

Informal Complaint (Part 13) to FAA Airports Division  
Southwest Region Office  
Against Sponsor of Dallas Love Field Airport  
April 30, 2014  
By Better Airports, LLC  
William Foster

April 30, 2014

RE: Informal Complaint under Title 14 Code of Federal Regulations Part 13 (Part 13), Investigative and Enforcement Procedures against the Sponsor of Love Field Airport (DAL), Dallas, Texas

TO:  
FAA Southwest Region Airports Division Office  
Mr. Kelvin L. Solco – Manager

DELIVERED BY EMAIL  
TO: Kelvin.L.Solco@faa.gov

With Email Copies To:

**FAA**

Kevin.Willis@faa.gov – FAA Airports Division Manager Washington, D.C.

**Sponsor – Dallas City Council Members, Mayor, and Aviation Department**

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**“New Entrant” carrier at DAL - Virgin America**

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**Complainant – Better Airports, LLC**

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***Copy of Informal Complaint can also be found at [www.FlyDallas.com](http://www.FlyDallas.com), after May 1, 2014.***

April 30, 2014

Mr. Solco,

This Informal Complaint under Title 14 Code of Federal Regulations Part 13 (Part 13), Investigative and Enforcement Procedures is against the Sponsor of Love Field Airport (DAL), Dallas, Texas, the City of Dallas Texas (Sponsor).

This informal complaint is against the Sponsor for recommending violations of Grant Assurances:

- **Grant Assurance 5 - Preserving Rights and Powers**
- **Grant Assurance 22 – Economic Nondiscrimination**
- **Grant Assurance 23 – Exclusive Rights**
- **Grant Assurance 25 – Airport Revenues**

The concern is the Sponsor and the top management of the Dallas Love Field Airport and the Aviation Department, executive Mr. Mark Duebner, and staff, “strategy”, “recommendations”, “guidance”, “direction”, and “evaluation” violates Grant Assurances as to how to accommodate a “new entrant” carrier like Virgin America that wants to leave DFW Airport and come as a “new entrant” to Dallas Love Field Airport.

Dallas Love Field (DAL) is not part of a Regional Airport Authority.

We believe the “reason for” and what went into the “why” a Sponsor makes in a determination is just as much a part of a Grant Assurance violation as the actual eventual violation act itself. We ask the FAA to determine early in the Sponsor violation based process, our informal complaint, before the Sponsor enacts their Grant Assurance violation “strategy”, “recommendations”, “guidance”, “direction”, and “evaluation” that are in violation of Grant Assurances as demonstrated on Pages 18-22 in below power point presentation.

The Sponsor, via their top Aviation Department executive Mr. Mark Duebner and staff, are paying airport revenue dollars for a consultant, L.E.K. Consulting L.L.C. (Consultant), that gives additional direct support in recommendations, guidance, direction, and evaluation that are of acts and strategies that are in violation of Grant Assurances.

The Grant Assurance violation events are as follows:

On April 28, 2014 the City of Dallas Aviation Director, Mr. Mark Duebner, personally made a public presentation to the City of Dallas Transportation and Trinity River Project Committee about the Sponsor and Aviation Staff's understand, guidance, direction, and evaluation for the City of Dallas (Sponsor) position and thought process to take in regard to the possible future of two (2) gates at Dallas Love Field that American Airlines, Inc. presently has under Lease from the Sponsor.

Mr. Mark Duebner states publicly in his power point presentation and in his own voice the following Grant Assurance violations:

# Consultant Scope of Work

- Identify key benefits to Dallas Citizens and Dallas Love Field
- Determine what aligns strategically with continued support of DFW
- Establish weighted criteria to evaluate the public plans from each airline
- Create framework for how the City will evaluate common use proposals, if necessary

In the above stated Sponsor directives as to the Scope of work to L.E.K. Consultant, L.L.C. there is a statement that is a violation of the **Grant Assurance 5 Preserving Rights and Powers, Grant Assurance 22 Economic Nondiscrimination , Grant Assurance 23 Exclusive Rights, and Grant Assurance 25 Airport Revenues** when Mr. Duebner requests the consultant in the stated "Scope of Work" to:

- Determine what aligns strategically with continued support of DFW [International Airport] (DFW)

