



March 8, 2018

Ms. Heather Haney
Airport Compliance Specialist
FAA Southern Region, Airports Division
Federal Aviation Administration
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RE: Reply to Responses Submitted by the County of Monroe and Signature Flight Support to Informal Part 13 Complaint Against Key West International Airport

Dear Ms. Haney:

We are in receipt of responses from the County of Monroe (County) and Signature Flight Support (Signature) to the informal complaint that the Aircraft Owners and Pilots Association (AOPA), along with certain affected pilots, filed with the Federal Aviation Administration (FAA) pursuant to 14 C.F.R. § 13.1(a). Taken together, the County admits to delegating, with minimal to no restrictions, exclusive control over general aviation transient parking to Signature, a monopoly fixed-base operator (FBO), at Key West International Airport. The County's actions have resulted in the absence of reasonably priced public parking and users being forced to pay for services they do not need, want, or benefit from. As a result, the County has violated Assurances 22 and 23 pursuant to the Airport Improvement Program (AIP) and Airport and Airway Improvement Act of 1982, as amended (49 U.S.C. § 47101, *et seq.*). AOPA respectfully requests the FAA take immediate action to ensure that Signature's aeronautical fees are reasonable and the County complies with its federal grant obligations.

Executive Summary

The County has leased to Signature a critical, public airfield asset under terms and conditions which violate Assurances 22 and 23, as well as the Rates and Charges Policy (Rates Policy). *First*, the County has failed to ensure that Signature's fees for use of the public transient ramp do not exceed the costs of making the ramp available. That transient ramp, although included in Signature's lease, is available for public use and is an airfield asset for purposes of the Rates Policy, regardless who maintains legal control. *Second*, the County improperly leased the entire transient parking ramp to Signature at monopoly rates in conflict with the Rates Policy. Indeed, recent FAA guidance, *FAA Q&As—FBO Industry Consolidation and Pricing Practices*, provides that an airport sponsor cannot contract away its obligation to ensure reasonable FBO pricing. *And finally*, the County's obligations to the Transportation Security Administration (TSA) do not abdicate its responsibility to protect the self-serve privilege and ability for users to reasonably access airfield assets.

More fundamentally, the County has allowed Key West Airport to no longer have any public-use ramp space available. The only apron available for parking is included in Signature's "exclusive use" agreement, subject to whatever Signature can extract from users. An overnight stop at Key West Airport for a transient operator, without a fuel purchase, will cost a Cessna 182T operator nearly \$60.00 and a Pilatus PC-12/45 operator \$548.00. Frankly, it is perplexing and disappointing that the County is not more concerned over the prices being charged to access the airport and, as a corollary, the entire Key West region. The County has effectively privatized access, preventing general aviation users from enjoying the benefits of a public-use airport unless such users are willing to pay Signature's exorbitant prices, often for services they neither use nor want. The users of the national airspace system did not invest over \$90 million into the Key West Airport over the past 35 years so that Signature could be given unfettered control over access to the use and enjoyment of this public asset.

Response to the County and Signature

A. The County has failed to ensure the reasonableness of Signature's pricing and fees.

1. Neither the County nor Signature dispute that fees for use of the only transient ramp space—a public-use airfield asset—exceed the ramp's costs.

The County is in violation of Assurance 22(b) because the public-use ramp included in Signature's lease is part of the airfield and the County has failed to ensure that Signature's fees comply with the Rates Policy. Neither the County nor Signature refute that Signature's fees for use of the transient ramp exceed the ramp's capital and operating costs. The County and Signature also do not dispute that Signature's fees require transient operators to pay for facilities and services which they do not benefit from or use. The single defense made is that the parking apron included in Signature's lease is a non-airfield asset—an exclusive use agreement according to Signature—which allows Signature to charge "fair market value" for its use. Signature offers no justification as to how they came to this conclusion. Notwithstanding that Signature is charging monopoly rates, Signature is mistaken. A ramp offered to all aeronautical users for public use is an airfield asset, regardless who maintains legal control.

