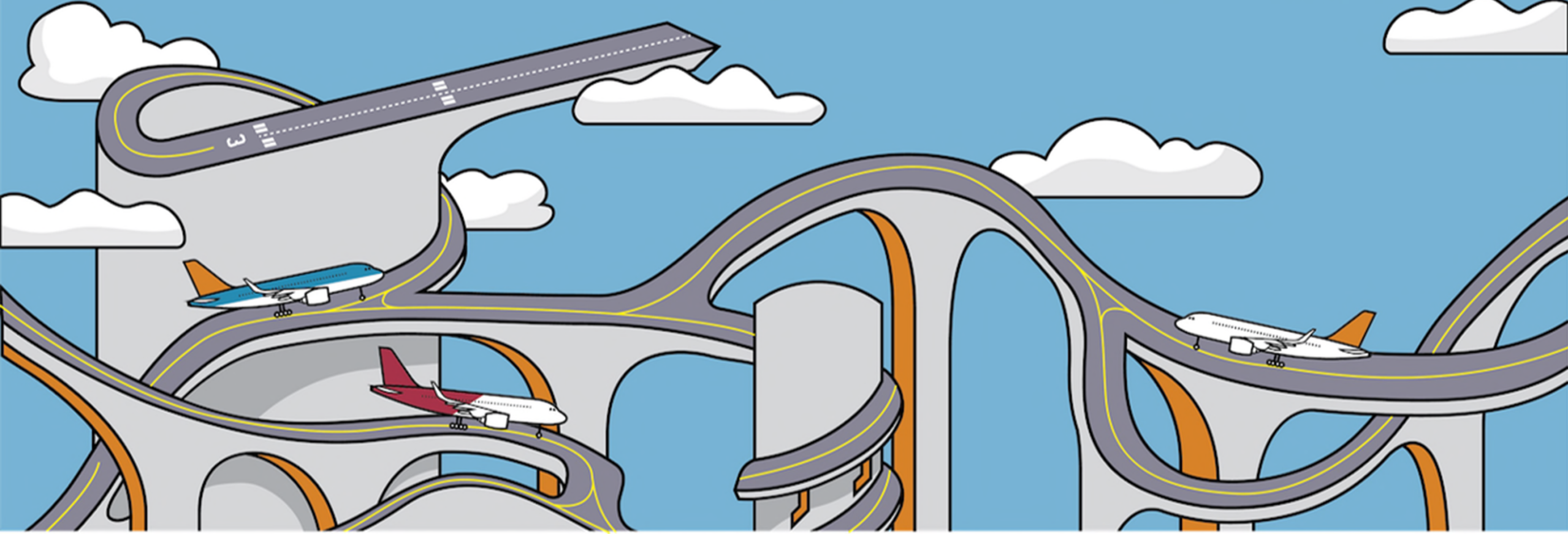


# 38TH ANNUAL

# AIRPORT LAW WORKSHOP



 KAPLAN KIRSCH ROCKWELL  
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Advanced Issues in Airline  
Airport Use Agreements

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# Introduction



**HELLO**  
My Name Is

Our speakers –  
brief introduction

- ≡ Preliminary statements/overview
- ≡ “If you have seen one airport...”
- ≡ Legal concepts mixed with financial considerations
- ≡ Questions welcome
- ≡ Front-loaded issues with honorable mentions at end

(could be “speed dating” but stay tuned!)



