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Resources, Community, and
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November 5, 1998

The Honorable Frank R. Wolf
Chairman, Subcommittee on Transportation
and Related Agencies
Committee on Appropriations
House of Representatives

Dear Mr. Chairman:

Subject: Airport Financing: Information on Airport Fees Paid by Airlines

Airports charge airlines to use runways and other facilities, and disputes over fees sometimes arise. In 1994, after a highly publicized dispute between Los Angeles International Airport and the airlines operating there, the Congress passed legislation establishing expedited procedures at the Department of Transportation (DOT) for handling fee disputes between airports and airlines. As requested, this report (1) describes how these fees are set, (2) explains DOT's role in resolving disputes between airports and airlines over these fees, and (3) discusses the formal disputes that have arisen over airport fees in the past 14 years.

In summary, airport fees generally are set under two pricing approaches–the residual cost approach and the compensatory approach. The residual cost approach guarantees that an airport will break even because the airlines pay the costs of running the airport that are not offset by other revenues. The compensatory approach calls for airlines to pay only for what they use. DOT relies on airports and airlines to establish fees and encourages the individual parties to resolve any differences through direct negotiation. When airport operators and airlines are unable to resolve disputes over fees, there are two administrative options–an investigation by the Federal Aviation Administration (FAA) or an expedited review by the Office of the Secretary. There have been few formal disputes over the fees that airlines pay to airports. Over the past 14 years, 14 such disputes have arisen. Complaints in eight of these disputes were filed since the passage of the Federal Aviation Administration Authorization Act of 1994, which established the expedited procedures at DOT for handling such disputes. The Office of the Secretary addressed seven of the

eight complaints under the expedited procedures. It dismissed three complaints and issued decisions in another three; one complaint was settled prior to a decision. FAA is handling the remaining case and is also considering separate issues raised in two of the seven complaints addressed by the Office of the Secretary.

BACKGROUND

The nation's commercial airports collect the bulk of their revenues from two general groups of users: aeronautical users, such as passenger airlines, and nonaeronautical concessionaires, including car rental agencies, parking lots, restaurants, gift shops, and other small vendors. The airports provide these users with a wide range of facilities and services for which they assess fees, rents, or other charges. Most commercial airports, regardless of size, type, or location, offer four major types of facilities and services:

- airfield facilities, including runways, taxiways, aprons, and parking ramps for use by commercial and general aviation aircraft;

- airline-leased areas in the terminal and elsewhere, including ticket counters, gates, passenger waiting rooms, baggage handling areas, office space, operations and maintenance areas, hangars, cargo terminals and aprons, and ground rentals;[1]

- nonaeronautical facilities and services in terminal areas, including automobile parking and ground transportation, restaurants, newsstands, duty-free shops, car rental agencies, office space, and hotels; and

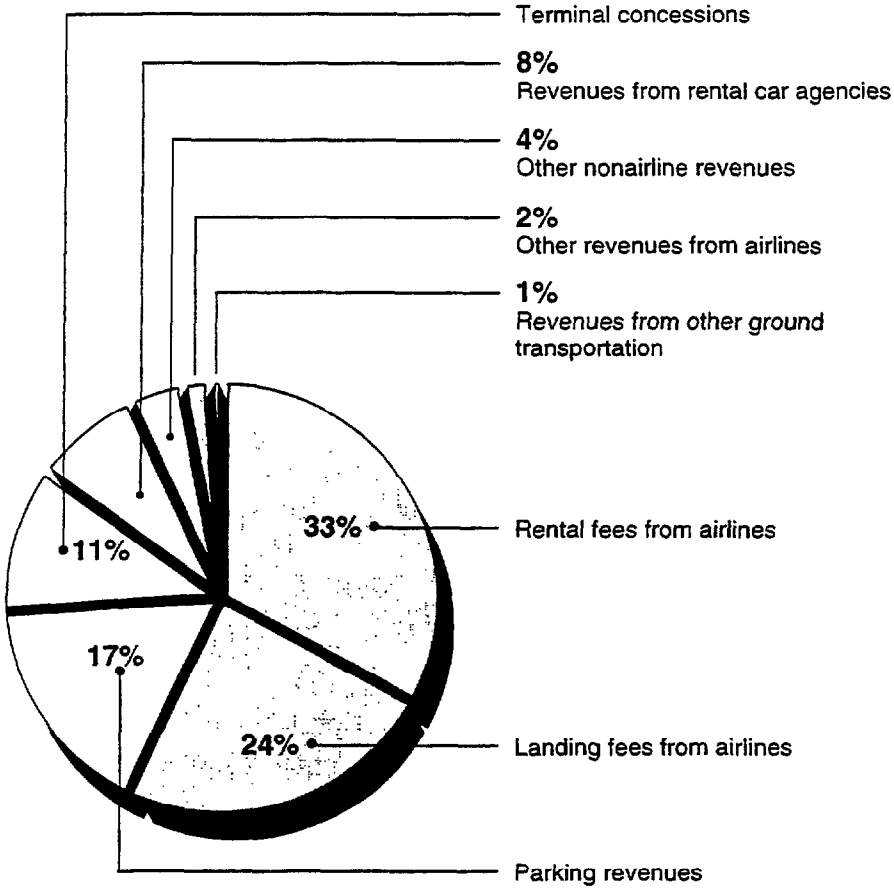
- other facilities leased to nonairline tenants and related services, including industrial areas, fuel and servicing of aircraft, warehouses, and other buildings and grounds.

