

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

In re:) Chapter 11
)
ATA Holdings Corp., *et al.*,) Case No. 04-19866
) (Jointly Administered)
Debtors.)

**THE CITY OF CHICAGO'S LIMITED OBJECTION
TO THE MOTION FOR APPROVAL OF THE SALE OF THE CHICAGO
EXPRESS ASSETS TO ED OKUN (OR ANY OTHER BIDDER)**

The City of Chicago ("Chicago"), by Mara S. Georges, Corporation Counsel for the City of Chicago, and through its undersigned counsel, hereby objects on a limited basis to that portion of the Chicago Express Transaction Motion seeking approval of the sale of the assets of Chicago Express, Inc. to Ed Okun (or any other bidder). In support of this objection, Chicago states as follows:

BACKGROUND

1. On October 26, 2004 (the "Petition Date"), each of the Debtors, including Chicago Express, Inc. ("Chicago Express") filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. Following the Petition Date, Debtors continued to operate their businesses and manage their properties as debtors-in-possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

Chicago Express at Midway Airport

2. Chicago Express is a regional feeder carrier which operated as ATA Connection, a "commuter airline" connecting small and mid-sized cities to Midway Airport. The rights of Debtors, including Chicago Express, to use certain facilities at Midway Airport arise from a 1998 Ordinance and the Chicago ATA Use Agreement and Facilities Lease, as amended (the "ATA Use Agreement"), by and between Chicago and debtor American Trans Air, Inc. ("ATA"). The

1998 Ordinance and ATA Use Agreement are discussed in detail in the City of Chicago's Limited and Preliminary Objection to Debtors' Transaction Motion and Bid Procedures (Docket No. 356), a copy of which (without exhibits) is attached hereto as Exhibit A, and incorporated herein.

3. Through the 1998 Ordinance and ATA Use Agreement, ATA controls Gate A-8, which is the only gate at Midway Airport suitable for commuter aircraft, although this space remains the property of Chicago. Use of Gate A-8 is subject to all terms and conditions of the ATA Use Agreement.

4. All other gates at Midway Airport are set up for jet service.

The Chicago Express Asset Sale

5. On March 14, 2005, as amended on March 17, 2005, Debtors filed their Chicago Express Transaction Motion, seeking entry of an order approving (a) procedures related to the possible sale of the assets and/or stock of Chicago Express (the "Chicago Express Assets"), and (b) setting a hearing date to consider the approval of one or more transactions concerning the Chicago Express Assets (the "Chicago Express Sale Motion"). Due to the fact that there was no stalking horse bidder for the Chicago Express Assets, no asset purchase agreement or term sheet was attached to or disclosed in the Chicago Express Sale Motion.

6. The Chicago Express Sale Motion did not mention the ATA Use Agreement, and the ATA Use Agreement was not part of the Chicago Express Assets. Indeed, the Chicago Express Sale Motion was silent with respect to what, if any, rights the purchaser of the Chicago Express Assets will have with respect to the facilities at Midway Airport.

7. The Court entered an order approving the Chicago Express Transaction Motion on March 22, 2005.

8. Unlike the procedure followed for the prior sale of ATA assets, Chicago was not a “Notice Party” under the bidding procedures for the Chicago Express transaction and it was not actively involved in the pre-auction negotiations.

9. An auction for the assets of Chicago Express Assets was held on March 31, 2005. On information and belief, Okun submitted the best and highest offer for the Chicago Express Assets (the “Okun Bid”).

10. At the auction, Debtors announced on the record that they would only support a presence of a new commuter carrier (*i.e.*, a successor to Chicago Express) at Midway Airport through May 31, 2005.

11. A hearing on the Debtors’ request for approval of the Okun Bid is scheduled for April 4, 2005 (the “Sale Hearing”).

12. As of the filing of this Objection, Debtors have not filed with the Court, or otherwise made public, any agreements between Debtors and Okun.

