THE PORT OF NEW YORK AUTHORITY

OFFICE OF
HOWARD S. CULLMAN, CHAIRMAN
161 FRONT STREET
NEW YORK 7, N. Y.

November 15, 1948

Mr. Amon G. Carter
Fort Worth Star Telegram
Fort Worth, Texas

Dear Mr. Carter:

As a Director of one of the airlines represented by Mr. George W. Whiteside in negotiations with the Port of New York Authority, we feel that you will want to read the enclosed letters bearing on those negotiations.

Sincerely yours,

Howard S. Cullman

Howard S. Cullman

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THE PORT OF NEW YORK AUTHORITY
111 Eighth Avenue
New York 11, N. Y.

November 15, 1948

George W. Whiteside, Esq.
Chadbourne, Wallace, Parke & Whiteside
25 Broadway
New York, New York

Dear Mr. Whiteside:

On behalf of the Commissioners of The Port of New York Authority, let me thank you for coming before us on Thursday, November 4, 1948 to repeat your clients' views with respect to the terms on which they wish to use New York International Airport.

As you know, the points raised in your argument had already been before us in the minutes of your series of conferences with our Executive Director, and in the various exchanges of correspondence between us.

No new factors were raised in your presentation which had not already been before us and on which we had not already acted. Our position in these matters is as outlined to you in the letter which was sent to you on October 8, 1948, at the unanimous direction of the Commissioners of the Port Authority, in response to your questions of September 24, 1948.

After a thorough review of all the facts, and on the basis of their knowledge of the events that preceded and followed the execution of the New York City Airport agreement of April 17, 1947, the Commissioners will continue to rely upon the airlines' assurances that they would renegotiate the 1945 Idlewild agreements. Accordingly, as we have advised your clients many times before, we expect them to continue the renegotiation of those agreements with our Executive Director so that we may arrive at a basis of airport use and compensatory charges equitable to all concerned. This is the only way that any difference between your clients and the Port Authority can be resolved to our mutual satisfaction.

In our letter of October 8, which is a definitive exposition of the position and policy of the Port Authority, we stated:

> "*** it should be said that the Port Authority does feel that a sliding scale of rates, designed to give an advantage to the

larger airlines having the greatest number of public schedules, is unjustly discriminatory against the smaller airlines and is contrary to public policy. The Port Authority has adopted a schedule of charges for the use of the landing area at New York International Airport which are designed to be compensatory but no more than compensatory of the cost to the Port Authority of providing, operating and maintaining the landing area; flexible so that appropriate adjustments may be made to reflect increases or decreases in the cost to the Port Authority of providing, operating and maintaining the landing area; and equitable so as not to discriminate as between large and small airlines, foreign flag and U. S. flag airlines, or late comers and early comers at the airport. We are not necessarily committed to the precise form of our present schedule of charges, but we are irrevocably committed to the use of a schedule of charges which will meet the three canons described above -- that such a schedule must be compensatory, flexible and equitable."

As contrasted with this Port Authority position you argued before the Board last week for a schedule of airline rates and charges which would be frozen at non-compensatory levels for fifty years. In addition, the schedule for which you argued would give a preferred and privileged status at the airport to the larger airlines among your clients. It would discriminate unjustly against all other airlines, domestic and foreign, which now use, or in the future may wish to use, the facilities of New York International Airport.

You argued for a sliding scale of charges under which the larger airlines, all of whom are your clients, would pay very much less for each plane take-off than would all other users. You said that your clients were willing to negotiate an increase of the dollars and cents provisions of the Idlewild leases as well as the provisions of the leases relating to physical construction, provided that the large airlines retained their special privileges under a sliding scale.

Both you and your clients have repeatedly agreed that the provisions for the development of the central terminal area under the 1945 Idlewild leases must be renegotiated (and those provisions cover about 80% of the 1945 leases). When you appeared before our Board, you also said that your clients were willing to renegotiate the rates and charges reserved in those leases. These statements were repeated the next morning in the NEW YORK TIMES (November 5, 1948) by a responsible reporter who said that "the airline men admit they have agreed that due to changes in building construction costs and other factors, many of their terms should now be modified." There would therefore seem to be little or nothing left of your clients' attempt to disclaim their agreements to renegotiate the 1945 leases, except their desire to perpetuate for the next fifty years at New York International Airport a system of inflexible, discriminatory and non-compensatory charges with special privileges for the large carriers.

