



**U.S. Department
of Transportation**

Office of the Secretary
of Transportation

GENERAL COUNSEL

1200 New Jersey Avenue, SE
Washington, DC 20590

June 15, 2015

Peter B. Haskel
Executive Assistant City Attorney
Dallas City Hall
1500 Marilla Street, Room 7DN
Dallas, Texas 75201-66222

Dear Mr. Haskel:

I am writing in response to your February 26, 2015 email, which seeks further guidance and information from the U.S. Department of Transportation (DOT) regarding letters received by the City of Dallas (City) from Delta Air Lines concerning two accommodation requests for gates and related space at Dallas Love Field (DAL or Love Field). In addition, you have asked for guidance and further explanation with regard to my December 17, 2014 letter to the City. That letter provided general guidance as to how the City should go about addressing accommodation requests, considering the unique circumstances at Love Field.

As noted in the December 17 letter, the City has

legal obligations under Federal law to reasonably accommodate all air carriers seeking to provide service at [Love Field], including the Competition Plan statute . . . and the obligations of the grant assurances accepted in connection with Airport Improvement Program grants to take all reasonable efforts to accommodate air carriers seeking to serve DAL.

Further, the letter provided guidance as to steps that the City should consider in assessing a request for accommodation from a new entrant carrier such as Delta or other carriers seeking expansion and determining the length of such anticipated accommodation at Love Field. The letter also reminded the City that, by law, the accommodation must be provided at reasonable rates. We believe that the letter provided sufficient guidance to permit the City to assess and make a determination regarding Delta's requests.

Your February 26 email has now asked for further guidance, specifically, whether the positions outlined in the December 17 letter were also "standards that are necessary for the City to comply with the grant assurances between DOT and the City." The answer to that question is yes. Our views regarding the consideration of requests for accommodation at

Love Field are derived from, among other things, our interpretation of the grant assurances and the statute upon which they are based.

The Airport Improvement Program (AIP) grant assurances statute, 49 U.S.C. § 47107, says in part that the Secretary of Transportation may *only* approve grant applications for an airport development project *if* he receives assurances that

(1) The airport will be available for public use on reasonable conditions and without unjust discrimination; [and]

* * * *

(4) A person providing ... aeronautical services to the public will not be given an exclusive right to use the airport

49 U.S.C. § 47107(a); *see also* 49 U.S.C. § 40103(e). These statutory requirements are incorporated in, and become a part of, every AIP grant agreement, and specifically in grant assurances numbers 22 and 23. The City has received numerous AIP grants that contain these conditions, so there is no doubt that these grant assurances govern the City's actions with respect to Delta's requests for accommodation and any other future requests for accommodation that the City may receive with respect to Love Field.

It is DOT's view that making reasonable efforts to accommodate new entrants or other carriers seeking expansion at Love Field, as described in our December 17 letter, follows the airport's obligation to make the airport available on "reasonable conditions" and "without unjust discrimination." Likewise, efforts to accommodate new entrants or other carriers seeking expansion at Love Field ensure that the airport has not given an "exclusive right" to a carrier at the airport. In accordance with the Competition Plan statutes, 49 U.S.C. §§ 40117(k), 47106(f), the City has acknowledged these accommodation obligations in its initial Competition Plan and in each of three updates to the Competition Plan. Specifically, the City's most recent Competition Plan update states its "inten[tion] to accommodate requests for access by applying the gate sharing provisions contained in . . . Section 4.06F of the new Restated Lease," wherein each incumbent carrier agrees to accommodate new entrants "at such times that will not unduly interfere with its operating schedule."

