not be punished for exposing past poor practice in attempts to improve those practices. As will be discussed below, the Sponsor's attempts to more accurately account for parcels under lease, to make FBO lease rates more consistent over time and to improve the efficient configuration of the airfield are all activities that can appear to effect the competitive situation at the Airport, but that do not necessarily result in unjust economic discrimination by the sponsor.

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

A. Whether the differences in lease terms, conditions and rates between the Complainant and its FBO competitor (AMR) constitute unjust discrimination by the MSCAA in violation of Federal grant assurance #22.

Generally, the Complainant argues that the Sponsor unjustly discriminated by perpetuating preferential, lower lease rates in the 1998 Lease for AMR's South Complex and by providing additional lands not previously leased to AMR at the same preferential, lower lease rates established in the 1979 Lease. Previously, the Sponsor had negotiated higher rates in WAC's 1993 Lease for the Complainant's FBO property. Also, the Sponsor perpetuated the lower rates for AMR despite a 1997 South Complex Rent Analysis showing that the South Complex was worth more than that reflected in the 1979 Lease, even with that lease's periodic rent adjustments. Also, the Sponsor perpetuated the lower AMR rates despite an internal staff memo

recommending that the South Complex be leased at rates consistent with WAC's lease rates. [FAA Exhibit 1, Item 1, pages 6-7] The Complainant argues that the Sponsor also provided options to AMR for other additional acreage adjacent to the South Complex, allowed AMR to divest itself of a non-contiguous AMR FBO leasehold (the North Complex) and has provided more acreage incidental to the South Complex leasehold in letter agreements subsequent to the 1998 Lease. The Complainant argues that all of this works to the detriment of WAC's ability to compete for the provision of FBO services, resulting in unjust economic discrimination. [FAA Exhibit 1, Item 1, pages 8-9]

In its Reply, the Complainant further argues the above points and expands on others, including the issue of consistent valuation of parcels stating:

> Despite Respondent's assertions that it is mandated to apply the FMV lease rates to leased land, it does not in fact appear to employ any consistent method by which it determines the FMV rate applicable to the land parcels located on airport premises. Neither does Respondent then apply these ostensible FMV values on a consistent basis.... Complainant does not argue with Respondent's premise that it could charge FMV rental rates. Rather, Complainant states that Respondent should consistently make the same rates available to similarly situated tenants. [FAA Exhibit 1, Item 10, pages 7-8]

Also, the Complainant argues that the Respondent did "have the legal right and leverage to negotiate lease rates" at the time of the 1998 Lease, when AMR gave up its North Complex leasehold for use by FedEx and AMR consolidated its operations in the South Complex. [FAA Exhibit 1, Item 10, page 8] As summarized in the Background Section, above, the Respondent cites examples of previous deletions of parcels from the AMR/Memphis Aero 1979 Leasehold. However, the FAA has noted that the Respondent did not raise the 1979 Lease rates when removing parcels from the leasehold. [FAA Exhibit 1, Item 10, Attachment C, exhibit 6] In a related argument, Complainant maintains that the 1998 Lease was a "new lease." [FAA Exhibit 1, Item 10, page 9]

The Respondent denies that the circumstances of the FBO leaseholds at the Airport put WAC at a significant competitive disadvantage. [FAA Exhibit 1, Item 4, page 14] Generally, the Respondent answers that, in regard to AMR's South Complex, it was "contractually obligated to maintain the same rental rates agreed upon in the 1979 Lease through June 30, 2005," [FAA Exhibit 1, Item 4, page 11] and that the 1998 Lease for the South Complex was not a "new lease." [FAA Exhibit 1, Item 4, page 12] The Respondent states that the staff internal memorandum regarding a recommendation for South Complex lease rates "did not take into consideration the fact that the 1979 Lease was still in effect and that AMR had a legal entitlement to those rates." [FAA Exhibit 1, Item 4, page 12] Respondent explains that the additional acreage provided to AMR under "letter agreement" was for a taxilane that had become so closely aligned with AMR's leasehold that it could not be effectively utilized by other Airport users. The parcel was leased to AMR at the same "improved" rate that would be applicable to

