



U.S. Department
of Transportation
**Federal Aviation
Administration**

Office of the Chief Counsel

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

October 18, 2016

Charles Parkin
City Attorney
City of Long Beach
Office of the City Attorney, City Hall, 11th Floor
333 West Ocean Blvd
Long Beach, CA 90802

RE: Request for FAA Legal Opinion – Initiation of International Service at Long Beach Airport and Continuing Compliance with Grant Assurances

Dear Mr. Parkin:

Thank you for your letter of September 8, 2016, requesting reaffirmation of a 2015 legal opinion to JetBlue Airways (JetBlue) on whether a planned initiation of international service from Long Beach Airport (LGB) would affect the City's continued compliance with its grant assurances. A copy of that legal opinion is included. Specifically, you request confirmation that the initiation of international service at LGB in a manner consistent with the Noise Ordinance and Allocation Resolution:

- (1) Will not jeopardize the FAA's determination that the Noise Ordinance is grandfathered under ANCA; and
- (2) Will not adversely affect future City grant applications under the Airport Improvement Program (AIP) or applications to impose or collect passenger facility charges (PFCs).

In your letter, you state that the City is in the process of a feasibility study related to establishing a Federal Inspection Services (FIS) facility at LGB, which would permit international flights by JetBlue and other operators. You state that the facts presented by JetBlue, which formed the basis of the FAA's analysis, remain accurate. Specifically, you affirm the proposed FIS facility does not contemplate any amendments to the City's Noise Compatibility Ordinance, which predates ANCA, or to the City's current Flight Allocation Resolution (C-28465), adopted in 2004.¹

Because there is no change in the facts presented or a planned change to the City's noise ordinance, the conclusions in the 2015 FAA letter remain the FAA's legal opinion. Additionally, the FAA is not

¹ In a letter dated April 30, 2003, the FAA concluded that the Airport Noise and Capacity Act (ANCA) and 14 C.F.R. part 161 requirements do not apply to the City's noise ordinance because the ordinance is grandfathered under 49 U.S.C. 47524(d)(5)(A) and (B). That same FAA letter also concluded that a settlement agreement allocating slots under the ordinance does not present an issue of current noncompliance under ANCA or the City's grant assurances. The City adopted Resolution C-28465 to revise its flight allocation rules consistent with the settlement agreement and 2003 FAA letter.

aware of any current airport access issues at LGB. Accordingly, the City's noise ordinance is grandfathered under ANCA, and there is no issue of current noncompliance under ANCA or the City's grant assurances. As stated in both the 2003 and 2015 letters, if at some point in the future a potential new entrant carrier believes that the ordinance is a barrier to entry, that carrier would be free to challenge it by filing a complaint with the FAA under 14 C.F.R. part 16. In such a case, the City could defend the reasonableness of its ordinance, make modifications to the ordinance to facilitate market entry, or consider other courses of action. The FAA reserves the right to review such a complaint and the consistency of the noise ordinance with Federal law.

This legal opinion is based on the information you have provided and is limited to the particular circumstances at LGB, including the ordinance that is grandfathered under ANCA. This opinion does not constitute a final agency order.

I hope this response is helpful to you. If you have additional questions regarding this matter, please do not hesitate to contact me or Rob Hawks, of my staff, at (202) 267-3199.

Sincerely,



Mark W. Bury
Deputy Chief Counsel

Enclosure



U.S. Department
of Transportation
**Federal Aviation
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Office of the Chief Counsel

800 Independence Ave., S.W.
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MAY 27 2015

Robert C. Land
Senior Vice President Government Affairs and
Associate General Counsel
JetBlue Airways
27-01 Queens Plaza North
Long Island City, NY 11101

**RE: Request for FAA Legal Opinion – Initiation of International Service at Long Beach
Airport and Continuing Compliance with Grant Assurances**

Dear Mr. Land:

Thank you for your letter of March 31, 2015, requesting a legal opinion on whether the planned initiation of international service by JetBlue Airways (JetBlue) from Long Beach Airport (LGB) would affect the airport sponsor's continued compliance with its grant assurances.

Currently JetBlue, US Airways, and Delta Airlines serve LGB in domestic U.S. markets.¹ The City of Long Beach, the airport sponsor, has a "noise budget" ordinance to mitigate aircraft noise impact on surrounding residential communities.² In a letter dated April 30, 2003, the FAA concluded that the Airport Noise and Capacity Act (ANCA) and 14 C.F.R. part 161 requirements did not apply to this ordinance because the ordinance was grandfathered under 49 U.S.C. 47524(d)(5)(A) and 47524(d)(5)(B). That same FAA letter also concluded that a settlement agreement allocating slots under the ordinance did not present an issue of current noncompliance under ANCA or the City's grant assurances. Consistent with that letter and settlement agreement, the Long Beach City Council adopted Resolution C-28465 on October 12, 2004, to revise the City's flight allocation rules. You state that there has been no change to LGB flight allocation rules since that time.

