NEW YORK AVIATION RULEMAKING COMMITTEE

REPORT

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INTRODUCTION

BACKGROUND

The summer of 2007 was one of the worst for flight delays. Three-quarters of the flight delays nationwide last summer were generated from the air congestion surrounding New York. In response to these delays, President Bush directed Department of Transportation (DOT) Secretary Peters to provide him with recommendations for dealing with air congestion in the New York region by the end of the year.

On September 27, 2007, Secretary Peters chartered a New York Aviation Rulemaking Committee (ARC) to help us understand what options are available and how any 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 of Transportation, the Federal Aviation Administration (FAA), the Port Authority of New York and New Jersey, the State of New York, airlines, consumer groups, and other interested parties.

SCOPE OF THIS REPORT

The purpose of the ARC was to explore ideas and to ensure any action undertaken by the Federal Government would be fully-informed and avoid unintended consequences. 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 ARC had three objectives: (1) to reduce congestion, (2) to allocate efficiently the scarce capacity of the New York area airports, and (3) to minimize disruption associated with implementing any of the suggested improvements.

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

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

This 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. Each working group's summary is contained within a separate chapter. The supporting information for each working group's summary and general relevant information is in the appendixes.

REPORT SUMMARY

The following report summary highlights the key points of each of the New York ARC 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, Working Group 1 researched current initiatives proposed by both the 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 followup to this report, additional work was done concerning operational improvements, eventually bringing the number to 77 items (see appendix C to this 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. Working Group 1 also identified some key items to focus on within the list of 77; namely, excessive spacing on final, runway/taxiway improvements, a second J80 departure route, and surface management systems. The Working Group 1 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. Working Group 1 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 — Auctions, Congestion Pricing, 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 Working Group 2 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 2 members also highlighted the significant difference in their views 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.

Working Group 2 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 (GA), 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 (LaGuardia) and the US Airways' proposal to eliminate or revise the perimeter rule at LaGuardia.

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 LaGuardia; 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 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 LaGuardia. 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 two or two and a half 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 the number of average seats per departure, increase passenger throughput, and improve the efficiency of LaGuardia. 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 if different priorities could lead to better outcomes. Specifically, the group explored if and how the "first-come, first-served" policy could be modified to improve overall capacity utilization of the air traffic control (ATC) system during times of congestion. Working Group 4 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. 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, noncommercial operations. Impacted operators would have the option of routing around the constrained area(s) or changing the time of their flight.

Working Group 4 had various views of how implementing this proposal would affect congestion and delays in the New York area. If GA 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 noncommercial operations, because they only account for 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.

Working Group 5 discussed the benefits of having scheduled landing and takeoff rights allocated under an administrative allocation scheme at the New York area airports, with 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 nondiscriminatory 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. air 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 Working Group 5 also identified a number of reasons why the IATA Worldwide Scheduling Guidelines should not be adopted without some critical changes. They believe 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 United States 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.

WORKING GROUP 1 — OPERATIONAL/INFRASTRUCTURE IMPROVEMENTS, NEW YORK AIRSPACE CZAR, GENERAL AVIATION, AND VOLUNTARY REDUCTIONS

SUMMARY

Introduction

Working Group 1 was tasked with looking at operational and infrastructure improvements that would minimize delay in the New York metropolitan area, as well as the possibility of implementing a position that would oversee enhancements for the New York area, commonly known as the "New York Czar."

As a result of this tasking, Working Group 1 researched current initiatives proposed by both the FAA and industry. The Port Authority of New York and New Jersey (Port Authority) published a report dated December 6, 2007, titled, "Technical Committee Report, Delay Reduction Task Force." That report contained 74 items recommended for consideration and/or implementation in the New York area. As followup to that report, additional work was done, eventually bringing the number to 77+ items (see appendix C to this report.).

Other work continues under the FAA, in conjunction with industry, to identify short-term initiatives to improve the efficiency in the New York area.

Process

Working Group 1 reviewed the proposals put forth and determined that the items suggested by those groups contained appropriate and significant challenges that could result in significant savings to industry and a more efficient use of the National Airspace System (NAS). Because of the large number of initiatives suggested by outside workgroups, Working Group 1 determined a priority to accomplish a number of items contained in the material. As a result, several items were presented to the greater ARC for consideration, including those listed below. A more detailed paper on each subject is included in this report.

Operational Priorities

Working Group 1 reviewed the priorities in the "list of 77+" and determined the items fall under five categories:

- More efficient airport surface movement
- Increased departure efficiency
- Increased arrival efficiency
- Improved regional airspace efficiency
- Improved technology

Working Group 1 cited high priority items under each category (report included). A number of these items are underway and are expected to be complete or near complete by summer 2008. These items include the following:

Number 1: Reduce excessive spacing on final. Briefings are being conducted in the higher activity TRACONs in the country.

Number 2: Eliminate passback restrictions for destinations 700 miles or more.

Number 4: SWAP escape routes through Canada during severe weather events.

Number 5: Conditional holding patterns in terminal airspace to allow for more efficient holding of arrival aircraft. This initiative is still under consideration and may not be complete before summer 2008.

Number 6: Tower reroutes, enabling towers to use precoordinated reroutes for select high delay/priority flights awaiting departure.

Number 7: Enhancements to the departure position "PIT" in the New York ARTCC, which allows towers to depart aircraft without coordination when specific routes are not impacted by weather, without individual coordination.

Number 8: The use of J70 as a westbound departure route, rather than an arrival route during periods of high delay caused by weather.

Number 9: The development of a reliever, or parallel route for J80 departures during severe weather events.

Number 11: The establishment of an ultra high sector above New York sectors 9 and 10 to relieve complexity.

Number 12: Accessing J134/J149 over ELIOT to allow relief to westbound flights during severe weather events.

Number 13: Moving J79 arrivals to the east to help reduce congestion over the MERIT departure fix. There is some concern, however, that there may be some impediments associated with a safety review that may be necessary.

Number 14: Resectorizing New York Center sector 73 to reduce complexity.

Number 15: Moving overflights in New York Center sector 34 to allow traffic departing to the north less encumbrance. There is some concern, however, that there may be some impediments associated with a safety review that may be necessary.

Number 37: Simultaneous ILS approaches on runway 31L and 31R at John F. Kennedy International Airport (JFK).

Number 39: Develop procedures to use JFK runway 31L departures with LaGuardia on Coney departure climbs.

Number 45: Newark Liberty International Airport (Newark) runway 4R–29 waiver to allow reduced spacing on crossing runways.

Number 46: Simultaneous visual approaches to 4L at Newark.

Number 47: Deconflict Newark arrivals over SHAFF from 0000-0600 local, allowing higher altitudes for international traffic from the north during low demand periods.

Excessive Spacing on Final

Because of a change in focus around operational errors, spacing on final has increased to ensure errors are not charged against air traffic controllers. This increase does not necessarily result in improved safety on the final approach course. As a result of this change, the FAA is taking steps to ensure focus on both safety and efficiency by providing briefings to the workforce at the larger activity approach controls in the country. Working Group 1 believes further consideration should be given to separation standards and a goal of -10/+15% should be set for all aircraft operating on final approach courses.

Runway/Taxiway Improvements

The majority of the airports in the New York metropolitan area have achieved their golden anniversary. When these airports were designed originally, the aircraft operating had different performance characteristics than those in use today. This fact, coupled with the higher activity levels, has resulted in a number of inefficiencies that can be addressed with infrastructure improvements. The two largest issues that need to be addressed are the lack of high-speed taxiways available for landing aircraft to exit the runway quickly and the multiple cases of displaced landing thresholds, limiting the amount of runway available. Additional runway departure points at runway ends would also increase departure efficiency.

This report includes suggested improvements, such as removing displaced thresholds for runways 13R, 22R, 31L, and 31R at JFK, and possible high-speed taxiway placement. Consideration should also be given to creating "holding areas" on the ground for those aircraft that have pushed back from the gate but will be delayed for departure.

A Second J80

This airway provides access for aircraft arriving and departing the Northeast. Traffic using this airway predictably incur delay because of its high usage. Working Group 1 concurs with standing recommendations to implement additional access for these aircraft, roughly paralleling the existing J80. Modeling indicates significant delay can be mitigated annually.

Surface Management Systems

One of the most challenging situations within which both industry and air traffic operate is a lack of information about ground positioning of aircraft on the surface. This information gap is as a result of the lack of use of existing technology. Surface management systems provide real time management of airport operations through use of integrated information sharing among operators, airport authorities, and the FAA. Working Group 1 believes the implementation of ASDE–X schedules in the New York area should be accelerated.

New York Czar

A large portion of the aviation community has expressed concern over the inability to implement changes in a more timely manner. Some suggest that the current structure of the FAA does not permit the flexibility and speed needed to achieve success. Coordination across lines of business is inhibited as a result of a difference in priorities and the availability of resources.

Working Group 1 suggests that an individual be responsible for ensuring changes occur in a timely manner. This individual should receive the support necessary to be successful across all lines of business and should report directly to the Air Traffic Organization's Chief Operating Officer. A parallel process should be evaluated that includes industry and the FAA in the process. There is some concern about how industry will be involved and who will prioritize required work.

Summary

After careful consideration of the initiatives reviewed, Working Group 1 believes that the items listed should be given more focus so that they may be implemented in the near term. However, all of the 77 items reviewed, as well as several other RNAV-related items, should be managed and implemented within the existing working groups.

OPERATIONAL PRIORITIES

Background

Last year, the region's three major airports — JFK, LaGuardia, and Newark — handled more than 104 million passengers and 2.7 million tons of cargo. The combined impact of aviation operations, airport investment, and tourism generated almost half a million jobs, $20.5 billion in wages, and more than $57 billion in annual economic activity. In recent years, flight delays have plagued the U.S. aviation system, posing a threat to our nation's economic growth and prosperity. In the first quarter 2007, the DOT reported the worst flight delays in 13 years. Nationally, 2007 is expected to be the worst year for flight delays in aviation history.[1]

Beyond the hardship airline passengers have been forced to endure, the problem of flight delays imposes serious costs on the economy. Each year, Americans lose over $9 billion in productivity from flight delays. The problem of flight delays is especially acute in the New York metropolitan area. JFK, LaGuardia, and Newark have consistently ranked among the nation's worst in ontime performance. From January to September 2007, only 57 percent of flights at Newark arrived on time, the worst in the nation. LaGuardia and JFK ranked second and third worst, with ontime arrival rates of 58 percent and 59 percent respectively.[2]

[1] Flight Delay Task Force Report, Summary of Recommendations, 12/6/07
[2] Flight Delay Task Force Report, Summary of Recommendations, 12/6/07

How were the operational priorities determined?

FAA System Ops System Review

In the fall of 2006, the FAA convened the annual "System Review" meeting, which included industry technical experts. At this meeting, the group developed a list of operational improvements that could be implemented in less than a year. Several of the initiatives, such as improvements in how routes in severe weather are processed by towers, were implemented at a limited level. Work continued on these delay reduction initiatives, mostly focused on impacts during severe weather events.

FAA/Customer New York Operations Meeting

In March 2007, the FAA held a meeting at Headquarters, which was attended by the FAA Deputy Administrator, airline customers, and the Port Authority. At this meeting, the attendees agreed to create individual lists of potential actions to address delays at New York airports. Those lists would be collated and reviewed for near-term initiatives targeted at efficiency gains and delay reduction at the New York area airports. These initiatives were meant to be a prioritized list of items that could be completed within 12 months. The collated FAA list (Short-Term Initiatives) was finalized, item coordination was completed, and tasking/tracking of these items was implemented. The industry group was briefed on progress at the monthly S2K meetings.

Northeast Airspace Work Group

Following the success of the Florida Airspace changes made to alleviate the delays at Fort Lauderdale/Hollywood International Airport and South Florida airports, another group determined that targeting small changes to the airspace could deliver substantial benefits. They developed a list of changes that could be implemented within 12 to 18 months. An example is the second west departure route (J80) out of the New York area.

Port Authority — The Flight Delay Task Force

In July 2007, the Chairman and Executive Director of the Port Authority convened a high-level group of influential and interested stakeholders in our region's aviation system to focus on the burgeoning problem of flight delays. The group was asked to develop recommendations for mitigating congestion and reducing flight delays, as well as to propose recommendations for improving the customer experience during extensive flight delays. This resulted in a list of 74 suggested initiatives aimed at reducing delay and increasing airspace efficiency. Over the course of time, additional items have been added to this list, with 77 being the generally accepted number.

New York ARC

After the Port Authority announced the formation of the Flight Delay Task Force in July 2007, the Federal Government initiated efforts on several fronts aimed at reducing flight delays. In summer 2007, U.S. Secretary of Transportation Mary Peters established a task force of high-ranking DOT and FAA personnel to develop a plan to address aviation congestion in the New York metropolitan area and to improve customer

satisfaction overall. In September 2007, President Bush directed the DOT to develop a plan to alleviate congestion and reduce delays in the New York area. Secretary Peters subsequently announced the formation of the ARC to explore various strategies.

Overview of ARC Working Group 1 Operational Priorities Categories

The ARC was divided into five working groups. Working Group 1 organized and categorized the list of 77 initiatives that had been captured from the previous groups. The items were then prioritized based on anticipated benefits. Those categories are listed below:

Category 1 – More Efficient Airport Surface Movement

Items included—

- 57: Install ASDE–X with Data Distribution Box (for airline and FAA access) at Newark and JFK in 2008
- (Unnumbered): Equipment should be installed in New York ARTCC and New York TRACON
- (Unnumbered): Standardize future deployments
- (Unnumbered): Infrastructure improvements

Category 2 – Increased Departure Efficiency

Items included—

- 3: AFP for high volume
- 4: SWAP routes through Canada
- 6: Tower reroutes (SWAP)
- 7: ZNY Pit enhancements
- 8: J70 as a departure route
- 9: 2nd J80 westbound
- 11: Establish ZNY ultra high above 9/10
- 12*: J134/J149 via ELIOT
- 13: BOS arrivals east out of ZNY56
- 14: ZNY redesign: 27, 73, 91, 93
- 15: Shift over flights in ZNY34
- 16: Simultaneous Newark/JFK departures
- 17: Stack departure fixes
- 18: Add third north gate route with RNAV
- 21: J146 as a departure route (SWAP)

* Indicates item complete.

- 39: JFK 31L departures with LaGuardia CONEY climbs
- 51: RNAV departure procedure Newark runway 22 to LANNA/PARKE/BIGGY
- 52: Top LaGuardia ILS 13 arrivals with Newark runway 4 departures

Category 3 – Increased Arrival Capacity

Items included—

- 1*: Reduce excessive spacing on final
- 37*: Simultaneous ILS approaches JFK 31L/R
- 42: Develop JFK CRDAs to 31L/22L
- 45: Newark 4R/29 waiver (reducing spacing on crossing runway operations
- 46*: Simultaneous VAPs EWR 4L
- 49: RNAV transition to Newark runway 29
- 50: RNAV STAR from SHAFF/PHLBO to Newark runway 11

Category 4 – Improved Regional Airspace Efficiency

Items included—

- 2*: Eliminate pass back restrictions beyond 500 miles
- 5: Conditional holding patterns in N90
- 24: Accelerate airspace redesign (phase 1 and 2)
- 32: Develop RNAV procedures to reduce spacing requirements
- 47*: De-conflict Newark SHAFF arrivals (00-06)

Category 5 – Improved technology

Items included:

- 58: Refine/develop Route Availability Planning Tool (RAPT)
- (Unnumbered): Accelerate the National Change Plan (NCP) to ensure flight plans filed by nonscheduled operators are made available to ETMS as soon as they're filed

What happens to the remaining items?

- Continue work in established workgroups
- Ensure tracking of progress, milestones, and accomplishments

EXCESSIVE SPACING ON FINAL

Background

The FAA, being a safety culture, embarked on a data collection exercise (audit) over 2 years ago to use automated measuring techniques that report spacing down to the 1/10 of a mile on the radar display. This degree of precision actually exceeds the controller's visual acuity. The audit identified over 200 technical violations of the separation standards at New York TRACON alone, none of which compromised safety or presented a collision hazard.

The results of this exercise negatively affected the efficiency of the system, because controllers responded with additional buffering mileage above the separation minima to avoid the consequences of a separation loss. This additional buffering had a measurable effect on throughput and additional impacts down line in the system with extensive airborne holding, diversions, and the like.

Current Situation

Excessive spacing on final today only exists as a means to reduce operational errors on the final approach course. This excessive spacing (buffering) does not increase safety; in fact, it can sometimes be tied directly to inefficiencies elsewhere in the system.

Well-established, predictable airport acceptance rates are no longer reliable because of the additional spacing. This lack of reliability has resulted in the increased probability of go-arounds, no-notice holding, increased vectoring, sector overload, and operational errors. Airports are operating at less than optimum capacity (reduced throughput), which increases miles flown, fuel burned, and CO_2 emissions.

Aircraft operators, airports, and passengers have incurred considerable cost without realizing any increase in safety. Fiscal year 2007 was the most delayed year in the history of our aviation system. New York area airports accounted for more than 40 percent of all delays, yet traffic levels at LaGuardia and Newark airports have actually decreased. Excessive spacing on final approach and initial departure is responsible for much of the increased delay.

Future Steps

To help the controller workforce deliver the safest and most efficient service possible, FAA's Air Traffic Organization (ATO) created the Proximity Event (PE) whereby a separation loss of 10 percent or less is not classified as an error. Establishing a safety and performance standard, that is, 10 percent below to 10 percent to 15 percent above minimum separation, would provide a tolerance envelope that ensures safety and maximizes efficiency. The standard would also identify clear and measurable performance expectations to employees.

A loss of separation below the envelope should be approached in a more positive and preventive manner. Every effort should be made to encourage the reporting of potentially unsafe situations and practices, to identify causal factors, prevent future occurrences, and to identify and correct performance deficiencies. The implementation of a safety reporting system for controllers is a critical component of restoring confidence by controllers and managers in the system, where there would be no actions of a punitive nature unless the loss of separation was intentional or the result of negligence.

Future steps to extend the PE criteria, using technology, to certain wake turbulence events needs to be pursued because many times an error is charged and, like in the previous examples, no increased risk was experienced, and unnecessary delay was incurred.

RUNWAY/TAXIWAY IMPROVEMENTS

Background

All of the airports in the New York metropolitan area are over 50 years old. They were first designed when there were few standards, and the size of the typical operating aircraft was significantly smaller than it is today. As modern aircraft grew in size and speed, there were new standards added to airports to accommodate the larger wingspans and to add increased levels of safety. As these new design standards were built into the airports, some of the available pavement and flexibility the controllers had to shuffle aircraft was lost. As airspace became more congested, this flexibility became more important to maintain throughput, especially on poor weather days.

To improve the throughput of aircraft on the runways, a careful analysis should be undertaken to define areas where runway occupancy times can be reduced. There are opportunities to improve the ability to sequence aircraft at runway ends to expedite departures. There are also a variety of improvements that can add to the overall efficiency of moving aircraft on the surface of the airport and add to passenger comfort. All these concepts should be developed to ensure maximum efficiency can be delivered by the airport infrastructure.

Runway Improvement Concepts

The first area of improvement should be designs to improve airport throughput. Currently only three of eight arrival runways at JFK qualify for reduced spacing on final approach (2.5 versus 3.0 mile spacing). There needs to be analysis to improve this capability on all landing runways. Some suggestions to facilitate improved arrival throughput include removing runway displacement and building high-speed runway exits.

Displaced arrival thresholds can create inefficiencies for mixed use (arrivals and departures) and can lead to undesirable runway exit points. Case in point, when a departure is placed in position on JFK Runway 31L, the preceding arrival flies an additional mile to touchdown. The succeeding arrival gap must take the disparate thresholds into account for spacing. To solve this situation, Working Group 1 suggests removing displaced thresholds for JFK runways 13R, 22R, 31L, and 31R.

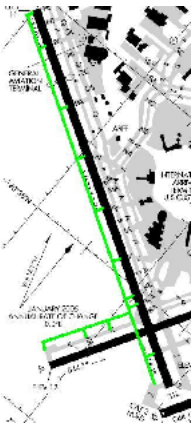
High-speed exit taxiways are also crucial to reduce runway occupancy times. High-speed taxiways allow pilots to exit the runway at a higher rate of speed than a standard 90-degree turnoff. This faster exit shortens the time the landing aircraft remains on the runway, allowing for multiple arrival and departure use or a reduced space for the following aircraft in some conditions. To facilitate this operation, we suggest adding high-speed exits (in coordination with removed displacement) to allow minimum runway occupancy for all runways. Three high-speed exits for each arrival runway appear to be the norm. We suggest the same interval of 4,500, 6,500, and 8,500 feet for each runway. Standardizing turn-off points enables consistent pilot expectations and performance.

Multiple departure points at runway ends also enable greater flexibility to controllers to sequence the departing aircraft at the end of the runway, and not a few miles earlier as is the case today on some runway ends. This flexibility allows for controllers to shuffle aircraft as situations dictate — for example, if the lead aircraft is not quite ready to go or if the departure spacing restrictions change. Added flexibility at the departure end maximizes the departure throughput. Dallas/Fort Worth International Airport (DFW) has many efficient departure ends at its runways (see figure 1), and we recommend similar access points be designed for JFK runways 31L, 22R, 4L and 13R, and Newark runway 22R.

Figure 1 — DFW Multiple Runway Entrance Points

Additional taxiways can enhance the operation of the airport by facilitating the movement of aircraft on the surface, or by providing areas to hold aircraft off gates, especially those where air carriers can access their aircraft. Newark Liberty has an area known as the ballpark that works well for this type of operation. JFK and LaGuardia need similar areas as well. Working Group 1 suggests adding an area for this purpose at the current hangar 12 location at JFK and at LaGuardia. Gaining extra pavement at the existing employee parking site behind the Marine Air Terminal could also have valuable benefit as additional aeronautical pavement.

Additional taxiways at JFK to move aircraft around the airfield will also enhance operations on the airfield and facilitate movement to and from runway ends. Examples of these taxiway improvements include a full length parallel taxiway south of runway 13R/31L (see figure 2A), and a connecting taxiway that joins taxiway B to YA (see figure 2B), which reduces complexity and improves access to runways 22R and 31L.



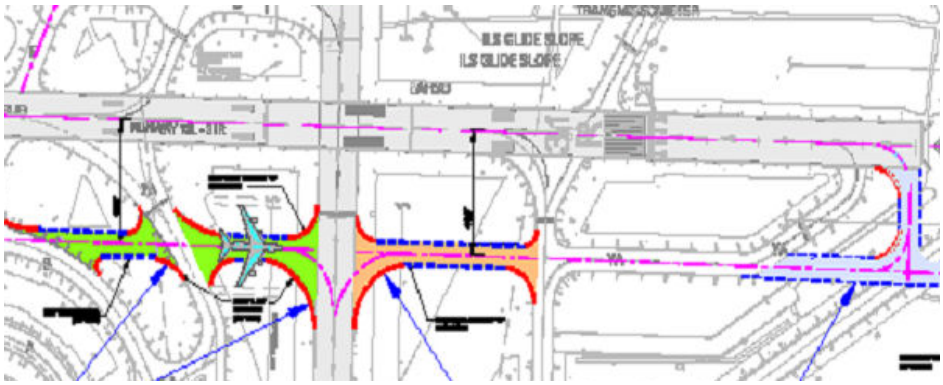


Figure 2B — JFK Taxiway B to YA connector

Figure 2A — JFK Parallel Taxiway

Summary

While there are many priorities placed on an airfield, the focus should be on ways to improve the throughput and reduce delays. Some of the suggestions above will help move more aircraft on and off the airfield each hour, improving the delay situation and benefiting passengers. As changes come to the industry, we need to be cognizant of the changes to be made to the airfields to keep pace with the increase in demand and search for new ways to increase airport throughput, even if only incrementally. New pavement, while a significant capital cost, can aid in reducing delays if it is carefully designed. Thorough coordination with all stakeholders is required to ensure full benefits are achieved.

SECOND J80

Background

J80 has been identified by other working groups as the most delayed airway in our airway route system today. This reputation is earned by its high utilization as a major east-west airway by those flying to/from the Boston, New York, Philadelphia, and Washington, DC, metropolitan airports. Although there are other initiatives to improve airway availability and utilization, the J80 initiative continues to be one of the most supported proposals to reduce delays.

Although the proposal has been referred to as the 2nd J80 or Parallel J80, it is envisioned as a 2nd airway that will follow a similar east-west track as the current J80 and could use RNAV waypoints and current RNAV technology to define its lateral path.

Concerns/known open items with 2nd J80

- Currently, there is some design work required allowing transition onto the 2nd J80.
- Continued design work is required at Indianapolis Center, Cleveland Center, and Chicago Center to manage the added traffic accommodated on the 2nd J80.

Positives

- Potential savings of $2.8 million/annual based on minutes of delay saved[3].
- Increased capacity on the most heavily used east-west route out of the New York, Philadelphia, and Washington, DC, metropolitan areas.
- Reduces delays at numerous airports.
- Established broad industry and FAA support exist:
    - Developed and recommended by the RTCA AWG.
    - Gained favorable consensus with other working groups.
    - Number one initiative in Working Group 1.

Full Benefit

Although the benefits of a 2nd J80 airway strongly suggest that it warrants implementation, increased benefit and capacity also may be realized if the New York Center ultra high sector 11 initiatives are implemented, allowing increased utilization of both the 2nd and current J80.

[3] Preliminary Results, RTCA AWG Study, subject to change.

SURFACE MANAGEMENT

Overview

In today's environment, the airlines and ATC operate within their respective silos as it relates to flight preparation and airport movements. The airline has little information on ATC intentions and the FAA has even less information, other than the filed flight plan, of the user's intentions.

Airline ramp tower personnel and operations centers make numerous business-related decisions when they plan, coordinate, and adjust as necessary gate assignments, catering, fueling, passenger loading, ramp movements, and other parameters that affect their respective operations. In addition to these tactical decisions, the ramp tower often has to consider aircraft assignments and crewmember sequences as a couple of the most essential pieces of the puzzle. These critical variables are important during normal operations, but have increased significance during off-schedule operations when they actually become the limiting factors. Figure 3 uses JFK as an example of how uncoordinated surface movements can cause delays.

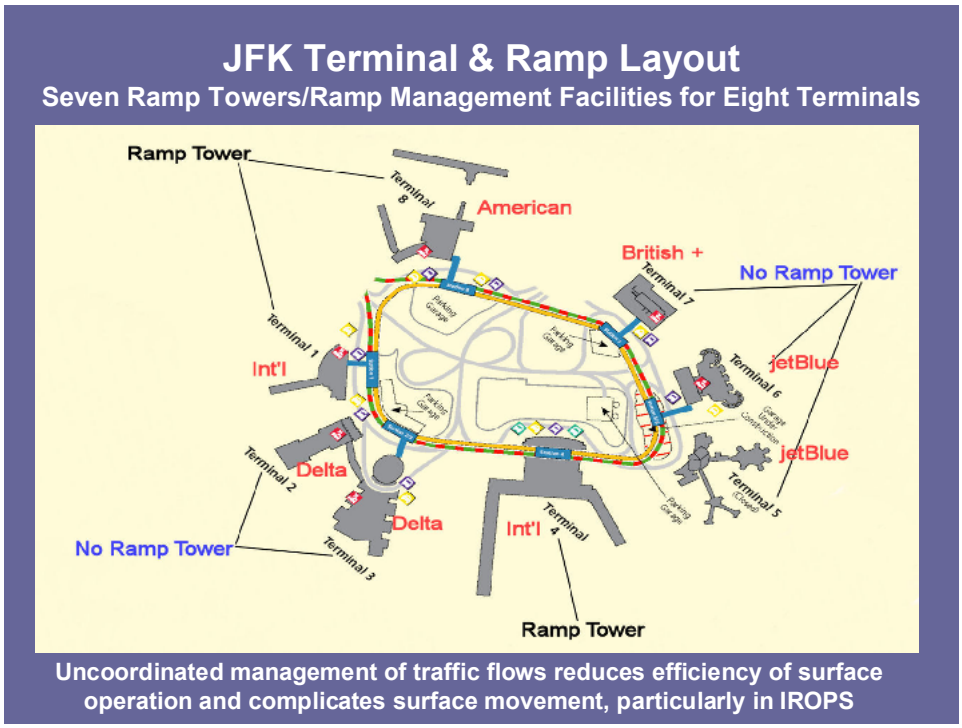


Figure 3 — JFK Terminal and Ramp Layout

ATC has the responsibility of meeting various traffic management initiatives, such as most efficient runway sequence, actual real-time operational demand, and use of "penalty boxes." These critical variables are important during normal operations, but have increased significance during off-schedule operations when they actually become the limiting factors. Today, ATC and traffic managers are blind to the surface situation and often make poor decisions based on inaccurate or untimely information. The current system of surface management, or lack thereof, fails to provide either the airlines or ATC an opportunity to avoid delays.

