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August 28, 2017

Mr. Ken Martin
Deputy Director
Aeronautics Division
Illinois Department of Transportation
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RE: Informal Part 13 Complaint Against Waukegan National Airport

Dear Mr. Martin:

Pursuant to 14 C.F.R. § 13.1(a), the purpose of this letter is to inform the Illinois Department of Transportation (IDOT) that the pricing practices of Signature Flight Support (Signature) at the Waukegan National Airport (UGN) violate the terms of Grant 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.*). Today we request that the IDOT:

- Investigate Signature's pricing practices at Waukegan Airport,
- Direct the Waukegan Port District (the Port), as owner and sponsor of the Waukegan Airport, to immediately bring Signature's pricing practices into compliance with the Port's grant assurances, and
- Take any other appropriate action to ensure Signature charges reasonable aeronautical fees to airport users.

Executive Summary

In the interest of creating a safe and efficient nationwide system of public-use airports that meets the needs of civil aeronautics, Congress has empowered the FAA to guard against potential monopolistic behavior at airports and prohibit, through grant assurances, the unreasonable and discriminatory pricing for aeronautical facilities and services. These assurances are necessary to protect general aviation's ability to access local communities and, conversely, local access to the national transportation system. The Port has obligated itself and the Waukegan Airport to accomplish these objectives through the receipt of federal funding. Since 2009, the airport has received over $12 million in funds through Illinois's participation in the FAA's State Block Grant Program (SBGP) for maintaining and improving the airport for the public's benefit.

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Signature is the only fixed-based operator (FBO) at Waukegan Airport, controls all the ramp space available for transient operators to park, is the only fuel provider, and thus possesses a monopoly position and significant power over access to a public airport. Many FBOs with these privileges protect the airport for public use by not abdicating its responsibility to charge reasonable and fair pricing; however, that is not the case here. Signature is using its monopoly position to charge unreasonable fees for fuel and the use of transient ramp space by forcing many operators to pay for services which they do not benefit from or use. As a corollary, Signature's pricing has precluded access to the airport on reasonable terms and conditions and unreasonably restricted an aircraft owner's self-service privilege. The Port has been aware of the unreasonable charges and accompanying grant assurance violations, but no actions taken thus far have led to any relief. Consequently, Signature has put the Port and the community of Waukegan in jeopardy of losing grant funds.

More generally, Signature's pricing is symptomatic of a broader problem at Waukegan Airport: a critical, public airfield asset has been placed into the hands of a single private FBO, which is imposing charges with insufficient oversight and under different standards than if the asset were in the hands of the airport. With only one FBO controlling all transient ramp space and fuel services, the ability for general aviation operators to access the community of Waukegan has become subject to the FBO's monopoly power. This is not good for the city of Waukegan or general aviation, and it goes entirely against the intent of Congress. The IDOT must exercise its investigative oversight authority and take appropriate action to ensure Signature's pricing complies with the Port's grant assurances.

Signature's Pricing at Waukegan Airport

Signature has become the exclusive gatekeeper over all transient access to Waukegan Airport, a public-use airport maintained and developed with taxpayer dollars. Signature is the only FBO offering fuel and parking services for transient operators at Waukegan Airport. The airport does not provide its own self-serve fuel station as a means of driving down Signature's fuel prices. Nor does the airport offer separate transient ramp space for aircraft operators to park if he or she does not want to pay Signature's exorbitant prices. *Any transient aircraft operator seeking to land at Waukegan Airport has no choice but to pay Signature for access*.

Signature's power at the airport is reflected in its pricing. Signature imposes a fee-or-fuel pricing arrangement upon any aircraft operator using its ramp space, ensuring that each operator's visit to the *airport* results in revenue to the FBO. A transient operator stopping at Signature will be charged a "handling fee" and an "infrastructure fee," regardless of how long the aircraft stays at the Signature ramp. If the aircraft remains on the ramp overnight, an additional, non-waivable "overnight fee" is assessed. The handling fee can be waived by purchasing a minimum amount of fuel or by holding a Signature Loyalty Program member with platinum status.[1] Only turbine-powered aircraft owners flying under instrument flight rules with a filed flight plan can qualify for membership benefits.

[1] Platinum members are those who visit Signature "more than ninety percent (90%) of the time during the prior quarter when they fly in to airports where there is a Signature FBO." Signature Status Terms and Conditions, https://www.signatureflight.com/programs/signature-status-terms (last visited Aug. 13, 2017).