It is against **Grant Assurance 5 Preserving Rights and Powers, Grant Assurance 22 Economic Nondiscrimination, Grant Assurance 23 Exclusive Rights, and Grant Assurance 25 Airport Revenues** for the Sponsor to make part of the accommodating a "new entrant" carrier process at DAL based on "what aligns

strategically with continued support of DFW [Airport]”. DFW Airport is not to be part of any of the Sponsor’s process to accommodate a “new entrant” carrier at DAL and in direct violation of **Grant Assurance 5 Preserving Rights and Powers, Grant Assurance 22 Economic Nondiscrimination, Grant Assurance 23 Exclusive Rights, and Grant Assurance 25 Airport Revenues.**

We will describe the violations in detail:

- It is a violation of **Grant Assurance 5 Preserving Rights and Powers** for Sponsor to direct the Consultant to “Determine what aligns strategically with continued support of DFW [International Airport]” in the Sponsor’s consideration of the gate assignments at DAL for a “new entrant” carrier where DFW Airport is not to be part of any consideration and if DFW Airport is part of any decision it creates rights to DFW Airport and therefore Sponsor is not Preserving Rights and Powers as required in **Grant Assurance 5 Preserving Rights and Powers.** The Sponsor is indirectly granting rights and powers to DFW Airport.
- For Sponsor to direct the Consultant to “Determine what aligns strategically with continued support of DFW [International Airport]” in the Sponsor’s consideration of the gate assignments at DAL for a “new entrant” carrier where DFW Airport is not to be part of any consideration and if DFW Airport is part of the decision, it creates Economic Discrimination against a “new entrant” carrier to DAL, in violation of **Grant Assurance 22 Economic Discrimination.**
- For Sponsor to direct the Consultant to “Determine what aligns strategically with continued support of DFW [International Airport]” in the Sponsor’s consideration of the gate assignments at DAL for a “new entrant” carrier where DFW Airport is not to be part of any consideration and if DFW Airport is part of the decision, it indirectly creates Exclusive Rights to DFW Airport by prohibiting a “new entrant” accommodation at DAL in violation of **Grant Assurance 23 Exclusive Rights.**
- For Sponsor to direct the Consultant to “Determine what aligns strategically with continued support of DFW [International Airport]” in the Sponsor’s consideration of the gate assignments at DAL for a “new entrant” carrier where DFW Airport is not to be part of any consideration and if DFW Airport is part of the decision, it indirectly violates **Grant Assurance 25 Airport Revenues.** The Sponsor paid the Consultant from Airport Revenue for work that directs the Consultant to advise Sponsor on acts that are in violation of **Grant Assurance 5, 22, and 23** and therefore the Sponsor has used Airport Revenues for the purpose and act of violating **Grant Assurance 25 Airport Revenues** and by definition is not a proper and acceptable Airport Revenue expense. Again, this act by the Sponsor is a not an authorized use of Airport Revenues, by definition, to violate **Grant Assurance 5 Preserving Rights and Powers,**

**Grant Assurance 22 Economic Nondiscrimination , Grant Assurance 23 Exclusive Rights** and therefore violates **Grant Assurance 25 Airport Revenues**.

- The entire Sponsor's process to date is also contrary to the existing Leases at DAL with American Airlines Inc. 20 year Gates and Facilities Lease and the behavior and statements the Sponsor has publically and privately made and behavior conducted to determine if a "new entrant" carrier will, or will not, be accommodated, is in violation of **Grant Assurances 5, 22, and 23**, and the behavior has in part been paid by DAL Airport Revenues and therefore are in violation of **Grant Assurance 25** as well.

# Best for Dallas Citizens & Travelers

- Carrier with quality customer service
- Responsible carrier, sensitive to impacts to the community including noise
- Carrier willing to be part of the community
- Broad network with multiple destinations
- Enhancing competition
- Carrier offering various products and services

In the above stated Sponsor decision making criteria are statements that are a violation of the **Grant Assurance 5 Preserving Rights and Powers, Grant Assurance 22 Economic Nondiscrimination , Grant Assurance 23 Exclusive Rights, and Grant Assurance 25 Airport Revenues** when Mr. Duebner states what those criteria are:

- Carrier with quality customer service
- Responsible carrier, sensitive to impacts to the community including noise
- Carrier willing to be part of the community

- Broad network with multiple destinations
- Enhancing competition
- Carrier offering various products and services

It is against Grant Assurance 22 Economic Nondiscrimination, and Grant Assurance 23 Exclusive Rights for the Sponsor to make part of the Sponsor’s decision process for a “new entrant” carrier at DAL based on the above stated qualifying criteria determinations as to a better choice of a “new entrant” carrier at DAL “Carrier. That is not to be any part of the process to accommodate a “new entrant” carrier at DAL and in direct violation of, Grant Assurance 22 Economic Nondiscrimination, and Grant Assurance 23 Exclusive Rights, and Grant Assurance 25 Airport Revenues.

