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Jim Waldrop
President
Jackson Hole Airport Board
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Re: Application to Operate a Fixed-Based Operator Facility at Jackson Hole Airport

Dear Mr. Waldrop:

The Aircraft Owners and Pilots Association (AOPA) understands the Jackson Hole Airport Board (Board) is currently considering an application from Wyoming Jet Center, LLC (WJC) to develop and operate a fixed-based operator (FBO) facility at Jackson Hole Airport (JAC). As the world's largest aviation membership organization, AOPA has made it a priority to ensure the affordability of accessing local airports by increasing FBO competition and reducing excessive FBO pricing and fees. Today we strongly urge the Board to act favorably on WJC's application, and emphasize the Board's statutory obligations under the Federal Aviation Administration's (FAA) Airport Improvement Program (AIP). We note also the recommendations of the General Aviation Manufacturers Association (GAMA) and the Experimental Aircraft Association (EAA) regarding the establishment of a second fixed base operator at Jackson Hole.

Under the AIP grant assurances, the Board agreed not to grant any "exclusive right," whether expressly or by implication, to a single FBO at the airport. The Board also committed to making JAC available to all types and classes of commercial activity, such as FBOs, on reasonable conditions and without unjust discrimination. Equally important, the Board is responsible for ensuring each FBO is charging reasonable and nondiscriminatory prices for any services rendered. Violating any of these assurances may result in the termination of grant fund eligibility. AOPA has received reports of excessive prices and fees from JAC's single FBO. In our opinion, approving WJC's application would greatly strengthen the Board's ability to comply with AIP grant assurances and avoid exposure to a loss of AIP grant funds. As distinguished from the current situation where prices are established by the sole incumbent FBO, a two FBO environment would better ensure more reasonable and competitive pricing and fees for all classes of users.

AOPA has long stressed the value and necessity of airports for promoting aviation and air travel, and bringing affordable access and economic benefits to local communities like Jackson Hole. In addition to ensuring compliance with AIP grant assurances, it is in the public's interest, at the local and national level, for the Board to permit the operation of a second FBO at JAC. Since 1983, the Board has received and benefited from over \$88.6 million in federal grant funds to develop and improve JAC. Promoting fair FBO competition will reduce the costs for both commercial and general aviation operators at JAC, and allow the public to fully realize the grant benefits JAC received from aeronautical users and taxpayers.

Importance of the Board's Grant Assurances

To ensure the development and safe operation of a national airport and airway system, the FAA is responsible for creating and maintaining a plan for developing U.S. public-use airports, known as the National Plan of Integrated Airport Systems (NPIAS). (49 U.S.C. §§ 47101(a), 47103.) NPIAS includes the airports identified by the FAA which are required for a “safe, efficient, and integrated system of public-use airports adequate to anticipate and meet the needs of civil aeronautics.” (Id. § 47103(a).) Equally important, NPIAS advances Congress’s goal of developing a transportation system which provides the public and aeronautical users with access to both urban and rural communities across the country. (Id. § 47101(b)(5).)

Under the FAA’s AIP, any airport identified in NPIAS is eligible to receive federal grants for airport development projects. (Id. § 47103(a).) The provision of funds to local airports like JAC furthers the country’s interest in maintaining a “safe and efficient nationwide system of public-use airports” for civil aeronautics, and ensuring “public interest in civil aviation will be served.” (Id. § 47104(a); FAA Order 5190.6B, at 1-1, 2-6.) In the case of Jackson Hole, JAC provides the public with efficient and essential access to two of the nation’s most visited national parks, Grand Teton and Yellowstone. Without the AIP, affordable access to these highly demanded regions of the United States would not be possible.

