

ACI-NA Economics and Finance Conference Rates and Charges: Recent Developments

Rates and Charges Background

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- Key principals of rates and charges regime
 - Does not apply to rates set by agreement
 - Negotiated solutions are preferred
 - Meaningful consultation on proposed fees
 - Fair and reasonable terms without unjust discrimination
- Guidance
 - Portions of DOT's 1996 Policy Regarding Airport Rates/Charges
 - Various statutes, case law, agreements

U.S. Supreme Court: Kent County, 1994

- Triggered by application of compensatory rate methodology
- Court found
 - Compensatory methodology not inherently unreasonable
 - Airlines have no right to non-aeronautical revenue
 - “Reasonableness” not a judicial decision
 - Should be decided by Secretary of Transportation

DOT/Court Proceedings: LAX I and LAX II

- Triggered by landing fee increases in July 1993 and July 1995
 - Methodology substantially upheld
 - Reasonable allocation among cost centers
 - No cross credit of aeronautical revenues
 - Amortization of local capital, incl. reliever
 - Rejected fair market valuation of land and charging “unneeded” coverage
- Court: Different airfield/non-airfield rules?

DOT Proceedings: Miami, 1997

- Triggered by development for hub airline
 - Issue: Reasonableness of terminal fees
 - Initiated by airport
 - Equalized terminal rents are reasonable even if facilities are different (for the time being)
 - Comparable practices at other airports are helpful, but not necessarily decisive
 - ALJ's recommended decision substantially reversed by Secretary

DOT Proceedings: Newark, 2005

- Triggered by unit terminal rate increases
 - Issue: Reasonableness of fees
 - Indirect allocations were reasonable, except one not allocated on costs
 - Complainants (without leases) were not similarly situated to lessees in other terminals
 - “Surplus” in compensatory fee methodology is unreasonable
 - ALJ and Secretary largely agreed

Key Compensatory Issues

- How compensatory?
 - Costs included
 - Airline space charged directly
 - Rentable/usable space denominator
 - Allocation of “public” and support space
- Allocation of indirect costs
 - Transparency and consistency

Rate Setting Best Practices

- Understand and articulate objectives clearly
- Identify and prioritize alternate means to reach objectives
- Assure seamless organizational links
- Recognize strengths and limitations of financial information
- Identify precedents
- Engage in meaningful consultation
 - Be fully prepared

Dispute Resolution Process

- Written notice of fee
 - Within 60 days: File complaint

- “Rocket Docket” process begins
 - First 14 days: Respondent comments
 - Next 14 days: Secretary determines if significant dispute exists
 - Next 60 days: ALJ hearings and recommended decision

- Next 30 days: Secretary’s final decision