We will describe the violations in detail:

- It is a violation of **Grant Assurance 22 Economic Nondiscrimination** for Sponsor to make part of the Sponsor’s decision process for a “new entrant” carrier at DAL based on the above stated qualifying criteria determinations as to a better choice of a “new entrant” carrier at DAL “Carrier. The Sponsor cannot exclude a “new entrant” carrier based on the outcome of the determination of the stated decision making and ranking criteria. This is creating Economic Discrimination.
- It is a violation of **Grant Assurance 23 Exclusive Rights** for Sponsor to make part of the Sponsor’s decision process for a “new entrant” carrier at DAL based on the above stated qualifying criteria determinations as to a better choice of a “new entrant” carrier at DAL “Carrier. The Sponsor cannot exclude a “new entrant” carrier based on the outcome of the determination of the stated decision making and ranking criteria, this is creating Exclusive Rights.
- It is a violation of **Grant Assurance 25 Airport Revenues** for Sponsor to use Airport Revenues to pay for the determination process for a “new entrant” carrier, the Airport Revenues that fuels the engine that affords the Sponsor’s behavior and acts that violate **Grant Assurances 22 and 23** and therefore **Grant Assurance 25 Airport Revenues**. By making part of the Sponsor’s decision process for a “new entrant” carrier at DAL based on the above stated qualifying criteria determinations as to a better choice of a “new entrant” carrier at DAL . The Sponsor cannot exclude a “new entrant” carrier based on the outcome of the determination of the above stated decision making and ranking criteria. This is using Airport Revenue to violate Grant Assurances 22, and 23, and therefore **Grant Assurance 25 Airport Revenues**.



# Best for Love Field

- Fiscally sound carrier
- Modern Fleet
- Sub-lease, carrier manages schedule
- Team player on airport operations and emergency management
- Supports mission of airport
- Environmentally sensitive, cognizant of noise issues
- Diversity of tenants

In the above stated Sponsor decision making criteria are statements that are a violation of the **Grant Assurance 5 Preserving Rights and Powers, Grant Assurance 22 Economic Nondiscrimination , Grant Assurance 23 Exclusive Rights, and Grant Assurance 25 Airport Revenues** when Mr. Duebner states what those criteria are:

- Fiscally sound carrier
- Modern Fleet
- Sub-lease, carrier manages schedule
- Team player on airport operations and emergency management
- Supports mission of airport

- Environmentally sensitive, cognizant of noise issues
- Diversity of tenants

It is against **Grant Assurance 22 Economic Nondiscrimination**, and **Grant Assurance 23 Exclusive Rights** for the Sponsor to make part of the Sponsor’s decision process for a “new entrant” carrier at DAL based on the above stated qualifying criteria determinations as to a better choice of a “new entrant” carrier at DAL “Carrier. That is not to be any part of the process to accommodate a “new entrant” carrier at DAL and in direct violation of, Grant Assurance 22 Economic Nondiscrimination, and **Grant Assurance 23 Exclusive Rights**, and **Grant Assurance 25 Airport Revenues**.

We will describe the violations in detail:

- It is a violation of **Grant Assurance 22 Economic Nondiscrimination** for Sponsor to make part of the Sponsor’s decision process for a “new entrant” carrier at DAL based on the above stated qualifying criteria determinations as to a better choice of a “new entrant” carrier at DAL “Carrier. The Sponsor cannot exclude a “new entrant” carrier based on the outcome of the determination of the above stated decision making and ranking criteria. This is creating Economic Discrimination.
- It is a violation of **Grant Assurance 23 Exclusive Rights** for Sponsor to make part of the Sponsor’s decision process for a “new entrant” carrier at DAL based on the above stated qualifying criteria determinations as to a better choice of a “new entrant” carrier at DAL “Carrier. The Sponsor cannot exclude a “new entrant” carrier based on the outcome of the determination of the above stated decision making and ranking criteria, this is creating Exclusive Rights.
- It is a violation of **Grant Assurance 25 Airport Revenues** for Sponsor to use Airport Revenues to pay for the determination process for a “new entrant” carrier, the Airport Revenues that fuels the engine that affords the Sponsor’s behavior and acts that violate **Grant Assurances 22 and 23** and therefore **Grant Assurance 25 Airport Revenues**. By making part of the Sponsor’s decision process for a “new entrant” carrier at DAL based on the above stated qualifying criteria determinations as to a better choice of a “new entrant” carrier at DAL . The Sponsor cannot exclude a “new entrant” carrier based on the outcome of the determination of the above stated decision making and ranking criteria. This is using Airport Revenue to violate Grant Assurances 22, and 23, and therefore **Grant Assurance 25 Airport Revenues**.