Commercial airports receive over one-half of their operating revenues from airlines in the form of landing fees paid by the airlines to use airfield facilities and rental fees for the airlines' space leased in terminals and elsewhere. The distribution can vary, however, according to a number of factors, including an airport's size and the nature of the markets served. For example, larger commercial airports typically have a more diversified base of revenues than do

[1]Ground rentals are leases of land for which the lessee pays the costs of constructing any facilities, such as terminals, built on it.

smaller ones, and terminal concessions can be expected to generate a greater percentage of the airports' total operating revenues as the number of passenger boardings increases. Factors other than an airport's size also affect the distribution of operating revenues. For example, at commercial airports, parking facilities generally provide the largest single source of nonairline revenues in the terminal area. However, airports that have a high proportion of connecting traffic may derive a smaller percentage of their operating incomes from parking revenues than "origin-and-destination" airports. Figure 1 illustrates the sources of operating revenues at large hub airports.[2]

Figure 1: Sources of Operating Revenues at Large Hub U.S. Airports, 1995-96



Note: Shaded areas indicate the fees paid by airlines.

Source: Leigh Fisher Associates.

[2]DOT defines large hub airports as those that have at least 1 percent of all enplanements.

The operating revenues can be used to cover direct and indirect expenses for operations and maintenance, equipment and capital outlays, debt service, and reserve funds. To the extent available, the revenues can also be used to fund nonoperating expenditures, such as capital development, and to generate profit. In March 1998, we reported that airports' revenues accounted for about 2 percent of the direct funding for capital development for the nation's airports in 1996.[3]

At many commercial airports, the financial and operational relationships between the airport and the airlines operating there are defined in legally binding agreements, commonly termed "airport use agreements," which specify how the risks and responsibilities of airport operations are to be shared between the parties. These agreements establish the terms and conditions governing the airlines' use of the airport and specify the methods for calculating the fees airlines must pay to use the facilities and services. In addition, these agreements identify the airlines' rights and privileges, sometimes including the right to approve or disapprove any major proposed capital development projects at the airports. At some commercial airports, the fees paid by airlines are established by local ordinances or resolutions rather than by negotiated airport use agreements.

APPROACHES FOR SETTING FEES PAID BY AIRLINES

Whether airport fees are established in negotiated use agreements or in local ordinances or resolutions, they generally fall under two pricing approaches–the residual cost approach and the compensatory approach. The residual cost approach guarantees that an airport will break even because the airlines pay the costs of running the airport that are not offset by other revenues. On the other hand, the compensatory approach calls for airlines to pay only for what they use.

Under the residual cost approach, the airlines collectively assume the airport's financial risk by paying for any deficit–the residual cost–remaining after the airport's expenses have been offset by nonairline sources of revenues, such as car parking lots and restaurants. This approach precludes an airport's generating substantial surplus revenues. Because the airlines assume a financial risk, they are more likely to have a greater say in how the airport uses its revenues than they do at airports that use the compensatory approach.

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[3]Airport Financing: Funding Sources for Airport Development (GAO/RCED-98-71, Mar. 12, 1998).

At airports using a residual cost approach, airlines may have agreements that give them the opportunity to review and approve capital projects that could entail significant increases in the fees they pay.