WAC ($0.18/ sq. ft.). [FAA Exhibit 1, Item 1, Attachment E][20] Respondent argues that the 4.25 acre difference between the estimated amount of the 1979 Lease, 20 acres, and that surveyed for the parcels under the 1979 Lease, 24.25 acres (not including the 1.519 acres found not to be used by AMR, but added to the 1998 Lease or the GAB Lease), "represents the underestimation of the original leasehold in the absence of a survey." [FAA Exhibit 1, Item 13, pages 12-13]

Upon review of all the arguments and evidence in the record, the relevant points of which having been summarized above, the FAA finds the following:

The FAA is not convinced by the record that AMR instigated the return of the North Complex to MSCAA, or that AMR's motivations are highly relevant.[21] According to the Cox affidavit, AMR had requested that the MSCAA extend the term of its North Complex Lease beyond 2005. The MSCAA declined to consider the request, because AMR's request would have interfered with FedEx's efficient expansion. [FAA Exhibit 1, Item 4, Attachment 17] The Cox affidavit is supported by the fact that FedEx did immediately take possession of the North Complex upon its abandonment by AMR [FAA Exhibit 1, Item 4, Attachment 2] and by the fact that the North Complex is contiguous with FedEx's leasehold but remote from both FBO facilities.

The FAA is not convinced by the record that the 1998 Lease constitutes a new relationship or "new" lease. In any case, the format of the document is irrelevant, in this circumstance. The FAA cannot find any allegation or evidence that the lease rate differential between AMR and WAC was unjustly discriminatory to the Complainant prior to the issuance of the 1998 Lease. The FAA does not find that the circumstances of the 1998 Lease require raising AMR's 1979 Lease rates.

The Respondent may choose to live up to its prior, valid contractual agreements, such as the 1979 Lease rates, in an amended or "new" lease document.[22] Furthermore, differing time frames of lease terms is an acceptable reason for differing lease rates. See Penobscot Air Services LTD v FAA. The Complainant has not alleged that the Respondent has treated a similarly situated tenant differently, by not living up to the lease rates stated in a valid agreement upon the return of leasehold parcels to the Airport. The FAA can find no such evidence in the record and finds no such argument. In fact, evidence submitted to the record suggests the opposite. As stated in the Background Section above, the 1993 reversion of parcels and hangars from the AMR leasehold to the Sponsor did not involve the Sponsor's success in changing the original 1979 Lease rates by raising them. [FAA Exhibit 1, Item 10, Attachment C, tab 7]

Regarding the taxilane acreage added to the AMR/Signature leasehold after the signing of the 1998 Lease, the Complainant does not rebut the Respondent's explanation that the parcel had

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[20] As stated by the Respondent, another parcel previously used by AMR under a 1997 letter agreement was subsumed in option parcel "P." [FAA Exhibit 1, Item 1, Attachment F and Item 4, page 12]

[21] MSCAA's willingness to maintain AMR's approximate total amount of FBO leasehold acreage at the Airport [See FAA Exhibit 1, Item 13, page 50] in a more efficient, contiguous layout is reasonable in pursuit of airport efficiency and generally compliant on its face, making further investigation into this particular matter unnecessary.

[22] Here, the FAA refers to the format of a contract document that continues or modifies an existing relationship, not to an entirely new relationship between the parties.

been intended to be included in the 1998 Lease, but was left out and that it was included because the parcel had become unusable by any other Airport user. [FAA Exhibit 1, Item 4, page 12] As stated, the record reflects that AMR/Signature is paying a rate consistent with that being charged WAC. [FAA Exhibit 1, Item 1, Attachment E] Therefore the FAA finds that such inclusion is not evidence of unjust economic discrimination.