The Commissioners are unconvinced by your argument that the large users should pay a lower rate than their small competitors. Our accountants, after a thorough review of our costs for providing, maintaining and operating the landing area, find no justification for the granting of a lower rate to your clients than is enjoyed by other users. It costs just as much to provide

emergency equipment and to police, clean, maintain, light and operate landing areas for the fiftieth landing by a large airline as for the last of fifty planes in individual ownership.

We derive no more concession revenue per passenger from the passengers on the fiftieth plane of a large airline than from the passengers on a fiftieth plane in individual ownership. The schedules added by an individual airline are the result of the tremendous air traffic potential available in the New York region and are not the cause of that traffic. The traffic must and will be served whether by additional schedules of a large carrier, or by the initial schedules of a small carrier.

Under the wholesale rate system urged by your clients for New York International, there would be discounts up to 64% for the large airlines. A discount of 64% would mean a rate of $90.96 per month per schedule for the large airlines for a 90,000 lb. Constellation compared with a rate of $254.60 which would be paid by the small carrier.

The system of charges which you defend is the type that has been fostered by the airlines in their dealings with municipalities throughout the country. The inequity of such a system and the dealings which have fostered it have been described in a recent book by the General Counsel of the National Institute of Municipal Law Officers, entitled "Airport Lease and Concession Agreements", in the following language:

> "* * *. Instance after instance has been called to my attention which show clearly that cities are not securing terms which are in any way favorable to them. The airlines have run rough-shod over cities and have undoubtedly contributed in large measure to the financial impotency of municipal airports by reason of inadequate compensation for the facilities which they use. The so-called 'Air Transport Association' model airport lease agreement is an infamous document that has been widely used by the airlines in their efforts to secure the terms which they desire, and unfortunately many cities have signed that document, or an agreement based upon it, which is almost as inequitable."

Some members of the National Institute of Municipal Law Officers, according to this book,

> "feel strongly that this unified front of the airlines to force an equal rather than a competitive agreement is a conspiracy in restraint of trade and is in violation of the anti-trust laws."

The discrimination of such a system in favor of the large scheduled operators at the expense of the airport operators, the small airline operators, the non-scheduled and contract carriers, and the itinerant planes may be illustrated by the following comparisons:

Under the system which you support, in August, 1948, the flight fees

paid by American Airlines at LaGuardia averaged 3.42¢ per thousand pounds of aircraft weight, while flight fees paid by Colonial Airlines averaged 9.93¢ per thousand pounds of aircraft weight. In terms of DC-4 with a maximum allowable gross weight of 73,000 pounds, this would mean a flight fee of $2.50 per departure for American, a large airline; and a flight fee of $7.25 per departure for Colonial, a small airline.

In a recent test month at LaGuardia we found that under the rate system of special privilege which you advocate, scheduled domestic carriers paid $5.11 per departure on DC-4's, scheduled overseas carriers paid $15.33 or three times as much for a take-off of the same airplane, while non-scheduled and contract carriers paid ten times as much, or $51.83!

During the course of your appearance before the Board you characterized non-discriminatory airport rates as "something new" which we had "invented", and which were used or advocated nowhere else in the United States. This is not the fact. Other municipalities in the United States and throughout the world, have been using and advocating the same system of flexible, equitable and non-discriminatory charges that the Port Authority has established at the New York International Airport. Charges based on the same system have also been adopted by the United States Government for government-owned airports.

Thus, flight fees on such a basis have been proposed in the renegotiation of the airline leases at Washington National Airport and adopted by the Air Force and the Navy for commercial use of their airports outside the continental United States. The cities of Minneapolis-St. Paul, San Francisco and Chicago are among those who are charging flight fees based on the weight of aircraft, such as the fees which the Port Authority is charging at the New York International Airport. In addition, the airports at Boston and Bedford, Massachusetts are now required by law to put such charges into effect, and the City of Birmingham, Alabama is now negotiating with the airlines on this basis.