## Best Strategically with DFW

- Minimizes direct competition to ongoing success to DFW
- Focus on domestic routes
- No diminution of service at DFW
- Service that compliments what is presently available at DFW
- Balancing needs of both DFW and Love Field

In the above stated Sponsor decision making criteria are statements that are a violation of the **Grant Assurance 5 Preserving Rights and Powers, Grant Assurance 22 Economic Nondiscrimination , Grant Assurance 23 Exclusive Rights, and Grant Assurance 25 Airport Revenues** when Mr. Duebner states what those criteria are:

- Minimizes direct competition to ongoing success to DFW [International Airport] (DFW)
- Focus on domestic routes
- No diminution of service at DFW [International Airport]
- Service that compliments what is presently available at DFW [International Airport]

- Balancing needs of both DFW and Love Field [Airports]

It is against **Grant Assurance 5 Preserving Rights and Powers** , **Grant Assurance 22 Economic Nondiscrimination**, and **Grant Assurance 23 Exclusive Rights** for the Sponsor to make part of the Sponsor's decision process for a "new entrant" carrier at DAL based on the above stated qualifying criteria determinations as to a better choice of a "new entrant" carrier at DAL "Carrier. That is not to be any part of the process to accommodate a "new entrant" carrier at DAL and in direct violation of, **Grant Assurance 22 Economic Nondiscrimination**, and **Grant Assurance 23 Exclusive Rights**, and **Grant Assurance 25 Airport Revenues**.

We will describe the violations in detail:

- For Sponsor to direct the Consultant to "Determine what aligns strategically with continue support of DFW [International Airport]" in the Sponsor's consideration of the gate assignments at DAL for a "new entrant" carrier where DFW is not to be part of any consideration and if DFW is part of any decision it creates rights to DFW and therefore is not Preserving Rights and Powers as required in **Grant Assurance 5 Preserving Rights and Powers**. It is indirectly granting rights and powers to DFW International Airport.
- It is a violation of **Grant Assurance 22 Economic Nondiscrimination** for Sponsor to make part of the Sponsor's decision process for a "new entrant" carrier at DAL based on the above stated qualifying criteria determinations as to a better choice of a "new entrant" carrier at DAL "Carrier. The Sponsor cannot exclude a "new entrant" carrier based on the outcome of the determination of the above stated decision making and ranking criteria. This is creating Economic Discrimination.
- It is a violation of **Grant Assurance 23 Exclusive Rights** for Sponsor to make part of the Sponsor's decision process for a "new entrant" carrier at DAL based on the above stated qualifying criteria determinations as to a better choice of a "new entrant" carrier at DAL "Carrier. The Sponsor cannot exclude a "new entrant" carrier based on the outcome of the determination of the above stated decision making and ranking criteria, this is creating Exclusive Rights.
- It is a violation of **Grant Assurance 25 Airport Revenues** for Sponsor to use Airport Revenues to pay for the determination process for a "new entrant" carrier, the Airport Revenues that fuels the engine that affords the Sponsor's behavior and acts that violate **Grant Assurances 22 Economic Nondiscrimination** and **Grant Assurance 23 Exclusive Rights** and therefore **Grant Assurance 25 Airport Revenues**. By making part of the Sponsor's decision process for a "new entrant" carrier at DAL based on the above stated qualifying criteria determinations as to a better choice of a "new entrant" carrier at DAL . The Sponsor cannot exclude a "new entrant" carrier based on the outcome of the determination of the

above stated decision making and ranking criteria. This is using Airport Revenue to violate Grant Assurances 22, and 23, and therefore is a violation of **Grant Assurance 25 Airport Revenues** using Airport Revenue to violate Grant Assurances.