Under the Rates Policy, the FAA provides that "[r]ates, fees, rentals, landing fees, and other service charges ("fees") imposed on aeronautical users for the aeronautical use of the airport ("aeronautical fees") must be fair and reasonable." (78 Fed. Reg. 55,330, 55,333 (Sep. 10, 2013).) The Rates Policy establishes more specific guidance and requirements for any fees imposed on users for use of the "airfield"; specifically, revenues from fees imposed for use of the airfield cannot exceed the costs of providing those assets for aeronautical use. (*Id.*) The airfield includes those "ramps or aprons not subject to preferential or exclusive lease or use agreements." (*Id.* at 55,332.)

The ramp space within Signature's lease is an airfield asset available for public use. The FAA's *Airport Compliance Manual* indicates the "airfield" includes those ramps and aprons available to the public. The Order states: "For purposes of the Rates and Charges Policy, the airfield includes runways and taxiways, **public aircraft parking ramps and aprons**, and

associated aeronautical land, such as land used for navigational aids.” (Order 5190.6B, ¶ 18.4, at 18-3 (emphasis added).) This is consistent with the requirement that, under Assurance 22(b), Signature make the ramp available to the public on a reasonable and not unjustly discriminatory basis. Signature has no right to “prefer” certain users over others, and most certainly has no right to “exclude” users from the ramp. In developing the Rates Policy, the FAA also understood that rates are unlikely to be reasonable if the users, such as transient operators, have no ability to negotiate the price. Signature’s contention that the only public-use ramp space is Signature’s for exclusive use defies common sense and is inconsistent with Assurance 22(b) and the FAA’s guidance.

Signature’s argument that non-movement area airfield facilities can be made available at “fair market value” is mistaken. In its only support, Signature proffers an out-of-context and misleading quote from the *Airport Compliance Manual*. (See Signature Response, at 4 (“[A]eronautical fees for . . . non-movement area airfield facilities . . . may be at fair market rate.”).) To the contrary, the FAA actually stated:

“Aeronautical fees for landside or non-movement area airfield facilities (e.g., hangars and aviation offices) may be at a fair market rate, but are not required to be higher than a level that reflects the cost of services and facilities. In other words, those charges can be somewhere between cost and fair market value. ***In part, this is because hangars and aviation offices are exclusively used by the leaseholders while airfield facilities are used in common by all aeronautical users.***” (Order 5190.6B, at 17-4.)

The FAA clearly refers to hangars and aviation offices, not a public-use ramp, in reference to market value. This entire statement is also misleading because hangars and aviation offices are *not* “airfield assets,” as that term is defined in the Rates Policy. Hangars and aviation offices are non-airfield facilities leased to a single user under an exclusive-use agreement. In contrast, the ramp in Signature’s lease—the only parking ramp apron available for general aviation transient users—is a public ramp used by, theoretically, an unlimited number of aeronautical users.

Moreover, as a practical matter, whether a ramp is an airfield or nonairfield asset is determined by the nature and character of its use, not whether the airport maintains legal control. Any contrary finding would lead to confounding results. *First*, Key West Airport would no longer have any public ramp space available to the public. The only ramp space available for parking would be included in Signature’s “exclusive use” agreement, subject to whatever Signature wants to charge users. *Second*, under the Rates Policy, it is undisputed that a publicly owned FBO offering a ramp for parking cannot charge more than cost because such ramp is not subject to any preferential or exclusive use agreement. In contrast, if Signature’s ramp space is not an “airfield” asset, then Signature’s charges for parking would not be limited to cost. There is no rational reason to treat those situations differently, especially when the FAA recently affirmed that an airport cannot waive its responsibility to ensure the reasonableness of pricing through an FBO lease. (FAA Q&As—FBO Industry Consolidation and Pricing Practices, at 4 (Dec. 7, 2017).) *Finally*, other airports would be deterred from offering a parking apron directly to users at cost, and would instead opt to lease, at “fair market value,” that apron to a third party, which could then charge unfettered monopoly rates.

