



35th Annual Airport Law Workshop

Session #13

EMERGING TRENDS IN USE AND LEASE AGREEMENTS



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INTRODUCTION

- Advanced session focused on specific issues
- Overview of current trends
- Plan for future
- The BIG issues
- Quick review
 - Negotiated agreement vs. rates by ordinance
 - Legal requirements and constraints
 - Know your airport



CURRENT TRENDS

- Contrasting business models
 - Legacy, low cost carrier, ULCC
 - Start-ups (Moxie? One Jet? Midwest Express 2?)
- Alignment of airlines – “them” vs. “the other guys”
- Airline consortia
- Current business situation
- Planning for the future

BACKGROUND - REFRESHER

- The legal issues
 - No *unjust* discrimination
 - Reasonable, transparent rates
 - Self sustaining requirement
 - Rates and charges policy
 - Airport indenture requirements
- Agreement vs. ordinance
 - Good faith negotiations
 - Compensatory vs. residual rates
- Know your airport
 - Sources and uses of funds
 - Cost centers and cost recovery



AIRPORTS WITH RATES BY ORDINANCE

Airport	Hub Size	CY 2016 e.p. ¹	Time Under Resolution
Los Angeles International	L	39,635,691	Since 1993 ²
Phoenix Sky Harbor International	L	20,896,229	> 30 years
Orlando International	L	20,283,479	Effective November 2013 ³
Boston Logan International	L	17,749,202	> 30 years
Oakland International	M	5,934,639	Since 2000
Raleigh-Durham International	M	5,378,637	> 30 years
John Wayne Airport-Orange County	M	5,217,242	> 20 years
Omaha Eppley Airfield	M	2,125,319	> 30 years
Charleston International	S	1,804,036	Since 2001
Grand Rapids Gerald R. Ford International	S	1,334,633	> 30 years
Long Beach /Daugherty Field	S	1,386,357	At least 10 years
Des Moines International Airport	S	1,214,307	Since January 1, 2014
James M Cox Dayton International	S	1,017,941	?
Greenville Spartanburg International	S	990,512	Since July 2016
Bill & Hillary Clinton National (Little Rock)	S	958,824	Since 2009
Greensboro International	S	846,042	Since 1999
Fresno Yosemite International	S	761,298	Since July 2016
Akron-Canton Regional	S	685,269	Since January 1, 2015
Northwest Arkansas Regional	S	670,528	Since January 1, 2015
Lexington Blue Grass	S	638,316	Since 2001
Eugene Mahlon Sweet Field	N	483,078	?
Asheville Regional	N	416,911	Since October 2016
Lehigh Valley International (Allentown, PA)	N	324,151	Since 1993
Santa Barbara Municipal	N	329,751	Since October 2007
Rapid City Regional	N	272,389	Since 2015
Aspen/Pitkin County Airport	N	254,354	Since 2001
Lafayette Regional	N	205,239	?
Transitioned from Ordinance to Airline Agreement			
Sacramento International	M	4,969,337	June 2008 - July 2017, then new agreement
San Juan Luis Munoz Marin International	M	4,327,833	> 20 years, but airport privatized March 2013

1. Enplanements and Ranking: FAA, ACAIS CY 2016, Primary Airports, November 2017.

2. The LAX landing fee tariff, as amended from time to time, has been in effect since July 1, 1993, and was the subject of two rate disputes (LAX I and II).

3. Airlines that sign the 3-year "Rate and Revenue Sharing Agreement" are eligible for revenue sharing and commit to not challenge the ratemaking methodology.

Source: Compiled by LeighFisher.