A tabulation of flight fees around the world for DC-4 and Constellation aircraft which has been assembled by the International Civil Aviation Organization is attached. The following comparisons are based on data assembled directly by the Port Authority:

Airport	DC-4 (73,000 lbs.)	Constellation (90,000 lbs.)
London	$67.50	$78.75
Manila	25.00	35.00
Montreal	14.60	23.00
San Juan	14.60	18.40
U. S. Air Force and Navy Bases abroad	12.20	14.75
New York International - at rates now in effect, which are opposed by your clients	7.85	9.68
Chicago Orchard (Douglas) Airport	7.30	9.00

Both in our formal discussions with other representatives of the airlines and in our discussions with you we have met with repeated refusals even to review the compensatory rates which the Port Authority has proposed. Despite the fact that:

Such rates would recover through flight fees only the Port Authority's cost of providing, maintaining and operating the landing area.

Such rates do not include any return of the $60,000,000 investment by the City of New York in the basic construction of the airport.

Such rates do not include any of the cost of constructing or operating the terminal area or the hangar facilities and hangar areas.

Such rates are based solely on the cost of providing, maintaining and operating the landing area.

Our books will always be open for inspection by the airlines.

We have offered to agree in advance on a mutually satisfactory basis for the annual computation of these charges for the use of runway, taxiway and other landing area facilities.

We have repeatedly assured your clients that the Port Authority planned to develop from non-flight sources from 60 to 70 per cent of the overall costs of providing, operating and maintaining the airport.

Your clients have advised us that they were not interested in Port Authority costs; that airport costs were a problem for the airport operator and not for the airlines. In this connection it is interesting to note that under the type of charges which you urge upon us and which are in effect at LaGuardia, your clients will pay flight fees at LaGuardia this year of only $187,000. This is $394,000 less than their pro rata share of the actual costs attributable to the LaGuardia landing area.

We have made no issue of this inequity at LaGuardia, or of similar inequities at Newark Airport, since there was no understanding for the renegotiation of either the LaGuardia or the Newark leases. Quite the reverse is true at New York International. Consequently, the Commissioners expect flight fees there to be renegotiated on a compensatory basis.

The importance to the whole aviation industry of the successful development of self-supporting airports is obvious. As you know, municipalities throughout the country are no longer able to foot the bill for airports. At the recent election a proposed bond issue of $8,600,000 for airport purposes was defeated in San Francisco. In Cleveland a similar airport bond issue of $9,000,000 would appear to have passed but only by the narrowest of margins -- 2/10 of 1 per cent. The Port Authority's program for a system of self-supporting airports should therefore commend itself to the airlines from every standpoint of their own self-interest.

Unless this program to make the airports self-supporting be successful here as well as in other large urban centers throughout the country, the aviation industry cannot possibly have the airports which it requires to survive and prosper. The San Francisco vote, the narrow vote in Cleveland, and the leasing of the New York and Newark Airports to the Port Authority, indicate an unwillingness on the part of the taxpayers to continue to carry the burden of airport development as a local subsidy to scheduled airlines. You are probably as aware as we that from fifteen to twenty cities in the United States will require much larger airports to accommodate scheduled air traffic within the next five years. This essential airport development is going forward in only a few of these cities today, including New York and Newark.

It is significant, too, that cities such as Boston, Chicago, New York and Newark, which are endeavoring (in each case over the opposition of the airlines) to put their airports on a compensatory basis, are the cities which are taking the lead in providing adequate airport facilities.

In your argument before the Board you supported the theory that the discriminatory and non-compensatory rates desired by your airline clients should be frozen for the next 50 years. You charged, as one of your principal arguments, that failure to freeze rates would make it impossible for your clients to budget their expenses from year to year or to have any stable basis for their future plans.

The Board cannot take this argument too seriously. The fact is that all airport charges and rentals paid by all of the scheduled airlines throughout the entire country amount to only 2 per cent of their gross operating expenses. The other 98 per cent of the airlines' operating expenses consist of wages and salaries, gasoline, and other materials, supplies and equipment, which must be purchased in the open market under normal market conditions that do not permit of their being frozen for even one year, much less fifty.

The airport operator cannot freeze payrolls or the cost of materials and supplies. This fact does not prevent the Port Authority from budgeting its expenses from year to year or from making plans for a reasonably foreseeable future.

