UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

UNION FLIGHTS, INC. v. SAN FRANCISCO INTERNATIONAL AIRPORT and CITY & COUNTY OF SAN FRANCISCO	)	Docket No. 16-99-11

DIRECTOR'S DETERMINATION

INTRODUCTION

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

Union Flights, Inc. (Union Flights), an air carrier as defined in 49 USC § 40102, has filed a complaint with the FAA, pursuant to the FAA Rules of Practice, against the San Francisco International Airport (SFO or Airport) and, by extension, the City and County of San Francisco, California (City), which owns and operates the Airport. It alleges that the City is violating its Federal obligations at the Airport by establishing and continuing to impose a landing fee schedule which is (i) unreasonable and excessive for services provided to Union Flights and (ii) unreasonably discriminatory in that landing fee rates applied to Union Flights' aircraft are higher than rates applied to larger air carrier aircraft. Union Flights submits that it has been directly and substantially affected by the City's allegedly violative actions and that good faith efforts informally to negotiate a resolution of the matters at issue in its complaint have produced no reasonable prospect for a timely resolution. Union Flights also requests that the FAA determine whether the landing fee being charged Union Flights for small fixed-wing aircraft operations at the Airport is unreasonable and, if so, issue an order directing the Airport to refund to Union Flights the fees collected since 1989.

ISSUES

The complaint presents the following issues for decision:

- Whether the City, by requiring a minimum landing fee for certain aircraft and a weight-based landing fee for other aircraft operating at the Airport, is violating its Federal obligations regarding reasonable and not unjustly discriminatory conditions of airport use set forth in 49 USC §§ 47107(a)(1), (a)(2), (a)(3) and its grant agreements.

- Whether the minimum landing fee charged by the City for aircraft operations at the Airport is reasonable under applicable Federal law.

Under the particular circumstances existing at the Airport and the evidence of record, as discussed below, we find that: (i) the SFO Minimum Landing Fee is a reasonable and not unjustly discriminatory condition of airport use and does not violate the City's obligations under 49 USC §§ 47107(a)(1), (a)(2), (a)(3) and its grant agreements; and (ii) the SFO Minimum Landing Fee being charged is reasonable under applicable Federal law.

Our decision in this matter is based on the applicable Federal law and FAA policy, review of the pleadings and supporting documentation submitted by the parties which comprise the administrative record reflected in the attached FAA Exhibit 1.[1]

THE AIRPORT

San Francisco International Airport (SFO or Airport) is a public-use airport, located in San Francisco, California. The Airport is owned and operated by the City and County of San Francisco, California (City).[2]

The planning and development of the the Airport has been financed, in part, with funds provided by the FAA under the Airport Improvement Program (AIP), authorized by 49 USC § 47101, *et seq.*

[1] FAA Exhibit 1 provides the Index of the Administrative Record in this proceeding.
[2] FAA Exhibit 2 provides a copy of the most recent FAA Form 5010 for the Airport.

Since 1982, the City has received a total of $150,985,539 in Federal airport development assistance. In 1999, the City received its most recent AIP grant for improvements at the Airport in the amount of $8,370,743 for, *inter alia*, runway reconstruction and taxiway rehabilitation.[3]

APPLICABLE LAW AND POLICY

Pursuant to 49 USC § 40101, *et seq.*, the FAA Administrator has 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. The currently operable Federal airport development program is the Airport Improvement Program (AIP), authorized by 49 USC § 47101, *et seq.*

Under each Federal airport development program to date, the airport sponsor assumes certain obligations, either by contract or by restrictive covenants in property deeds and conveyance instruments, to maintain and operate its airport facilities safely, efficiently, and in accordance with specified conditions. Commitments assumed by airport sponsors in property conveyance or grant agreements are important factors in maintaining a high degree of safety and efficiency in airport design, construction, operation and maintenance as well as ensuring the public reasonable access to the airport.

Pursuant to 49 USC § 47122, the FAA has a statutory mandate to ensure that airport owners comply with their sponsor assurances.

FAA Order 5190.6A, *Airport Compliance Requirements* (Order), provides guidance to FAA personnel, airport sponsors, and other interested persons regarding the policies and procedures to be followed by the FAA in carrying out its legislatively mandated functions related to federally obligated airport owners' compliance with their sponsor assurances.

The Airport Sponsor Assurances

As a condition precedent to providing airport development assistance, the Secretary of Transportation receives certain assurances from the airport sponsor. These assurances are set forth in grant agreements and instruments of property conveyance.

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[3] FAA Exhibit 3 provides the Airport Sponsor's AIP Grant History listing the Federal assistance provided by the FAA to the Airport Sponsor from 1982 to the Present.

For example, pursuant to 49 USC § 47107(a) *et seq.*, each grant agreement must set forth assurances to which an airport sponsor receiving Federal financial assistance must agree as a condition precedent to receipt of such assistance. These staturorilly mandated sponsorship requirements are included in every airport improvement grant agreement and instrument of Federal property conveyance. Upon acceptance of a Federal airport improvement grant or Federal property conveyance by an airport sponsor, the assurances become a binding contractual obligation between the airport sponsor and the Federal government.

Airport Owner Rights and Responsibilities

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

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

In addition to obligating the airport sponsor to preserve its rights and powers to carry out all grant agreement requirements, this assurance also places certain obligations on the sponsor regarding land upon which Federal funds have been spent, including the operation and maintenance of airports managed by agencies other than the sponsor.

FAA Order 5190.6A, *Airport Compliance Requirements*, (Order) describes the responsibilities under Assurance 5 assumed by the owners of public use airports developed with Federal assistance. Among these is the responsibility for enforcing adequate rules, regulations, or ordinances as are necessary to ensure the safe and efficient operation of the airport. *See* Order, Secs. 4-7 and 4-8.

Terms and Conditions of Airport Use

Assurance 22, *Economic Nondiscrimination*, of the prescribed sponsor assurances implements the provisions of 49 USC §§ 47107(a)(1) through (a)(3), and requires, in pertinent part, that the sponsor of a federally obligated airport

> "...will make its airport available as an airport for public use on reasonable terms and without unjust discrimination, to all types, kinds, and classes of aeronautical use, including any person, firm, or corporation to conduct or to engage in any aeronautical activity for furnishing services to the public at the airport." Assurance 22(a)

Furthermore, it implements the provisions of 49 USC § 47107(a)(13), and requires, in pertinent part, that the sponsor of a federally obligated airport sponsor will ensure that

> "[e]ach air carrier using such airport (whether as a tenant, nontenant, or subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such air carriers which make similar use of such airport and utilize similar facilities, subject to reasonable classifications such as tenants or nontenants and signatory carriers and nonsignatory carriers. Classification or status as tenant or signatory shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on air carriers in such classification or status. Assurance 22(e)

FAA Order 5190.6A describes in detail 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. 3-1 and 4-14(a)(2).