As discussed in the Background Section, regarding the two small parcels totaling 1.5 acres that were added to the 1998 Lease at 1979 Lease terms, the Respondent states:

> In fact, the only "new" land conveyed in the 1998 Lease at the rates negotiated in 1979 were two small parcels totaling 1.519 acres... The Authority insisted that AMR lease the two small parcels, which AMR was not using, because they were small and situated where no other airport tenant could use them. The Authority added these areas to AMR's existing 1979 leasehold.... Accordingly, AMR (Signature) will pay rent on 1.519 acres at the 1979 rates through June 2005. However, any rent disparity resulting from the application of the 1979 rates to the 1.519 acres is *de minimus*. The difference between the rate now charged for unimproved land in AMR's 1979 leasehold (9.49 cents per square foot per year) and the rate paid by Wilson (12 cents per square foot per year) is only 2.51 cents per square foot per year. Applied to the 1.519 acres or 66,168 square feet, the difference amounts to $1,661 per year, or approximately $138 per month. [FAA Exhibit 1, Item 13, page 28]

FAA agrees with the Respondent that the monetary impact of this addition is too small to be considered dissimilar treatment. The FAA acknowledges that the Complainant may believe that there is more acreage under dispute here. However, the FAA finds that the Respondent's accounting of the acreage, as described in the Background Section, is convincing. As stated above, past poor management controls on leaseholds by the Sponsor should not prevent the Sponsor from improving its business practices. Furthermore, the FAA is interested in current compliance. The FAA finds that the Respondent has improved the documentation of the leases at the Airport and has instituted procedures to ensure future benefit to the public by providing adequate return from FBO leases.

Without having shown that the Respondent is discriminating against WAC by the Sponsor's living up to its agreements with AMR, while failing to live up to some term with WAC, the FAA is left with its review of the primary documents submitted to the record. This review reveals that the 1998 Lease rent schedule shows that in 2005 (the end of the 1979 lease term), AMR/Signature's rent for the South Complex more than triples. Also, it reflects that 288,388 square feet of the leasehold previously leased at the unimproved rate will then be leased at the improved rate ($0.307/square foot[23]) and hangars will be added to the rent calculation. [FAA Exhibit 1, Item 4, Attachment 3] The FAA finds that this is a meaningful increase in payments that reasonably demonstrates the true termination of the perpetuated 1979 Lease terms, because the lease rate will increase over that currently paid by WAC, the leasehold improvements will become valued as lease fee assets of the MSCAA and the increase itself will be large.

[23] The unimproved rate is listed at $0.221 per square foot, $0.10 more than that paid by WAC in its 1993 Lease.

In consideration of the above, the FAA finds that the Respondent's lease rates for its FBOs do not represent a rate disparity that results in unjust economic discrimination under the applicable Federal obligation.

B. Whether the differences between the rent terms for a building used by AMR upon its FBO leasehold and the lease-terms under negotiation between the parties for a building adjacent to the Complainant's leasehold (NWA Building) constitute unjust discrimination by the MSCAA in violation of Federal grant assurance #22.

It is difficult to analyze a sponsor's state of compliance when allegations involve differences between actual agreements and agreements under negotiation, since, as is the case here, the details are important. The FAA finds that there are insufficient details about the negotiated positions of the parties in respect to the NWA Building for it to make a determination of unjust economic discrimination. Upon review of the record, the FAA notes that the Sponsor does not have sufficient information to determine that the NWA Building is best used for FBO purposes at a discounted rental rate, in that the record does not include a proposal for WAC's potential use of it for FBO purposes or the need for any certain improvements to the NWA Building that would provide value to the MSCAA in lieu of rent. The Complainant states, "the NWA Building has not previously experienced GA usage, but, if Complainant rented the building, it would be used for GA tenants and GA-related services." [FAA Exhibit 1, Item 1, page 10] FAA records show that the property is to be used for aeronautical purposes, but the MSCAA is not obligated to use the facility for any specific kind of aeronautical user, nor is the MSCAA obligated to lease it to an aeronautical user at any cost.

Generally, the Complainant argues, "Respondent economically discriminates against Complainant by placing Complainant in a position where it is impossible for Complainant to effectively offer competitive lease rates to prospective tenants, whereas AMR pays zero rent on the GAB and can offer far more favorable lease terms to tenants." [FAA Exhibit 1, Item 1, pages 10-11] To support this argument, the Complainant states:

> Respondent has abated the rent to a zero value through 2010 on the GAB to AMR while simultaneously citing a rental rate of $6.00 - $6.50/sf on the NWA Building to Complainant. Both buildings require the expenditure of funds for improvements and will experience the same or similar uses. From the documents available to Complainant, it appears that AMR has been responsible for the maintenance of the GAB for approximately 15 years (Exh M), but has evidently not lived up to its maintenance obligations. To the contrary, Complainant has never leased the NWA Building. [FAA Exhibit 1, Item 1, page 10][24]

