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*Via E-Mail: Bart.Vernace@faa.gov*
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November 20, 2017

Mr. Bart Vernace
Manager
Orlando Airports District Office
Federal Aviation Administration
5950 Hazeltine National Dr., Suite 400
Orlando, FL 32822

RE: AOPA's August 28, 2017, Informal Part 13 Complaint Against Key West International Airport

Dear Mr. Vernace:

Signature Flight Support Corporation submits this response to AOPA's August 28, 2017, Informal Part 13 Complaint. Although Key West International Airport ("EYW") is the respondent to AOPA's Complaint, at bottom, AOPA challenges the reasonableness of Signature's rate schedule at EYW seemingly for the sole reason that Signature operates the only FBO at EYW. In so doing, AOPA misinterprets FAA guidance, ignores the realities of Signature's business at EYW, and conflates fundamental areas of law and policy. Accordingly, Signature provides the following information in response to AOPA's Complaint in an effort to dispel some of its many inaccuracies and to ensure that County of Monroe (the "County"), as owner and sponsor of EYW, is not unduly burdened by the unfounded assertions regarding airports that have a single FBO service provider.[1]

In its Complaint, AOPA states that "the pricing practices of Signature [at EYW] violate the terms of Grant Assurances 22 and 23 …" (Complaint at 1.) As the FAA knows, these grant assurances only speak to obligations of an airport sponsor—the County—and do not speak to aeronautical service providers at all. True, Grant Assurance 22.b requires the airport sponsor to "insert and enforce provisions requiring the contractor … to furnish services on a reasonable, and not unjustly discriminatory, basis," but there are no allegations that these contractual terms are absent in the lease between the County and Signature (nor could there be, as each applicable lease contains such a provision). And Grant Assurance 23 simply sets forth the exclusive rights prohibition which, in no way, confers obligations on an FBO. In any event, an express statutory exception allows for the existence of a single FBO where airport realities dictate such a reality.

[1] AOPA has filed materially identical Part 13 Complaints against the airport sponsors of Waukegan National Airport (KUGN), Asheville Regional Airport (KAVL), and Heber City Airport (KHCR).

As set forth below, AOPA's complaint challenges legislative decisions that are not subject to the Part 13 process. But even if they were, AOPA fails to show sufficient grounds for an investigation and fails to allege sufficient facts to show that Signature's prices are unreasonable such that the County is violating Grant Assurance.

**AOPA's Complaint Is Not Subject to the Part 13 Process**

As a general matter, despite being framed as a complaint about the County's compliance with Grant Assurances, AOPA is really challenging the propriety of an airport sponsor engaging a single service provider to perform all FBO services at a public use airport. AOPA repeatedly suggests that such an arrangement confers a "monopoly" on the FBO and believes that it *ipso facto* constitutes a breach of the Grant Assurance that prohibits a sponsor from conferring exclusive rights.[2] Although not cited by AOPA, there is also a statutory prohibition on exclusive rights that complements the Grant Assurance prohibiting exclusive rights. *See* 49 U.S.C. § 40103(e)); 49 U.S.C. § 47107(a)(4). Both prohibitions contain an exception to permit single FBOs if it is unreasonably costly, burdensome, or impractical for more than one FBO to provide services, and allowing more than one FBO to provide services would reduce the space leased under an existing agreement between the airport and single FBO. AOPA expressly recognizes in its Complaint that "the current demand for Key West Airport is unlikely to support a second FBO." (Complaint at 5.) Thus, EYW cannot reasonably accommodate more than one FBO at this time, presumably because it would be "unreasonably costly, burdensome, or impractical for more than one FBO to provide services" at EYW. AOPA cannot argue that Grant Assurance 23 has been violated where they explicitly agree that the circumstances at EYW fall squarely within the statutory exception.

Beyond the practical reasons an airport sponsor may not be able to attract or host multiple FBOs—space limitations, usage of the facility, and the realities of market demand—the FAA has been unequivocal that it "does not consider the presence of only one provider engaged in an aeronautical activity as a violation of the exclusive rights prohibition … [w]here the sponsor has not entered into an express agreement, commitment, understanding, or an apparent intent to exclude other reasonably qualified enterprises." *FAA Airport Compliance Manual*, FAA Order 5190.6B ¶ 8.6 (Sept. 30, 2009). Indeed, "The fact that a single business or enterprise may provide most or all of the on-airport aeronautical services is not, in itself, evidence of an exclusive rights violation. An exclusive rights violation is the denial by the airport sponsor to afford other qualified

[2] The statutory basis for Grant Assurances 22 and 23 is 49 U.S.C. § 47107(a). Accordingly, the scope of the FAA's investigatory powers is confined by the terms of § 47107. The FAA does not have the statutory authority to confer cartel status—the result of declaring the presence of a monopoly—on anyone. It is beyond the parameters of FAA's enabling statute and is firmly within the purview of different federal agencies. Accepting AOPA's invitation to label a single service provider as having a "monopoly" raises serious legal issues under both the Administrative Procedures Act as well as due process concerns under the Constitution itself.

parties an opportunity to be an on-airport aeronautical service provider." *Airport Manual*, 5190.6B ¶ 8.9(b).

