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Ms. Heather Haney
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Federal Aviation Administration
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RE: Reply to Responses Submitted by Greater Asheville Regional Airport Authority and Signature Flight Support to Informal Part 13 Complaint Against Asheville Regional Airport

Dear Ms. Haney:

We are in receipt of responses from Greater Asheville Regional Airport Authority (GARAA) 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, GARAA admits to delegating, with minimal to no restrictions, exclusive control over general aviation transient parking to Signature, a monopoly fixed-base operator (FBO), at Asheville Airport. GARAA'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, GARAA 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 GARAA complies with its federal grant obligations.

Executive Summary

GARAA 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*, GARAA 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*, GARAA 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*, GARAA'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, GARAA has allowed Asheville 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 Asheville Airport for a transient operator, without a fuel purchase, will cost a Cessna 182T operator $57.00 and a Pilatus PC-12/45 operator $423.00. Frankly, it is perplexing and disappointing that GARAA is not more concerned over the prices being charged to access the airport and, as a corollary, the entire Asheville region. GARAA 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 nearly $100 million into the Asheville 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 GARAA and Signature

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

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

GARAA is in violation of Assurance 22(b) because the public-use ramp included in Signature's lease is part of the airfield and GARAA has failed to ensure that Signature's fees comply with the Rates Policy. Neither GARAA nor Signature refute that Signature's fees for use of the transient ramp exceed the ramp's capital and operating costs. GARAA 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—either part of a preferential use agreement, according to GARAA, or an exclusive use agreement, according to Signature—which allows Signature to charge "fair market value" for its use. Their disagreement over the nature of the lease is puzzling; and neither offers any justification as to how they came to these conclusions. Notwithstanding that Signature charges monopoly rates, GARAA and Signature are 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. GARAA and Signature's contention that the only public-use ramp space is Signature's for exclusive or preferential use defies common sense and is inconsistent with Assurance 22(b) and the FAA's guidance.

GARAA and Signature's argument that non-movement area airfield facilities can be made available at "fair market value" is mistaken. In its only support, GARAA proffers an out-of-context and misleading quote from the *Airport Compliance Manual*. (*See* GARAA Response, at 5 ("'[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*, Asheville 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 Asheville 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) GARAA 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, GARAA fails to explain how Signature's fees for transient parking reflect fair market value when Signature has a monopoly over general aviation transient parking in the Asheville 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 Greenville Spartanburg International Airport (GSP) in Greer, South Carolina. A transient user seeking to visit Asheville and not park with Signature would have to park their aircraft at Greenville Airport and complete a nearly 90-minute drive to Asheville. 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, GARAA is not mitigating, with its authority and oversight power, the effects of Signature's monopoly over access to the airport. AOPA appreciates that GARAA has begun preliminary discussions over a second FBO; however, GARAA 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 Asheville Airport. (FAA Q&As, at 5.) Unfortunately, GARAA 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,

[1] AOPA disputes, but disregards as irrelevant, GARAA 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 Asheville Airport. AOPA did not state, expressly or implicitly, these were viable alternatives to Asheville Airport. Any potential competition over fuel services is irrelevant when a single FBO controls all the parking in a geographical market.

Signature does not have revenue diversion restrictions; does not have to disclose any information regarding its financial position; does not have to explain or justify fee or rates changes; and is subject to little to no oversight by GARAA. 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. GARAA cannot rely upon market discipline to ensure the reasonableness of Signature's fees for parking at Asheville Airport.

GARAA incorrectly argues that the airport can rely upon "market discipline" to ensure the reasonableness of Signature's fees and pricing for parking services. GARAA's only cited support is the Rates Policy, but that provision refers to an airport's fees, not those of an FBO, and falsely presupposes revenue limitations and disclosure requirements are imposed on the FBO. (78 Fed. Reg. at 55,335 ("The Department assumes that the limitation on the use of airport revenue and effective market discipline for aeronautical services and facilities other than the airfield will be effective in holding aeronautical revenues, over time, to the airport proprietor's costs . . . .").) Transparency is a fundamental requirement for market discipline to be effective. However, as explained above, Signature is not subject to the revenue limitations and public disclosure requirements imposed upon airports. Thus, market discipline is completely irrelevant in the context of Signature's fees and pricing.

For the same reasons, it is equally disingenuous for GARAA and 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. <u>GARAA has failed to make the Asheville Airport available on reasonable terms and conditions.</u>

GARAA 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. GARAA 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, GARAA has failed to make the airport available on reasonable terms and conditions.

Moreover, GARAA 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, GARAA 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 GARAA's rates to Signature for leasing the ramp are reasonable.

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

GARAA does not dispute that it denies the right of transient operators to self-serve their aircraft, but instead shifts the blame to TSA. On the contrary, security requirements imposed on the Asheville Airport are consistent with the requirement that GARAA 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, GARAA has chosen to channel these operators to Signature, unreasonably denying their self-service privilege and granting Signature an exclusive right over these services.

For these reasons, we request that the FAA direct GARAA to bring Signature's pricing practices into compliance with the grant obligations GARAA agreed to when they accepted federal funds. This is necessary to protect reasonable access into Asheville Airport, a critically important issue to the community of Asheville 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,

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