In a footnote to the above quote, Complainant admits that "Respondent has indicated it would be willing to give a rent credit to offset improvements Complainant made to the NWA Building,

[24] Referring to AMR's GAB improvements, MSCAA states, "routine maintenance, however well performed, is not equivalent to the substantial renovations at issue here." [FAA Exhibit 1, Item 4, Attachment 17, page 8]

but, even with rent credits, the GAB and NWA rental terms are inequitable and discriminatory in application." [FAA Exhibit 1, Item 1, page 10]

In its Reply, Complainant emphasizes that the Respondent has not justified why the NWA Building had been appraised in comparison to nonaeronautical uses, while the GAB had not been compared to nonaeronautical facilities [FAA Exhibit 1 Item 10, page 11], citing a specific appraisal of the NWA Building [See FAA Exhibit 1, Item 1, Attachment N], discussed in the Background Section. It does not appear that the Respondent relied upon this appraisal. Instead, another study was used. This Market Rent Analysis of the NWA Building conducted by Airport Business Solutions states, "In the analysis of the subject developments, the consultant performed an extensive market study of the local, regional and national general aviation and real estate markets relative to rental rates for similar properties." [FAA Exhibit 1, Item 4, Attachment 7]

The Respondent emphasizes the following:

> The GAB was the original passenger terminal for the Airport and was constructed in 1937. The building had been leased to Memphis Aero and then to AMR for $2,500.00 per month. The Airport Authority had determined that the building contained asbestos and lead, had electrical, roof and plumbing problems, the HVAC was old and outdated and the building would not meet current building code standards without major rehabilitation. The Airport Authority considered the building to be virtually worthless notwithstanding a 1997 appraisal that stated that $0.75 per sf. was a fair market rental rate for the building. The Airport Authority gave AMR the choice of tearing down the old building and building a new building or rehabilitating the old building. AMR choose to rehabilitate the old building and agreed that it would invest a minimum of $4,500,000 to rehabilitate the GAB building and build two new aircraft hangars. The rehabilitation of the GAB building has been underway for some time and should be completed by the end 1999 at a cost in excess of $3.2 million.
> ...During the [one year] rent abatement period, which ended July 31, 1999, AMR contributed significant capital investment in the facility in lieu of rent and is receiving nothing for free. [FAA Exhibit 1, Item 4, page 15]

The Respondent further argues, "The use of different rental rates for the two buildings is fully justified by differences in the existing structures and the $3.2 million investment that AMR will make (part of a $4.5 million investment it is required to make) to refurbish the sixty year old, dilapidated GAB." [FAA Exhibit 1, Item 13, page 44]

Considering the above, the FAA finds the following.

The Respondent may determine that lessee improvements that eventually will become lease fee improvements (improvements upon which rent will be assessed) can be considered in lieu of rent. The Respondent has accepted that concept for both parties. However, the facilities in question are not similarly situated. They differ markedly in age, character, condition, location, potential uses, permanence and needed improvements. The Complainant has failed establish that its unknown proposed improvements to the NWA Building should result in treatment similar to

that provided to AMR by the Respondent for the GAB, and has failed to establish that the improvements to the GAB should not be credited to AMR. The FAA is unconvinced that the Respondent has sufficient information about the proposed improvements to the NWA Building in order to offer the same arrangement to WAC as has been accepted by AMR.

The FAA notes that MSCAA was willing to forgive significant amounts of rent for significant improvements and rehabilitation to the GAB.[25] However, a dollar equivalency of rent reductions is not the relevant comparison. Rather, the relevant comparison is the value to the MSCAA of proposed leasehold improvements to the GAB and the NWA Building. In any case, the Respondent is not required by its Federal obligations to treat dissimilar situations identically. Therefore, rent and required investment scenarios do not have to result in a specific rent that is identical between the two differing leased structures, but may result in a mix of rental rates and specific leasehold improvements.