**Sponsor's Last power point presentation page and Logo on Page 22:**



**Love Field Gate Recommendations**  
Assessment of optimal use of American's divested  
Love Field gates for the City of Dallas

April 28, 2014

This is the actual last slide of the presentation by the Sponsor/Dallas Aviation Department Director Mr. Mark Duebner power point presentation to the committee and the public on April 28, 2014, where it states:

“Love Field Gate Recommendations

Assessment of optimal use of American's divested Love Field Gates for the City of Dallas

April 28, 2014”

This is evidence that the Sponsor/Aviation Department Director Mr. Duebner was making “Love Field Gate Recommendations” as to the “Assessment of optimal use of American’s divested Love Field Gates for the City of Dallas”.

The Sponsor/Mr. Duebner making recommendations in and of itself is not a violation Grant Assurances. It is the recommendations that Sponsor/Mr. Duebner made that are violations of Grant Assurances as stated above.

Mr. Duebner is the Aviation Department Director and is the lead person to ensure Sponsor does not violate Grant Assurances, instead he has done the opposite, yet is paid to be a competent professional in aviation and to know and enforce the rules and regulations and Grant Assurances in the construction of a new remodeled almost \$1 BILLION dollar Dallas Love Field Airport and the enforcement of the valid way to accommodate “new entrant” carriers at Dallas Love Field Airport. As well as understand how to be compliant with the Grant Assurances as to a “new entrant” carrier at DAL.

The Sponsor is also in violation of **Grant Assurance 25 Airport Revenue** by diverting Airport Revenue to pay for those that present, under the label of knowledgeable and professionally competents as to Grant Assurance requirements, like the Aviation Department Director Mr. Mark Duebner , and L.E.K. Consulting, L.L. C. for presenting, as an expert in US Aviation and should know the Grant Assurances made by the Sponsor and to present Grant Assurance compliant “strategy”, “recommendations” , “guidance”, “direction”, and “evaluation” as to accommodating a “new entrant” carrier at Dallas Love Field (DAL).

Yet instead, the Dallas Aviation Department Director presented what is in violation of Grant Assurances as demonstrated on Pages 18-22 of the power point presentation as shown above. The “strategy” , “recommendations” , “ guidance” , “direction”, and “evaluation” being used by the Sponsor is a violation of **Grant Assurance 25 Airport Revenue**. Even for the Sponsor to divert Airport Revenue to pay for the salaries and budget expense for such decision making and enactment that employs and used by the Sponsor is in violation of **Grant Assurance 25 Airport Revenues**.

Below are quotes made by the current Dallas City Council Member Philip T. Kingston, taken from a news article written by Terry Maxon with the Dallas Morning News on April 28, 2014:

## Dallas City Council member Kingston: City involvement in Love Field gate debate is ‘bad, bad, bad’



By [Terry Maxon](#)

[tmaxon@dallasnews.com](mailto:tmaxon@dallasnews.com)

9:52 am on April 28, 2014



(Terry Maxon/Dallas Morning News)

The Dallas Morning News article in part states:

“Here was Kingston’s Facebook reaction to the city’s involvement:

“This is bad. Bad, bad, bad. Keep in mind that council has no legal right to weigh in on who gets the gates. I know that from our own lawyer, and I know that all my colleagues got the same analysis from him. So what could possibly be the point of hiring a consultant to tell us to put our thumb on the scale for Southwest? (more on this tomorrow at the briefing, but this study is deeply flawed)

“Who in her right mind would want to be seen as picking the winner between Southwest and Virgin? Especially when we’re precluded by our contract with AA from meddling in this decision at all? We’re missing a fantastic opportunity to shut up and let the market work.””

The news article continued saying:

“UPDATE, 11:45 a.m. Monday: [Philip T.]Kingston also had this observation on Friday [April 25, 2014]:

“As I’ve been saying to anyone who will listen for 2 months, the City of Dallas does not have any say in who gets the 2 gates at Love that American is required to divest. Here’s how that works legally: American has a lease with the city that gives it the right to assign or sublease the gates subject only to the city’s approval which is not to be unreasonably withheld. There’s no safe way to make an argument that withholding the assignment to Virgin is reasonable. In other words, if someone on Council wanted to explore the idea that we get to pick the winner, we’re handing AA a breach of contract cause of action and handing Virgin a tortious interference cause of action. That’s a case I believe we’d lose badly.

