FAA Response to Comments Regarding the Participation of Luis Muñoz Marín International Airport in the Airport Privatization Pilot Program

The Federal Aviation Administration (FAA) received approximately 337 public comments about Luis Muñoz Marín's final (SJU) privatization application (FAA 2009-1144) were docketed on www.regulations.gov . The FAA received comments opposed to approving the final application and comments in support.

Comments were received from airport users, airport tenants, airport commercial tenants and airport public and private company employees and hotel operators. Comments were also received from elected officials such as U.S. Senator Mark Kirk, Congressman John Mica, Chairman of the U.S. House of Representatives Committee on Transportation and Infrastructure, Governor Alejandro Garcia Padilla, Commissioner Pedro R. Pierluisi, Delegate to the U.S. House of Representatives, Kenneth D. McClintock, the Secretary of State, State Representatives Jaime R. Perelló Borrás and Luis Vega Ramos, Carlos M. Hernández, and the mayors of Ponce, Aguadilla, and Fajardo.

Comments were also received from the National Business Aviation Association, Airlines for America, Southwest Airlines, the SJU Airline-Airport Affairs Committee, the Airports Council International- North America, the Maryland Department of Transportation, the Puerto Rico Bankers Association, UBS Financial Services Incorporated of Puerto Rico, the Private Sector Coalition of Puerto Rico, the Puerto Rico Economic Association, U.S. Panama Business Council, the Ports Authority Managerial Employees Association, the Federation of Associations of Management Employees of the Commonwealth, and political candidates for local elective office.

On September 28, 2012, a Federal panel representing the United States Department of Transportation, the Transportation Security Administration and the FAA conducted a public meeting in San Juan, Puerto Rico, where the panel received oral testimony from the general public. A Spanish/English transcript of the public meeting is included in the docket.

The following response to comments is organized by issue, not by commenter. The summary of comments is intended to represent the general divergence of views on various issues. It is not intended to be an exhaustive restatement of the comments received. All comments received were considered by FAA, even if not specifically identified in this response.

General Comments

Comments supporting the privatization believe that changes are needed to modernize the airport infrastructure, improve management of the Airport, and provide leadership to

market Puerto Rico as a global destination. Comments opposing the privatization believe that the private sector should not perform public services that are inherently governmental in nature. Commenters are opposed to foreign companies controlling local public assets. Commenters believe that foreign nationals will displace Puerto Ricans in public and private sector jobs at the Airport.

Comment:
U.S. Senator Mark Kirk believes the Federal government should support innovative methods for private investment in the nation's transportation infrastructure. Senator Kirk states that Luis Muñoz Marín International Airport's application is an excellent opportunity to demonstrate the potential of aviation public-private partnership in the United States. Congressman John Mica, Chairman of the House Transportation and Infrastructure Committee expressed his support for the long-term lease of the Airport. Chairman Mica indicates that the privatization intiative will provide funding for needed capital improvements at the Airport while simultaneously creating a sustainable plan for the airport's growth.

Response: FAA notes the comments and commits to exercising its authority in the privatization area judiciously.

Comment:
Commissioner Pedro R. Pierluisi, Delegate to the U.S. House of Representatives, believes that the Luis Muñoz Marín International Airport application is consistent with the objectives of the Airport Privatization Pilot Program, originally envisioned by Congress. When Congress established the program in 1996, it sought to determine whether new investment and capital from the private sector can be attracted through innovative financial arrangements to modernize and improve U.S. Airports. Commissioner Pierluisi indicated the Puerto Rico Ports Authority is burdened with significant debt and is incapable of generating funds to make needed improvements to the Airport. In 2009, the Port Authority had a bond rating of Triple B minus, the lowest credit rating above junk bond status. The amount of debt increased 63 percent between 2004 and 2008, and effectively shut the Port Authority out of the bond market.

Response: FAA notes the comment and the important role the Airport plays in the national public-use airport system by serving 25 commercial and international air carriers with four million passenger enplanements. The Final Application discusses in detail the PRPA's debt and its intentions about the use of the proceeds should the transaction be approved. The legislative history of the Airport Privatization Pilot Program indicates that the congressional intent was to determine "if new investment and capital from the private sector can be attracted through innovative financial arrangements."

Comment

The Government Development Bank (GDB) supports the transaction and believes PRPA's present financial condition and high debt make the Lease Agreement highly beneficial. GDB suggests operational expansion, improved services, and capital improvements throughout Puerto Rico's airport system. In addition, the Puerto Rico Chamber of Commerce believes that an airport to be successful must have access to key resources: 1) large capital improvements over a long period of time; 2) a robust seasoned and experienced work team with a global perspective that will operate, maintain and improve the facilities; 3) a sound technological background that will enhance and provide competitiveness in accordance with industry parameters and best practices; and 4) an unyielding commitment to include and boost those efforts with local service providers. Luis Munoz Marin International Airport is also Puerto Rico's main air cargo hub. The Chamber asserts that the facility also requires substantial infrastructure improvements to support international business trade, and improve the passenger and cargo movement to and from the Island. The Airport requires a large capital investment that Puerto Rico is not in a financial position to implement, on its own. The Chamber believes that Aerostar has demonstrated strong management capabilities and financial resources to enhance the airport's operations, generate revenues and comply with Puerto Rico employment goals.