Also, allowing the market to influence how best to use limited Airport property under demand from various uses is acceptable. As discussed above, willingness-to-pay (bidding) is a valid method to determine how best to use Airport property. However, it is not the only method. Should the Complainant provide a plan for the use and rehabilitation of the NWA Building or the property upon which it rests, the MSCAA could decide to provide the property for FBO use without fully realizing its fair market value.[26]

In consideration of the fact that the record does not reflect sufficient justification for MSCAA to use the NWA Building for FBO purposes; the fact that the record does not reflect the nature of the needed improvements or alterations to the NWA Building parcel or their value to MSCAA; the fact that the Sponsor has arguably received a fair rental value for the GAB; and the fact that MSCAA has discussed a similar lease structure with WAC for the NWA Building, the FAA finds that the Sponsor has not unjustly discriminated.

Notwithstanding the aforementioned, the FAA encourages the parties to continue to discuss the use of the NWA Building property by WAC. The MSCAA should allow WAC the opportunity to make a proposal for its FBO use of the NWA Building property and its needed improvements and should allow adequate access to the site to inspect its condition. WAC should prepare a plan for its proposed use of the parcel consistent with its FBO functions. As stated above, any lease agreement could contain a mix of rent abatements and required investments, does not have to consider the fair market value of the property, does not have to provide a dollar equivalency to the GAB lease arrangement, and must provide a reasonable benefit to the MSCAA.

[25] The rent abatement/leasehold investment structure is reasonably self-sustaining, as is discussed in Section 3.
[26] The FAA agrees with the Complainant that the Respondent has significantly misinterpreted FAA guidance regarding procedures for valuing airport property. Regardless, as stated by the Complainant, requiring fair rental value for aeronautical facilities is an acceptable method.

C. Whether the provision of land options to AMR by MSCAA for the continued growth of AMR's FBO operations and the alleged denial of rental land to the Complainant constitute unjust discrimination by the MSCAA in violation of Federal grant assurance #22.

It is difficult to analyze a sponsor's state of compliance when allegations involve differences between actual agreements (AMR's Option Parcels) and agreements under negotiation (WAC's Hurricane Creek Parcel), since, as is the case here, the details of the parcels and the circumstances of the individual arrangements are important. Most significantly, upon review of record, the FAA notes that the Sponsor does not appear to have sufficient information to determine that the Hurricane Creek Parcel (HCP) is best used for FBO purposes, as opposed to the valid aeronautical support purpose for which FedEx currently uses it. Therefore, the confounding issue of the cost of making it available to the Complainant comes into play. The Respondent is not obligated to make the parcel available for development by WAC at any cost to the Respondent. However, it may choose to shoulder some of those costs, upon finding that the public's aeronautical interests are best served by doing so. The record does not include a detailed proposal from WAC for the use of the parcel for FBO purposes. Conversely, the record does demonstrate sufficient information to establish that the Option Parcels provided to AMR is most appropriately used for FBO purposes. The Respondent does not incur an additional obligation to make the HCP affordable to WAC for its expansion, simply because it has provided the Option Parcels to WAC's competitor to replace the North Complex parcels.

Generally, the Complainant argues that it has made verbal and written requests to Respondent for additional land suitable for FBO expansion.[27] Despite having granted the Option Parcels to WAC's FBO competitor, the Complainant states that the only expansion land offered for consideration to WAC has been the HCP. However, the Complainant states that the most recent offer is so inadequate as to constitute unjust economic discrimination, because of the preferable parcels optioned to AMR/Signature:

> Should Complainant lease this land from Respondent, Complainant would have to expend substantial funds merely to obtain access to the land. Respondent is also quoting the higher rental rates ($.12/sf) to Complainant for the land, rather than rates which are comparable to the rates paid by AMR. As noted above, this quoted rate is $.0224/sf higher than the rate paid by FedEx on the identical land. [FAA Exhibit 1, Item 1, page 11][28]

Complainant states, "...the facts show that, by letter dated June 5, 1995, AMR affirmatively requested to cancel its AMR North lease and relocate its tenant on that property to new hangars on AMR South. Therefore, Respondent's reason for giving AMR the option land is contradicted by the documentary evidence." [FAA Exhibit 1, Item 1, page 12] Complainant also states, in Robert A. Wilson's affidavit, "At a GA subcommittee meeting on May 28,

[27] Except for recent requests for particular terms regarding the leasing of the HCP and NWA parcels, the FAA has found no other written request in the record, other than references to previous requests.

