UNITED STATES DEPARTMENT OF TRANSPORTATION

FEDERAL AVIATION ADMINISTRATION

WASHINGTON, DC

IN THE MATTER OF COMPLIANCE **WITH FEDERAL OBLIGATIONS BY THE CITY OF DALLAS, TEXAS**	**FAA Docket No. 16-15-10**

NOTICE OF INVESTIGATION

Notice is hereby given to the City of Dallas (City), the owner and operator of Dallas Love Field (DAL), that the Federal Aviation Administration (FAA) is initiating an investigation to determine whether the City, by failing to grant or otherwise act on the request of Delta Air Lines, Inc. (Delta) for accommodation at DAL, has violated its Airport Improvement Program (AIP) grant agreements with FAA, and/or the statutory prohibition on granting an exclusive right to an airport on which Federal funds have been expended. The FAA issues this Notice of Investigation (NOI) in accordance with FAA Rules of Practice for Federally Assisted Airport Proceedings, Title 14 Code of Federal Regulations (CFR) Part 16. In accordance with 14 CFR §16.103, the City has 30 days from the date of service of this notice to respond.

At present, Delta is operating five flights a day from DAL using gates subleased by Southwest Airlines Co. (Southwest) from United Airlines, Inc. (United). The FAA understands that while the short-term license agreement under which Delta had most recently been accessing these gates expired on July 6, 2015, Southwest Airlines has agreed to accommodate Delta on gates it leases while the U.S. District Court for the Northern District of Texas considers certain motions filed in a lawsuit commenced by the City. The FAA strongly recommends that the City make all necessary arrangements to ensure that Delta is able to continue its current pattern of service until this FAA proceeding is resolved. The FAA hereby provides notice that it may, if it deems it necessary, issue an interim order to require the City to maintain access to DAL for Delta so that it may continue its current pattern of service during the pendency of this proceeding.

If FAA's investigation establishes violations of the City's sponsor obligations and related Federal law, FAA may issue a determination that the City is in noncompliance with its Federal grant obligations in its operation of DAL. As a result, the City could be found to be ineligible to receive new FAA grants and payments under existing grants until this matter is resolved. Further sanctions, including a judicial order of enforcement, are also possible.

I. BACKGROUND

The Airport and Its Obligations

DAL is a public-use airport owned and operated by the City. The facility, classified as a commercial service airport[1], is the base of operations for approximately 240 aircraft and accounts for approximately 176,000 operations each year, 85,000 of which are air carrier operations.[2] In 2013, the airport accounted for 4 million passenger enplanements.[3]

The FAA records indicate that the planning and development of the airport has been financed, in part, with funds provided by FAA under the AIP, authorized by the Airport and Airway Improvement Act of 1982, as amended, 49 United States Code (U.S.C) 47101, et seq. Between 1982 and 2014, the City has received a total of $149 million in federal airport development assistance for projects at the airport. The City has also used Passenger Facility Charges under 49 U.S.C. 40117 to fund FAA-approved projects.

A. The Wright Amendment, Five Party Agreement, and the Wright Amendment Reform Act

Congress enacted the Wright Amendment in 1979 to limit commercial airline service from DAL to Texas and four contiguous states. It limited most non-stop flights from DAL to destinations within Texas and neighboring states. Additional states were added in 1997 and 2005. In July 2006, the Cities of Dallas and Fort Worth, the DFW International Airport Board, American Airlines, and Southwest Airlines entered into an agreement (the "Five Party Agreement") to govern future operations and development at Love Field. The Five Party Agreement sought the enactment of legislation that would amend, and ultimately repeal, the limitations on DAL operations imposed by the Wright Amendment. It also called for the reduction of gate capacity at DAL, from 32 to 20 gates. The agreement provided that after a certain period, three carriers would receive preferential use of gates as follows: Southwest Airlines (Southwest) (16 gates), American Airlines, Inc. (American) (2 gates), ExpressJet Airlines, Inc. (ExpressJet) (2 gates).[4]