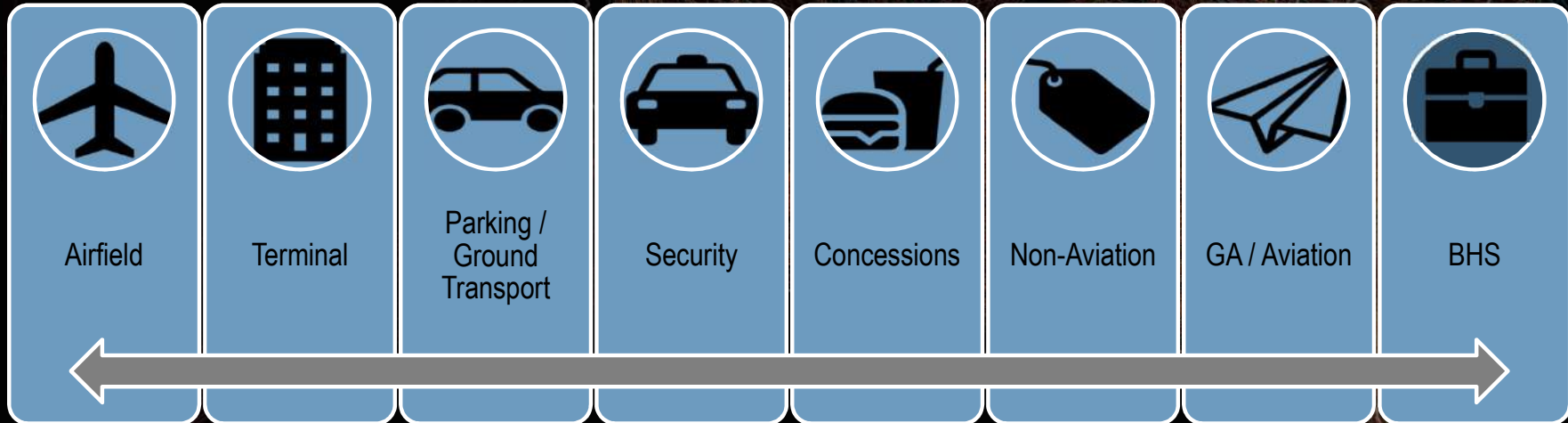
AIRPORT RATE METHODOLOGIES

	Large Hubs		Medium Hubs		Total	
	Number	Percent	Number	Percent	Number	Percent
Methodology						
Residual	8	27%	11	35%	19	31%
Compensatory	9	30%	9	29%	18	30%
Hybrid	13	43%	11	35%	24	39%
	30	100%	31	100%	61	100%
Form of Agreement						
Ordinance	4	13%	6	19%	10	16%
Agreement	26	87%	25	81%	51	84%
	30	100%	31	100%	61	100%

Source: Compiled by LeighFisher.

COST CENTERS

Cost Centers: Functional areas or activities of an airport or airport system used for the purposes of accounting for revenues, operating expenses, amortization, and debt service.





CURRENT TRENDS – CONTEXT FOR NEGOTIATIONS

Thinking like an airline (it's not that hard)

NEW(ISH) BUSINESS MODELS

- ULCCs – domestic and international
 - Point-to-point
 - Unbundled
 - Nimble, opportunistic
 - Limited service
 - New choices for *your* customers
- Contrast with legacy carriers
 - Hub and spoke
 - Daily frequencies
 - Provide the bulk of service
- Smaller business-focused services
 - E.g., OneJet, Midwest Express 2, Silver
- New entrants



ALIGNMENT OF AIRLINES BY BUSINESS MODEL

- “Big 4” vs. the others
 - Policies designed to reduce competition
 - Are these models *really* incompatible?
- Challenge – airport rates that allow ALL airlines to thrive
- Requires strategic approach

CURRENT REALITY

- Less PFC capacity
- Reduced AIP funding
- Aging facilities = BIG projects
- Facility constraints, growth in service
- Revenue mix
 - Larger airports: concessions, esp. parking
 - Low aeronautical rates
 - Cost recovery



PLANNING FOR THE FUTURE

- Impact of TNCs
- Turo's impact
- Potential impact of autonomous unmanned vehicles (AUVs)
- New entrants and new business models
- Other disruptive technologies, e.g.,
 - Uber Elevate
 - Facial recognition
 - Part 380 operations



BIG ISSUES

It's all about how risk is allocated

PRIMARY AREAS OF CONTENTION

- Allocation of common use fees
- Term
- MII, CIP approval
- Per turn fees
- Recovery of airline space
- Use of CUTE
- Cost center allocation
- Rates by ordinance vs. agreement