“And from the perspective of a Council member, why in the hell would you possibly want to be seen as trying to influence a gate assignment decision between Virgin and Southwest? Virgin is a popular and innovative carrier that has injected competition into a number of US routes, and Southwest is a popular and innovative carrier that has a great record of service to Dallas. Messing with the market and a contract here is foolhardy.

“So I was pretty shocked to discover that the [Dallas City] manager’s office has not already signed the consent form and has apparently been instructed to wait for a briefing to the Transportation Committee that is scheduled for Monday. I’ll be there if for no other reason than to argue for steering clear of meddling in a situation where we have no legal rights.””

-----End of news article quote-----

The statements in the above news article made by current Dallas Council Member Philip T. Kingston shows the Sponsor has been put on notice, at least by their own outspoken current Council Member, that the Sponsor is in violation on many fronts as to how the Sponsor accommodates a “new entrant” carrier.

This news article is further evidence that the Sponsor knowingly is in violation of **Grant Assurance 5 Preserving Rights and Powers, Grant Assurance 22 Economic Nondiscrimination, and Grant Assurance 23 Exclusive Rights, and Grant Assurance 25 Airport Revenues.**

The problem is the Sponsor keeps telling the public via the experts like Mr. Mark Duebner, Aviation Department Director, and L.E.K Consultants L.L.C how the Sponsor accommodates a “new entrant” carrier that is in direct violation of **Grant Assurance 5 Preserving Rights and Powers, Grant Assurance 22 Economic Nondiscrimination, and Grant Assurance 23 Exclusive Rights, and Grant Assurance 25 Airport Revenues.**

The Sponsor’s behavior is shown to be premeditated and not an accident of “We did not know” we are in violation of any Grant Assurances. The Sponsor has a complete staff of aviation experts and attorneys and some are paid from Airport Revenue and again this is in violation of **Grant Assurance 25 Airport Revenue, for**



the Sponsor to knowingly foster the violation of **Grant Assurance 5 Preserving Rights and Powers, Grant Assurance 22 Economic Nondiscrimination, and Grant Assurance 23 Exclusive Rights**, and therefore in violation of **Grant Assurance 25 Airport Revenues** by definition.

If the Sponsor says “We did not know” we are in violation of Grant Assurances, yet the Sponsor has been paid an **ABUNDANCE** of Federal dollars to DAL and the Sponsor promised not to violate **Grant Assurance 5 Preserving Rights and Powers, Grant Assurance 22 Economic Nondiscrimination, and Grant Assurance 23 Exclusive Rights**, and **Grant Assurance 25 Airport Revenues** among others Grant Assurances.

The Sponsor has been paid \$100s of Millions in Federal Airport Improvement Program (AIP) Grants and the Sponsor has the responsibility to know when they are in violation of their Grant Assurances. Our firm is not paid by AIP \$100s of Millions in grants and we know the difference. We expect and demand no less from the Sponsor of Dallas Love Field Airport, and their experts and Director.

Below is the actual full power point presentation and “audio” of the Dallas Aviation Department Director, Mr. Mark Duebner, presentation that he personally presented to the Sponsor and the public on April 28, 2014 at the Aviation and Trinity Project Committee meeting where Mr. Duebner says in his own words, his recommended reasons, directives, and strategies, that are in direct violation of **Grant Assurance 5 Preserving Rights and Powers, Grant Assurance 22 Economic Nondiscrimination , Grant Assurance 23 Exclusive Rights, and Grant Assurance 25 Airport Revenues**.

Below is the power point presentation and the audio of that presentation on April 28, 2014 to the Sponsor.

Click on the Audio Button to hear Mr. Mark Duebner's own words as tells you what page he is describing as he describes the Sponsor's "strategy", "recommendations", "guidance", "direction", and "evaluation" on accommodating a "new entrant" carrier at Dallas Love Field Airport (DAL).