While individual airports' applications of the residual cost approach vary widely, figure 2 presents a simplified example of calculating the annual fees paid by airlines for leasing space in terminal buildings. Most airports are composed of a number of cost centers, such as terminal buildings, airfields, roads and grounds, and airfreight areas. At a residual cost airport, the total annual operating expenses–including administration, maintenance, operations, and debt service–would be calculated for the cost center and then offset by all nonairline revenues anticipated for that center. In the example, operating expenses for the terminal buildings are estimated to be $4.6 million, and the nonairline revenues in the terminal are estimated to be $2.8 million. The expected residual between expenses and revenues–$1.8 million–would then provide the basis for calculating the fees that the airport charges the airlines for using the terminal buildings. For this example, the residual–$1.8 million–is divided by the total terminal space rented by the airlines–75,000 square feet–to calculate the rate–$24 per square foot–paid by the individual airlines. Because the fees are based on estimated revenues, in the following year the fees would be adjusted to account for surplus revenues or a deficit. Similar calculations would be made for other cost centers at the airport.

Figure 2: Sample Calculation of Rental Rates for Terminal Buildings Under the Residual Cost Approach

	Estimate using residual cost approach
(1) Annual operating expenses for terminal buildings	$4,600,000
(2) Annual nonairline terminal revenues	$2,800,000
(3) Total annual rent required from airlines (line 1 minus line 2)	$1,800,000
(4) Airline-rented space	75,000 sq. ft.
(5) Rent per sq. ft. (line 3 divided by line 4)	$24 per sq. ft.

Note: This is not an actual rate calculation but a simplified illustration.

Source: Leigh Fisher Associates.

Under the compensatory approach, the airport operator assumes the major financial risk of running the airport and charges the airlines fees set at a level to recover the actual operating expenses of the facilities and services that they use. In contrast to the situation at airports using the residual cost approach, the airport operator is not guaranteed that the fees paid by the airlines will be sufficient to pay for all expenses. On the other hand, some airports may accumulate surplus revenues under the compensatory approach because funds from nonaeronautical sources are not used to reduce the fees paid by airlines. Because the airport operator assumes the major financial risk of running the facility under the compensatory approach, the operator generally is freer to undertake capital development projects without the consent of the airlines.

Figure 3 provides a simplified example of the compensatory approach for calculating fees for leasing terminal space. First, the total annual expenses for operating the terminals--including costs for administration, maintenance, operations, and debt service--is calculated ($4.6 million). Second, the total annual expenses are divided by the total usable space--200,000 square feet--to calculate the rent--$23 per square foot. The total usable space includes public space such as terminal lobbies and space used by concession operators and airlines. The airlines would pay for the space they actually used--75,000 square feet. This would provide the airport with $1.725 million in revenues from the airlines. Under the compensatory approach, then, the airlines' fees are based on their actual use of facilities. The airlines would not be charged for the costs of public space, nor would they receive any credit for nonairline revenues, which offset expenses in the residual cost approach.

Figure 3: Sample Calculation of Rental Rates for Terminal Buildings Under the Compensatory Approach

	Estimate using compensatory approach
(1) Annual operating expenses for terminal buildings	$4,600,000
(2) Total usable space	200,000 sq. ft.
(3) Rent per sq. ft. (line 1 divided by line 2)	$23 per sq. ft.
(4) Airline-rented space	75,000 sq. ft.
(5) Total annual rent received from airlines (line 3 times line 4)	$1,725,000

Note: This is not an actual rate calculation but a simplified illustration.

Source: Leigh Fisher Associates.

Individual airports have adopted many versions of the compensatory and residual cost approaches. For example, Miami International Airport uses a combination of the two approaches. Since 1990, the airport has set fees for terminal space used exclusively by a single airline, such as ticket counters, on the basis of square footage and has set fees for facilities and services shared by airlines, such as baggage claim and concourse areas, on the basis of the number of aircraft seats carried by each airline. These fees reflect such costs as direct and indirect operating expenses and debt service. In the manner of compensatory agreements, terminal costs are not adjusted to reflect revenues derived from concession operations or from other nonairline sources. In addition, the costs of vacant rentable space are not recovered through rental charges. However, the airport uses a residual cost approach to set landing fees and to provide an "umbrella" for covering the airport's overall expenses and meeting the requirements of bonds used to finance airport development. Landing fees are calculated annually on the basis of budget estimates for the upcoming year and are revised midyear on the basis of updated estimates. A portion of concession revenues are used to offset costs in the computation of these fees.

Several trends in setting airport fees have emerged in recent years, including (1) a switch away from the residual cost approach and (2) a blurring of the traditional distinctions between residual and compensatory rate-setting methodologies, as a large percentage of agreements now use hybrid forms of

the two methods. For 1983, the Congressional Budget Office reported that 58 percent of the nation's large and medium-sized airports used a residual cost approach to set fees, while 42 percent used a compensatory approach.[4] By comparison, for 1995-96, the American Association of Airport Executives' survey of airport fees indicated that 34 percent of the responding airports used a residual cost approach to set fees, 30 percent used a compensatory approach, and 36 percent used a hybrid approach.[5]

DOT'S ROLE IN RESOLVING DISPUTES

DOT relies on airports and airlines to establish fees and encourages them to resolve any differences through direct negotiation. When airport operators and airlines are unable to resolve disputes over fees, the Department provides two administrative options–an investigation by FAA or an expedited review by the Office of the Secretary. FAA will also informally help to resolve disputes if asked, but this occurs infrequently, according to FAA officials.