[28] The FAA notes that the MSCAA is not obligated to treat FedEx's fee and rate structure similarly to an FBO's fee and rate structure.

1998, we specifically discussed the approx. 17.0[29] acres of land located directly north of the AMR complex. The Authority told Wilson Air Center that it would not lease land at AMR's 'front door' to us." [FAA Exhibit 1, Item 10, Attachment J, page 3]

The Complainant also states in the affidavit of Robert A. Wilson:

> The Airport Authority faults Wilson Air Center in its Answer for not having developed a master expansion plan. I have in fact provided the Airport Authority with development plans for every parcel the Airport Authority and I have discussed during our recent negotiations. It is impossible to develop final plans without specifically knowing which parcel the Airport Authority would make available to us. [FAA Exhibit 1, Item 10, Attachment J][30]

The Respondent argues that the HCP is 10 acres of land located immediately east of WAC's FBO site. Although separated from the WAC FBO by Hurricane Creek, its bridging is not infeasible. The Sponsor has negotiated FedEx's abandonment of its leasehold of the HCP in exchange for the Sponsor paying for the relocation of FedEx's facilities, costing approximately $1.4 million. [FAA Exhibit 1, Item 4, page 17] The FAA notes that $0.12/sf is the amount that WAC agreed to pay for the unimproved land adjacent to HCP in 1993 and is "the identical rate that AMR (Signature) will be charged for additional land upon its exercise of options N, O and P." [FAA Exhibit 1, Item 4, page 18] The Respondent claims that

> in planning for the efficient use and development of the Airport, the Airport Authority has established a plan that provides for expansion by Wilson without blocking future growth of FedEx. The Airport Authority has offered Wilson a suitable alternative parcel that is located next to Wilson's present site. By doing so, the Airport Authority is observing the priorities established in the Master Plan for allocating parcels that are desired by both a high priority user and a secondary priority user[31].... The Airport Authority denied AMR's request to renew the lease on the North Complex in order to allow for FedEx expansion into the North Complex. [FAA Exhibit 1, Item 4, page 22]

The Respondent further argues that

> the options granted to AMR were to compensate for land that was released by AMR to allow for expansion of FedEx into the North Complex.... AMR did 'affirmatively request' to cancel its AMR North Complex Lease after the Airport Authority informed AMR of its decision not to renew AMR's lease and the correspondence referenced by Wilson (Exhibit P to Complaint) was a result of the Airport Authority's decision.... The

[29] Wilson overestimates the parcel by about 4 acres relying on incorrect documents provided by the Respondent and since corrected, prior to filing in this record.

[30] The FAA notes that the Complainant has not provided these plans in the filings to this proceeding.

[31] The Respondent discusses the issue of another parcel of land amidst FedEx's operations for which WAC had expressed some interest, in an attempt to illustrate WAC's alleged interest in dictating the use of airport property. The FAA does not find this issue to be sufficiently well developed by the parties or relevant to discuss in detail in this proceeding, other than to note it as an example of how the MSCAA's pursues the efficient layout of the Airport.

> Airport Authority is without sufficient knowledge or information to admit or deny that Wilson is ready to develop additional land as Wilson has not furnished the Airport Authority any master plan for development of additional land.... [FAA Exhibit 1, Item 4, page 23]

The Respondent emphasizes its mandate to efficiently manage development at the Airport, stating:

> the sponsor's assurances do not require the Authority to hold *each* parcel of available land out to all potential bidders, and they do not require the Authority to be indifferent to the pattern of development of airport land. On the contrary, the Authority has a responsibility to oversee the orderly development of airport land; and it was reasonable for the Authority to decide that it would be better for Wilson and AMR each to develop sites contiguous to its existing leasehold, instead of pursuing a checkerboard pattern of development. [FAA Exhibit 1, Item 13, pages 52-53]

Upon review of the above-summarized arguments, the FAA finds the following.

