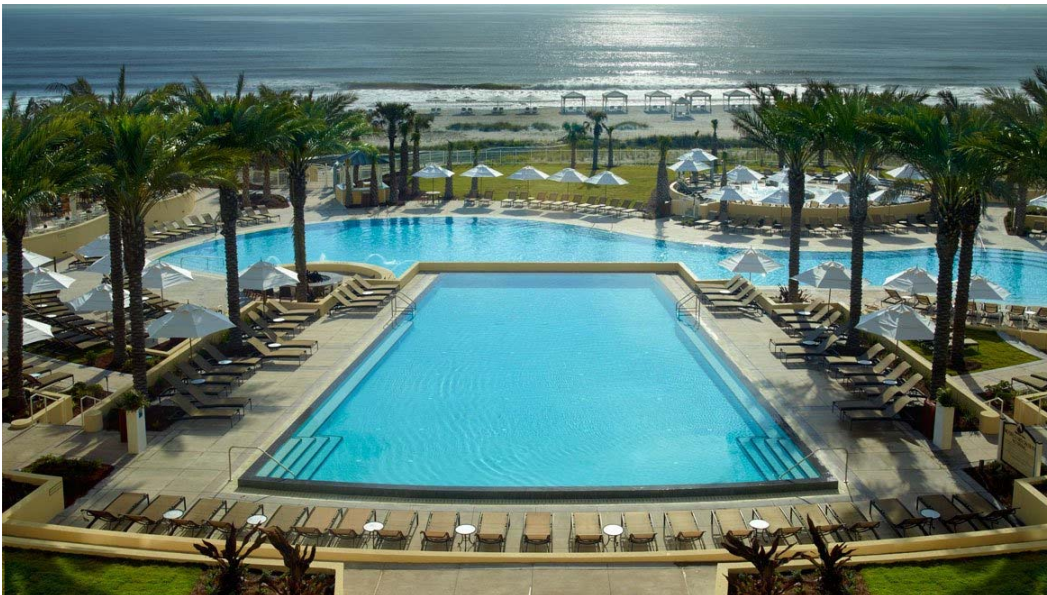




Leigh|Fisher

# Air Service Issues: Legal Means to Induce Air Service to Your Community

## ACI-NA Legal Affairs Spring Conference



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Omni Amelia Island Plantation  
Amelia Island, Florida  
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## Discussion Topics

### Changing Airline Industry and Implications for Airport Ratemaking Per-Turn Fees

- What's the Issue?
- Regulatory and Legal Basis
- Implementing and Calculating Fees

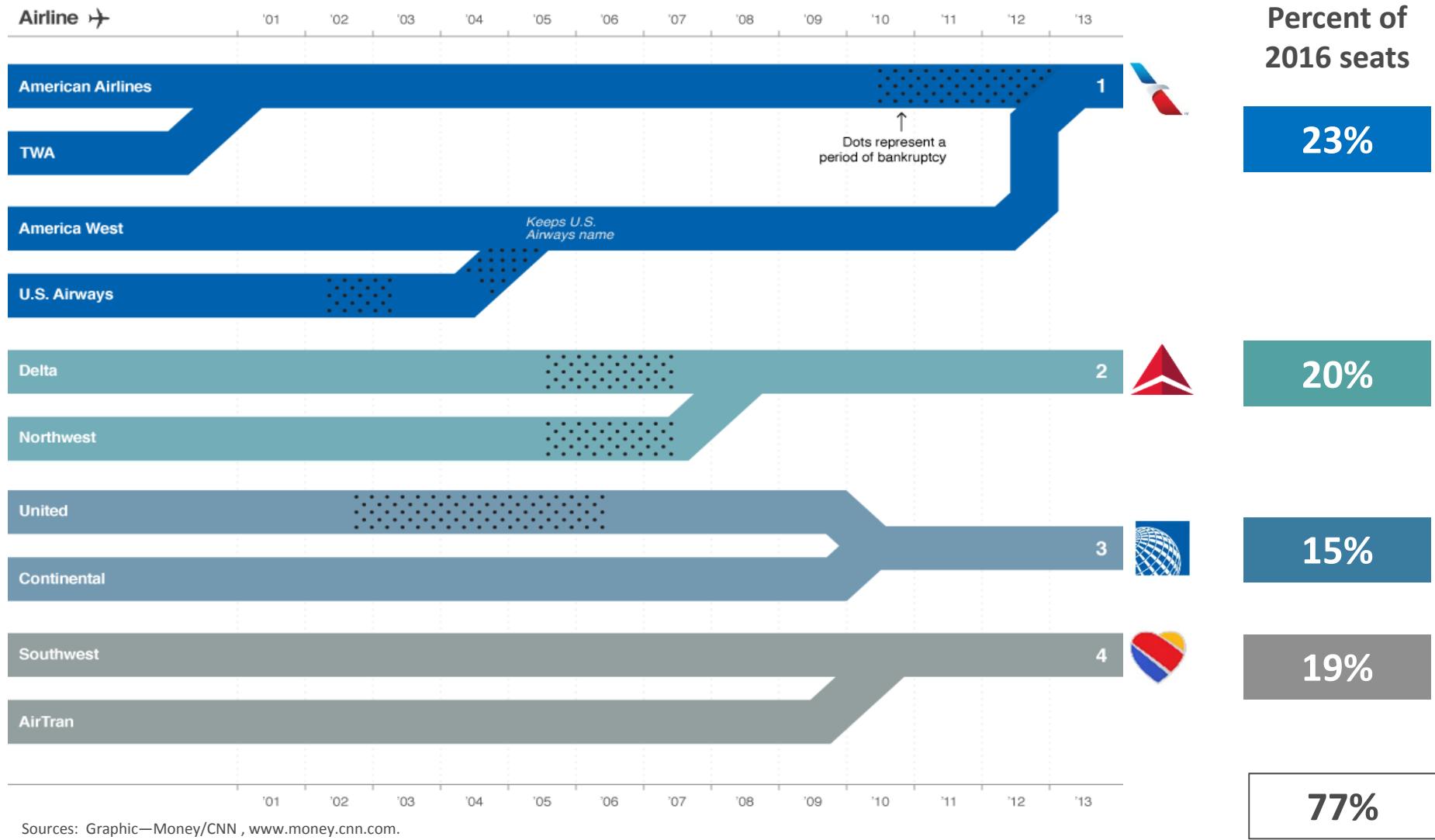
Questions?