Airlines can request an investigation by FAA into the reasonableness of an airport fee because of requirements in several federal statutes. The Airport and Airway Improvement Act of 1982 requires an airport that accepts federal grants under the Airport Improvement Program to provide assurance that the airport will be available for public use on reasonable conditions and without unjust discrimination.[6] This grant assurance provision has been interpreted to include a requirement that the airport's fees be reasonable. Similarly, the Anti-Head Tax Act requires that the rental charges, landing fees, and other service charges set by publicly owned airports be reasonable.[7]

Upon receiving a complaint under these statutes, FAA first determines whether reasonable grounds for the complaint exist. FAA may then initiate an investigation, and if it determines that a fee is unlawful, it can issue a compliance order. The order may call for the airport to cease and desist

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[4]"Financing U.S. Airports in the 1980s," Congressional Budget Office (Apr. 1984).

[5]The study by the Congressional Budget Office was based on a survey of 60 large and medium-sized airports, and the 1995-96 survey by the American Association of Airport Executives was sent to over 700 airports.

[6]49 U.S.C. 47107 (a)(1) (1994).

[7]49 U.S.C. 40116 (e)(2) (1994).

charging the contested fee and may direct the refund of a fee unlawfully collected. FAA's decisions can be appealed to the courts of appeals. Airlines are expected to continue paying a contested fee while it is under protest. Until December 1996, when FAA's new regulations became effective, there were no time frames for resolving such disputes. FAA's new regulations allow up to 60 days from the date of a complaint for the parties to file additional statements and information. The regulations allow an additional 120 days for an initial determination of compliance, which can be appealed within the agency.

A second administrative option for handling disputed fees was established by the Federal Aviation Administration Authorization Act of 1994.[8] Under the act, an airline can file a complaint with the Secretary within 60 days after it receives written notice of the establishment or increase of a fee. An airport operator can also request DOT to determine if a fee is reasonable, as required by the federal statutes discussed above. The Secretary is required to resolve a significant dispute over the reasonableness of a fee within 120 days after a complaint or request is filed. The Secretary must first determine whether a significant dispute exists within 30 days after the complaint or request is filed. If the dispute is found to be significant and the matter otherwise falls under the Office of the Secretary's jurisdiction, the Secretary then refers the case to an administrative law judge, who must issue a recommended decision within 60 days of the referral. The Secretary has 30 additional days to issue a final order; if the Secretary does not do so, the decision of the administrative law judge becomes the final order of the Secretary. Final orders may be appealed directly to the courts of appeals. The act includes explicit authority for the Secretary to order refunds of unreasonable fees.

The 1994 act also required the Secretary to establish standards for determining whether airport fees are reasonable. In June 1996, DOT issued a policy defining reasonable fees that distinguished between airfield and nonairfield fees. The policy required that airfield fees–aeronautical fees charged for the use of the runways, taxiways, ramps, aprons, and roadway land–be capped at the actual costs to the airport and that airfield assets be valued according to their historic costs. The policy permitted nonairfield fees–aeronautical fees charged for the use of all other aeronautical facilities and service, including terminals, hangars, cargo space, and maintenance–to be set using any reasonable methodology.

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[8]49 U.S.C. 47129 (1994 & Supp. II 1996).

The Air Transport Association of America and the City of Los Angeles[9] challenged DOT's policy that defined reasonable fees. The association argued that DOT had not defined reasonableness for nonairfield fees, thus exposing airlines to excessive fees. Los Angeles challenged the policy's requirement that airfield assets be valued at historic costs. In August 1997, the Court of Appeals for the District of Columbia Circuit set aside the portions of DOT's policy that capped airfield fees at historic costs and permitted nonairfield facilities and land to be valued using any reasonable methodology.[10] In order to revise the pertinent portions of the policy, on August 12, 1998, DOT issued an advance notice of proposed policy that requested suggestions for replacement provisions to the policy. The comment period extends until December 30, 1998, on the basis of requests from the airline transport industry, according to FAA.