2. Signature is charging monopoly rates for parking services at Key West Airport with minimal to no oversight.

Signature is charging monopoly rates, not “fair market value,” for use of the general aviation parking ramp because (1) Signature is acting as a monopolist, not as a participant in a competitive market for parking services; (2) the County acknowledged it conducts minimal, if any, oversight over Signature’s pricing and fees; and (3) Signature, unlike airports, is *not* subject to the revenue limitations and public disclosure requirements which protect against potential abuse. As such, Signature’s pricing methodology is unreasonable, and the County’s failure to protect aircraft owners from excessive FBO fees and unreasonable pricing practices violate Assurance 22 and is an abuse of their monopoly power. (*See Alaska Airlines v. DOT*, 575 F.3d 750, 760 (D.C. Cir. 2009).)

First, Signature fails to explain how its fees for transient parking reflect fair market value when Signature has a monopoly over general aviation transient parking in the Key West geographical market and is exercising that power through its pricing. Signature is not acting as a participant in a competitive market because there are no reasonable alternatives.¹ The closest comparable airport is Marathon International Airport in Marathon, Florida. A transient user seeking to visit Key West and not park with Signature would have to park their aircraft at Marathon Airport and complete over an hour drive to Key West. This is not a viable alternative for parking and undermines Congress’s intent in establishing a national and uniform system of airports. Signature cannot argue that they charge “fair market value” rates for use of the general aviation public transient ramp.

Second, the County is not mitigating, with its authority and oversight power, the effects of Signature’s monopoly over access to the airport. AOPA appreciates that the County issued a request for proposal (RFP), with no FBO response, soliciting development of land for aeronautical use. However, the County acknowledges that it has delegated control over transient operations to a private company with minimal, if any, oversight or restrictions. This is unacceptable for a federally funded, public-use airport. In recent guidance, the FAA outlined a series of recommendations for airports to follow to stimulate competition at the airport and address unreasonable FBO fees, such as those at Key West Airport. (FAA Q&As, at 5.) Unfortunately, the County has not implemented any of these recommendations, such as making alternative ramp space available for parking, publicly disclosing rates and charges, or retaining control of the only parking ramp.

Third, Signature, unlike airports, has not been bound by any other restrictions preventing abuse of its monopoly position. Despite possessing exclusive control over all transient parking, Signature does not have revenue diversion restrictions; does not have to disclose any information

¹ AOPA disputes, but disregards as irrelevant, the County and Signature’s contention that Signature is engaged in a competitive market for fuel services. AOPA’s complaint listed fuel prices from nearby airports to show the prices users were being forced to pay as a condition of parking at Key West Airport. AOPA did not state, expressly or implicitly, these were viable alternatives to Key West Airport. Any potential competition over fuel services is irrelevant when a single FBO controls all the parking in a geographical market.

regarding its financial position; does not have to explain or justify fee or rates changes; and is subject to little to no oversight by the County. In contrast, federal law requires airports not to divert revenue away from the airport and make certain public disclosures regarding its financial position. (49 U.S.C. § 47107(b); Assurance 25, 26.) Under the Rates Policy, airports are expected to consult users and disclose certain information when proposing changes to their fees. (78 Fed. Reg. at 55,332, 55,336.) Disclosures include historical financial information, an economic and legal justification for the changes, and planning and forecasting information. (*Id.* at 55,336.) Although these protections help guard against unreasonable fees of an airport, which possesses a monopoly over transient parking, Signature has no such restrictions despite occupying the same positioning. As such, any “fair market value” methodology proposed by Signature cannot be considered reasonable under the Rates Policy.

3. The FAA can investigate the reasonableness of Signature’s fees for parking at Key West Airport without an accumulation of surplus aeronautical revenues.