# Changing Airline Industry and Implications for Airport Ratemaking



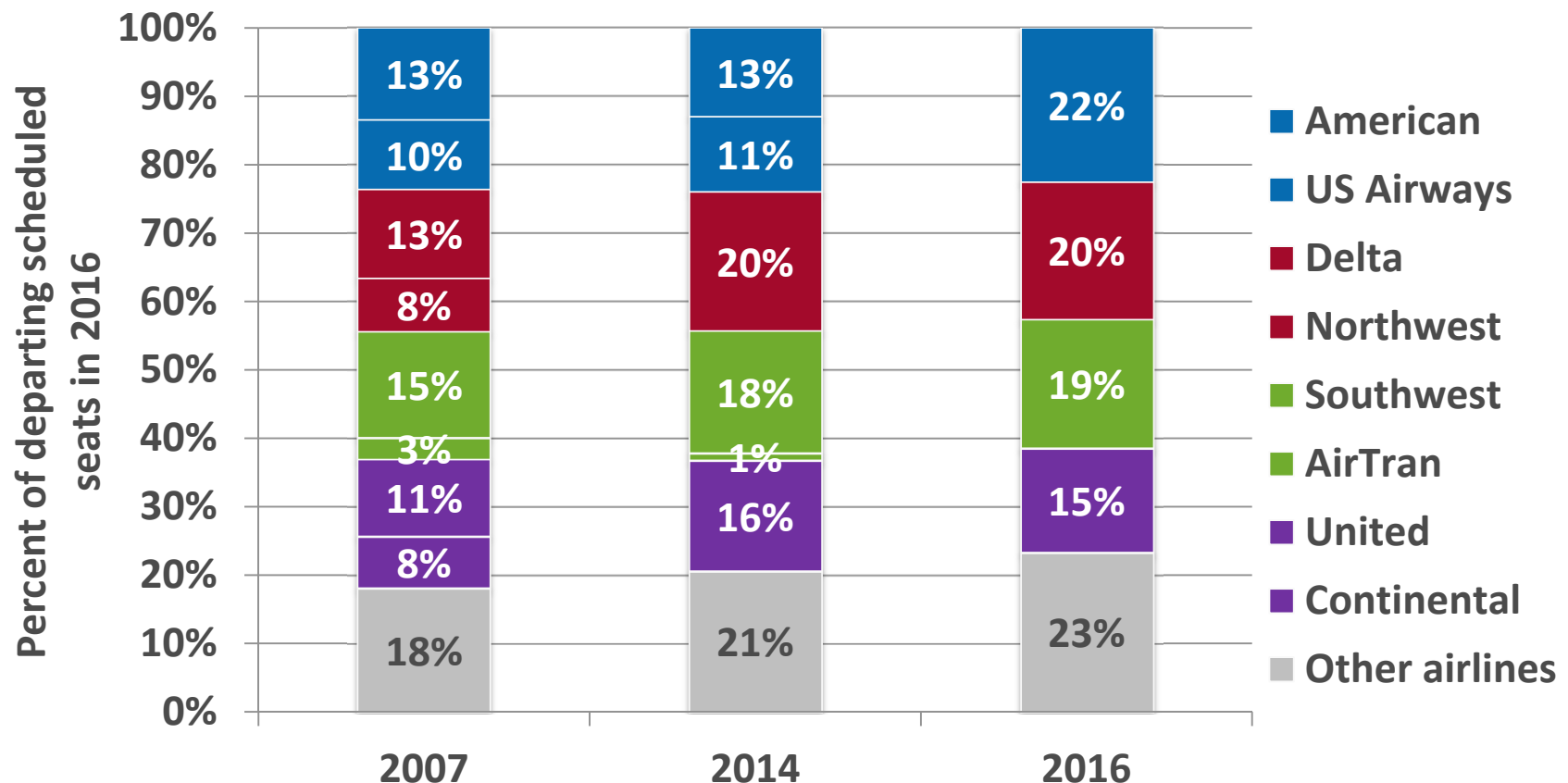
# In the early years, there were 10

*The Big 4 together account for 77% of total seats in 2016, down from 79% in 2014*