Possible Solution

Surface management systems provide coordinated real-time management of airport surface operations through a process that is based on integrated information sharing between operators, ATC, and the airport authorities. In other words, a NET-CENTRIC airport information system would help to improve surface management. Use of surface management systems would provide a more efficient operation as well as the ability to perform a post-event analysis to improve future operations.

A surface management solution would allow us to improve the operation significantly and reduce delays by—

- Providing the right information to the right people, at the right time
    - High quality surveillance
    - Rapid update
    - Real-time and historical analyses capability
    - Web-based architecture that will support distribution to a geographically-dispersed user base (for example, ramp towers, airport operations offices, ATC, traffic management units and FAA Command Center)
- Facilitating common situational awareness that enables airports, users, operators, and ATC to optimize—
    - Gate occupancy
    - Departure taxi sequence and flows
    - Arrival taxi sequence and flows
    - Pushback sequence as required
    - Deicing sequence
    - Leveraging of available resources
- Having the capability to measure performance and build metrics.

An optimum surface management system requires airline and user data that can be interpolated into useful information when combined with the movement area surveillance that ASDE–X provides when enhanced with non-movement area (gates, ramp, aprons) surveillance as well. A common platform for every site would assist in reducing the interface costs associated with data exchange for all parties. It is understood that proprietary information supplied by each entity should be protected and not available to outside vendors to ensure business interests are not compromised.

The airlines require significant experience and training to qualify for a position at the ramp towers. Intimate knowledge of airline operations and infrastructure plays a huge role in the overall success of each ramp tower. To add this expertise to the existing expertise of tower controllers would provide a significant interchange of awareness and understanding leading to significant gains in efficiency, fuel burn, and associated emissions.

Commonly Asked Questions

1. **Do all airlines/operators at an airport have to participate? – No**
    a. Major air carriers are needed. The more participation the better.
    b. Willingness to share and contribute data is a requirement to participate in the work groups listed under No. 3.

2. **How soon can it be implemented? – 6 to 9 months**
    a. ASDE–X schedule – JFK has an accelerated ASDE–X schedule and consideration should be given to accelerating Newark.
    b. Airline interfaces – major air carrier IT contributions to gain interfaces and install software. Each airline can determine software available:
        i. Vendor commercial products and services – for example, Aerobahn
        ii. NASA SMS
        iii. In-house

3. **What should be the vehicle for implementation? – Two groups of joint FAA/user/airport personnel.**
    a. Technical Group – determines IT interfaces.
    b. Procedures Group – determines usage and decisionmaking processes.

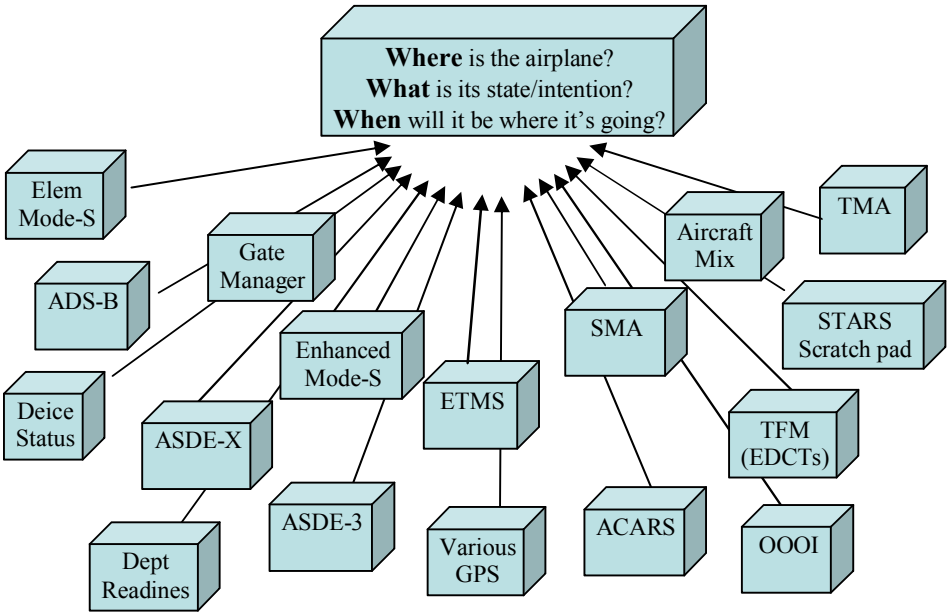
4. **What surveillance sources are normally needed?**
    a. ASDE–X surface surveillance enhanced with additional sensors to provide surveillance of gates, ramps, aprons in addition to runways and taxiways.
    b. SMA – TRACON Radar and scratch pad information.
    c. ASDI.
    d. TMA, when available.

5. **What are the difficulties of implementation?**
    a. Timeline conformance of all IT tasks by all concerned.
    b. Software and interface conformance – common displays are not needed but data exchange must interface.
    c. FAA letters of agreement for data protection – unless commercial services are used, FAA requires multiple letters of agreement by all parties.
    d. Airport Authority involvement – new level of involvement.
    e. Lease agreements with property owners for remote sensor installations.

6. **Surface Management facilitates Net Centric Command and Control of an airport. What might this architecture look like?**
    a. Both on and off gate estimated times of arrival are extremely important in proper planning.
    b. Runway end optimum sequencing enhances capacity.
    c. Conformance to traffic management initiates enables the capturing of capacity.
    d. Data streams allow greater analysis and development of procedures and infrastructure.

7. **Once a surface management system has been implemented, what challenges remain?**
    a. System support 24/7.
    b. Tower-to-user interface upgrades.
        i. Upgrades and changes to the system on both ends (tower and operator)
        ii. Changes or upgrades to the procedures employed
    c. Addition of new operators and gate complexes and changes to existing ones.

Multitude of Inputs to Command & Control



Definition

The collaborative net-centric management of airport activities, including but not limited to aircraft movement, through a process of integrated information sharing (user, service provider, airport authorities, etc.), real-time surveillance, and jointly established procedures tailored to the specific airport operations that result in the safest and most efficient operational decisionmaking.

Pros

1. Real-time situational awareness by all operations personnel yields—
    a. Safety
    b. Efficiency
    c. Command and control
2. Taxi time reduction through better decisionmaking and processes yields
    a. Fuel efficiency
    b. Reduced emissions
    c. Better management of deice operations/queues
3. Net-centric info availability provides information required to enhance system decisionmaking for unusual events-less "wing it"
4. Better service to the customer
    a. Service provider to user
    b. User to end state customer
    c. Airport authority to user and service provider
5. Better identification of problems and inefficiencies
    a. Denotes infrastructure changes needed
    b. Root cause identification
    c. Solutions address core issues
6. Improved ramp tower product to ATCT
7. Better CFR response by airport facilities
8. Multi-lateral receives multiple inputs
    a. ADS–B
    b. GPS
9. Users have transparent influence on FAA decisions to improve their operation.
10. Capability for Web-based distribution environment available to authorized, geographically-dispersed users.

11. Capability for data storage, retrieval, and archiving of the surface including actual position, identification, replay, and reporting capability yields long-term efficiencies in surface operations.
12. Ability to upgrade software on an annual or semi-annual basis provides a continuous state-of-the-art system capability.

Cons

1. Cost
    a. Data distribution unit required
    b. Software required to turn the data into usable information
    c. Additional sensors to cover ramps, gates, deice pads, and specified GSE roadways
    d. On-going IT support need – 24/7
    e. Display and software equipment
    f. Possible aircraft equipment changes on "classic" aircraft
    g. User adaptation of feed into current systems
    h. Need to upgrade surveillance hardware on an ongoing basis, not to exceed 5-year cycle
    i. Variable lease costs for sensor (RU) locations
2. Identification of aircraft transponder issues is very difficult
3. Training required
    a. Pilot to stop "squat" feature
    b. All personnel to use the system
    c. On established processes
4. Trust and relationship paradigms need breaking
    a. Competitive issues
5. Net-centric decisions require—
    a. More work/thought
    b. More establish processes
    c. Increased communications
6. Different software by different users.
7. FAA process for degree of information sharing lacking.
8. Development for an end-state system lacking which reduces user commitment.
9. Cultural fear of the unknown: big brother impact on ATC and user operators.

NEW YORK CZAR

Background

This New York Czar proposal is based on recent successes within the Air Traffic Organization wherein a single individual/entity was granted sufficient authority to facilitate initiatives and implement much needed enhancements encountering little, if any, delay. The current structure within the ATO does not provide the level of speed and agility required to implement the initiatives identified in the New York ARC in a timely manner. The ATO's current structure seems to have greatly increased coordination across the different lines of business. There is concern that it has been inefficient and at times the structure seems to have been a direct impediment to making significant progress.

Specifically, the amount of time involved in reviewing, adjusting, and implementing most of the suggested initiatives, including the Port Authority's list of 77, the RTCA Short-Term Airspace initiatives, New York/New Jersey/Philadelphia airspace redesign, the ASDE–X Surface Management System, as well as others, presently require a tremendous amount of coordination, focus, and followup to attempt a timely and successful implementation. We believe a position should be established and designated as the focal point or czar for strategic traffic flow management initiatives within the Northeast.

New York Czar Duties

To be successful, this individual should receive the full backing and support from each of the ATO's vice presidents as well as their entire directorate level to ensure positive results in a much more expeditious manner. It is imperative that this position be given the necessary authority to cross all the lines of business to manage these critical processes and to expedite their implementation.

Consideration should be given to having this individual report directly to the ATO's Chief Operating Officer and be readily accountable to the ATO's Executive Council (EC) on all matters that deal with these strategic initiatives from inception through implementation and followup.

Working Group 1 would also like to see a process whereby a committee comprised of FAA/DOT employees and representatives from industry meet regularly to discuss necessary airspace enhancements. This group could assist in determining what changes may be necessary to enhance the implementation of initiatives aimed at relieving the problems encountered in the Northeast/New York area. Any recommendations or findings that come from this committee should be reported to the EC within 90 days.

Pros

- Single point of accountability.
- Sidestep bureaucratic process.

- General consensus within Working Group 1 for the concept.
- Encompasses all elements of ATO.
- Focused tasking regarding Northeast initiatives.
- Mandate of authority to engage all elements within the organization to implement identified initiatives within a specific timeframe.

Cons

- Scope of authority may need to go outside ATO.
- Does not address elements outside the FAA and/or DOT if their inclusion is a component of implementation.
- Must be careful not to allow scope to exceed parameters defined by an FAA appointment.

WORKING GROUP 2 — AUCTIONS, CONGESTION PRICING, AND AIRCRAFT GAUGE

INTRODUCTION

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

Congestion pricing is one type of market-based mechanism that uses prices to moderate demand for limited arrival and departure capacity and to shift that demand from one time period to another. The goal of congestion pricing is to encourage efficient use of scarce resources at an airport by shifting a portion of the demand to periods when capacity is readily available. To accomplish this, congestion fees would be levied on operations and varied throughout the day according to demand for access to the airport. Consequently, the most congested periods of the day would have the highest congestion fees (for example, the congestion fee at 5:30 a.m. would be lower than the congestion fee at 5:30 p.m., which is a peak travel hour).

Auctions can be used to allocate a scarce resource by putting the scarce object up for sale or lease. In the aviation context, a fixed number of slots would be available for lease by aircraft operators. These operators would bid on prices in an auction for those slots. The auction stops when there are no new bids within a round (that is, the auction determines both the selling price and the purchaser of the slots in each of the time periods). Fixing the number of slots available would establish an upper limit on the amount of congestion and delay allowed. Auctions are intended to encourage the efficient use of airport slots and related facilities by allowing the market to set the clearing price for slots. New or existing capacity could be auctioned.

Working Group 2 suggests that it would be helpful to look at the pros and cons of congestion pricing or auctions in an airport-specific proposal for New York. The proposals set forth below do not represent the views of any member of the ARC. They were used as examples so that members of Working Group 2 could debate the specifics of pricing proposals. Many of the Working Group 2 members expressed strong concerns regarding application of congestion pricing or auctions as the primary means of allocating airport capacity.[4]

[4] Working Group 2 did not intend to cover the entire universe of congestion pricing and auction schemes in this report.

STRAWMAN PROPOSALS FOR HOW CONGESTION PRICING AND AUCTIONS COULD BE IMPLEMENTED IN THE AVIATION CONTEXT

I. Hybrid Congestion Pricing/Auction Scenario

Mr. Frank Berardino, GRA, Inc., presented Working Group 2 with a hybrid congestion pricing/auction scenario to take account of some of the unique characteristics in the aviation context, including rivalry among firms. The proposal's key elements include the following:

- The FAA sets an optimal target of hourly operations.
- *X*% of Instrument Meteorological Condition (IMC) slots would be grandfathered to air carriers currently operating at the airport. Air carriers could swap, lease, or sell any of these grandfathered slots as they currently are able to do at slot-controlled airports.
- Access to an airport beyond *X*% of grandfathered IMC slots would be priced.
- The pricing of these slots would take place in a multi-round process:
    1) Prices would be set by an Independent Pricing Board whose sole responsibility is to reach target operations numbers.
    2) Airline schedules would be published *Z* days before the first flight. The Independent Pricing Board would set prices based on expected delay costs; airlines would then adjust schedules based on published congestion prices. Prices would be reset until the auction ends, as declared by the Independent Pricing Board.
    3) Air carriers are required to take or pay based on the schedule at end. Ending would be determined by the Independent Pricing Board.
    4) Air carriers may swap/sell access rights at any time with notification to the FAA.
    5) A minimum deposit would be required to participate on the initial schedule offered.
- The congestion pricing event would take place *Y* times annually—for example, the International Air Transport Association (IATA) scheduling events (twice a year). After the pricing event is over, new schedules would not be accepted until the next round of pricing opens (that is, at the next scheduling season).

- Consistent with DOT Competition Policy, to ensure physical access to airport facilities (for example, gates), and as a condition of participating in the pricing process, air carriers would have to agree to accommodate other operators at compensatory rates when gate capacity is not otherwise available (details to be defined).

- Congestion pricing revenues could be used for any number of things, such as—
    - Recycled to operators based on other fees paid (for example, landing fees, passenger facility charges).
    - To buy "historic" slots from air carriers, which would then be put into the market.
    - Held by a third party in an interest bearing account to pay for any approved runway capacity or complementary expansion projects at New York area airports.

As highlighted by Mr. Berardino, one benefit of this type of hybrid scenario would be that only a limited portion of airport capacity would be in the market initially – making the transition period much smoother than if all capacity were in the market at one time.

Options: *X%* of IMC slots that are grandfathered could be expanded so that all slots are grandfathered and just "new" capacity is priced. Alternatively, a low number of IMC slots could be grandfathered and a large portion of airport capacity could be priced.

The time period between pricing events could also be varied. For JFK, Mr. Berardino proposed that pricing events would take place twice a year based on scheduling seasons. Alternatively, pricing events could occur more or less frequently. The less frequently pricing events occur, the more auction-like this hybrid-scenario becomes.

II. Auction Scenario

Dr. Peter Cramton, University of Maryland, presented a summary of a proposal for how a slot-auction might work in New York. A summary of the auction design follows:

- The FAA sets an optimal target number of operations per hour. Slots would be auctioned.

- X% of slots would be auctioned per year (for example, 20% per year, so each slot has a 5-year life).

- Port Authority would work to provide facilities in sync with auction outcome. In the short term air carriers would need to be flexible with their ground facilities. However, over the long term, the Port Authority could aim to develop common-use facilities.

- The auction design suggested for the aviation application would have the following characteristics:
    - *Simultaneous* - All slots in the auction up for auction at the same time;
    - *Ascending clock* - Auctioneer announces prices and bidders respond with the quantity demanded at these prices. Prices increase on slots with excess demand. Auction ends when no excess demand remains; and
    - *Package bids* - Allows bidders to buy what they want given the prices. No risk of winning just part of what you need.

Options: The percentage of slots up for auction each year could vary, which would make the life-term of slots either longer or shorter than Dr. Cramton's proposal.

Also, the number of slots for sale in the auction could be adjusted. For example, FAA could grandfather all historic slots at an airport and simply auction "new" capacity.

CONCERNS WITH USING CONGESTION PRICING OR AUCTIONS

Many Working Group 2 members raised concerns about the ability of congestion pricing or auctions to work in an aviation environment and the potential consequences of using them.

A summary of the challenges and concerns raised by Working Group 2 members follows:

- ***No proven track record in aviation*** – Auctions and Congestion Pricing have not been implemented on a broad scale at any U.S. airport. Boston's Logan Airport has a congestion pricing policy on the books, however, the level of congestion necessary to "trigger" the use of this policy has not occurred. In addition, specific initiatives to implement congestion pricing and/or auctions at foreign airports have failed.

  Further, many Working Group 2 members expressed strong skepticism that experience with auctions and congestion pricing in other industries could be used as a meaningful parallel for application of such measures in the airline industry. Participants pointed to unique aspects and complexities of airport and airline operations that distinguish aviation from other industries where auctions/congestion pricing may have been applied[5]. Additionally, there is

[5] Congestion pricing models used for individuals and highways do not apply to the aviation network because networks work differently than individuals. Surface vehicles have optional routes to get from point A to point B. More often than not, they also involve a single decision made by an individual at a point in time. Automation of highway toll collections has also helped. In contrast, airlines generally are limited to one airport to serve a particular city and, as noted below, may be time-constrained by network considerations. This is true for both domestic and international flights to airports like Heathrow that are slot controlled.

concern that auctioning the capacity at the New York area airports does not take in to account the airspace congestion issues.

Working Group 2 members also noted that there is a significant risk involved in trying auctions or congestion pricing because the airlines cannot afford financially or operationally to fail next summer, given this past summer's performance and public reaction. It was noted that the ARC only had 10 weeks to work, and, despite several years of research on market mechanisms, a workable auction or congestion pricing solution for LaGuardia Airport has never been developed.

Many ARC members were concerned that revenue neutrality, as required under federal airport grant assurances, probably cannot be maintained at the fee levels necessary for auctions or congestion pricing to be effective in the New York area.

- ***Government Tax*** – One of the principal reasons articulated by many Working Group 2 members in opposition to market-based mechanisms is that the organizations that control airport and airspace access are both monopolies and, therefore, are themselves not market-based. For this reason, pricing of airport or airspace access as proposed would operate as a government tax, rather than a market price between two private entities.

  Certain air carriers believe that congestion pricing or auctions do not address congestion, while an administrative cap does. In their view, these market mechanisms may deal with efficiency and allocation issues, but not congestion, so the market prices will amount to a significant tax on consumers.

- ***Risk of Disruption*** – One of the tenets of the ARC has been to minimize the amount of potential harm and disruption to consumers, airlines and other stakeholders. Even limited experiments with unproven techniques in the aviation industry environment could have serious negative consequences that could actually exacerbate delay and congestion in the New York region.

  For congestion pricing to be effective, the right price for airport access must be established to achieve the desired level of operations without allowing available capacity to go unused. There is risk in that the prices must be set accurately because airlines are not able to quickly modify their routes since tickets are sold well in advance and ground facilities need to be in place at the airport (e.g., baggage handling, gates, etc.).

  LaGuardia, the smallest of the three New York airports, handles nearly 30 million passengers annually and has 1,200 operations per day. Even a small disruption there could have a negative ripple effect across the national air transportation system.

NEXTOR says the same network arguments have been made in the spectrum and energy industries and market mechanisms have proven successful within a network context.

- ***International routes heavily dependent on connecting domestic passengers –*** Delta noted that it serves 33 international destinations out of JFK. These flights are not sustainable without the domestic feed at JFK. If Delta is forced to up-gauge or eliminate these feeder flights, it could make the routes nonviable because of increased costs. Delta also noted that international flight times are not always flexible. The same is true for Continental at Newark and other examples in the United States.

  U.S. air carriers are concerned that if the DOT requires domestic air carriers to pay congestion fees for slots in New York airports, but then exempts foreign flag air carriers from paying for slots (because of bilateral agreements/Chicago Convention), U.S. air carriers will be competitively disadvantaged.

- ***International banks cannot be changed in many circumstances –*** There is a narrow window of time both to leave New York for European destinations and to depart European airports to arrive in New York the same day because of the European airports' slots rules and the North Atlantic Air Traffic Control track system. Congestion pricing and auctions may not affect decisions for some international destinations because there is no flexibility in those schedules. This is also true for important domestic spokes like New York, where even a slight shift in schedules can cause misconnection in hundreds of city pairs to/from New York, both domestically and internationally.

- ***Might violate U.S. Bilateral and Multilateral Agreements –*** Auction and congestion pricing schemes would likely violate US bilateral and multilateral aviation agreements because such charges are not cost-based. For example, congestion pricing and auction charges on foreign flag air carriers from EU countries would likely violate Article 12(2) of the US-EU Open Skies Agreement because the higher FAA ATC charges on users or higher airport fees on users (if imposed by the Port Authority) would exceed the full cost of providing the relevant ATC or airport services.

- ***Fails to recognize relationship between physical assets and investments –*** Congestion pricing and auctions presume to some extent that gates, hangars, and other physical assets at an airport are interchangeable. Many airlines have invested hundreds of millions, and even billions, of dollars in terminals, gates, hangars and other facilities and would lose their investment if their slots are withdrawn.

  In addition, some airport infrastructure (gates, ticket counters, etc.) is controlled by one or more airlines or private entity at particular airports. If reallocation of operating rights is achieved through imposition of a pricing mechanism, there is no clear mechanism to ensure access of the "winning" air carrier to airport facilities controlled by the "loser." Also, there is no clear mechanism to ensure that the "loser" is compensated for use of such facilities. Additionally, other air carriers may have operations granted but no leasehold. The prospect of such forced reallocations could have a significant dampening effect on air carrier incentives to make or support such investments in the future.

It was also raised in Working Group 2 that many airlines have paid for some slots by acquiring them on the secondary market or by acquiring another airline (or its assets). If they must reacquire them, whether by auction or congestion pricing, then they will have paid twice, with the prospect of having to pay for them again at some point in the future. However, this view is not held by all Working Group 2 members because the slots that were purchased at the New York area airports were subject to the High Density Rule. When that rule expired, all slots also expired.

- ***May deter incentive for airline investment*** – It was noted that airlines with a presence in New York, as well as others, recognize that the New York area is a congested market but they are still willing to invest to meet demand of travelers and shippers for domestic and international service. Congestion fees or auctions could chill the interest and/or wherewithal of airlines to continue to invest in equipment, facilities and personnel to meet consumer demand. Any public policy that had the effect, intended or not, of dampening demand in the region could undermine many of the economic benefits for the New York City area[6].

- ***Cost to consumers*** – Auctions and congestion pricing could increase the monetary cost to travelers in the New York-metro area if, as is likely, airlines pass these market costs on to consumers. Congestion Pricing and auctions do not take in to account all four components to any congestion/delay proposals and assumes the consumers care most about delay. Only the market place can decide between competing effects to consumers of congestion, delay, airfares, and flight options. Therefore, the cost to consumers could include: (1) an increase in fares with no guarantee of delay reduction; (2) a loss of flights and service options; or (3) some combination of all of the above.

- ***Might eliminate incentive to increase capacity*** – There is concern among some members of Working Group 2 that implementing congestion pricing or auctions as the "fix" for delays will act as a disincentive to increase capacity and improve operational conditions. Further, local communities that are opposed to airport capacity expansion would argue that there is not a need to expand capacity, since the congestion problem has been solved.

- ***Potential Loss of Service to General Aviation (GA)*** – There is concern among some Working Group 2 members that implementing congestion pricing or auctions could limit GA access to the New York area airports.

- ***Potential Loss of Service to Small Communities*** – As the congestion price increases, service to small communities could decrease because there will be significant pressure on air carriers that lose slots to move slots currently used for small community service to larger, more lucrative markets. This would limit the opportunities of those in smaller communities to have reliable access

[6]http://www.panynj.gov/AboutthePortAuthority/PressCenter/PressReleases/PressRelease/Aviation_Economic_Impact.pdf

to the New York area and could also erode the hub structures formed at the New York area airports.

- ***"Economic Solution" might be laden with exemptions (e.g. small community carve-outs, GA etc)*** – Many Working Group 2 members have concerns that a congestion pricing or auction scenario would require so many exemptions to satisfy political imperatives that the underlying economic efficiencies could be reduced. The full range of potential exemptions cannot be anticipated. Such exemptions must be fully considered and undergo objective analysis for unintended consequences to operations or the competitive landscape prior to being granted. Since pricing scenarios are designed to reallocate flying from less to more "valuable" operations there was widespread agreement that service to/from small communities and general aviation service could suffer.

  For example, service to small communities often does not support service on large aircraft, therefore without exemptions from congestion fees or auction prices, service to these communities may be reduced. DOT may also need to exempt a certain number of operations for general aviation and international operations. The more exemptions there are from the fees, the more expensive the remaining capacity will be because less of the scarce resource will be available. Many airlines believe that ultimately what this means is that the vast majority of air travelers will end up paying more to travel to, from or through New York without any commensurate benefit in operational efficiency or overall system performance.

- ***Economic Disruption*** – The uncertainty caused by congestion pricing and auctions to the service of air carriers in the New York area could cause economic damage to the airlines, Port Authority and industry. Both the airlines and the Port Authority have billions of dollars of debt and other financing tied to service levels and the disruption and uncertainty these methods could cause may mean economic disaster to the industry. Additionally, many air carriers have long term leases at the New York airports that have legal liability attached and congestion pricing and auctions could cause default on these leases and in the worst case, bankruptcy.

- ***Excessive cost and burden*** – Working Group 2 members also raised concerns that implementation of a congestion pricing or auction mechanism would entail substantial costs and burdens on the industry and the government. Depending on the details of the implementation, the mechanism could significantly impact current airline scheduling practices and require investment in significant new resources to manage the new mechanism. By contrast most air carriers are already familiar with the World Scheduling Guidelines (WSG) and have available technology and personnel to manage that system without significant additional investment. If an air carrier chooses to invest in a new management tool, there are many commercial tools available in the marketplace designed to manage slots under the WSG process.

- ***Business Model Selection*** – While the focus of Working Group 2 has been on the loss of small community service, mid-size markets also run the risk of service lost. Because communities such as Louisville, Columbus, and Pittsburgh demand high

frequency service, that service is provided on regional jets. Adding more seats in already crowded markets at the expense of smaller markets is not a solution to congestion and efficiency.

- ***Potential Unintended Route Consequences*** **–** If congestion pricing or auctions were implemented at an airport like JFK, it could eventually lead to a severe reduction in domestic operations. International operations generate more revenue and passengers than domestic operations and can afford to pay more per flight. This would benefit foreign flag air carriers, which operate hubs in their homeland and would not be impacted by a reduction of U.S. domestic feed.

- ***New entrant and Limited Incumbent Air Carrier Access*** – Some believe that market mechanisms could limit competition by effectively disenfranchising new entrants and limited incumbent air carriers, who often do not have the resources of the legacy air carriers to buy the slots necessary to remain viable and competitive.

- ***Lack of a reliever airport in New York region*** – Congestion pricing/auctions assumes that air carriers will alter their "behavior." To the extent an air carrier cannot "afford" to fly to the airport, it will seek a reliever airport at which to offer service. Some believe that there are not viable reliever airports that air carriers can use and effectively serve the region because all three of the Port Authority airports are facing capacity constraints.

RESPONSES TO CONCERNS WITH USING MARKET-BASED MECHANISMS

To assist readers of this document to compare the potential pitfalls and benefits of using pricing to allocate airspace in the New York region, this section of the document highlights some of the benefits of pricing and then responds to the various arguments made in the section above in the same order they are made.

- ***Cost of Congestion*** – Working Group 2 members were concerned about the costs of congestion and the ability to address those costs in the short-term. While the FAA and the Port Authority have committed to accelerating improvements in the New York area, it is unlikely any additional capacity will significantly address congestion in the short-term. In fact, preliminary estimates indicate that even if all short-term improvements were made for JFK, delay times for 2008 would be double those of 2007 based on the additional flights planned. Pricing is being considered at New York area airports because those airports are extremely congested and there appears to be no short-term way to expand capacity to meet demand. Congestion is expensive. The New York City Comptroller has estimated that increased congestion costs travelers to New York City an additional $187 million. Reducing congestion will produce system reliability and dramatic savings for consumers. Auctions or congestion pricing would control congestion and thereby address the costs of congestion.

