

April 7, 2022

Gail Lattrell  
Director, New England Region Airports Division  
Federal Aviation Administration  
1200 District Avenue  
Burlington, MA 01803

RE: Part 13 complaint regarding the Norwood Airport from BEH on February 6, 2022

Dear Ms. Lattrell,

The response to the BEH Part 13 complaint filed by Anderson Kreiger on behalf of Flight Level Norwood, Inc., makes the following arguments:

1. There have been no complaints to NAC from FLN subtenants about reasonable access.
2. No complaints have been made to FL about the fuel purchase clause.

It may or not be the case that tenants have not complained, but it would not be surprising if they had not. There is simply no alternative for them to rent space at the airport, other than to deal with FLN on FLN's terms. This is what a tied product looks like.

3. The FLN sublease contains a clause stating that FLN won't discriminate but may charge discounts to volume users.

The FLN sublease fuel clause is not a volume discount at all; it is a requirements contract imposed as a condition of being allowed to lease space at Norwood Airport on reasonable terms, and possibly at all.

4. The fact that FLN leases most of the airport space is not in itself a violation.

The complaint did not directly concern the amount of airport space under FLN's control, but it could have. While it is not a *per se* violation by the sponsor if one entity provides most of the services on the airport, that policy assumes no action or willful inaction on the part of the sponsor to

obtain that result. Here, in the face of two formal FAA determinations finding NAC's leasing practices to violate multiple FAA grant assurances, NAC essentially gave FLN control of airport space for the next 30 years.

The fact that FLN provides most of the services at OWD did not just happen; it results 1) from NAC's lease of all available airport space to FLN, 2) FLN's use of that control of airport space to assure that all based operators will buy fuel only from FLN; and 3) NAC's acceptance of that condition of access to the airport for aeronautical subtenants.

5. BEH has complained about access rights in the past, and they have been fully addressed by the FAA.

6. Exclusive rights claim has already been addressed by FAA.

FAA has not addressed the issue of using control of airport space to effectively impose requirements contracts on OWD airport tenants. The issue in this Part 13 complaint was not addressed in any form in prior complaints.

7. While the FLN "Aviation Fuel" clause purports to give tenants a choice to rent from FLN or not, this is not a real choice because almost all airport space is available only from FLN. Under lease from NAC or NAC prime tenant Boston Metropolitan Airport, Inc. (BMA), FLN controls through its leases and sub leases 85 to 90% of the ramp and hangar space at the Norwood Airport, approximately (761 ,648 sq.ft. of ground space at the Norwood Airport, including approximately 95,700 sq.ft. of hangar space). FAA found that FLN's predecessor (EAC) controlled 88% of the ramp space at the Airport. Director's Determination, FAA Part 16 No. 1607-03, pages 5, 11. More recently, FAA found that evidence clearly showed the NAC has continued to bestow greater control of airport ramp space to FLN. Directors Determination, FAA Part 16 No. 16-15-05, page 23.

8. The January 20, 2022, Public Records Request to the Town of Norwood for copies of leases and subleases of public Airport land has gone unanswered. On March 22, 2022, the Secretary of the Commonwealth ordered the Town to comply with the Public Records Law. This has also been ignored.

In sum, none of the arguments contained in the NAC response directly counter the complaints made in the BEH Part 13.

Respectfully,

Christopher Donovan  
209 Access Road  
Norwood, Mass. 02062