Response. The FAA notes that the Application Procedures set out the nine statutory findings under 49 USC section 47134 that the Secretary must make before issuing an exemption for the privatization of an airport. This includes a requirement that the lessee of the airport will maintain, improve, and modernize the facilities of the airport through capital investments and will submit to the Secretary a plan for carrying out such maintenance, improvements, and modernization. FAA also examines the fitness of the proposed private operator to confirm the company has the capacity to operate an airport under the Airport Privatization Pilot Program, including its airport management and operations experience.

Comment

Several commenters commented on the management of the Airport. One commenter believes that professional management is needed to assure the rescue of an increasingly deteriorating airport that is falling behind in physical appearance, service, management and direction. Other comments suggested the Airport needs steady reliable management. Airport management has been inconsistent for many years, largely due to the replacement of executives each time a new territorial government administration takes office. In the past three years, there have been four port authority executive directors. Frequent airport management changes, and in turn, its policies has been problematic, producing a very inconsistent vision over time.

Response. As stated above, the FAA also examines the fitness of the proposed private operator to confirm the company has the capacity to operate an airport under the Airport Privatization Pilot Program, including its airport management and operations experience. The Lease Agreement provides for a 40 year lease. Any change in the management of the private airport management firm must be approved by the PRPA and the FAA.

<u>Protection of PRPA Assets</u>

Comment.

In a December 28, 2012, telephone call to Secretary of the U.S. Department of Transportation, Ray LaHood, Governor-Elect Alejandro Garcia Padilla indicated that he is aware of the SJU privatization application and he expressed the following three concerns that the application must address: 1.) No employees of SJU should be fired as a result of the privatization; 2.) Nearby airports must retain the right to expand; and 3.) Airport rates at SJU must not increase.

Response. First, federal law provides protection to Airport employees employed by the PRPA. The law requires that the Lease Agreement between the PRPA and Aerostar must ensure that any collective bargaining agreement (CBA) that covers Airport employees and is in effect on the date of the sale or lease of the airport will not be abrogated by the lease of the Airport to a private operator. The application of the PRPA and Aerostar may be approved only if the Secretary finds that the lease agreement includes provisions satisfactory to the Secretary/Administrator to ensure that any collective bargaining agreement that covers Airport employees and is in effect on the date of the sale or lease of the airport will not be abrogated by the sale or lease.

PRPA and the members of the Bargaining Unit of the Union of Office, Commerce and Related Branches Employees of Puerto Rico, Inc. (Union) approved a four-year CBA (signed December 13, 2012 and effective October 1, 2012)(2012 CBA). The Bargaining Unit consists of administration, operation and maintenance workers of the Authority carrying out business or activities related to the maritime and air transportation facilities, or other related Authority activities. The CBA provides for relocation of displaced Union employees in the event of a possible privatization, sale, lease or merger of an Authority facility. The PRPA states "Employees who do not join Aerostar will remain employed by the PRPA in other capacities, but under the same compensation and benefit package they currently enjoy under the CBA."

Second, FAA was also concerned about the effect of the transaction on the other airports in Puerto Rico. Accordingly, the PRPA has submitted a Regional Airports Operational Plan, acceptable to the FAA, that provides for the continued funding and operation of the Regional

Airports. The PRPA has established a Regional Airports Reserve Fund of $25 million; dedicated SJU lease payments totaling $550 million over the 40 year life of Aerostar's Lease Agreement combined with Maritime Net Revenues will be available to support the growth of the Regional Airports. The plan also requires the PRPA to implement improvements in its management practices regarding leasing, maintenance, operations, and capital improvements.

There appear there has been misunderstandings about provision 3.22 in the Lease Agreement. However, there are no restrictions on a Regional Airport's ability to obtain a Part 139 Airport Operating Certificate should the Airport's passenger traffic warrant such a license. Title 14 CFR Part 139 requires FAA to issue airport operating certificates to airports that serve scheduled and unscheduled air carrier aircraft with more than 30 seats;or scheduled air carrier operations in aircraft with more than 9 seats but less than 31 seats. Section 3.22 of the Lease Agreement requires the PRPA to compensate Aerostar in the event that PRPA obtains an airport operating certificate under 14 C.F.R. Part 139, authorizing scheduled passenger commercial service at any Puerto Rican airport that, as of the date of the lease, did not have a Part 139 certificate. This section applies, for a period of 20 years from the date of the lease, to the former U.S. Naval Air Station Roosevelt Roads, located in Ceiba. For airports elsewhere in Puerto Rico, the lease condition would apply for a period of 15 years from the date of the lease. Section 3.22 of the Lease Agreement would not prohibit the PRPA from obtaining a license. Section 3.22 is discussed in more detail on the discussion of the Regional Airports.