- ***Addressing Scarcity*** – New York airports and airspace are scarce commodities. Scarcities can be addressed by having people wait in line (current approach), politically deciding who wins and who loses (slot controls), or pricing the scarcity and allowing the market to make allocations. While many Working Group 2 members raised a number of concerns about pricing, it is important to remember that other approaches to congestion (scarcity) have elements that are raise concerns.

- ***Pricing Avoids Hazards of Congestion and Administrative Rule*** – Some Working Group 2 members noted that primary and secondary market pricing allows for greater flexibility in responding to market changes than administrative rules, such as the High Density Rule (HDR), because the government would not determine how 100% of the slots would be allocated (since the market would dictate which air carriers operate).

- ***Track record in aviation*** – Some members of Working Group 2 noted that congestion pricing has been used effectively in the United States. In fact, the Port Authority currently charges a nominal congestion fee. These fees were initially effective changing behavior by shifting much of the general aviation seeking to land at their airports other than the most congested airports.[7]

  Working Group 2 agreed that the aviation industry was very complex and the dynamics at work are not exactly the same as other industries in which pricing has worked. However, some members of Working Group 2 did not agree that aviation was so unique that pricing was unworkable. It was noted that every private industry uses pricing as a mechanism to address demand. Even in aviation itself, ticket prices are adjusted based upon the supply of and demand for certain routes, with lower prices used to stimulate demand during specific times of the day.

- ***Government Tax*** – Working Group 2 discussed how the proceeds of pricing might be spent. The point was made that if they were deposited by the Port Authority or the FAA into a general revenue account, the proceeds would appear to be a tax. Concerns lessened if the proceeds were dedicated to expanding capacity and funding specific projects at the airports.

- ***Risk of Disruption*** – One of the tenets of the ARC was to avoid addressing congestion by a means that would be overly disruptive. Working Group 2 discussed that auctions, in an aviation context, could be less disruptive than congestion pricing because auctions have more stability in the quantity/assets being offered.

- ***Impact of Pricing on Business Models*** – Some Working Group 2 members expressed concern that pricing would favor or disfavor certain business models. Some members of Working Group 2 expressed concern that network air carriers would be able to spread the costs of pricing across more flights and as a result

[7] One ARC member noted that there has been million of dollars of capital investment in the airport over the past decade and this may have been likely to influence GA as well.

point-to-point air carriers would be disadvantaged. Other members expressed concern that hubs air carriers would have to pay prices on more flights and that they would be disadvantaged. The point of pricing is to use the market to affect behavior and create a system in New York that is more efficient and has less congestion.

- ***International "banks" of operations cannot be changed in many circumstances –*** Working Group 2 members with international flights were concerned that pricing would be ineffective because those flights are so valuable that air carriers cannot afford to move them and are effectively a captive market. For this reason, non-international air carriers were concerned that they would not be able to afford a slot during peak times for international operations. Again, pricing will affect behavior and will change the market in New York to one that is more efficient. If there are policy concerns about domestic operations in such an environment, they can be addressed by other government actions. However, those actions would have their own impacts (*see* Economic Solutions in the section "Concerns With Using Congestion Pricing or Auctions" on page 34 of this report).

- ***US Bilateral and Multilateral Agreements –*** Working Group 2 members agreed that the adoption of any pricing needs to take into account international agreements. However, those actions would have their own impacts (*see* Economic Solutions in the section "Concerns With Using Congestion Pricing or Auctions" on page 34 of this report).

- ***Relationship between physical assets and slots –*** Working Group 2 members discussed the need to make sure that the rights to operate in the airspace were matched with the appropriate resources needed on the ground. If pricing is applied in New York, bidders will need to make arrangements for the appropriate surface infrastructure, just as they had to under non-auction schemes – including both the High Density Rule or the IATA allocation system. There were concerns that the amount of slots auctioned could make a difference.

- ***Relationship between pricing and prior investments –*** Many Working Group 2 members have made significant investments in the New York airports and concerns were raised that pricing would require them to pay twice to access the airports. It was suggested that any pricing mechanism include the ability to adequately compensate those air carriers who have invested in financing infrastructure and building networks.

- ***Incentive for airline investment –*** Working Group 2 discussed the lack of certainty pricing may create and the willingness of airlines to invest in airports. Pricing based on a limited life to the asset may change behavior in investment, but it will allow the market to determine what are the best investments. Pricing by the Port Authority could create a revenue stream that could be used for infrastructure investments, including projects that would avoid competitive issues of airlines having exclusive use of airport property. If done by the Federal Government, it could create a revenue stream that could help grow capacity, through faster

implementation of the Next Generation Air Transportation System. Some in the group are concerned that it raises additional complex issues.

- ***Cost to consumers*** **–** Many of Working Group 2 members expressed concern that pricing would increase costs to consumers. Some Working Group 2 members pointed out that pricing just makes the costs consumers already pay transparent and gives them the ability to avoid the higher costs by traveling during less congested periods. When scarcity exists, consumers pay higher costs. In the case of aviation, those costs are paid by in terms of wait times, higher fares due to slot controls, or as a result of pricing. Only the last option provides consumers the choice of avoiding higher prices.

- ***Eliminates incentive to increase capacity*** – Although FAA and the Port Authority have both agreed to focus on expanded capacity, some Working Group 2 members believe that implementing congestion pricing or auctions as the "fix" for delays will act as a disincentive to increase capacity and improve operational conditions. On the other hand, some Working Group 2 members noted that higher prices can also serve as an incentive to expand capacity since airlines will have a direct incentive to expand capacity so prices drop. It can be argued that the prospect of lower prices serve as a greater motivator than reduced wait times. If new capacity is priced, new capacity would be incentivized.

- ***Potential Loss of Service to Small Communities*** **–** Working Group 2 discussed small community service at some length. Some were concerned that pricing would drive less profitable but highly valued service from the airports. Others expressed concern that small community exemptions would distort the market and mitigate the policy benefits of pricing. One air carrier noted that congestion pricing or auctions may not reduce service for small communities if they have relatively high fares or the passenger flows contribute significantly to an airline's larger network

- ***Excessive cost and burden*** **–** Some members of Working Group 2 considered including pricing as part of any World Scheduling Guideline regime that would be implemented in New York. Any pricing regime should be neither excessively costly or burdensome.

- ***Disruption, Business Model Selection and Potential Unintended Route Consequences*** **–** Some Working Group 2 members expressed concerns about the impact pricing will have on existing airline operations. Others noted that the inefficiency of current operations is one of the reasons to implement pricing. History has demonstrated repeatedly that market pricing will encourage innovation and drive efficiency.

- ***Lack of a reliever airport in New York region*** – The Port Authority has just purchased a lease for Stewart Airport for the express purpose of providing a reliever airport in the New York region. Pricing could help incentivize its use to help control congestion at the other New York airports.

POLICY ISSUES TO BE CONSIDERED WHEN USING AUCTIONS OR CONGESTION PRICING

Working Group 2 had several conversations regarding the policy implications of using auctions or congestion pricing. Many of these policy considerations are relevant to not only market clearing solutions, but also to administrative solutions. The primary issues for consideration are:

- ***New Entrant Air Carriers*** – In a slot-constrained environment new entrants and limited incumbents often have a difficult time obtaining slots to begin or expand service at the airport. On the other hand, some new entrant air carriers have successfully developed service over time at LaGuardia and JFK. In determining policies about new entrant air carriers, it is important that government policies are reevaluated regularly in light of evolving market and competitive realities.

    - It was pointed out that the Buy-Sell Rule had 5% of slots set aside, upon its establishment in 1985, for the purpose of providing new entrants and limited incumbents an initial base of slots to aid their entry in the market. When DOT granted 75 slot exemptions to JetBlue at JFK in 1999, it determined that exclusive reliance on the Buy-Sell Rule was not practical given the scope of proposed operations. In 1998, DOT granted America West 5 slots at O'Hare after the air carrier could not secure additional slots through the secondary market. And in 1997, DOT granted 21 slots to Frontier, ValuJet, and AirTran at LaGuardia, rejecting arguments from larger, incumbent air carriers that new entrants and limited incumbents should grow only through the Buy-Sell Rule.

      Historically the government has not relied exclusively on secondary markets to preserve new entrant and limited incumbent access to slot controlled airports, citing concerns about barriers to competition.

    - On the other hand, some air carriers assert that preferences for new entrants and limited incumbents in the HDR and associated legislation were enacted during a time when government policy was concerned with the ability of new entrant air carriers to compete effectively. However, the industry has experienced a dramatic change in structure that began in 2000 and is continuing. Today, the U.S. domestic airline industry is more competitive than at any time in history. Some Working Group 2 members submit that "hub fare premiums" which were a significant issue in the 1990s have been reduced. Low cost air carriers (LCC) now drive industry growth and fare levels. Network air carriers no longer dictate the terms of domestic competition. High levels of competition and the continuing evolution of the industry in favor of the LCC business model suggest that government intervention to assist new entrant and low cost air carriers may no longer be justified on the grounds of promoting competition.

- ***Small Community Service*** – As described in the section above, service to small communities is often on regional jets. A pricing scenario may make operations on such aircraft impractical (because the cost would only be spread among a few passengers). Therefore, service to these small cities may be at jeopardy. Under the High Density Rule Congress made carve-outs for service to small communities. Any solution for the New York area will likely need to consider whether provisions should be made for preserving service to small communities.

- ***International Operations*** – Some are concerned that if DOT requires them to pay congestion fees for slots in New York airports, but then exempts foreign flag air carriers from paying for slots (due to bilateral agreements/Chicago Convention), they will be competitively disadvantaged. On the other hand, foreign flag air carriers are concerned that slot auctions or congestion pricing schemes would violate U.S. bilateral and multilateral agreements.

- ***General Aviation*** – The ARC discussed the impact of general aviation on the New York airspace. While there was disagreement over the impact general aviation had on congestion, FAA data shows that nonscheduled, noncommercial operations are a very small percentage of the operations at JFK, LaGuardia, and Newark. In previous allocations at overscheduled or capacity constrained airports (O'Hare, JFK, LaGuardia, and Reagan National), a small number of slots has always been available to General Aviation. Some Working Group 2 members believe that nonscheduled, noncommercial operators must have access to all airports. Other members expressed concern that GA was an inefficient use of very scarce airspace, which has an effect on New York airports.

- ***Congestion Fee Revenues*** – Operators are concerned about where revenues from auctions or congestion pricing would go and how they would be used. If such policies were implemented, Working Group 2 members feel strongly that the revenue should be used for airport capacity expansion projects and aircraft equipment needed to realize the benefits of capacity-enhancing airspace management technology.

- ***Life of auction/congestion pricing slots*** – One of the issues involved in pricing is the term of the right granted the air carrier to use the airspace. Market-based concepts proposed in the ARC would only grant operating rights for a limited time. The LaGuardia NPRM proposed operating authorizations with a ten-year lifespan. Some members of Working Group 2 considered this to be overly disruptive and a radical departure from slot regulations internationally, which have always been based on the perpetual right to operate a flight so long as certain requirements (such as minimum usage) are consistently met. Other members of Working Group 2 considered limited terms to be an essential element in ensuring competitive access to airports.

- ***Auctions of New Capacity*** – Some Working Group 2 members wanted to make a clear distinction between auctions for allocating historic slots and "new" capacity. They noted that network interdependencies have not yet been formed on "new" slots and investments in airports and routes would be preserved if historic slots are not put up for auction. One clear advantage of this approach is that government would have an incentive to create capacity.

  Other members commented that as additional capacity comes on-line and total hourly authorizations increase, restoration of historic rights should not come at the expense of low fare competition. Defining "new capacity" may become controversial since some incumbent airlines have reduced schedules at one or more New York area airport. Meanwhile, new entrant and limited incumbents believe they should be allowed to draw slots from the unallocated pool.

- ***Vibrant Secondary Markets*** – Working Group 2 spent a fair amount of time discussing secondary markets in an administrative context and whether they represent a better market-based measure for aviation. Several Working Group 2 members agree that London's Heathrow Airport has just recently seen an effective secondary market and could serve as a model. The key features of that secondary market that that they believe make it successful are (i) an open market for the trading of slots with no limits on consideration; (ii) daily publication of all slot holdings; (iii) consistency with the IATA WSG; (iv) facilitation by an independent entity, Airport Coordination Limited (ACL), subject to approval and monitoring by the UK Government; and (v) no exemptions exist.

  Other members do not agree that the Heathrow secondary market has provided meaningful opportunities for participation by new air carriers because there has been very little new entrant competition at Heathrow, with only two of 21 new entrants over the past five years holding sufficient slots to operate at least two daily roundtrip flights.

- ***"Blind" vs. Transparent Auctions and Secondary Markets*** – Some Working Group 2 members argued that there should be a "blind" market and assert that a truly "blind" auction and billboard mechanism, similar to those under the final rule on congestion and delay reduction at O'Hare, are essential ingredients of a successful auction system. Such provisions are necessary to decrease the likelihood smaller air carriers will be shut out of the process, particularly where a smaller air carrier hopes to directly compete with the incumbent slot holder. Other members express concerns that blind markets do not work because they do not easily allow for non-cash compensation and air carriers will resist giving up a slot unless they have some understanding of how that will affect competition.

- ***Other Potential Limitations on the Market*** – If an auction or congestion pricing scheme were adopted where historic rights are not grandfathered, there could be an impact on the airlines' investment at the airport(s), causing them to default and pose a burden on the Port Authority finances.

- ***There is not a "one size fits all" solution for the New York area Airports –*** Some Working Group 2 members have pointed out that the characteristics of JFK, LaGuardia and Newark are different and a solution for one airport may not be appropriate for another airport. For example, the Port Authority notes that there is a different need at different airports to protect small community service.

- ***Legal Issues –*** Some Working Group 2 participants question the authority of the DOT to implement market-based mechanisms without new, express statutory authority. The Air Transport Association submitted a legal analysis that concludes the DOT does not have the necessary authority[8]. Other members believe DOT has statutory authority to implement an auction, including the authority to collect and dispose of auction proceeds.

  In addition, IATA and foreign airlines have taken the position that pricing schemes based on resource scarcity rather than actual costs of providing airport and/or air traffic services would contravene bilateral agreements and the Chicago Convention. These legal issues would need resolved before taking action.

[8] Memorandum dated November 14, 2007, from Theodore B. Olson, Gibson, Dunn & Crutcher to David A. Berg, Air Transport Association.

WORKING GROUP 3 — GATE UTILIZATION AND PERIMETER RULE

INTRODUCTION

Working Group 3 of the New York Airspace Aviation Rulemaking Committee (ARC) was tasked with reviewing The Port Authority of New York and New Jersey's (Port Authority) gate management proposal for LaGuardia and also considered the LaGuardia Perimeter Rule, as well as a proposal submitted by U.S. Airways to eliminate or revise the Perimeter Rule. The group held an initial meeting and a number of telephone conferences, and reviewed draft documents distributed by email to try to achieve consensus. While the group did not arrive at a common, consensus view on the major issues, the discussion developed detailed information and a list of issues for future consideration of the two proposals. The group report summarizes that information and comments made by Working Group 3 members.

ISSUES REGARDING THE PORT AUTHORITY'S LAGUARDIA PROPOSED GATE LEASING POLICY

Background

LaGuardia runway capacity cannot accommodate the number of flight operations to meet demand without significant congestion, resulting in delayed and cancelled flights at LaGuardia and at airports within the national airspace system whose flights serve LaGuardia. However, LaGuardia, has the ability to accommodate additional capacity, if throughput is maximized. The geographic and physical constraints of LaGuardia preclude the construction of increased runway capacity. As distinguished from JFK, the physical layout of LaGuardia is limited, and additional capacity at the airport is only possible if throughput is maximized. The FAA, under its statutory authority to regulate the use of the navigable airspace of the United States (§ 40103(b) of Title 49, United States Code (49 U.S.C.)), has limited the number of flight operations at LaGuardia. The FAA capped operations and allocated slots to air carriers serving the airport pursuant to the High Density Rule (HDR). (See subparts K and S to part 93 of title 14, code of Federal Regulations (14 CFR).) The HDR defines a slot as the "operational authority to conduct one instrument flight reservation landing or take-off operation each day during a specific hour or 30 minute period" (14 CFR § 93.213). Congress terminated the HDR at LaGuardia, effective January 1, 2007 (49 U.S.C. § 41715(a)(2)).

In December 2006, by Final Order, the FAA adopted temporary caps on flight operations at LaGuardia (Operating Limitations at New York LaGuardia Airport; Notice of Order (71 FR 77854; September 27, 2006)). These caps were intended to avoid severe congestion-related delays that would occur without a regulatory limit on flight operations. The Order also sought to maintain the status quo of flight operations at the airport, permitting 75 scheduled and 6 unscheduled flight operations per hour between 6:00 a.m. and 9:59 p.m., Eastern Time, Monday through Friday, and from 12:00 noon through 9:59 p.m., Eastern Time, on Sundays. Under the Order, the FAA assigned an operating authorization (OA) to conduct a scheduled arrival or departure at LaGuardia to the air carrier holding the equivalent slot or slot exemption authority. The Order requires each

air carrier to use its OA at least 80 percent of the time over a two-month period or the OA will be subject to withdrawal by the FAA. Further, the Order empowers the FAA to reallocate withdrawn, surrendered, or unassigned OAs by lottery.

On August 29, 2006, the FAA also proposed to retain limits on flight operations at LaGuardia, encourage service to LaGuardia using larger aircraft, and develop a system of temporary OAs to facilitate competition and provide a foundation for a possible eventual market-based approach to OA allocation (Notice No. 06–13, Congestion Management Rule for LaGuardia Airport; Notice of Proposed Rulemaking (71 FR 51360)). The FAA has not yet issued a final rule.

Port Authority of New York and New Jersey's Proposed Gate Leasing Policy

The Port Authority operates the three major commercial airports serving the New York City area, including LaGuardia. The Port Authority proposes a system under which the FAA would retain the cap of 75 scheduled hourly operations at LaGuardia, and the Port Authority would allocate the 75 scheduled hourly operations to air terminal gates. The Port Authority believes it could match optimal aircraft size to gate positions by monitoring gate usage and reallocating a percentage of gate reservations. Under its proposal, the Port Authority would allocate the operations through a system of gate reservations, assigning one gate reservation per hour at each of its 75 gate positions at LaGuardia. The Port Authority indicates that its gates are not uniform — meaning some gates may not accommodate larger aircraft and many of its terminals have gates and associated landside infrastructure of significantly different capacities. The Port Authority calls its proposal a "right-sizing" proposal in which aircraft are matched to gates and associated infrastructure.

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 use it or lose it policy would require that each gate reservation be used at least 90 percent of the time during a three month period, subject to recapture by the Port Authority. The aircraft seat size requirement would have the Port Authority, in consultation with the Gate Management Advisory Committee (composed of Port Authority officials and signatory airlines), establish a target activity level that is 80 percent of the average maximum number of seats per passenger aircraft for each gate position category, and would recapture gate reservations that were used below that target activity level. Under the annual reallocation policy, the Port Authority anticipates that it would recapture 3 percent of the gate reservations every three years (if not already reallocated as a result of methods 1 and 2 above) to be reallocated to the air carrier(s) proposing to use the largest aircraft in terms of seats, and in the event two or more interested air carriers propose the same size aircraft, preference would be given to a limited incumbent.

The Port Authority states that its proposal is not designed to enhance revenues. The Port Authority intends to negotiate the new gate leases as the existing leases come due.

The Port Authority also proposes 8.5 gate positions, amounting to 136 gate reservations, to be set aside for small community service subject to use it or lose it and to a target activity level of 40 seats. The Port Authority states that its proposal is evolving and that it would conform to the Department of Transportation's small community service objectives. In the past, the FAA has set the parameters for required small community service, and the Port Authority's proposal contemplates that the FAA would select the communities that would receive the small community service.

For purposes of the aircraft seat size and target activity level requirements, the Port Authority proposes three categories of average aircraft maximum seat size:

1. Category II aircraft (70 seats),
2. Category III aircraft (120 seats), and
3. Category IV aircraft (200 seats).

Category IV aircraft would be required at 21 gate positions (2 in CTB–A/B, 6 in CTB–C/D, 8 in East End Terminal, and 5 in Delta Terminal 3). Category III aircraft would be required at 39 gate positions (10 in CTB–A/B, 7 in CTB–C/D, 4 in Marine Air Terminal, 5 in East End Terminal, 8 in US Airways Shuttle, and 5 in Delta Terminal 3). Category II aircraft would be required at 15 Gate Positions (2 in CTB–A/B, 9 in CTB–C/D, 2 in East End Terminal, and 2 in Delta Terminal 3).

On May 15, 2007, the FAA chief counsel, by letter, informed the Port Authority's director of the aviation department that the FAA has not acquiesced in the Port Authority's approach regarding gate utilization at LaGuardia and that the aviation industry should be aware that the Port Authority had not coordinated the gate leasing policy with either the FAA or the Office of the Secretary of the Department of Transportation. The letter went on to advise that the FAA would review the merits of the Port Authority's proposal to determine whether any legal obstacles, including but not limited to federal preemption, would preclude or require modification of the draft gate leasing policy.

The Port Authority states that its proposal was never intended to be anything beyond the starting point for a traditional airport operator-airline negotiation, and as such it was never contemplated that the proposal required federal review.

Member Comments in Response to the Port Authority's Proposed Gate Leasing Policy

Two air carrier associations and one air carrier oppose the Port Authority's proposed gate leasing policy.

One of the air carrier associations believes that there are a number of problems with the Port Authority's proposal, including violations of federal preemption, the Airline Deregulation Act, federal non-discrimination requirements, and federal rates and changes principles. Some of its member airlines are concerned that the financial results of the proposed gate leasing policy will be more costly to them than the current gate leases. It

also questions whether the Port Authority will assess on the airline lessee an additional valuation on the gate reservation itself, on top of the normal rates and charges assessed by the Port Authority. The association members question whether the Port Authority is actually regulating the airport, selling "slots" (under the name of gate reservations), and incorporating this value into the lease rate. They are also concerned with the potential ramifications of other airports adopting this type of gate leasing policy.

Some of the association's member airlines also question whether the proposed gate leasing policy will truly be negotiated or just categorically imposed on the airlines. They are concerned about consequences of not agreeing to the new lease terms or the ability of their fleet to fit the assigned gate. The association questions whether the New York ARC is the appropriate forum to discuss gate leasing terms.

This air carrier association points out what it perceives to be major legal obstacles to a system they say transfers excessive powers to the Port Authority. It asserts that the proposed gate leasing policy—

- Functions as an airspace management system, which would be preempted by the FAA's sole and exclusive authority over navigable airspace under 49 U.S.C. § 40103(b).

- Regulates routes and services, contrary to the preemption provision of the Airline Deregulation Act of 1978 (49 U.S.C. § 41713(b)(1)).

- Involves the Port Authority in airline scheduling decisions.

- Potentially generates excessive fees for the Port Authority (because of the bundling of the operating authorizations and gates), which the Port Authority could divert to non-airport uses to the detriment of the airlines. (The Port Authority is grandfathered from compliance with certain revenue use requirements under 49 U.S.C. § 47107(b)(2).)

- Potentially charges airlines for airspace use, thereby taxing airlines twice.

- Unjustly discriminates among air carriers by requiring different conditions of gate usage for the same class of air carriers that gives an advantage to air carriers operating at gates accommodating larger aircraft and discounts individual air carrier fleet mix, scheduling and flight crew issues, and other operational and financial considerations. (Reasonable, not unjustly discriminatory access to gates is required by 49 U.S.C. § 47107(a) and grant assurance No. 22.)

- Is onerous and arbitrary.

- Unjustly discriminates in favor of limited incumbents by recapturing 3 percent of gate reservations for reallocation to limited incumbents.

- Unjustly discriminates in favor of airlines providing service to small communities by exempting small community service from gate recapture provisions.

- Makes the Port Authority the de facto lessor of both gates and slots, raising the significant potential of a major revenue windfall for the Port Authority, which is exempt from diversion of revenue to off-airport projects.

- Lacks a safety need on the part of the Port Authority.

- Violates the Airline Deregulation Act because the commercial decision that the Port Authority seeks relates to airline prices and services.

- Is a pretext for dictating service and markets.

- Lacks an analysis of whether upgauging would increase the efficient use of air traffic capacity or terminal facilities.

- Lacks an acknowledgement that policy may not apply to some gates that are related to unit terminal facilities whose leases may not expire soon or are dependent on underlying bond issues.

- Unreasonably burdens air carriers by requiring desired levels of operation rather than negotiated levels based on actual operations.

- Lacks provisions for airline concurrence.

This association also states that there is no statutory authority that grants the Port Authority the right to impose its proposed gate leasing policy. It recommends that any consideration of the gate leasing proposal revoke the Port Authority's revenue diversion exemption and require the Port Authority to charge no more than fair and reasonable rates.

The other association opposing the Port Authority's proposed gate leasing policy, an association of regional air carriers, states that it believes the marketplace currently right-sizes the aircraft at LaGuardia. It further states that the airlines design their operations to fit the market, not the gates. This association asserts that the Port Authority should not substitute its approach for marketplace regulation because—

- The existing FAA rules for LaGuardia were implemented to manage airspace constraints. The gate leasing proposal does not address the original justification for the current operating constraints at LaGuardia.

- By forcing the use of types of equipment, there is a strong potential that service to many existing communities will be jeopardized.

- It should not be taken as a given that upgauging offers a public benefit. To the extent it results in fewer flights or substitution of long-haul flights for short-haul, it will reduce or eliminate service to some communities, large and small. It also presupposes that upgauging will reduce delays and congestion.

The air carrier that opposes the Port Authority's proposal claims that it—

- Regulates competition at LaGuardia under the guise of a legitimate function — congestion management for the FAA and facilities management for the Port Authority.

- Imposes a central planning mechanism to replace the free market.

- Imposes an unnecessarily complex and unworkable regulatory and operational regime on the industry.

This air carrier also states that neither the FAA nor the Port Authority have authority from Congress to supplant competitive market forces. It provides an extensive analysis showing that competition is thriving at LaGuardia and there is no economic need for the Port Authority's proposal.

This entire comment is provided in Appendix E to this report.

A different air carrier and air carrier association support the Port Authority's proposed gate leasing policy. The supporting air carrier states that it disagrees with much of the opposing air carrier association's legal analysis and criticism of the Port Authority's proposal. This air carrier states that it is common airport practice for the airport to exert control over gate usage and allocation and that the Port Authority proposal is not unusual.

This air carrier also stated:

- It believes the proposal is consistent with the goals of the New York ARC in terms of addressing congestion as well as promoting competition and improved utilization of scarce resources.

- The Port Authority proposal shares the same objectives as theoretical congestion pricing models, i.e. better utilization of scare resources, though this proposal has basis in actual experience of multiple U.S. airports, large and small, where common-use requirements are applied to gates and other facilities in order to maximize efficiency, competition and consumer benefit.

- Congestion is both an airside and landside issue and must be considered together. The Port Authority proposal intends to link the two and create efficiencies that are entirely consistent with the FAA established limits on airspace operations.

The other air carrier association that supports the Port Authority's proposal states that it feels that the opposing air carrier association's response disregards the many benefits of the proposal. Furthermore, it believes that the FAA has the authority under 49 U.S.C. § 40103(b) to create specific regulations that would mandate certain usage requirements or to grant the Port Authority the power to manage flight activity at LaGuardia.

Pros and Cons of the Port Authority's Proposed Gate Leasing Policy

After discussing the Port Authority's proposed gate leasing policy, Working Group 3 compiled a list of pros and cons related to the proposed policy. The following list of pros and cons reflect comments offered by Working Group 3 members and, in some cases, the views of the Office of the Secretary of Transportation (OST) staff.

Pros

- Potentially enhances efficient utilization of gates;
- Potentially maximizes passenger throughput and promotes upgauging;
- Could be implemented in a manner transparent to airlines serving the airport;
- Potentially facilitates opportunities for competition, and contains provisions designed to accommodate new entrants;
- Avoids additional congestion and delays by adhering to the Federal cap on flight operations;
- Attempts to support utilization measures consistent with market demand.
- Designed to reflect airline investment in facilities.
- Allocation changes would be evolutionary, and should be minimally disruptive to airline schedules.