The owner of any airport developed with Federal 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 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 unreasonable and unjustly discriminatory economic terms by aeronautical activities. *See* Order, Sec. 3-8(a).

Airport Rates and Charges

Assurance 24, *Fee and Rental Structure*, of the prescribed sponsor assurances implements the provisions of 49 USC § 47107(a)(13), and requires, in pertinent part, that the sponsor of a federally obligated airport

> "...will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection."

Under Assurance 24, a federally obligated airport sponsor agrees, in essence, to maintain a fee and rental structure for the services and facilities being provided airport users which will generate airport revenues sufficient to make the airport as self-sustaining as possible under the airport-specific circumstances, while operating the airport in a manner consistent with other applicable assurances, *e.g.*, the requirement to make the airport available for aeronautical use by the public on reasonable and not unjustly discriminatory terms [Assurance 22(a), (e)] and the prohibition against exclusive rights [Assurance 23].

A federally obligated airport owner's obligation to make the airport available for public use does not preclude the owner from recovering the cost of providing facilities and services at the airport through the imposition of reasonable fees, rents and other user charges designed to make the airport as self-sustaining as possible under the airport-specific circumstances. *See* Order, Sec. 4-14(a).

Each commercial aeronautical activity at a federally obligated airport shall be subject to the same, or substantially similar fees, rents and other charges as are uniformly applied to all other commercial aeronautical activities making the same or substantially similar use of the airport utilizing the same or substantially similar facilities. *See* Order, Sec. 4-14(a)(2).

Federal law, however, limits an airport sponsor's authority to collect fees for aeronautical use of the airport. For example, 49 USC § 40116(e)(2) allows an airport sponsor to collect only reasonable rental charges, landing fees, and other service charges from aircraft operators for the use of airport facilities, and 49 USC § 47107(a)(2) provides that air carriers making similar use of the airport will be subject to substantially comparable charges.

However, variations in commercial aeronautical activities' use of the airport facilities and services, *e.g.*, type of service(s) being provided by the commercial aeronautical activity, leasehold locations, and leasehold improvements, may be the basis for acceptable differences in fees, rents and other charges. Nonetheless, airport fees, rents and other such charges must be reasonable and equably applied within each airport management-designated type or classification of commercial aeronautical activity based on similarity of airport use. *See* Order, Secs. 4-14(a) and 4-14(d).

Under 49 USC § 47129, in order to assist in the resolution of air carrier-airport fee disputes, the Secretary of Transportation was directed to (i) publish rules or guidelines providing the standards that shall be used in determining whether a fee is reasonable, and (ii) establish expedited procedures for obtaining a determination of the reasonableness of airport fees imposed on air carriers. However, notwithstanding the statutory obligation to determine whether a fee is reasonable, we may not set the level of an airport fee. The setting of airport fees is left to the discretion of the federally obligated airport owner and operator.

Neither Federal law nor FAA policy requires a single approach to airport rate-setting. Airport fees, rents and other charges may be set according to a methodology, *e.g.*, residual or compensatory, a combination thereof, at the discretion of the airport sponsor, so long as the methodology and cost-allocation formula selected is transparent, reasonable, and not unjustly discriminatory. *See* 49 USC § 47129(a)(2) and *DOT/FAA Policy Concerning Airport Rates and Charges*, 61 FR 31994-32022.

FAA policy regarding airport revenue generation provides, in pertinent part, that:

> Rates, fees, rentals, landing fees, and other service charges ("fees") imposed on aeronautical users for the aeronautical use of the airport ("aeronautical fees") must be reasonable.
>
> Aeronautical fees may not be set or applied in an unreasonable or unjustly discriminatory manner to aeronautical users or user groups.
>
> Fees may be set according to either of the industry standard rate-setting methodologies, *i.e.*, residual, compensatory, or a combination thereof, or according to another rate-setting methodology, so long as the selected methodology is applied consistently to aeronautical users making the same or similar use of the airport.

Airport management must apply a consistent methodology in establishing fees for comparable aeronautical users of the airport. When the airport proprietor uses a cost-based methodology, aeronautical fees imposed on any aeronautical user or group may not exceed the costs allocated to that user or user group

under a cost allocation methodology adopted by the airport proprietor that is transparent, reasonable and not unjustly discriminatory, unless aeronautical users specifically agree otherwise.

The prohibition on unjust discrimination does not prevent an airport proprietor from making reasonable distinctions among aeronautical users (*e.g.*, signatory and non-signatory carriers, tenants and non-tenants, commercial and non-commercial users) and assessing higher fees on certain categories of aeronautical users based on those distinctions (*e.g.*, higher fees for non-signatory carriers, as compared to signatory carriers).

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 property conveyance in order to protect the public's interest in civil aviation and to ensure compliance with Federal laws.

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

FAA Order 5190.6A, *Airport Compliance Requirements*, 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 explains the policies and procedures to be followed by FAA personnel in carrying out the FAA's responsibilities for ensuring airport compliance. It provides basic guidance for FAA personnel in interpreting and administering the various continuing commitments made to the United States by airport owners as a condition for the grant of Federal funds or the conveyance of Federal property for airport purposes. The Order, *inter alia*, analyzes the various obligations set forth in the standard airport sponsor assurances, addresses the nature of those assurances, addresses the application of these assurances in the operation of public-use airports, and facilitates interpretation of the assurances by FAA personnel.