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[1] National Plan Of Integrated Airport Systems available at: http://www.faa.gov/airports/planning_capacity/npias/.
[2] Source: DAL Master Record, http://www.gcr1.com/5010web/airport.cfm?Site=DAL&AptSecNum=2.
[3] Commercial Service Airports Based on Calendar Year 2013 Enplanements, FAA ACAIS Data, 1/26/2015.
[4] Continental Airlines, Inc. (Continental) subsequently acquired the preferential use of two gates from ExpressJet, and United acquired the preferential use of those gates when it merged with Continental. The City currently has Amended and Restated Master Leases with Southwest for 16 gates, American for two gates, and United for two gates. American has subleased its two gates to Virgin America Inc. (Virgin). United has subleased its two gates to Southwest. The master lease terms expire on

In the Five Party Agreement, the City agreed to seek voluntary accommodation of new entrant carriers at DAL from its existing carriers, and to require the sharing of preferential lease gates if the existing carriers are unable or unwilling to accommodate the new entrant service. The Five Party Agreement, Art. I(3)(b). The parties agreed that the City would not be obligated to take any action that would lead it to be found in noncompliance with its Federal grant assurances or other Federal aviation law obligations. *Id.* at Art. II (1).

In October 2006, Congress enacted the Wright Amendment Reform Act, Pub. L. No. 109-352 (WARA), pursuant to which the flight limitations imposed by the WARA were sunset effective October 13, 2014. WARA incorporated and essentially adopted many of the terms of the Five Party Agreement, including the restriction on the number of gates allowed at DAL.

Section 5(a) of WARA provides that:

> [The City] shall determine the allocation of leased gates and manage DAL in accordance with the contractual rights and obligations existing as of the effective date of [WARA] for certificated air carriers providing scheduled passenger service at Love Field on July 11, 2006. To accommodate new entrant air carriers, [the City] shall honor the scarce resource provision of the existing DAL leases.

Section 5(e)(1)(E) of WARA provides that:

> Nothing in this Act shall be construed . . . to limit the authority of [FAA] . . . to enforce requirements of law and grant assurances . . . that impose obligations on DAL to make its facilities available on a reasonable and nondiscriminatory basis to air carriers seeking to use such facilities, or to withhold grants or deny applications to applicants violating such obligations with respect to DAL.

Section 5(e)(2)(B)(ii) of WARA provides that Section 5(e)(1)(E)

> shall not be construed to require [the City] . . . to modify or eliminate preferential gates leases with air carriers in order to allocate gate capacity to new entrants or to create common use gates, unless such modification or elimination is implemented on a nationwide basis.

September 30, 2028. The leases are subordinate to any and all existing and future grant agreements between the City and the United States.

II. APPLICABLE LAW AND POLICY

A. The FAA Airport Compliance Program

The FAA discharges its responsibilities for ensuring airport owners' compliance with their Federal obligations through its Airport Compliance Program. The FAA's airport compliance efforts are based on the contractual obligations, which an airport owner accepts when receiving Federal grant funds or the transfer of Federal property for airport purposes. These obligations are incorporated in grant agreements and instruments of conveyance in order to protect the public's interest in civil aviation and to ensure compliance with Federal laws.

The FAA Airport Compliance Program is designed to ensure the availability of a national system of safe and properly maintained public-use airports operated in a manner consistent with the airport owners' Federal obligations and the public's investment in civil aviation. The Airport Compliance Program does not control or direct the operation of airports; rather it monitors the administration of the valuable rights pledged by airport sponsors to the people of the United States in exchange for monetary grants and donations of Federal property to ensure that the public interest is being served.

As a general rule, we note that FAA Compliance Program is designed to achieve voluntary compliance with Federal obligations. In addressing allegations of noncompliance, FAA will make a determination as to whether an airport sponsor is currently in compliance with the applicable Federal obligations. FAA has to make a judgment whether the sponsor is reasonably meeting the Federal obligations. The FAA may also take into consideration any action or program the sponsor has taken or implemented or proposed action or program the sponsor intends to take which, in FAA's judgment, is inadequate to reasonably carry out the obligations under the grant assurances.

B. The Airport Improvement Program and the Airport Sponsor Assurances

Title 49 of the United States Code, § 47101, et seq., provides for federal financial assistance for the development of public-use airports under the AIP established by the Airport and Airway Improvement Act of 1982, as amended. Section 47107, et seq., and the grant contract set forth assurances to which an airport sponsor agrees as a condition of receiving federal financial assistance. Upon acceptance of an AIP grant, the assurances become a binding contractual obligation between the airport sponsor and the federal government.