Cons

(Note: some 'cons' assume the gate allocation mechanism would replace federal allocation of operating rights rather than be used as a complementary overlay on a federal allocation.)

- Potentially replaces federal allocation procedures, which would be subject to public notice and comment, with local allocation;
- Potentially replaces individual airline marketplace decisions on optimal seat size at LaGuardia with committee recommendations;
- May adversely impact airline business opportunities and airline schedules out of LaGuardia;

- May not align local political considerations with federal policies and requirements with respect to interstate air transportation;
- Potential feasibility depends on termination or amendment of existing leases;
- May depend on an operating authorization hourly cap matching the number of LaGuardia gate and hardstand positions.
- If imposed by ordinance rather than negotiation, may raise issues of consistency with federal statutes relating to preemption, airline deregulation, and AIP grant assurances.
- Methodology for pricing of gate access is unclear.
- Could adversely impact existing airline investment in facilities.

ISSUES REGARDING THE LAGUARDIA PERIMETER RULE

Background

The Port Authority operates the three major commercial airports serving the New York City area: JFK, Newark, and LaGuardia. Under Port Authority stewardship, these airports have been operated as a unified system. Since the 1950s, the Port Authority has had a perimeter rule in effect at LaGuardia, the smallest of the three airports. Until 1984, the Perimeter Rule was informal and prohibited non-stop flights into or out of LaGuardia to or from points more than 2,000 miles from the airport. In 1984, following a study, the Port Authority instituted a formal 1,500-mile Perimeter Rule but grandfathered service to Denver, which is more than 1,600 miles from LaGuardia (and allows unrestricted beyond-perimeter flying on Saturday). In the past, the Port Authority has stated that it "believes that business travelers create considerably less airport congestion than vacationers" and instituted the Perimeter Rule "to encourage the use of LaGuardia by business people, who often make relatively short trips, and the use of Newark and Kennedy for vacation flights."[9]

The perimeter rule is a local regulation adopted under the Port Authority's proprietary authority, and has been upheld by the U.S. court of appeals. The Port Authority has no current plan to eliminate or revise the LaGuardia Perimeter Rule.

[9] Delta Air Lines, Inc. v. Port Authority of New York and New Jersey, No. 87–333, U.S. Supreme Court, October 1987.

The Relationship Between the Perimeter Rule and Congestion Management

Because it is not clear whether any change to the Perimeter Rule would help to eliminate congestion at LaGuardia, most of the Working Group 3 participants have questioned the relevance of discussing the Perimeter Rule in an ARC focused on relieving congestion in the New York area airports in general, and at JFK in particular. However, the DOT noted the following reasons for including the Perimeter Rule in a congestion forum:

- A discussion of the Perimeter Rule is important if the ARC is to take a holistic approach to congestion in the New York region. Several ARC participants have argued that the region is like a balloon — when pressure is applied in one half, the other half expands.

- Eliminating or easing the Perimeter Rule could encourage upgauging, with the potential to increase passenger throughput without increasing operations. This in turn would result in more efficient utilization of a scarce resource.

- The Perimeter Rule inhibits airlines of all types serving more than one New York airport from optimizing their services to the New York region. This effect could be further exacerbated by either scheduling caps or other measures designed to reduce congestion in the New York region. For example, if schedule reductions (or other congestion management tools) are implemented at JFK, air carriers may not be able to adjust their services to the New York region as effectively as they could have in the absence of the Perimeter Rule because the Perimeter Rule limits the changes they can make to their service patterns.

The DOT would not support any change to the Perimeter Rule that would have an adverse effect on congestion at LaGuardia. The DOT would consider any and all operational effects of a proposed change to the Perimeter Rule, and any change considered would be structured to avoid adverse effects.

Consideration of the Elimination or Easing of the LaGuardia Perimeter Rule

Working Group 3 was tasked generally by the DOT with considering the idea of eliminating or revising the LaGuardia Perimeter Rule. The Port Authority participated on Working Group 3, but noted its position that the New York ARC was not an appropriate forum to discuss the Perimeter Rule. Working Group 3 also discussed a specific plan for revising the rule that U.S. Airways presented.

Working Group 3 Comments

Two air carriers and an air carrier association also oppose discussing the LaGuardia Perimeter Rule in the context of this ARC.

One of the air carriers states that the Perimeter Rule is neither the cause of, nor the solution to, the delays plaguing New York area airspace, and further states that before the HDR was repealed, the Perimeter Rule's existence did not result in unacceptable levels of congestion in New York. It attributes the recent decline in dependability at all three major New York airports to unfettered expansion at JFK after the HDR's slot restrictions

were eliminated. Therefore, this air carrier believes that it makes no sense to look to LaGuardia's Perimeter Rule to solve a problem caused by another source at another airport. The air carrier provided a set of graphs showing the change in flight operations at the New York area airports from 2004 to 2007, which are provided in Appendix E to this report.

This air carrier also states that some participants in the ARC have argued that the Perimeter Rule is relevant to the ARC because beyond-perimeter service would be operated with larger aircraft, thus increasing the average number of seats flown by aircraft operating at LaGuardia. The air carrier agrees that the average aircraft size at LaGuardia is partially a function of the nature of the markets served. However, it states that another cause for the decline in the number of seats per departure at LaGuardia is the recent growth of total seats at JFK, and believes that if schedule reductions at JFK are imposed, and slot controls reimposed on JFK, a natural byproduct will be increased aircraft size at LaGuardia. The air carrier recommends that the ARC focus on time-tested solutions to congestion, such as the IATA Worldwide Scheduling Guidelines, rather than what it believes to be complex and speculative proposals that are made for certain air carriers' competitive advantage.

Another air carrier states that it does not support changing the Perimeter Rule and believes that further consideration of the issue should be undertaken only if the proposed change can be shown to reduce the unacceptable level of delays that airline operations and customers experience at LaGuardia. In support of its position, this air carrier states the following:

- The FAA and Port Authority have stated that elimination of the Perimeter Rule would decrease the number of flights that could be operated at LaGuardia because long haul B–737 and A320 aircraft require special obstacle clearances, and increased B–757 operations would require enhanced separation standards.

- With LaGuardia currently experiencing significant delays, lifting the Perimeter Rule would make the situation worse.

- Beyond-perimeter flights would have to be funded from existing within-perimeter service, which suggests that those in favor of eliminating the rule admit that at least a portion of their current services are dispensable;

- Air carriers with surplus slots should not be given new ways to utilize them when the airport remains seriously delayed and when demand for within-perimeter services exceeds supply;

- If there currently are superfluous flights at LaGuardia, the FAA and DOT should identify them and decide whether the public interest would be better served by reallocating those slots to other air carriers or consolidating existing services on larger aircraft so the traveling public can enjoy meaningful delay reduction;

- Potential beyond-perimeter air carriers have multiple within-perimeter hubs that could access beyond-perimeter markets;

- The Perimeter Rule is the Port Authority's local rule, which was successfully defended against judicial challenge.

The opposing air carrier association believes that any proposals related to the Perimeter Rule should not be a part of the ARC. However, it states that if the Perimeter Rule is to be considered, it opposes the elimination of the Perimeter Rule for the following reasons:

- Eliminating the Perimeter Rule would not reduce congestion and delay, which is the goal of the ARC;

- Any actions taken must promote, rather than limit competition, and eliminating the Perimeter Rule would allow legacy air carriers to further dominate LaGuardia;

- Some air carriers state that eliminating the Perimeter Rule would allow them to fly larger aircraft at LaGuardia. However, those air carriers could fly larger aircraft now. Approximately 50 percent of existing operations at LaGuardia are operated by regional jets and many are to medium and large markets;

- Eliminating the Perimeter Rule would inhibit competition as it would only benefit a few air carriers;

- The ARC should focus first on addressing delay and congestion, and then on taking steps to enhance competition at LaGuardia (withdrawing and redistributing slots), before it considers Perimeter Rule actions.

A third air carrier that was not a member of Working Group 3 also opposes the ARC even looking into and exploring the merits of the LaGuardia Perimeter Rule, stating that it is something wholly separate from the stated mission of the ARC. This air carrier further states that the Perimeter Rule should be maintained and not repealed in whole or in part at LaGuardia until the numerous slot-holding air carriers are able to endure some competition. In addition, this air carrier states that it has been unable to obtain any slots at LaGuardia on the free market, and as the largest air carrier at JFK, it finds it disturbing that it cannot operate more than eight daily roundtrip flights at LaGuardia.

A different air carrier disagrees with the others and believes that a discussion of the Perimeter Rule should be part of the ARC because it addresses congestion management. This air carrier believes that repealing the Perimeter Rule will enhance competition at LaGuardia and throughout the New York region. This air carrier also responded specifically to comments made by the other air carriers and the air carrier association.

In response to the comment regarding the use of larger aircraft and increased separation standards, this air carrier states that certain aircraft types smaller than the B–757 should have no problem operating from LaGuardia to points beyond the Perimeter Rule in regards to obstacle clearance. [Note: FAA ATC staff indicated that some models of

smaller aircraft sometimes do require use of the nonstandard runway at certain loads and stage lengths, although this is the exception]. This air carrier further states that this is not a Perimeter Rule issue because airlines currently schedule aircraft types that have problems clearing certain obstacles requiring a non-standard operation at the airport today. It believes that changes to the Perimeter Rule could be structured to ensure that new operations are performed by capable aircraft only so that nonstandard operations do not increase over current levels. It also states that these smaller aircraft have no increased separation requirements so they would not be the cause of more congestion on the field and, when combined with the proposed requirement to use 2 slots (Alternate Perimeter Rule Proposal discussed below), could measurably reduce congestion on the field.

In response to the comment regarding funding of beyond-perimeter flights from existing within-perimeter service, this air carrier states that air carriers should not have artificial restrictions on their ability to operate to any point because such restrictions reduce airline management's ability to maximize utilization and efficiency. It further states that proposed capacity restraints at JFK make a change to the Perimeter Rule all the more imperative for airlines and consumers in 2008.

In response to the comment that air carriers with surplus slots should not be given new ways to utilize them while demand for within-perimeter services exceeds supply, this air carrier states that the ARC is about congestion management, including maximizing throughput, and not about adding new flights and further states that the Alternate Perimeter Rule Proposal (discussed below) maximizes potential throughput of passengers at the airport.

In response to the comment that potential beyond-perimeter air carriers have multiple within-perimeter hubs that can access beyond-perimeter markets, this air carrier states that not all air carriers can serve all points in their network from within-perimeter hubs because some air carriers have no hubs within the perimeter and other air carriers cannot link their international gateways on the West Coast with LaGuardia.

In response to the comment that the Perimeter Rule has been successfully defended against judicial challenge, this air carrier notes that even the Port Authority has acknowledged that the foundation upon which the Perimeter Rule was upheld has been eroded by changed circumstances.

In response to the comment that air carriers currently could fly larger aircraft at LaGuardia, this air carrier states that airline business models are not one-size-fits-all and merely stating that an airline could upgauge today ignores fundamental airline operating reality.

In response to the comment that eliminating the perimeter rule would inhibit competition as it would only benefit a few air carriers, this air carrier states that the repeal of the Wright Amendment was done even though it benefited only a few air carriers.

In response to the comment that the ARC should focus first on addressing delay and congestion, and then on taking steps to enhance competition at LaGuardia (withdrawing and redistributing slots), before it considers Perimeter Rule actions, this air carrier states that Alternate Perimeter Rule Proposal (discussed below) focuses on congestion and is also competition enhancing.

FAA Comments

The FAA's air traffic technical representative stated that there were a number of significant factors that would need to be considered with regard to operations and fleet mix, in order to determine the effect of a revision of the Perimeter Rule on airport delays, positive or negative. The rule itself has no effect on ATC, but use of certain aircraft for longer flights can require the need to use the non-standard runway for the traffic configuration in use. In some configurations, a departure on the non-standard runway can substantially delay other operations. With the preliminary information available, the FAA could not estimate whether there would be an increase in the number of aircraft requiring non-standard runway departures.

Pros and Cons of Eliminating or Easing the LaGuardia Perimeter Rule

The following list of pros and cons reflect comments offered by various Working Group 3 members and in some cases the views of OST staff, but do not represent the consensus of the group. Individual members have commented further on pros and cons in their separate comments below.

Pros

- Potentially increases the passenger throughput of the airport without increasing the number of aircraft operations by—
  - Maximizing utilization of a severely constrained public facility that is in high demand;
  - Increasing revenue for the airport because of the increased number of passengers;
  - Promoting upgauging so passenger growth does not remain stagnant.
- May reduce some demand for flights at JFK and/or EWR because some new route additions at LaGuardia may replace existing services at JFK or EWR;
- May produce a less constrained market by removing a regulatory barrier;
- For some air carriers, could ease the economic burden resulting from the current rule, which limits the choice of the markets that air carriers can serve;

- May align the policy goals of several government entities, which are not aligned under the current rule, including the following (OST comments):
  - The DOT/FAA NPRM on LaGuardia congestion initially favored upgauging to increase throughput, better matching demand with capacity, with a true market-based solution versus the current administrative regulation;
  - The Port Authority has completed an analysis on the infrastructure at LaGuardia and stated publicly that the facility can handle several million additional passengers per year;
  - Since 2000, other perimeter rules have been eased. For example, Congress has exempted 20 flights at DCA to beyond-perimeter cities and may include additional ones in the current reauthorization bill. In 2006, Congress and the local Dallas/Ft. Worth Metroplex officials agreed on the phasing out of restrictions at Dallas Love Field over the next several years.

- Potentially benefits consumers in the form of new and expanded air services from LaGuardia, and with competition with existing service offered at JFK and Newark.

Cons

- Could require increased separation requirements in some instances if there are no restrictions on the types of aircraft allowed to fly beyond the perimeter;

- Could reduce the number of flights that can be operated at LaGuardia;

- Could reduce service to some communities within the perimeter;

- Would duplicate service to well-served long-haul markets already offered at JFK and Newark (note that competition with service at JFK and Newark is listed as both a pro and a con);

- May require consideration of political issues, including concerns of smaller communities about loss of or reduction in flights from LaGuardia, particularly to and from upstate New York.

- May not increase competition, because easing or eliminating the Perimeter Rule could benefit some airlines more than others. Also, the availability of new markets, with no increase in airport capacity, does not address new entrant and limited incumbent air carrier access issues.

- Modifying the perimeter rule as discussed could negatively impact competition because only a few air carriers are in a position to operate to the West coast. One air carrier could add dozens of flights anywhere in the country, while most other air carriers could not add any flights outside the perimeter. Allowing one or two air carriers to add flights to anywhere in the country without first allowing limited incumbents to expand would take connecting traffic away from those air carriers that can do nothing to respond.

- No other perimeter rule has been modified as proposed by US Airways.

- Giving only one or two slots to a limited incumbent is not enough to promote competition.

U.S. Airways Alternate Perimeter Rule Proposal

As an alternative to simply eliminating the Perimeter Rule, U.S. Airways had approached the Port Authority with a proposal to revise the Perimeter Rule to allow flights beyond the perimeter. In furtherance of the discussion of the issue, U.S. Airways presented a version of its proposal to the group for consideration. It believes that its proposal addresses many of the concerns expressed by Working Group 3 members regarding the Perimeter Rule.

U.S. Airways presented a plan that would create exemptions to the LaGuardia Perimeter Rule, and represented that the proposed plan contained measures to—

- Allow all incumbent airlines the ability to participate;

- Address the issues of non-standard departures and separation issues by certain aircraft (although this would more likely need to be addressed by the FAA);

- Mitigate the effect on current nonstop service to small markets.

According to U.S. Airways, specifically, this alternate perimeter rule proposal would—

- Allow the use of two slots for each flight operated to/from a beyond-perimeter point with aircraft that weigh less than the B–757 (new entrants exempt);

- Allow the use of two and one-half (2.5) slots for each flight operated to/from a beyond-perimeter point for B–757s for separation issues (no wide-body aircraft permitted);

- Cap the number of beyond-perimeter flights allowed to protect small community service (new entrants exemption);

- Require air carriers flying beyond the perimeter to maintain nonstop service to all small- and non-hub markets that had service in 2007 for a minimum of 24 months;

- Require air carriers flying beyond the perimeter to provide existing service to large hubs with aircraft that average at least 90 seats and service to medium hubs with aircraft that average at least 70 seats (effective at 18 months from program start);

- Have no seat size requirement for flights to small- and non-hub markets.

U.S. Airways states that this alternative proposal would have the following benefits:

- Creates an estimated 10 to 12 percent reduction in departures – 130 fewer operations per day or approximately 10 fewer operation per hour during peak hours;

- Increases the average seats per departure by about 15 percent;

- Is available for all airlines;

- Increases passenger throughput for a more efficient use of the airport;

- Benefits the passengers with new nonstop destinations with less congestion;

- Small- and non-hub market service is guaranteed and enhanced with larger aircraft.

Member Comments in Response to the Alternate Perimeter Rule Proposal

Two air carriers responded to the Alternate Perimeter Rule Proposal. One air carrier notes that the proposal attempts to mitigate the adverse delay impacts of beyond-perimeter operations by requiring a reduction factor of 2.5 for 1 for 757 aircraft and 2 for 1 for other narrow-body aircraft. However, this air carrier is not sure whether this proposed reduction ratio would be sufficient to achieve a delay reduction benefit. Accordingly, it does not support this proposal without seeing modeling that shows delay reduction.

Another air carrier notes that while this proposed change to the Perimeter Rule would reduce the number of operations at LaGuardia, it is unclear whether it would have any meaningful impact on delays or congestion at New York airports. This air carrier reiterates that the Perimeter Rule is not the cause of the New York area airport delays, and further states that implementation of the alternate proposal could lead to an elimination of up to 10 operations per hour, which would result in a profound change in the nature of service offered at LaGuardia. It estimates that 10 existing operations per hour would be eliminated, while another 7 to 10 operations would be shifted to beyond-perimeter destinations, thereby potentially cancelling one-quarter of existing service to communities within the perimeter at LaGuardia. This air carrier states that whether such a change in the service at LaGuardia would be good or bad for the marketplace can be debated, but such a debate has no place within the context of an ARC that should be focused on delay reduction.

An air carrier association noted that it would not oppose an AIR-21-type approach to allow a limited number of beyond-perimeter flights at LaGuardia that would be distributed by the DOT without regard to who holds the most slots, because this would give all air carriers options to add service and would allow smaller air carriers to put some flights in place.

One other air carrier would not necessarily oppose a modification of the Perimeter Rule if analysis of the alternate proposal showed that it would reduce or at least not add to congestion. However, the proposal should be modified to provide that any air carrier participating in beyond perimeter flying would be required to trade 2 slots for one beyond perimeter operation as well a slot that would go into a lottery for New Entrant/Limited Incumbent air carriers or Incumbent air carriers not operating beyond the perimeter flights, with a requirement that the slots be utilized by aircraft larger than the current market average for LaGuardia (overall seats per departure) at the time of the lottery. The air carrier states that this secondary lottery would promote competition and improve the utilization of limited LaGuardia slots and facilities, would increase passenger throughput at the airport, and be beneficial to consumers.

The Port Authority states that it has been and continues to be been open and willing to review technical data that would aid in a thoughtful discussion of the LaGuardia Perimeter Rule. However, the Port Authority states that the alternate proposal, as presented to the ARC, lacks a comprehensive technical analysis to substantiate its provisions and its effects on congestion, delays, and airport throughput. Accordingly, the Port Authority takes the position that the pros identified in this section have not been substantiated by adequate technical or economic analysis. The Port Authority also believes that the alternate proposal, rather than increase throughput, could decrease throughput at the airport because of the acknowledged requirement of increased separation of certain larger aircraft.

WORKING GROUP 4 — PRIORITY AIR TRAFFIC PREFERENCES

BACKGROUND

The first-come, first-serve principle of ATC priority has a long history. It does not lead to any conflicts when there is enough capacity for everyone. The principle is transparent and simple. However, when demand exceeds capacity and excess delay results as in New York in the summer of 2007, it may not lead to the most efficient public policy outcome in terms of airport or airspace utilization or overall passenger delay. Working Group 4 was assigned the task of reevaluating the practices by which we allocate and assign priority in the management of air traffic to see if different priorities could lead to more efficient outcomes that reduce passenger delay.

In recognition of this reality, the FAA and stakeholders have already taken some steps to ensure the best use of scarce airspace resources during periods of reduced capacity caused by weather or other factor(s). For instance, in collaborative decision making (CDM) used during ground delay programs (GDP) and airspace flow programs (AFP), FAA's command center rations clearances to airlines based on their prior published schedules and will not necessarily strictly adhere to first-come, first-serve principles. The airlines choose which of their flights will operate at what time within the reduced schedule. There is also limited trading between airlines in a slot credit substitution program. (Note: The "slots" created under a GDP or AFP are separate and distinct from High Density Rule slots.)

In March 2004, representatives from the Department of Transportation, the Federal Aviation Administration, airlines, business and general aviation met in a three day conference known as "Growth without Gridlock". The purpose of the conference was to develop practical solutions to ease delays. Most of the recommended solutions have been implemented and are now part of everyday operations. However, there were some potential solutions identified which have not yet been fully implemented. Specifically, participants in the conference agreed that "first-come, first-served" should be modified when necessary to improve overall capacity utilization during times of congestion. More advanced operating concepts such as express lanes and virtual thunderstorms were tested but never fully implemented. There were practical obstacles to their implementation, and focus and priority were given to implementing the items with immediate payoff[10].

[10] Apparently both items – express lanes and virtual thunderstorms – were experimented with during the summer of 2004. One issue cited with the express lane concept was "on-off ramps" – in other words, how to merge traffic into and out of the priority streams. Another issue cited with both programs was the duration – it was relatively easy to start the program and much harder to stop it. Operators disadvantaged by the programs felt the programs continued longer than necessary giving them more delay.

WORKING GROUP 4 DISCUSSION

The group discussed a number of issues and experiences associated with air traffic priorities, including the experiences with collaborative decision making, growth without gridlock, airspace flow programs, and precision runway monitors. For possible implementation in the New York area at this time, Working Group 4 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.
3) Restricting access at certain times to scheduled commercial operations only.

No specific recommendations for current implementation were agreed to by Working Group 4. Each of the three items is further explained below, and the nature of the pro and con arguments documented. Except for the first item (technology based priorities) there were diametrically opposed viewpoints expressed. The "pros and cons" below are opinions expressed by members of Working Group 4. Additional modeling should be undertaken to determine if enough capacity improvement or delay reduction could be achieved to be worth further investment in implementation.

One other item discussed by Working Group 4 was the issue of non-standard departures at LaGuardia. The issue is that some heavier aircraft may require a certain runway in order to take off safely; if they call for departure and are accommodated promptly at a time when a different runway is in use for other departures it can lead to a decrease in total takeoffs accommodated. Some Working Group 4 participants expressed concern that some air carriers elect to use equipment and procedures that necessitate the use of non-standard departures thus exacerbating delays and costs for other users and consumers. Working Group 4 referred that item to Working Group 1 for consideration.

1) Setting aside specific capacity allocations to aircraft that meet technical criteria in order to increase aircraft throughput.

This concept is to 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 it may be able to accommodate more operations in total. An analogy was drawn to existing cases where Precision Runway Monitor utilization allows increased capacity[11].

There was general agreement in the group that if total capacity or throughput were to be increased as a result of the set aside for equipped aircraft, this would be a positive solution. Caveats were expressed: the set aside should be temporal (limited to congested periods) and should not permanently eliminate access for aircraft that are not equipped.

[11] Precision Runway Monitor (PRM) is an improved technology for approach and landing at an airport during times of reduced visibility. Pilots and controllers require special training in order to use this. PRM enables aircraft throughput to be maintained.

No one knows yet whether there are technically feasible opportunities for specific equipage to actually increase the realized capacity. One new technology, ADS-B, is being actively investigated by the FAA, to see if there would be benefits from an early implementation in New York. However, the ADS-B project is complex and even an accelerated implementation in New York probably would not create capacity benefits before 2010. Another area also being investigated is improved required navigational performance (RNP) to see if new procedures and increased precision could yield a capacity payoff into JFK or other New York area airports.

Pros

- May be an opportunity to boost capacity without new runways.
- Could accelerate equipage of U.S. fleet with certain NextGen capabilities that will also be used outside the New York area.
- Builds on work already underway for NextGen – not a brand-new idea.

Cons

- Could be costly to operators in terms of avionics, installation, and associated expenses.
- Could be costly to the FAA to accelerate technology, procedures and standards development from the current schedule.
- Efficacy would be reduced if foreign flag air carriers are not on-board.

Next Steps

- FAA to explore whether accelerated ADS-B implementation or an RNP 0.3 requirement along with new STAR/SID procedures in New York could result in increased number of operations.

2) Priority assignments in advance

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. Currently when the FAA needs to hold flights inbound into New York due to capacity constraints, flights are kept roughly in the arrival order they had originally scheduled. This results in progressively longer delays throughout the day. If an airline has more than one flight inbound to New York, they can swap within their set of arrivals to suit their priorities. If an airline cannot make use of an assigned arrival time, there are limited opportunities for anonymous transfer of times between airlines in the slot substitution program. Business aircraft operators also participate in the collaborative decision making process. As traffic flow management programs play out, operational adjustments are made and there is not rigid adherence to the original priorities.

Two variants of imposed advance priority setting were discussed by Working Group 4: priority to the biggest aircraft (as a proxy for the most number of passengers), or airline designated priorities. Under either priority designation, airlines could still substitute within their own arrival times, and unused times could be assigned to other operators.

A specific proposal was made to set aside a certain number of flights into the New York area for each operator as delay-free or high-priority flights, for example one per hour per operator. Today, large operators have many opportunities to swap flights within their allocation to meet their priorities, but smaller operators cannot exercise the same flexibility. Airlines with multiple flights today optimize their arrivals within their set of flights before making any unused times available to other operators in the slot credit substitution program, and so this program is only of limited value.

Pros

- Would allow increased schedule certainty for the designated priority flights.
- Priority to larger aircraft in issuing delays could lead to lower overall passenger-delay minutes.
- Preference to larger aircraft would over time create incentives for airlines to schedule larger aircraft, increasing total passenger throughput in the New York area.
- Designated priority flights by air carrier would permit smaller operators to maintain some increased schedule integrity.
- Designated priority flights by air carrier would permit all operators to realize some increased certainty for specific flights.

Cons

- Over time, preferences for larger aircraft could result in decreased service to some smaller communities.
- Setting aside a specific number of priority flights per airline might result in a large number of designated flights – too many for these flights to actually exhibit better ontime performance.
- It would be difficult operationally to implement different priorities for aircraft already in the air or on the airport surface. Trying to implement the priorities might result in a loss of total throughput.

3) Restrict access to scheduled commercial operations

One participant presented a concept to limit access to New York regional airspace during congested periods to scheduled commercial operations only. During constrained periods (3:00 to 9:00 p.m. weekdays and selected holidays / special events), FAA should identify constrained airspace and implement an airspace flow program (AFP) effective for all unscheduled, noncommercial operations. Impacted operators would have the option of routing around the constrained area(s) or changing the time of their flight.

Working Group 4 did not agree on how or the extent to which implementing this concept would affect congestion and delays in the New York area. The airline concept cites TRACON and center operations and delays, noting there are many general aviation airports within the New York area. GA members asserted that they fly at different times into different places and therefore have little effect on delays. As evidence, they pointed

to the decline in GA operations in New York over the same period that airline delays have risen. They further contend that GA operators are already disadvantaged by commercial airlines, experiencing significant delays that are driven by the airline overscheduling. Further, the GA operators note that airspace is a public resource and restrictions should not be applied to those who do not create the congestion.

Variations

- Allow charter operations scheduled at least two weeks in advance access to the airspace on the same basis as scheduled airlines.
- Allow scheduled cargo operations access to the airspace on the same basis as scheduled airlines

Pros

- If GA operations do conflict with commercial operations, this proposal could maximize commercial passenger throughput which yields the greatest benefit to the most people. The notion here is that scheduled commercial services serve as mass transportation and the aggregate economic costs of delay to commercial operations are higher than for nonscheduled private operations.

Cons

- There might be only a minimal impact on congestion by eliminating noncommercial operations because they only account for a small number of operations at the three commercial airports.
- Maximizing scheduled commercial operations at the expense of other operations may not represent the most economically-efficient outcome. Business aviation serves individuals participating in time-critical economic activities.
- This could encourage GA operators to operate under visual flight rules (VFR) in marginal conditions in order to avoid the restrictions, reducing aviation safety.