And in any event, as is standard in the industry, the County relied on a competitive bidding process to ensure that the service provider it chose to work with would not lead it to violate its Grant Assurance obligations. This is the methodology endorsed by the FAA. *Rates and Charges Policy* at 55335. The threat of competitive entry alone is a significant deterrent to any type of unfair or unreasonable pricing for a single service provider. And when Signature's lease is subject to renewal, competitive bidding will again ensure that the terms of the lease are reasonable and within the parameters set forth by the Grant Assurances.

Here, AOPA does not suggest—nor can it—that the County failed to engage in a competitive bidding process, that Signature was selected arbitrarily or to the exclusion of other qualified applicants, or that the County engaged in any other type of conduct that is not expressly condoned and endorsed by the FAA. AOPA does not suggest—nor can it—that the County has entered into an agreement, commitment, or understanding to exclude other reasonably qualified enterprises. And AOPA does not suggest—nor can it—that the County has denied other qualified parties an opportunity to provide aeronautical services at EYW. And AOPA itself believes that "the current demand for [the] Key West Airport is unlikely to support a second FBO." (Complaint at 5.) This undermines AOPA's entire (unfounded) attack on the County's compliance with the Grant Assurances.

**AOPA Fails to Allege Facts Necessary to Warrant an Investigation**

Looking to the specifics of AOPA's Part 13 Complaint, AOPA ultimately attacks Signature's pricing scheme as being unreasonable. It has been long settled that the "FAA will not ordinarily investigate the reasonableness of a general aviation airport's fees absent evidence of progressive accumulation of surplus aeronautical revenues." *Policy Regarding Airport Rates and Charges*, 78 Fed. Reg. 55330, 55332 (Sept. 10, 2013) ("Rates and Charges Policy"). AOPA does not allege, much less prove, that the County has accumulated surplus funds due to an "unfair" or "unreasonable" rate structure at EYW. As described below, AOPA fails to explain why it would be an appropriate or efficient use of the FAA's time to engage in this investigation it seeks.

The FAA has long recognized that "aeronautical services are best provided by profit-motivated, private enterprises." *Airport Manual*, 5190.6B ¶ 8.9(a). This requires an airport sponsor, such as the County, to enter into agreements with service providers. These "complex relationships between the sponsor and its aeronautical tenants" are not micromanaged by the FAA; instead, "the FAA's interest in a lease is confined to the lease's impact on the sponsor's federal obligations." *Airport Manual*, 5190.6B ¶¶ 12.2, 12.4. The FAA will not micromanage these arrangements for several reasons, including because FBO pricing practices are very dependent on the specific aspects of a particular airport and often vary based on factors outside of the FBO's control, including costs of capital expenditures, rental rates, labor costs, insurance premiums, and

maintaining safety standards. The airport sponsor is in a far superior position—and has the obligation—to ensure that the prices offered at the airport are reasonable.

With this in mind, the FAA will review the sponsor-service provider relationship only to "ensure that (a) the sponsor maintains a fee and rental structure in the lease agreements with its tenants that will make the airport as self-sustaining as possible and that (b) the facilities of the airport are made available to the public on reasonable terms without unjust discrimination." *Airport Manual*, 5190.6B ¶ 12.5. Both aspects are present in the leases between the County and Signature.

*First*, the County has an obligation to ensure that EYW is self-sustaining. (Grant Assurance 24.) The FAA recognizes that certain areas of the airport must be subject to strict fee schedules to ensure that the airport remains available to all aeronautical users. *See, e.g.*, *Rates and Charges Policy* at 55333 ("fees imposed for use of the airfield … may not exceed the costs … of providing airfield services and airfield assets currently in aeronautical use."). But, what AOPA fails to mention, is that the FAA "considers the airfield assets to consist of ramps or aprons not subject to preferential or exclusive lease or use agreements." *Rates and Charges Policy* at 55332. Put another way, ramps or aprons that are subject to an exclusive lease—such as the lease between the County and Signature—are permitted to have fees associated with their use that exceed the costs of providing airfield services. Indeed, the FAA has expressly stated that "aeronautical fees for … non-movement area airfield facilities … may be at fair market rate." *Airport Manual*, 5190.6B ¶ 17.10. All of the land, buildings, and facilities leased to Signature are not "movement areas" as that term is defined by the FAA and thus are leased to Signature at "fair market rate." *See* 14 C.F.R. § 139.5 (stating that movement areas do not include loading ramps and aircraft parking areas). This alone should satisfy the FAA that the County is complying with the Grant Assurances. And as a practical point, this leasing structure is the only way that the airport sponsor can satisfy its obligation to be as self-sustaining as possible.

