U.S. Department of Transportation
Office of the Secretary of Transportation

GENERAL COUNSEL

1200 New Jersey Avenue, SE
Washington, DC 20590

December 13, 2007

The Honorable Mary E. Peters
Secretary
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

Dear Secretary Peters:

As you know, the summer of 2007 was one of the worst for flight delays. Three-quarters of the flight delays nationwide last summer resulted from the air congestion surrounding New York. In response to these delays, President Bush directed you to provide him with short-term recommendations for dealing with air congestion in the New York region by the end of the year.

On September 27, you chartered a New York Aviation Rulemaking Committee (ARC) to help the Administration understand what options are available and how changes to current policy would affect the airlines and airports as they serve the traveling public. Members of the ARC included officials from the Office of the Secretary and Federal Aviation Administration (FAA), the Port Authority of New York and New Jersey (Port Authority), the State of New York, airlines, consumer groups, and other interested parties.

The ARC was not a negotiated rulemaking process, nor was the goal to reach a consensus around a specific proposal or to provide specific recommendations. The purpose of the ARC was to explore ideas and to ensure that any action undertaken by the Federal Government would be fully informed and avoid unintended consequences. Our objective with the ARC was to identify ideas that would reduce congestion, efficiently allocate the scarce capacity of the New York area airports, and do both without creating major disruptions.

Early in the process, the ARC members agreed to create working groups to explore and refine specific policy ideas. The five working groups were:

Working Group 1: Operational/Infrastructure Improvement – New York Airspace Czar, General Aviation, Voluntary Reductions;
Working Group 2: Congestion Pricing, Auctions, and Aircraft Gauge;
Working Group 3: Gate Utilization and Perimeter Rule;
Working Group 4: Priority Aviation Traffic Preferences; and
Working Group 5: IATA Scheduling Guidelines, Other Administrative Options.

The attached report provides a summary of the ideas discussed by the Working Groups and an analysis of the benefits and downsides of the policy actions that can be taken. Allow us to highlight the key points of each of the Working Group reports.

Working Group 1: Operational/ Infrastructure Improvement – New York Airspace Czar, General Aviation, Voluntary Reductions

Working Group 1 was tasked with looking at operational and infrastructure improvements that would reduce delay in the New York metropolitan area, as well as the possibility of establishing a position that would oversee enhancements for the New York area, commonly referred to as the "New York Czar." As a result of this tasking, the Work Group researched current initiatives proposed by both FAA and industry. Among these initiatives is the *Technical Committee Report, Delay Reduction Task Force* by the Port Authority, dated September 18, 2007. This report contains a list of 74 items recommended for consideration and implementation in the New York area. As follow up to this report, additional work was done concerning operational improvements, eventually bringing the number to 77 items, which are attached to the Working Group's report.

Working Group 1 reviewed the priorities in the list of 77 items and determined that the items fall under five categories: (1) efficient airport surface movement; (2) departure efficiency; (3) arrival efficiency; (4) regional airspace efficiency; and (5) technology. Of the list of 77 items, 18 are underway and are expected to be complete or nearly complete by summer 2008. The Working Group also identified some key items to focus on within the list of 77; namely, excessive spacing on final approach, runway/taxiway improvements, a second J80, and surface management systems. The Working Group report provides more details about each of these items.

The appointment of a New York Czar also was discussed. The person acting as the Czar would be granted sufficient authority to facilitate strategic traffic flow management initiatives within the northeast. The Working Group discussed the benefits and downsides of a Czar. Appointment of a Czar could be beneficial in that the person would be a single point of accountability and could sidestep the bureaucratic process. The FAA is currently considering whether to appoint a manager to facilitate movement in the New York region.

Working Group 2: Congestion Pricing, Auctions, and Aircraft Gauge

The focus of Working Group 2 was to look at congestion pricing and auctions at the major New York airports as a means to reduce congestion and efficiently allocate the scarce airspace.

Many members of the Working Group expressed strong concerns about the application of congestion pricing or auctions as a primary method to allocate airport capacity at New York airports. There was concern that a congestion pricing or auction system would

cause disruption to the market and may not be effective in moving flights out of peak times. In addition, if not properly structured, these market-based mechanisms may not recognize investments made by airlines at airports and could deter future airline investment. Working Group members also highlighted the significant difference in their view between auctioning existing capacity versus new capacity.

While concerns were raised with congestion pricing and auctions, some participants expressed the view that these approaches could be beneficial in an aviation context. These market-based mechanisms could allocate a scarce resource in an economically efficient manner and would be less prescriptive and bureaucratic than an administrative rule. While consumers pay higher prices in a congested market -- in terms of either wait times, higher prices due to slot controls, or pricing -- with the last option, consumers might have a choice in avoiding higher prices. Pricing mechanisms could affect business decisions, such as the types and frequency of aircraft using the airports. Furthermore, pricing would create a revenue stream that could be used for aviation investments.