BACKGROUND

Since 1981, the SFO Airport-Airline Lease and Use Agreement (SFO-Signatory Agreement) entered into by the Airport with signatory air carriers has provided for the establishment and maintenance of a schedule of airport fees, including the SFO Landing Fee Schedule. Airport landing fees are computed annually on a fiscal year (FY) basis using the guidelines established in the SFO-Signatory Agreement.[4]

Since 1984, the SFO Landing Fee Schedule has included a minimum landing fee for all aircraft weighing less than a threshold landing weight (SFO Minimum Landing Fee). The SFO Minimum Landing Fee applies to all air carriers, signatory or non-signatory, operating fixed-wing aircraft below a designated threshold landing weight, including commuter air carriers and air cargo carriers. Carriers operating fixed-wing aircraft weighing the prescribed threshold landing weight or more are charged a landing fee based on each 1000 pounds of aircraft landing weight.[5]

Since 1989, Union Flights, operating as an air carrier under Federal Aviation Regulations (FAR) Part 135, has been providing air cargo feeder service at SFO and other major airports under contract to larger air cargo carriers. Union Flights operates at the Airport using fixed-wing aircraft with a maximum landing weight of 8500 pounds, operating approximately two flights nightly using Cessna C-208 Caravan aircraft. Union Flights is not a signatory to the SFO Airport-Airline Lease and Use Agreement and is charged the minimum landing fee for its use of the Airport.[6]

In 1997 and 1998, Union Flights sought relief from the SFO minimum landing fee regimen, claiming in part that air carriers operating larger aircraft were being charged less than Union Flights for use of the Airport because they are charged a weight-based landing fee.[7]

During FY1998-99, the threshold landing weight prescribed was 32,765 pounds for signatory carriers and 30,968 pounds for non-signatory carriers. During FY1998-99, the landing fee for aircraft exceeding the threshold landing weight operated by signatory air carriers to the SFO Airport-Airline Lease and Use Agreement was $1.465 per 1000 pounds, while the fee for non-signatory carriers

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[4] FAA Exhibit 1, Item 4, Attachment 1.
[5] FAA Exhibit 1, Item 4, p. 5, and Attachment 1.
[6] FAA Exhibit 1, Item 3, p. 1, and Item 4, p.6.
[7] FAA Exhibit 1, Item 4, pp. 5-6, and Item 4, Attachments 6 and 7.

was $1.55 per 1000 pounds.[8] For FY1999-2000, the Airport charges $1.848 per 1000 pounds for signatory carriers' aircraft above the minimum weight threshold, and $1.933 per 1000 pounds for non-signatory carriers aircraft exceeding the threshold.[9] Union Flights, as a non-signatory air carrier operating fixed-wing aircraft below the minimum weight threshold was charged $48 per landing during FY1998-99, and is being charged $53 per landing during FY1999-2000 under the currently effective SFO Landing Fee Schedule.[10]

In January 1997, Union Flights sought relief from the landing fees being charged for its two daily operations with Cessna C-208 Caravan aircraft, advising the Airport that it considered the SFO Minimum Landing Fee to be unreasonable and economically unfair to Union Flights.[11]

On November 30, 1998, at the request of Union Flights, FAA representatives from the FAA Airports District Office, SanFrancisco (SFADO) met with representatives of Union Flights and the City in an effort to assist them in resolving their landing fee dispute.[12]

On January 20, 1998, Union Flights filed a report of violation with the SFADO, under *FAA Investigative and Enforcement Procedures*, 14 CFR § 13.1, alleging that the SFO Landing Fee Schedule, particularly the minimum landing fee applicable to Union Flights operations at the Airport, is inconsistent with applicable Federal obligations.[13]

On February 8, 1999, SFADO acknowledged the receipt of Union Flights' report. The SFADO, in order to determine whether the reported allegations warranted further FAA action, requested additional details of the subject fee dispute.[14]

On February 23, 1999, Union Flights provided SFADO with additional information, which it subsequently amended for accuracy on February 25, 1999.

On June 3, 1999, Union Flights advised that the SFADO's informal assistance in resolving the air carrier's dispute over landing fees at the Airport appeared to be making no progress and that Union Flights intended to pursue its claim by filing a formal complaint under the FAA Rules of Practice.

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[8] FAA Exhibit 1, Item 3, Attachment 12; and Item 4, p. 4.
[9] FAA Exhibit 1, Item 4, Attachment 3.
[10] FAA Exhibit 1, Item 4, p. 5.
[11] FAA Exhibit 1, Item 4, Attachment 6.
[12] FAA Exhibit 1, Item 3, Attachments 1 and 2; and Item 4, p. 7.
[13] FAA Exhibit 1, Item 3, Attachment 4.
[14] FAA Exhibit 1, Item 3, Attachment 4.

On August 12, 1999, Union Flights filed the above-referenced complaint under the FAA Rules of Practice, alleging that the SFO Landing Fee Schedule is (i) unreasonable and excessive for services provided to Union Flights by the Airport and (ii) unreasonably discriminatory in that the landing fee applied to Union Flights' small aircraft are higher than the landing fees applied to other air cargo carriers operating larger aircraft at SFO.[15]

On September 23, 1999, the City submitted its answer to Union Flights' complaint. The City takes the position that the SFO Landing Fee Schedule is reasonable and fully satisfies the requirements of Federal law; that the SFO Landing Fee Schedule, including its minimum landing fee, is not unjustly discriminatory because there is no evidence that it penalizes operators of small aircraft; that the minimum landing fee is not unjustly discriminatory because it does not recover the full costs attributable to the operations of small aircraft at the Airport. The City further contends that the complaint fails to establish a reasonable basis for FAA investigation and warrants no further FAA action; that, insofar as the complaint challenges the reasonableness of the SFO Landing Fee Schedule, it falls outside of the FAA's jurisdiction as set forth in the FAA Rules of Practice; that, insofar as the complaint challenges a new or increased landing fee, it asserts an untimely challenge by an air carrier to an airport fee, which claim is time-barred pursuant to 49 USC § 47129; and that the complaint, having been improperly filed, cannot be considered a complaint pursuant to the FAA Rules of Practice.[16]

On September 23, 1999, the City also filed a motion requesting that the complaint be dismissed with prejudice to refiling on the grounds that (i) the allegations set forth in the complaint are outside the jurisdiction of the FAA as described in the FAA Rules of Practice, 14 CFR § 16.1; and (ii) the complaint provides no reasonable basis upon which to evaluate the SFO Landing Fee Schedule. The City asserts that Union Flights' grievance is with the perceived unreasonableness of the Airport's rates and charges for air carriers, which rates and charges have been established and known by Union Flights for over 60 days prior to the filing of the complaint, and that, consequently, Union Flights' complaint regarding the unreasonableness of the Airport's rates and charges for air carriers is time-barred by 49 USC § 47129.[17]

