

Airport Law Alert – FAA Seeks Comment on PFC Funding for Ground Access Projects

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FAA Seeks Comment on PFC Funding for Ground Access Projects

The Federal Aviation Administration (FAA) is requesting comments on a proposed change in agency policy that would permit on-airport, rail access projects to be funded with Passenger Facility Charge (PFC) revenue, even if they do not exclusively serve airport traffic.

Historically, the FAA has required all ground access transportation projects (including both road and rail access) to meet three conditions: (1) the road or facility may only extend to the nearest public highway or facility of sufficient capacity to accommodate airport traffic; (2) the access road or facility must be located on the airport or within a right-of-way acquired by the public agency; and (3) the access road or facility must “exclusively serve” airport traffic. The FAA is now considering changing those criteria as they apply to airport rail projects.

In order to better carry out its statutory obligation to encourage the “development of intermodal connections at airports,” 49 U.S.C. § 47101(a)(5), the FAA is considering three possible ways to determine the eligibility of rail access projects that do not exclusively serve airport traffic:

- *Incremental Cost Comparison.* Under this approach, any additional cost associated with constructing a track that runs through an airport, as opposed to an alignment which bypasses an airport, would be eligible for PFC funding.
- *Separate System Comparison.* Where the costs of constructing a track that runs through an airport is less expensive than the full cost (including rolling stock) of a hypothetical, stand-alone people mover that would move airport traffic between the airport station and an off-airport station, the cost of the on-airport trackage would be eligible for PFC funding.
- *Prorated Costs.* The prorated costs of the on-airport trackage, based on the percentage of ridership that is forecast to travel to and from an airport, would be eligible for PFC funding.

The FAA is requesting comments on these alternative approaches, or the recommendation of additional alternatives, by June 2, 2016.