DISPUTES OVER THE REASONABLENESS OF THE FEES PAID BY AIRLINES

There have been few formal disputes over the fees that airlines pay to airports. Over the past 14 years, 14 disputes about these fees have arisen. As a result, complaints have been filed with the Office of the Secretary, FAA, and/or the courts. Complaints in eight of these disputes were filed after the passage of the Federal Aviation Administration Authorization Act of 1994. The Office of the Secretary addressed seven of the eight complaints. It dismissed three complaints and issued decisions in another three; one complaint was settled prior to a decision. FAA is handling the remaining case and is also considering separate issues raised in two of the seven complaints addressed by the Office of the Secretary. (Enc. I summarizes the 14 cases.)

The nature of the complaints in these disputes has been mixed. Among the factors triggering the filing of complaints have been a change in the type of agreement from residual to compensatory,[11] increased fees to pay for the

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[9]The City of Los Angeles operates Los Angeles International Airport.

[10]The court also vacated the policy's distinction between charging airlines for imputed interest associated with the investment of nonairfield fees in the airfield but not charging airlines for imputed interest associated with the investment of airfield fees in the airfield. Air Transport Association of America v. Department of Transportation, 119 F.3d 38, as amended by 129 F.3d 625 (D.C. Cir. 1997).

[11]See in enc. I, "Los Angeles International Airport."

construction of a new terminal,[12] and landing fee differentials for large versus small aircraft.[13] Specific examples illustrate the diversity of the complaints:

The airlines serving the Kent County International Airport in Michigan complained that the airport's compensatory agreement imposed excessive fees because it did not provide for using concession revenues to offset the fees paid by airlines. The Supreme Court, however, ruled in 1994 that compensatory agreements were legally permissible and that the fees were not excessive because the airlines were charged only break-even costs.[14] This case as well as the dispute at the Los Angeles International Airport led the Congress in 1994 to direct the Secretary of Transportation to issue the guidance for assessing the reasonableness of fees.

The Los Angeles International Airport has been involved in two separate disputes. In the first case, when the airport's residual cost agreement expired and efforts to negotiate a new agreement were unsuccessful, the airport operator unilaterally adopted a new compensatory agreement. Under the new agreement, the landing fees tripled from $0.51 per 1,000 pounds to $1.56; the estimated fair market value of the airfield and land was reflected in the fee change. The airport threatened to deny use of the airport to airlines that did not pay the new fees. In late 1993, the Secretary of Transportation negotiated an interim solution whereby the airlines agreed to pay the fees under protest until the dispute was resolved. Ultimately, DOT ruled that the airport's use of fair market value in calculating landing fees was not reasonable.

In the second case, airlines filed a complaint with the Office of the Secretary in August 1995 after the airport increased the fees at the beginning of its 1995-96 fiscal year. The airlines again challenged the fees because, among other things, the airport included expenses for a portion of police and fire services in the fee calculation. DOT concluded that charges for police and fire protection were in part unreasonable and reaffirmed its prior ruling that fair market value should not be used in calculating landing fees. On most other issues, the Department concluded that the fees were reasonable. DOT's decisions on the valuation of airfield land in both cases are on appeal to the Court of Appeals for the District of Columbia Circuit. The court is expected to hear the combined case in January 1999.

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[12]See in enc. I, "Miami International Airport."

[13]See in enc. I, "Logan Airport."

[14]Northwest Airlines v. County of Kent, Michigan, 510 U.S.C. 355 (1994).

In 1996, the operator of Miami International Airport requested that DOT determine the reasonableness of the fees imposed upon airlines in order to finance capital improvements at the airport. DOT ruled that the fees were reasonable because the airport's operator relied upon a standard methodology and because the airport's capital improvement plan would eventually provide comparable facilities for all airlines. Six airlines appealed this decision. In July 1998, the Court of Appeals for the District of Columbia Circuit upheld DOT's decision.[15] The court's decision also noted that the airlines had not presented any evidence to support their claim that the fees would cross-subsidize the airlines that would benefit from the improvements or that the fees charged would adversely affect competition among carriers.

SCOPE AND METHODOLOGY

You requested that we (1) describe how the fees that airports charge airlines are set, (2) explain DOT's role in resolving disputes between airports and airlines over these fees, and (3) discuss the formal disputes that have arisen over airport fees in the past 14 years. To address the three objectives, we interviewed officials at the Office of the Secretary, DOT; FAA; and several aviation industry associations–the Air Transport Association of America, Airports Council International, American Association of Airport Executives, and the Regional Airline Association. We also interviewed officials at the Metropolitan Washington Airports Authority and Hopkins and Sutter, a law firm that has represented airports in disputes over fees charged to airlines. In addition, to address the first objective, we reviewed literature on airport financing. To address the second objective, we also reviewed DOT's and FAA's policies on airport fees and dispute resolution. To address the third objective, we also reviewed and summarized relevant court decisions and DOT orders. We conducted our work from May through November 1998 using generally accepted government auditing standards.