WORKING GROUP 5 — IATA SCHEDULING GUIDELINES/ OTHER ADMINISTRATIVE

INTRODUCTION

Working Group 5 largely agreed that scheduled landing and take-off rights should be allocated under an administrative allocation scheme at the New York area airports, with broad support for adoption of the International Air Transport Association (IATA) Worldwide Scheduling Guidelines. While this discussion assumes that an administrative allocation scheme will be imposed, the preference of all Working Group 5 members is for no artificial constraints in the market, with adequate capacity for all air carriers interested in flying to a particular airport. However, the near unanimous assessment of Working Group 5 was that a slot-based system with a vibrant secondary market was an effective, market-based means of allocation.

Recognizing that some level of constraint is likely necessary at the New York City airports, at least in the short term, most of Working Group 5 recommends the adoption of IATA's Worldwide Scheduling Guidelines at the New York/New Jersey area airports when congestion and delays reach an unsustainable level. One air carrier expressed opposition about adopting the Worldwide Scheduling Guidelines in its entirety, especially without expanded provision for new entrant access to congested airports. That air carrier went further and supported, in the context of any administrative allocation scheme, both a one-time and continuing withdrawal of slots or operating authorizations to accommodate new entrants or limited incumbents, and market-based means of allocating capacity, including slot auctions. Two other air carriers, while generally supportive of the Worldwide Scheduling Guidelines do not support its narrow definition of new entrant air carrier. To the extent the Department determines an administrative mechanism is needed, the air carrier opposed to the IATA system supports a scheme more akin to the High Density Rule (HDR) than to the Worldwide Scheduling Guidelines, because the guidelines, in its view, do not adequately provide opportunities for meaningful entry for new entrants

In order to apprise the Secretary of the array of issues involved in an administrative allocation scheme, the group has prepared suggested elements on how to implement the Worldwide Scheduling Guidelines. The discussion of these elements details the positions of respective members of Working Group 5 on issues where there is a lack of consensus. The positions of parties that disagree with or vary from the primary position of Working Group 5 are characterized as "other positions" and immediately follow the general discussion. Whether a particular air carrier's position on a specific issue is encompassed by the document's primary position may change throughout the document.

POSITION IN SUPPORT OF THE WORLDWIDE SCHEDULING GUIDELINES WITH LITTLE OR NO CHANGE

Most of Working Group 5 believes that the Worldwide Scheduling Guidelines provide the best option for managing congested airports in the New York/New Jersey area and elsewhere, should a need arise. The determination to set a cap would be based on a determination by the FAA, after consultation with interested parties, that a cap was appropriate.

- Following the criteria set forth in the *Worldwide Scheduling Guidelines* for moving from Level 1 (no restrictions) to Level 2 (voluntary restrictions) to Level 3 (mandatory restrictions or cap), would avoid the need to withdraw capacity at a particular airport because of excessive scheduling.
- When coupled with a rule permitting the sale or lease of slots in a secondary market, the guidelines offer a market-based mechanism for slot allocation that promotes the efficient allocation of scarce resources.
- The guidelines offer a fair 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. air carriers at congested airports abroad.
- 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. Finally, it would avoid discouraging future investments in the airport.
- The dynamic and flexible nature of the guidelines, designed to reflect and accommodate market and network complexities, is particularly beneficial.
- Finally, the adoption of a process that is consistently applied throughout the United States and well-understood by domestic and international air carriers is significant, particularly at a large international airport like JFK.

POSITION AGAINST THE ADOPTION OF THE WORLDWIDE SCHEDULING GUIDELINES ABSENT SIGNIFICANT CHANGES:

Other members of Working Group 5 are opposed to the wholesale adoption of the Worldwide Scheduling Guidelines for domestic traffic in the New York region, unless the Department adopts adequate provisions to permit multiple operations for new entrants and limited incumbents (defined as those holding 20 or fewer slots per day at a slot-controlled airport). One air carrier asserts that using the Worldwide Scheduling Guidelines to address new entrant and limited incumbent access departs from the pro-competitive principles of the Airline Deregulation Act, as well as long-standing Department precedent on airline capacity at constrained airports. This sentiment is shared in varying degrees by two other air carriers that were Working Group 5 members

and one association of air carriers, which, while not a member of Working Group 5, expressed its views in a letter directed toward the group.

- Wholesale adoption of a system based on "historic rights" would favor incumbents at the expense of new entrants, is at odds with precedent under the HDR 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. An air carrier notes that in several slot proceedings under the HDR, the Department awarded slots when it found that exclusive reliance on the secondary market was not practical given the applicants' proposed scope of operations.
- The Worldwide Scheduling Guidelines have never been used in the U.S. to allocate domestic traffic, and may not offer adequate opportunities for new entrants and limited incumbents for obtaining slots in these key markets.
- Application of the guidelines in the United States must be specifically tailored to reflect the realities of competition in the world's largest and most dynamic domestic commercial aviation market.

SUGGESTED ELEMENTS FOR FOLLOWING THE IATA WORLD SCHEDULING GUIDELINES

The Working Group 5 puts forth the following discussion of the key elements of the Worldwide Scheduling Guidelines and has attached a more detailed description of how the Worldwide Scheduling Guidelines could be adopted in practice, as well as specific comments submitted by members of Working Group 5 and the broader ARC.

Working Group 5 recognizes that both the Department of Transportation and Congress have expressed concerns that any allocation mechanism must be structured in such a manner as to address certain articulated public policy interests. Some of these policy goals are already contemplated by the Worldwide Scheduling Guidelines; others could be addressed by the U.S. through local rules.

Capacity Declaration

Primary Position — The Department should conduct an open consultation to determine what the industry believes to be an acceptable level of delay and the associated capacity level.

- Flexible capacity, differing caps by time period, with consideration for backlog, arrival and departure flow, chronic meteorological events and aircraft mix are recommended to better meter a stable delay rate throughout the day versus an average level of traffic at all hours of the day.

- Under the Worldwide Scheduling Guidelines, a slot takes into account the totality of available capacity at an airport. Thus, a determination of airspace capacity at an airport may not reconcile with the amount of available gates or terminal facilities. Since different entities control the airspace (FAA), the airport (the Port Authority of New York and New Jersey), and in some instances the terminal (e.g., Continental at Newark, US Airways at LaGuardia, and JetBlue, Air France, British Airways and Lufthansa at Kennedy), a tri-partite coordination among these interested parties, recommended in the form of a Coordination Committee with domestic and foreign flag air carrier participation, is required for a capacity number to accurately reflect an airport's actual capacity.

Other Position — The Port Authority is in the best position to coordinate among the air carriers and determine available landside capacity. Thus, it can coordinate with the FAA to determine the maximum available capacity at its airports.

Initial Distribution of Capacity

Primary Position — In general, Working Group 5 agreed that the initial distribution of capacity should be based on historic rights, as contemplated by the Worldwide Scheduling Guidelines. This represents both the fairest and most efficient allocation method and allows for the recognition of the billions of dollars invested by historic operators into the infrastructure, people and development of the airport and markets, including the purchase of slots on the secondary market or by acquisition of airlines.

Other Position — One air carrier argued that while there may be some need for an initial historic allocation of at least some portion of the available capacity so as not to disrupt service patterns, the practice contained within the Worldwide Scheduling Guidelines is unfairly biased in favor of incumbents and can result in a windfall for an incumbent air carrier that has quickly added a significant amount of service. This is because historic allocations are based solely on the level of an air carrier's operations in the immediately preceding season. This rapid growth represents no more of an added investment than the investment of an air carrier seeking to expand its operations at the airport. This problem is particularly acute at initial allocation. In addition, the "grandfathering" of slots fails to force incumbents to make economic decisions about the value of slots because they have often paid nothing for the slots. This disincentive undermines the efficiency of a secondary market.

Other Position — Another air carrier believes initial distribution of capacity should be based on historic rights. However, it believes those rights should be based on presence at the airport prior to the airport becoming overly congested so that those air carriers responsible for the over congestion are not rewarded.

New Entrants

Primary Position — The Worldwide Scheduling Guidelines reserve 50% of available capacity (on a per slot basis) for new entrants. The definition of a new entrant (fewer than 5 slots at the airport on any given day) permits new entrant access in a manner that Working Group 5, in general, believes is equitable. First, no new entrant can fly more than two round trip flights in a particular day and still be considered a new entrant.[12] Most of Working Group 5 believes the Worldwide Scheduling Guidelines' definition of new entrant is appropriate for application in the U.S. and recommend against the adoption of the historic limited incumbent concept that has only been used in the United States. They believe that:

- This definition is especially appropriate for international airports like JFK and Newark, which have over 60 and 21 foreign flag air carriers, respectively, most of which operate daily service to their home country market.
- The success of new entrants and low cost air carriers (LCC) throughout the world under the Worldwide Scheduling Guidelines demonstrates there is no need for an expanded definition of a new entrant. The domestic airline industry is more competitive than it has ever been with LCCs carrying 30 percent of domestic passengers and competing in markets that account for three of every four passengers. As such, fares have markedly decreased, including those at most network hubs. LCCs have shown solid financial performance and have actively participated in secondary markets under the HDR.
- The historic U.S. definitions of "new entrant" and "limited incumbent" had a dampening effect on the Buy-Sell Rule of the HDR once exemptions were introduced in 1995.
- This reasonably limited definition of a new entrant fosters a vibrant secondary market.[13] To the extent an air carrier with a relatively small number of operations wants to grow, it could do so through the secondary market.
- The proposal to expand the definition of a new entrant, if applied equally to domestic and foreign flag air carriers, could undermine the Department's efforts to control congestion.

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[12] Typically, a slot constrained airport managed under the Worldwide Scheduling Guidelines is slot controlled over a 24-hour period, even though the airport may not be congested during all hours of the day. This approach has never been adopted in the U.S., where the FAA has only constrained operations during congested periods of the day. Some accommodation of the new entrant definition may be required to address the U.S. model.

[13] The Department adopted a similar approach in the Congestion and Delay Reduction at Chicago O'Hare International Airport Final Rule in 2006. In that rule, the FAA limited the preference for new entrants/limited incumbents in a lottery of new capacity to only the first two arrival authorizations per hour when the hourly limitation is able to increase from 88 to 89 or 90 after which a lottery, without preference or weight, will continue to allocate the remaining new capacity. This combined with the secondary market would in the Department's words allow "greater opportunity for smaller carriers to purchase or lease arrival privileges." A limited definition of new entrants is essential to maintaining incentive in the marketplace for carriers to participate in the secondary market.

Other Position — Three air carriers with a limited presence at JFK believe the Department should adopt the historic limited incumbent concept that it used under the HDR, and that Congress affirmed and expanded upon by statute (i.e., an air carrier holding 20 or fewer slots per day). Among other reasons asserted by some or all of the air carriers in support of their view are:

- The IATA new entrant threshold of two daily roundtrips under the guidelines does not provide meaningful market entry opportunities, when an air carrier seeks to initiate service to a capacity-constrained airport. Two roundtrips might be sufficient for new international service by a foreign flag air carrier, but is insufficient for a U.S. domestic operator starting up operations at a major domestic airport.
- The adoption of the Worldwide Scheduling Guidelines in the New York region could harm consumers by potentially causing fares to rise, restricting capacity, and preventing service innovation such as the development of alternative service models (e.g., all first class type seating, coach service with unbundled fares), and impeding product innovation.
- One air carrier believes that the LCCs' overall share of the domestic market is irrelevant to the question of whether the Worldwide Scheduling Guidelines are an appropriate mechanism for granting access at capacity-constrained airports. Because many LCCs serve non-capacity constrained airports in the United States, generally avoiding high-density airports, their share of the overall domestic market provides no basis for determining whether new entrants and limited incumbents can continue to obtain meaningful access at airports such as JFK. Startup air carriers in the U.S. generally cannot afford to actively participate in a secondary market to the extent necessary to achieve significant frequencies in markets involving congested airports.
- This same air carrier believes that fare reductions in markets like LAX-SFO, JFK-SFO and others following new entry demonstrate the relative public benefits of adding one new slot to a new entrant versus reducing one of many frequencies to an incumbent air carrier. Pre-entry fares in these markets remained relatively high.

Other Position — Several air carriers generally disagree with expanding the definitions of a new entrant to the levels in the HDR, but would support an expanded definition of a new entrant consistent with that in the O'Hare rule (i.e., an air carrier conducting no more than 8 roundtrips a day) if following the Worldwide Scheduling Guidelines is deemed inappropriate.

Other Position — Two of the foreign flag air carriers support the use of the WSG new entrant definition, but note that any expansion under a local rule to include U.S. "limited incumbents" into the new entrant definition should not unfairly favor U.S. air carriers and treat foreign flag air carriers in a discriminatory manner.

Secondary Trading

Other Position — Most of Working Group 5 supports the creation of a secondary market for slots, which would create a market-based mechanism for new capacity allocation consistent with the Administration's desire to explore such mechanisms. The secondary market should not be thought of merely in terms of the actual sale of slots, but should also include leases or transfers of slots with or without consideration. In fact, most of the secondary market activity elsewhere is more directly attributable to leases and transfers rather than the outright sale of a slot. If the number of leases in the HDR were viewed as secondary transactions, the actual success of the secondary market under that program may appear more robust than generally assumed.

- Working Group 5 recognizes that the effectiveness of the secondary slot market has been criticized for two reasons, which led the FAA to require that secondary market transactions at O'Hare be conducted through an FAA-managed blind auction mechanism.
    - The first, the need for transparency so that all air carriers are aware of the availability of an arrival authorization and, ultimately of the terms and conditions of that transaction, is widely supported by Working Group 5. Accordingly, Working Group 5 recommends that local rules be considered to increase the transparency of slot sale or lease transactions, including for example, a requirement that slots available for sale or lease be publicly advertised through an FAA-sponsored forum prior to any sale or lease transaction.
    - The second concern, that absent a blind transaction, air carriers will collude or otherwise prevent entrance into or expansion at the airport by a competitor is one that Working Group 5 doubts is a real concern. The current secondary markets in the U.S. have been inhibited because of the uncertainty about the future structure and duration of regulatory regimes and because numerous slot exemptions provided by the government have eliminated incentives to purchase slots. As such, Working Group 5 believes that the latter issue may best be handled through monitoring rather than through the imposition of a blind market. The majority also points out that limiting transactions to cash consideration inhibits the market and that in some cases non-cash consideration may be valued more highly by the parties.
- Most of Working Group 5 agreed that the Department must not artificially create capacity in the form of exemptions in excess of the declared capacity parameters, undercutting the effectiveness of the secondary market and also degrading the airport's overall operating performance. Rather, the Department should allow the market to determine efficient use through secondary trading.

Other Position — Three air carriers with a limited presence at JFK argue that any secondary market must be accompanied by meaningful opportunities for new entrants to initiate or expand service where slots cannot realistically be obtained on the secondary market.

- Historic exemptions in the U.S. were based on a determination by the Department and Congress that access through the secondary market should not be the exclusive means to provide opportunities for new entrants and limited incumbents at capacity-constrained airports.
- If a sufficient number of well-timed slots are not made available to new entrants and limited incumbents, then a limited number of exemptions for this category of operator is necessary to ensure adequate competition without unduly increasing delays.
- One air carrier fully supports use of a blind auction, including a "billboard" mechanism, to avoid a situation in which incumbent air carriers refuse to deal with a new entrant LCC, particularly where a smaller air carrier intends to compete with the incumbent on the same route. A blind auction is also necessary to prevent collusion and market signaling between dominant incumbent air carriers.
- Another air carrier believes that since a secondary market alone is insufficient to ensure meaningful competition or access for new entrants, at a minimum, new entrants should be afforded this preferential access to available capacity.

Other Position — Two of the foreign flag air carriers are presently neutral or non-committal on this issue. They will consider the concept of secondary trading pending the completion of the ARC process and when more specifics are available as to how the secondary trading would be structured and managed in the U.S. market. These air carriers favor transparency and free markets, and could consider some form of "billboard" publication of available slots, provided it were for informational purposes only. One air carrier submits, however, that an FAA policy of granting slot exemptions and set-asides for U.S. new entrants/limited incumbents not only has the potential to dilute the effectiveness of a secondary market, but more importantly, would be inconsistent with the principles of fair and non-discriminatory treatment embodied in the Worldwide Scheduling Guidelines by favoring a small group of U.S. air carriers over foreign flag air carriers.

Other Position — One domestic air carrier notes that a blind market helps eliminate all perceptions and blocking of new entry at capacity controlled airports. That air carrier has aggressively attempted to penetrate the secondary market at LaGuardia and National, without success. It believes a blind auction would ensure access.

Service Level Restoration

Primary Position — Working Group 5 recommends that air carriers who have voluntarily reduced service or had slots confiscated for reasons other than their own underutilization should have those slots returned and services restored when new capacity becomes available and before any new capacity is allocated to parties who did not reduce regardless of any other considerations.[14]

Other Position — Three air carriers with a limited presence at JFK claim that new entrants and limited incumbents should be given priority over both restoration of slots (particularly if the air carrier built up its schedule in disregard for its congestion-inducing properties) and allocation to new incumbent air carriers or foreign flag air carriers. One of these air carriers agrees with the premise, but only to the extent that it believes that restoration should never diminish the 50% of available capacity afforded new entrants under the Worldwide Scheduling Guidelines.

Other Position — Three air carriers stated that air carriers that have substantially increased their schedules at a congested airport should not be given an advantage over those that have not. It would be perverse to give an express slot restoration priority to air carriers in direct proportion to their contribution to congestion at that airport. One of these air carriers also notes that the Worldwide Scheduling Guidelines do not guarantee any restoration to incumbent air carriers and that to the extent the majority of Working Group 5 supports restoration claims, such a scheme would essentially be a local rule.

Local Rules

Primary Position — Working Group 5 believes that local rules should not limit the use of specific slots based on particular characteristics of service, like aircraft size, citizenship of air carrier, or dedicated service to certain communities. Rather, legitimate policy goals should be addressed by prioritizing the allocation of new capacity; this could be done either as described in the Worldwide Scheduling Guidelines, or as local rules.

- In situations where local rules may be needed, they should be handled on an airport-by-airport basis to address unique market and operating characteristics of such facility and with a full industry consultation.
- Over utilization of local rules would dilute the effectiveness of the Worldwide Scheduling Guidelines and minimize incentives for air carriers to participate in the secondary market.

[14] When the terminal collapsed at Paris' Charles de Gaulle airport in 2004, the airport's declared capacity was reduced to match the then available facilities. The Coordinator asked for carrier's assistance voluntarily reducing their schedules and moving to less congested times during the construction and promptly restored those carriers to their historic level when the airport was back to full capacity.

Other Position — One air carrier urged that any administrative mechanism include a policy that promotes new entrant and limited incumbent access to capacity-constrained airports, and, as is increasingly being considered in Europe and elsewhere, the environmental performance of the aircraft in terms of greenhouse gas emissions should be considered in the context of allocating newly created slots for takeoff and landing. This air carrier also believes consideration should be given to the size of the aircraft in the allocation of capacity at capacity-controlled airports.

Small Communities

Primary Position — Working Group 5 recognizes that the market dynamics of some airports may warrant setting aside a small portion of slots to ensure adequate service to small communities.

- Working Group 5 recommends that this issue be approached on an airport-by-airport basis and set-asides applied only when there is evidence that adequate small community service has been, or is on the verge of, being discontinued in the New York/New Jersey area.
- The overall small community analysis should be such that it does not dictate slots for specific markets, as with EAS, but rather that it preserves an allocation which air carriers may use in their own commercial judgment to serve any market listed as a qualifying airport in the Annual Passenger Enplanements at Commercial Airports as published annually on the FAA website.
- Working Group 5 recommends that a smooth process be established to address slot mobility and qualification when an airport's hub status changes and will need further discussion to define such process.
- Additionally, small community slots, where they exist, should be tradable in the secondary market in the same manner as all other slots, but would retain their small-community character, regardless of what air carrier holds them.
- Working Group 5 notes that, given the industry's current network air carrier business model, small community service at most airports may be adequate without government intervention. In fact, service to and from small communities through O'Hare has increased since the imposition of caps at that airport.

Other Position — In markets with multiple capacity constrained airports in close proximity, service to small communities can be addressed by service to the catchment area rather than by service to a particular airport.

Other Position — The nature of new entry at JFK and Newark is often different than at LaGuardia. Whereas a new entrant at LaGuardia needs to have multiple daily frequencies in a market to have any hope of establishing a market preference, most new entrants at JFK and Newark are seeking no more than a few daily roundtrip operations.

Other Position — Regional distribution or measurement of small community service must exclude LaGuardia as long as the perimeter rule remains in place at LaGuardia. The market distortions caused by the perimeter rule would only be further exacerbated if additional restrictions were placed on airline management's ability to select markets or consumers' ability to select the airport and air carrier that best meet their needs.

Other Position — Two of the foreign flag air carriers generally support the majority position subject to the reservation that any extensive small community service preference would favor U.S. air carriers exclusively and would in turn support the need for a foreign flag air carrier preference to avoid discriminatory treatment.

Paperwork Burden

Primary Position — Working Group 5 recognizes the Department's need to supply paperwork reduction estimates and guidance. As the Worldwide Scheduling Guidelines process is well documented and relatively stable, implementing them in the United States would allow for dynamic and continual market fluctuations without an undue paperwork burden on the air carriers.

- Additionally, uniform application at all airports in the U.S. that meet pre-set delay criteria would allow for ease of management for both the airlines and management and reduces the need for additional technological resources to keep up with unique, short-term slot regimes.
- Because the Worldwide Scheduling Guidelines allocate slots twice a year, there will be a greater need for FAA resources than under the HDR.

Use-or-Lose

Primary Position — The Worldwide Scheduling Guidelines impose a use-or-lose requirement based on 80% usage of a slot for each day of the week. Under the HDR the requirement was 80% over the course of a week. Working Group 5 believes the daily use-or-lose requirement is more stringent and has the effect of making more capacity available for reallocation.

Other Position — One air carrier agrees that the use-or-lose requirement in the HDR did not adequately ensure that adequate capacity was available for reallocation. While it does not believe that the methodology under the Worldwide Scheduling Guidelines would provide sufficient capacity to meet the needs of new entrants, it is willing to withhold judgment on whether the daily use-or-lose requirement is more efficient than the one used under the HDR.

Access to U.S. airports by foreign flag air carriers

Primary Position — The Worldwide Scheduling Guidelines treat all operations, domestic and international, operated by domestic or foreign flag air carriers, equivalently. The group generally believes that the Worldwide Scheduling Guidelines would allow for fair, non-discriminatory treatment by the United States, consistent with its bilateral obligations and consistent with the treatment U.S. air carriers receive abroad.

- The U.S. air carriers do not support foreign flag air carriers receiving preference simply for being parties to Open Sky bilateral agreements as U.S. air carriers do not receive this preferential treatment at foreign stations.
- The U.S. air carriers do not believe the United States is legally obligated to give foreign flag air carriers any preference at airports with operating constraints.
- U.S. and foreign flag air carriers both agree that local rules should be minimized as they reduce the effectiveness of the Worldwide Scheduling Guidelines in managing congestion.

Other Position — Foreign flag air carriers participating in Working Group 5 accept the Worldwide Scheduling Guidelines concept of equivalency, and believe that U.S. bilateral obligations can be met in the absence of local rules.

- These air carriers would oppose any local rule that prevents DOT/FAA from considering a variety of circumstances when awarding new slots at a congested airport, including the impact restrictions would have on U.S. bilateral agreements.
- They would consider seeking protection if a significant number of local rules providing protection to new entrants and service to small communities above what are already contained in the Worldwide Scheduling Guidelines were to make it difficult for foreign flag air carriers to:
    - Maintain their historic schedules and
    - Achieve the growth that was anticipated in existing bilateral agreements.

Other Position — According to one domestic air carrier, local rules could meet the specific needs of the U.S. domestic aviation industry and address important public policies such as competition, and should be adopted, as necessary, to meet these objectives.

Other Position — One foreign flag air carrier believes that U.S. bilateral obligations can be met by the adoption of the Worldwide Scheduling Guidelines without local rules. The addition of extensive local rules that favor U.S. air carriers exclusively would require some similar form of preference for foreign flag air carriers in order to meet the U.S. Government's obligations under its bilateral treaties.

Allocation of Capacity Through a Market Mechanism

Primary Position — Working Group 5 recognizes the Administration's desire to introduce market mechanisms in the allocation process. Working Group 5 strongly believes that the adoption of caps pursuant to the Worldwide Scheduling Guidelines, along with a robust secondary market, will provide an effective market allocation mechanism that is preferable to congestion pricing and other mechanisms being discussed because it is not an experimental mechanism, but rather has been in use successfully at many airports around the world for many years. In addition, the majority of Working Group 5 is not convinced that the FAA currently has sufficient legislative authority to allocate via a market-based mechanism.

- Initial Allocation — Working Group 5 believes that air carriers' investments related to building service at a particular airport, including investments in personnel, communities and aircraft and facilities, on or off the airport, which directly support airport operations, are the direct result of the "slots" having market value and developing such value through time. These significant investments must be recognized and accounted for in any future allocation scheme. Working Group 5 therefore believes that there should be no departure from the principle articulated in the guidelines, which dictate that initial allocation of slots be based upon historic use.
- Allocation of New Capacity — Working Group 5 discussed the notion of auctioning significant new capacity, such as may be generated with the opening of new runways. Several members of the group were open to further consideration of this concept provided that incumbent restoration takes priority. However the group believes this issue needs further practical and legal consideration, especially around equity and international ramifications, regardless of citizenship.

Other Position — One air carrier association and the foreign flag air carriers strongly oppose the introduction of a market mechanism for primary allocation citing multiple airports (AMS, MAD and NRT) that have brought on significant new capacity in the form of new runways and effectively allocated it via the industry best practices outlined in the Worldwide Scheduling Guidelines. In addition, they point out that introduction of a market mechanism in the U.S. may lead to a proliferation of such mechanisms globally, potentially to the detriment of U.S. air carriers, and would destabilize the international schedule clearance process.

Other Position — One foreign flag air carrier does not support auctions of any capacity, including new or returned capacity. It is particularly concerned that withdrawal of historic slots would raise significant property and discrimination issues.

Other Position — According to one domestic air carrier, new entrants (defined as an air carrier holding no more than 20 slots per day) should have a right of first selection of any new or returned capacity.

Other Position — Another domestic air carrier believes the Worldwide Scheduling Guidelines are unduly biased in favor of incumbents and would not provide new entrants with an adequate opportunity to gain entry at capacity-controlled airports in the United States based on experience with similar allocation schemes in the past. If adequate provision is not made for new entrants in an administrative allocation scheme, that air carrier supports the use of market mechanisms to assure new entry at these airports.

Application of *Worldwide Scheduling Guidelines* in the United States

Currently, 14th Edition, July 2007

Section 1: Determination to be a Coordinated Airport

A. Capacity Limitation
   1. Operational Performance/Runway
      a. Arrival and/or Departure delay criteria
      b. FAA/DOT Performance Ranking
   2. Terminal Infrastructure Limitations
      a. Lack of stand/gate availability
      b. Passenger through-put congestion

B. Expansion of capacity, in the short term, is highly improbable

Section 2: Definition of Slot

A. Ability to use full infrastructure (e.g. no separate slots for runway and terminal as currently exists at ORD)
   1. This encompassing definition should include behind-the-scenes coordination between the FAA, Port Authority New York and New Jersey and terminal operators/managers so as to provide one single message from the coordinator to the air carrier approving all elements of the slot.

B. Minimum of 30-minute slot window [U.S. recommendation, not part of WSG]

Section 3: Capacity Declaration

A. Initial baseline capacity analysis conducted by FAA with open consultation including airport managing body, industry and related associations

B. Capacity analysis updated and published twice yearly in advance of slot allocation for each scheduling season (summer and winter).
   1. All parties planning to operate to/from an airport (including passenger and cargo air carriers and general aviation) must submit requests for slots on a seasonal basis and be informed of any capacity changes before submission deadline.

C. Coordination parameters should include ATC, runway, terminal throughput and stand constraints, where applicable, and be coordinated as a single allocation.

Section 4: Appointment of Coordinator

A. Single national coordination group handling all slot controlled airports with specialist assigned to each airport
   1. Ideally, independence from any single interested party (e.g. airport managing body, airlines or government).

