Today’s presentation
- Basic background on airline incentives
- Legal structure
- Strategic and policy issues
Questions to ask

Lawful incentive program
State of play

- Airline industry (A4A) **opposes**
- Airlines are increasingly aggressive in **seeking** incentives
- An airline may demand an incentive from one airport and oppose the same incentive at another airport
- FAA is aggressively ambivalent
Incentives generally

Makes complete sense
Basics

- *Revenue Use Policy* allows incentives for two express purposes:
  1. Encourage new air service
  2. Encourage competition
Sources

Air Carrier Incentive Program Guidebook:
A Reference for Airport Sponsors
Sources

- Incentives Guidebook may provide helpful information but it is sometimes:
  - Confusing
  - Inconsistent
  - Wrong
Sources

- Policy Regarding Airport Rates and Charges ("Rates and Charges Policy")

- Policy and Procedures Concerning the Use of Airport Revenue ("Revenue Use Policy")

- Airline Deregulation Act does not apply
Grant Assurances

- Prohibition on unjust discrimination/exclusive rights (Grant Assurance 22, 23)

- Self Sustaining Requirement (Grant Assurance 24, 25)

- Violation if sponsor does not make incentives available to all similarly situated carriers
Four steps

1. Review and understand Grant Assurances, laws and policies
2. Identify goals and types of service to be covered
3. Define program timelines
4. Design incentive program
Duration of incentives

- Up to 1-year - new entrant incentives
- Up to 2-years - incentives for any carrier that meets service criteria
- Staggered OK so long as total time available does not exceed 1 or 2 years
Prohibitions

- Use of airport revenues for general economic development, marketing, and promotional activities unrelated to airports or airport systems.
- Indefinite fee waivers or discounts
Prohibitions

- Cash incentives to passengers using the airport
- Purchase seats from an air carrier or guarantee a number of seats will be filled
Subsidies v. incentives

- Subsidy: direct payment of airport revenue to a carrier or any provider of goods or services to the carrier in exchange for additional service by the carrier.
Subsidies v. incentives

- **Incentive**: any fee reduction, fee waiver, or use of airport revenue for acceptable promotional costs, where the purpose is to encourage an air carrier to increase service at the airport.
Confusion and nuances

- Incentives Guidebook
  - States restrictions, often without underlying legal support
  - May only be ‘safe harbor’
- FAA may be flexible
  - If sponsor can demonstrate there is no legal prohibition.
By the book

- Guidebook = guidelines
- Not absolute prohibitions
- Think outside the box
Specific incentives
New service

- Service to an airport not currently served
- Nonstop service where no nonstop service is currently offered
- New entrant
- Increased frequency of flights to a specific destination
Up-gauging

- OK if combined with other elements
- Net increase required
Passenger-based incentives

- Probably (?) impermissible
Jet service

- Cannot limit incentives to jet service
- Can get creative in definitions (!!)
Low fare service

- Low fare carriers (or ULCC) are not a “type of service”
- Must have objective criteria that any carrier can meet
Type of cabin

- Distinctions such as coach, business, or first class may not be the basis for an incentive
Impact on other carriers’ fees

- Incentive program may not negatively affect other carriers without their express permission
- Sponsor must make up waived fees from non-airline revenue source
- Residual methodology airports – check agreement
Influence on fares

- Sponsor cannot tie incentives to ticket price.
- Violates Airline Deregulation Act (rates, routes, or services)
International service

- Bilateral or multilateral agreements
- New entrant vs. incumbent may raise potential concerns.

http://swamedia.com/pages/latin-america-caribbean-routes-map
Third party incentives

- Community organizations or non-sponsor local governments may offer an incentive or subsidy.
- Sponsor must not be involved in negotiating, implementing, or monitoring the program in any manner.
- Sponsor may only provide technical assistance.
Lease and Use agreements

- ‘Most Favored Nation’ clauses
- Other provisions may limit airport flexibility
- Residual agreements
Conclusions

- Law is black-and-white
- But application is completely gray
- FAA will tell you what you can’t do, not what you can do
Questions?

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