Third, the Airlines and Aerostar have signed a fifteen year use agreement that reduces Airline fees and stabilizes rates and charges. During the first five years total annual airline fees (including landing and terminal fees) referred to as the Total Annual Contribution will not exceed $62 million. The Airline fee increases cannot exceed the annual rate of inflation for the remaining term of the Use Agreement. General Aviation fee increases cannot exceed the precentage increase imposed on the Airlines.

Comment.

One comment claims the Airport's participation in the Privatization Program violates the Puerto Rican constitution by failing to protect the assets of Puerto Rican citizens. Several comments highlighted potential negative airport business impacts. Among these threats were higher concessionaire and airline costs, increased airline charges, and flight reductions; all of which would have a resounding impact on the local economy and population. Several comments noted the monopolistic position held by Aerostar will drive-up airline ticket prices to prohibitive levels for seniors and other economically disadvantaged groups. A few individuals suggested the Puerto Rican tourism industry will suffer due to the mismanagement of the airport by the private company and its focuse on a desire for profit. There were several concerns about the profit motivation of a private management company. Most expressing this concern believe the airport will withhold needed investments and ignore community and employee impacts in order to maximize

profits. Another comment indicated a need to amend the lease to include an earthquake preparedness plan.

Response. Under the privatization statute, a commercial service aiport can only be leased so the real property remains under the ownership of the PRPA, and will be returned to the PRPA at the end of the term. The FAA disagrees with the comment that privatization will result in higher concessionaire and airline costs, increased airline charges, and flight reductions, and drive up airline ticket prices**.** No public or private airport operator controls airline ticket prices. Aerostar's Lease Agreement reduces Airline operating costs below charges currently assessed by the PRPA. Whether the Airlines will pass this cost on to the consumer is a question for the Airlines. Airline ticket prices are based upon a number of factors, and airport costs are only one factor of an airlines' operating costs. Aerostar, as a part of its agreement with the Airlines, has created the Puerto Rico Air Travel Promotion and Support Fund. The Airport Use Agreement requires Aerostar to set aside $6 million in an escrow account to reward signatory airlines (Airlines) that increase their service during the first three years of the Airport Use Agreement. The distribution of funds is based on the number of passengers arriving at the Airport. The Airlines have agreed to the program.

The agreement between Aerostar and the PRPA provides incentives to Aerostar to maintain safe operations at SJU and invest in capacity and infrastructure to attract passengers. It is only by making SJU an attractive airport to passengers and airlines that Aerostar can receive a return on its investment in purchasing a 40 year lease. To stay in compliance with the terms of the 40 year lease, Aerostar must meet certain specified operating standards.

The Airlines and the PRPA have agreed to a set of operating standards that Aerostar must develop and implement specific requirements within six months. The standards address among other things: facilities, airfield, capital asset management, environmental sustainability, safety management systems, wildlife hazard management, airport security, airport emergency, customer service, and performance metrics.

To ensure compliance with these standards, the lease agreement requires an annual assessment of both the aeronautical and non-aeronautical facilities at SJU by an independent engineer. Aerostar must develop an action plan that is acceptable to the PRPA and the Airlines to meet any areas found deficient by the engineer, including a funding plan. If Aerostar is unable to cure whatever problem is identified, there is a binding enforcement procedure which includes a process outlined by the American Arbitration Association. Both the Airlines and the PRPA can initiate proceedings. The FAA, by having third party beneficiary rights, may also have standing if desired. If Aerostar still fails to cure any problems, several actions are possible: 1.) Issue is turned over to outside courts; or 2.) The PRPA has the right to terminate the lease agreement; or 3.) Aerostar's lenders can step in and cure the default. DOT/FAA have their own tools to ensure Aerostar and PRPA uphold the requirements of this transaction. Not only will FAA conduct regular Part 139 safety inspections and financial audits, but the Secretary may revoke the exemptions or initiate a Notice of Investigation under CFR Part 16 if the private operator were to violate any of the conditions or grant assurances. The FAA believes the Lease Agreement and federal regulatory requirements provide sufficient safeguards to ensure that the Airport is not mismanaged at the expense of the operator's profit.

Comment

One comment indicated that airport revenue will be taken out of the local economy, increasing SJU's dependency on federal grants.