Signature's extraordinary control over the airport, in conjunction with its pricing practices, has resulted in transient operators being forced to pay unrestrained FBO fees to gain access to Waukegan Airport. As the table below illustrates, a transient operator with a Cessna 182T stopping at Signature's ramp will be charged a $60.00 handling fee and a $5.00 infrastructure fee, regardless of how long the aircraft stays. The handling fee is only waived if the operator purchases 10 gallons minimum of fuel. That means each Cessna 182T operator stopping at the airport, however briefly, must pay at least $65.00 to Signature. Staying overnight is an additional $34.00 charge. For a PC-12/45 operator to stop at Waukegan Airport, however briefly, the minimum fee to Signature is $385.00. A single 24-hour visit to Waukegan Airport for a transient operator, without purchasing fuel, will cost a PC-12/45 operator $563.00 and a Cessna 182T operator $99.00.

	No Fuel Purchase		Fuel Purchase	
	C-182T	PC-12/45	C-182T	PC-12/45
Handling Fee	$60.00	$360.00	$0.00	$0.00
Infrastructure Fee	$5.00	$25.00	$5.00	$25.00
Min. Fuel Fee	$0.00	$0.00	$59.90	$661.00
Fuel Price ($/gal.)	-	-	*FS: $6.60* *SS: $5.99*	*$6.61*
Min. Gallon Purchase (gal.)	-	-	*10*	*100*
Min. FBO Fee	**$65.00**	**$385.00**	**$64.90**	**$686.00**
Each Overnight Fee	$34.00	$178.00	$34.00	$178.00
Min. FBO Fee, 24-Hour Visit	**$99.00**	**$563.00**	**$98.90**	**$864.00**

Source: Signature Waukegan, August 2017.

Signature's imposition of handling fees is a mechanism to force transient operators to purchase fuel when they otherwise may not. The fuel they are being forced to purchase is priced at a premium, particularly in comparison to nearby public-use airports. As provided in the following table, five airports within 35 miles offer significantly cheaper fuel prices compared to Waukegan. More than a $3 per gallon difference in Jet A fuel separates the Kenosha and Waukegan airports.

Airport	Distance from UGN	100LL SS	100LL FS	Jet A FS
Waukegan National Airport (UGN)	0	$5.99	$6.60	$6.61
Kenosha Regional Airport (ENW)	11 miles	$4.29	$4.79	$3.39
Batten International Airport (RAC)	20 miles	-	$3.99	$3.99
Lake in the Hills Airport (3CK)	24 miles	$3.78	$4.50	$3.25
Burlington Municipal Airport (BUU)	25 miles	$3.59	-	-
East Troy Municipal Airport (57C)	32 miles	$3.87	-	-

Source: AOPA Airport Directory, August 2017.

Over the past year, at least, the Port and its airport manager have been fully aware of Signature's monopoly power, which has led to decreased airport activity and increased fuel prices relative to nearby airports. The Port has recognized, as illustrated through the following sample of Board meeting minute excerpts, the effect of Signature's pricing on access to the airport and the need for competition.

> “There are a couple of customers that are not happy with Signature currently, so some thoughts are possibly the Port running self-service fuel options, when contracts are up what does the Port want from a renewal that can benefit the grown [sic] and a more independent option for customers at the airport. Currently the airport is the third highest in the state of Illinois in the fuel category.” (Waukegan Port District, Minutes of Regular Board Meeting, July 20, 2016, at 5.)
>
> “Mr. Goss reported that December fuel is down 12% for the same period as last year. The year-end totals from 2015 to 2016 were down 2%. . . . Others are up an average of 20%. FBO is down 20% over the same period as last year. The team is trying to analyze the reasons for this. The Airport has the third-highest fuel cost in the state. FBO has a monopoly and that may be chasing business away.” (Waukegan Port District, Minutes of Regular Board Meeting, Jan. 18, 2017, at 5.)

The overall effect of Signature’s power and pricing is self-evident. Any transient operator must pay a minimum FBO fee to access Waukegan Airport. While an airport’s landing fees are subject to strict standards, Signature’s FBO fees have gone unrestrained, resulting in decreased access.

Failure to Comply with Grant Assurances

A. Signature’s pricing model violates the Port’s assurance that any airport contractor will charge a reasonable price for each aeronautical service rendered.

As part of the AIP, the Port made a binding commitment that Waukegan Airport will be made available for public use on reasonable conditions and without unjust discrimination. (Assurance 22(a).) To further this assurance and preserve access, any FBO engaged in aeronautical activity must offer its services on a “reasonable basis” and charge “reasonable, and not unjustly discriminatory, prices for each unit or service . . . .” (Assurance 22(b).) The FAA recently emphasized the airport’s “right and responsibility” to ensure reasonable and competitive FBO pricing. (*Signature Flight Support Corp. v. Cty. of Orange*, FAA Docket No. 16-17-02, at 6 (July 21, 2017).) These obligations collectively preserve access to airports considered critical to the nation’s transportation infrastructure and worthy of the investment of federal funds. Signature’s pricing practices are fundamentally unreasonable for the reasons outlined and have led to the Port’s noncompliance with Assurance 22(b).