The Working Group also identified a number of policy issues to be considered when using congestion pricing or auctions. These issues include the competition provided by new entrants, small community service, international operations, general aviation, use of revenues, the duration of the slots, and the type of auction to be used (blind versus transparent). Members noted that application of public policy exceptions would undermine the benefits of a market-based approach.

Working Group 3: Gate Utilization and Perimeter Rule

Working Group 3 was tasked with reviewing the Port Authority's gate management proposal for LaGuardia Airport (LGA) and the US Airways' proposal to eliminate or revise the perimeter rule at LGA.

Gate Utilization Proposal. Earlier this year, the Port Authority proposed a system under which the FAA would retain the existing cap of 75 scheduled hourly operations at LGA; however, the Port Authority, rather than the FAA, would allocate the 75 scheduled hourly operations. Under its proposal, the Port Authority would reallocate gate reservations annually, using three different methods: (1) use it or lose it; (2) aircraft seat size; and (3) reallocation to promote competition. The gate reservations would be revenue-neutral to the Port Authority and would include a set aside for small community service. The Port Authority believes that the proposal could match optimal aircraft size to gate positions, monitor gate usage, and reallocate a percentage of gate reservations to promote airline competition.

Working Group 3 weighed the pros and cons of the Port Authority's proposal. On the pro side, the proposal could enhance the efficient utilization of gates, maximize passenger throughput, and facilitate opportunities for competition. On the con side, the proposal could replace Federal protections and procedures with local controls, replace individual market-based decisions on optimal seat size with Port Authority recommendations, and

adversely impact airline business opportunities out of LGA. Working Group 3 also debated what legal authority exists for the Port Authority's gate leasing proposal.

Perimeter Rule. The Port Authority's perimeter rule prohibits incoming and outgoing flights that exceed 1,500 miles, except on Saturdays, when the ban is lifted, and on flights to Denver, which have grandfather rights. US Airways presented a proposal that would create exemptions to the perimeter rule. The proposal would allow either 2 or 2.5 slots to be exchanged for each flight operated to and from a point beyond the 1,500 mile perimeter. Additionally, the US Airways proposal would cap the number of beyond-perimeter flights to protect small community service and would include an upgauging requirement.

Some in Working Group 3 believe that the proposal to modify the perimeter rule would reduce the number of flights, increase average seats per departure, increase passenger throughput, and improve the efficiency of LaGuardia Airport. Others in the group expressed concern that the proposal might not have a meaningful impact on flight delays, could result in the loss of service to small communities, and could result in increased separation requirements, potentially generating more congestion.

Working Group 4: Priority Aviation Traffic Preferences

The focus of Working Group 4 was to reevaluate the practices by which the FAA allocates and assigns priority in the management of air traffic to see whether different priorities could lead to better outcomes. Specifically, the group explored whether and how the "first-come, first-served" policy could be modified to improve overall capacity utilization of the air traffic control system during times of congestion. The Working Group explored three specific areas: (1) setting aside specific capacity allocations to aircraft that meet technical criteria in order to increase aircraft throughput; (2) assigning priorities to flights in advance of traffic flow management delay programs; and (3) restricting access at certain times to scheduled commercial operations only.

Setting aside specific capacity allocations to aircraft that meet technical criteria in order to increase aircraft throughput. This concept would set aside specific capacity allocations – in space or time – for aircraft that meet certain technical criteria. The idea is that if a section of airspace or a runway end were restricted to specially equipped aircraft, more operations in total could be accommodated. For example, Precision Runway Monitor (PRM) is an improved technology for approach and landing at an airport during times of reduced visibility, which enables aircraft throughput to be maintained. Many in the group thought that if total capacity or throughput were to be increased as a result of the set aside for equipped aircraft, this solution would be beneficial. Some in the group did express concerns, including that the set aside should be temporary (limited to congested periods) and should not permanently eliminate access for aircraft that are not equipped. Also, it is unknown whether there are technically feasible opportunities for specific equipage to actually increase the capacity.

Assigning priorities to flights in advance of traffic flow management delay programs. Under this concept, priorities would be assigned to flights in advance and then these priorities would be used in issuing delay times to aircraft inbound to New York during a traffic flow management program. If an airline has more than one flight inbound to New York, they could swap within their set of arrivals to suit their priorities. If an airline cannot make use of an assigned arrival time, there would be limited opportunities for anonymous transfer of times between airlines in the slot substitution program. During times of decreased capacity, the automation algorithm used for issuing delay times could consider other priorities, such as the largest aircraft (as a proxy for the most number of passengers) or airline designated priorities.