Grant Assurances Applicable to WJC's Application

Exclusive Rights Prohibition. To protect and foster affordable access to communities like Jackson Hole, Congress enumerated a series of written assurances that airport sponsors must agree to before receiving federal funding for development projects. (49 U.S.C. § 47107(a).) One of these assurances is that the airport will not grant an “exclusive right” to any person providing, or intending to provide, aeronautical services to the public. (Id. §§ 40103(e), 47107(a)(4); Assurance 23.) These “aeronautical services” include services offered by an FBO, such as aircraft storage, fuel sales, or maintenance. (FAA Order 5190.6B, at 8-3, 314.)

Prohibiting exclusive rights at certain airports has been a fundamental policy emphasized in major pieces of aviation legislation for over 90 years. (Air Commerce Act in 1926, Pub. L. No. 69-254, § 5(b), 44 Stat. 568, 571; Civil Aeronautics Act of 1938, Pub. L. No. 75-706, § 303, 52 Stat. 973, 986; Federal Aviation Act of 1958, Pub. L. No. 85-726, § 308(a), 72 Stat. 731, 750–51 (codified 49 U.S.C. § 40103(e)); Airport and Airway Improvement Act of 1982, Pub. L. No. 97-248, § 511(a), 96 Stat. 671, 686 (codified 49 U.S.C. § 47107(a)).) The primary intent of the provision is to promote fair competition at public-use airports where federal funds have been expended. (FAA Advisory Circular (AC) 150/5190-6, at 2; FAA Order 5190.6B, at 8-4.) FBOs holding a monopoly position over certain aeronautical services increase prices and deprive users of fully realizing developments paid for by taxpayers through the federal government. Excessive fees can effectively foreclose access to the public use airports altogether for certain classes of users.

An express agreement to grant an “exclusive right” to any person is not required for an airport to violate the exclusive rights provision. (FAA AC 150/5190-6, at 8.) An airport can grant an exclusive right through the “imposition of unreasonable standards or requirements, or by any other means.” (Id.) As an example, many public-use airports adopt minimum FBO operating standards, such as JAC’s “Minimum Standards and Requirements for the Conduct of Commercial Aeronautical Activities.” These minimum standards cannot be used to protect an exclusive right. Applying any unreasonable requirement or standard to the prospective FBO’s activities is a constructive grant of an exclusive right. (See *City of Pompano Beach v. FAA*, 774 F.2d 1529, 1542 (11th Cir. 1985); FAA Order 5190.6B, at 10-2.)

Only one statutory exception exists to the exclusive rights prohibition. A single FBO providing services at JAC is permitted if two conditions are met: (1) it is unreasonably costly, burdensome, or impractical for more than one FBO to provide the services; and (2) allowing more than one FBO to provide the services requires a reduction in space leased under an agreement existing between JAC and the single FBO. (49 U.S.C. §§ 40103(e), 47107(a)(4).) From AOPA's understanding, WJC has more than adequately addressed each of the Board's questions in response to the application. WJC has also not requested, nor would it be required, that the Board reduce the space currently leased to Jackson Hole Aviation, LLC, the only FBO at JAC. Consequently, the Board cannot refuse to afford qualified persons such as WJC the opportunity to be an on-airport aeronautical service provider. (FAA Order 5190.6B, at 8-10.)

Reasonable Conditions for Airport Access. A separate, but equally important, grant assurance is the airport's binding commitment that the airport will be made available for public use on reasonable conditions and without unjust discrimination to all types and classes of aeronautical activity, including commercial activities offering services to the public. (49 U.S.C. §§ 47101(a)(9), (d), 47107(a)(1); Assurance 22(a).) This assurance is a cornerstone of airport development and has been incorporated into each significant iteration of the federal aid program. (See Federal Airport Act of 1946, Pub. L. No. 79-377, § 11, 60 Stat. 170, 176; Airport and Airway Development Act of 1970, Pub. L. No. 91-258, § 18, 84 Stat. 219, 229; Airport and Airway Improvement Act of 1982, Pub. L. No. 97-248, § 511(a), 96 Stat. 671, 686.)