# Legal underpinnings



- ≡ Rates and charges policy
- ≡ Grant Assurances
- ≡ PFC assurances
- ≡ AIR-21 & competition plans
- ≡ Litigation risk and role of attorney
  - ≡ Part 16
  - ≡ The DOT “Rocket Docket”
- ≡ Rates by resolution
- ≡ Key take-aways



# Introduction:

## core financial concepts (important to legal aspects)



≧ We are assuming some baseline knowledge  
remember, this is an advanced course

Review of a few key concepts:

- CPE & CPT
- Compensatory vs. residual
- Cost (and revenue) centers
- Cost allocation
- Joint use formula
- Revenue sharing
- Turn fees



# Introduction to airline agreements: Planning, timeline and members of the team



- ✍ When to begin planning
- ✍ The airport team – who and what role?
- ✍ The AAAC – chair, members, etc.
- ✍ The role of counsel (In-house and external)
- ✍ Keeping stakeholders informed
- ✍ What to expect along the way



***“... I have always found that plans are useless but planning is indispensable “***



# The rates and charges hit list



**AND SO IT  
BEGINS**



# Air service / competition –

## What is the appropriate role of the sponsor?



- ≡ Important for any size airport/city/region
- ≡ Mix of carriers, mix of service types
- ≡ Fleet mix matters
- ≡ Network vs ULCC
- ≡ 7 days / week vs less (i.e. 2 days per week to 2 different cities)
- ≡ USDOT competition plan
- ≡ Inter-airline tensions
- ≡ Air service incentives programs (ASIPs)
- ≡ Anything written on the topic?



# Joint use formula – how to divide shared costs



- ≡ Historical perspective
- ≡ EPAX - fixed percentage (ex. 80-20)
- ≡ Operations component
  - ≡ Encourage efficient use of limited gates
- ≡ Low frequency carriers - financial and legal considerations
  - ≡ carve-outs
  - ≡ creative solutions

Uh oh, lawyers doing math? This can't be good.



# Airport gate issues – managing your gates



- ≧ Core concept: What is appropriate at YOUR airport?
- ≧ Preferential vs common use models –
  - ≧ Practical and legal considerations
- ≧ Retention of airport gates for common use
- ≧ Recapture of preferential use gates
- ≧ Virtual preferential gates (MCO)
- ≧ Per-turn operations of preferential use gates
- ≧ Turn fees
  - ≧ “Reasonable” rates
  - ≧ Where *do* the \$\$ go?





# Airport cash reserves

- ✍ Post COVID-19 risk assessment
- ✍ “DCOH” and reserves
- ✍ Rates and charges policy
- ✍ Importance of “clean” airline cost centers
- ✍ Revenue sharing considerations
- ✍ Legal and financial analysis



# Capital control



Majority-in-Interest (MII) (“Mother May I”)