On the positive side, this proposal could increase schedule certainty for the designated priority flights; would give priority to larger aircraft during delays, which could reduce overall passenger-delay minutes; and could increase total passenger throughput in the New York area. On the negative side, this proposal would make a government-imposed policy choice on aircraft size, could result in decreased service to smaller communities, and could be difficult to implement for aircraft already in the air or on the airport surface.

Restricting access at certain times to scheduled commercial operations only. This concept would limit access to New York regional airspace during congested periods to scheduled commercial operations only. During congested periods, the FAA would identify constrained airspace and implement an airspace flow program effective for all unscheduled, non-commercial operations. Impacted operators would have the option of routing around the constrained area(s) or changing the time of their flight.

The Working Group had various views of how implementing this proposal would affect congestion and delays in the New York area. If general aviation operations do conflict with commercial operations, this proposal could maximize commercial passenger throughput which yields the greatest benefit to the most people. However, there might be only a minimal impact on congestion by eliminating non-commercial operations, because they account for only a small number of operations at the three commercial airports in the New York area. Additionally, maximizing scheduled commercial operations at the expense of other operations may not represent the most economically efficient outcome.

Working Group 5: IATA Scheduling Guidelines, Other Administrative Options

Working Group 5 focused on the International Air Transport Association (IATA) *Worldwide Scheduling Guidelines* as a possible solution for managing congested airports in the New York area. The *Worldwide Scheduling Guidelines* provide a detailed framework for managing airport capacity issues and are designed to prevent excessive airport congestion and delays. Twice a year, IATA hosts a conference comprised of IATA and non-IATA airlines, as well as airport coordinators and schedule facilitators, to provide a forum for the parties to discuss slot timing allocations and schedule adjustments necessary to conform to airport capacity limitations.

broad support for adoption of the IATA *Worldwide Scheduling Guidelines* when congestion and delays reach an unsustainable level.

Many in Working Group 5 supported adopting the IATA *Worldwide Scheduling Guidelines* with little or no change. They argued that coupling the *Worldwide Scheduling Guidelines* with a rule permitting the sale or lease of slots in a secondary market would provide a market-based mechanism for slot allocation that promotes the efficient allocation of scarce resources. In their view, the guidelines offer a fair, transparent, and non-discriminatory mechanism for allocating scarce airport capacity in a manner consistent with U.S. obligations under air services agreements with other countries and the rules applicable to U.S. carriers at congested airports abroad. They also noted a system based on historic rights allows for network stability and predictability and would allow airlines to efficiently schedule flights and the flying public to better plan travel. It also recognizes the billions of dollars of investment in infrastructure (both on and off the airport property), market development, aircraft, and employment that holders of historic rights have made.

However, some members of the Working Group also identified a number of reasons why the IATA *Worldwide Scheduling Guidelines* should not be adopted absent some critical changes. They believe that wholesale adoption of a system based on historic rights would favor incumbents at the expense of new entrants, which would be at odds with precedent under the High Density Rule allocation program and would not maximize consumer benefits. Access via a secondary market alone can be very difficult, particularly if incumbents are unwilling to make available and convey an adequate number of desirable slots at reasonable prices. Additionally, the IATA *Worldwide Scheduling Guidelines* have never been used in the U.S. to allocate domestic traffic.

Working Group 5 also developed a summary of how key elements of the IATA *Worldwide Scheduling Guidelines* might be adopted and discussed the benefits and downsides to these approaches. The key elements are discussed in detail in the report.

We believe the ARC process has been successful in educating members and helping to move members from positions held when the meetings initially began. After initially opposing any form of pricing, the Air Transport Association announced that under certain conditions it would consider the auctioning of new airport capacity as a way forward. Furthermore, the Port Authority came to support an IATA-like scheduling process. This movement in positions is indicative of the useful dialogue that occurred over the last several months with the ARC members.

As President Bush noted during his speech on September 27, "We've got a problem, we understand there's a problem, and we're going to address the problem." The ARC embraced your challenge to be bold and to identify market-based mechanisms and other policies that can be used to reduce congestion and more efficiently allocate airspace, while carefully

considering how policy changes might disrupt the current system. We believe that the information contained in this report will help guide you in selecting a recommendation to the President for addressing aviation congestion in the New York region.

Sincerely yours,

D.J. Gribbin
New York ARC Chairman

Nancy LoBue
New York ARC Vice-Chairman