Response:Federal grants alone cannot sustain the operation of a commercial service airport. Federal law, the grant assurances combined with the Lease Agreement and Airline Use Agreement provide that Aerostar must operate a self-sustaining Airport, make capital improvements, pay Lease payments to the PRPA, and earn compensation. The FAA believes there are adequate protections to ensure that the SJU Assets are protected.

Aerostar's Capital Improvements are Insufficient.

Comment.

Several commenters cited concern that Aerostar would fail to make substantive investments in the airport. Without major investment it is believed SJU will fail to realize its growth potential, suffer declines in customer service quality, and ignore necessary infrastructure needs. One Commenter believes that Congress sent $285 million to the Airport. What will happen to the money if FAA approves the transaction? Another commenter suggested the lease needs to address ground transportation upgrades, which are poor and lack signage. One commenter provides an analysis claiming that mandatory capital improvements appear limited, when considering the estimated PFC revenue and government grants that Aerostar would be eligible to receive. The commenter cites that the lease requires Aerostar to make $34 million in improvements at SJU, with an additional $167 million in optional capital improvements, rather than contractual commitments binding on the tenant.

Response, There are four components to Aerostar's proposed capital improvement program: 1.) Initial Capital Projects. Aerostar is required by the Airline Use Agreement to spend not less than $34 million to meet a specific list of capital improvements within the first 3 years. These improvements include 21 projects that focus on improving the Airport's infrastructure including construction of a general aviation access road, taxiway construction, terminal roadway signage, terminal roof repair, bathroom remodeling, expanded terminal curbside, and installation of a public address system in Terminal B. Aerostar must make these improvements regardless if AIP or PFC funds are available. 2.) The Lease Agreement also requires Aerostar to make improvements entitled “General Accelerated Upgrades”. Aerostar must fund, at its sole expense, $16-20 million of improvements within the first 18 months of the Lease Agreement. These improvements include repair and refurbish loading bridges, repair roadways and walkways, replace deteriorating terminal flooring, install Wi-Fi throughout the terminal, install electrical outlets, upgrade and replace deficient lighting, and repair or replace elevators, escalators and stairwells. 3) Aerostar’s Capacity Enhancement Program will invest an estimated $50 million to improve operations, security and airport capacity at SJU.. The funds are available through a credit line with various key financial institutions. 4.)The Use Agreement requires the Airlines to pay for any “Government-Mandated Capital Project” projects that are mandated for safety or security by the Federal Government. These costs, if not funded through PFC or AIP would be added to the rate base, a standard practice at U.S. Airports.. Aerostar proposed a total of $267.4 million in capital expenditures from 2013-2017, to be funded by a combination of sponsor funds, AIP grants and PFC revenues. Furthermore, Aerostar can only use future PFC revenues for eligible airport-related PFC projects that are approved by FAA.

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<u>PRPA is leasing SJU to retire government debt that is largely unrelated to SJU.</u>

Comment

A commenter stated that the PRPA has not substantiated its claim that $380 million of the $505 million of PRPA debt to be repaid relates specifically to SJU rather than other PRPA purposes. The commenter asserts that Passenger Facility Charges (PFC) and Airport Improvement Program (AIP) grants collected in previous years may have retired a significant portion of the SJU-related debt.

Response: The FAA disagrees with the comment that the PRPA is leasing the Airport to retire non-Airport debt. AIP grants must be used for physical improvements; they can not be used to retire debt. Federal law requires that both AIP grants and PFC revenue must be used for eligible airport-related projects approved by FAA. The PRPA plans to retire $500 million of PRPA debt, of which approximately $380 million was incurred to finance SJU operations or capital improvements. The remaining $120 million is non-airport related debt that the PRPA will also retire. The PRPA will use approximately $495 million (80%) of the $615 million Leasehold Fee.

<u>Aerostar’s Proposal undervalues SJU</u>

Comments

A number of comments indicated that the Aerostar proposal undervalued the Airport.

Response: The FAA reviewed and confirmed that the studies used an analyses based on simple extrapolations of historical airport operating data that compared the present value of future airport income, as estimated by the commenters, to the present value offered by Aerostar. Although each commenter made different assumptions, all commenters concluded that the terms of the proposed lease undervalue SJU. Generally speaking, the commenters' annual revenue growth assumptions are not consistent with the historical operating results for SJU. Also, the revenue streams resulting from their respective forecasted growth rates do not accurately reflect the risks associated with investing in the stand-alone operation of the airport. A more moderate revenue growth rate and a higher discount rate reflecting the risks associated with investing in SJU would have resulted in a lower estimated valuation closer to the amount bid by Aerostar through the PRPA competitive solicitation process.