1. Signature’s aeronautical fees are unreasonable for requiring transient operators to pay for facilities and services which they do not benefit from or use.

Signature’s pricing model is unreasonable because Signature requires transient operators to pay for services—which the operator may not need, want, or use—as a condition of engaging in an aeronautical use of Signature’s facility. Signature Waukegan’s aeronautical services primarily include storing and parking of aircraft on its ramp space, and providing fuel to aircraft operators. (FAA Order 5190.6B, at 314 (defining “aeronautical activity”).) Signature Waukegan also offers a series of nonaeronautical services, including a business center, conference rooms, courtesy crew cars, crew rooms, a fireplace, golf cart service, automobile parking, a snooze room, complimentary magazine and cookies, among other amenities.[2] (*See id.* at 18-2 ("Nonaeronautical uses include public parking, rental cars, ground transportation, as well as terminal concessions such as food and beverage and news and gift shops.").)

Signature only collects fees from the transient operator if that operator engages in an aeronautical activity such as parking an aircraft on Signature's ramp or purchasing fuel. Signature's handling and infrastructure fees are imposed as soon as the aircraft is parked on the ramp, not for receiving any other unrelated services. Signature does not collect an additional or separate fee for rendering nonaeronautical services to the operator. Signature clearly recovers the costs of providing nonaeronautical services—snooze room, crew car, among others—from the fees imposed for the operator's aeronautical use of Signature's ramp. If the operator does not use any of those services, however, the operator is effectively being charged for the cost of services not requested, sought, or received simply for showing up at the airport. This is unreasonable. Fundamentally, operators should not be forced to pay for the cost of nonaeronautical services and facilities which the operator does not use or benefit from.

Instead, Signature's fees must bear a causal relationship to the cost of the services rendered. The FAA's Policy Regarding Rates and Charges (Rates Policy) outlines the standards for determining whether an airport's fees—imposed on aeronautical users for aeronautical use of the airport—are reasonable. (78 Fed. Reg. 55,330 (Sep. 10, 2013).) The FBO is properly bound by that same reasonableness standard. (Assurance 22(b).) Indeed, the airport and FBO—by virtue of their control over essential facilities—are acting in identical capacities; to wit, both have the power to restrict airport access through egregious pricing. In the Rates Policy, the FAA stresses a core principle that any fees assessed for aeronautical activity must be based on costs causally related to the activity. (*See* 78 Fed. Reg. at 55,333–34.) As a corollary, aeronautical users engaged in an aeronautical activity must not be forced to pay for the costs of nonaeronautical services or facilities which they do not benefit from or use. (*Id.* at 55,331.)

2. Signature's fees for use of the ramp space are unreasonable because they far exceed the ramp's capital and operating costs.

Signature's fees for use of the transient ramp space are unreasonable because such fees exceed the costs of maintaining and operating such ramp space. Under the Rates Policy, airports cannot charge fees for "airfield facilities and services"—runways, taxiways, and airport-provided parking ramps—which would exceed the cost of providing those facilities and services. (78 Fed. Reg. at 55,332–33; FAA Order 5190.6B, at 18-3, 18-6.) For an airport-provided transient ramp, the FAA strictly limits the types of costs an airport can include in the rate base for purposes of setting fees for an operator's aeronautical use of that ramp. (78 Fed. Reg. at 55,333–34.) The FAA prohibits allocating any costs to the rate base except for those expenses associated with operating the public ramp and the capital costs for its development. (*Id.* at 55,334.)

The FAA has more stringent standards for imposing fees on critical airfield assets, such as landing fees, because of the airport's monopoly over these facilities and services. (*See* Proposed Policy Regarding Airport Rates and Charges, 60 Fed. Reg. 47,012, 47,013 (Sep. 8,

[2] Signature UGN, Fixed Base Operator (FBO) at Waukegan National Airport, https://www.signatureflight.com/locations/ugn (last visited Aug. 13, 2017).

1995) ("For airfield assets—runways and taxiways—there is greater risk that airport proprietors may enjoy locational monopoly power.").) In the case of a single FBO with control over *all* transient ramp space, the same strict requirements in the Rates Policy apply to fees for use of that FBO's ramp. If the ramp is the only option for parking, the FBO's ramp space becomes equally as valuable for access to the airport as the taxiways and runways, and must be protected in the same manner, whether controlled by the airport or an FBO. Under this standard, Signature's fees for use of the ramp space are unreasonable because they are based, in part, on costs of facilities and services unrelated to its development and operation.