## ...and now there are four

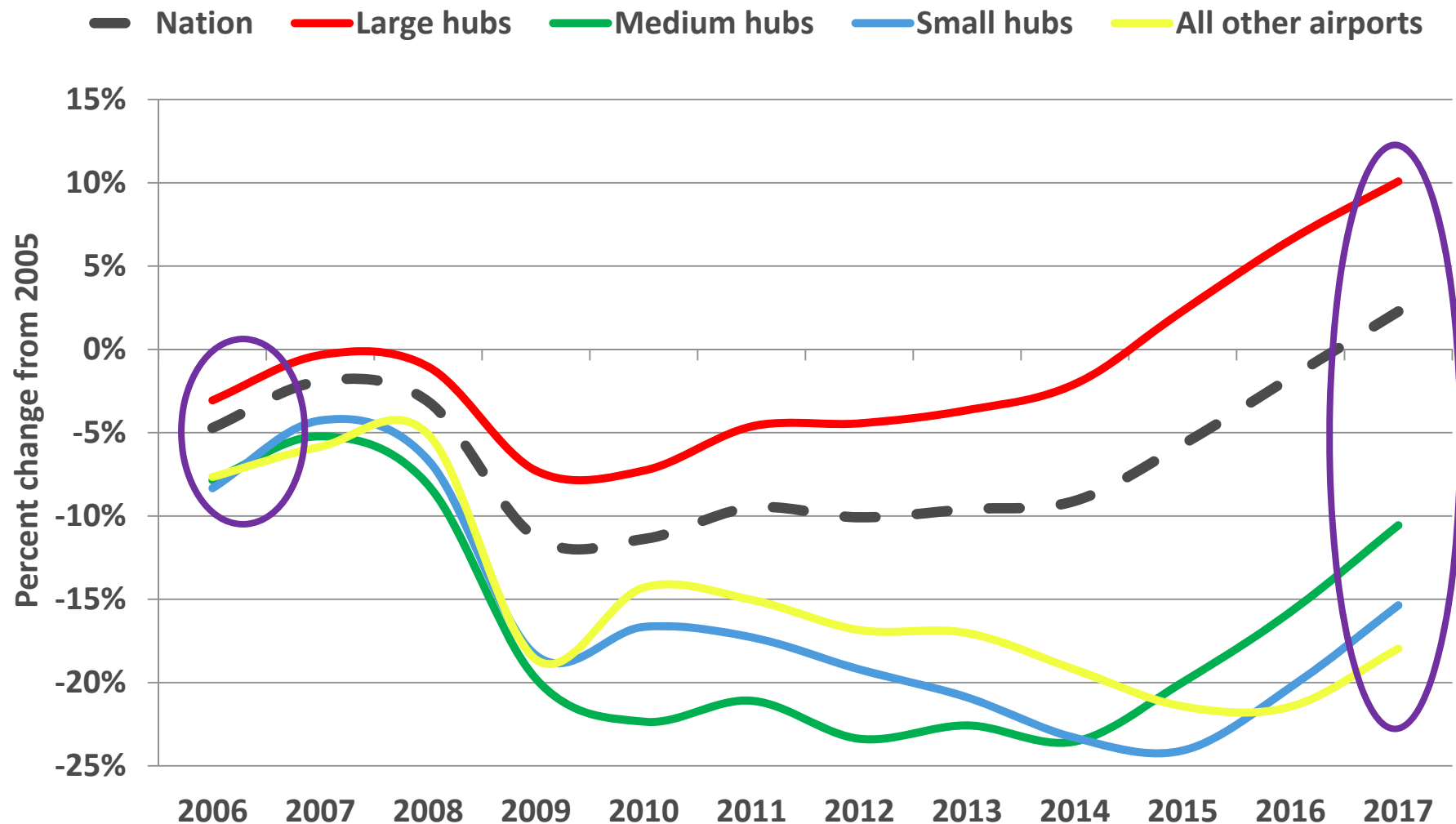
- The Big 4's 2016 seats are 7% below 2007 levels
- Larger decreases for Delta and United reflect, in part, the closure of connecting hubs
- Southwest's seats exceeded 2007 levels in 2016



Source: OAG Aviation Worldwide Ltd, OAG Analyser online database, accessed October 2016.