ALLOCATION OF COMMON USE COSTS

- This may be the hottest current issue
- One size does NOT fit all!
- 80-20 model is no longer the norm
 - Retention of a fixed component impacts infrequent service & larger carriers
- Use of activity as one or more metrics
 - Enplaned passengers
 - Bags handled
 - Operations/turns
 - Impacts on different carriers
- Use allocation methodology to drive behaviors, recover costs

METHODS OF RECOVERING BHS COSTS

SUMMARY			
80/20 (passengers/users)	24	38%	50%
90/10 (passengers/users)	8	13%	
90/10 (bags/users)	1	2%	
100% pax	11	17%	
100% bags	11	17%	
Other/Exclusive sq ft	8	13%	
Total	63	100%	

Carveouts (BWI, CMH, IND, PHX, SDF); small airline bucket (STL), 100% bags O&M (CLT), ULCC terminals (AUS, MSP, TUS); EDS 100% bags (SNA), turn fee (SFO)
DCA, IAD, SAN have carveout

Source: Compiled by LeighFisher from various sources, October 2019.

AGREEMENT TERM

- Trending shorter, but
 - ULCCs prefer shorter
 - Big 4 prefer longer especially where large capital programs
- Term also affects justification for non-signatory penalty
- Options include:
 - Term with options (mutual or MII)
 - Planned holdover
 - Evergreen
 - May depend on bond market perception/requirements

COMMON USE SPACE & RECOVERY OF SPACE

- Accommodate new entrants, growth of incumbents
- Variable/less frequent use
- “Use it or lose it” recapture provisions
 - Gates
 - Other facilities: ticket counters, RON, office space
 - Appropriate metrics for measuring & allocating use
- Exclusive, preferential and common or joint use space (and when they are indistinguishable), and public areas
 - Impact of funding source (e.g., PFCs cannot be used to fund long term exclusive use leased space)

FACILITY CONTROL

Lease Type	Description	Example Types of Space
Exclusive	Exclusive right to use	Ticket counter, back office, clubrooms
Preferential	First right, airport may assign others if not in use	Gates, holdrooms, ticket counters
Joint	Multiple airlines use jointly	Baggage handling - Avoid paying costs of others
Common	Airport assigns	Gates, ticketing, FIS, Circulation, restrooms

DEFINING TERMINAL SPACE

- Define rentable vs. non-rentable space
 - Cost recovery for non-rentable space
 - Commercial compensatory vs. other methods
- Common use space
 - Airline
 - Public
- Joint use space
- Any exclusive use space?
- Virtual preferential space



NEW MCO GATE ASSIGNMENTS – NO MORE PREFERENTIAL GATES

■ Annual Access Gate

- ✓ Annual Access Gate: Airline pays annual fee for access to Gate assigned the Authority.
- ✓ Airline must declare the number and type of Annual Access Gates required each period.
- ✓ Location of Gate(s) may change as needed.
- ✓ Gates may be granted priority access.

■ Priority Access Gates

- ✓ Airline may request Priority Access if activity meets Utilization Threshold
- ✓ Utilization Threshold for the initial year is 6.0 turns per Gate per day; recalculated once per year
- ✓ Priority Access Gates subject to availability as determined by the Authority.
- ✓ Authority will work with Airline to schedule flight activity on the Priority Access Gates

■ Common use per turn

KEY LEVERS TO RECOVER AIRPORT COSTS

- Debt service coverage
- Amortization & imputed interest
- PFC off-sets
- Direct & indirect cost centers
 - Recover ALL costs
- O&M allocations
 - ARFF
 - Security
 - Administration
 - Common areas



PERTURN FEES

- For low frequency *and* legacy carriers
- Retain control over % of gates?
- Dynamic pricing – incentivize appropriate behaviors
 - Leased gate vs. use per turn?
 - Recover costs
 - Who receives payment for use of preferential gate?
- Several variables in turn fee
 - Average numbers of turn per day (over a year) per gate
 - Fully loaded cost – holdroom, loading bridge, ramp, ticket counter, FIS, other?
 - Non-signatory (or other) premium?
 - Premium for multiple uses per day?

