

AIRPORTS: FAA SAYS ORANGE COUNTY, CALIFORNIA
NOISE POLICY DISCRIMINATES AGAINST NEW ENTRANTS

The Federal Aviation Administration informed the Orange County, Calif., Board of Supervisors April 3 that its failure to apply "essentially equal treatment" to all qualified air carriers seeking entry to John Wayne Airport as part of its noise abatement policy is "unjustly discriminatory" and "cannot be countenanced."

FAA Chief Counsel Clark H. Onstad told the county to take action to accommodate pending entry applications "without further delay" or face the consequences of "contractual, injunctive, and civil penalty remedies."

The "legitimate goal of noise control," Onstad declared, "does not relieve the county from its statutory and contractual obligations to accommodate the requests of qualified air carriers to commence service."

Congestion, Crowded Facilities: To reduce the noise levels, as mandated by state noise laws (Reference File 81:3581, 81:3595) as well as to alleviate passenger congestion and crowded facilities, the board had restricted new entrants, limited daily operations to 40 flights per day, established a curfew, a 500-mile perimeter rule, and imposed use restrictions.

Air California and Hughes Airwest are the only scheduled air carrier turbojet operations authorized at the airport. A commuter air carrier, Golden West, holds access to the remaining available terminal space.

Continental Air Lines and Frontier Airlines have been denied entry to John Wayne Airport in spite of automatic market entry provisions of the Airline Deregulation Act. Pacific Southwest Airlines and Western Airlines also have been granted entrant authority by the Civil Aeronautics Board but the board has not approved the start-up of service.

Last February, Onstad directed that a fact-finding investigation be conducted of the airport usage rights by the county. This investigation concluded that the county, by its failure to approve qualified air carriers, granted exclusive rights to incumbent carriers in violation of Section 308(a) of the Federal Aviation Act and unjustly discriminated against such applicants in violation of the county's contractual obligations under the Airport and Airway Development Act of 1970.

Dewitte T. Lawson, the presiding officer of the investigation, observed in his findings and recommendations that "the fact that the current air carrier tenants need the space granted them, and indeed more, does not justify or clothe in legality, the granting of exclusive right in this area - or the unjust discrimination meted out to air carriers aspiring to tenant status. The principle of first come, first served is not sanctioned by the federal requirements applicable to public airports, within the framework of facts ascertained during this investigation."

Local Noise Abatement Encouraged: It is the FAA's policy, Onstad declared, to encourage adoption of local airport noise abatement programs as long as they do not place "undue burden on interstate commerce" and "are rationally related to meaningful noise reduction and not unjustly discriminatory."

Mindful that the county's action to comply with the FAA will result in a total change in the operation of the incumbent carriers, Onstad stated that "the FAA believes that a reasonably phased method of entry for all new entrants is in order."

Onstad found various aspects of the county's program unsatisfactory. For example, he said the curfew which the county imposes only on jet operations "is substantially similar to the jet ban which Judge Hill found to be unconstitutional in Santa Monica Airport Association v. City of Santa Monica," No. CV-77-2852-IH (C.D. Calif. 1979) (Current Report, August 28, 1978, p. A-16).

The current limit of 40 average annual daily departures for carriers using turbojet aircraft is "equally troubling," Onstad continued, particularly since the technology of aircraft engine noise reduction has greatly advanced since 1971 when the county imposed the limit.

According to the FAA chief counsel, any imposition of use restrictions must be "rational and equitable." He advised the county to consult FAA's Advisory Circular 36-3 (Reference File 51:7061), which lists airplane noise levels, in determining what types of aircraft can use the airport.

Rather than establishing noise level restrictions, Onstad declared that "Orange County has sought to base restrictions upon type of use (such as air carrier operations) with resulting unequal treatment both between the various classes of users of the airport and within the class of air carriers."

Onstad said the 500-mile perimeter rule also is "troubling." He explained that the agency would continue to assess the validity of such a rule "in light of Section 105 of the Federal Aviation Act of 1958, as amended, which federally preempts an airport operator from enacting or enforcing 'any law, rule, regulation, standard or other provision having the force and effect of law relating to rates, routes, or services of any air carrier having authority under Title 10 of this Act to provide interstate air transportation.'"

Onstad urged the county to "act fairly and expeditiously on the requests of new entrants" and to keep the FAA informed of its progress.