## Small and mid-sized airports have been harmed by Big 4 capacity reductions

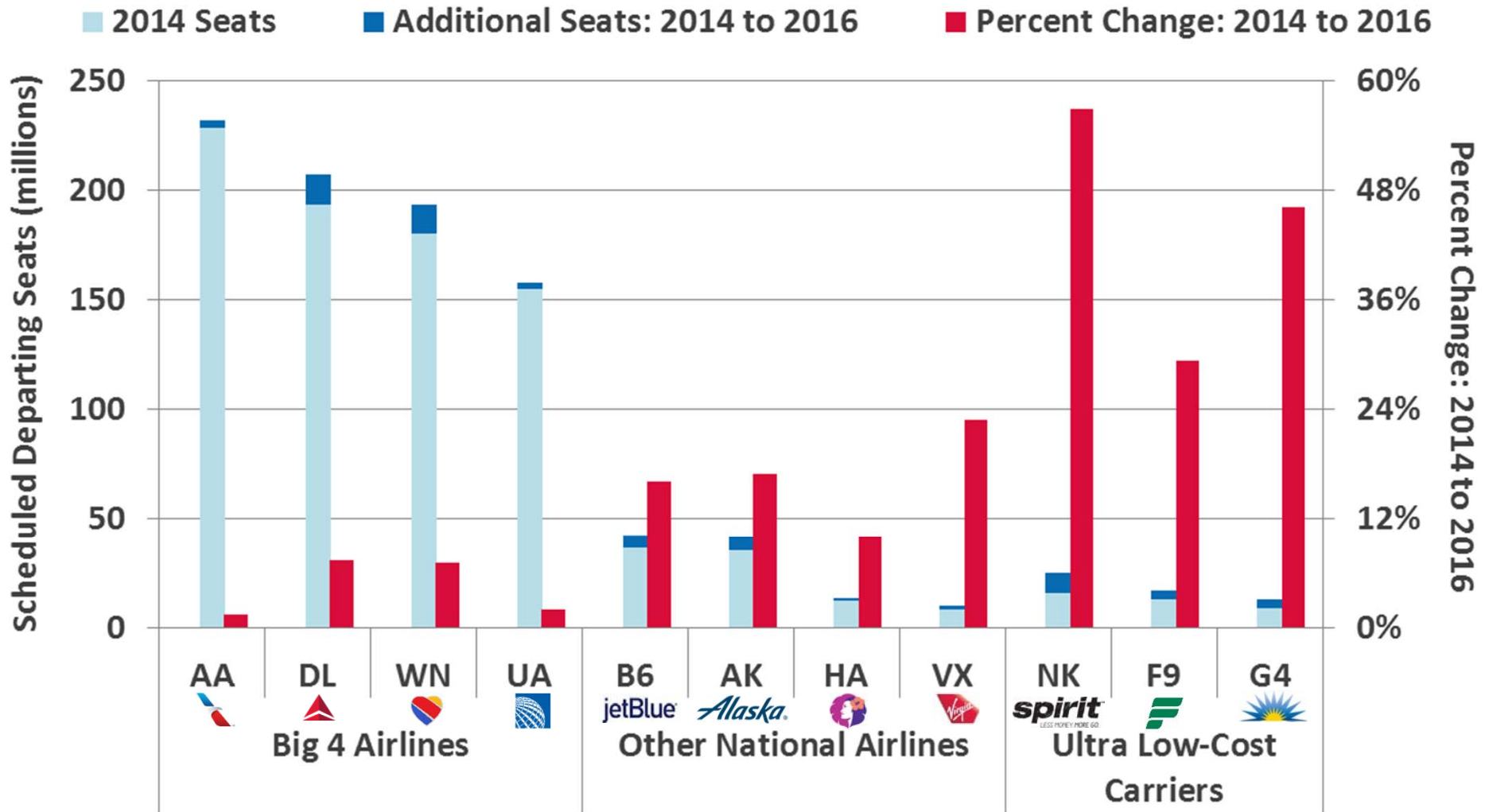
*Percent Change in Scheduled Seats by Hub Size from 2005 (May base)*



Note: Changes shown for 2017 are based on advance published schedules.

Source: OAG Aviation Worldwide Ltd., OAG Analyser database, accessed April 2017.

## Big 4 control most of the capacity, but are constraining their growth



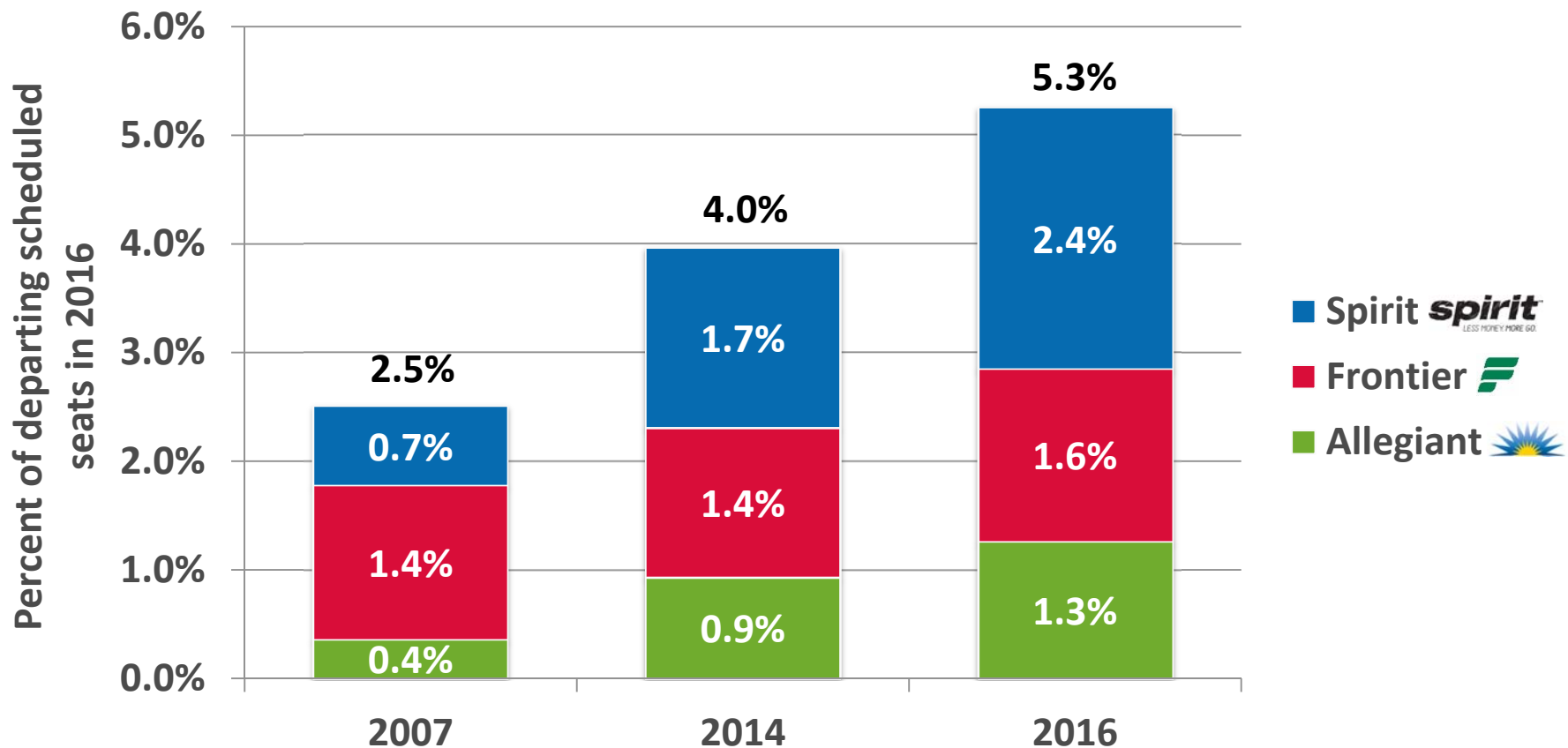
Source: OAG Aviation Worldwide Ltd., OAG Analyser database, accessed April 2017.