BASIS FOR CHICAGO’S OBJECTION

13. On information and belief, Debtors and Okun have, or intend to, enter into an agreement pursuant to which Debtors purportedly will grant Okun access through May 31, 2005 to a limited number of remote parking spots, bus service routes, and the Commuter Facilities at Midway Airport.

14. To the extent Debtors ask the Court to authorize or approve any such agreement (or any other agreement regarding the use of any other portion of the Midway Airport facilities), Chicago objects to the Chicago Express Transaction Motion.

15. First, Debtors have no authority under the ATA Use Agreement to allow a third-party to use any portion of the Midway Airport facilities without Chicago’s approval. Thus,

Okun (or any other bidder for the Chicago Express Assets) does not have the right to use any portion of the Midway Airport facilities at any time, including through May 31, 2005 -- regardless of any agreement that may have been reached with Debtors -- unless Chicago consents to such usage.

16. The 1998 Ordinance (through the incorporated ATA Use Agreement) specifically forbids any assignment or transfer of ATA's rights without the consent of Chicago:

The Airline covenants that it will *not* assign, sublet, transfer, convey, sell, mortgage, pledge or encumber (any of the foregoing events being referred to as a "Transfer") the Leased Premises or assigned aircraft parking positions or any part thereof, or any rights of the Airline hereunder or any interest of the Airline in this Agreement . . . *without in each instance having first obtained the prior written consent of the City as set forth below.* In determining whether or not to consent to a Transfer, the City will take into account, among other factors, the balanced utilization of the Airport facilities and operational considerations relating to the characteristics of the proposed transferee. *The consent of the City Council of the City on behalf of the City shall be required for any Transfer of (i) all of Airline's Leased Premises, (ii) all rights of the Airline hereunder or (iii) all of the Airline's interest in this Agreement. The consent of the Commissioner on behalf of the City shall be required for any other Transfer.*

Id. at § 4.03(a) (emphasis added).

17. As set forth the Limited and Preliminary Objection to Debtors' Transaction Motion and Bid Procedures, pursuant to Section 365(c)(1) of the Bankruptcy Code and applicable non-bankruptcy law, this Court may not authorize or allow an assignment of the ATA Use Agreement, in whole or in part, to a third party without the consent of Chicago. *See* Exhibit A.

18. In addition, if Debtors do make a formal request to allow the successful bidder to continue operating out of Midway Airport, one of the criteria Chicago will consider in evaluating

such a request is the length of time Debtors commit to supporting the successful bidder's use of the Commuter Facilities. As described below, Chicago cannot, and will not, approve any arrangement that would extend the successful bidder's rights at Midway Airport only through May 31, 2005. Thus, as it now stands, Chicago will not approve the limited assignment of usage rights contemplated by Debtors. Chicago is not objecting to ATA's support of a successful bidder. Chicago is objecting to the limited term of ATA's stated intent to support a successful bidder.

19. Second, Chicago is concerned that Okun and the other bidders may not understand that Gate A-8 is the only commuter gate at Midway Airport and, even if the successful bidder were allowed to use Midway Airport's facilities through May 31, 2005, there would not be a commuter gate at which their flights could land or board following that date. If ATA does not support the operations of the successful bidder past May 31, 2005, that airline's access requirements will be cut off and Chicago will potentially be burdened with an airline "orphaned" of operational space. Chicago does not want any successful bidder to have a false expectation as a result of ATA's offer of support through May 31, 2005, that there will be alternate terminal space available to it at Midway Airport following that date; there simply is no other terminal space available at Midway Airport other than ATA's Gate A-8.