B. Neutral, non-discriminatory, transparent

Section 5: Role of Airlines

A. Scheduled (planned) flight details must be submitted to and approved by the coordinator via standard Slot Clearance Request (SCR) messages as per Chapter 6 of SSIM in advance of operation.
    1. Flight record details include flight numbers, effective and discontinue dates, equipment, seats, days of operation, origin/destination and previous/next airports (thru flights), arrival time, departure time and type of service.

Section 6: Role of Airports

A. Ensure that initial capacity analyses are carried out and updated twice yearly in conformity with the two IATA scheduling periods.
B. Pursue capacity enhancements
    1. Ensure that a reversion to Level 2 or Level 1 status can be achieved at the earliest opportunity.

Section 7: Role of Coordinator

A. Allocate slots to airlines on the basis of established coordination parameters, using priority criteria and in a neutral, non-discriminatory and transparent way.
B. Enforce slot usage on a seasonal basis.
    1. May require airlines to submit usage reports to the Coordinator.
    2. May require monthly reporting for proactive tracking and consultation if pro-rata performance is low.

Section 8: Initial Slot Allocation

A. Historic Slots
    1. Historic slots must not be withdrawn from an airline as a means of providing for new entrants or any other category of aircraft operator. Confiscation of slots for any reason should be avoided, unless intentional abuse of the coordination system by an airline is proven.
B. Priorities in Coordination
    1. Historical precedence
    2. Retiming of historic slots
    3. New entrants
        a. An airline's request for a slot at an airport should have new entrant status provided that the airline, if the request were accepted, would hold fewer than 5 slots at that airport on that day.
        b. Of the slots contained within the slot pool at the initial allocation, 50% must be allocated to new entrants, unless requests by new entrants are less than 50%.
        c. Slot obtained with new entrant status must have been operated for more than two equivalent seasons before being transferred to another air carrier.
    4. Introduction of year round service

5. Additional criteria
    a. Effective period of operation: longer period of operation has priority
    b. Size and type of market: there is a requirement for a mixture of operations (domestic/regional/long-haul markets) at major airports to meet the demands of the public. This criteria could include, for example, a preference in favor of small community[15] service where appropriate. [consistent with prevailing U.S. policy, not part of the WSG]
    c. Competition
    d. Curfews: priority should be given to the airline whose schedule is constrained by a curfew
    e. Frequency of operation: higher frequency should not in itself imply higher priority
    f. Local guidelines: must be approved by the Coordination Committee

Section 9: Use of Slots by Airlines

A. Slot exchanges (one-for-one exchanges)
    1. Air carriers may exchange slots on a one-for-one basis for the purpose of conducting that operation in a different slot period.
    2. Written evidence of each air carrier's consent to the transaction must be provided to the Coordinator with the Coordinator approving the request after completing a feasibility check.
B. Slot transfers (one-way)
C. Shared operations
    3. In the case of joint, codesharing, or any other operations involving voluntary cooperation between airlines, only one of the participating airlines can apply for each required slot. Slots held by an airline may be used by (an) other participating airline(s) for their shared operation, provided that the designator of the airline whom the slots were originally allocated remains on the shared flight for coordination and monitoring purposes.

Section 10: Secondary Trading [U.S. recommendation, not in WSG]

A. Slots from existing capacity may be bought, sold or leased only to air carriers for any consideration.
B. New entrants may not sell, lease or otherwise transfer control of their slots within two years of assignment, except for one-for-one trades for operational retiming.
C. The secondary market should be open equally to domestic and foreign flag passenger and cargo air carriers or general aviation operators who use the airport regularly.

[15] Preferably as defined by the FAA's calendar year passenger activity for commercial service airports.

D. Air carriers wishing to transfer, or acquire, slots must advise the Coordinator of the following details. In order to provide transparency, the Coordinator will publish this information on their website in a section clearly marked "Slot Transfers".
    1. The name of the air carrier/general aviation operator,
    2. The historic slots available or the slot times required,
    3. The effective date range (seasons or permanent),
    4. The type of agreement sought (sale, lease, barter), and
    5. The period for which the transfer offer is valid.
E. Once air carriers reach an agreement, the Coordinator should be advised and the following information will be published on the Coordinator's website, after the Coordinator has checked the feasibility of the proposed transfer. No other details of the agreement between the airlines should be made public or published.
    1. The names of the air carriers/general aviation operators involved,
    2. The slot times transferred or exchanged, and
    3. The period of the agreement (e.g. date range, seasons, permanent)

Section 11: Capacity Utilization (Use-or-Lose)

A. All slots should be utilized at least 80 percent over a scheduling season based on the slots held by an air carrier as of a specific date.
B. Air carriers should receive a waiver to the utilization requirement of their slots as follows:
    1. Any slots held on Thanksgiving Day and the day after Thanksgiving and from Christmas Eve through the first Saturday in the new year will be counted as utilized. [consistent with prevailing U.S. policy, not part of the WSG]
    2. Unforeseeable and unavoidable circumstances outside the air carrier's control leading to:
        a. Grounding of the aircraft type generally used for the air service in question,
        b. Closure of an airport or airspace,
        c. Serious disturbance of operations at the airport concerned, including those slots at other airports related to routes which have been affected by such disturbance, during a substantial part of the relevant scheduling period;
    3. Interruption of air service due to action intended to affect those services which make it practically and/or technically impossible for the air carrier to carry our operations as planned.
C. The utilization rule will apply equally to slots held by domestic as well as foreign flag air carriers.
D. If the 80 percent usage cannot be demonstrated, the slots shall not be allocated to the air carrier as Historics and will be placed in the slot pool for re-allocation.

Section 12: Coordination Committees

A. Coordination Committees should be established at all coordinated airports.
B. Membership of these committees should be open to the airlines using the airport regularly, their representative organizations, the managing body of the airport, ATC authorities and representatives of general aviation using the airport regularly. FAA representatives and the Coordinator should be invited to the meetings of the Coordination Committee as observers.
C. Each Coordination Committee should have a Terms of Reference including participation, organization (elections), tasks and frequency of meetings.
D. The tasks of the Coordination Committee should include, but not be limited to, making proposals and advising the Coordinator or FAA on:
    1. Possibilities for increasing capacity,
    2. Coordination parameters,
    3. Methods of monitoring use of allocated slots,
    4. Local guidelines for the allocation or monitoring of slots,
    5. Improvements on traffic conditions, and
    6. Serious problems encountered by new entrants.
E. The Coordination Committee should host an Annual General Meeting (AGM) open to all scheduled and unscheduled operators (including general aviation) including their representative associations, the airport managing body, the Coordinator, representatives from FAA/DOT and air traffic during which presentations are given on airport performance, coordination issues and airport/airspace projects.

Section 13: Slot Misuse

A. Airlines must not intentionally operate services at a time significantly different from the allocated slots. Airlines that do so on a regular basis will not be entitled to historical precedence for either the times they operated or for the times allocated.
B. An air carrier that is not a small business as defined in the Small Business Act would be liable for a civil penalty of up to $25,000 for every day that it violates the limits set forth in the final Order. An air carrier that is a small business as defined in the Small Business Act would be liable for a civil penalty of up to $10,000 for every day it violates the limits set forth in the final Order. [consistent with US policy, not part of WSG]
C. For each airport that is coordinated, the Coordination Committee should ensure a Slot Performance Sub-Committee is established.
    1. In order to ensure that all airlines conform with procedures governing the use and availability of the runway, and operate to the slots allocated to them, slot performance sub-committees should be established by the Coordination Committees at the coordinated airports in support of the role of the Coordinator.
    2. The functions of the Sub-Committee should be to:
        a. Analyze the slot performance of all airlines operating through the airport,
        b. Identify any airline that regularly and intentionally abuses the procedures of slot allocation,

c. Notify the airport managing body, Coordinator and FAA of such abuse,
d. Communicates with the airline concerned and seeks explanations of specific instances of apparent abuse,
e. If the responses to such requests are considered by the Sub-Committee to be inadequate or unreasonable, a set of disciplinary procedures may be recommended and initiated through the appropriate body,
f. If required to do so by airlines, may act as a mediator with the Coordinator in the event of differences of interpretation on slot performance.

3. Membership in the Slot Performance Sub-Committee should include:
    a. The airport managing body provides the Chairman and the Secretary for the Sub-Committee,
    b. The airlines operating at the airport provide representatives with scheduling experience from two or three airlines carrying different types of traffic who are members of the Coordination Committee,
    c. The Coordinator attends the meeting as an advisor, and
    d. The inclusion of an ATC representative.
4. Meetings should be held at least quarterly, or as required.

APPENDIX A —NEW YORK ARC ORGANIZATIONAL DOCUMENTS

NEW YORK ARC CHARTER

ORDER

SUBJ: NEW YORK AVIATION RULEMAKING COMMITTEE

1. PURPOSE. This order constitutes the charter for the New York Aviation Rulemaking Committee (NYARC) that is designated and established pursuant to the Administrator's authority under 49 USC 106(p)(5).

2. DISTRIBUTION. This order is distributed at the director level in Washington headquarters and throughout the Office of the Assistant Administrator for Aviation Policy, Planning, and Environment.

3. BACKGROUND. The Administrator has determined that it is appropriate to create an Aviation Rulemaking Committee to explore various options, including market based mechanisms, for addressing airspace congestion in the New York area.

4. OBJECTIVES AND SCOPE. The NYARC will serve as a forum for interaction among officials of the Department of Transportation (DOT) and FAA, the Port Authority of New York and New Jersey, representatives of air carriers operating to and from LaGuardia Airport, John F. Kennedy International Airport, Newark International Airport, Teterboro Airport, and other interested parties as determined by the Chair. The committee will be assigned specific tasks by the Chair.

5. DUTIES. The NYARC shall meet to explore market based mechanisms and other options for addressing airspace congestion in the New York area, and then provide advice, information and recommendations to the Administrator and the Secretary of Transportation in a form to be determined by the Chair.

6. ORGANIZATION AND ADMINISTRATION.

a. The Administrator designates the General Counsel of the Department of Transportation as the Chair of the committee. The Chair:

(1) Determines when meetings are required and where they will be held.

(2) Arranges notification to all committee members of the time and place for any meeting.

(3) Formulates an agenda for each meeting and conducts the meeting.

(4) Establishes subcommittees, if required, and determines membership of subcommittees.

- 2–

b. The Administrator may designate a Vice-Chair, Executive Director, and other support to the committee, as necessary.

c. The committee is not required to keep minutes, but may elect to do so.

7. COMPENSATION. Non-Government representatives serve without Government compensation and bear all costs related to their participation on the committee.

8. PUBLIC PARTICIPATION. Unless otherwise decided by the Chair, all meetings of the committee shall be closed. Interested persons wishing to attend a meeting who are not members of the committee must request and receive approval in advance of the meeting from the Chair.

9. AVAILABILITY OF RECORDS. Subject to the conditions of the Freedom of Information Act, 5 U.S. C. Section 522, records, report, agendas, working papers, and other documents that are made available to or prepared for or by the committee shall be available for public inspection and copying at the FAA Office of Rulemaking, 800 Independence Avenue, SW., Washington, D.C. 20591. Fees shall be charged for information furnished to the public in accordance with the fee schedule published in part 7 of title 49, Code of Federal Regulations.

10. EFFECTIVE DATE AND DURATION. This committee is effective on September 27, 2007. The committee shall remain in existence until December 10, 2007, unless sooner terminated or extended by the Administrator.

Robert A. Sturgell
Acting Administrator

September 25, 2007

CHARTER TO EXTEND THE NEW YORK ARC

ORDER

SUBJ: EXTENSION OF THE NEW YORK AVIATION RULEMAKING COMMITTEE

1. PURPOSE. This order extends the New York Aviation Rulemaking Committee that was designated and established pursuant to the Administrator's authority under 49 USC 106(p)(5).

2. DISTRIBUTION. This order is distributed at the director level in Washington headquarters and throughout the Office of the Associate Administrator for Regulation and Certification.

3. BACKGROUND. In accordance with the September 27, 2007 Order that chartered the New York Aviation Rulemaking Committee, the Acting Administrator hereby extends the duration of the Committee to December 24, 2007.

4. DUTIES. The Chairman of the Committee retains all previous authority, and may reconvene the Committee, either in whole or in part.

5. PUBLIC INTEREST. The extension of the New York Aviation Rulemaking Committee is determined to be in the public interest in connection with the performance of duties imposed on FAA by law.

6. EFFECTIVE DATE AND DURATION. This extension is effective immediately. The committee shall remain in existence until December 24, 2007, unless terminated or extended by the Administrator.

Robert A. Sturgell
Acting Administrator

December 10, 2007

APPENDIX B — LIST OF ARC AND WORKING GROUP MEMBERS

ARC MEMBER-PARTICIPANT LIST

Affiliation/Organization	Name	ARC Designation
DOT	D.J. Gribbin	Chair
FAA	Nancy LoBue	Vice Chair
ABX Air	Jim O'Grady	
ABX Air	Robert J. Morgenfeld	
Air Canada	Rob Reid	
Air Canada	Volker Wackernagel	
Air Canada	Jim Jakes	
Air Canada	Doug Scott	
Air Carrier Association of America	Ed Faberman	
Air Carrier Association of America	Christine Freund	
Air France	Jacques Malot	
Air France	Joan Gabel	
Air France (Silverberg, Goldman & Bikoff)	Michael Goldman	
Air Transport Association	Jim May	
Air Transport Association	David Berg	
Air Transport Association	Sharon Pinkerton	
Air Transport Association	Paul McGraw	
Air Transport Association	Basil Barimo	
Air Travelers Association	David Stempler	
Airports Council International- North America	Debby McElroy	
AirTran Airways	Kevin P. Healy	
AirTran Airways	Greg Christopher	
AirTran Airways	Phil Mullis	
Alaska Airlines	Kevin Finan	
Alaska Airlines	Megan Lawrence	
Alaska Airlines	Keith Loveless	
Alaska Airlines (Squire, Sanders, and Dempsey)	Connie O'Keefe	

Affiliation/Organization	Name	ARC Designation
American Airlines	Walter Aue	
American Airlines	Jeff Ogar	
American Airlines	Michael Wascom	
American Airlines	Diana Walke	
American Airlines	George Kypreos	
AOPA	Randy Kenagy	
AOPA	Andrew V. Cebula	
British Airways	Paul C. Jasinski	
British Airways	Steve Clark	
British Airways	James B. Blaney	
Business Travel Coalition	Kevin Mitchell	
Continental Airlines	Rebecca Cox	
Continental Airlines	Tracy Lee	
Continental Airlines	Larry Kellner	
Continental Airlines	Hershel I. Kamen	
Continental Airlines	Greg Hart	
Continental Airlines	Glenn Morse	
Delta Air Lines	Glen Hauenstein	
Delta Air Lines	Joe Kolshak	
Delta Air Lines	Scott Yohe	
Delta Air Lines	Bob Cortelyou	
Delta Air Lines	J. Scott McClain	
Delta Air Lines	Sametta C. Barnett	
DHL	Wolfgang Pordzik	
DHL	Ian Taylor	
DHL	Stephen Dolan	
DOT	Nicolle Fleury	
DOT	Jacqueline Stratton	
DOT	Andy Steinberg	
DOT	Michael Reynolds	
DOT	Naveen Rao	
DOT	Tyler Duvall	

Affiliation/Organization	Name	ARC Designation
DOT	Robert Dehaan	
DOT	Jana Weir	
DOT	Sam Podberesky	
DOT	Brian Turmail	
DOT	Katherine Stusrud	
DOT	Christopher Mandel	
DOT	Susan McDermott	
DOT	Paul Smith	
DOT	John Kiser	
DOT	Steven Hatley	
DOT	Brett Jortland	
DOT	Kevin Schlemmer	
DOT	Todd Homan	
DOT	David Foss	
DOT OST	Eric Gabler	
DOT OST	Nancy Kessler	
DOT OST	Dayton Lehman	
DOT OST	Brian Swanson	
FAA	Mike Sammartino	
FAA	Ellen King	
FAA	Dan Murphy	
FAA	David Bennett	
FAA	Dan Elwell	
FAA	Molly W. Smith	
FAA	Claudett Wiggins	
FAA	Morgen MacDonald	
FAA	Bobby Sturgell	
FAA	Cecilia Harley	
FAA	Jeffrey Wharff	
FAA	Louise Maillett	
FAA	Catherine Lang	
FAA	Megan Rosia	

Affiliation/Organization	Name	ARC Designation
FAA	Rochelle Claypoole	
FAA	Nancy Kalinowski	
FAA	Jon Cross	
FAA	Leo Prusak	
FAA	Carmine Gallo	
FAA AGC	Kerry B. Long	
FAA AGC-2	James W. Whitlow	
FAA AGC-200	Rebecca MacPherson	
FAA AGC-40	James Tegtmeier	
FAA APO	Nan Shellabarger	
FAA ATO	Brian Meehan	
FAA ATO	Gerry Shakley	
FedEx	Steve Vail	
FedEx Express	James R. Parker	
FedEx Express	J. Mark Hansen	
IATA	Doug Lavin	
IATA	Peter Cerda	
IATA	Juan Catala	
IATA	Cyriel Kronenburg	
JetBlue	Joe Bertapelle	
JetBlue	Robert Land	
Lufthansa	Natalie Hartman	
Lufthansa	David Thomas	
Lufthansa	Arthur Molins	
Lufthansa	Fred Blumer	
Midwest Airlines	Greg Aretakis	
Midwest Airlines	Scott R. Dickson	
Midwest Airlines (Silverberg, Goldman & Bikoff)	Robert P. Silverberg	
MITRE	William Swedish	
MITRE	George H. Solomos	
NACA	Tom Zoeller	
NACA	Paul Doell	

Affiliation/Organization	Name	ARC Designation
NBAA	Steve Brown	
NBAA	Lisa Piccione	
NetJets	Richard Smith	
NetJets (Hogan & Hartson)	Ted Ellett	
New York Department of Transportation	Astrid Glynn	
Northwest Airlines	Dennis Newman	
Northwest Airlines	Alexander Van der Bellen	
Northwest Airlines	Robert Muhs	
Northwest Airlines	Lorne Cass	
Northwest Airlines	Jennifer Sayre	
PAI	Peggy A. Swalve	
Port Authority of NY and NJ	Bill DeCota	
Port Authority of NY and NJ	Patty Clark	
Port Authority of NY and NJ	Tom Bock	
Port Authority of NY and NJ	Bradley Rubinstein	
RAA	Roger Cohen	
RAA	Scott Foose	
Southwest Airlines	Leslie Abbott	
Southwest Airlines	Bob Kneisley	
State of New York	Michael Wojnar	
U.S. Airways	Doug Parker	
U.S. Airways	C. A. Howlett	
U.S. Airways	Howard Kass	
U.S. Airways	Tom Chapman	
U.S. Airways	David Seymour	
U.S. Airways	Andrew Nocella	
U.S. DOJ	Michael Billiel	
U.S. DOJ	Will Gillespie	
United Airlines	Julie Oettinger	
United Airlines	Michele Boyce	
University of Maryland	Mike Ball	
University of Maryland	Dave Lovell	

Affiliation/Organization	Name	ARC Designation
UPS	Bob Bergman	
UPS	Tim Stull	
Virgin America	Brian Clark	
Virgin America	Becky Weber	
Virgin America	David Pflieger	
Virgin America	Robecta Ma	
Virgin America	Scott Humphrey	
Virgin America	Adam Green	
Virgin America (Pillsbury Winthrop Shaw Pittman)	Jonathon Foglia	
Virgin America (Pillsbury Winthrop Shaw Pittman)	Kenneth P. Quinn	
Virgin America (Whitmer & Worrall)	Rudy Barry	
Virgin America (Whitmer & Worrall)	Martin Whitmer	

WORKING GROUP ROSTER

Working Group 1 - Operational/Infrastructure Improvements, NY Airspace Czar, General Aviation, Voluntary Reductions

Working Group Chair - FAA	**Mike Sammartino**
ABX Air	Bob Morgenfeld
Air Canada	Jim Jakes
Air Travelers Association	David Stempler
Airports Council International-North America	Deborah McElroy
AirTran Airways	Kevin Healy; Phil Mullis
American Airlines	George Kypreos
AOPA	Randy Kenagy
ATA	Sharon Pinkerton
Business Travel Coalition	Kevin Mitchell
Continental Airlines	Hershel Kamen
Delta Air Lines	Scott Yohe
DHL	Wolfgang Pordzik
FedEx	Steve Vail
IATA	Peter Cerda
JetBlue	Joseph Bertapelle
Lufthansa	David Thomas
National Air Carrier Association	Thomas Zoeller
National Business Aviation Association	Steve Brown
NetJets	Ted Ellett; Richard Smith
New York Department of Transportation	Astrid Glynn
Northwest Airlines	Alexander Van Der Bellen; Lorne Cass
Port Authority of NY/NJ	Patty Clark; Tom Bock
United	Tim Matuszewski
Univ. Maryland	Dave Lovell

Working Group 1 - Operational/Infrastructure Improvements, NY Airspace Czar, General Aviation, Voluntary Reductions

UPS	Tim Stull
US Airways	David Seymour; Tom Chapman
Virgin America	David Pflieger; Scott Humphrey

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

Working Group Chair - DOT	**DJ Gribbin**
Air Canada	Rob Reid
Air Carrier Association of America	Edward Faberman
Air France	Joan Gabel
Air Travelers Association	David Stempler
Airports Council International-North America	Deborah McElroy
AirTran Airways	Kevin Healy; Phil Mullis
Alaska Airlines	Kevin Finan; Connie O'Keefe
American Airlines	Diana Walke
ATA	Sharon Pinkerton
British Airways	Steve Clark
Business Travel Coalition	Kevin Mitchell
Continental Airlines	Hershel Kamen
DHL	Wolfgang Pordzik; Ian Taylor; Stephen Dolan

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

DOT	Todd Homan; Christopher Mandel; Kevin Schlemmer; Brian Swanson; Steven Hatley Nancy Kessler
FedEx	Mark Hansen
IATA	Cyriel Kronenburg
JetBlue	Robert Land
Lufthansa	David Thomas
Midwest Airlines	Greg Aretakis
National Air Carrier Association	Thomas Zoeller
National Business Aviation Association	Steve Brown
NetJets	Ted Ellett; Richard Smith
New York Department of Transportation	Astrid Glynn
Port Authority of NY/NJ	Patty Clark
RAA	Roger Cohen
United	Michele Boyce
Univ. Maryland	Dave Lovell
UPS	Tim Stull
US Airways	Andrew Nocella
Virgin America	Brian Clark; Adam Green

Working Group 3 - Gate Utilization and Perimeter Rule

Working Group Co-Chair - DOT	**Mike Reynolds**
Working Group Co-Chair - FAA	**Dave Bennett**
Air Canada	Rob Reid
Air Carrier Association of America	Edward Faberman
Air Travelers Association	David Stempler

Working Group 3 - Gate Utilization and Perimeter Rule

AirTran Airways	Kevin Healy
Alaska Airlines	Kevin Finan; Connie O'Keefe
American Airlines	Diana Walke
ATA	Sharon Pinkerton
DOT	Todd Homan; Christopher Mandel; Kevin Schlemmer; Brian Swanson Nancy Kessler
Midwest Airlines	Greg Aretakis
National Air Carrier Association	Thomas Zoeller
New York Department of Transportation	Astrid Glynn
Northwest Airlines	Alexander Van Der Bellen
Port Authority of NY/NJ	Patty Clark
RAA	Roger Cohen
US Airways	Andrew Nocella

Working Group 4 - Priority Air Traffic Preferences

Working Group Chair - DOT	**Mike Reynolds**
Air Canada	Jim Jakes
Air Carrier Association of America	Edward Faberman
Air Transport Association	Sharon Pinkerton
Air Travelers Association	David Stempler
Airports Council International-North America	Deborah McElroy
AirTran Airways	Kevin Healy; Phil Mullis
American Airlines	George Kypreos
AOPA	Randy Kenagy
British Airways	Steve Clark
Continental Airlines	Hershel Kamen

Working Group 4 - Priority Air Traffic Preferences

Delta Air Lines	Scott Yohe
DHL	Wolfgang Pordzik
DOT	Todd Homan; Christopher Mandel; Kevin Schlemmer; Brian Swanson
FedEx	Steve Vail
JetBlue	Joseph Bertapelle
Lufthansa	Arthur Molins
National Business Aviation Association	Steve Brown
NetJets	Ted Ellett; Richard Smith
New York Department of Transportation	Astrid Glynn
Northwest Airlines	Lorne Cass
Port Authority of NY/NJ	Patty Clark
RAA	Roger Cohen
Southwest Airlines	Leslie Abbott
United	Tim Matuszewski
US Airways	David Seymour
Virgin America	David Pflieger; Scott Humphrey

Working Group 5 - IATA Scheduling Guidelines/Other Administrative

Working Group Chair - FAA	**Rebecca MacPherson**
Air France	Joan Gabel
Air Transport Association	Sharon Pinkerton
Air Travelers Association	David Stempler
Alaska Airlines	Kevin Finan; Connie O'Keefe
American Airlines	Diana Walke
British Airways	Steve Clark

Working Group 5 - IATA Scheduling Guidelines/Other Administrative

Business Travel Coalition	Kevin Mitchell
Continental Airlines	Hershel Kamen
Delta Air Lines	Scott Yohe
DOT	Michael Reynolds
FAA	Molly W. Smith
FedEx	Mark Hansen
IATA	Juan Catala
JetBlue	Robert Land
Lufthansa	Arthur Molins
Midwest Airlines	Greg Aretakis
Port Authority of NY/NJ	Patty Clark
United	Michele Boyce
Univ. Maryland	Dave Lovell
UPS	Tim Stull
US Airways	Howard Kass
Virgin America	David Pflieger; Scott Humphrey

APPENDIX C — ATTACHMENTS RELATED TO WORKING GROUP1 REPORT

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#	General	Notes
	AIRSPACE INITIATIVES	
	Procedural	
1	Reduce Excessive Spacing on Final Approach - adhere to standards, continue to look at ways of improving safety and increasing throughput with final compression studies	Ensure that excessive space on Final Approach is eliminated, and improve arrival efficiency.
2	Eliminate pass back restrictions to NY area airports for Destinations 500 miles or more	Departure restrictions to airports over 500 miles often lead to wasted space in the departure queue as controllers often have to wait to release aircraft. Eliminating this airport restrictions and allowing enroute controllers to build in the spacing would improve airport efficiency
3	Airspace Flow Program (AFP) Utilization in High volume/Delay triggers	Utilize the automation in AFP to improve enroute throughput and space aircraft to allow delayed airports access to the enroute stream
4	SWAP Escape Route for NY dep, north to CAN routes(NRS waypoints, SWAP Tactical)	Develop an additional route for Severe Weather through northgate utilizing Navigational Reference System waypoints to access the Canadian (CAN) Routes
5	Conditional Airspace holding Patterns in N90--ARD-RBV-CAMN	Develop procedures to allow NY TRACON conditionally to work holding patterns at Yardley, Robbinsville, and Camrn. This will allow the TRACON to empty the pattern quickly and immediately when traffic conditions permit, thus reducing coordination and delays.
6	Tower Reroutes - SWAP CDRs, J75 Offloads to fix balance	Develop pre-coordinated re-routes for select high delay/priority flights staged in departure queue that towers can implement without additional coordination
7	ZNY pit Enhancements (silent clearances)	During Severe Weather conditions, NY Air Route Traffic Control Center will develop procedures to allow towers to launch aircraft without coordination when their specific routes are unaffected by weather
8	J70 test - use J70 as westbound dept route instead of arrival route under certain conditions.	Develop procedures with NY Center to allow use of J70 (normally TEB & JFK arrival route) for westbound departures when delays are exacerbated by weather (tactical re-route)