On October 4, Union Flights filed a reply setting forth its opposition to the City's motion to dismiss the complaint. Union Flights objects to the methodology used

[15] FAA Exhibit 1, Item 3.
[16] FAA Exhibit 1, Item 4.
[17] FAA Exhibit 1, Items 5 and 6.

by SFO in assessing landing fees; maintains that the SFO landing fees assessed against Union Flights were excessive in relation to the benefits conferred on the air carrier in comparison to the fees paid by other users of the Airport; and argues that its complaint regarding the reasonableness of the SFO minimum landing fee has been appropriately filed with the FAA under the FAA Rules of Practice and is not barred as untimely by any applicable statute of limitations.[18]

On October 14, 1999, the City submitted a rebuttal in support of its answer and motion to dismiss the complaint. The City argues that Union Flights offers no evidence that the Airport's minimum landing fee is unreasonable; that Union Flights fails to rebut the City's argument that the Airport treats all air carriers operating fixed-wing aircraft of similar landing weight the same and, in so doing, the City fails to recover its full costs for such aircraft use through its minimum landing fees; and that Union Flights offers no response to the City's argument that the FAA Rules of Practice expressly do not apply to disputes between air carriers and airport proprietors concerning the reasonableness of airport fees.[19]

ANALYSIS AND DISCUSSION

At issue for FAA determination in this proceeding, as raised in the complaint, is (i) whether the City and the Airport are imposing unreasonable and unjustly discriminatory terms and conditions of airport use by requiring a minimum landing fee for certain aircraft and a weight-based landing fee for other aircraft; and (ii) whether the SFO Minimum Landing Fee is reasonable.

Union Flights alleges that the Airport is engaging in economic discrimination by charging Union Flights a fixed minimum landing fee regardless of aircraft landing weight, while charging other air cargo carriers operating larger aircraft on the basis of aircraft landing weight, and by charging Union Flights the same fixed minimum landing fee charged commuter air carriers making more extensive use of airport facilities. It also alleges that the Airport has established and is maintaining an airport fee schedule setting a minimum landing fee for air carriers operating aircraft of less than a designated landing weight which disregards the differences in airport facilities and services utilized by Union Flights, commuter air carriers operating aircraft of similar landing weight, and air cargo carriers operating larger aircraft. Union Flights further alleges that the SFO Minimum Landing Fee is not reasonable, and that Union Flights is entitled to a refund of the amount of overcharges incurred since initiating its service at the Airport.

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[18] FAA Exhibit 1, Item 4.
[19] FAA Exhibit 1, Item 8.

The City generally maintains that it is not engaging in economic discrimination by charging Union Flights a minimum landing fee different from the weight-based landing fees charged air carriers operating larger aircraft, nor by charging the same minimum landing fee to all air carriers operating fixed-wing aircraft weighing less than a prescribed threshold landing weight; that, while the minimum landing fee for aircraft operations at the Airport is reasonable, the instant proceeding is an inappropriate forum for determining the reasonableness of the subject fee; and that the fee and rental schedule at the Airport is consistent with its grant assurances.

Terms and Conditions of Airport Use

Union Flights states that the SFO Minimum Landing Fee is unreasonably discriminatory as applied to its operations at the Airport.

In support of its allegation that the SFO Minimum Landing Fee is inherently unreasonable and discriminatory, Union Flights submits that large air carrier aircraft are assessed charges based on actual weight; that the minimum landing fee rates applied to Union Flights' aircraft are higher than rates applied to larger aircraft; that no extra services or other considerations are provided Union Flights to justify a higher charge; and that, given the relatively less adverse impact of small aircraft on airport facilities, small aircraft operators should be charged at a lower rate than large aircraft operators.

Union Flights further argues that it pays the same minimum fee per landing as the commuter air carriers operating passenger service at SFO; however, although its cargo aircraft are comparable in landing weight to their passenger aircraft, Union Flights does not utilize the SFO passenger terminal facilities used by those commuter air carriers. Consequently, Union Flights submits that the Airport is unreasonably discriminating against Union Flights by charging Union Flights the same fee per landing as the commuter air carriers which receive additional services from the Airport.

The City contends that charging a fixed minimum landing fee for operations at the Airport with aircraft weighing less than a designated landing weight threshold to pay a fixed minimum landing fee, while charging a weight-based landing fee for operations with larger aircraft, is neither an unreasonable nor unjustly discriminatory condition of airport use.

The City submits that airport users at SFO, regardless of the weight of aircraft operated, are charged landing fees in accordance with the SFO-Signatory Agreement which requires that all users of the airfield and airport support areas, regardless of the size of aircraft operated, pay for their use of those areas, and which specifically provides that such payments may be collected by imposing a minimum flat-rate landing fee or other appropriate methods.

The City maintains that charging a minimum landing fee for aircraft below a designated landing weight threshold is neither an unreasonable nor unjustly discriminatory condition of airport use, since the fee is designed to recover airfield costs attributable to air carriers and applied so that it charges equably all air carriers making the same or similar use of the airport for their usage of airfield facilities. In support, the City submits that the threshold landing weight for the SFO Minimum Landing Fee is calculated by dividing the sum of budgeted operating costs and a portion of capital costs attributable to small aircraft by the projected landing weight of carriers operating such aircraft. Moreover, the SFO Minimum Landing Fee is subject to review and revision annually to reflect inflation and other changes in Airport costs attributable to the accommodation of small aircraft operations.

The City further argues that the minimum landing fee is neither an unreasonable nor unjustly discriminatory condition of airport use because it does not actually recover the full costs attributable to small aircraft operations at the Airport. In direct rebuttal to Union Flights' argument that its aircraft would pay less for airport use if charged on the basis of landing weight rather than the minimum landing fee and, thus, must be unjustly discriminatory, the City maintains that Union Flights completely ignores the costs that smaller aircraft impose on the Airport. The City submits that the SFO Minimum Landing Fee is based on budgeted operating expenditures for the airfield and capital costs attributable to the projected usage of the airfield center by general aviation and small commercial aircraft operations, and that the SFO Minimum Landing Fee has regularly recovered substantially less than the full cost imposed by the operations of small fixed-wing aircraft at the Airport.[20]

In further support of its position, the City submits that no air carrier other than Union Flights has alleged that the SFO Minimum Landing Fee is unreasonable or unjustly discriminatory, even when other carriers subject to the minimum landing fee have a greater incentive to bring such a challenge because of their larger number of operations at the Airport.