Aerostar's Proposal negatively impacts the PRPA

Comment

Several Comments indicated that the PRPA and its ability to effectively administer its facilities will be negatively impacted by the Aerostar proposal. Commenters claim that removing SJU from PRPA's portfolio would negatively impact PRPA's ability to effectively administer and maintain its remaining airports and Port facilities. They argue that income from SJU is necessary to invest and develop Puerto Rico's air transportation system. Also, they contend that PRPA's ability to issue new debt, post-privatization, would be hindered.

Response: In evaluating the application, a primary concern of both the U.S. DOT and FAA is the long-term sustainability of Puerto Rico's transportation infrastructure and the regional airports. The PRPA 's "Puerto Rico Regional Airports Operational Plan, September 2012 outlined the specific plan for PRPA's regional airports after privatization of SJU. The PRPA projects that the regional airports, collectively, will have an operating deficit of $267 million over the next 40 years. The FAA will require that the regional airports will have access to three sources of revenue: 1.) the PRPA will use proceeds from the SJU privatization to establish a Regional Airport Reserve Fund with a minimum of $25 million. 2.) The PRPA will use all annual lease payments from SJU, estimated at $550 million over 40 years to support the regional airports; 3.) The PRPA will have access to Maritime Funds of $1.292 billion as required by the 1972 Trust Agreement. The FAA will also require the PRPA to take steps to improve revenue collection, reduce operating expenses, and report on the steps.

<u>The Impact of the SJU Privatization on the Regional Airports.</u>

Comments

Several comments expressed concern that the development of air service at regional airports will be constrained. Many comments were concerned about the impact of the privatization of SJU on the regional airports. Several of the comments believed that Section 3.22 of the Lease Agreement imposed a restriction on an airport's ability to obtain a licensce for commercial passenger service. Others suggested if SJU underperforms or fails, it will impact the entire commonwealth, especially the regional airports. The Mayor of Ponce, PR stated she supported the plan provided it does not hinder the development of Mercedita Airport. Other comments believe the restriction prevents economic development that would otherwise be realized with an expansion of passenger and cargo services at regional airports like Aguadilla or Roosevelt Roads. They also cite section 3.22 and want to ensure regional airports are not inhibited by this lease provision. The Puerto Rico Bankers' Association believes the Part 139 restriction limits free trade and may be detrimental to the Puerto Rican economy. The City of Anasco feels the terms of the lease limit economic development in western Puerto Rico, specifically reducing passenger traffic and revenues at Aguadilla, and limiting development opportunities at Hostos Airport.

Response: The FAA does not concur with the commenter's interpretation of Section 3.22 as prohibiting the addition of new passenger service at airports that had a Part 139 certificate as of the lease signing date. Furthermore, there are no restrictions on a Regional Airport's ability to obtain a Part 139 Airport Operating Certificate should the Airport's passenger traffic warrant such a license. Title 14 CFR Part 139 requires FAA to issue airport operating certificates to airports that serve scheduled and unscheduled air carrier aircraft with more than 30 seats;or scheduled air carrier operations in aircraft with more than 9 seats but less than 31 seats.

Section 3.22 of the Lease Agreement requires the PRPA to compensate Aerostar in the event that PRPA obtains an airport operating certificate under 14 C.F.R. Part 139, authorizing scheduled passenger commercial service at any Puerto Rican airport that, as of the date of the lease, did not have a Part 139 certificate. As of this date, four airports in Puerto Rico had Part 139 certification Aguadilla, Isla de Vieques, Ponce, and San Juan (SJU). This section applies, for a period of 20 years from the date of the lease, to the former U.S. Naval Air Station Roosevelt Roads, located in Ceiba. For airports elsewhere in Puerto Rico, the lease condition would apply for a period of 15 years from the date of the lease.

According to the National Plan of Integrated Airport Systems (NPIAS) published by FAA for 2013-2017, the Jose Aponte De La Torre Airport (RVR) in Ceiba is currently a publicly-owned, non-hub airport. RVR's service level is currently classified as commercial service – primary; this classification is not anticipated to change during the five-year planning period. Although RVR enplaned only 0.2 percent of total enplaned passengers in Puerto Rico in 2010, the airport accounted for 29 percent of total Puerto Rico planned development costs (AIP grants, excluding planning costs) for the 2011-2015 period.

The preservation of Puerto Rico's regional airports is a key factor in the FAA's consideration for deciding whether to approve or deny SJU's application. Maintaining these airports so they are able to provide for the air travel needs of the people of Puerto Rico is consistent with FAA's goal to provide a safe and efficient National Airport System and to safeguard the interests of General Aviation users.