It is disingenuous for Signature to contend that the FAA can only investigate Signature’s fees “absent evidence of progressive accumulation of surplus aeronautical revenues” of the airport. (78 Fed. Reg. at 55,335.) The FAA relies on a number of requirements imposed on airports—including public financial disclosures and limitations on use and amount of airport revenue—to ensure the reasonableness of an *airport’s fees*. The provision about progressive revenue accumulation is another tool to guard against unreasonable fees. (*Id.*) However, this standard is illogical in the context of *Signature’s fees* when Signature is not bound by those disclosure and revenue limitations and when the airport has acknowledged conducting minimal, if any, oversight over its FBO’s fees. Exorbitant fees from Signature or any other FBO would also rarely, if ever, increase the surplus of an airport’s aeronautical revenues.

B. The County has failed to make the Key West Airport available on reasonable terms and conditions.

The County violated Assurance 22(a) and the Rates Policy by leasing to Signature at “fair market value” the only general aviation transient ramp space available for public use. Under the Rates Policy, the fees imposed for the use of any “airfield” ramp or apron cannot exceed the cost of making the ramp available. The ramp apron within Signature’s lease is a public-use ramp and is not being exclusively or preferentially used by an aeronautical user. The County cannot waive, through its lease with Signature, its obligation to ensure the fees for use of that ramp comply with the Rates Policy. (FAA Q&As, at 4.) In leasing the ramp to Signature at a rate above cost, the County has failed to make the airport available on reasonable terms and conditions.

Moreover, the County cannot charge “fair market value” rates to Signature for that ramp. The FAA has no rational basis for requiring airports to make a public-use ramp available at cost, but not an FBO. In addition, as in the case of Signature, the County exercised monopoly power over the parking ramp area; there were no other providers. The lack of any competition prevents the FAA from relying upon the market to ensure that the County’s rates to Signature for leasing the ramp are reasonable.

C. TSA security requirements do not require the County to grant an exclusive right to Signature and unreasonably deny transient operators their self-service privilege.

The County does not dispute AOPA's contention that the right of transient operators to self-serve their aircraft has been denied. On the contrary, Signature contends that TSA security requirements are to blame. In reality, security requirements imposed on the Key West Airport are consistent with the requirement that the County not grant any exclusive right, preserve the ability for users to self-serve their aircraft, and comply with the Rates Policy. As an example, a transient operator could be permitted to park and tie down his or her own aircraft at the public-use ramp space for a fee. In accordance with the Rates Policy, the fee would be based on the costs to make that ramp available, including a reasonable fee for Signature's services in complying with the Airport Security Program. Transient users should have the option, not the mandate, to use Signature's handling services. Unfortunately, the County has chosen to channel these operators to Signature, unreasonably denying their self-service privilege and granting Signature an exclusive right over these services.

D. The County's procedural objections have no merit.

The County's objections on procedural grounds have no legal basis. *First*, contrary to the County's assertion, AOPA, along with certain affected pilots, have no obligation to confer with the County prior to filing an informal complaint with the FAA pursuant to 14 C.F.R. § 13.1(a). Any recommendation from the FAA's Airport Sponsor and User Rights Brochure is not binding. Nevertheless, AOPA is always willing to engage with the County to determine if any of the issues can be resolved. *Second*, no person submitting a report under § 13.1(a) is required to have been affected by the County's actions. Even still, AOPA represents transient operators who have been directly and substantially affected by Signature's unreasonable prices, and the informal complaint was filed in conjunction with aircraft owners who visited Signature at the airport.

For these reasons, we request that the FAA direct the County to bring Signature's pricing practices into compliance with the grant obligations the County agreed to when they accepted federal funds. This is necessary to protect reasonable access into Key West Airport, a critically important issue to the community of Key West and all general aviation operators. Please do not hesitate to reach out if you have any questions or need any clarification of the issues raised.

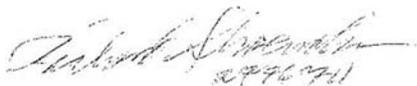
Sincerely,



Kenneth Mead
General Counsel
Aircraft Owners and Pilots Association



Robert Vila



Richard Shoemaker

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March 8, 2018
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cc:

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