On the basis of the administrative record in this proceeding with regard to Union Flights' allegation that the SFO Minimum Landing Fee is unreasonable and unjustly discriminatory, we conclude that the City is acting neither unreasonably nor in an unjustly discriminatory manner by charging a minimum landing fee for operations with aircraft weighing less than a designated threshold landing weight, while charging a weight-based landing fee for operations with larger aircraft, as a condition of airport use.

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[20] FAA Exhibit 1, Item 4, Attachment 4.

We are unpersuaded that charging a minimum landing fee is an unreasonable condition of airport use. The City, as a federally obligated airport sponsor, has discretion in establishing terms and conditions of use, including landing fees, and the methods by which those terms and conditions of airport use are satisfied.[21] The collection of a minimum landing fee for airport use is a standard industry practice and, as implemented at the Airport in this instance, has not been demonstrated to be an unreasonable or unjustly discriminatory condition of airport use.

Nor are we persuaded that the SFO Minimum Landing Fee is applied in an unjustly discriminatory manner. The statutory prohibition against unjust discrimination does not prevent a federally obligated airport sponsor from making reasonable distinctions among aeronautical users, so long as those making similar use of the airport are subject to substantially comparable charges.[22] FAA policy requires that an airport proprietor apply a consistent methodology in setting fees for aeronautical users making comparable use of the airport. Consequently, when a cost-based methodology is used to establish airport fees, aeronautical fees imposed on any aeronautical user or user group may not exceed the costs allocated to that user or user group under a cost-allocation methodology consistent with FAA policy, unless the affected aeronautical user or user group otherwise agrees.[23]

Moreover, FAA policy recognizes that a federally obligated airport sponsor has considerable discretion to draw reasonable distinctions among aeronautical users in setting airport fees, and specifically provides that the prohibition on unjust discrimination does not prevent an airport proprietor from making reasonable distinctions among users, *e.g.*, signatory and non-signatory air carriers, and assessing fees on certain categories of aeronautical users based on those distinctions, *e.g.*, higher fees for non-signatory air carriers than signatory carriers.[24]

In this instance, the SFO Minimum Landing Fee is imposed on all signatory and non-signatory carriers operating aircraft weighing less than the designated threshold landing weight. Since all non-signatory carriers operating the same classification of aircraft are charged the same minimum landing fee, we are unpersuaded that the SFO Minimum Landing Fee is applied in an unjustly discriminatory manner. Union Flights fails to demonstrate otherwise. Moreover, Union Flights has not demonstrated that the SFO Minimum Landing Fee is being

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[21] *FAA Policy Regarding Airport Rates & Charges*, Section 2.1, 61 FR 32019.
[22] 49 USC § 40171(a)(1) and (a)(2).
[23] *FAA Policy Regarding Airport Rates & Charges*, Section 3.1, 61 FR 32021.
[24] *FAA Policy Regarding Airport Rates & Charges*, Section 3.1.1, 61 FR 32021.

applied in a manner aimed at penalizing or that it, in fact, penalizes operators of aircraft weighing less than the designated threshold landing weight.

Against this background, we conclude that no basis in record exists for determining that the City is violating its Federal obligation to make the Airport available for aeronautical use on reasonable and not unjustly discriminatory terms and condition, and that the complaint, insofar as it raises such issues, should be dismissed.

Air Carrier-Airport Fee Dispute

Union Flights asserts that the SFO Minimum Landing Fee is unreasonable, and requests that the FAA issue a determination that the subject fee is unreasonable. Union Flights additionally requests that FAA direct SFO to refund to Union Flights the amount of $95,990.88 as the amount of unreasonable overcharges for the period ending October 31, 1998, and to refund to Union Flights the amount of additional overcharges, computed on the basis of applicable schedules, which have accrued since October 31, 1998.

Regarding its request that the FAA direct the Airport to refund of the amount of the landing fee charges determined to be unreasonable, Union Flights provides a chart comparing its landing fee costs and projected landing fees based on its aircraft landing weight for operations at SFO during the period from 1989 until 1998, and indicating that Union Flights would have paid $95,991 less in landing fees under a weight-based regime.[25]

Union Flights contends that the SFO Minimum Landing Fee is unreasonable, based on a comparison of landing fees that Union Flights is charged at SFO and 17 other airports.[26] In support, Union Flights provides a list of landing fees allegedly charged at these other airports. The lists indicates that the landing fees at eight of these airports are weight-based with charges ranging from $0.50 to $1.33 for each 1000 pounds of aircraft landing weight, and that nine of the airports charge a minimum fee ranging from $3 to $20 per landing, or a flat fee ranging from $100 to $250 per month.[27]

Union Flights argues that the airport landing fee comparison demonstrates that the FY1998-99 SFO Minimum Landing fee ($48 per landing) exceeds by far the average charged by other airports, including Los Angeles International Airport

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[25] FAA Exhibit 1, Item 3, Attachment 9.

[26] FAA Exhibit 1, Item 3, Attachments 9 thru 13.

[27] FAA Exhibit 1, Item 3, Attachment 8. A list of the landing fees purportedly charged at the identified airports, including the SFO Minimum Landing Fee ($40), as of September 1, 1996. On February 25, 1999, Union Flights amended the list to include the minimum landing fee charged at Los Angeles World Airport ($20) and to reflect the change in the SFO Minimum Landing Fee ($48) for FY1998-99.

($20 per landing).[28] It further argues that SFO provides no services not provided by the other airports and that the Airport actually provides fewer services. In support of this contention, Union Flights submits that, unlike the other airports utilized by Union Flights, SFO does not provide tiedown facilities for Union Flights' aircraft that remain overnight at the Airport.