Privatization is a Poor Solution to Ineffective Management

Comment

A commenter, using comparisons between SJU and similar airports, disputes the notion that privatization is an appropriate response to SJU's current condition, asserting that:

- **The recent landing fee increases (from $2.46 per thousand pounds of takeoff weight in 2006 to $3.65 in 2011) were not evidence that SJU could not control costs, but instead were adopted by the current administration via regulation;**
- **Although SJU has high operating costs relative to medium hub airports, this argument is fallacious because SJU is the main airport for Puerto Rico and because it fails to consider SJU aeronautical revenue per enplanement, which was much higher than other medium hub airports;**
- **Low food and beverage income is attributable to the facts that SJU is an origin and destination airport, rather than a connecting airport; most connections that do occur are in the American Airlines terminal, which has the fewest food/drink alternatives in the entire airport; and, the low cost carriers fly at odd hours of the day when there is no need to eat or drink;**
- **Poor performance in the area of vehicle rentals is attributable to the facts that many tourists take taxis to their respective hotels or cruise ships; many of the passengers are Puerto Rican and do not need to rent vehicles; and, numerous car rental companies are located nearby, off airport grounds;**
- **Poor performance in the area of parking is attributable to the facts that parking is poorly managed, but this can be solved with better administration; parking prices in Puerto Rico are generally less than in the U.S.; and, SJU does not offer medium and long-term parking facilities; and,**
- **SJU has limited viability as a transit hub, regardless of privatization, because most foreign passengers traveling through the U.S. (including Puerto Rico) need a visa.**
- **the private sector cannot adequately fulfill a role that is truly governmental in nature.**

A contrary comment was submitted by Estudios Tecnicos. According to his economic impact assessment, the privatization would have a large positive impact on Puerto Rico's economy. Estudios Tecnicos was commissioned by Aerostar to perform the economic impact assessment (Docket FAA-2009-1144-0075). Estudios Tecnicos evaluated the economic benefits of privatization associated with Aerostar's capital investment plan, operating plan and the change in ownership structure using accepted economic procedures based on an Input-Output Model. For all of Puerto Rico, during the first ten years after privatization, the deal will result in annual average impacts of:

- **$2.3 billion in increased business activity;**
- **14,461 new jobs;**
- **$437.4 million in salaries associated with the new jobs; and,**
- **$93.6 million in new tax revenue.**

These impacts were based on the impact of Aerostar's construction activities and investment in machinery and equipment of $583 million during the initial ten years of the agreement and the expected increase in passenger movement resulting from Aerostar's operational plan that will result in an estimated increase of $8.8 billion in additional visitor expenditures during the initial ten years of the agreement. The construction activities, investment in machinery and equipment, and additional visitor expenditures will generate a total of $936 million in new tax revenue that will support an additional $2.4 billion in new business activity during the initial ten years of the agreement.

Response: The FAA recognizes that there are varying views on privatization. However, the decision is made locally by the airport sponsor on whether to pursue this course of action.

Foreign Management

Comment

One comment stated that foreign management of the Airport also raises concerns about public safety and security issues such as the smuggling of illegal drugs and weapons.

A number of comments cited leasing SJU to a foreign company as a cause of concern. A few comments suggest foreign management would open the airport to Mexican drug cartels, drug and gun trafficking, illegal immigration, and terrorism. Several comments mentioned that a foreign management would endanger national security by allowing a foreign company access to information about the Puerto Rico Air National Guard facility at SJU. Two other commenters suggested ASUR has a record of poor airport management and has allowed unscrupulous behavior from the government security personnel in Cancun. These

activities include paid bribes and inconsistent customs enforcement. Both individuals urged the federal government to create a strong oversight mechanism to monitor ASUR.

Response: The FAA requested the Transportation Security Administration (TSA) to respond to these issues. TSA advised that it requires compliance with 49 CFR Part 1542 and the Airport Security Program regardless of who operates the airport. Security measures are currently in place at SJU to protect U.S. and government operations, and TSA will continue to require all measures necessary to protect national security at the airport.

The TSA provided the following response to the security concerns raised by the commenters: a.) All airport drugs trafficking matters are referred to appropriate Federal and local agencies for handling. These agencies will vigorously enforce all applicable laws regardless of who operates the airport. b) All illegal immigration matters are referred to appropriate Federal agencies for handling. These agencies will vigorously enforce all applicable immigration laws regardless of who operates the airport c.). TSA created a multi-layered system of security elements to secure our aviation system. In combination, the security value of each layer is multiplied, creating a much stronger, formidable system to stop a terrorist. A terrorist who has to overcome multiple security layers in order to carry out an attack is more likely to be pre-empted, deterred, or to fail during the attempt. Some of the visible layers of security are: watch lists, Visible Intermodal Prevention and Response teams, K-9 units, Behavioral Detection Officers, Ticket Document Checkers, screening checkpoint and checked baggage screening, random inspection of airport employees, Transportation Security Explosives Specialists, Federal Air Marshals, hardened cockpit doors, and security training for crewmembers. In addition, TSA advised that it employs a number of additional layers of security that we cannot reveal to the general public. d.) All airport gun trafficking matters are referred to appropriate Federal and local agencies for handling. These agencies will vigorously enforce all applicable laws regardless of who operates the airport. e.) TSA created a multi-layered system of security elements to secure our aviation system.

