



U.S. Department  
of Transportation

**Federal Aviation  
Administration**

Office of the Chief Counsel

800 Independence Ave., S.W.  
Washington, D.C. 20591

Mr. James H. Montman  
Airport Manager  
Santa Fe Municipal Airport  
200 Lincoln Avenue  
PO Box 909  
Santa Fe, New Mexico 87504-0909

NOV 20 2009

RE: New Mexico Airlines' Request for Opinion on City of Santa Fe

Dear Mr. Montman:

Thank you for your September 1 letter concerning an August 26 letter from Gregory S. Walden, Esq., on behalf of Pacific Wings Airlines d/b/a New Mexico Airlines (NMA), sent to the Honorable Robert S. Rivkin, General Counsel, Office of the Secretary (OST), United States Department of Transportation, and Mr. David Grizzle, Chief Counsel, Federal Aviation Administration (FAA). Mr. Walden's letter requested an opinion on whether an airport sponsor may base the eligibility for a fee waiver or discount on a distinction between interstate and intrastate air service. Mr. Walden enclosed a copy of a December 7, 2007 letter from the Federal Aviation Administration (FAA) Southwest Regional Office to you concerning the use of fee waivers at the Santa Fe Municipal Airport.

You state that your purpose in writing is to advise OST and FAA that the city of Santa Fe and NMA are currently in litigation over the carrier's alleged failure to pay rent for use of the terminal building in response to the city's negotiations with American Eagle Airlines for service to Dallas-Forth Worth (DFW) and Los Angeles (LAX), and to state the city's views on its air carrier incentive program.

You indicate that the program was never instituted during the period that NMA operated from the Santa Fe Airport. You further state that NMA was neither planning on, nor currently providing, direct non-stop service to either DFW or LAX, and that any incentive program offered would have only been available during the promotional period. You state that the FAA's 2007 letter supports your position. Concerning whether the FAA's letter endorsed a fee incentive program limited to promotion of interstate service, you state your belief that FAA used the distinction between interstate and intrastate service only as an example of what the agency perceived as "similar destinations" in its 2007 letter "in an attempt to quantify the meaning of the policy statement 'the waiver or fee discount must be offered to all users that are willing to provide the type and level of new service that qualifies for the promotional period.'" You inquire about the meaning of "type and level."

You discuss your belief that if the city wanted to promote intrastate service through an incentive program, it could do so. You further state your view that any airline starting or conducting service to a destination other than that promoted by the airport should not be eligible for the same incentives provided to an airline serving the promotional destination. You state your disagreement with a statement from the 2007 FAA letter ("If NMA chooses to start interstate service too, it should be afforded the same incentive").

In response to your comments and questions, the FAA considers "type of service" to mean nonstop, one-stop, etc. FAA considers "level of service" to mean frequency of service (e.g., three times per week, daily, etc.). Concerning your view that if the city wanted to promote intrastate service through an incentive program, it could do so, we agree if by promoting intrastate service you mean selecting only in-state destinations. Under FAA policy, airports are free to select city destinations inside or outside of the airport's state. However, an airport sponsor may fail to comply with the Airport Improvement Project (AIP) grant assurance on self-sustainability, *Grant Assurance 24 Fee and Rental Structure*, if it based the eligibility for the fee waiver or discount incentive programs upon a distinction between interstate and intrastate service.<sup>1</sup> The FAA has never permitted such a distinction. Accordingly, you may not promote intrastate or interstate service by broadly offering incentives that apply to any destinations within or outside a particular state.

The FAA agrees that an airline starting or conducting service to a destination other than that promoted by the airport should not be eligible for the same incentives provided to an airline serving the promotional destination(s). In fact, the airline not providing service to those destinations specified in the program would presumably not be eligible for any incentives at all. Again, airport management chooses the destination(s) for the promotional program. Those destination cities could be located entirely within the airport's state, located entirely outside of that state, or a mixture of both. Airlines make a business decision on whether or not to provide the service desired by the airport. Once the airport sponsor offers a promotional fee waiver or discount, it must offer it to all similarly situated users of the airport willing to provide the same type and level of new service consistent with the sponsor's promotional offering.

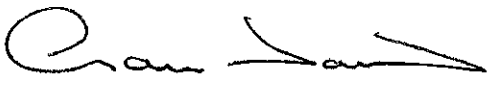
Concerning your disagreement with the statement from the FAA's 2007 letter ("If NMA chooses to start interstate service too, it should be afforded the same incentive"), this language is not as accurate as it should have been. The statement should have read that if NMA chooses to provide service to DFW and LAX, then it should be afforded the same incentives as other carriers choosing to provide that service. Again, the FAA does not recognize a distinction between interstate and intrastate service in the context of air carrier incentive programs. It appears that this distinction was first discussed in e-mail communications between NMA and you on November 27, 2007 that were later forwarded to FAA's Southwest Region Airports Office.

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<sup>1</sup> Such a broad, non-destination specific classification would provide the potential for a large number of eligible destinations, such that an airport establishing such a classification could find itself in an untenable position of having to offer a prohibitive number of fee waivers.

I hope that this response will be helpful to you. If you have any questions, please contact me at (202) 267-3222, or Jonathan Cross of the Airports and Environmental Law Division at (202) 267-3199.

Sincerely,



<sup>For</sup> J. David Grizzle  
Chief Counsel

cc: Gregory S. Walden, Esq.