Regarding WAC's allegation that MSCAA's offer of the Option Parcels to AMR is discriminatory, the FAA notes that WAC admits, in the affidavit of Robert Wilson, to a verbal inquiry about the AMR Option Parcels that he states occurred *after* the MSCAA had resolved to grant the options to AMR and amidst the MSCAA's discussions with AMR to vacate its investments in the North Complex. [FAA Exhibit 1, Item 10, Attachment J, page 3] Therefore, the MSCAA's failure to consider WAC's undescribed interest in using the AMR Option Parcels is reasonable, especially in light of the MSCAA's attempts to reconfigure the Airport's layout for more efficient operation based on contiguity of uses. The FAA is unconvinced that AMR abdicated any interest in compensation for its abandonment of its North Complex investments.

The FAA finds that the Respondent's actions regarding the awarding of these options, as represented in lease documents [FAA Exhibit 1, Item 4, Attachment 15] are reasonable in pursuit of the efficient layout of the Airport, and as a reasonably equivalent replacement for AMR's North Complex leasehold investments.[32] The addition of the 6.09 acres of taxilane is incidental to the awarding of the replacement Option Parcels, considering that the taxilane represents the border between the existing South Complex and the Option Parcels.[33] As stated above, the addition of the two noncontiguous parcels totaling 1.519 acres to the existing South Complex leasehold in the 1998 Lease was incidental to the institution of the more accurate accounting of AMR's South Complex acreage, has not been shown to have prevented any opportunity by any other party and represent a de minimus increase.

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[32] The absolute increase in AMR's leasehold acreage is 0.173 acres. This is the result of the exchange of the improved, rectilinear North Complex with the unimproved Option Parcels adjacent to the AMR's South Complex. [FAA Exhibit 1, Item 13, pages 49-50]

[33] The FAA would expect that the MSCAA would retain the taxilane parcel for public use, if AMR does not exercise its options for the Option Parcels or does not complete the required development.

Furthermore, the MSCAA presents information that shows that the AMR leasehold has not increased appreciably since WAC came on the airport, considering acreage surrendered by AMR in 1993. [See FAA Exhibit 1, Item 13, pages 49-51] Therefore, the actions of MSCAA to reconfigure AMR's leasehold do not inspire an obligation on MSCAA to provide parcels for WAC's expansion at any cost.

Nevertheless, As stated, the Respondent has offered to lease the HCP to WAC at the standard unimproved rate for its FBO use, and has volunteered to shoulder some of the costs of making the parcel available to WAC. The Sponsor's Federal obligations do not prohibit the Sponsor from providing access to the parcel. The FAA sees little difference between the Sponsor's offer to move FedEx from the area and the Complainant's demand for some paved access. The question is whether the costs of making the property suitable for FBO operations are prohibitive or not. Without a plan for the FBO development of the HCP, the Sponsor is unable to determine whether the future benefits of such development outweigh the present and significant costs to the Sponsor and its other aeronautical users.

In consideration of the above, the FAA cannot find that the MSCAA has unjustly discriminated against WAC by means of its present offer for use of the HCP and request for an explicit plan for such use, as compared to its providing of the Option Parcels to WAC's FBO competitor.

The FAA notes that the Respondent has put the HCP in consideration for use by WAC for FBO purposes, based on its principle pursuit of contiguity and in order to fulfill a secondary priority for airport use (GA). Upon receipt of a reasonable master plan for the development of the parcel, for which the Complainant prepares a business plan, the FAA would expect the Respondent to consider such plan. If the plan presents a feasible development strategy for serving the current or future needs of general aviation at the Airport, the Respondent would be free to consider making the parcel accessible to the airfield and shoulder some or all of the expense. The FAA's Memphis Airports District Office can assist in the evaluation of such a plan.

2. THE GRANTING OF AN EXCLUSIVE RIGHT

Whether any of the above-alleged actions, individually or cumulatively, have resulted in the MSCAA having granted an exclusive right to conduct an aeronautical activity at the Airport in violation of Federal grant assurance #23.

The Complainant states, "Respondent's acts also *de facto* violate Paragraph 23 of the Grant Assurances prohibiting exclusivity, in that AMR can expand its FBO at its leisure while Complainant is effectively excluded from doing so." [FAA Exhibit 1, Item 1, page 13]

An FBO's inability to expand its leasehold in order to offer better services or a greater variety of services can occur by various means. These impediments are not necessarily the responsibility of the Sponsor to cure. However, it is possible that unjustly discriminatory terms or unreasonable standards can create the constructive granting of an exclusive right. In this case, the Complainant has not argued that its rates are unreasonably restrictive. Nor has the Complainant established that the Sponsor is unjustly preventing its expansion. The Complainant

has argued, but failed to establish, that the preferences provided to the Complainant's FBO competitor are unjustly discriminatory to the Complainant.