All of this is to say that the Grant Assurances require the County to charge sufficient use fees such that EYW is self-sustaining. A major aspect of this obligation is satisfied in the rate structure associated with leasing the land, buildings, and facilities to Signature. In turn, Signature has the obligation to comply with all the terms of its lease and the right to recover the costs it expends in leasing the land, buildings, and facilities from the County and also to make a profit. Nothing in AOPA's complaint touches on this well-settled aspect of the sponsor-service provider relationship.

*Second*, AOPA argues that Signature's role as the only FBO offering aeronautical services to transient operators is, in and of itself, a violation of the obligation to furnish services and impose charges that are reasonable and not unjust discriminatory. Signature notes that any inquiry into the reasonableness of rates provided at an airport, including Signature's rates at EYW, *must* consider all of the factors that influence pricing, including: the capital investment of the FBO in physical facilities (most of which revert back to the airport sponsor upon completion of the lease);

the long-term financial commitment to operate an FBO; the positive economic impacts the FBO(s) will have at the airport and the community, the prevailing labor supply and corresponding rates; the local fuel inventory levels and costs; federal and local policy requirements including increased insurance limits; safety and related technical training initiatives; and increases in rents and other fees paid by the FBO. These factors not only inform—in a very direct way—the price of services offered at an airport, they also are largely outside of the FBO's control due to the competitive bidding process and concessions that FBO's must make to secure the right to provide services at an airport. AOPA does not consider any of these factors when blindly asserting that Signature's rate structure causes the County to violate the Grant Assurances. AOPA's myopic view on one data point to the exclusion of all else that is relevant is misguided and should be seen for what it is: a baseless complaint.

A contextual approach that is heavily fact specific is, and always has been, the way in which compliance with the Grant Assurances has been satisfied. The FAA has always rejected the invitation to conduct an exhaustive review of the factors related to FBO pricing. *Airport Manual*, 5190.6B ¶ 12.3(a). There is no reason for the FAA to break from its historic practices in this case.

**Signature's Prices at EYW Are Reasonable and Do Not Discriminate**

AOPA's factual allegations fail to show any unreasonable pricing or unjust discrimination. AOPA entirely ignores all aspects of the arrangement between the County and Signature and instead argues that the County has violated its Grant Assurance obligations due to: (1) the price associated with a transient airport user's use of EYW, including the price of fuel; and (2) the fact that there is not self-service fuel farms or self-service tie downs at EYW. At bottom, AOPA seems to think that the County has abdicated its responsibility because EYW has as single FBO and the price for various aeronautical activities is not sufficiently inexpensive enough for AOPA's liking. AOPA seems to infer that transient operators have the right or privilege to utilize self-service amenities. However, the FAA has never recognized such a right or privilege. Each of AOPA's allegations are both factually and legally inaccurate.

*First*, AOPA's argument that a transient user is harmed by the prices at EYW is misplaced and undermined by AOPA's own allegations. For example, AOPA states that Signature's fuel and apron service pricing at EYW is unreasonable based on the fuel prices of five nearby airports. This allegation directly contradicts with AOPA's statement that "transient operators have no meaningful alternative to Key West Airport." (Complaint at 6.) Assuming AOPA means what it says, it is alleging that Marathon International Airport (KMTH) is not a "meaningful alternative" to EYW despite being only 40 miles away. AOPA must be suggesting that the services offered at EYW are materially different and cannot be replicated at MTH (or any of the other airports cited). If that is the case, the alleged price difference associated with operating at ENW and EYW simply reflects the realities of operating under different leases with different obligations and different services provided. Given that it appears that a meaningful alternative exists for transient operators (MTH sells 100LL and Jet A), a transient operator need not terminate at EYW at all. AOPA

cannot cite neighboring airports as a basis for comparing pricing (however misleading this comparison is, see below) when convenient for a portion of its position, but then argue no competitive alternatives exist. Of course, the existence of supply and demand based competitive pricing ensures that the prices offered by FBOs, including Signature, are causally related to the costs associated with operating at a particular airport.