Also listen to Mr. Duebner's side comments in the Audio Recording as he states more evidence to the violations of **Grant Assurance 5 Preserving Rights and Powers, Grant Assurance 22 Economic Nondiscrimination, Grant Assurance 23 Exclusive Rights, and Grant Assurance 25 Airport Revenues.**

Just scroll down as Mr. Duebner talks and he directs you to each presented page:

[Click on Below Play Arrow Button to hear Audio Recording of Mr. Mark Duebner, Aviation Department Director for Sponsor at Dallas Love Field Airport, and scroll along with him, page by page below.](#)



## **Love Field Gate Recommendations**

Assessment of optimal use of American's divested  
Love Field gates for the City of Dallas

April 28, 2014



# City of Dallas Aviation

Love Field Gate Leases

Transportation & Trinity River Project Committee

28 April 2014



# Background

- Dallas Love Field
  - 20 gates (per the five-party agreement and Wright Amendment Reform Act)
  - 4.2 million enplanements in 2013
  - Classified as a “Medium Hub” by Federal Aviation Administration [“FAA”]
- Airports can lease gates on following basis
  - Exclusive use – Airlines have full control, including branding and scheduling, over space
  - Preferential use – Airlines have control but gives right for airport to allow **new** entrants to operate at gates that are not being fully utilized
  - Common use – gate space and time of use is managed by the airport

# Background

- Dallas Love Field [“DAL”] has leased all available gates on a preferential use basis
  - Southwest Airlines - 16 gates
  - United Airlines - 2 gates
  - American Airlines - 2 gates
- Typically, ten flights or “turns” per gate is full utilization

# Background

- American filed for bankruptcy in November 2011
- In February 2013, American and US Airways proposed a merger as a way out of bankruptcy for American
- In August 2013, the United States Department of Justice [“DOJ”] and attorneys general from six (6) states and the District of Columbia filed an antitrust lawsuit in an attempt to stop the proposed merger

# Terms of Proposed Settlement

- In November 2013, DOJ announced a proposed settlement of the antitrust litigation
  - DOJ is requiring gates and slots to be divested to low-cost carriers
- In December 2013, the bankruptcy court approved the merger; however, the antitrust suit is still awaiting final resolution

# Terms of Proposed Settlement

- Under the terms of the proposed settlement, American will divest
  - 52 slot pairs at Washington Reagan National Airport
  - 17 slot pairs at New York LaGuardia Airport
  - 2 gates at Boston Logan International Airport
  - 2 gates at Chicago O'Hare International Airport
  - 2 gates at Miami International
  - 2 gates at Los Angeles
  - 2 gates at Dallas Love Field



# Terms of Proposed Settlement

- Asset Preservation Order and Stipulation:
  - “Defendants shall not, except as part of a divestiture approved by the United States...remove, sell, lease, assign, transfer, pledge, or otherwise dispose of their respective divestiture assets”
- Proposed Final Judgment:
  - “‘acquirer’ or ‘acquirers’ means the entity or entities, approved by the United States in its sole discretion”

# Current Status

- To date, there has been interest expressed in the two (2) gates, should they become available
- The City has not actively solicited interest for the gates from any airline

# Issues

- Because of Love Field's unique history, there are three key controlling documents that affect the leasing activities
  - Wright Amendment Reform Act
  - The Five-Party agreement
  - City's use and lease agreement with American Airlines

# Wright Amendment Reform Act of 2006

## Based on local Five-Party Agreement

- City of Dallas, City of Ft Worth, American Airlines, Southwest Airlines, DFW International Airport
- Flight restrictions end on October 13, 2014, however the following restrictions will remain
  - No international flights
  - Love Field capacity limited to twenty (20) gates
- **Required City & Southwest Airlines to collaborate** on modernization of Love Field

# Local Five Party Agreement

## Other provisions

- City negotiated a voluntary noise curfew precluding scheduled service between 11pm and 6am
- Both Cities are to oppose efforts to initiate commercial passenger service at any airport other than DFW until October 2014
  - If another airport within 80 mile radius attempts to initiate commercial service, both cities will work to bring that service to DFW, or if that fails, to airports owned by Dallas or Fort Worth

# Use & Lease Agreements

- Twenty (20) year term, ending 2028
  - Airlines with little activity can exit leases early in 2018 and 2023
- All gates leased on a “Preferential Use” basis, rather than exclusive
- All baggage areas (outbound & inbound) leased as “common use”
- Office, operations and ticket counter space leased as exclusive use
- All space subject to “accommodation provisions” for **new** entrant airline access to terminal