In light of the above findings that the Respondent has not unjustly discriminated against WAC, the FAA concludes that the Sponsor has not instituted unreasonable restrictions on WAC to constitute the constructive granting of an exclusive right. Furthermore, the Complainant has failed to show that it has been excluded from offering general aviation FBO services. The fact that the Complainant does not enjoy the ability to offer every variety of aeronautical service upon terms it deems sufficiently advantageous or at the location of its choice does not constitute the granting of an exclusive right to its FBO competitor.

Therefore, the FAA finds that the Sponsor has not constructively granted an exclusive right.

3. FAILURE TO PURSUE A SELF-SUSTAINING STRATEGY

Whether the alleged favorable treatment of AMR by MSCAA constitutes MSCAA failing to pursue a financially self-sustaining business strategy, considering airport specific circumstances, in violation of grant assurance #24.

The Complainant incidentally alleges that the Respondent has violated grant assurance #24, in that it has preferably treated AMR and its successor. FAA's review of three major allegations does not reveal that the MSCAA has failed to pursue a reasonably self-sufficient strategy.

As discussed above, the Sponsor may choose to honor its valid, contractual agreements embodied in lease agreements that have been amended or renewed and it may perpetuate such terms in "new" documents without violating the self-sustainability requirement. The addition of the 1.5 acres of leased parcels at the 1979 lease rates is insufficient to constitute violation of the self-sustainability requirement due to its small amount. Moreover, as discussed more fully above, the Airport honored these rates after having obtained reversion of AMR's North Complex for immediate use by FedEx.

As discussed above, the Sponsor may accept capital investments in lieu of rent, once it has determined that such improvements benefit the Sponsor and the aeronautical users of the Airport. In its Rebuttal, the MSCAA states, "In consideration of AMR's substantial expenditures and their value to the Authority, the Authority agreed to continue the existing 18.9 cents per square foot rate (which was slightly higher than the value of the land provided by the Authority), and to abate the rent on the GAB 'during the period of construction beginning August 1, 1998 and ending no later than July 31, 1999 or the date of beneficial occupancy, which ever occurs first.'" [FAA Exhibit 1, Item 13, page 17] It is reasonable for the MSCAA to consider the investments made by AMR to be in lieu of rent, especially considering the provision to re-appraise the facility in 2010. The FAA cannot find that the benefits to the MSCAA in regard to the rent for and required improvements to the GAB are sufficiently inadequate to fail to constitute a self-sustaining lease structure.

As discussed above, the Complainant's providing to AMR/Signature of options for parcels for specific time-limited FBO development on land that is adjacent to the AMR/Signature complex and not adjacent to any other entity is reasonably in pursuit of valid Sponsor concerns for the efficient use of the limited and highly demanded airfield facilities. Furthermore, the Sponsor has stated that the Option Parcels will be leased at the standard rental rates. [FAA Exhibit 1, Item 4, page 18] The Sponsor's concerns about the best use for parcels adjacent to WAC's lease are legitimate, having inadequate information to determine if the proposed FBO use of those properties is a more deserving use of parcels that are either under another aeronautical use, or that are available for other airport purposes.

In consideration of the above, the FAA does not find that MSCAA has failed to maintain a fee and rental structure which makes the Airport as self-sustaining as possible under the circumstances existing at the Airport.

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 actions of the MSCAA regarding its treatment of WAC and its FBO competitor(s), as described above, do not constitute unjust economic discrimination in violation of Federal grant assurance #22.

2. The MSCAA has not constructively granted an exclusive right by providing preferential treatment to WAC's FBO competitors or instituting unreasonable restrictions on WAC that would violate Federal grant assurance #23.

3. The MSCAA's fee and rental structure has not failed to make the Airport as self-sustaining as possible under the circumstances existing at the Airport, consistent with grant assurance #24.

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)(4)(5)(13), 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:
AUG - 2 2000