AGENCY COMMENTS

We provided copies of a draft of this report to the Department of Transportation for review and comment. We met with the Director, Airport Safety and Standards, FAA, and a Senior Economic Policy Advisor, Office of Transportation Policy Development, Office of the Secretary. The Department generally concurred with the information presented in our draft and also

[15]Air Canada v. Department of Transportation, 148 F.3d 1142 (D.C. Cir. 1998).

provided technical corrections and updated information that we incorporated where appropriate.

We are sending copies of this report to the Secretary of Transportation and will make copies available to others on request. Please call me at (202) 512-2834 if you or your staff have any questions about this report. Major contributors to this report were Janet Barbee, Helen Desaulniers, Sharon Dyer, and Teresa Spisak.

Sincerely yours,

John H. Anderson, Jr.
Director, Transportation Issues

Enclosure

DISPUTES OVER THE FEES PAID BY AIRLINES, 1984-98

Complaints over the airport fees paid by airlines have been filed with the courts, the Federal Aviation Administration (FAA), and the Office of the Secretary of Transportation. From 1984 through 1994, six cases were filed with the courts and/or FAA. Since 1994, airlines and airports can have the reasonableness of fees reviewed under the Office of the Secretary's expedited procedures; airlines also have the option of having fees reviewed under FAA's existing procedures. A 1994 court decision held that complaints have to be raised first through the Department of Transportation (DOT), after which they can be appealed to the courts. Since 1994, eight cases have been filed with the Office of the Secretary or FAA. The 14 cases filed since 1984 are summarized below.

INDIANAPOLIS INTERNATIONAL AIRPORT

Indianapolis Airport Authority v. American Airlines, Inc., 733 F.2d 1262 (7th Cir. 1984).

After unsuccessful negotiations with six airlines over the terms of a new lease, the Indianapolis Airport Authority set new fees by ordinance, using a compensatory approach to calculate the fees. The airlines refused to pay the new fees, which were nearly double those paid under the expired lease, because the airport authority had not considered concession revenues in setting the fees. The airport initiated legal action to collect payment. In 1984, the Seventh Circuit Court of Appeals ruled that the methodology for calculating the fees was unreasonable because it did not take into consideration concession revenues that would lower the fees charged to airlines. In its 1994 decision concerning Kent County International Airport (see below), the Supreme Court effectively over ruled this decision.

MIAMI INTERNATIONAL AIRPORT

Arrow Airways, Inc. v. Dade County, 749 F.2d 1489 (11th Cir. 1985).

A dispute over property rents and fee increases at Miami International Airport led to a 1985 decision by the Eleventh Circuit Court of Appeals that the airlines had no right to bring suit against the airport under the grant assurance provision of the Airport and Airway Improvement Act. The court also ruled that the fee increases did not create an undue burden upon interstate commerce, nor was the airport engaged in unlawful revenue diversion. The fee structure at Miami International Airport has changed since the court ruling. The new fee structure was challenged in 1996 (see below).

ASPEN/PITKIN COUNTY AIRPORT

Rocky Mountain Airways, Inc. v. County of Pitkin, 674 F. Supp. 312 (D. Colo. 1987).

Increased fees at Aspen/Pitkin County Airport led the airlines to sue the airport operator, alleging that certain airport fees were excessive, unreasonable, and discriminatory. The airport had increased the fees paid by airlines to pay for renovating a facility used by general aviation and commercial airlines. The commercial airlines complained, however, that they were assessed a disproportionate share of the costs compared to general aviation airlines. The District Court for the District of Colorado held, among other things, that the airlines had a right to sue the airport authority under the Anti-Head Tax Act but that the airlines had no right to sue for alleged violations of the grant assurance provision of the Airport and Airway Improvement Act.

STAPLETON INTERNATIONAL AIRPORT

The City and County of Denver v. Continental Airlines, Inc., 712 F. Supp. 834 (D. Colo. 1989).

The airport operator decided to finance the construction of a new airport with revenues from fees paid by concessionaires and airlines at Stapleton International Airport. Two airlines complained that the financing plan violated the Anti-Head Tax Act. The District Court for the District of Colorado upheld the right of the airlines to sue under the Anti-Head Tax Act and held that the act prohibited Denver from charging airlines for the costs of the new airport but not from using surplus revenues from concessionaires for that purpose. The court found that the profits from concession revenues did not have to be considered in recovering costs from airlines then using Stapleton International Airport. This decision conflicted with the 1984 decision concerning Indianapolis International Airport. The differences were resolved in the Supreme Court's ruling on Kent County International Airport (see below).