Union Flights also alleges that, as a result of the methodology by which SFO determines and assesses landing fees, the SFO Landing Fee Schedule, including the SFO Minimum Landing Fee, is unreasonable and excessive for services provided by the Airport.[29]

Union Flights contends that the SFO Landing Fee Schedule, and the SFO Minimum Landing Fee prescribed therein, is based on a methodology which fails to take into consideration the services provided to Union Flights. In addition, Union Flights argues that the SFO Minimum Landing Fee is arbitrary; that the SFO Operating Permit under which Union Flights is required to operate is a "take-it-or-leave-it document;" and that Union Flights had no opportunity to negotiate at fair arms-length the terms and conditions of its permit to operate at the Airport.[30] Union Flight maintains that, as a result of the methodology used by SFO in calculating landing fees, the SFO Minimum Landing Fee assessed for Union Flights' operations at the Airport is excessive in relation to the benefits conferred on it, particularly in comparison to the fees paid by other users of the Airport. As evidence of the alleged methodological inequity, Union Flights submits that it is assessed the same fixed minimum landing fee charged commuter air carriers making more extensive use of airport facilities.[31]

The City takes the position that Union Flights' complaint asserts the unreasonableness of an Airport-imposed air carrier fee; that Union Flights' challenge to, and request for relief from, an Airport-imposed air carrier fee is not within the scope of FAA jurisdiction; that Union Flights failed to provide a reasonable basis for further FAA investigation of its claims; and that Union Flights' complaint should be dismissed.

The City contends that, despite purporting to base its claim on allegations of Airport obligations set forth in 49 USC § 47107(a), *et seq.*, Union Flights' complaint is essentially that the SFO Minimum Landing Fee is unreasonable within the meaning of 49 USC § 47129; and that, even when alleging the existence of unfair, disparate treatment of air carriers serving the Airport, Union Flights' complaint is essentially about an allegedly excessive fee being charged

[28] FAA Exhibit 1, Item 3, Attachment 8.
[29] FAA Exhibit 1, Item 3.
[30] FAA Exhibit 1, Item 3, Attachment 5.
[31] FAA Exhibit 1, Item 3.

for its operations at the Airport in support of which it offers no more than conclusory allegations.

The City argues that Union Flights' allegation about the unreasonableness of the SFO Minimum Landing Fee has been inappropriately filed with the FAA as a complaint under the FAA Rules of Practice, rather than with the U.S. Department of Transportation (DOT) as a request for determination of the reasonableness of the subject fee under the *DOT Rules of Practice in Proceedings,* 14 CFR Part 302, SubPart F, *Rules Applicable to Proceedings Concerning Airport Fees* (DOT Procedural Rules); and that, as such, the matter is now time-barred by the statutory mandate set forth in 49 USC § 47129.

Before addressing the merits of Union Flights' challenge to the reasonableness of the SFO Minimum Landing Fee, it is necessary to address the jurisdictional issue raised by the City in its Motion to Dismiss.

In its Motion to Dismiss, the City argues that Union Flights' allegations are outside the scope of FAA jurisdiction and that Union Flights should have filed its request for a determination of the reasonableness of the SFO Minimum Landing Fee under 49 USC § 47129 and the DOT Procedural Rules.

Upon consideration of the arguments presented by the City, we conclude that the FAA has the authority, and moreover, the responsibility to determine the reasonableness of the subject airport fee.

The FAA clearly has authority, under 49 USC §§ 46101 and 46105, to investigate a complaint with respect to allegedly unreasonable airport rates and charges. These statutory provisions grant the FAA authority to investigate compliance with the provisions of Part A of Subtitle VII of Title 49 of the United States Code, including 49 USC §§ 40103(e), 40116(e), and 41713(b). Title 49 USC § 40116(e) expressly addresses the reasonableness of airport landing fees. Pursuant to 49 USC § 47122, the FAA also has a statutory mandate to ensure that airport owners comply with their sponsor assurances. We find nothing within 49 USC § 47129 that rescinds or cancels the FAA's authority under the aforementioned statutes. Likewise, 49 USC § 47129 does not state that an air carrier may only bring a complaint under the express terms of 49 USC § 47129.

The City argues, *inter alia*, that fee disputes between air carriers and airport proprietors are specifically excluded from the scope of jurisdiction set forth in the FAA Rules of Practice, 14 CFR § 16.1(a), and must be brought pursuant to 49 USC § 47129 using the expedited procedures established in the DOT Procedural Rules.

We disagree with the City's interpretation of the FAA Rules of Practice in this regard. The City-referenced language in the FAA Rules of Practice, 14 CFR § 16.1(a), in pertinent part, provides that

> "[t]he provisions of this part govern all proceedings involving federally-assisted airports, except for disputes between U.S. and foreign air carriers and airport proprietors concerning the reasonableness of airport fees covered by 14 CFR Part 302 [SubPart F], whether the proceedings are instituted by order of the FAA or by filing with the FAA a complaint, under the following authorities:....[t]he assurances contained in grant-in-aid agreements issued under ... 49 USC § 47101, *et seq.*, specifically ... 49 USC § 47107(a) and (b)."

Contrary to the City's interpretation, the language relating to 14 CFR Part 302 in the FAA Rules of Practice, 14 CFR § 16.1(a), was intended to prohibit air carriers from filing fee disputes with the FAA which were the subject of adjudication pursuant to 49 USC § 47129 under the expedited procedures set forth in the DOT Procedural Rules. The provision assures that complaining carriers do not have an opportunity to pursue a determination of the reasonableness of an airport fee in two separate forums within the U.S. Department of Transportation and, thereby, to obtain two possibly conflicting Federal decisions regarding the reasonableness of the same airport fee. Because 49 USC § 47129 does not apply here, neither does its 60-day filing deadline.

Interpreting the referenced language contained in the FAA Rules of Practice, 14 CFR § 16.1(a), as barring all complaints which were not adjudicated pursuant to 49 USC § 47129, but otherwise could have been, would prohibit the FAA from fulfilling its responsibilities under 49 USC §§ 46101, 46105, and 47122. For example, the City's interpretation of 49 USC § 47129 and the FAA Rules of Practice, 14 CFR § 16.1(a), infers that the FAA would have to let stand an unreasonable fee charged to an air carrier simply because that air carrier did not file a complaint with the Department of Transportation within the timeframe specified in 49 USC § 47129. As we explained in the preamble to the FAA Policy on Airport Rates and Charges policy, 61 FR 31994-32022, the expedited procedures under the DOT Procedural Rules and our review under the FAA Rules of Practice serve two distinct purposes. The purpose of the former is to resolve fee disputes between air carriers and airport owners on an expedited basis. The purpose of the latter is to protect the public interest by assuring that airports are operated in a manner consistent with the airport owner's Federal obligations.[32]

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[32] *FAA Policy Regarding Airport Rates & Charges*, 61 FR 32018.