#	General	Notes
9	2nd J80 Additional Westbound Departure Route North of J80	Establish an additional westbound route north of J80 to reduce volume on the most used westbound route from NY/PHL. (This is tentatively planned for spring 2008 and included as part of ZNY sector 9 & 10 resectorization)
10	Hyper-Binns resectorization	Resector positions in NY Center to segregate arrival and departure flows, reduce complexity and improve capacity.
11	Establish at ZNY new Ultra Hi sector overlying sectors 9, 10	This new position will allow for an additional J80 and improve capacity and reduce complexity and controller workload
12	Accessing J134/J149 from ELIOT	This will provide access to additional westbound routes from the NY/PHL metro area allowing for better fix balancing and reducing delays to access J80
13	Moving BOS Arrival Route to East out of ZNY Sector 56	This initiative will reduce complexity between arrivals and departures in Sector 56 at NY Center and improve departure throughput, Military Airspace proposal
14	Redesign ZNY sectors 27,73,91,93	This initiative will improve throughput by reducing complexity and segregating arrival and departure positions. It will not require any additional sectors.
15	Shifting overflights in ZNY Sector 34	Shifting overflights to allow unrestricted climbs by NY departures will improve sector capacity by reducing aircraft interactions and complexity.
16	Simultaneous Departure runways at EWR & JFK Daily	Utilize multiple runways to depart traffic simultaneously to improve throughput.
17	Stack Dept fixes to expedite departures	Allow for piggyback departure altitudes at outbound fixes to improve capacity, rather than requiring traffic be in-trail
18	Add 3rd Northgate route w/ RNAV and segregate away from MIT routes (ORD, DTW)	Add additional route for ORD and DTW traffic to allow other unrestricted destinations to flow freely on existing routes.
19	Develop RNAV route for DCA & BWI traffic to segregate from Biggy route	Develop separate route for DC area traffic from NY/PHL area to reduce complexity and reduce departure restrictions
20	Develop RNAV route for IAD arrivals from ZBW to segregate Parke Departures	Similar to above, this will segregate arrivals from departures on the same route and improve throughput
21	Develop procedures to use J146 for Departures instead of arrivals in SWAP	Similar to J70 initiative this will use the LGA arrival route for departures from NY & PHL during certain Severe Weather conditions (tactical use)

#	General	Notes
22	Advance Random Routes East program to reduce international dept delays	Similar to a procedure for eastbound traffic, agreements need to be established with international air traffic service providers to allow random routes in the eastbound direction to segregate traffic and reduce departure restrictions. FAA working with NAV Canada
23	Develop Controller Based Safety Program similar to airline safety program to allow controllers to identify safety issues without fear of reprimand.	If safety is the #1 goal the FAA needs to identify ways to improve system without punishing controllers for inadvertent errors.
24	Accelerate NY/NJ/PHL Airspace Redesign Implementation, including RTCA Near-Term Initiatives. Begin expedited planning and funding of NYICC	speed-up the implementation of the Airspace Redesign projects, deliver short term items immediately and begin the planning for delivering the NYICC
25	Reclassify B757-300 and other B757's with MTOW of 255,000 lbs or greater as a B757 not as a heavy jet aircraft.	This will reduce spacing between certain B757 aircraft and improve capacity. Standards call for all aircraft above 250,000 lbs. to be classified as heavyjets with increased spacing requirements. A B757 has a lesser spacing requirements
26	Develop procedures for efficient use of visual approaches	Improve throughput in VMC
27	Eliminate in-trial restrictions when EDCTs in place	Improve efficiency and improve GDP performance
28	Segregate departures by fix (to the extent practical) through remote staging and develop intersection departure procedures to facilitate SWAP operations	Facilitates SWAP departures - however requires areas to hold aircraft with access to runways
29	Develop standard throughput rates based on weather and actual aircraft types	Eliminate subjectivity to throughput rates
30	Analyze staffing in towers to determine if additional staff will improve capabilities	Improve operational capability in towers
31	Develop initiative with the National Weather Service to improve convective forecasting - develop CCFP with greater granularity	Improved forecasting is the key to better weather planning
32	Develop RNAV RNP Procedures to reduce spacing requirements - SAAAR, Sids, STARs	Utilize new precise navigation systems to reduce spacing
TEB		
33	Add RNAV fixes west and north of WANES to facilitate use of the VOR DME A approach to TEB. A complete RNAV Visual or RNAV approach with descent guidance is needed.	Utilize RNAV to improve use and consistency of VOR/DME A track to TEB, to deconflict arrivals with EWR Traffic

#	General	Notes
34	Develop procedures to consistently utilize RNAV Runway 6 to deconflict EWR traffic	RNAV 6 approach to TEB allows EWR & TEB to operate independently. Current procedures allow limited use of this approach. Procedures need to be developed to more consistently use the RNAV 6 approach to TEB
35	Develop additional RNAV procedures to deconflict TEB & MMU from EWR traffic	New RNAV designs and procedures to operate TEB & MMU independently from EWR
36	Develop RNAV 'transitions" or CVFPs to deconflict traffic flows and reduce noise impacts.	Similar to 24B above. All TEB proposals can be grouped under RNAV development
JFK		
37	Simultaneous ILS Approaches on 31L and 31R at JFK	Enhances arrival throughput - N90 training issue currently in progress
38	Increased use of alternate departure Runway at JFK by expanding fixes available	Expand the departure fixes allowed use of secondary departure runway (usually 31L) - White/Wavey Shuffle
39	Develop procedures to utilize JFK 31L departures with LGA on Coney Climbs	This will increase the use of 31L at JFK and allow LGA Coney climbs which will increase departure throughput at both airports. Restrictions have been in place with slower climbing aircraft (B727) but newer aircraft can easily make climb restrictions
40	Develop procedures to utilize JFK 31R and 22L arrivals via CRDA	Allow crossing runway simultaneous arrivals with the use of CRDA procedures - requires wake turbulence analysis
41	Develop JFK 13R arrivals and 22R departures waiver	Allow departures from 22R at JFK while arrivals land 13R. Reduces amount of separation required between operations to realistic levels while maintaining safety.
42	Develop 31L and 22L CRDA procedures	Allows for multiple arrival runways and 4-runway concept
LGA		
43	Develop non-conflicting RNAV approach into JRB	In IFR weather helicopters often fly LGA ILS until clear of clouds, reducing airport capacity. An RNAV approach into Wall St. Heliport will resolve this and deconflict traffic
44	Develop RNAV transition to LOC 31 approach or overlay vector pattern for LOC 31 approach with RNAV waypoints	Reducing controller complexity and improving final approach path consistency will improve airport throughput
EWR		
45	EWR 4R-29 Waiver - Allow reduced spacing on crossing runway operations	Similar to JFK waiver, this procedures allows arrivals to Runway 29 while landing Runway 4R. Aircraft are spaced to ensure safety and operations are enhanced.

#	General	Notes
46	Simultaneous Visual Approaches to 4L at EWR	Increased arrival capacity by allowing overflow arrivals to 4L.
47	Deconflict EWR arrivals over SHAFF (12am-6am time dependent)	This allows for higher arrival altitudes for international traffic from the north during low demand times
48	Caribbean Tactical Reroutes to Manage EWR Arrival Banks	Re-routes Caribbean arrivals to better control EWR final approach while landing Runway 4R - tactical operation
49	Establish an RNAV visual approach procedure to EWR runway 29 to have a repeatable, stabilized approach path. From both north and south approaches	Allows for more consistent spacing and improves ability to land 29 while other aircraft land 4R or 22L. This is being developed by N90 and FAA RNAV office
50	Develop RNAV STAR from SHAFF/PHLBO to runway 11 at EWR	Segregates Runway 11 arrivals from other traffic and makes them easily identifiable to controllers
51	Develop RNAV Departure Procedure from EWR runway 22 to LANNA, PARKE and BIGGY	Facilitate departures and reduce controller workload
52	Develop a climb off EWR RWY 4 to top LGA arrivals when LGA ILS RWY 13 is in use	Reduce impact of 13 ILS at LGA on TEB and EWR Traffic
53	Develop RNAV/Charted Visual to Runway 22R to eliminate use of VFR GDP	Allow some overflow arrivals to Runway 22R and reduce controller workload reducing need for Ground delays programs in good weather
54	Develop Converging Runway Display Aid (CRDA) procedures for use in Visual conditions for Runway 11/22 and 4/11 (w/no Land and hold short restrictions)	Develop procedures to allow for non-conflicting overflow arrivals
55	Develop procedures for Visual approaches to 22L with tower side-step to 22R in visual conditions	Similar to RNAV to 22R - eliminate VFR GDP
Technological		
56	Develop PRM (ADS-B/Multi-Lat)/SOIA or RPAT type procedures for parallel approaches to EWR 4L/R and 22L/R for use in MVMC.	Longer range project to allow for landing on parallel runways in less than visual conditions
57	Install ground surveillance systems (ASDE-X with Data Distribution Box for airline & FAA Access) at EWR & JFK in 2008	COA announced plan to install system at EWR and FAA accelerating ASDE-X installation at JFK - need to accelerate effort to extent practical
58	Further refine and develop RAPT(Root availability planning tool) to improve predictability capabilities	In FAA budget, being worked
59	Datalink real-time weather data and forecast to cockpit	Longer-term initiative
60	Utilize ADS-B to improve traffic flows and reduce spacing -	Reduced spacing based on more precise surveillance equipment

#	General	Notes
61	Digital Non-voice communications - data link	Next-Gen
62	Develop Net-Centric airport where ALL operational information both user, airport, and FAA is in one source with all entities operating off the net-centric system - reroutes, gate, ready status, etc.	Shared data to all parties - may be do-able in shorter timeframe
63	Develop 4-D flight tracks to improve traffic flows and runway sequencing - Suggest expansion of Traffic Management Advisor (TMA) to additional airports/runways.	Expansion of existing programs - enhance data to reduce delays and improve throughput
64	Install terminal multi-lateration capability/leverage investment in ASDE-X and related ground surface management systems to provide high update surveillance capability in advance of ADS-B mandate.	Utilize ground surveillance systems to improve operations both in air and on ground through new procedures designed to take advantage of improved surveillance capability.
65	Accelerate LAAS/GBAS *(ground based augmentation system) installation for EWR/TEB	Mid-term navigation improvements
Capital		
66	Develop Closely spaced Dependent ILS Approaches (STL Procedures) 1.5 nm diagonal separation behind like types or smaller at EWR. Allow procedure in certain weather conditions regardless of type - e.g. 15 kt crosswind with heavy outside.	Procedures to increase arrival flow to parallel runways, requires change in thresholds
67	Provide aircraft holding pad at end of taxiway P & Q near JFK Runway 13R	Being considered for JFK 13R rehab project in 2009
68	Add additional airside pavement at JFK for deicing and SWAP - Hanger 12 site	Additional pavement needs to be added to PA Capital plan
69	Add multiple access points to runway ends (similar to DFW) All airports	Pavement needs similar to above
70	Evaluate obstacles impacting EWR Runway 29 takeoff weights and initiate removal.	Longer term initiative
71	Evaluate obstacles impacting LGA Runway 13 takeoff weights and develop plan for removal	Long term capital planning
72	Uncouple Runway 4R and runway 29 at EWR.	Requires discussion - Shortens runway - Work through Customer Forum
73	Install ODALS or other specialized lighting system for EWR Runway 11	Capital cost - engineering feasibility required
74	Deploy Air Traffic Control Tower simulators to EWR, JFK, LGA for reduce training time and improve safety	Improve training capability of tower staff - Speed training of new controllers
75	Taxiway improvements - LGA	Improve ability to stage and store aircraft

#	General	Notes
76	LGA ALSF-2 installation - Runway 22	Provides ability to obtain CAT II approach to runway 22
77	JFK additional taxiway improvements (Taxiwy B to 22L 31R, etc)	Increase runway use flexibility

GIBSON, DUNN & CRUTCHER LLP MEMORANDUM TO ATA

GIBSON, DUNN & CRUTCHER LLP

November 14, 2007

C 04536-00003

MEMORANDUM

TO: David A. Berg, Esq.
Air Transport Association of America, Inc.

FROM: Theodore B. Olson

RE: Congestion Pricing and Slot Auctions at JFK and LGA

This memorandum analyzes whether the Federal Aviation Administration ("FAA") or the Port Authority of New York and New Jersey ("PANYNJ") is authorized to implement congestion pricing or slot auctions at New York airports. Part I summarizes the regulatory mechanisms that have traditionally been used to address airport congestion, as well as the new regulatory approaches being considered. Part II examines the FAA's authority to impose congestion pricing or slot auctions at John F. Kennedy International Airport ("JFK") and LaGuardia Airport ("LGA"), and concludes that Congress has not authorized the FAA to implement such measures. Part III considers whether the PANYNJ could impose congestion pricing or slot auctions. It concludes that federal law would preempt such measures, and that the imposition of congestion pricing and slot auctions would also be unreasonable. The memorandum therefore concludes that, under the current statutory and regulatory framework, neither the FAA nor the PANYNJ possesses the authority to impose congestion pricing or slot auctions.

I. Background

Congestion at New York City's JFK and LGA airports has long been a cause of concern for airlines, the federal government, and the PANYNJ, which operates both airports. Historically, the FAA addressed flight delays at high volume airports by capping the volume of aircraft operations during peak periods of the day through a High Density Traffic Airports Rule ("HDR"). *See* 14 C.F.R. pt. 93, subpart K. The HDR required aircraft to have a reservation, or "slot," in order to operate during peak periods of the day. 71 Fed. Reg. 51,361 (Aug. 29, 2006) (describing the background of the HDR at LGA). In 2000, however, Congress enacted the Wendell H. Ford Aviation Investment and Reform Act of the 21st Century, which phased out the HDR at three airports, including JFK and LGA. 49 U.S.C. § 41715. Since that time, congestion levels at those airports have increased, as have passenger delays. 71 Fed. Reg. at 51,361.

In considering measures to reduce congestion at New York City's airports, the FAA has recently focused on market-based mechanisms—most notably, congestion pricing and slot auctions to allocate the airports' limited resources. 71 Fed. Reg. at 51,631-32. Under the congestion pricing mechanism, the FAA (or the PANYNJ) would require aircraft to pay substantially higher takeoff and landing fees to operate during peak periods in order to discourage aircraft from operating during those times. Under the slot auction mechanism, the

FAA (or the PANYNJ) would auction a limited number of slots to airlines seeking to operate during peak periods, with the highest bidders receiving those slots.

Whether or not congestion pricing and slot auctions would successfully reduce congestion at New York airports, neither mechanism can be lawfully imposed by the FAA or the PANYNJ.

II. The FAA Lacks The Authority To Implement Congestion Pricing Or Slot Auctions At JFK And LGA

Although the FAA possesses the authority to impose restrictions on navigable airspace, the agency has itself acknowledged that invoking this authority to impose congestion pricing or slot auctions would violate constitutional and statutory requirements.

Congress has granted the FAA authority to impose restrictions on navigable airspace by regulation or order. *See* 49 U.S.C. § 40103(b)(1) (authorizing the FAA to "develop plans and policy for the use of navigable airspace and assign by regulation or order the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace"). The authority granted by this provision extends to "protecting individuals and property on the ground." *Id.* § 40103(b)(2)(B). As noted, the FAA has exercised this authority in the past to limit the number of takeoffs and landings at certain high-volume airports through an HDR. *See* 14 C.F.R. § 93.123 (1973).

The FAA's statutory authority does not extend, however, to establishing airport landing fees, which "has been left by Congress to local action." *New England Legal Found. v. Mass. Port Auth.*, 883 F.2d 157, 172 (1st Cir. 1989) ("*Massport*"). Although the Department of Transportation ("DOT") is authorized under certain circumstances to determine whether locally imposed landing fees are reasonable (49 U.S.C. § 47129(a)(1)), there is no statutory provision authorizing the DOT to set the actual level of those fees.

It would be unconstitutional for the FAA to invoke its general power to regulate the airspace as a basis for imposing congestion pricing or slot auctions because only Congress possesses the authority to implement such measures in the absence of a clear delegation from Congress. Under Article I of the Constitution, Congress is the "sole organ for levying taxes." *Nat'l Cable Television Ass'n v. United States*, 415 U.S. 336, 340 (1974). The Supreme Court has recognized that assessments intended "to discourage [an] activity . . . are in the nature of 'taxes' which under our constitutional regime are traditionally levied by Congress." *Id.* at 341. Congestion pricing and slot auctions are classic taxes because these measures are designed to discourage takeoffs and landings during peak periods by making operations during those times more expensive.

Congress may, of course, delegate its taxing authority to agencies, "so long as Congress provides an administrative agency with standards guiding its actions such that a court could ascertain whether the will of Congress has been obeyed." *Skinner v. Mid-Am. Pipeline Co.*, 490 U.S. 212, 218 (1989) (internal quotation marks omitted). In order to satisfy separation-of-powers requirements, Congress must "'clearly delineate[] the general policy, the public agency which is to apply it, and the boundaries of th[e] delegated authority.'" *Id.* at 219 (quoting *Am. Power & Light Co. v. SEC*, 329 U.S. 90, 105 (1946)). The only general authority, however, that

Congress has delegated to the FAA with respect to taxes or fees is the power delegated to all federal agencies in the Independent Offices Appropriations Act ("IOAA"), 31 U.S.C. § 9701.[1] In *National Cable*, the Supreme Court narrowly interpreted the IOAA to authorize only the assessment of fees on individuals who obtain special benefits from licenses or services provided by an agency, not the levying of taxes. 415 U.S. at 336; *Fed. Power Comm'n v. New England Power Co.*, 415 U.S. 345, 349 (1974) (holding that fees are valid under the IOAA if the agency levies "specific charges for specific services to specific individuals or companies"). Because congestion pricing and slot auctions are taxes designed "to discourage [an] activity" (*Nat'l Cable*, 415 U.S. at 341), rather than fees for a license or service provided by the FAA, the IOAA does not authorize the FAA to implement these measures.

Furthermore, even if congestion pricing and slot auctions were considered "fees," the IOAA still would not authorize their imposition. The IOAA requires that fees imposed by agencies be based upon, among other things, the "cost to the Government." 31 U.S.C. § 9701(b)(2)(A). Fees must therefore reflect "a reasonable approximation of the attributable costs which the [agency] identifies as being expended to the benefit of the recipient." *Nat'l Cable Television Ass'n v. FCC*, 554 F.2d 1094, 1106 (D.C. Cir. 1976); *see also Neb. Trails Council v. Surface Transp. Bd.*, 120 F.3d 901, 903 (8th Cir. 1997) (charges assessed under the IOAA "must be fair and based on the Government's costs, the value of the service or thing to the recipient, the public policy or interest being served, and other relevant facts"). Because congestion pricing and slot auctions are based on the market value of the slots and policy judgments concerning incentives and disincentives, rather than on the cost to the government of providing such slots, these measures are not authorized under the IOAA.[2]

The FAA itself has recognized as recently as last year that it lacks the power to implement congestion pricing or slot auctions. The agency explained that "legislation would be necessary to employ market-based approaches such as auctions or congestion pricing at LaGuardia *because the FAA currently does not have the statutory authority to assess market-clearing charges for a landing or departure authorization*." 71 Fed. Reg. 51,360, 51,362 (Aug. 29, 2006) (emphasis added); *see also id.* at 51,363 ("The FAA currently does not have full

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[1] The FAA's power to manage the airspace does not include the authority to impose taxes (or fees) as a means of implementing that authority. *See* 49 U.S.C. § 40103(b)(1). Congressional delegations of taxing authority must be "clear[]" (*Skinner*, 490 U.S. at 224), and the text of Section 40103 makes absolutely no mention of the authority to impose taxes (or fees). Moreover, Congress's authorization of passenger facility fees in 49 U.S.C. § 40117 does not authorize the type or amount of congestion pricing fees that would be necessary to effectively reduce airport operations during peak periods. *See* 49 U.S.C. § 40117 (the DOT may authorize airports to charge fees of between $1.00 and $4.50 per paying passenger to "finance an eligible airport-related project").

[2] Moreover, because the FAA lacks statutory authority to impose congestion pricing or slot auctions, the agency's expenditure of funds on those efforts would violate the Anti-Deficiency Act, which prohibits the government from spending money in the absence of a federal appropriation. *See* 31 U.S.C. § 1341(a)(1).

legislative authority to employ [auctions or congestion pricing] at LaGuardia or at other airports . . . . Consequently, we are seeking the legislative authority to conduct auctions or congestion pricing.").

In light of the absence of statutory authorization, and the restrictions imposed on the FAA by the constitutional separation of powers and the IOAA, any attempt by the FAA to impose congestion pricing or slot auctions at JFK or LGA would be contrary to both federal constitutional and statutory requirements.[3]

III. The PANYNJ Lacks The Authority To Impose Congestion Pricing Or Slot Auctions At JFK And LGA

Like the FAA, the PANYNJ is prohibited by federal law from implementing congestion pricing or slot auctions at JFK and LGA.

A. Federal Law Preempts State Laws That Impose Congestion Pricing Or Slot Auctions

There are several legal impediments to the PANYNJ's implementation of congestion pricing or slot auctions at its airports. As a threshold matter, federal law would preempt a PANYNJ measure imposing such market-based mechanisms.

In the Airline Deregulation Act of 1978, Congress expressly provided that "a State . . . or political authority of at least 2 States may not enact or enforce a law, regulation, or other provision having the force and effect of a law related to a price, route, or service of an air carrier." 49 U.S.C. § 41713(b)(1); *see also Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 378 (1992) (the purpose of this provision was "[t]o ensure that the States would not undo federal deregulation with regulation of their own"). The Supreme Court has construed this preemption provision to encompass state laws "having a connection with, or reference to, airline rates, routes, or services." *Am. Airlines v. Wolens*, 513 U.S. 219, 223 (1995) (internal quotation marks omitted). Heightened fees imposed on airlines to land at airports during certain times of the day unquestionably "hav[e] a connection with . . . airline 'rates, routes, or services.'"[4]

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[3] The FAA may not circumvent these constitutional and statutory restrictions by directing the PANYNJ to conduct auctions or establish congestion pricing. An agency cannot do indirectly what it cannot do directly. *Cf. Massport*, 883 F.2d at 173-74. Nor can the FAA attempt an end-run around these restrictions by contracting with the PANYNJ for the imposition of congestion pricing or slot auctions at JFK and LGA. Although 49 U.S.C. § 106(*l*)(6) grants the FAA the general authority to enter into contracts "as may be necessary to carry out [its] functions," measures that would be unconstitutional if implemented by the FAA directly cannot be "necessary to carry out [the FAA's] functions."

[4] The *Wolen* Court's preemption analysis was based on 49 U.S.C. App. § 1305, which was the original codification of current 49 U.S.C. § 41713. Title 49 was revised and recodified by Pub. L. No. 103-272, 108 Stat. 745 (1994). Although the text of the two statutes is slightly

[Footnote continued on next page]

Section 41713(b)(1) would therefore preempt any PANYNJ measure imposing congestion pricing or slot auctions, unless that measure fell within the statute's proprietary powers exception, which preserves a State's authority to "carry[] out its proprietary powers and rights." 49 U.S.C. § 41713(b)(3). Courts considering this exception have consistently emphasized that the role of airport proprietors is "extremely limited." *Arapahoe County Pub. Airport Auth. v. FAA*, 242 F.3d 1213, 1222 (10th Cir. 2001); *British Airways Bd. v. PANYNJ*, 564 F.2d 1002, 1010 (2d Cir. 1977).

The First Circuit has squarely concluded that the proprietary powers exception does not apply to landing fees imposed to ease airport congestion. In *New England Legal Foundation v. Massachusetts Port Authority*, 883 F.2d 157 (1st Cir. 1989), the court held that federal law preempted a landing fee scheme imposed by the Massachusetts Port Authority ("Massport") at Logan Airport. The challenged landing fees were based on aircraft weight, and the fee structure resulted in drastically higher fees for smaller aircraft, but lower fees for larger ones. *Id.* at 159. The court explained that, although the proprietary powers exception "allows local authorities to operate airports as proprietors, this grant is not unlimited and is subject to curbing if it transgresses into the general field reserved for federal interest." *Id.* at 173. Because the landing fee structure appeared to be an effort to "modify conduct (*e.g.*, control air traffic) rather than to recover operational costs," the court concluded that the proprietary powers exception was inapplicable and that the fees were preempted. *Id.* at 174.

The proprietary powers exception therefore does not encompass airports' efforts to impose congestion pricing and slot auctions. As the First Circuit recognized in *Massport*, although landing fees designed to defray operational costs are proprietary in nature, airport operators are prohibited from using such fees to regulate and control air traffic—a function that resides exclusively with the FAA. 49 U.S.C. § 40103(b); *see also Massport*, 883 F.2d at 173 (explaining that because Massport could not enact a direct regulation establishing the times when landings could occur, it could not accomplish that objective indirectly by imposing congestion fees designed to have the same effect). Because the primary purpose of congestion pricing and slot auctions at LGA and JFK would be to discourage airlines from scheduling takeoffs and landings during peak periods, such measures would transcend the PANYNJ's proprietary powers and would be preempted by federal law.[5]

[Footnote continued from previous page]

different, the textual revisions were not intended to result in substantive changes to the law (*id.* at 745), and interpretations of the earlier codification therefore apply with equal force to the current codification. *Cf. W. Pac. R.R. Corp. v. W. Pac. R.R. Co.*, 345 U.S. 247, 255 (1953).

[5] *Western Air Lines Inc. v. PANYNJ*, 658 F. Supp. 952 (S.D.N.Y. 1986), *aff'd*, 817 F.2d 222 (2d Cir. 1987), is not to the contrary. That decision upheld the PANYNJ's implementation of a perimeter rule at LGA, which prohibited nonstop operations in excess of 1,500 miles from the airport. In endorsing PANYNJ's proprietary right to limit the flights that could land at LGA, the court did not conclude that the use of congestion pricing or other market-based mechanisms to address congestion issues is also a component of an airport owner's proprietary powers.

B. The Anti-Head Tax Act And Other Federal Statutes Prevent The PANYNJ From Implementing Congestion Pricing And Slot Auctions

In addition to being preempted, the PANYNJ's imposition of congestion pricing and slot auctions would also violate several provisions of federal law.

The Anti-Head Tax Act permits publicly owned airports to collect only reasonable landing fees and charges. *See* 49 U.S.C. § 40116(e)(2) (a State or political subdivision of a State may collect "reasonable . . . landing fees[] and other service charges from aircraft operators for using airport facilities of an airport owned or operated by that State or subdivision").[6] Similarly, the Airport and Airway Improvements Act of 1982 requires an airport that receives federal grant money or land to provide assurances that it "will be available for public use on reasonable conditions and without unjust discrimination." 49 U.S.C. § 47107(a)(1); *see also id.* § 47101(a)(12) ("It is the policy of the United States that airport fees, rates, and charges must be reasonable"). This provision has "been interpreted to include a requirement that the airport's fees be reasonable." *Air Transp. Ass'n of Am. v. DOT*, 119 F.3d 38, 39 (D.C. Cir. 1997); *see also Massport*, 883 F.2d at 169 (explaining that "reasonable" fees must "fairly and rationally reflect[] the cost to users that are comparably situated," and thus must be "founded upon a principled, non-arbitrary basis").

As directed by Congress in 49 U.S.C. § 47129, the Secretary of Transportation issued a "Final Policy Regarding Airport Rates and Charges" in 1996, which set forth the standards that the Secretary would use in determining "whether an airport fee is reasonable." 49 U.S.C. § 47129(b)(2).[7] The Final Policy mandates that, in order to be reasonable, "[r]evenues from fees imposed for use of the airfield . . . may not exceed the costs to the airport proprietor of providing airfield services . . . unless otherwise agreed to by the affected aeronautical users." 61 Fed. Reg. 31,994, 32,019 (June 21, 1996); *see also id.* at 32,021 ("[i]n establishing new fees, and generating revenues from all sources, airport owners and operators should not seek to create revenue surpluses that exceed the amounts to be used for airport system purposes and for purposes for which airport revenues may be spent under 49 U.S.C. § 47107(b)(1)"). To be reasonable, a fee assessed by an airport must therefore be revenue neutral.

The PANYNJ could not lawfully impose congestion pricing or slot auctions because, in order to reduce the number of flights during peak hours of the day, the PANYNJ would need to increase takeoff and landing fees so substantially—and decrease the number of available slots so

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[6] Although the First Circuit held in *Massport* that congestion fees were "outside the scope" of the Anti-Head Tax Act (883 F.2d at 170), the Supreme Court has since held that "[l]anding fees, terminal charges, and other airport user fees . . . fit the [Anti-Head Tax Act's] description." *Nw. Airlines v. County of Kent*, 510 U.S. 355, 365 (1994).