LOGAN AIRPORT

New England Legal Foundation v. Massachusetts Port Authority, 883 F.2d 157 (1st Cir. 1989).

In 1988, the Massachusetts Port Authority approved a new fee structure for service at Logan Airport, which effectively increased the landing fees of smaller aircraft while decreasing those of larger aircraft. The National Business Aircraft Association and others filed a complaint with FAA in March 1988 alleging that the new fees were unfair,

unreasonable, and discriminatory.[1] The Secretary ruled, among other things, that the new landing fees were unreasonable and discriminatory because of the impact on smaller aircraft. In 1989, the First Circuit Court of Appeals affirmed the Secretary's finding.

KENT COUNTY INTERNATIONAL AIRPORT

Northwest Airlines v. County of Kent, Michigan, 510 U.S. 355 (1994).

The airlines alleged that the airport's compensatory approach for setting fees did not allow concession revenues to be used to offset the fees they paid. Including these revenues in the rate calculations would have lowered the fees paid by the airlines. The Supreme Court upheld the airport's use of a compensatory approach and found that the fees assessed under the approach were not excessive. In upholding the airport's use of this compensatory approach, the Court resolved the conflict presented by the decisions concerning Indianapolis International and Stapleton International airports.

LOS ANGELES INTERNATIONAL AIRPORT (FIRST CASE)

Department of Transportation Order 95-6-36, June 30, 1995.
City of Los Angeles Department of Airports v. United States Department of Transportation, 103 F.3d 1027 (D.C. Cir. 1997).
Department of Transportation Order 97-12-31, December 23, 1997.

LOS ANGELES INTERNATIONAL AIRPORT (SECOND CASE)

Department of Transportation Order 95-12-33, December 22, 1995.
Department of Transportation Order 97-12-31, December 23, 1997.

The Los Angeles International Airport has been involved in two separate disputes. In the first case, when the airport's residual fee agreement expired and efforts to negotiate a new agreement were unsuccessful, the airport operator unilaterally adopted a new compensatory methodology to calculate airport fees. Under this new agreement, the landing fees tripled from $0.51 per 1,000 pounds in landed weight to $1.56; the estimated fair market value of the airfield land was reflected in the fee change. Under the threat of being denied access to the airport, the airlines agreed to pay the fees under protest while

[1]Shortly thereafter, the New England Legal Foundation and others filed an action against the Massachusetts Port Authority in district court to prevent the enforcement of the new fee structure. The district court held that the new structure was reasonable. The Court of Appeals considered both the district court's decision and the Secretary's decision.

seeking resolution of the case under DOT's expedited procedures.[2] Although most of the fees were upheld, DOT held that Los Angeles should have valued the land on the basis of historic costs and that an allocation for fire services was not justified. The Court of Appeals for the District of Columbia Circuit held DOT's decision to be based on an erroneous view of federal law and sent the case back to DOT for further consideration. After reconsideration, DOT again determined that Los Angeles' use of fair market value in calculating airline fees was not reasonable. The Department did not agree with the airlines' other objections to the fees, such as the allocation of access road costs.

In the second case, airlines filed a complaint under DOT's expedited procedures in August 1995, challenging the increased landing fees adopted in July 1995 because the airport again used fair market value in calculating them. Among other things, the airlines also challenged the city's decision to include expenses for a portion of police and fire services in the fee calculation. DOT reaffirmed its prior ruling that the fees should not use fair market value and concluded that charges attributable to police and fire protection were in part unreasonable. After the court's decision in the first case, the two cases involving the Los Angeles Airport were combined. DOT's decisions on the valuation of airfield land in both cases are now on appeal to the Court of Appeals for the District of Columbia Circuit. The court is expected to hear the case in January 1999.[3]

PUERTO RICO'S AIRPORTS

Department of Transportation Order 95-5-13, May 11, 1995.

Financial losses at the Puerto Rico Ports Authority, which operates the Luis Munoz Marin International Airport and the Mercedita Airport, led the Authority to adopt a new fully compensatory rate structure, which increased the landing fees paid by airlines almost 30 percent. The airlines filed a complaint under DOT's expedited procedures challenging the increase. The airlines questioned the appropriateness of the methodology used to establish the fees. Among other things, they also complained that the new fees discriminated among airport users, unjustly subsidized unrelated aviation facilities, and

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[2]Prior to filing a complaint with the Office of the Secretary, several airlines and their trade associations challenged in district court Los Angeles' adoption of the new methodology. The court dismissed all claims pointing to the administrative remedies available to the airlines.