In combination, the security value of each layer is multiplied, creating a much stronger, formidable system to stop a terrorist. A terrorist who has to overcome multiple security layers in order to carry out an attack is more likely to be pre-empted, deterred, or to fail during the attempt. Some of the visible layers of security are: watch lists, Visible Intermodal Prevention and Response teams, K-9 units, Behavioral Detection Officers, Ticket Document Checkers, screening checkpoint and checked baggage screening, random inspection of airport employees, Transportation Security Explosives Specialists, Federal Air Marshals, hardened cockpit doors, and security training for crewmembers. In addition, TSA employs a number of additional layers of security that we cannot reveal to the general public.

While TSA cannot publicly discuss aviation security specifics at the airport in Cancun, Mexico, TSA will require full compliance with 49 CFR Part 1542 and all Airport Security Program measures regardless of who operates SJU. Or TSA must approve an Airport Security Program for SJU under the operation of Aerostar and the Lease cannot commence until the TSA approves the program.

<u>Impact on Airport Operations</u>

Comments

Several commenters highlighted concerns over the height of trees surrounding the runway area. Another comment suggested the Airport Layout Plan (ALP) needs to be updated before the lease is finalized. One individual recommended LMM's Airport Layout Plan (ALP) is overdue for an update and suggested the FAA should delay approval until these changes are made. Another individual strongly urged FAA to ensure a public safety and emergency plan and an earthquake plan is added to the final lease.

Response: The FAA notes that the lack of an updated ALP is not a legitimate reason to uphold action on a pending privatization application.Many airports have ALPs in a state of transition. This will be one of many tasks assumed by the private operator should the transfer take place.. According to the PRPA, there is a plan to conduct tree trimming in the approach of runway 8/26 which is scheduled for the end of February.

Public safety and emergency plans are standard requirements for Title 14 CFR Part 139 airports. Operating standards have been developed by the Airlines and the PRPA. These operating standards must also address federal regulatory requirements that apply to all federally-obligated airports. The standards address among other things: facilities, airfield, capital asset management, environmental sustainability, safety management systems, wildlife hazard management, airport security, airport emergency, customer service, and performance metrics.

<u>Comment</u>

The PRPA Property Development and Marketing Director suggest changes are needed to market the Airport and improve the way the PRPA manages its commercial contracts. He indicates that the PRPA approves contracts with no benefit to the airport, grant excessive periods of time with no apparent compensation to the Airport or the government. A better program is needed to reduce mounting litigation costs.

Response: The FAA agrees with the comment that the PRPA leasing practices have not been sufficient. The FAA will require the PRPA formalize its leasing practices into a formal leasing policy for airport property.

<u>Adverse Effects on General Aviation</u>

Comments

NBAA wants to ensure lower rates at SJU, corresponding to any landing fee reductions for carriers and against rate increases at other airports. They also urged FAA to take steps to guarantee fair rates and charges for the GA community. The National Business Aviation Association (NBAA) wants to ensure Aerostar continues to allow general aviation access to the airport.

Response: The protection and development of General Aviation in Puerto Rico is a primary concern to the FAA. The statute also requires that the interests of general aviation users are not adversely affected by the privatization.

In the final application, Aerostar states that it recognizes the value and importance of general aviation to the growth and development of SJU. Aerostar also asserts that general aviation users will benefit from the Airport improvements, including increasing airfield maintenance, during the term of the lease. Additionally, Aerostar commits to designating a general aviation liaison as a point of contact for transition and Airport operation issues and the liaison will provide updates to general aviation users on operational and development issues at the Airport as relevant to the Airport. The PRPA is currently expanding general aviation facilities at SJU. As required by the Airport Use Agreement, Aerostar is committed to completing these projects.

The statue requires that the percentage increase in fees imposed on general aviation aircraft at the airport will not exceed the percentage increase in fees imposed on air carriers at the airport. Aerostar's lease Agreement reaffirms that requirement. Section 3.4(a)(v) of the Lease Agreement requires percentage increase in fees imposed on general aviation will not exceed the percentage increase in fees imposed on air carriers. The FAA will carefully take into consideration the effect of the transaction on General Aviation users.

Airport Concession Operators

Comment

Some concessionaires expressed concerns about their existing contracts with PRPA and asserted they are entitled to operate on the properties on which they already hold a lease or were contractually promised. Numerous comments raised concerns about the plan to close terminals D and E., One concessionaire claims he will be forced to close restaurants and 150 jobs and revenue will be lost. Numerous employees expressed concerns about the closure of Terminal D and the lack of access to Terminal A.A second concessionaire suggested PRPA plans to abrogate their existing contract with them, for property within

terminal A. The concessionaire asserts the FAA should not condone the use of the privatization to void contracts. It did not say it does not oppose the concept of privatization and that concession revenue is important to the success of SJU.