The FAA has a statutory mandate to ensure that airport owners comply with these sponsor assurances.[5] FAA Order 5190.6B, "Airport Compliance Requirements" provides the policies and procedures to be followed by FAA in carrying out its legislatively mandated functions related to federally obligated airport owners' compliance with their sponsor assurances. Congress mandated conditions such as

[5] See, *e.g.*, the Federal Aviation Act of 1958, as amended and re-codified, 49 U.S.C. § 40101, 40113, 40114, 46101, 46104, 46105, 46106, 46110, and the Airport and Airway Improvement Act of 1982, as amended and re-codified, 49 U.S.C. § 47105(d), 47106(d), 47107(k), 47107(l), 47111(d), 47122.

these on grants to local airport proprietors in part to ensure the maintenance of conditions essential to an efficient national air transportation system.

Grant agreements under the AAIA are not ordinary contracts, but part of a procedure mandated by Congress to assure federal funds are disbursed in accordance with Congress' will.[6] The FAA considers it inappropriate to provide Federal assistance for improvements to airports where the benefits of such improvements will not be fully realized due to inherent restrictions on aeronautical activities.

C. Economic Non-Discrimination

The owner of any airport developed with Federal grant assistance is required to operate the airport for the use and benefit of the public and to make it available to all types, kinds, and classes of aeronautical activity on fair and reasonable terms, and without unjust discrimination. Grant Assurance 22, *Economic Nondiscrimination,* which implements the provisions of 49 U.S.C. § 47107(a)(1)-(6), requires the sponsor to assure:

a. It will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.... [and]

e. Each air carrier using such airport (whether as a tenant, non-tenant, or subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such air carriers which make similar use of such airport and utilize similar facilities, subject to reasonable classifications such as tenants or non-tenants and signatory carriers and non-signatory carriers. Classification or status as tenant or signatory shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on air carriers in such classification or status.

Grant Assurance 22 deals with both the reasonableness of airport access and the prohibition of adopting unjustly discriminatory conditions as a potential for limiting access. FAA Order 5190.6B describes the responsibilities under Assurance 22 assumed by the owners or sponsor of public use airports developed with Federal assistance. Among these is the obligation to treat in a uniform manner those users making the same or similar use of the airport and to make all airport facilities and services available on reasonable terms without unjust discrimination.[7]

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[6] City and County of San Francisco v. FAA, 942 F.2d at 1396 (9th Cir. 1991).
[7] FAA Order 5190.6B at Chapter 9.

D. Exclusive Rights

Title 49 U.S.C. §40103(e), provides, in relevant part, that "there shall be no exclusive right for the use of any landing area or air navigation facility upon which Federal funds have been expended." Title 49 U.S.C. §47107(a)(4), similarly provides, in pertinent part, that any airport sponsor that receives AIP funds shall provide an assurance that "a person providing, or intending to provide, aeronautical services to the public will not be given an exclusive right to use the airport."

Grant Assurance 23, *Exclusive Rights* implements both statutory provisions, and requires, in part, that the sponsor assure that:

> It will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public [. . .] It further agrees that it will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities, including, but not limited to . . . air carrier operations . . . , and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under Title 49, U.S.C.

An exclusive right is defined as a power, privilege, or other right excluding or debarring another from enjoying or exercising a like power, privilege, or right. An exclusive right can be conferred either by express agreement, by the imposition of unreasonable standards or requirements, or by any other means. Such a right conferred on one or more parties, but excluding others from enjoying or exercising a similar right or rights, would be an exclusive right.[8]

It is FAA's policy that the sponsor of a federally obligated airport will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public and will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities. FAA Order 5190.6B clarifies the applicability, extent, and duration of the prohibition against exclusive rights under 49 U.S.C. § 40103(e) with regard to airports developed with FAA-administered grant assistance and Federal property conveyances.

The exclusive rights prohibition remains in effect as long as the airport is operated as an airport. FAA Order 5190.6B provides additional guidance on the application of the statutory prohibition against exclusive rights and FAA policy regarding exclusive rights at public-use airports.[9]

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[8] See FAA Advisory Circular 5190-6 *Exclusive Rights and Minimum Standards for Commercial Aeronautical Activities,* January 4, 2007.

[9] FAA Order 5190.6B, Chapter 8.

E. Reasonable Accommodation

The FAA has long interpreted these grant assurances and other Federal obligations to require an airport to make reasonable efforts to accommodate new entrants by providing the necessary facilities or the opportunity for the new entrant to obtain those facilities. Since access must not be unjustly discriminatory, airports must also be sensitive to assuring that a new entrant is accommodated on terms reasonably similar to that of the incumbent.

