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COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20541

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Dear Senator Spong:

In our report to you entitled "Growth And Use of Washington Area Airports" (B-159719, dated August 18, 1971), we stated that we planned to furnish you a report at a later date in response to your questions concerning the legal status and jurisdiction over improvements made by the air carriers at Washington National Airport (National) in the event the airport is sold. Information on this matter follows.

In January 1966, the Federal Aviation Administration (FAA) issued a statement to representatives of air carriers serving the Washington area explaining that some of the air carriers operating at National had approached FAA with requests to improve or construct certain facilities at National for their exclusive use and occupancy. According to FAA's statement, the air carriers' requests contemplated the leasing of land area and unoccupied space in the main terminal, and undertaking improvements and construction at their own expense.

In its statement, FAA advised the carriers that (1) the Government would entertain requests from any scheduled air carrier operating at National for improvement of existing facilities, rental of unused facilities, or rental of land area; (2) any agreement with an air carrier must commence on a mutually agreeable date and expire on or before September 30, 1971; and (3) an air carrier's rights under such an agreement would not be permitted to interfere with the Government's plans or preparations for any improvement it might decide to make in the airport areas in which the carrier's facilities were located.

As shown in the following listing of information furnished by FAA, 12 air carriers have improved and constructed facilities at National since 1965.

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<u>Air Carrier</u>	<u>Estimated cost</u>
United Air Lines Ticketing and hold rooms, and in-flight food kitchen	\$ 900,000
Eastern Airlines Ticketing and hold rooms	1,500,000
American Airlines Ticketing and passenger facilities	3,200,000
Northwest/Trans World Airlines Ticketing and passenger facilities	6,500,000
National Airlines Ticketing and passenger facilities	470,000
Northeast Airlines Operations and hold room facilities	200,000
Piedmont Airlines Ticketing and hold rooms	50,000
Braniff International Ticketing and hold room	85,000
Delta Air Lines Hold room	109,000
Lake Central Airlines Ticketing and hold room	25,000
Allegheny Airlines Ticketing and hold room	<u>250,000</u>
Total estimated cost of new facilities and improvements	<u>\$13,289,000</u>

All of the above listed improvements and new construction had been completed by April 1970. FAA considered that the air carriers' improvements to existing facilities at National were covered by the use agreements in effect and made no additional charges as a result of such improvements. Nine of the 12 air carriers, who have made improvements and constructed new facilities involving the use of additional land area at an estimated cost of about \$3.6 million, have entered into agreements with FAA for the use and disposition of new facilities. The remaining three air carriers--Northwest Airlines, Trans World Airlines, and American Airlines--have constructed new facilities at an estimated cost of about \$9.7 million but had not, at the time of our inquiry, entered into agreements with FAA for their use and disposition. An FAA official advised us that a meeting with the three air carriers was scheduled for September 8, 1971, at which time he expected the carriers to sign agreements with FAA.

FAA agreements with the nine air carriers--applicable to their new facilities--provide for an annual charge of \$.15 a square foot for the ground space occupied at National. The same charge has been imposed on, and paid by, Northwest, Trans World, and American Airlines even though these air carriers had not entered into agreements with FAA covering their facilities.

Eight of the nine agreements covering new facilities expire on September 30, 1971, and one expired on July 31, 1971. In the case of the expired agreement, FAA officials advised us that, until a new agreement could be consummated, they were continuing to charge the air carrier for ground space at the rate prescribed in the expired agreement.

Under the terms of each of the nine agreements, legal title to the facilities constructed by the air carriers passes to the Government upon the expiration of the period fixed in the agreements. Since one agreement has expired, title to the applicable facilities has passed to the Government.

If National is sold prior to the expiration of FAA's agreements with the eight air carriers, the purchaser of National would acquire the rights of the Government to the transfer of title in accordance with the provisions of the agreements. After expiration of the

agreements (September 30, 1971), the Government would acquire title to the air carrier-constructed facilities and the purchaser would acquire title to the facilities upon consummation of the sale. In the latter situation, however, there could be new FAA agreements with the air carriers, and the purchaser ordinarily would take title subject to the leasehold interests of each of the air carriers pursuant to such agreements.

The draft of the agreement being negotiated by FAA with Northwest Airlines and Trans World Airlines for the new joint facilities constructed includes provisions for the passage of title to the facilities to the Government and for lease charges similar to those in the nine executed agreements, and for the re-leasing of the facilities to the two carriers after September 30, 1971. The agreement being negotiated with American Airlines contains similar provisions.

We were advised by an FAA official that the entering into agreements with Northwest and Trans World Airlines and with American Airlines has been delayed because of difficulty in reaching accord on terms relating to the leasing fees to be charged these air carriers for use of the new facilities after September 30, 1971. He advised us also that the fees to be charged these air carriers after September 30, 1971, will include an offsetting factor to reflect the substantial investments made by the three air carriers in new terminal facilities at National.

The FAA official also indicated that the agreements with the other nine air carriers covering their new facilities at National do not prescribe the fees to be charged after the termination dates of those agreements. He stated that this would not be a critical factor in the negotiations with these nine air carriers because their investments in terminal facilities were substantially smaller than those of Northwest, Trans World, and American Airlines.

The Government's general policy regarding charges and fees for the leasing of Federal property is contained in Office of Management and Budget (formerly Bureau of the Budget) Circular No. A-25. Paragraph 3b of this Circular provides as follows:

"***Where federally owned resources or property are leased or sold, a fair market value should be obtained. Charges are to be determined by the application of sound business management principles, and so far as practicable and feasible in accordance with comparable commercial practices. Charges need not be limited to the recovery of costs; they may produce net revenues to the Government."

The apparent flaw in the adequacy of FAA's contracting procedures, as demonstrated in the Northwest, Trans World, and American Airlines situations is that of permitting air carriers to construct facilities in the absence of previously executed agreements. The agreements that finally may be negotiated with the three air carriers may reflect pressure to include provisions, covering such matters as amortization of carrier investments, which may not be in the best interests of the Government. Also, the agreements may set the pattern for the renewal agreements with the other nine air carriers.

For the protection of all parties concerned, agreements for any additional construction should be executed prior to the commencement of construction.

We plan to make no further distribution of this report unless copies are specifically requested, and then we shall make distribution only after your agreement has been obtained or public announcement has been made by you concerning the contents of the report. We did not obtain comments from the Department of Transportation on this report; this fact should be taken into consideration in any use made of the information presented.

We trust the information furnished will serve your purposes.

Sincerely yours,


Acting Comptroller General
of the United States

01 The Honorable William B. Spong, Jr.
United States Senate