3. Waukegan Airport lacks competitive or regulatory forces to ensure the reasonableness of Signature's pricing.

Waukegan Airport lacks any competitive forces to ensure that Signature maintains reasonable pricing for its services. Signature is the only FBO at the airport, and it controls all the transient ramp space and fuel services. Waukegan Airport has no airport-provided self-serve fuel station or alternative ramp space. The lack of another FBO or alternative to Signature provides Signature with unfettered monopoly power over these critical and basic aeronautical services. Moreover, the current demand for Waukegan Airport is unlikely to support a second FBO; meaning, no threat of competitor entry exists to pressure Signature into reducing its charges. This also demonstrates how minimal, if any, bargaining power transient operators have against Signature. The transient nature of their operations do not typically allow for negotiated rates.

Furthermore, transient operators have no meaningful alternative to Waukegan Airport. For most operators, the airport selected is based on its proximity to their ultimate destination. The inconvenience and cost of traveling to another airport for refueling at a lower price outweighs any fuel price differences between the airports. Operators do not have the option to simply "go elsewhere" if they are dissatisfied with the airport's FBO pricing. As a result, Waukegan Airport is a distinctive market in which Signature enjoys a monopoly over critical aeronautical services.

There is also insufficient oversight over Signature to substitute for competitive forces. FBOs are not required to be transparent with their pricing. Unlike airports, FBOs are not obligated to publicly disclose financial information about its operations at the airport. (49 U.S.C. § 47107(a)(15), (19).) Airports, not FBOs, are limited by how it may expend any revenues generated. (*Id.* § 47107(b).) These are critical tools for the FAA and IDOT to monitor and curtail potential airport monopoly pricing, including the diversion of revenue away from the airport, but are not available with regards to ensuring the reasonableness of an FBO's fees. The lack of oversight has prevented any transient operator from being assured that Signature's pricing is within the ballpark of reasonable.

B. **Signature's pricing model and exclusive control of transient parking presents unreasonable conditions for transient operators to access Waukegan Airport.**

The combination of Signature's pricing model and its exclusive control over all transient parking at Waukegan Airport presents unreasonable conditions and terms for transient operators to access the airport. (*See* Assurance 22(a).) Signature uses its monopoly power to require any transient operator to either pay fees or purchase fuel. The fees are grossly disproportionate to the services rendered (e.g., tie down), and the fuel is sold at a premium relative to nearby airports. Making the airport available to transient operators on this condition—pay an excessive fee for a needed service, or pay a premium for a product which may not be needed—is unreasonable. The obligation to protect airport access applies regardless if the unreasonable terms are imposed by the airport or a commercial tenant such as a FBO. (FAA Order 5190.6B, at 9-1 ("The tenant's commercial status does not relieve the sponsor of its obligation to ensure the terms for services offered to aeronautical users are fair and reasonable and without unjust discrimination.").)

C. **Signature's pricing model and exclusive control of transient parking unreasonably restricts a transient operator's privilege to self-service their aircraft.**

The Port obligated itself to not grant any right or privilege which prevents any aircraft operator at Waukegan Airport from performing any services on its own aircraft that it may choose to perform. (Assurances 22(f), 23.) Similarly, the Port is forbidden from granting any exclusive right to any person providing aeronautical services to the public. (*Id.*) The FAA has identified the tying down of an aircraft as a service which the aircraft operator is permitted to perform in accordance with any reasonable restrictions imposed by the airport. (FAA Order 5190.6B, at 8-8–8-9.) These assurances are critical to fostering competition against FBOs by allowing an aircraft operator to perform his or her own services if the FBO's prices are too high.

At Waukegan Airport, Signature provides the only available aircraft tie-down services, but requires a transient operator to either pay fees or purchase fuel. While Signature may permit the operator to tie down the aircraft him or herself, the required fees or fuel purchase remain unchanged. That means all transient operators must pay for tie-down service regardless whether the operator chooses or is permitted to do it him or herself. In effect, all transient aircraft tie-down activities have been channeled to a commercial provider, Signature, requiring the operator to pay to have the aircraft parked. (FAA Order 5190.6B, at 8-9 ("Restrictions imposed by an airport sponsor that have the effect of channeling self-service activities to a commercial aeronautical service provider may be an exclusive rights violation.").) Signature's tie-down fees, combined with no parking alternative, constitute an unreasonable restriction on the operator's self-service privilege and an exclusive rights violation.

Conclusion

Based on the foregoing, we request that the IDOT investigate Signature's pricing practices and take the necessary action to ensure that Signature's aeronautical fees are reasonable and the Port complies with its grant obligations. Addressing the unreasonableness of Signature's fees, which have led to decreased access to the Waukegan Airport, is a critical matter to the community of Waukegan, general aviation operators, and the entire national air transportation system. We trust that the IDOT will give this matter urgent attention. Please reach out if you have any questions or need any clarification of the issues raised.

Sincerely,

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Aircraft Owners and Pilots Association

Michael Caban

Denis Doster

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