In fact, the FAA Rules of Practice, 14 CFR Part 16, provide an appropriate forum for the FAA to address disputes between air carriers and airport proprietors concerning the reasonableness of an airport's aeronautical fees. The City is not correct when it states such disputes are excluded from Part 16. In its Motion to Dismiss, the City quotes the FAA Rules of Practice, 14 CFR § 16.1(a), only in part. The FAA Rules of Practice, 14 CFR § 16.1(a), also state that the FAA has express authority to investigate and rule on complaints raising issues relating to the reasonableness of an airport's aeronautical fees under the Anti-Head Tax Act, 49 USC § 40116.[33] In addition, we have authority under the FAA Rules of Practice, 14 CFR § 16.1, to address complaints concerning airport fees that either directly or indirectly would constitute an access restriction under the Airport and Airway Improvement Act of 1982, as amended, 49 USC § 47107(a)(1).[34]

Under the City's reasoning, a small air carrier such as Union Flights would be left without any forum within the Department of Transportation to have its fee complaint addressed. Since the City submits that Union Flights accounts for less than 1% of flights subject to the Airport's minimum landing fee at SFO, it is unlikely that Union Flights' complaint would constitute a "significant dispute" under 49 USC § 47129.[35] Therefore, we believe that a complaint similar to the instant complaint, if filed under 49 USC § 47129 would likely be dismissed. In addition, the City argues that the FAA Rules of Practice are also not the appropriate forum for such cases. Thus, we would be left with an absurd result - an air carrier such as Union Flights would be without any administrative means to have its grievances addressed. Such a result is inconsistent with the Federal Aviation Act of 1958, as amended, the Airport and Airway Improvement Act of 1982, as amended, and FAA policy.

Accordingly, we deny the City's Motion to Dismiss the complaint for lack of jurisdiction.

Regarding the allegation that the SFO Minimum Landing Fee is unreasonable, the City contends that Union Flights offers nothing of evidentiary value to support its allegation that the SFO Mininum Landing Fee is unreasonable, or to rebut any of the analysis or documentation provided by the City to support its position that

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[33] FAA Rules of Practice, 14 CFR § 16.1(a)(2).

[34] FAA Rules of Practice, 14 CFR § 16.1(a)(5). See also, FAA Order 5190.6A, *Airport Compliance Requirements*, Chapter 4, Section 4.

[35] Under 49 USC § 47129(c)(2), the Secretary must dismiss the complaint if no significant dispute exists. The City points out that in *Trans World Airlines, Inc. v. City and County of Denver*, Docket OST 95-221; 50414, served July 21, 1995, the Department of Transportation dismissed an airport fee complaint under 49 USC § 47129 for lack of a "significant dispute" because the complaining non-signatory carrier accounted for only 1.5% of the domestic market at Denver International Airport. *See* FAA Exhibit 1, Item 6, Attachment A.

the SFO Minimum Landing Fee, as well as the entire SFO Landing Fee Schedule, is reasonable.[36]

The City states that, in support of the reasonableness of the SFO Minimum Landing Fee, it has submitted for the administrative record in this proceeding the following evidence: (i) detailed description of the SFO cost accounting system used in calculating the SFO Landing Fee Schedule, including the SFO Minimum Landing Fee;[37] (ii) the SFO-Signatory Agreement which provides the underlying guidance and methodology for constructing Airport fees; (iii) analysis of SFO Rates and Charges prepared by an independent accounting firm which describes and illustrates the Airport's methodology for determining landing fee and rental charges;[38] and (iv) the City's Resolution adopting and explaining the SFO Minimum Landing Fee for FY1999-2000.[39]

The City maintains that Union Flights has failed to reply substantively to the City's answer describing the basis for and derivation of the SFO Minimum Landing Fee; that Union Flights effectively concedes the inadequacy of its comparison of airport fees to sustain its burden of proof by failing to answer the City's charge that such comparisons are meaningless and legally irrelevant to the reasonableness of a particular airport's landing fees; and that Union Flights presents no compelling argument for the unreasonableness of the SFO Minimum Landing Fee. The City further argues that Union Flights nowhere rebuts the City's arguments that SFO treats the same all fixed-wing air carriers operating fixed-wing aircraft weighing less than the prescribed threshold landing weight and fails to recover its full costs through the SFO Minimum Landing Fee.[40]

The City states that the charges at issue in the complaint are computed under a residual fee methodology prescribed in the SFO-Signatory Agreement; that, pursuant to the SFO-Signatory Agreement, the Airport is obligated to require all users of the airfield and airport support areas to pay for their use of the airfield; and that, even non-signatory air carriers such as Union Flights are required to pay a fair and reasonable charge for their use of those areas.

Under the residual fee methodology prescribed in the Agreement, air carriers are obligated to pay terminal building rates and landing fees which, when included with all other SFO revenues, are sufficient to cover annual Airport costs.[41] Landing fees are derived for each fiscal year by first computing the total amount of budgeted expenses for the airfield and airport support areas (Airfield Cost Center), and then deducting Airfield Cost Center revenues from sources other

[36] FAA Exhibit 1, Item 8, p. 2.
[37] FAA Exhibit 1, Item 4, Attachment 1.
[38] FAA Exhibit 1, Item 4, Attachment 2.
[39] FAA Exhibit 1, Item 4, Attachment 3.
[40] FAA Exhibit 1, Item 8, p. 5.
[41] FAA Exhibit 1, Item 4, Attachment 2, Exhibit G.

than signatory air carriers. The excess of expenses over such revenues is the basic cost element in the determination of landing fees. Following this calculation, the net expense of the Airfield Cost Center expense is divided by the forecast of air carriers' landing weight to determine the SFO Landing Fee Schedule for the fiscal year. The Agreement specifically provides that the fees charged to non-signatory air carriers will be adjusted periodically to reflect changing costs, *e.g.*, due to inflation, airfield improvements, *etc.* The City submits that the SFO Fee Schedule is reviewed, and revised as warranted, each fiscal year.

The City further submits that the SFO Minimum Landing Fee is charged for small fixed-wing aircraft usage of the Airport by smaller commercial and general aviation aircraft operators; that it is based solely on budgeted expenditures for the Airfield Cost Center and capital costs attributable to operations by smaller commercial and general aviation aircraft; and that, consequently, the SFO Minimum Landing Fee must be considered reasonable.