Providing timely access is important for purposes of complying with the grant assurances and ensuring that the public receives the benefit of competitive service. Generally, access should be provided with dispatch, since the airport operator is presumed to be familiar with the usage of the airport's space and facilities and with management of sublease or sharing arrangements. Delays occasioned by the airport management investigating "reasonable accommodation" arrangements should not be necessary, since the airport has undertaken the assurance that, as a public facility, it will be able to provide reasonable access to the public.

A sponsor may not deny an air carrier access solely based on the non-availability of existing facilities; claim lack of gate availability when, in fact, gates are not fully utilized; relinquish control of airport facilities to incumbent carriers for purposes of negotiating access with a new entrant; or permit unreasonable sublease fees or conditions to be imposed on new entrants. In short, the sponsor must make arrangements for accommodation if reasonably possible.

F. Grant Assurance 39. Competitive Access

Grant Assurance 39, which implements 49 U.S.C. § 47107(r), provides that:

a. If the airport owner or operator of a medium or large hub airport (as defined in section 47102 of title 49, U.S.C.) has been unable to accommodate one or more requests by an air carrier for access to gates or other facilities at that airport in order to allow the air carrier to provide service to the airport or to expand service at the airport, the airport owner or operator shall transmit a report to the Secretary that:

    1. Describes the requests;

    2 Provides an explanation as to why the requests could not be accommodated; and

    3. Provides a time frame within which, if any, the airport will be able to accommodate the requests.

b. Such report shall be due on either February 1 or August 1 of each year if the airport has been unable to accommodate the request(s) in the six month period prior to the applicable due date."

Competition Plans

The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21), Pub. L. No. 106-181, requires certain large and medium hub airports ("covered airports"), including DAL, to submit and maintain a Competition Plan that includes "information on the availability of airport gates and related facilities, leasing and sub-leasing arrangements, gate-use requirements, gate-assignment policy, financial constraints, airport controls over air- and ground-side capacity, and whether the airport intends to build or acquire gates that would be used as common facilities." See title 49 U.S.C. § 47106(f). Pursuant to 49 U.S.C. § 40117(k), FAA is authorized to review any plan to ensure that it meets these requirements, and to review the plan's implementation to ensure that it is successfully implemented by each covered airport.

In adopting the Competition Plan requirement, Congress found that "[m]ajor airports must be available on a reasonable basis to all carriers wishing to serve those airports."[10] Legislative history indicates that "[t]he underlying purpose of the competition plan is for the airport to demonstrate how it will provide for new entrant access and expansion by incumbent carriers."[11]

The City submitted its initial Competition Plan in 2001, wherein it stated:

> Dallas understands its legal obligations under Federal law and, therefore, strives to accommodate all air carriers seeking to provide service at DAL subject to restrictions imposed by Federal law. In addition, Dallas recognizes that, by having accepted Federal grants, it has undertaken a legal obligation to provide reasonable air carrier access at DAL. Accordingly, Dallas has made and will continue to make all reasonable efforts to accommodate air carriers seeking to provide service at DAL subject to Federal law.

The City's most recent update to its Competition Plan, submitted in 2009 after the execution of the Five Party Agreement and the enactment of the WARA, likewise stated the City's "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

[10] Pub. L. No. 106-181, § 155(a)(1).

[11] H.R. Rep. 106-513.

agrees to accommodate new entrants "at such times that will not unduly interfere with its operating schedule."

III. FACTS AND ANALYSIS

The factual recitations below are based on FAA's information and belief, and based on information available to FAA at this time; the facts may be further developed, amended or corrected, if necessary, as this investigation proceeds.

Delta has operated five flights per day from DAL since 2009, when the carrier began subleasing gate space from American. In November 2013, the U.S. Department of Justice (DOJ) announced that American would be required to divest its two gates at DAL, as a condition of the settlement of DOJ's lawsuit challenging the merger between American and US Airways. In May 2014, Virgin America announced that it would sublease the American gates at DAL, with flights beginning on October 13, 2014. This date also marked the expiration of the Wright Amendment restrictions on long-haul flights from DAL. In anticipation of the lifting of restrictions, Southwest had begun announcing in early 2014 its plans to add flights at DAL.