But even assuming AOPA is right that a transient user does not have a meaningful alternative to EYW, when considering raw data from other airports, it is imperative to consider all of the factors that influence the price of goods and services at that airport (many of which are set forth above). AOPA does not examine whether these airports are operating under a proprietary exclusive agreement or if a third-party FBO provides the services. AOPA does not consider whether the airport is operating pursuant to Part 139. Nor does AOPA even mention the financial arrangement between the sponsor and the FBO, the FBO's source of fuel, the quantity of fuel sold by the FBO, the costs associated with obtaining and storing the fuel, the capital investment made by the FBO, or (and perhaps most importantly) what types and amounts of fees are being collected by the airport sponsor through the provisioning of fuel. Each of these factors *must* be taken into consideration when determining the reasonableness of the price structure at any airport. AOPA fails to consider any of these issues which makes it impossible for AOPA to allege, in good faith, that Signature's prices at EYW are unreasonable. Further, AOPA affirmatively agrees that competition exists by virtue of citing neighboring airports as viable alternatives.

AOPA also complains that certain airport users can benefit from discounted fuel rates due to membership in Signature's Loyalty Program and that this amounts to a Grant Assurance violation for the County. This of course is untrue. The fact that an FBO's rates may vary depending on the type of customer is the byproduct of several complex factors, including aircraft size, operator activity level, applicable discount programs, and volume of sales. Simply having different charges for different users in and of itself does not constitute unjust discrimination or otherwise indicate that prices are unreasonable. Indeed, this is how the entire aviation industry operates and is expressly permitted by Grant Assurance 22: "the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers." Grant Assurance 22.b(2).

Finally, AOPA complains that because certain non-aeronautical services are complimentary at Signature it must mean that fees associated with aeronautical services are unreasonable. The FAA has never been in the business of regulating FBO market entry or exit conditions, investment levels, business models, cost-based rates, net operating revenues, adequate rates of return, mergers, or rates and charges schedules. It has been long established that FBO and airport contracting is beyond the purview of the FAA except to the extent necessary to ensure compliance with Grant Assurances. Thus, in this context, the FAA is only concerned with the reasonableness of access provided to airport users at EYW—that Signature may make the business decision to offer certain complimentary services is wholly outside of the FAA's purview.

*Second*, AOPA alleges that the County has violated its Grant Assurance obligations by not providing for a self-serve fuel farm or self-service tie downs. AOPA argues that this, too, violates the Grant Assurances because it requires transient operators to pay Signature fees to access the airport. But the FAA has been clear that "the airport sponsor is not required to encumber the airport with leases and facilities for self-servicing activity." *Airport Manual*, 5190.6B ¶ 8.8(b)(2). And to be sure, "An airport sponsor is under no obligation to permit aircraft owners or operators to introduce fueling equipment or practices on the airport that would be unsafe or detrimental to the public welfare or that would affect the efficient use of airport facilities by the public." *Airport Manual*, 5190.6B ¶ 8.8(b)(3).

Moreover, EYW is a Part 139 airport. Part 139 imposes several requirements on the sponsor that explain why the County has decided that unfettered access on the ramp and apron is unsafe and unwise. For example, the Airport Security Program, as administered by the Transportation Safety Administration, prohibits free access to the ramp and instead requires individuals to possess a valid security badge to access the apron without an escort. As the FAA knows, a transient operator at a Part 139 airport cannot taxi and tie down without approval and a chaperone. Similarly, when departing, the transient airport user could not walk, without escort, to his or her aircraft. These realities of operating a Part 139 airport are not only proper, they are required by federal law. At EYW, Signature's ramp employees are screened by the relevant authority and serve to escort all non-badged personnel—including transient airport users—pursuant to the strictures of Part 139. AOPA seemingly favors free and unfettered access at EYW, the impossibility of which is the fault of neither Signature nor the County.

And even if the realities of a Part 139 airport did not impact Signature and the County, there is no dispute that the County can decide, in its discretion, that permitting transient operators to do certain tasks themselves is unreasonably unsafe given the nature of the airport. *Airport Manual*, 5190.6B ¶ 8.8(a) ("Restrictions on aeronautical operators by airport sponsors for safety must be reasonable."). Whether the County is seeking to protect the aircraft, the airport, or the operators (or all of the above) by restricting unfettered access at EYW, such a decision is not only reasonable, it could be seen as necessary in today's safety environment.

AOPA's statement that the County has violated the Grant Assurances by not permitting transient users the ability to access the airport free of charge is misplaced.

## Conclusion

Signature and the County engaged in arm's length negotiations regarding leasing of the land, buildings, and facilities at EYW. The County, in accordance with its obligations, sought and received the fair market value in these leases in order to be self-sustaining. AOPA does not suggest otherwise. Signature, in accordance with its obligations and rights, seeks to recover its expenditures through a reasonable and not unjustly discriminatory price structure. The FAA should not condone AOPA's attempt to hoodwink it into ignoring FAA guidance on these very

topics; AOPA continually confuses the issues, law, and related policies without considering the realities of the marketplace in today's environment.

To the extent the FAA needs additional information, Signature is available to provide such information or engage in further dialogue.

Sincerely,

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cc:

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