You complained to the Board, and your clients subsequently charged in the newspapers, that the restriction against the landing of loaded Boeing Stratocruisers at LaGuardia and Newark Airport was an arbitrary regulation. Such a charge has no basis in fact. Your clients' own knowledge of the runway requirements for the landing of the new Boeings brands their charge as reckless and irresponsible.

The fact is, as your clients well know, that after exhaustive tests, the Army Air Forces stated in published reports their conclusion that the runways at LaGuardia and Newark Will break down under use by planes weighing in excess of 90,000 pounds. (LA GUARDIA FIELD - AIRFIELD PAVEMENT EVALUATION REPORT -

-prepared by U. S. Engineer Office, dated May, 1945 and NEWARK AIRPORT-AIRFIELD PAVEMENT EVALUATION REPORT prepared by U. S. Engineer Office, dated February, 1944.) The weight of a loaded Stratocruiser is 142,000 pounds. Our own Engineering Department and our Board of Engineering Consultants are in accord with the Army's conclusion that these heavy planes, when loaded, could not safely use either the Newark or the LaGuardia runways.

The Port Authority and the airlines have a mutual responsibility for public safety in the operation of the airports of this metropolitan area. We would not be carrying out our responsibility if we permitted these new Stratocruisers, fully loaded, to use runways found grossly inadequate for their use. In a similar situation, the Port Authority carried out its part of that responsibility by closing down the short 3,500 foot runway at LaGuardia Airport following the disastrous crash of May 29, 1947. Similarly, we insisted on the closing of the service road at the southwest end of runway 4/22 at LaGuardia Airport where large transport aircraft were landing and taking off only a few feet above passenger cars, buses and trucks, including gasoline tank trucks carrying 4,000 gallons of highly volatile aviation gasoline.

At New York International Airport, the City and the Port Authority have constructed great new runways specifically designed to accommodate modern aircraft of up to 300,000 lbs. gross weight - more than twice the weight of the fully loaded Stratocruiser.

We have repeatedly advised your clients that, during the renegotiation of their leases, the International Airport is available to them for the handling of the new Boeings upon the same basis for comparable space and service as is now afforded to the ten foreign and domestic airlines which are already using the Airport. We have also advised your clients that the rates paid would be subject to retroactive adjustment on the basis of whatever rates are finally agreed upon. We advised your clients a year ago that we were ready and willing to furnish them, on that basis, beginning July 1, 1948, such space in the temporary terminal facilities and hangars at New York International Airport as they might require for their overseas or other long haul flights. We offered to cooperate with them in the preparation of plans for the construction and allocation of such space.

Your clients continue to raise the spectre of moving their airline business away from New York, unless the Port Authority accepts the system of special privilege rates for the large airlines which you supported before the Board. These are the same threats that have been made by the same airlines for many years against municipalities all over the country in order to obtain municipal airport facilities at only a fraction of their cost. We as a public agency cannot submit to such pressures.

As stated in our letter of October 8, 1948, the Port Authority is ready to finance and build hangars and similar facilities for the exclusive use of individual airlines in accordance with mutually approved plans. We will rent such facilities to your clients on the basis of long-term leases at rentals based upon

a fair ground rent, a debt service allowance to cover the bonds issued by the Port Authority to provide funds for the construction of the improvement, and similar items. The Port Authority's proposal with respect to such arrangements was contained in a draft of "Lease of Premises and Agreement to Construct Improvements at New York International Airport", which was transmitted to your clients on April 16, 1948. This lease was the subject of negotiations with the Airlines' Committee headed by Mr. John Newey last Spring.

For the protection of your clients in the event they are at any time of the opinion that the flight fees charged at the airport are so unfair or unreasonable as to prevent their operating at the airport, the Port Authority would, as we have heretofore advised you, consent to a provision in the leases permitting the airlines to cancel their leases upon one year's notice in any such event.

As stated at the beginning of this letter, it is the view of the Commissioners of the Port Authority that a mutually satisfactory resolution of the differences between your clients and the Port Authority can be accomplished only by the continuance of discussions with our Executive Director.