20. Finally, because ATA has formally stated its intention to abandon any continuing relationship with the purchaser of Chicago Express beyond May 31, 2005, ATA cannot continue to control the only commuter gate at Midway Airport because such control could effectively eliminate commuter services out of Midway Airport or result in an inappropriate re-utilization of other gates at the airport. Chicago will not be able to enter into any new agreements with commuter airlines because any such agreements would require converting gates dedicated to

servicing jets to commuter gates. Any such conversion will deprive Chicago of operational maximization of its facilities and deprive the airlines operating out of such gates of significant revenue generated by the highest use rate (by jets) at these gates. Midway Airport operates under a residual rate-setting system; the decreased revenue from commuter operations must be offset by other airlines in paying more to fund the cost of running the airport.

21. One of Chicago's principal objectives in its operation of Midway Airport is to provide open access to the Airport and to achieve a balanced utilization of the airport's facilities. ATA Use Agreement, § 5.01. Pursuant to Article V of the ATA Use Agreement, Chicago has the right, and intends to exercise that right if necessary, to require Debtors to permit the continued operations of commuter flights out of Gate A-8. *See id.* at §§ 5.03-5.05. ATA was given A-8 as part of its leasehold at Midway Airport because ATA was operating commuter flights through Chicago Express. If ATA abandons support of commuter services, Article V may allow Chicago to re-evaluate its grant of Gate A-8 to ATA.

22. Therefore, if Debtors want to go forward with a sale of the Chicago Express Assets to the successful bidder, ATA must either (a) relinquish control of Gate A-8 back to Chicago as a Chicago-controlled gate or (b) propose an arrangement, acceptable to Chicago, whereby the successful bidder will continue to operate out of Gate A-8, at the same level that Chicago Express did, for at least one year.

23. Alternatively, the successful bidder can provide written assurances to Chicago that: (a) it will not operate at Midway Airport beyond May 31, 2005 and that it does not intend to use any Midway Airport facilities past that date; or (b) it will present to Chicago, for its review and approval, a plan for its post May 31, 2005 operations pursuant to which another airline

currently operating at Midway Airport will permit the successful bidder to use it's the other airline's Midway terminal space past May 31, 2005.

WHEREFORE, Chicago respectfully requests that the Court:

A. Deny any request by Debtors for entry of an order (i) approving any agreement allowing or authorizing the successful bidder to use any portion of the Chicago Midway Airport facilities without Chicago's approval or (ii) approving or authorizing the assignment of any portion of Debtors' rights under the ATA Use Agreement to the successful bidder without the consent of Chicago; and

B. Grant Chicago such further and additional relief as it deems appropriate under the circumstances.

Respectfully submitted,

CITY OF CHICAGO, MARA S. GEORGES
CORPORATION COUNSEL

By: /s/ James E. Rossow, Jr.
One of Its Attorneys
Attorney No. 21063-29

Mara S. Georges, Corporation Counsel
Diane M. Pezanoski, Deputy Corporation Counsel
J. Patrick Donovan, Chief Assistant Corporation
Esther E. Tryban Telser, Senior Counsel
CITY OF CHICAGO
30 North LaSalle Street, Room 900
Chicago, Illinois 60602
Tel: (312) 744-1846
Fax: (312) 744-6798
E-mail: etrybantelser@cityofchicago.org

Richard S. Lauter
Sara E. Lorber
SEYFARTH SHAW LLP
55 East Monroe Street, Suite 4200
Chicago, Illinois 60603
Tel. (312) 346-8000
Fax: (312) 269-8869
E-mail: rlauter@seyfarth.com
E-mail slorber@seyfarth.com

Elliott Levin
James E. Rossow, Jr.
RUBIN & LEVIN, P.C.
500 Marott Center
342 Massachusetts Avenue
Indianapolis, IN 46204
Tel: (317) 634-0300
Fax: (317) 263-9411
E-mail: Edl@rubin-levin.net
E-mail: jim@rubin-levin.net

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been served upon the Core Group, the 2002 List and the parties listed in the Court's electronic system, by electronic mail, or first class United States mail, postage prepaid, this 4th day of April 2005.

/s/ James E. Rossow, Jr.
James E. Rossow, Jr.