CUTE

- Less use of common use terminal equipment in U.S.
- Desire by airlines for proprietary equipment
 - Proprietary back walls & systems
 - CUTE often not 100% compatible
 - Data protection
- Technological change – good & bad
 - More flexible use of facilities
 - Trend towards e-tickets
 - Allocation of O&M responsibility, liability and cost

MAJORITY-IN-INTEREST (OR MOTHER MAY I?)

- Whose airport is this anyway? Who bears the risk?
- Airport: address local needs, provide for competition
- Airlines: risk of cost of new facilities, desire to prevent competition
- Appropriate metric(s) can include number of signatories, enplaned passengers, landed weights, payments to airport
- Wide range of alternatives, from none to strong MII
 - Pre-approved CIP; other projects (in excess of \$X) subject to MII
 - Negative MII; high or low bar
 - Deferral vs. rejection
 - Rates by ordinance, with no MII
 - Annual basket of discretionary capital revenues

AIRLINE INVOLVEMENT IN CIP

- Role of Airline Technical Rep
 - Increased airline input
 - MCI
 - PIT
- Airline-driven/funded projects
 - SWA at HOU, DAL
 - Delta BOS Terminal A



MCITMP PROJECT GOVERNANCE

	Program Management Committee	Steering Committee (SC)
Purpose	Supports the SC by providing overall management and coordination	Review/approve any changes to all Threshold Issues
Members	<ol style="list-style-type: none"> 1. KCAD - Deputy Director 2. Airline - Airline Technical Representative 3. Developer – VP/Managing Director for TMP 	<ol style="list-style-type: none"> 1. KCAD - Director of Aviation 2. Airline – AAAC Chairperson
Responsibilities	<ol style="list-style-type: none"> 1. Prepare and submit appropriate documents to the SC 2. Establish/review baselines, scope, cost estimates, schedules 3. Establish clear lines of responsibility, authority, and communication (spirit of teamwork among all stakeholders) 4. Minimize Program impacts on Airport operations, operating airlines, and other tenants 5. Coordinate projects with other on-going Airport projects 6. Ensure proper review and approval by the SC before contracts for services or construction are developed and executed 7. Review performance of consultant and construction contractors providing services to the Program and review quality standards 8. Coordinate both internal and external interfaces, identify any issues, and obtain resolution 9. Direct the value engineering exercises to satisfy the required function at the lowest cost consistent with performance, reliability and maintainability requirements 10. Review all significant deviations from the Program baseline as established 11. Review all packages of work 12. Approve all change orders that do not materially affect Airline operations, Program Schedule, or Program scope, or that affect the payments required of the Airlines under the Airline Use and Lease Agreement (“Threshold Issues”) 	<ol style="list-style-type: none"> 1. Set Program Policy and provide Program oversight 2. Review and resolve issues to maintain forward progress in achieving Program goals 3. The SC is responsible for the following: <ol style="list-style-type: none"> a. Overall Program review and approval b. Decision making authority within the Program for all procurements c. Review and approval of all TMP’s scope, cost and schedule d. Review Bid Packages before released for bidding e. Review and advise bid awards f. Review weekly, monthly and quarterly reports g. Review financial controls recommendations and reports 4. The SC shall review any part of the Program that has deviated from its SC approved baseline scope, budget or schedule. Developer shall recommend subsequent corrective actions based on the following criteria: <ol style="list-style-type: none"> a. Scope Changes b. Schedule delays over the baseline c. Budget variances over or under the baseline

AIRLINE CONSORTIA

- End run around airport rate setting?
- What services appropriate?
- Can airlines opt out?
- Governance model; airport input
- Role of ground handlers

FINAL THOUGHTS

- Question authority – “we’ve always done it this way” – Really?
- Understand your market and your airlines
- Your airport is different – structure for your unique situation
- These issues are all interrelated – the best solution may require several parts
- Plan for the future

QUESTIONS AND OBSERVATIONS

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