On November 5, 1948, I advised you that the Commissioners regarded statements which have appeared in the press as a flagrant violation of your express agreement with us at the opening of these negotiations on September 8, 1948 that "statements to the press with reference thereto will be issued only with the joint approval of Messrs. Whiteside and Tobin." In view of the breach by your clients of this agreement, the Commissioners feel that they have no choice but to make public this letter and our letter of October 8, 1948. Our decision in this matter is in conformity also with our further agreement with respect to these negotiations that "If any airline or combination of airlines issues any release bearing on the conferences, or any other airport matter, the Port Authority will reply as it sees fit."

Very truly yours,

Howard S. Cullman
Chairman

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FLIGHT FEES AROUND THE WORLD

Airport	DC-4	Constellation
New York International*	$ 8	$ 10
Gander	80	85
Shannon	72	85
Paris	27	38
Geneva	20	25
Rome	12	15
Athens	56	66
Cairo	24	29
Azores	54	72
Lisbon	21	40
Madrid	36	66
Algiers	39	n.a.
Tunis	40	n.a.
Tripoli	40	n.a.
Lydda	41	n.a.
Dhahran	47	n.a.
Karachi	45	n.a.
Bombay	45	n.a.

n.a. = not available.

Source: Airport Economics (Preliminary Study) - International Civil Aeronautics Organization - May, 1948

* Now in effect

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THE PORT OF NEW YORK AUTHORITY
111 Eighth Avenue
New York 11, N. Y.

October 8, 1948

George W. Whiteside, Esq.
Chadbourne, Wallace, Parke & Whiteside
25 Broadway
New York 4, New York

Dear Mr. Whiteside:

At our conference on Friday, September 24, you submitted eight written questions for me to answer on behalf of the Port Authority. It is my understanding that these questions are asked in an attempt to determine, as an aid to our negotiations, the points on which the Port Authority and the airlines are in agreement and those upon which they are in disagreement, and thus to narrow the issues to be resolved through our conferences.

Your carefully prepared list of questions seem to cover all the main topics which will come up for discussion in connection with the renegotiation or modification of the airline leases at New York International Airport, and their form and underlying implications are such that they are obviously not susceptible to categorical answers but require rather a statement of the Port Authority's ideas and proposals upon the points raised.

Upon this basis the following answers, which have been reviewed and approved by the Commissioners of the Port Authority, are submitted:

Question No. 1.

"Does the Port Authority still refuse to permit lessee airlines to use Idlewild, while those discussions proceed and as it becomes operationally necessary for them to do so, under the terms of the existing leases to the extent applicable and subject to retroactive adjustments?"

Answer

It is the Port Authority's conviction that if it should become operationally necessary for the airlines which you represent to use New York International Airport during the continuance of the present discussions, the interests of all concerned will be best served if they do so upon the same basis for comparable space and services as the airlines which are now using New York International Airport, subject to retroactive adjustment in accordance with the agreement finally reached as a result of the present discussions.

As you perhaps know, we advised your clients last year that we were ready and willing to furnish them, on that basis, beginning July 1, 1948, such space in the temporary terminal facilities and hangars at New York International Airport as they might require for their overseas or other long-haul flights, and to cooperate with them in the preparation of plans for the construction and allocation of such space. Your clients were unwilling to proceed upon that basis. It is the basis upon which other airlines are now using that airport, and it is still our firm belief that it should be the basis for any use of the airport during the continuance of our discussions.

The foregoing is not intended as a hard and fast requirement. The rates now being paid by the airlines using New York International Airport are based upon actual costs and, in our opinion, are fair and reasonable. We will be glad to discuss any proposals your clients may have for reasonable modifications of the existing rates, rules or regulations for the use of New York International during the interim period, subject as indicated above to retroactive adjustment. We cannot, however, consent to its use at non-compensatory rates or upon terms and conditions which would discriminate as between users.

If your clients initiate operations at New York International Airport upon the above basis, it would, of course, be our understanding that unless these discussions extend beyond the coming calendar year, there would be no change in the rates without the approval of your clients during the discussions or for a reasonable time thereafter.

Question No. 2.

> "If the Port Authority still so refuses, will it agree now that it will not interfere with the occupancy and use of LaGuardia by the U.S.-Flag overseas lines and other lines holding leases there during the unexpired term of those leases and all renewals thereof?"