On notice that its sublease of the American gate would expire on October 12, 2014, Delta contacted the Signatory Carriers in June 2014 to seek a voluntary arrangement for gate access that would allow Delta to continue its five daily flights. In July 2014, Delta informed the City that the Signatory Carriers had declined to enter into an arrangement with Delta, and Delta asked the City to follow the gate-sharing provisions of Section 4.06(F) of the Signatory Carriers' leases with the City.

Discussions between the City and Delta about gate access continued through the summer of 2014. On September 29, 2014, the City informed Delta that, based on the Signatory Carrier's operating schedules and the recent licensing of one gate by United to Southwest, the City could not provide gate access to Delta after October 12, 2014. On October 2, 2014, Delta responded to the City, arguing that gate space was available at DAL and that the City's failure to force an accommodation violated the City's obligations under the lease, the Five-Party Agreement, the airport's Competition Plan, AIP grant assurances, and federal law.

In late September, Delta also informed the U.S. Department of Transportation (DOT) about its attempts to continue serving DAL. During teleconferences with the City and carriers serving DAL in early October, DOT urged the parties to resolve the gate access issues. On October 10, Delta entered into a gate use licensing agreement with Southwest and a facilities use licensing agreement with United, which collectively allowed Delta to continue service at DAL until January 6, 2015. In the meantime, discussions among DOT, the City, and the carriers continued, and the City notified the carriers that it would work with consultants to develop an

accommodation policy for DAL. The City also sought guidance from the DOT Office of the Secretary and FAA about its obligations to accommodate carriers seeking to serve DAL.

In response to the City's requests for guidance, the DOT General Counsel sent a letter to the City on December 17, 2014, expressing guidance as to the scope of the City's legal obligations.[12] DOT's letter advised 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." The letter also stated 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." The letter also expressed views about the importance of maintaining an up-to-date gate utilization report, and the rates charged to accommodate carriers.

Because Delta's short-term licenses with Southwest and United were set to expire on January 6, the City directed the carriers on December 24 to continue the licensing arrangement until February 28, 2015, to give the City more time to decide Delta's request for accommodation. The parties negotiated privately, and, on January 6, Delta entered into agreements with United for the use of gate and facility space through July 6, 2015.

United and Southwest also finalized plans in January for Southwest to sublease United's two gates through the remainder of United's lease term with the City – that is, until September 30, 2028. The City consented to the sublease on January 28. In connection with the City's consent, the City, Southwest, and United agreed that the Sublease was subordinated and subject to the gate and facility space agreements between United and Delta. The City "expressly reserve[d] all its rights under the Lease and applicable law to issue decisions, directives, or rules regarding the utilization and potential accommodation of other airlines on the subleased gates." Southwest and United "agree[d] to comply with any decisions, directives, or rules regarding the utilization and potential accommodation of other airlines on the subleased gates issued by the City, but expressly reserve[d] all their rights under the Lease and applicable law to challenge the legality of any such decisions, directives, or rules issued by the City."

A few weeks later, on February 13, Southwest issued a press release announcing thirteen additional flights from DAL made possible by its sublease of the two United gates. On the same day, Southwest filed a petition for review of DOT's December 17, 2014 letter in the U.S. Court of Appeals for the D.C. Circuit.

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[12] Because the letter only offered guidance, it was not intended to constitute a definitive resolution of the dispute between Delta and the City.

The City continued to consider Delta's request for accommodation in early 2015, and, in April, the City sought comment from the carriers on proposed gate accommodation procedures. The City also asked DOT to explain further the City's obligations and provide more guidance on how it should assess accommodation requests.

On June 15, DOT responded to the City with an additional letter. DOT confirmed that its guidance regarding the scope of the City's legal obligations were derived from, among other things, Grant Assurances 22 and 23 and 49 U.S.C. § 40103(e). DOT also offered further explanation of the views expressed in the December 17, 2014 letter. On June 17, the City brought an action in federal district court in Dallas against DOT, FAA, and all carriers serving DAL. The City challenged both DOT Letters as inconsistent with the WARA, and also sought declaratory relief regarding how to handle Delta's request for accommodation. In connection with that lawsuit, Southwest, Delta, and the City each moved for a temporary restraining order and/or preliminary injunction. On June 24, the court set a briefing schedule that called for the parties to file any opposition papers to the pending motions by July 17, and any reply papers by July 31. On the same day, Southwest and Delta reportedly agreed that Delta would continue to operate its five round-trip flights during the pendency of those motions.