## Big 4 levels of service are steady or in some cases declining



## Ultra LCCs are taking advantage of the opportunity and are growing

- The Ultra LCCs accounted for 5.3% of total departing seats at U.S. airports in 2016, more than twice 2007 levels
- Between 2007 and 2016, departing seats for Allegiant increased an average of 15% per year, followed by Spirit (14% per year), and Frontier (1% per year)



Source: OAG Aviation Worldwide Ltd, OAG Analyser online database, accessed October 2016.

# Per-Turn Fees: What's the Issue?

*“The three largest carriers not just in the US but also in the world, and which also control the three clubs—the global alliances—that control 50% of the world’s traffic, are trying to shut the door on any competition or potential competition. That’s what’s going on here.”*

*Etihad general counsel & company secretary Jim Callaghan*

# Why is this an issue?

## *Airline industry consolidation means fewer options for smaller communities*

- Due to airline industry consolidation, smaller airports have little negotiating leverage; they need to retain existing and attract new service
- Some network airlines are pushing for regimes that price the less-than-daily airlines out of the smaller markets, which is contrary to the “public interest” and the desire to have healthy competition
- Low frequency airlines can’t afford to lease full ticket/gate modules
- **Setting a per-turn fee at a reasonable level, and adjusting as necessary:**
  - Promotes competition and fosters an encouraging environment for variety of business models and new entrants
  - Accomplishes the airport’s obligation to serve the public (both airlines and travelers)
  - Provides an airport with the means to remain financially self-sufficient
- **Alternatively, if the topic is approached from the reverse...**
  - If an airport does NOT maintain a reasonable per turn fee, it could be considered unjustly discriminatory - a de facto exclusion of low-frequency carriers from the market

# Per-Turn Fees: Regulatory and Legal Basis



# Regulatory basis for per-turn fees

*Little guidance under the USDOT Rates and Charges Policy for per-turn fees*

- **The only reference in the Rates and Charges Policy is:**
  - 1.1.3 ***Airport proprietors*** should consider the public interest in establishing airport fees, ***and aeronautical users should consider the public interest*** in consulting with airports on setting such fees
- **USDOT's statutory responsibilities include:**
  - Ensure... ***"the availability of a variety of ... low-priced services without unreasonable discrimination or unfair or deceptive practices"*** (49 U.S.C. § 40101(a)(5))
  - ***"Encourage[ing] entry ...by new and existing air carriers and ...strengthening of small air carriers to ensure a more ...competitive airline industry"*** (49 U.S.C. § 40101(a)(13))
- Under airport competition plans, the USDOT encourages airports to retain common use gates for new entrants and expanding incumbents

**"It is the fundamental position of the Department that the issue of rates and charges is best addressed at the local level by agreement between users and airports..."**

**"Airport proprietors and aeronautical users should consult and make a good-faith effort to reach agreement. Absent agreement, airport proprietors are free to act in accordance with their proposals, subject to review by the Secretary or the Administrator on complaint by the user . . ."**

- U.S. DOT Policy Concerning Airport Rates and Charges, Introduction and Section 1.1.4

## What is A4A saying?

### *Some airports have “gone off reservation” by:*

1. “Arbitrarily” discriminating based on differential rates by concourse
2. Basing per-turn fees on unreasonable usage assumptions - 8 turns per gate per day
3. Offering per-turn fee to some airlines, but not others
4. Disproportionately shifting costs to signatory airlines by not including a fixed fee component in their common use space allocation methodology
5. Imposing or threatening to impose ordinance rates - not good faith negotiations



# FAA response to A4A letter

## 1. Overall

- The specific, and often complex, circumstances at each airport will affect a determination of whether a particular fee or methodology is reasonable and not unjustly discriminatory

## 2. Are per turn fees permitted?

- The policy does not dictate a single approach to rate-setting so long as it is applied consistently to similarly situated aeronautical users and conforms with the Policy

## 3. Must an airport give all carriers all rate options?

- Carriers making similar use of the airport would generally need to be offered the same options for fee methodology.

## 4. Are rate differences permitted based solely on the number of departures?

- A rate methodology would be expected to result in the same charge per operation for all carriers if it were based solely on the number of their scheduled daily departures. However, [it is possible] that other circumstances may exist to allow the airport to make reasonable distinctions.