Answer

We are not precisely clear what is intended by the question whether the Port Authority will agree not to interfere with the use and occupancy of LaGuardia Airport by airline lessees.

The Port Authority has not done anything at LaGuardia Airport in violation of those leases, and it has no intention of doing so. These leases do reserve certain rights to the landlord, and the Port Authority will, of course, continue to exercise these rights if and to the extent we believe it in the public interest for us to do so. These leases, moreover, grant certain definite rights and privileges to the airlines, and of course, we will make no commitment beyond these rights and privileges. In addition, we must be perfectly free to urge upon the airlines our views with respect to the transfer of overseas and transcontinental operations to New York International Airport, which views are concurred in by various federal agencies.

Question No. 3.

> "Does the Port Authority agree that, if modifications of the existing Idlewild leases should be agreed on, it will sponsor legislation making the Port Authority subject to suit under the leases as so modified, and that such modifications will not be binding on the airlines if such legislation is not passed at the earliest possible sessions of the Legislatures of New York and New Jersey?"

Answer

In the event a mutually satisfactory agreement with respect to modification of the leases is reached, I am confident, as I have assured you at each of our conferences, that the Port Authority will be able to satisfy you and through you, your clients as to the enforceability of mutually agreeable modifications. We would not expect such modifications as may be agreed on in the course of our renegotiation to be binding on your clients unless you or they were satisfied as to their enforceability.

Question No. 4.

> "Does the Port Authority agree that all space, facilities and operations of the airlines at all airports under the jurisdiction of the Port Authority should be provided for in basic leases and supplements thereto, except in occasional incidental respects, and that the permit system now used by the Port Authority will to that extent be abandoned?"

Answer

In general, the Port Authority's position is as follows:

(a) That whenever an airline desires it, hangars and similar individual facilities for its exclusive use will be constructed by the Port Authority in accordance with mutually approved plans, and rented to the airline upon the basis of a long-term lease at a rental based upon a fair ground rent, a debt service allowance to cover the bonds issued by the Port Authority to provide funds for the construction of the improvement, and similar items. The Port Authority's proposals with respect to such arrangements were contained in a draft of "Lease of Premises and Agreement to Construct Improvements at New York International Airport", which was transmitted to your clients as well as to

other air carriers who might operate at New York International Airport on April 16, 1948.

(b) That collateral to such leases there should be agreements for counter space, office space, etc. in the Permanent Administration Building for the exclusive use of the airline. Agreements with respect to such space must necessarily be flexible with respect to rate because of the inevitable variations in the Port Authority's cost of operating and maintaining such buildings, and must also be flexible or at least not frozen for any substantial period of time with respect to location because of the changing requirements of the airlines themselves as well as the necessity for occasional change in interior arrangement to permit maximum development of non-flight revenues.

(c) That the public landing area, the public ramp and apron area, the public aircraft parking and storage area, the public vehicular parking area, the air terminal highway system, the gasoline storage and distribution system, and any similar improvement or facility should be operated on a public utility basis. In other words that as public terminals they should be open to all users, upon the payment of fair and reasonable charges, subject to reasonable rules and regulations, and without unjust discrimination.

That rates and charges should be based upon reasonable costs and other pertinent factors, and that there should be collateral agreements with airline lessees, assuring them against excessive, unreasonable or discriminatory charges, and against modifications of tariffs or rules and regulations without due notice and an opportunity to be heard. Draft of such a tariff including explanation of the basic factors which would be included in its calculation was forwarded to you, at your request, in a memorandum dated September 20, 1948. We would assume that such collateral agreements would specify some such sound accounting basis for calculating the tariff from year to year.

(d) The Port Authority would consent to a provision permitting the airlines to cancel their long-term hangar leases and collateral agreements upon one year's notice, if at any time they were of the opinion that the tariff charges, so calculated, were unfair or unreasonable.

(e) That when the Port Authority finances and constructs hangars or similar facilities in advance of a definitive lease and agreement for construction, it should be free to enter into agreements with airlines for its use either upon the basis of temporary permits or long-term leases as may be appropriate at that time.