As explained in the December 17 letter, our view is that the grant assurances, the Competition Plan and other authorities noted above require that "if a requesting carrier is unable to arrange a voluntary accommodation with a signatory carrier," the City is obligated to "accommodate the requesting carrier to the extent possible given the current gate usage, without impacting current or already-announced, for-sale services by the signatory carriers." In other words, we believe that the City is required to accommodate a requesting carrier unless Love Field's facilities are fully-utilized at the time of the request, or the signatory carriers at the time of the request are selling tickets for future flights fully-utilizing the facilities. We do not believe that it would be consistent with the grant assurances or with the City's Competition Plan for the City, in determining gate utilization and the "operating schedule" of the incumbent carriers, to take into account expanded, unscheduled service that a signatory carrier had not announced and offered for sale at the time of the request. We have considered whether it would be appropriate for the City to take into account a signatory carrier's unscheduled future plans, but

believe – in light of our experience with the manner in which carriers make (and often change or abandon) expansion plans as circumstances change over time or proposed routes become less desirable – that the City should not consider such plans as sufficiently reliable indicators of future utilization. To do so may give a signatory carrier the ability to block a competitor's accommodation request by deciding or asserting, after a request is made, that it will expand service. Consideration of unscheduled plans could also make it difficult for the City to make consistent and objective decisions, both because the City would have no reasonable way of knowing which unscheduled plans to take into account, and because unscheduled plans may not provide sufficient data to conduct a meaningful gate utilization analysis. Our view is that such results would be inconsistent with the grant assurances and the other authorities noted above, which ensure that Federally-assisted airports develop reasonable accommodation procedures that provide new entrants and incumbent carriers the ability to compete fairly for access to limited airport facilities.

As also explained in the December 17 letter, our view is that, once accommodated at Love Field, "the accommodated carrier is entitled to an ongoing similar pattern of service as long as the carrier continues to operate the accommodated flights," and that "the accommodated carrier should not be pushed out by incumbent carriers at a later date." It is the City's responsibility to manage gate space and any forced accommodation, and, as may be necessary over time, the accommodated carrier may be accommodated by different signatory carriers on different gates. How that is accomplished is left to the judgment of the City as the airport operator. However, the City and Love Field's signatory carriers must remain mindful of the need to accommodate the carrier's continuing pattern of service. We believe that just as a dominant signatory carrier should not be able to block a requesting carrier from accessing Love Field by announcing future plans to expand service shortly after an accommodation request is made, a dominant carrier should not be able to do so at a later date. We also believe that allowing a requesting carrier to continue a similar pattern of service is necessary in order to make any accommodation economically meaningful; if a requesting carrier could be pushed out after a short time period, new entrants would have very little incentive to ever seek to initiate service at a limited-capacity airport. We do not believe, however, that any forced accommodation would need to continue if at any time the City converts certain recaptured gates to common use and capacity is there available for the accommodation. Indeed, given the capacity constraints at Love Field, we strongly recommend the City consider this and other actions to facilitate entry and enhance competitive access at the expiration of the City's current leases or the next available opportunity.

With this additional guidance regarding the applicability of the grant assurances to the City's actions, we expect that the City will be able to carry out, in reasonable and timely fashion, the accommodation efforts we described in our December 17 letter. As with other grant assurances, DOT reserves the right to pursue appropriate action if it were to determine that there has been a violation of the grant assurances. At this time, we have made no determination as to whether such a violation has occurred.

We believe that the December 17 letter already addresses the City's remaining questions, and/or that it is unnecessary for DOT to comment on those questions at this time. DOT's decision not to comment further should not be construed as agreement with, or acquiescence

to, any statements contained in your email. The views expressed in this letter also should not be construed as relating to considerations of competition issues under the antitrust laws.

I note, as I have in the past, that it is the City's responsibility to decide how to act on Delta's requests. The City, of course, must make this decision in compliance with the grant assurances and its other legal obligations. DOT has expressed its views to the City on this subject and also given guidance about some aspects of those obligations. Ultimately, however, it is the City that must make a decision, and I urge you to do so in a reasonable and timely manner.

Please contact me if you have any questions or would like to discuss these issues further.

Sincerely yours,

A handwritten signature in blue ink that reads "Kathryn B. Thomson". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Kathryn B. Thomson