Legal vs striking the right balance



Rates-by-resolution as alternative



Trends and recent issues



Pre-Approved capital programs



Typical exclusions from MII



Application of BIL, PFCs and non-airline derived monies



# Large terminal projects



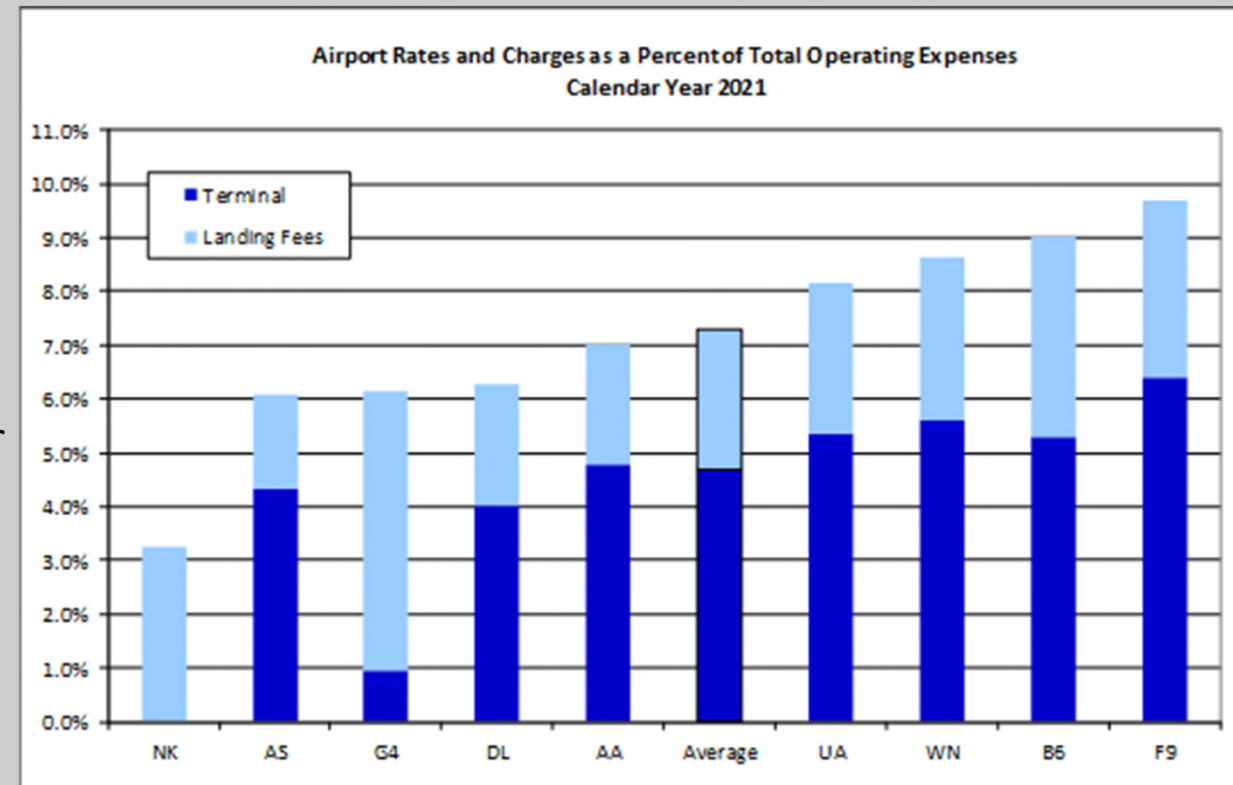
- Rates and charges policy
- Modeling large projects and airline concerns
- Shocking legal conclusion
- Pre-payment of....
- Importance of consideration of debt and issuance of bonds



# Airport costs – keeping it in perspective



- Different views of CPE by airlines
- Sponsor goal – strike a balance
  - Keep network carriers reasonably happy
  - Thoughtful cost for new-entrants and/or low frequency carriers



Source: DOT, Form-41.



# Affiliates of network carriers



- “No good deed...”
- Importance of privity of contract
  - Indemnification
  - Insurance
  - Bankruptcy risk mitigation
  - Cross-company guaranties and security for performance



# Signatories and non-signatory premiums



- Signatory status
  - The cost of admission
  - Reasonable and not unjustly discriminatory
  - Metrics
    - Historical
    - Recent Issues
  
- Non-sig premiums
  - Historical perspective
  - Legal underpinnings
  - Legal and financial considerations





# Debt service coverage



- Hard vs. rolling coverage
- Legal issues
  - UsBond indenture / trust agreement
  - e of funds
- Airline perspective



# Security for performance



- "No good deed..."
- Bankruptcy risk mitigation
- But we have \$\_\_\_ billion in unrestricted cash...
- Letters of credit, cash, performance bonds
- Cross-company guaranties and security for performance



# Airline agreements – what are they?



- “Airline Use & Lease Agreement”
- Lease or license?
  - A distinction without a difference or something quite important?
  - Bankruptcy implications
  - State law implications



# Federal Inspection Service (FIS) fees



- Welcome to the United States, please pay a fee...
- Importance of cost center construction
- Full cost vs. subsidized (or market rate)
- What works at your airport?



# And we just were getting started!



- Many more issues exist
  - Required federal provisions
  - Title VI
  - Environmental, insurance & indemnity
  - Revenue diversion
  - Reliever airports
  - + More!
- Each of the issues discussed was just scratching the surface
- The team you build is of the utmost importance
- Understand the airlines perspective and work to anticipate concerns
- No pressure: shaping the future of your airport





# QUESTIONS?

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