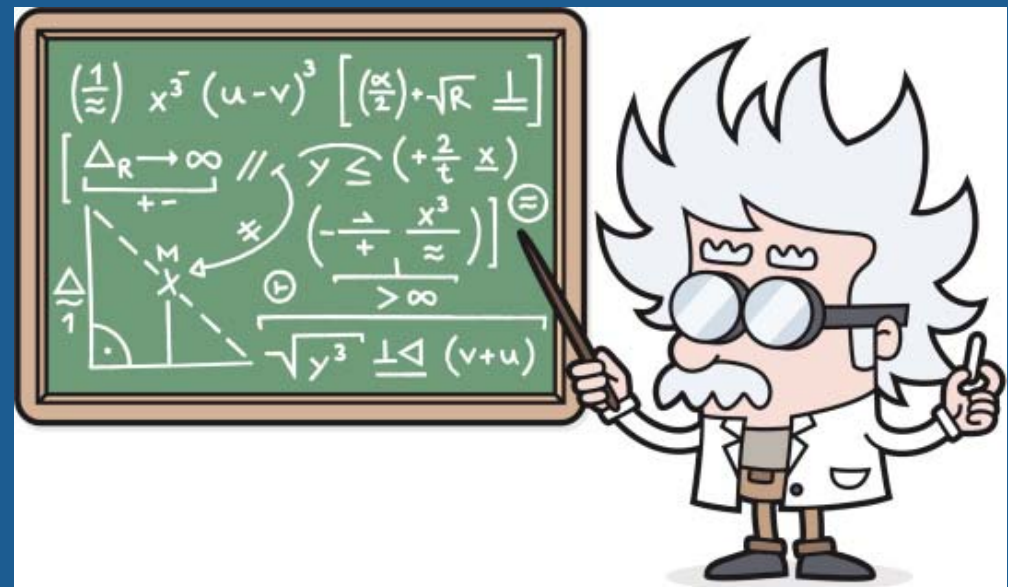
## 5. Are airports required to define a fixed cost component for common space?

- The Policy does not require a fixed-fee component.

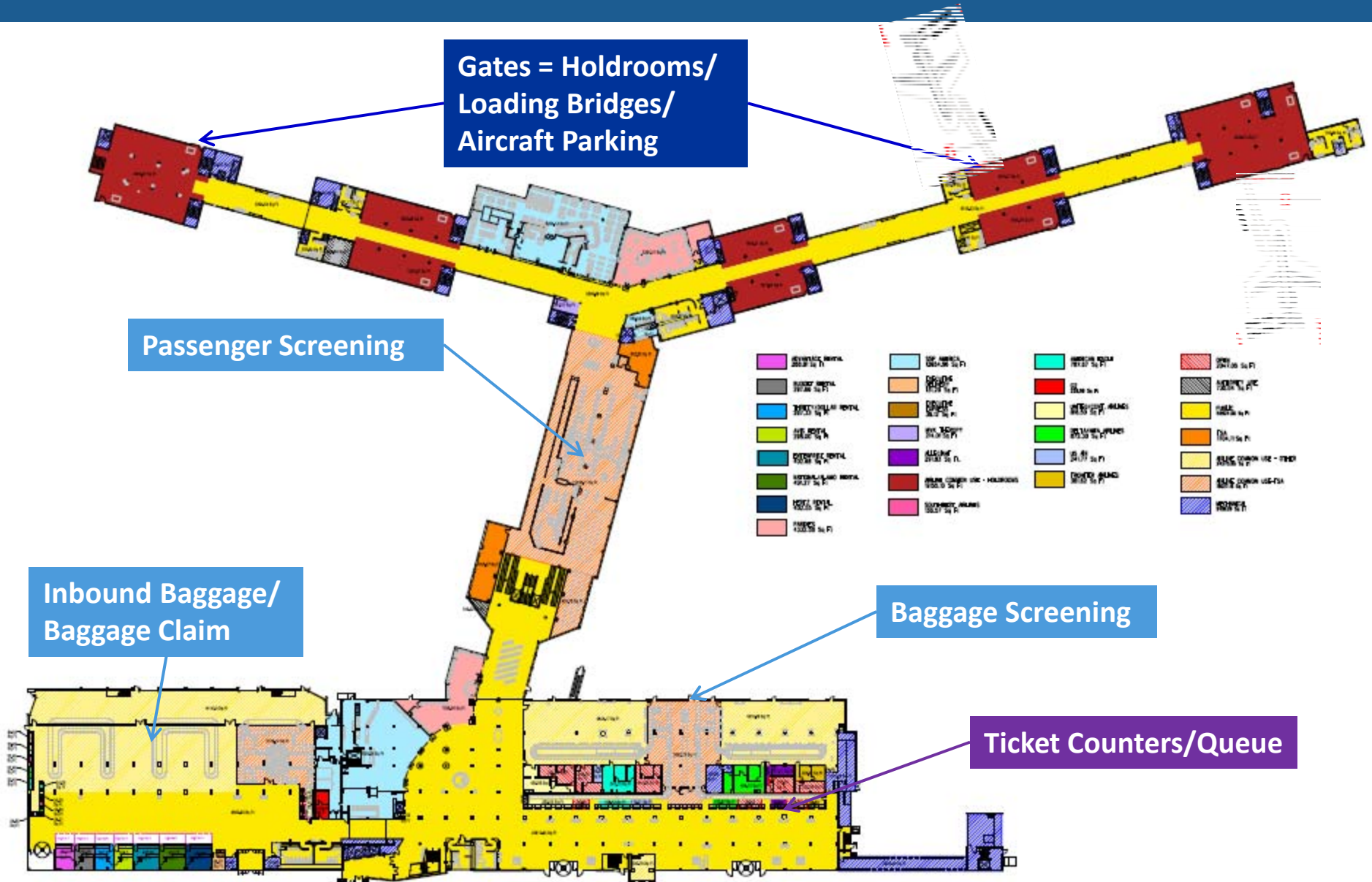
## 6. Is imposing or threatening Ordinance Rates if carriers do not sign a lease permitted?

- The Policy emphasizes consultation with users and encourages negotiation in setting rates and charges. Nonetheless, Section 2.1 of the Policy permits an airport sponsor to set fees by ordinance.