Response: Tthe Lease Agreement requires the PRPA to assign the SJU Airport Facility Contracts which includes concessions to Aerostar, subject to certain exceptions. The Airlines have agreed to Aerostar's Capacity Enhancement Program will invest an estimated $50 million to improve operations, security and airport capacity at SJU. It is FAA's understanding that all existing material agreements and contracts will be transferred to Aerostar.

Environmental Mitigation

Comment

One comment cited several environmental issues at SJU including existing underground pipelines filled with contaminated water and two lead storage tanks with asbestos roofs.

Response:Federal law and the Lease requires Aerostar must mitigate the adverse effects on the environment from Airport operations at the airport to the same extent as at public airport. Section 3.4(a)(viii) of the Lease Agreement requires Aerostar to mitigate the adverse effects on the environment from Airport operations at the Airport to the same extent as at the public airport. The Operating Standards requires Aerostar to develop and implement an Environmental Sustainability Plan as part of its Airport Operations Plan. The FAA is aware that a Phase I Environmental Site Assessment of the Airport was conducted. In addition, the Lease requires the PRPA to disclose environmental issues which it has become aware since delivering the Phase I Environmental Site Assessment of the Airport to the Lessee.

Collective Bargaining and Airport Employee Concerns

Comment

Many comments cited concerns about airport collective bargaining, concessionaire contracts, job cuts, and employee benefits. Several . The Independent Union of Airport Workers believes Aerostar will ignore the rights of airport concessions and employees to maximize profit. The Hermandad de Empleados de Oficina (HEO or Brotherhood of Office Employees) claims the labor agreement has been extended on a day-by-day basis over the last several years and PRPA has refused to negotiate, since they applied to take part in the privatization program. They also suggest airport employees and the labor unions were never offered an opportunity to comment about the privatization process. HEO requests the FAA delay approval of the application until a collective bargaining agreement is reached. Commenters cited concerns about airport collective bargaining, concessionaire contracts, job cuts, and employee benefits. Forty-five commenters oppose and two support the plan.

Response: The FAA is aware the PRPA and the members of the Bargaining Unit of the Union of Office, Commerce and Related Branches Employees of Puerto Rico, Inc. (Union) approved a four-year CBA (signed December 13, 2012 and effective October 1, 2012)(2012 CBA). The Bargaining Unit consists of administration, operation and maintenance workers of the Authority carrying out business or activities related to the maritime and air transportation facilities, or other related Authority activities. The CBA provides for relocation of displaced Union employees in the event of a possible privatization, sale, lease or merger of an Authority facility. The PRPA states "Employees who do not join Aerostar will remain employed by the PRPA in other capacities, but under the same compensation and benefit package they currently enjoy under the CBA."

Additionally, Aerostar has interviewed more than 150 interviews of current employees, representing all of the employees that have applied for an interview. Aerostar has offered employment to PRPA employees who meet Aerostar's stated requirements for employment

<u>Community Outreach</u>

Comment

Comments expressed a concern about the lack of effort to engage and seek feedback from the local community. Many of these comments opposed the idea of leasing SJU to a private operator. Several of the comments indicated the PRPA attempted to block public commentary throughout the privatization process. Others comments believed the FAA failed to provide enough time to allow public comments.

Response: The FAA looks to the airport owner to initiate dialogue and public discussion with the local community and interested stakeholders. The FAA is aware that a public website was maintained through out the transaction process. We understand that documents and project updates have been publicly posted in order to the keep the community informed of the transaction and solicit input.

The FAA's role is to ensure the Federal investment and the interest of airport users are protected. Toward that objective, we met with Airlines, airport tenants, airport union leaders, elected officials, and interested individuals. A number of people have complained about the short notice of our September 28 public meeting in San Juan, Puerto Rico, and for that we apologize. This meeting gave citizens, airport and non-airport businesses, and local political figures an opportunity to provide feedback on the privatization plan and the lease terms.
The public docket has been receiving comments from the public for the past six months.

<u>Puerto Rico Public Private Partnership Authority Solicitation Process</u>

Comment

Commenters complained that the bidding process allowed several conflicts of interest. Commenters cited cited conflicts of interest in the bidding process and questioned the manner in which participants were chosen and that the the process has been politically motivated.

Response:The FAA considers the solicitation process within the exclusive province of the local authorities. Some communities conduct a competitive bid process others engage in direct negotiations with one operator. The process can vary depending upon what local law and custom permit.   Airport owners are solely responsible for determining whether or not to privatize their airport, without any unreasonable federal interference.   We do note that two Airlines each indicated the SJU privatization process has been fair, collaborative, and transparent for signatory airlines.