



U.S. Department
of Transportation
**Federal Aviation
Administration**

Apr 7, 1995

Mr. J. Richard Studenny
Special Counsel
St. John Utica Tower Building
Suite 1300
1024 South Utica
Tulsa, Oklahoma 74104

Dear Mr. Studenny:

This responds to your letter dated April 12, 1994, on behalf of Millard Refrigerated Services, Inc. (MRS) and Freezer Services, Inc. (FSI). The Federal Aviation Administration (FAA) has determined that Items 38 through 41 of your letter are solely related to compliance with the Airport Noise and Capacity Act of 1990 (ANCA), as implemented by 14 CFR Part 161. As such, these items are being addressed as follows, separately from the FAA determination of Formal Complaint No. 13-93-19, Millard Refrigerated Services, Inc. v. Omaha Airport Authority, Omaha Nebraska.

The FAA has reviewed the allegations in Items 38 through 41 of your letter and determined that circumstances unrelated to an intention or purpose to impose a noise or access restriction have changed the service capabilities of the airport.

FAA headquarters personnel worked closely with field personnel in reviewing the request of the Omaha Airport Authority (OAA) to update its report layout plan (ALP) for Millard Airport. The OAA updated its ALP as a precondition to applying for a grant of Federal funds to reconstruct a runway and taxiways that had accommodated aircraft with maximum certificated takeoff weights of up to 30,000 pounds. The FAA advised the OAA in its comments on the preliminary ALP that, to meet the FAA's new airport design standards, the following actions would be needed: (1) the runway would have to be lengthened, (2) obstruction violations that had been waived would have to be corrected, and (3) runway/taxiway separation standards would have to be met.

The new design standards were established in Advisory Circular 150/5300-13, dated September 1989. An Airport Capacity Study dated September 1986, conducted by Coffman Associates on behalf of the OAA, indicated that due to geographic constraints Runway 12/30 could not be effectively lengthened, that a new runway or taxiway would be needed to comply with the required 240-foot separation criteria, and that the Part 77 obstructions could

not be accommodated. Further studies revealed that expanding the airport to meet the large airplane design group category would cost approximately \$3.5 million, while maintaining it for smaller airplanes would cost approximately \$156,000.

Based upon these studies and consultation with the FAA, the OAA decided to plan and operate the airport as a small airplane design group category airport. The OAA submitted a revised ALP based on these design standards, which was approved by the FAA in April 1993.

Since the OAA was forced to decide whether to expand or limit access, the basis for the resulting limitation on access was safety. The OAA was forced to make this choice because it only partially met the new standards. There is no evidence that the OAA used the change in standards by the FAA as a pretext for imposing an airport noise or access restriction. Since the limitation was not imposed to control noise or limit access, it is not a noise or access restriction within the meaning of ANCA.

The OAA's decision to adopt an ordinance limiting use of the airport to aircraft weighing less than 12,500 pounds, which reflects the new service capability, does not dictate a different result. The ordinance does not change the basis for the limitation on access at Millard.

We note that the OAA has offered to assist operators of larger aircraft that were based at Millard to relocate to Eppley Field, which is also owned by OAA. Eppley Field is located 12 nautical miles northeast of Millard and is designed to accommodate transport category and other large airplane design group category aircraft.

This determination that the OAA is in compliance with the ANCA does not constitute a determination of the above-referenced Formal Complaint, which you filed pursuant to 14 CFR Part 13. The complaint is pending for determination by the FAA.

Sincerely,

Cynthia Rich
Associate Administrator for Airports

cc: Omaha Airport Authority