Under this economic nondiscrimination obligation, the Board must "negotiate in good faith and on reasonable terms with prospective aeronautical service providers" if adequate space at JAC is available. (FAA Order 5190.6B, at 9-9.) The Board also does not have discretion in determining whether sufficient business activity exists to justify an additional FBO; the willingness of a prospective provider to lease space is deemed evidence as a public need for those services. (Id.) While demand, location, facility conditions, and similar factors may justify differing lease conditions or rates, the Board cannot deny access on those grounds.

AOPA understands the Board is considering whether a second FBO can be safely operated at JAC. While an airport may prohibit or impose limits on certain aeronautical uses to ensure the safe operation of the airport, any such restrictions must be reasonable and not discriminatory. (49 U.S.C. § 47107(a)(1); Assurance 22(h), (i).) In addition, the FAA has final authority to determine whether the services offered by a FBO sufficiently compromise safety to prevent the FBO from accessing the airport. (FAA Order 5190.6B, at 8-8, 14-2.) The FAA must review and approve any application denial on safety grounds issued to a prospective aeronautical service provider like WJC. (Id.)

Moreover, an airport must reasonably accommodate an aeronautical activity if the activity could be safely conducted at the airport on less restrictive terms than the terms proposed by the airport sponsor. (Id. at 14-5.) This would require the airport to remove or revise the prohibition or restriction for the airport to remain in compliance with the grant assurances. In this case, the Board cannot deny WJC access to the airport based upon its minimum standards when a revision of those requirements would accommodate WJC and not interfere with the safe operation of JAC. (Id. at 14-6.)

AOPA is also aware that Jackson Hole Aviation, LLC (JHA), intends to present a safety and operations report regarding applications for a second FBO to operate. A letter from its attorney strongly suggests the purpose of the report is to ensure the denial of WJC's application, effectively eliminating competition at the airport. AOPA cautions the Board against denying an FBO application on any alleged safety concerns, especially when the Board has historically been willing and able to accommodate multiple FBOs on the airport. Such a denial would likely implicate the exclusive rights

assurance, as described above, and the assurance to offer JAC to the public on reasonable conditions and without unjust discrimination.

Reasonable FBO Pricing. As a component of economic nondiscrimination, airports are obligated to ensure that FBOs are charging reasonable and not unjustly discriminatory prices for any services rendered to the public. (49 U.S.C. § 47107(a)(1); Assurance 22(b)(2).) In the case of JAC, AOPA has received complaints from members over JHA's high fuel prices and fees which were grossly disproportionate to the services rendered. As a leading advocate in general aviation, AOPA knows that high prices from FBOs deter pilots and operators from flying into that airport. Allowing a second FBO operator like WJC to offer services to the public will increase FBO competition, provide more access to JAC with reduced costs, and enable the Board to fulfill its grant assurances more adequately.

Consequences of Violating Grant Assurances

Congress has provided the FAA with broad authority to ensure airport compliance with AIP grant assurances. The FAA is authorized to conduct investigations, issue any orders the agency deems necessary to ensure compliance with the assurances, and enforce such orders through federal courts. (49 U.S.C. §§ 47111(f), 47122; FAA Order 5190.6B, at 8-13.) For instance, federal courts have declared leases between airports and commercial tenants void to the extent those leases are in violation of the statutory grant obligations. (See *Niswonger v. Am. Aviation, Inc.*, 411 F. Supp. 769, 771 (E.D. Tenn. 1975).)

Any violation of the FAA's AIP grant assurances could result in an informal FAA investigation under 14 C.F.R. part 13, or a more formal complaint process under 14 C.F.R. part 16. (49 U.S.C. § 47106(d); 14 C.F.R. § 16.109.) It is in the best interests of the aviation industry, the Board, and the local community of Jackson Hole for the airport to maintain compliance with its grant assurances in rendering a decision on WJC's application.

Accordingly, AOPA appreciates the Board's consideration of our letter and strongly urges favorable action on WJC's application. Doing so will promote a fair, competitive FBO environment at JAC and increase affordable public access to the community of Jackson Hole.

Sincerely,



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