JetBlue is interested in beginning service from LGB to international markets, in Mexico and Central America without U.S. pre-clearance facilities, and has taken the first steps to have the City request availability of Federal inspection services at the airport. You contend that the planned service would be compliant with the noise ordinance and operated within JetBlue's existing allocation under that ordinance.

¹ For the year ending September 30, 2014, there were 27,233 air carrier operations at LGB. FAA Form 5010, Airport Master Record.

² Long Beach Municipal Code, Title 16, Chapter 16.43. The City mitigates noise at LGB by establishing a single event noise limit (SENEL), by imposing a noise curfew, and by limiting aircraft operations by category of operator (air carriers, commuter carriers, industrial operators, charter operators, and general aviation). The City established operational limits for each category intended to achieve a noise budget based on cumulative noise impacts from operations in base year 1989.

There is no planned change to the ordinance to make it more restrictive, and the only potential change is the addition of a customs facility at LGB to process international arrivals. You indicate that JetBlue would substitute international flights for domestic flights, with no other changes in operations, and would use aircraft of the same type currently operating at LGB. You contend the proposed international service would have no effect on LGB's grant assurance compliance or on the applicability of ANCA to the ordinance. You also state that any carrier serving the airport could operate international flights using the customs facility, provided the flights are within the current operational limits. Nevertheless, you state there has been some concern from the Long Beach community that international service would undermine the City's existing ordinance or otherwise cause the FAA to reconsider its longstanding acceptance of that ordinance.

You request assurance from the FAA that the initiation of international service at LGB:

- (1) Will not affect the conclusion in the FAA letter of April 30, 2003, that the Long Beach ordinance is exempt from ANCA review;
- (2) Will not affect the conclusion in that letter that the allocation of flights at LGB does not present a current issue of noncompliance under the sponsor's grant assurances; and
- (3) Will be consistent with the City's obligation to provide reasonable, not unjustly discriminatory, access to air carriers.

No facts have been presented to indicate the City has or plans to amend its noise ordinance. Additionally, no facts have been presented to suggest that allocations or operations under the City's ordinance are changing, with the exception of a potential change to the origin or destination of some existing LGB operations.

Because there is no current or planned change to the City's noise ordinance, the facts presented do not justify any change in the FAA's conclusion that the City's noise ordinance is exempt from ANCA review because of the grandfathering provisions in ANCA.

The 2003 letter did not take a position on whether the City's noise ordinance met Federal requirements for airport access. As stated in the 2003 letter, if at some point in the future a potential new entrant carrier believes that the ordinance is a barrier to entry, that carrier would be free to challenge it by filing a complaint with the FAA under 14 C.F.R. part 16. In such a case, the City could defend the reasonableness of its ordinance, make modifications to the ordinance to facilitate market entry, or consider other courses of action. The FAA reserves the right to review such a complaint and the consistency of the noise ordinance with Federal law.

However, as in 2003, the FAA is aware of no interest in LGB operations (either domestic or international) by other carriers. JetBlue's proposal to use currently allocated slots for international service with the same aircraft type permitted under the noise ordinance does not raise an issue of airport access requiring the FAA to opine on the ordinance's consistency with Federal grant assurances. Accordingly, the FAA does not find an issue of current noncompliance under ANCA or the City's grant assurances. Concerns that the introduction of international service consistent with the current noise ordinance would undermine that ordinance or cause a change in the FAA's position toward it are unwarranted.

This opinion is based on the information you have provided and is limited to the particular circumstances at LGB, including the ordinance that was grandfathered under ANCA. This opinion is not binding on the FAA and does not constitute a final agency order.

I hope this response is helpful to you. If you have additional questions regarding this matter, please do not hesitate to contact me or Daphne Fuller, the Assistant Chief Counsel for Airports and Environmental Law, at (202) 267-3222.

Sincerely,

A handwritten signature in cursive script, appearing to read "Patricia A. McNall".

