

So Your Airport Sponsor Is Trying To Dictate Your Rate Structure For Subtenants And Customers?



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Part two of a six part series on airport tenant relations and aviation legal matters

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Well, for better or for worse, this is not prohibited. In fact, in some circumstances, your Airport Sponsor may have an affirmative obligation under its grant assurances to do so. That said, here is a brief primer on when and why your Airport Sponsor is allowed to dictate a rate structure for your services and how to protect yourself from unjust or arbitrary efforts to do so.

Let's review the recent Part 16 decision in Valley Aviation Services, LLP v. City of Glendale, AZ, FAA Docket 16-09-06 (May 24, 2011) to illustrate some of these issues.

A Part 16 Case Study

In Valley Aviation Services, Complainant, Valley Aviation Services, LLP ("Valley"), was a tenant of Glendale Municipal Airport (KGEU) in Glendale, Arizona, and operator of the Glendale

Airport Hangars on the southern end of the airport, inclusive of large hangars, T-hangars, T-shades, office, and ramp space. In total, Valley had 104

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hangars and 112 tie-downs for aircraft. Complainant Valley was assigned the relevant leasehold interests for the Glendale Airport Hangars on January 1, 1999, though several of the issues raised in the context of this Part 16 action arose prior to that date.

Respondent, City of Glendale, owns and operates the airport; KGEU is a federally funded airport. In accordance with its lease, Complainant Valley was permitted to sublet its premises, including its hangars and tie-down spaces.

The Respondent airport advised Valley in January 2009 that it was required to lower its hangar and tie-down rates or face default under the terms of its lease. As a result, Complainant alleged in its Part 16 action that Respondent violated Grant Assurance 22, Economic Nondiscrimination, through its imposition of a rental rate structure to be charged by Complainant Valley to its subtenants and customers. Respondent airport denied that its imposition of a rate structure upon Complainant Valley was in violation of Federal Grant Assurance 22 and argued, rather, that its action "Was necessary to increase occupancy

rates at the airport and to ensure subtenants are charged fair and reasonable rates.”

Grant Assurance 22

Federal Grant Assurance 22, governing economic nondiscrimination, requires airport sponsors to make federally funded airports available “For the use and benefit of the public and to make it available to all types, kinds, and classes of aeronautical activity on reasonable terms, and without unjust discrimination.”

Federal Grant Assurance 22 further requires airport sponsors “To treat in a uniform manner those users making the same or similar use of the airport and to make all airport facilities and services available on reasonable terms without unjust discrimination.

In short, Complainant Valley’s position was that the airport’s imposition of a rental rate structure was in violation of Federal Grant Assurance 22 because, among other issues, said

rental rate structure was not likewise imposed upon all similarly situated tenants at the airport.

Further, Complainant Valley argued that the rate structure was not imposed on reasonable terms, as it was based upon an appraisal

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that not only failed to include hangar and tie-down rates charged by other tenants at the same airport (including Respondents itself and at least four hangar associations), but that it also erroneously relied upon rental rates charged by public sponsor owners at other regional airports, for which rental rates are at least partially subsidized.

Respondent KGEU’s position, by contrast, was that it not only had the right to impose such a rental rate structure upon Complainant, but an affirmative obligation to do so in accordance with Federal Grant Assurance 22.

Pursuant to Federal Grant Assurance 22, airport sponsors have an obligation “To ensure the terms imposed on aeronautical users of the airports for services, including rates and charges, must be reasonable and applied without unjust discrimination, whether by the owners or by a licensee or tenant who has been granted rights to offer services or commodities nor-

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Looking Back

In the May 2012 issue of *airport business*, the authors addressed airport minimum standards, and asked, 'Can an airport tenant ever really be exempt from an airport's minimum standards and regulations?'

In case you missed it, see what Paul and Megan had to say: www.aviationpros.com/article/10709407/minimum-standards-exemptions

mally required at the airport.”

To that end, “Respondent has an obligation to ensure the Complainant has access on reasonable terms and without unjust discrimination and that the Complainant, in turn, provides its services on reasonable terms and without unjust discrimination.”

Interestingly, the Director ultimately held that Respondent KGEU was in violation of Federal Grant Assurance 22, but on a procedural rather than substantive basis. As such, the Director held that the process of determining and imposing the rental rate structure was in violation of Federal Grant Assurance 22, leaving open the possibility for the imposition upon Complainant of an otherwise valid rental rate structure.

As stated in Valley Aviation Services, “Airport sponsors do have a federal obligation to ensure airport rates are fair and reasonable, including rates charged by tenant service providers. A sponsor may impose rates, if justified, to comply with this federal obligation. There must

however, be a reasonable basis for establishing the rates, and the rate requirements must be applied consistently and in a transparent manner to all similarly situated tenant service providers.”

In this case, a rate structure was imposed on one tenant without considering — or even knowing — the rate structure applied by others offering the same type of service on the airport.

Conclusion

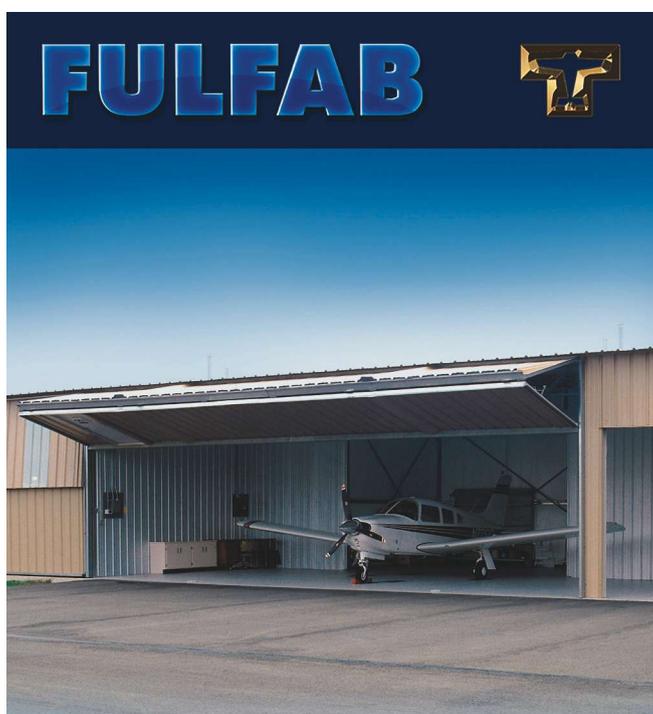
So, yes, an Airport Sponsor may in fact impose a rental rate structure upon its tenants with respect to rates charged to subtenants and customers. That said, however, the tenant is not without recourse. In the event that a tenant is subjected to such a rental rate structure, it should pay close attention to the following:

- Was the imposition of the rental rate structure justified?
- Was the rental rate structure developed using data based upon comparable rates? To this

end, the airport sponsor must be able to substantiate that the particular tenant is similarly situated (based upon evaluation of lease terms, ownership and financial investment interests, location of the airport, location and access on the airport of the comparative entities, and other terms/limitations of ground leases) to those entities relied upon in the airport sponsor's analysis.

- Was the rental rate structure developed using data derived from publicly owned hangar landlords rather than private hangar landlords?
- Has the rental rate structure been imposed upon all other similarly situated tenants at the airport?

While an Airport Sponsor may lawfully pursue rent and rate control under certain circumstances, a Part 16 claim may nonetheless arise by virtue of the process used in developing and imposing the rental rate structure. **ab**



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