# Per-Turn Fees: Calculating and Implementing



Types of terminal space/per-turn fee (ticket, common baggage, gates)



Source: Airline Operating and Use Agreement, Des Moines International Airport.

# Methodologies to allocate common / joint use space

## ■ Units

- Passengers
- Operations
- Fixed or per capita
- Bags
- Time of use

## ■ Formulas

- Passengers / fixed (split equally among users)
  - ✓ 80/20, 90/10, 85/15
- 100% passengers
- Passengers / operations – 50/50, 70/30
- Passengers / operations / fixed – 35/55/10
- Bags

## ■ Carve-outs/exceptions

- Affiliates
- Low volume carriers (e.g., 2% - 5% of passenger market share)

## ■ Issues

- Turns per day
- Premium for non-signatories
- Limiting per-turn fee option to airlines flying less than [x] flights per week

# Methodologies example – allocation methodologies matter (esp. for airlines)!

**Airport Requirement**      \$ 2,000,000

**Allocation Methods**

Fixed  
Passengers  
Operations

Option 1	Option 2	Option 3	Option 4	Option 5	Option 6
20%	10%	0%	0%	0%	0%
80%	90%	100%	50%	50%	35%
0%	0%	0%	50%	50%	65%

**Airport Revenues**

Annual Revenues	\$ 2,000,100	\$ 2,000,100	\$ 2,000,100	\$ 2,000,100	\$ 2,000,100	\$ 2,000,000
Average Cost per Passenger	\$ 4.74	\$ 4.74	\$ 4.74	\$ 4.74	\$ 4.74	\$ 4.74
Average Cost per Operation	\$ 392.48	\$ 392.48	\$ 392.48	\$ 392.48	\$ 392.48	\$ 392.46

**Distribution by Airline**

**Low Frequency (137 seats, 1x/day)**

Payments to Airport	\$ 303,700	\$ 258,300	\$ 212,900	\$ 177,900	\$ 177,900	\$ 167,400
Cost per Passenger	\$ 6.77	\$ 5.76	\$ 4.74	\$ 3.96	\$ 3.96	\$ 3.73
Cost per Operation	\$ 834.34	\$ 709.62	\$ 584.89	\$ 488.74	\$ 488.74	\$ 459.89

**Large Jet (150 seats, 3x/day)**

Payments to Airport	\$ 692,800	\$ 696,100	\$ 699,300	\$ 564,000	\$ 564,000	\$ 523,300
Cost per Passenger	\$ 4.70	\$ 4.72	\$ 4.74	\$ 3.83	\$ 3.83	\$ 3.55
Cost per Operation	\$ 634.43	\$ 637.45	\$ 640.38	\$ 516.48	\$ 516.48	\$ 479.21

**Small Jet (70 seats, 10x/day)**

Payments to Airport	\$ 1,003,600	\$ 1,045,700	\$ 1,087,900	\$ 1,258,200	\$ 1,258,200	\$ 1,309,300
Cost per Passenger	\$ 4.38	\$ 4.56	\$ 4.74	\$ 5.49	\$ 5.49	\$ 5.71
Cost per Operation	\$ 275.71	\$ 287.28	\$ 298.87	\$ 345.66	\$ 345.66	\$ 359.70

## Calculation methodologies in general

- **Not all airports have formula-driven methodologies for setting per turn fees**
- **A methodology is preferred, and helps an airport provide reasonable, transparent, and defensible fees; additionally, a fee set according to a methodology can be adjusted over time as other rates and charges are adjusted**
- **Methodologies in the airport industry for setting per turn fees vary widely, but in our experience methods that are reasonable, transparent, and defensible generally fall into two categories**
  - Method A – Calculated using average cost, size, and operations at a typical gate
  - Method B – Calculated using imputed average per turn cost for rented space
- **The method for charging for joint use space is an important consideration when establishing the per turn fee**
  - Joint use space can be included in a bundled per turn fee and charged 100% on the basis of operations, or
  - Joint use space can be separately charged under established methodology, or
  - A separate passenger fee can be calculated to recover joint use costs

## Per-turn fees at other airports

- **Method A – Calculated using average cost, size, and operations at a typical gate**
  - TUL, CVG, PHX, LAX, and SEA
  - Methods may include an explicit premium (CVG 1.25x) or implicit premium (TUL 3 turns per gate divisor)
  - Per-turn fee could be completely “bundled” (inclusive of all terminal fees) or joint use fees could be charged separately (using 100/0 or other methods)
  - Per-turn fees could be weighted for aircraft size, especially in situations where a “bundled” rate is charged (LAX fees range from 0.75x to 3.00x; SEA fees range from 0.50x to 2.00x; PIT fees range from .10x to 1.88x)
- **Method B – Calculated using imputed average per turn cost for rented space**
  - LEX determines the average signatory terminal cost per turn and then multiplies the average by a 1.6x premium to calculate the non-signatory per turn fee; the rate is “bundled” and joint use costs are included in the per-turn fee; the 1.6x premium is in recognition of non-signatory status and differences in aircraft size
- **Method C – Calculated using total common use holdroom costs divided by total turns using common use gates (PDX)**
- **Method D – Some airports charge a “market rate” per turn, which is annually adjusted for inflation (MDT)**

# Phoenix (PHX) method (with bundled/unbundled)

## ■ Method A – Calculated using average cost, size, and operations at a typical gate

- Full service / bundled domestic turn rate is \$699
- Partial service (holdroom and loading bridge) rate \$174 rate per turn; additional fees paid separately incl. joint use charges and fixed space rentals (ticket counter, back office)
- No large aircraft markup; joint use fees for full service based on average of 114 passengers
- No non-signatory mark up since rates are charged by ordinance