Patricia A. McNall
Deputy Chief Counsel



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September 8, 2016

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Mark Bury
Deputy Chief Counsel, AGC-1
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Federal Aviation Administration
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Washington, DC 20591

RE: Request for FAA Legal Opinion re Initiation of International Services at Long Beach Airport and Continuing Compliance with Grant Assurances and Ability to Impose or Collect Passenger Facility Charges

Dear Mr. Bury:

JetBlue Airlines has provided the City of Long Beach with a copy of a letter from JetBlue directed to you on March 31, 2015, as well as a responsive letter from Deputy Chief Counsel Patricia McNall, date stamped May 27, 2015.

As the letter to the FAA from JetBlue correctly points out, JetBlue has requested the City of Long Beach, as the owner and sponsor of the Long Beach Airport (LGB or Airport), to investigate the feasibility of establishing a Federal Inspection Service (FIS) customs facility at LGB so that JetBlue and possibly other commercial air carriers and general aviation aircraft could avail themselves of international markets within the current regulatory requirements and flight limits at the Airport.

As per the request from JetBlue, the Long Beach City Council has directed Airport and other City staff to undertake a comprehensive feasibility study related to moving forward with federal inspection services at LGB. The study, which is currently under way, will be broad ranging, including land use and design, financial feasibility, market analysis, environmental, security, and legal components.

Importantly, the FIS facility concept under review does not contemplate any amendments to the City's Noise Compatibility Ordinance (Title 16, Chapter 16.43 LBMC), which has been in effect since 1995 without amendment and which mitigates aircraft noise impacts on surrounding residential communities, nor does it contemplate amendments to the City's current Flight Allocation Resolution (C-28465) which was adopted in 2004 as part of

Mark Bury, Deputy Chief Counsel, AGC-1
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the settlement of a dispute with air carriers regarding the methodology by which the City had allocated flight slots prior to the adoption of the Resolution.¹

As the proprietor of LGB, the City has always maintained a principal goal of providing its residents with a quality living and learning environment in stable neighborhoods, while at the same time recognizing that air commerce is a significant element of economic vitality of the City. In this regard, the City has striven to balance the sometimes conflicting legitimate needs of residential, educational and air commerce interests of the City in a thorough, realistic and practical approach. The Noise Compatibility Ordinance has, since its adoption, proved to be a key element of achieving an appropriate balance.

In reviewing Deputy Chief Counsel McNall's May 27, 2016 response to JetBlue's request for an opinion regarding the ramifications of a customs facility at LGB, we were pleased to note that the FAA continues to recognize the "grandfathered" status of the City's Noise Compatibility Ordinance under 49 U.S.C. 47524(d)(5)(A) and 47524(d)(5)(B) and does not find an issue of current noncompliance with ANCA or the City's grant assurances. Further, the FAA indicated that concerns that the possible introduction of international service at the Airport consistent with the Noise Ordinance would undermine the Ordinance or cause a change in the FAA's position toward it are unwarranted.

Although the facts as presented in JetBlue's letter to FAA in March 2015, remain accurate, because the FAA opinion letter to JetBlue was issued over a year ago, in an abundance of caution, and as the City determines whether to move forward with the analysis of FIS facilities at the Airport, we respectfully request confirmation that the conclusions stated in the FAA's May 27, 2015 letter remain accurate. Specifically, we request that the FAA confirm in a written opinion that the introduction of international service at the Airport in a manner consistent with the Noise Ordinance and Allocation Resolution will not jeopardize the FAA's determination that the Noise Ordinance is exempt from ANCA review because of the grandfathering provisions in ANCA, and that initiation of such service will not adversely affect future City grant applications under the Airport Improvement Program or applications to impose or collect PFCs under 49 U.S.C. 40117.

We respectfully request this updated information so we can assure our City Council, the residents of Long Beach, and those commercial and general aviation interests that may use a customs facility at LGB that we are providing them with current and accurate information regarding the FAA's position.

¹ In a letter dated April 30, 2003, the FAA concluded that the Airport Noise and Capacity Act (ANCA) and 14 C.F.R. Part 161 requirements did not apply to the Noise Ordinance because the Ordinance was grandfathered under 49 U.S.C. 47524(d)(5)(A) and 47524(d)(5)(B). The letter also concluded that a settlement agreement allocating slots under the Ordinance did not present an issue of current noncompliance under ANCA or the City's grant assurances.

Mark Bury, Deputy Chief Counsel, AGC-1
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If there is any further information that would assist you with this request for information/opinion, please feel free to let us know. We look forward to continuing to work with you on these important issues.

Very truly yours,

CHARLES PARKIN, City Attorney

By:


MICHAEL J. MAIS
Assistant City Attorney

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cc: Robert Hawks, Senior Attorney, FAA