[3]Several airlines that were denied participation in DOT's proceeding filed complaints with the agency over the landing fees; several nonairline firms filed similar complaints. According to FAA, these complainants have agreed to abide by the ultimate finding on the reasonableness of landing fees in DOT's proceeding. The issue to be decided is whether FAA has the authority to order refunds.

possibly cross-subsidized nonaviation functions of the Authority. During DOT's proceedings, the parties settled the matter, and DOT dismissed the complaint on May 11, 1995.

MICRONESIA/NORTHERN MARIANA ISLANDS' AIRPORTS

Department of Transportation Order 95-4-14, April 10, 1995.

A complaint filed by one airline contended that the landing, arrival, and departure fees imposed by the airport operator–the Commonwealth Ports Authority of the Commonwealth of the Northern Mariana Islands–were excessive, unreasonable, and discriminated against aeronautical users. The complaint sought to undo the fees set by an airport use agreement that had gone into effect without protest in July 1993, prior to enactment of the Federal Aviation Administration Authorization Act of 1994. The act specifically excluded from DOT's expedited procedures any fees not in dispute as of August 23, 1994, as well as fees established in a written agreement. DOT, therefore, dismissed the complaint.

LEHIGH VALLEY INTERNATIONAL AIRPORT

Department of Transportation Order 95-5-8, May 4, 1995.

This complaint concerned landing fees and terminal rental charges as well as a subsidy that the Lehigh Valley International Airport agreed to pay to any airline that would provide service to specified markets. Initially, the airport made this offer to airlines already serving the airport, but it eventually decided to accept a proposal from TWA, which did not operate at the airport at that time. Airlines filed complaints about the subsidy program both with FAA and DOT. Six airlines–four of which had signed airport use agreements–filed a complaint under DOT's expedited procedures alleging that the increases in landing fees and terminal rental charges for 1995 and subsequent years violated federal law. They also claimed that the subsidy was an impermissible revenue diversion and that they had sustained unreasonable rate increases because the subsidy was included in the rate base used to calculate their fees.

DOT dismissed the complaint of the airlines that had signed use agreements with the airport because the expedited procedures do not apply to fees set in a written agreement. DOT also dismissed the complaints of the two remaining airlines after determining that the dispute was not significant. The complaints filed with FAA were still pending as of October 30, 1998.

DENVER INTERNATIONAL AIRPORT

Department of Transportation Order 95-7-27, July 21, 1995.

In April 1995, Denver International Airport increased terminal fees; the terminal rental rates included amounts needed to pay for unused gates. One airline filed a complaint with DOT, alleging that this increase was unreasonable, discriminatory, and unlawful. DOT determined that the complaint was not significant, noting that it concerned a single issue and a small dollar amount. Accordingly, DOT dismissed the complaint.

MIAMI INTERNATIONAL AIRPORT

Department of Transportation Order 97-3-26, March 19, 1997.
Air Canada v. Department of Transportation, 148 F.3d 1142 (D.C. Cir. 1998).

This is the only case in which an airport operator has used DOT's expedited procedures. Dade County, the operator of Miami International Airport, requested that DOT determine the reasonableness of the fee increases to cover a planned expansion.[4] The airport operator planned to develop a new terminal for American Airlines' use and renovate and expand facilities for other airlines. Six of the approximately 140 carriers serving the airport filed a response, claiming that American Airlines should pay a larger proportion of the cost of the facilities being constructed for it. DOT determined that the fees were reasonable (excluding a portion of the costs for a planned control tower not yet built) because all airlines would obtain comparable facilities under the airport's reconstruction plans. The airlines appealed DOT's decision to the Court of Appeals for the District of Columbia Circuit. In July 1998, the court upheld DOT's determination of the reasonableness of the fees and the comparability of facilities.

GREATER ROCHESTER INTERNATIONAL AIRPORT

Pending.

On January 1, 1998, the Greater Rochester International Airport established an airport facility use fee of $4 per passenger that was charged only to the regional airlines serving the airport. The regional airlines filed a complaint with FAA, claiming that the fee was unreasonable, unfair, and discriminatory because it was imposed solely upon their

[4]Several airlines challenged the new fees in district court. The court ruled that the determination of the reasonableness of the new fees should be made administratively, rather than by the court.

passengers and not the passengers of other airlines serving the airport. Under FAA's procedures, a preliminary determination was due at the end of October 1998. According to FAA, the parties agreed to extend that deadline until November 12, 1998, to provide further opportunity for them to resolve the dispute.

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