	Component 1a* (Ticket Counter)	Component 1b (Holdroom & Loading Bridges)	Subtotal	Component 2 (Joint Use)	Total Domestic (Full Service)
<b>PER USE REQUIREMENTS</b>					
Average Space per Gate (Sq. Ft.)	500	2,000			
Terminal Rental Rate	\$ 109.80	\$ 109.80			
Equals: Average Annual Rent per Gate	\$ 54,900	\$ 219,600			
Average Annual Capital Cost of City-owned Loading Bridge		\$ 17,566			
Average Annual Operating Cost of City-owned Loading Bridge		80,544			
Average Annual Loading Bridge Requirement per Gate		\$ 98,110			
<b>TOTAL REQUIREMENTS</b>	\$ 54,900	\$ 317,710			
<b>PER USE UNITS</b>					
Assumed Turns per Gate per Day	5.0	5.0			
x 365 days	365	365			
Annual Uses	1,825	1,825			
<b>PER USE RATES (before rounding)</b>	<b>\$30.08</b>	<b>\$174.09</b>			
<b>JOINT USE REQUIREMENTS AND RATES</b>					
Terminal Use Fee				\$ 4.35	
x Average Aircraft Seats x 80% Assumed Load Factor				114	
RATE: Joint Use Areas per Use (before rounding)				<b>\$495.90</b>	
<b>TOTAL RATES (rounded)</b>	<b>\$30.00</b>	<b>\$174.00</b>	<b>\$204.00</b>	<b>\$495.00</b>	<b>\$699.00</b>

# Los Angeles (LAX) method (holdroom only - turns and tiers)

## ■ Method A1 – Calculated using turns per gate and weighted by aircraft size

- Total holdroom space times terminal rental rate
- Divided by estimated total annual turns to yield holdroom cost per turn
- Weighted by aircraft size

Aircraft Class					
1	2	3	4	5	6
A380	747	A340 A330 B777 A350 MD-11 IL-96	B757-300 B767 B787	B717 A318 A319 A320 A321 MD (DC) All B737 757-200	All others having 100 seats or less

Terminal Buildings Rate (a)

Times: Common Use Holdroom Space (square feet)

Holdroom Requirement (b)

Divided by: Estimated Turns (weighted by aircraft class) (c)

Common Use Holdroom Rate (per full turn)

Common Use Holdroom Rates (per full turn) (by aircraft class): (c)

Hypothetical

Year

\$124.23

268,000

\$33,300,000

117,300

\$283.89

Weighted

Class	Common Use Holdroom Rate	Relative charge per turn	Common Use Holdroom Rate
	[A]	[B]	[=A*B]
1	\$283.89	3.00	\$851.67
2	\$283.89	2.00	\$567.78
3	\$283.89	1.50	\$425.84
4	\$283.89	1.25	\$354.86
5	\$283.89	1.00	\$283.89
6	\$283.89	0.75	\$212.92

# Pittsburgh (PIT) method (menu of facilities - turns and tiers)

## ■ Method A1 – Calculated using turns per gate and weighted by aircraft size

- Average holdroom, ticket counter, bag claim, bag make-up space times terminal rental rate
- Cost per gate per year for apron and airline equipment
- Divided by estimated total annual turns to yield cost per turn
- Weighted by aircraft size

### Aircraft Class Categories

Cat.	Seats/ Class	Aircraft Example
1	1 - 20	B1900, Embraer 110, Piper, Cessna 402
2	21 - 90	CRJ200, CRJ700 ERJ 145/175, Q400
3	91 - 200	B717, B737, B757, A319, A320, A321
4	200+	B747, B767, B777, B787, A330, A380

### Common Use, Airport-Controlled Gates /Facilities

Air carriers must contact Airport Operations to arrange for gate, ticket counter and baggage claim use at (412) 472-5630.

### Per Turn Charge

Category	2 ticket positions, gate, baggage carousel
1	\$ 50.00
2	\$ 198.00
3	\$ 516.00
4	\$ 972.00

Category	Use of Gate Only
1	\$ 30.00
2	\$ 110.00
3	\$ 287.00
4	\$ 541.00

Category	Use of Ticket Counter Only
1	\$ 11.00
2	\$ 41.00
3	\$ 107.00
4	\$ 202.00

# Lexington (LEX) method

## ■ Method B – Calculated using imputed average per turn cost for traditional carriers

- LEX offers a rate structure where carriers can elect to pay a “Per Turn Fee” or lease space exclusively/preferentially in the traditional manner
- The Per Turn Fee rate is based on airport-wide average cost per turn with a premium multiplier
- It’s intended to reduce costs for low-frequency operators so as not to discourage even minimal amounts of air service, but yet become disadvantageous once a carrier reaches a certain level so that they move back to paying traditional rentals

Airline	Code	Number of Gates	Excl. and Pref. Rent	Common Use Rent	Total Rent	Annual Turns	Total Rent per Turn
Reference			Exhibit 7.0	Exhibit 7.0		Exhibit 5.0	
American	AA	1	357,614	378,676	736,290	1,830	402.34
Delta	DL	2	608,381	1,113,442	1,721,823	4,553	378.17
United	UA	2	186,522	300,824	487,346	1,653	294.82
US Airways	US	1	139,496	530,184	669,680	2,928	228.72
Total		6	\$ 1,292,013	\$ 2,323,125	\$ 3,615,139	10,964	\$ 329.73
Average (AA, DL, UA, US)							\$ 329.73
Per Turn Fee Premium							1.50
Calculated Per Turn Fee (rounded)							<b>\$ 500.00</b>



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