(f) That pending the construction of the Permanent Administration Building and the construction of an adequate number of hangars, etc., no airline should be granted the exclusive use, on the basis of a long-term lease, of any space which may be needed by other airlines; and that until adequate facilities have been provided for all, space should be allocated upon the basis of temporary permits so that allocations can be rearranged from time to time so that all may be upon a parity. This refers primarily to existing hangars and hangars constructed by the Port Authority for its own account, to space in the Temporary Administration Building, etc. It does not refer to any hangars or similar facilities which may be constructed for the exclusive use of an airline pursuant to

a lease of the character first mentioned above.

(g) That all of the foregoing can be accomplished by appropriate renegotiation and modification of the existing leases.

Question No. 5.

> "Does the Port Authority agree that the existing Idlewild leases are comprehensive in nature, intended to cover in detail the rights and obligations of the parties? Does the Port Authority agree that such comprehensive nature will be preserved in any proposed modification of the existing leases, including specifically the principles of (a) the fixed term subject to the renewals specified in the existing leases, (b) fixed charges for all operations at the airport and rights under the leases, subject only to such maximum charges as may be agreed upon therein and (c) that no rentals, fees, charges or tolls other than those expressly provided therein shall be charged to or collected from the airlines?"

Answer

The Port Authority was not a party to the negotiation of the existing leases and has no knowledge of what they intend except as evidenced by their language. On this point, the leases speak for themselves.

The Port Authority's general position with respect to the modifications which would seem desirable in the existing leases has been set forth in its answer to Question 4. With respect to the specific points raised in Question 5 it may be said:

(a) That as indicated, when hangars and other facilities are built for the account of an airline, a lease for a long fixed term is appropriate. The term and renewal privileges which the Port Authority would consider appropriate in such instances were outlined in the draft of "Lease of Premises and Agreement to Construct Improvements at New York International Airport", to which reference was made in paragraph (a) of the answer to Question 4.

(b) That as indicated above, we believe certain areas and facilities should be operated as public utilities, open to all users upon the payment of fair and reasonable charges, subject to reasonable rules and regulations, and without unjust discrimination.

(c) That no rentals, fees, charges or tolls other than those expressly provided after the renegotiation and modification of the existing leases should be charged to or collected from the airlines for the facilities and services specified in such leases or other agreements. The Port Authority, however, does not feel it appropriate to agree that it cannot make additional charges to cover the cost of new or additional facilities or services which are voluntarily used by the airlines.

Question No. 6.

"Does the Port Authority agree that the principle of the existing leases, under which all-inclusive activity rentals charged each airline are based on published time tables of such airline and decrease as its schedules increase, will be preserved in any proposed modification of the existing leases?"

Answer

The Port Authority's position with respect to rates and charges for the landing area and other public facilities has been stated above. In addition it should be said that the Port Authority does feel that a sliding scale of rates, designed to give an advantage to the larger airlines having the greatest number of public schedules, is unjustly discriminatory against the smaller airlines and is contrary to public policy. The Port Authority has adopted a schedule of charges for the use of the landing area at New York International Airport which are designed to be compensatory but no more than compensatory of the cost to the Port Authority of providing, operating and maintaining the landing area; flexible so that appropriate adjustments may be made to reflect increases or decreases in the cost to the Port Authority of providing, operating and maintaining the landing area; and equitable so as not to discriminate as between large and small airlines, foreign flag and U. S. flag airlines, or late comers and early comers at the airport. We are not necessarily committed to the precise form of our present schedule of charges, but we are irrevocably committed to the use of a schedule of charges which will meet the three canons described above -- that such a schedule must be compensatory, flexible, and equitable.

Question No. 7.

"Does the Port Authority agree that the principle contained in the existing leases that the lessees shall have the full right to purchase or otherwise obtain from persons of their choice all services, equipment, supplies and materials, including specifically their requirements of gasoline and other fuel and lubricants, without the imposition therefor on lessees or their suppliers of any direct or indirect rentals, charges, fees or tolls will be preserved in any proposed modification of the existing leases?"

