

January 14, 2020

The Honorable Elaine Chao
Secretary
United States Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

Dear Secretary Chao,

I wish to bring to your attention an unfortunate situation arising from a series of conflicting statements and actions by the Department in relation to Raleigh County Memorial Airport (BKW)'s Alternate Essential Air Service (AEAS) contract.

On May 1, 2019, Airport Director Tom Cochran notified representatives within the EAS and Domestic Analysis Division of the planned closure of Runway 01/19 for a programmed FAA Airport Improvement Project (AIP) for runway rehabilitation from May 10 to June 10, 2019. In a conversation with an analyst within the EAS office, Mr. Cochran and Contour Airlines CEO Matt Chaifetz were told that BKW would be compensated for the flights that Contour Airlines could not operate due to the planned runway closure, consistent with DOT's longstanding policy "*to compensate airlines when the airports they serve have been closed on the grounds that the circumstances are beyond the airline's control and there are only minimal cost savings to the airline.*" As per this conversation, Mr. Cochran submitted an invoice and then received reimbursement from the Department of Transportation (DOT) for the month of May 2019 in the amount of \$242,528, which included several weeks during which Beckley's primary runway was closed. Despite receiving notice on the day that the funds were deposited that the Department had suddenly concluded that runway closures under Alternate EAS would not be eligible for reimbursement, Mr. Cochran confirmed with the EAS Office that he should send the funds to the carrier.

Despite Mr. Cochran's conscientious actions keeping DOT in the loop at every step of this process, on August 20, BKW received a letter from DOT requesting reimbursement for \$173,888 claiming that it had been disbursed improperly. This is despite the fact that he had not only been told initially that he would receive reimbursement from DOT, he then received reimbursement and was told by the EAS office to disburse those funds. It is true that the grant agreement with BKW states that reimbursements by DOT shall be based on completed flights (Section B.4a), but it also notes that these payments shall be made in accordance with procedures as DOT may prescribe (Section A.4), providing DOT flexibility in its interpretation of the grant agreement. Indeed, Contour Airlines continued to honor its AEAS agreement by making flights to Parkersburg during this time, incurring similar costs as to when it was flying to both Beckley and Parkersburg on the same route. Contour's agreement with

incurred continuing this service in performance of the award should be allowable under the guidelines governing this award (2 CFR §200.403a).

While every DOT order regarding traditional EAS and AEAS agreements has included language noting that the compensation is based on completed flights, it is also clear that Congress has provided the Secretary with flexibility in overseeing the EAS program, and that DOT itself has shown that it has the authority, willingness, and existing procedures in place to provide compensation to carriers – regardless of whether they are participating in EAS or AEAS – when an airport closes beyond the control of the carrier. Discriminating against communities that opt into the AEAS program would also be inconsistent with federal regulations. Both programs meet the definition of a Federal Award, and the criteria set forth by Congress includes a consistent treatment of costs (2 CFR §200.403d). DOT's actions in this case are contrary to past precedent and thus federal regulations requiring the consistent treatment of costs in similar circumstances.

The Secretary has broad authority to make determinations based on the public interest, and that is what I am asking you to do in this case. For the first time in years, both Parkersburg and Beckley have reliable air service, and both communities have been delighted with the service provided by Contour, particularly with regards to past carriers under the traditional EAS program. Further, I am aware that Parkersburg will need to close its own runway later this year as a result of its own scheduled rehabilitation projects, and I fear that we will face a similar situation at that time. Given this Administration's – and your Department's – clear mandate to provide equitable federal assistance to rural communities, it seems discriminatory to punish a small Appalachian airport like BKW for successfully receiving federal funds to improve its infrastructure and continue to provide quality service to a rural, disadvantaged area.

It is clear to me that the Raleigh County Memorial Airport and its staff have consistently worked closely with the EAS office and followed their guidance in disbursement of funds, while the Department's position on recovery of the funds has been inconsistent and without substantive justification. I am hopeful that we can work with you and your office to resolve this situation in a way that is fair and just, and does not continue to unfairly punish rural areas like my state.

I look forward to your response.

Sincerely,



Joe Manchin III
United States Senator