As further evidence that the minimum landing fee regimen is not unreasonable, the City submits the FY1998-99 budgeted costs of general aviation and air cargo carrier fixed-wing aircraft operations to demonstrate that the SFO Minimum Landing Fee during that period ($48 per landing) was substantially less than the full cost ($58.22 per landing) imposed by small fixed-wing aircraft such as those operated by Union Flights.[42]

We are persuaded that the SFO Minimum Landing Fee is reasonable. The City has offered comprehensive and detailed analytical support for the consistency of the methodology and application of the SFO Minimum Landing Fee with its Federal obligations, while Union Flights has offered little evidence to rebut the City's demonstration that the SFO Minimum Landing Fee is reasonable. For example, the City has provided a detailed breakdown of the budgeted airfield capital and operating costs directly attributable to the operation of fixed-wing aircraft weighing less than the designated threshold landing weight.[43] Union Flights in rebuttal, rather than providing substantive evidence that the budgeted airfield costs are erroneous or improperly allocated to small fixed-wing aircraft operations, asserts that the City has offered no evidence that Union Flights aircraft utilized certain Airport services, *i.e.*, crash, fire and rescue services, attributable to smaller aircraft.[44] We concur in the City's assessment of Union Flights' rebuttal.[45]

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[42] FAA Exhibit 1, Item 4, Attachment 4, pp. 4-5.
[43] FAA Exhibit 1, Item 4, Attachment 4, p.4.
[44] FAA Exhibit 1, Item 7, p. 3.
[45] FAA Exhibit 1, Item 8, p. 3.

We are unable to give credence to Union Flights' argument that it should be exempt from a share of FAA-mandated emergency service costs at the Airport because it has not used the services. While such services may not be required for operations of Union Flights' small fixed-wing aircraft, the Airport is required to provide such services pursuant to its certification under Federal Aviation Regulations (FAR) Part 139.[46] Union Flights and other operators of small fixed-wing aircraft certainly benefit from the availability of such services at the Airport, if only prospectively in case of an operational emergency. Therefore, we believe it is reasonable to allocate to Union Flights and other airport users operating fixed-wing aircraft of less than the designated threshold landing weight the budgeted costs of such services.

Absent any compelling evidence that the budgeted airfield costs allocated to small fixed-wing aircraft operations at the Airport are erroneous under the airport-specific circumstances, we conclude that the SFO Minimum Landing fee is reasonable.

Neither are we persuaded that the SFO Minimum Landing Fee is inequitably calculated. The SFO Minimum Landing Fee appears to be based on a realistic and nondiscriminatory allocation of the Airport's operating and capital costs attributable to operations with aircraft weighing less than the designated threshold landing weight. Union Flights fails to demonstrate that the SFO Minimum Landing Fee was designed in a manner calculated to penalize or that it, in fact, penalizes operators of aircraft weighing less than the designated threshold landing weight. In calculating its minimum landing fees, SFO allocates the costs associated with aircraft operations for each fiscal year, based on the forecasted number of operations and aircraft landing weight. Moreover, even though the City devotes considerable attention annually to establishing a SFO Minimum Landing Fee which will recover the airport costs associated with small aircraft operations, the administrative record makes clear that the FY1998-99 SFO Minimum Landing Fee which Union Flights uses as an example in support of its allegation does not fully cover the allocable costs for operations with aircraft weighing less than the designated threshold landing weight during that period; rather, the minimum landing fee charged during that period only recovered approximately 80 percent of the the airfield costs allocable to Union Flights, as does the currently effective SFO Minimum Landing Fee.[47]

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[46] FAR Part 139, *Certification and Operations; Land Airports Serving Certain Air Carriers*, 14 CFR 139, prescribes rules governing the operation of airports which serve any scheduled or unscheduled air carrier passenger operation conducted with an aircraft having a seating capacity of more than 30 passengers. As such, FAR Part 139 applies to the operation of SFO.

[47] FAA Exhibit 1, Item 4, Attachment 4, p. 3-5, paras. 10-21 and 24-27; FAA Exhibit 1, Item 6, p.6; and FAA Exhibit 1, Item 8, p. 5.

Against this background and under these airport-specific circumstances, the SFO Minimum Landing Fee appears to be neither unreasonable nor unjustly discriminatory in construction and application.

Accordingly, based on the administrative record in this proceeding, we conclude that, insofar as the complaint alleges the unreasonableness of the SFO Minimum Landing Fee, Union Flights' complaint should be dismissed. Similarly, we further conclude that the SFO Landing Fee Schedule, as it is developed and applied to Union Flights or any other airport user operating aircraft weighing less than the designated threshold landing weight at the Airport, is not inconsistent with the Federal obligations applicable at the Airport, and that the complaint, insofar as it raises such issues, should be dismissed.

ORDER

Under the specific circumstances at San Francisco International Airport as discussed, and based upon the evidence of record in its entirety, we find that:

- The City and County of San Francisco, by requiring a weight-based landing fee for aircraft weighing the equivalent of, or more than, a prescribed threshold landing weight and a minimum landing fee for aircraft weighing less than the prescribed threshold landing weight operating at San Francisco International Airport, is operating the airport in a manner consistent with the Federal obligations regarding reasonable and not unjustly discriminatory conditions of airport use set forth in 49 USC §§ 47107(a)(1), (a)(2), (a)(3) and its grant agreements.

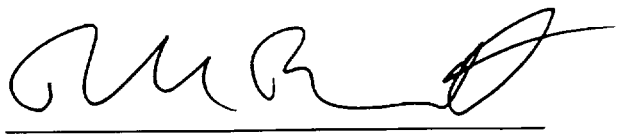
- The Motion to Dismiss the complaint for lack of FAA jurisdiction is denied.

- The minimum landing fee charged for aircraft operations at the San Francisco International Airport is reasonable under applicable Federal law.

ACCORDINGLY, we do not find the City and County of San Francisco to be in violation of applicable Federal law or grant obligations. The complaint is DISMISSED, and all motions in this proceeding not expressly granted herein are DENIED.

RIGHT OF APPEAL

This Director's Determination is an initial agency determination and does not constitute a final agency action subject to judicial review under 49 USC § 46110. *See* 14 CFR 16.247(b)(2). Any party to this proceeding adversely affected by the Director's Determination may appeal this 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

2/15/2000
Date