Answer

Question 7 is answered by the agreement which the Port Authority has made with the United States of America for federal aid at New York International Airport which provides as follows:

"4. The Sponsor agrees that it will operate the airport for the use and benefit of the public, onfair and reasonable terms and without unjust discrimination, In furtherance of this covenant (but without limiting its general applicability and effect), the Sponsor specifically covenants and agrees:

* * * * *

"(b) That it will not exercise or grant any right or privilege which would operate to prevent any person, firm or corporation operating aircraft on the airport from:

* * * * *

"(2) Purchasing off the airport and having delivered on the airport without entrance fee, delivery fee or other surcharge for delivery any parts, materials, or supplies necessary for the servicing, repair or operation of its aircraft; Provided, That the Sponsor may make reasonable charges for the cost of any service (including charges for maintenance, operation and depreciation of facilities and rights-of-way) furnished by the Sponsor in connection with the delivery of any parts, materials or supplies, And Provided Further, That in the case of aviation gasoline and oil purchased off the airport and delivered to the airport, the Sponsor may require the aviation gasoline and oil to be stored in specified places, limiting the amount delivered to the amount of storage space available, and if necessary for the safe and efficient operation of the airport, require persons furnishing their own aviation gasoline and oil to utilize such storage dispensing and delivery system as the Sponsor may designate.

* * * * *

"5. (a) Nothing contained herein shall be construed to prohibit the granting or exercise of an exclusive right for the furnishing of non-aviation products and supplies or any service of a non-aeronautical nature.

"5. (b) The term "non-aviation products and supplies" as used in paragraph 5(a) above includes "meals aloft" and all other products or supplies such as food, beverages, confections and periodicals, which are furnished for consumption or use by the passengers or crew of aircraft while in flight, and the term "parts, materials, or supplies" as used in paragraph 4(b)(2) above does not include "meals aloft" or any other products or supplies such as food, beverages, confections, and periodicals which are purchased or delivered for consumption or use by the passengers or crew of aircraft while in flight.

"5. (c) Nothing in paragraph 4 above shall prevent the Sponsor from imposing terms for the use of the airport, or any services or facilities thereof, which are commensurate with the value of the rights or privileges granted, even though existing contracts may grant similar rights or privileges on terms which are not commensurate with their value. However, it is understood that the Administrator has not approved as consistent with the covenants of said paragraph 4 any existing leases or other contracts granting rights or privileges for use of the airport or any service or facilities thereof, and that his action in tendering an offer of Federal aid for the project will not constitute or imply any such approval."

Question No. 8.

"Assuming that it may be mutually desirable to alter the physical layout of the hangar site areas or the Central Terminal areas, does the Port Authority agree that (a) such alterations will be arrived at by mutual agreement between it and the airline lessees, and (b) any airline lessee may preserve its present hangar site premises without alteration?"

Answer

Inasmuch as the purpose of the present renegotiation is to arrive at a mutual agreement with respect to modifications of the existing leases, we are not clear as to precisely what is meant by Question 8. Assuming as we do that these discussions will reach a successful conclusion, it seems obvious that whatever modifications are made in the leases will be made by mutual agreement.

In Conclusion

The Port Authority's position with respect to the general nature of the modifications which should be made in the leases has been set forth above.

May we, therefore, take the liberty of inquiring whether the airlines see any reasonable objections from the standpoint of public policy or otherwise to the operation of the public landing area, the public ramp and apron area, the public aircraft parking and storage areas, the air terminal highways, the public vehicular parking areas, the gasoline storage and distribution system and any similar facilities at the airport upon a public utility basis, provided, that there are adequate assurances to the airlines:

(a) That the schedule of charges and the rules and regulations will not be changed without adequate notice to the airlines and an opportunity to be heard;

(b) That the rates and charges will be based upon cost and other pertinent factors and will not be unfair, unjust, unreasonable or excessive;

(c) That such facilities will be operated without discrimination as between users; and

(d) That the rules and regulations governing their use will be fair and reasonable?

I have discussed your questions with my Commissioners, and they have asked me to inform you that this letter is in accordance with their views. They wish, however, to point out that it is not intended as a unilateral commitment on their part, and that of necessity there can be no binding commitments until they are set forth in definitive agreements formally accepted by all parties.

I take the liberty of suggesting that our next meeting be at my office at 10:00 a.m. on Friday, October 15th. Kindly let me know if this meets your convenience.

Very sincerely yours,

Austin J. Tobin
Executive Director.