Delta wrote to the City on June 19 to confirm its exhaustion of good-faith efforts to resolve the carrier's request for accommodation and stated that Delta would be seeking legal recourse.

On July 10, SeaPort Airlines, which provides Essential Air Service (EAS) to DAL from El Dorado and Hot Springs, Arkansas, filed with DOT a request to replace DAL with service to George Bush Intercontinental Airport in Houston, Texas. SeaPort operates two daily flights to DAL, using gates subleased from Virgin. In its filing with DOT, SeaPort stated that one reason for its request to change the service pattern was its inability to secure a permanent ticket counter at DAL following the sublease of United's two gates to Southwest. Indicating that its sublease with Virgin for gate space did not include terminal space for a ticket counter, SeaPort stated that it sought to sublease terminal space from United, but this request was not addressed before United subleased its gates to Southwest. SeaPort also cited concern about tarmac delays and the ongoing legal battles over gate accommodation at DAL as reasons for the requested change in service pattern. On July 22, DOT granted SeaPort's request to replace its DAL service with service to IAH.

IV. ISSUES UNDER INVESTIGATION

The issues under investigation here are:

- Whether the City's failure to grant or otherwise act on Delta's request for accommodation of five daily flights at DAL is consistent with its grant obligation to make its airport available as

an airport for public use on reasonable terms and without unjust discrimination to all types, kinds, and classes of aeronautical activities. (Grant Assurance 22)

- Whether the City's failure to grant or otherwise act on Delta's request for accommodation of five daily flights at DAL is consistent with the statutory and grant assurance prohibition on granting or permitting any person, firm, or corporation, either directly or indirectly, the exclusive right at the airport to conduct any aeronautical activities. (Grant Assurance 23 and 49 U.S.C. § 40103(e))

- Whether the City has complied with the requirements of Grant Assurance 39, Competitive Access.

- Whether the City's consent to the sublease of United's two gates to Southwest through the remainder of United's lease term with the City, prior to the resolution of Delta's request for an accommodation of five daily flights at DAL, and prior to the resolution of Seaport's request for ticket counter space, is consistent with its obligations to make its airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds, and classes of aeronautical activities, and to avoid granting or permitting any person, firm, or corporation, either directly or indirectly, the exclusive right at the airport to conduct any aeronautical activities. (Grant Assurances 22 & 23 and 49 U.S.C. § 40103(e)).

The FAA notes that the City has asserted that application of the above-referenced authorities to require accommodation of Delta would be unlawful in light of various provisions of the Five Party Agreement, the WARA, and the Use and Lease Agreement between the City and its signatory carriers. The City will be afforded a full opportunity to raise arguments in this proceeding on these or any other relevant topic including the guidance provided by the DOT letters of December 2014 and June 2015.

The FAA strongly recommends that the City ensure the maintenance of the status quo at DAL until this matter can be resolved. As stated above, FAA hereby provides notice that it may, if it deems it necessary, issue an interim order to require the City to maintain access to DAL for Delta so that it may continue its current pattern of service during the pendency of this proceeding.

V. OPPORTUNITY TO RESPOND

Pursuant to 14 CFR. § 16.103 and 16.17, the City of Dallas may reply to this Notice no later than 30 days from the Notice's date of service. In accordance with 14 CFR. §§ 16.103 and 16.105, during that timeframe, FAA invites good faith efforts by the City to resolve informally the matters that are addressed in the Notice. If the issues addressed in this Notice are not resolved informally within the 30-day time period the City has to respond to this Notice, and FAA's subsequent investigation establishes violations of Federal law and related sponsor obligations,

FAA may issue a Director's Determination in accordance with 14 CFR § 16.31 making findings on the above-identified issue.

Randall S. Fiertz
Director, Office of Airport Compliance
and Management Analysis

August 7, 2015
Date

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 7th, 2015, I mailed through Federal Express a true copy of the Notice of Investigation, FAA Docket 16-15-10 addressed to:

Mark Duebner
Director of Aviation
City of Dallas
8008 Herb Kelleher Way, LB 16
Dallas, TX 75235

Copy to:
FAA Part 16 Airport Proceedings Docket
FAA Airports Compliance Division, ACO-100

Claudia Roberts
Office of Airport Compliance
and Management Analysis