# Use & Lease Agreements

- Leases are structured to be consistent with the Five-Party Agreement commitments
  - **Expanded scope** of the lease of terminal space, included **terms for the use of the Airport**, including the airfield, aircraft parking ramp;
    - Incorporated Landing Fee & new Apron Fee in lease rate model
  - Incorporated new **cost recovery rate model** approved in the Term Sheet Allocates Airport costs to Terminal, Apron, Airfield cost centers
    - Airlines pay cost of Love Field Modernization Program (“LFMP”) thru allocations of cost to square foot rental rate
    - Protects non-airline tenants from paying for LFMP
  - Developed **guidelines** for future capital improvements [“CIP”];
    - CIP funded in rate base, **airlines have approval rights** for certain capital improvements affecting their rates

# Use & Lease Agreements

- Allows for the sub-lease of the gates
  - American Sub-leased to Delta in July 2009
  - American Sub-leased to Seaport Airlines in June 2011
- If the right to use the preferential gates ceases, they become common use
  - Common use gates are managed by the airport and available to all airlines requesting space to conduct flights until full



# Gate Assignments\*



\*As per current leases

# Analysis

- The City has not received formal proposals nor has it solicited any
- City retained a consultant, L.E.K. Consulting L.L.C., to evaluate the public statements of plans by the interested carriers
- Goal was to be prepared for further discussions with American and the Department of Justice regarding the disposition of the gates
- On April 16, 2014, the City received notice from the Department of Justice that American and Virgin American had reached an agreement and that agreement satisfies the Department of Justice

# Consultant Credentials

- L.E.K. is a leading strategic advisor to the global airline industry, whose clients include more than half of the top fifty (50) airlines around the world
- Chief architect of the merchandizing (ancillary revenue) movement in the U.S. industry and around the globe
- Extensive work with the most successful and innovative airports and airport groups around the globe
  - Numerous successful engagements developing innovative retail masterplans
  - Traffic forecasting
  - Buy- and sell-side advisory work for airport privatizations

# Consultant Scope of Work

- Identify key benefits to Dallas Citizens and Dallas Love Field
- Determine what aligns strategically with continued support of DFW
- Establish weighted criteria to evaluate the public plans from each airline
- Create framework for how the City will evaluate common use proposals, if necessary

# Best for Dallas Citizens & Travelers

- Carrier with quality customer service
- Responsible carrier, sensitive to impacts to the community including noise
- Carrier willing to be part of the community
- Broad network with multiple destinations
- Enhancing competition
- Carrier offering various products and services

# Best for Love Field

- Fiscally sound carrier
- Modern Fleet
- Sub-lease, carrier manages schedule
- Team player on airport operations and emergency management
- Supports mission of airport
- Environmentally sensitive, cognizant of noise issues
- Diversity of tenants

# Best Strategically with DFW

- Minimizes direct competition to ongoing success to DFW
- Focus on domestic routes
- No diminution of service at DFW
- Service that compliments what is presently available at DFW
- Balancing needs of both DFW and Love Field



## **Love Field Gate Recommendations** Assessment of optimal use of American's divested Love Field gates for the City of Dallas

April 28, 2014

[Informal Complaint continues on in below page](#)

-----This is the end of the power point presentation by Aviation Department Director, Mr. Mark Duebner-----

If the FAA Airports Division has any further questions or needs more evidence as to the stated violations of Grant Assurances by the Sponsor of Dallas Love Field Airport:

- **Grant Assurance 5 - Preserving Rights and Powers**
- **Grant Assurance 22 – Economic Nondiscrimination**
- **Grant Assurance 23 – Exclusive Rights**
- **Grant Assurance 25 – Airport Revenues**

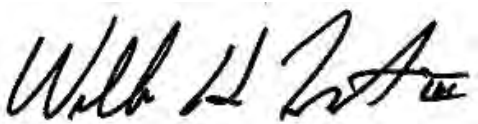
Please do not hesitate to ask.

The Aviation Department Director, Mr. Mark Duebner, is scheduled to make a full briefing using the above exact same information and power point presentation on Wednesday, May 7, 2014, to the Sponsor and the Sponsor's City Council where they are expected to vote on the determination of the information as presented by Mr. Mark Duebner, the Sponsor's Aviation Department Director, and Consultant's recommended and stated process to accommodate a "new entrant" carrier at Dallas Love Field Airport (DAL).

Time is very short, seven (7) days, to stop the Sponsor from any further Grant Assurance violations and not to fully enact said violations on May 7, 2014.

We look forward to your input and Determination as to our informal complaint Part 13 against the Sponsor of Dallas Love Field Airport, Dallas, Texas.

Thank you,



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