[7] Although termed a "Final Policy," this promulgation is "clearly" an agency rule. *Air Transp. Ass'n of Am.*, 119 F.3d at 40 n.3. Portions of the Final Policy were invalidated by the D.C. Circuit, but the parts relevant to the validity of congestion pricing and slot auctions remain in force. *See id.* at 45.

significantly that the measures would inevitably fail to be revenue neutral. The PANYNJ has itself acknowledged the substantial revenues that it would receive from the imposition of congestion pricing and slot auctions in its 2001 submission to the FAA regarding capacity management options at LGA. 66 Fed. Reg. 31,731, 31,741-48 (June 12, 2001). The first option proposed by the PANYNJ was the imposition of congestion fees on flights landing during peak hours of the day in order to decrease demand for use of the airfield during those hours. The second option was to allocate a fixed number of authorized operations through use of an auction among competing airlines. The PANYNJ asserted that the "primary purpose" of implementing the congestion pricing or slot auction procedures would be "to allocate the scarce resources available at LGA efficiently, not to generate additional revenue." *Id.* at 31,743. It nevertheless forecast that these mechanisms would create between $130 million and $550 million per year in additional revenue. *Id.* at 31,745. This revenue estimate was based on the level of fees required to reduce operations to the desired level during peak periods (*i.e.*, approximately 78 operations per peak hour).[8]

The PANYNJ's 2001 proposal demonstrates that, to have the desired effect on the volume of operations during peak periods, the imposition of congestion pricing or slot auctions could not be revenue neutral. Indeed, the FAA's comments regarding the 2001 proposal recognize that "for a market-based approach to be effective in allocating scarce resources at LGA, the revenue generated would *far exceed* the amount collected by traditional airport charges." 66 Fed. Reg. at 31,737 (emphasis added); *see also id.* at 31,738 ("The generation of revenue in excess of the airport's traditional cost base raises several policy questions for the FAA.").

The use of congestion pricing and slot auctions to generate revenues that exceed the cost of airfield services and assets is not reasonable under the Anti-Head Tax Act, the Airport and Airway Improvements Act, or the Secretary's Final Policy, and is therefore foreclosed by federal law.[9]

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[8] Moreover, the PANYNJ's 2001 proposal assumed that the market-based mechanisms would be instituted at LGA alone. Revenues could total more than $1 billion if the PANYNJ also implemented such mechanisms at JFK and generated a comparable amount of revenue at that airport as at LGA.

[9] Although not addressed in this memorandum, congestion pricing and slot auctions may also constitute an abuse of the PANYNJ's monopoly power. *See N.Y. Airlines v. Dukes County*, 623 F. Supp. 1435, 1452 (D. Mass. 1985) ("[t]he fact that [an airport] may adopt rules and regulations to insure the safety of the public is not sufficient evidence of authority to engage in anticompetitive conduct").

GIBSON, DUNN & CRUTCHER LLP

IV. Conclusion

Neither the FAA nor the PANYNJ possesses the authority to impose congestion pricing or slot auctions at LGA and JFK. A court would invalidate any attempt to do so as contrary to federal constitutional and statutory requirements.

ACAA MEMORANDUM TO WORKING GROUP 2

1776 K Street, N.W., 9th Floor, Washington, DC 20006
(202) 719-7420 (Telephone) (202) 719-7049 (Facsimile)
Ed Faberman, Executive Director

www.acaa1.com

MEMORANDUM

TO: Working Group 2

FROM: Edward P. Faberman, Executive Director

DATE: November 30, 2007

SUBJECT: ARC Working Group 2 – Congestion Pricing and Auctions

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The ACAA reiterates the need for specific provisions dealing with new entrants and limited incumbents in any congestion pricing or auction program. Without carve-outs allowing these smaller carriers to enter airports, grow, and compete, the level of competition will fall and consumers and the entire industry will suffer.

Before an auction or congestion pricing system is implemented, some operating authorizations should be distributed to small carriers so that they are not so disproportionately outmatched by the legacy carriers. Providing these slots to carriers with limited operations will prevent them from being completely blocked from expansion.

The draft report repeats the false statement that secondary markets there "have not been very effective" because new entrant and limited incumbent carriers were "given slots for free" at LaGuardia and O'Hare. This statement should be removed. First, all carriers were provided slots at O'Hare and LaGuardia "for free." Some slots were purchased, but all carriers have "free" slots. Since buy-sell was implemented, only a small number of slots have been sold. Some were included in larger purchases or from a carrier filing for bankruptcy or dropping service. Secondary markets have not increased competition.

If auctions are chosen as the preferred method of slot allocation, a blind auction system should be created so all carriers have full opportunities to obtain, purchase or lease slots. A blind auction involving anonymous bidders will prevent dominant carriers from continuing their reign over slots. Such a mechanism is absolutely necessary to reestablish a fair playing field for airlines involved in slot transfers and will allow true competition

to return to the New York area airports. Blind auctions also benefit the public interest, as they ensure that slots/operating authorizations will continually come available and provide access to many different holders.

The draft report also states that a secondary market would be an effective vehicle for carriers to swap, lease and sell slots, even without carve-outs for new entrant and limited incumbent carriers. This is absolutely incorrect. Time and again the ACAA has emphasized that incumbent carriers rarely sell or lease slots to limited incumbents because maintaining market power and excluding competition is so important to them. As the Department of Justice has stated, incumbents with market power "will always have an incentive to outbid an equally efficient entrant for any slots offered." The Department commented:

> "Indeed, an incumbent with market power may well be able to outbid a more efficient entrant, simply because maintaining market power is more profitable than entering a competitive market…once a potential buyer's identity is known to the seller, the seller has every incentive to seek out an incumbent airline that would be willing to offer more money to maintain its market power than the entrant would be willing to apply to erode it."[1]

Carriers cannot be allowed to control who they sell their slots to. As the Department of Justice noted, using a blind auction mechanism and concealing the identity of bidders will prevent incumbent carriers from being able to make sales decisions based on a bidder's identity. This will eventually end the dominance over operating authorizations and will spread control and ownership more equally among all airlines.

Additionally, in order for the auctions to be fair, the bids must be weighted according to how many operating authorizations the carrier already holds. By inflating the bid of small carriers, they will have a better chance to actually obtain the operating authorizations they desire rather than continually being outbid by legacy carriers with greater resources. However, the weighting formula must be significant enough so as to truly assist those carriers with less than 30 operating authorizations.

[1] Comments of the United States Department of Justice regarding the Notice of Alternative Policy Options for Managing Capacity at LaGuardia Airport and Proposed Extension of Lottery Allocation, Docket No. FAA-2001-9854, p.6.

COMMENTS FROM AMERICAN AIRLINES REGARDING THE PROPOSED PANYNJ LAGUARDIA GATE LEASING POLICY

Comments of American Airlines
Proposed PANYNJ LaGuardia Gate Leasing Policy
New York Aviation Rulemaking Committee
Working Group 3
November 27, 2007

The Port Authority has proposed a gate leasing policy for LaGuardia as an alternative to the regulatory scheme proposed by the FAA in 2006 (71 Fed. Reg. 51360, 8/29/06).[1] However, while the two plans have some differences, they are identical at their core – both would effectively regulate competition at LaGuardia under the guise of a legitimate function (congestion management for the FAA, facilities management for the Port). While American strongly supports efforts to reduce delays at airports like LaGuardia, congestion management does not require competition to be replaced by central planning. Accordingly, American opposes the Port's proposal.

I. Background

The Port has proposed a system under which the LaGuardia would continue to be capped at 75 scheduled hourly operations through gate leases allocated by the Port rather than the FAA. The Port believes it could manage the allocation of capacity at LaGuardia more effectively than the FAA because it could match aircraft sizes to gate positions, monitor gate usage, and confiscate/reallocate a percentage of gate reservations each year to create an artificial level of turnover. The Port would allocate the operations through a system of Gate Reservations, assigning one Gate Reservation per hour at each of its 75 Gate Positions at LGA. The Port indicates that its gates are not uniform, some may not

[1] American has stated previously that it will not support any proposal that is not part of a larger and more comprehensive solution to congestion in the New York region generally.

accommodate larger aircraft, and many of its terminals have gates of significantly different sizes.

The Port would reallocate gate reservations annually, using three different methods: use/lose; aircraft seat size; and forced confiscation. The use/lose policy would require that each Gate Reservation be used at least 90% of the time during a three month period. The aircraft seat size requirement would require compliance with a Target Activity Level of 80% of the average maximum number of seats per passenger aircraft for each Gate Position Category. A carrier's failure to meet the use/lose or Target Activity Level requirements would result in the Port reclaiming Gate Reservations. If this turnover – along with any buy/sell – did not result in a sufficient level of turnover over a three year period, the Port would also be allowed to confiscate Gate Reservations from incumbents to distribute to new entrants and limited incumbents for the sole purpose of regulating competition.

II. Competition Is Not Broken At LaGuardia – There Is No Need (Or Statutory Authority) To Fix It

Free market competition need not be impaired by delay reduction and congestion management mechanisms. Despite that fact, the Port's proposal (like the LGA NPRM) would impose a central planning mechanism to replace the free market that has served consumers well over the last three decades. While some regulation of capacity-constrained airports like LaGuardia is necessary, Congress has not given the FAA or the Port a blanket license to supplant competitive market forces. Specifically, Congress has directed the FAA to place "maximum reliance on competitive market forces and on actual and potential competition" (49 U.S.C. § 40101(a)(6)) (emphasis added). The

proposed rule fails to meet that standard. The FAA cannot cede this statutory authority to allow the Port to manage flight activity at LaGuardia through a local leasing policy.

Moreover, even if the Port had the authority to regulate competition at LaGuardia, it is unclear how anyone can conclude that there is a need to do so. Despite slot limitations under the HDR, competition at LaGuardia – and New York City as a whole – is extremely robust. American and other airlines have invested in developing comprehensive networks at LaGuardia. Continental operates a hub on the other side of Manhattan at Newark. Low cost competitors abound in New York, with US Airways, AirTran, ATA Airlines, Frontier and JetBlue at LaGuardia, JetBlue at JFK, Southwest at Islip and JetBlue and AirTran at Newburgh. LaGuardia is less concentrated than neighboring Newark or other comparable airports like Baltimore-Washington, Washington-Reagan or Oakland. For New York City's three major airports as a whole, market concentration is even lower. As a result of this vibrant competition, fares to and from LaGuardia and New York City are competitive. Despite limits on operations, load factors are no higher at LaGuardia than at other airports.

Perhaps the only element of competition that does not work well at LaGuardia is the secondary market for HDR slots. Yet this is not the fault of incumbents; rather, AIR-21 largely eliminated the value of HDR slots to new entrants and limited incumbents by making slots available to them for free. This should be no surprise, as no rational airline would pay a competitor for a slot that it could get from the government for free. The FAA should focus on working with airlines and the Port to maximize LaGuardia's ability to support operations and to manage those operations in a way that minimizes delays and congestion. The free market will – and does – take care of the rest.

A. Competition – Not Regulation – Should Govern Capacity At LaGuardia Absent Evidence That Free Markets Are Unable To Achieve An Efficient Result

In 1978, Congress decided that the regulation of domestic airline competition led to inefficiency – with consumers bearing the burden of higher fares and fewer choices. In the nearly 30 years since the Airline Deregulation Act was enacted, the results for airlines have often been harsh. Names like Eastern, Braniff and Pan Am have disappeared from the marketplace. Even airlines that have survived have had difficulty; only one of the remaining pre-deregulation network carriers – American – has avoided bankruptcy. There is simply no more competitive industry in the U.S. than commercial aviation – and New York City is one of the most competitive markets in the country.

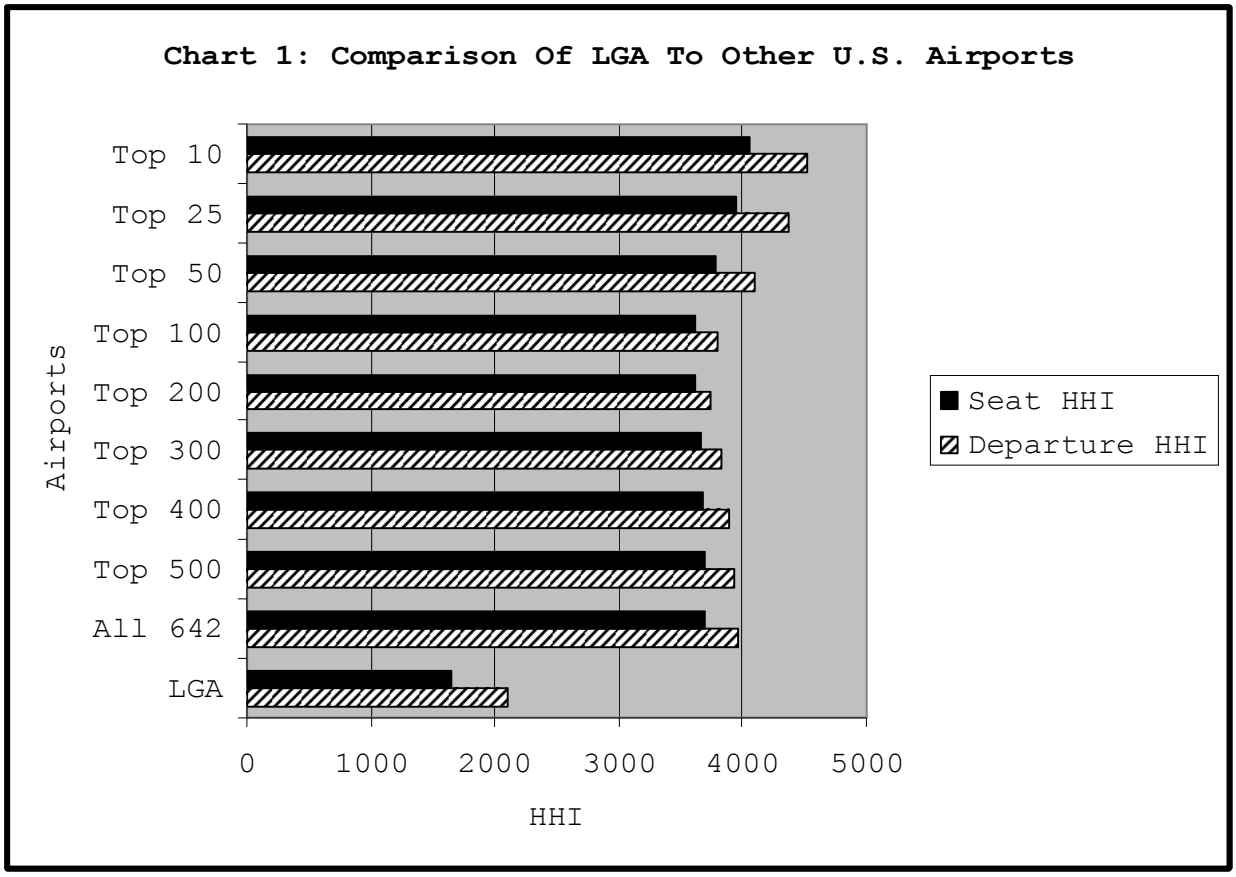
The New York market is so large that it supports scheduled service at three separate major airports – LaGuardia, JFK and Newark. The New York City metropolitan area is also served by regional airports like MacArthur (ISP) on Long Island and Stewart (SWF) in Newburgh. At LaGuardia, consumers can choose among 13 carriers – including three comprehensive and competing networks operated by US Airways, American and Delta. While runway capacity may be a scarce commodity at LaGuardia, consumer choice most definitely is not. Using the government's standard measure of concentration – the Herfindahl-Hirschman Index ("HHI") – LaGuardia is not concentrated (measured by departures or seats) compared to its New York City neighbors:

TABLE 1: Airport Concentrations In The New York City Area

Airport	Herfindahl-Hirschman Index Departure HHI	Seat HHI
ISP	6257	8456
EWR	5352	4579
SWF	3223	2805
LGA	2104	1651
JFK	1887	1401
NYC (3)	1466	1210
NYC (5)	1409	1158

(Source: OAG Schedule-October 2006, T-100-2005)

As Table 1 shows, LaGuardia's HHI is only 1651 when measured by seats. By this measure, LaGuardia is less concentrated than comparable airports like Oakland (4396), Baltimore-Washington (3229) or Washington-Reagan (2454), and is only slightly higher than Orange County (1499). Chart 1 (based on OAG data) shows where LaGuardia ranks in comparison to all airports in the U.S.:



By any measure of airport concentration, LaGuardia ranks well below the average. Given these figures, it is clear that competition is alive and well at LaGuardia.

B. Fares And Load Factors At LaGuardia Are Consistent With Healthy Deregulated Competition

While it is true that there is more demand for LaGuardia operations than the airport can accommodate, it does not follow that consumer demand is not being met. If LaGuardia were suffering from market failure, one would expect to see higher than normal fares and load factors, as consumers bid prices up for an inefficiently low number of seats. Yet neither fares nor load factors at LaGuardia are higher than those at Newark, JFK or other East Coast airports. Tables 2 and 3 below illustrate this fact:

TABLE 2: Fare Comparison – LGA vs. Other East Coast Airports

							LGA Higher / **(Lower)** than Other Airport				
	BOS	DCA	EWR	JFK	LGA	PHL	LGA vs. BOS	LGA vs. DCA	LGA vs. EWR	LGA vs. JFK	LGA vs. PHL
ATL	$125	$140	$129	$135	$134	$140	$9	**($6)**	$5	**($1)**	**($5)**
BGR	$240	n/a	$189	n/a	$174	$202	**($66)**		**($15)**		**($27)**
BNA	$113	$148	$210	$157	$165	$153	$53	$18	**($45)**	$8	$12
BTV	$184	$101	$138	$74	$109	$188	**($75)**	$8	**($29)**	$35	**($79)**
BUF	$180	$119	$115	$72	$80	$286	**($100)**	**($39)**	**($35)**	$8	**($206)**
CAE	n/a	$180	$164	n/a	$113	$227		**($67)**	**($52)**		**($114)**
CLE	$103	$136	$156	$108	$120	$231	$17	**($16)**	**($37)**	$11	**($111)**
CVG	$162	$199	$194	$158	$178	$195	$16	**($22)**	**($17)**	$20	**($17)**
DEN	$157	$155	$195	$132	$172	$168	$15	$17	**($23)**	$40	$4
DFW	$198	$200	$230	$181	$206	$216	$8	$6	**($24)**	$25	**($10)**
FLL	$94	$102	$128	$100	$97	$99	$2	**($5)**	**($32)**	**($3)**	**($3)**
GRR	n/a	$118	$204	n/a	$136	n/a		$18	**($68)**		
IAH	$194	$194	$231	$181	$225	$147	$31	$31	**($6)**	$43	$78
LEX	n/a	$160	$187	n/a	$167	n/a		$6	**($20)**		
MCI	$127	$140	$217	n/a	$152	$148	$25	$12	**($65)**		$4
MCO	$90	$136	$124	$100	$95	$101	$4	**($41)**	**($29)**	**($5)**	**($7)**
MDW	$102	$89	$120	n/a	$112	$93	$9	$22	**($8)**		$19
MHT	n/a	$87	$220	$21	$181	$44		$94	**($40)**	$159	$137
MIA	$121	$133	$138	$117	$124	$113	$3	**($9)**	**($14)**	$7	$11
MKE	$142	$139	$153	n/a	$148	$126	$7	$10	**($5)**		$22
MSP	$203	$200	$245	$121	$231	$197	$28	$31	**($14)**	$111	$34
ORF	$88	$234	$219	$138	$183	$314	$95	**($51)**	**($36)**	$45	**($131)**
PBI	$99	$134	$137	$102	$100	$102	$2	**($34)**	**($37)**	**($2)**	**($2)**
PIT	$192	$351	$233	$163	$245	$105	$52	**($106)**	$12	$82	$139
PVD	n/a	$85	$233	$116	$227	$43		$142	**($7)**	$111	$184
ROC	$149	$115	$168	$67	$107	$256	**($42)**	**($9)**	**($62)**	$40	**($150)**
SAV	$96	n/a	$158	n/a	$123	n/a	$27		**($35)**		
SDF	n/a	$160	$233	n/a	$149	$182		**($11)**	**($84)**		**($33)**
SYR	$167	$112	$174	$71	$123	$164	**($43)**	$11	**($50)**	$52	**($41)**
TPA	$87	$137	$130	$97	$96	$99	$9	**($41)**	**($34)**	**($1)**	**($3)**

(Source: DOT O&D Survey, October 2-8, 2005)

Table 2 shows that LaGuardia fares are comparable to those at other East Coast airports. During the first week of October 2005, there were 30 cities served from LaGuardia by at least one round trip nonstop flight per day. Those 30 cities were also served from Boston, Washington-Reagan, Newark, JFK and Philadelphia. More than half the time, the LaGuardia fare was lower (shown in bold), and was within five percent of the lowest fare in nearly two-thirds of the cases. In fact, the LaGuardia fare was lower than the Newark fare for 28 of 30 destinations. The data simply does not support a conclusion that consumers are paying high fares at LaGuardia.

TABLE 3: Airport Average Load Factors

Airport	By Pax/Seats			By RPMs/ASMs		
	APR04-MAR05	JAN05-DEC05	APR05-MAR06	APR04-MAR05	JAN05-DEC05	APR05-MAR06
LGA	68.5	70.2	72.5	72.5	75.2	75.3
BOS	69.5	72.0	73.6	73.6	76.8	77.4
DCA	66.6	69.3	71.0	71.0	74.1	74.8
EWR	70.8	73.0	74.6	74.6	76.7	77.4
JFK	77.3	78.9	77.8	77.8	80.1	80.2
PHL	67.2	67.9	73.6	73.6	75.7	76.6
Industry Domestic	71.1	72.4	73.2	75.3	76.9	77.6

(Source: T-100)

Table 3 shows that average load factors at LaGuardia are not out of line with other East Coast airports. This is true whether measured by passengers/seats or RPMs/ASMs. While the FAA's regulatory evaluation used passengers/seats for the year ending March 2005 (FAA Regulatory Evaluation, p. 36 n.21), the data is consistent even if measured for the 2005 calendar year, or the year ending March 2006. In fact, the

average load factor at LaGuardia is lower than the industry domestic average by each measure. The lack of high load factors, coupled with the absence of high fares, demonstrates that competition at LaGuardia is healthy and serving consumers well.

Given these facts, it is ironic that some cite the antitrust laws as "the very reason why the [Government] must intervene to stop the hoarding behavior that is freezing competition in one of the nation's most important markets" (Comments of ACAA, OST-2006-25755, 10/19/06, p. 7). As the Supreme Court has repeatedly noted, "[i]t is axiomatic that the antitrust laws were passed for 'the protection of competition, not competitors'." Brooke Group Ltd. v. Brown & Williamson Tobacco Corp., 509 U.S. 209, 224 (1993) (emphasis added). As demonstrated above, concentration, load factors and fares at LaGuardia are extremely competitive. Any claim that LaGuardia is "a market devoid of competition" and that incumbents have a "stranglehold" on the airport is little more than empty rhetoric (Comments of ACAA, OST-2006-25755, 10/19/06, p. 7).

C. The Secondary Market Has Failed At LaGuardia Because New Entrants And Limited Incumbents Have No Incentive To Purchase Slots When AIR-21 Makes Them Available For Free

Before AIR-21, new entry at LaGuardia was far from impossible. In 1998, AirTran, ATA Airlines and Frontier started service, joined by Spirit in 1999. Since 2000, JetBlue has started service using free slots granted under AIR-21. Had free slots not been available, these new entrants and limited incumbents would have used the secondary buy/sell market. New entrants and limited incumbents realize that they need not buy what is available at no cost. Simple economic theory dictates that goods have value only if they are scarce. One can assume that new entrants and limited incumbents at

LaGuardia would have been far more likely to purchase slots through the HDR's buy/sell market if AIR-21 did not make them available for free.

D. Consumer Demand Is Efficiently Met By Existing Service Levels At LaGuardia

The Port's proposal would regulate aircraft size in an effort to increase the average number of seats flown by airlines serving LaGuardia. This is similar to the LGA NPRM, which stated that such a rule would be necessary because it would force airlines "to use larger aircraft, on average, than are being operated at the airport now (and in the recent past) so that a larger share of consumer demand will be satisfied" (71 Fed. Reg. 51364). Yet it is unclear why the Port or the FAA concludes that there is a need to "increase passenger access to LaGuardia" (71 Fed. Reg. 51367).

For example, the LGA NPRM claimed that LaGuardia's "groundside facilities can handle more passengers than now use the airport" (71 Fed. Reg. 51367 n.19). Specifically, the LGA NPRM stated that while 28.5 million passengers could be accommodated at LaGuardia, only 24.5 million passengers actually were accommodated during the year ending March 2005. However, this fact does not automatically lead to the conclusion that consumer demand is being unmet – in fact, it is equally consistent with consumer demand being completely satisfied.[2] To establish that consumer demand is unmet one would have to demonstrate that load factors are extremely high at LaGuardia, and that fares are consistently above average.

[2] Moreover, much of the supposedly underutilized capacity at LaGuardia for the year ending March 2005 was in fact utilized during the following year. Passenger load factors climbed 1.7 points, from 68.5% to 70.2%. This reflects an increase of more than 750,000 passengers that took place without regulatory intervention (Source: T-100).

To the contrary, the FAA's regulatory evaluation established that LGA load factors average 68.6% – lower than other New York airports and less than the national average (as shown in Table 3). Nor are fares at LaGuardia inflated by an imbalance in supply and demand. To the contrary, average fares at LaGuardia are lower than those at Newark, and comparable to those at other East Coast airports like JFK, Boston, Washington-Reagan and Philadelphia (as shown in Table 2). This data shows that the belief held by the FAA and the Port that passenger demand is unmet at LaGuardia to be unsupported by the evidence. While LaGuardia may be able to accommodate 4 million more passengers than used the airport in 2004, the industry is already providing 7.8 million empty seats per year (FAA Regulatory Evaluation, p. 36 n.21).

In other words, load factors at LaGuardia could not exceed 78.5% at today's level of service without overwhelming the airport's infrastructure.[3] If average aircraft size were increased, the additional seats would simply be wasted capacity. Moreover, there are unanswered questions about the impact larger planes would have on New York airspace or LaGuardia ground handling facilities. There is no evidence to support any proposal to force an increase of average aircraft seat size – and the risk of unintended consequences would be extremely high if such a rule were ever implemented.

While the Port's proposal wrongly assumes that consumer demand is not being met by existing service at LaGuardia, the average size of aircraft serving LaGuardia is less than that at other nearby airports. This phenomenon is easily explained by the fact that (a) airlines serve shorter routes from LaGuardia than they do at other airports; and

[3] The FAA's regulatory evaluation states that the industry operates 36.3 million seats to LaGuardia. Assuming LaGuardia's terminals were used to capacity – 28.5 million – these passengers would fill 78.5% of the 36.3 million seats. Any higher passenger load factor would exceed the airport's capacity for passengers.

(b) long-haul domestic operations are operated at JFK, where growth has been unrestrained in recent years. Shorter routes tend to be flown by smaller planes – a fact not limited to LaGuardia (as shown in Table 4):

TABLE 4: Average aircraft Size At LaGuardia Is A Function Of The Markets Served – Not Market Failure

Airport	Average Aircraft Size For Routes: 0-1500 Miles	1,500+ Miles
ATL	106	191
DCA	99	149
JFK	95	166
PHL	94	154
LGA	**91**	**164**[4]
ORD	91	162
EWR	90	156
BOS	88	154
CLT	87	171
IAD	75	151

(Source: OAG (September 13, 2006); BuchAir; carrier websites)

Table 4 shows the average aircraft size by stage length for 10 major airports east of the Mississippi. Some, like O'Hare or Washington-Reagan, are capacity constrained. Others, like Charlotte and Washington-Dulles, are not. Yet once stage length is factored out as a variable, the average aircraft size of each of these airports is comparable. Indeed, the two lowest average aircraft size numbers are found at airports without slot controls. LaGuardia – at 91 seats – is squarely in the middle of the pack. Thus, it does not appear that the average aircraft size at LaGuardia is the result of anything other than competitive

[4] While the LaGuardia perimeter rule limits operations to cities within 1,500 miles, Denver (1,620 miles) is a grandfathered exception to reflect the existing LGA-DEN service at the time the perimeter rule was formally imposed.

efficiency on the routes served. Furthermore, if capacity at JFK is capped one would expect average aircraft size at LaGuardia to rise.

III. The Port's Proposal Is Unworkable Given Commercial Realities

While the Port's proposal may appear relatively simple to administer given the fact that LaGuardia can accommodate 75 operations per hour and has 75 gates, it would in reality impose an unnecessarily complex and unworkable regulatory regime on the industry. While there are 75 operations per hour and 75 gates, splitting each gate into hourly operating rights would create chaos at LaGuardia. For example, if an airline had two gates – and thus two gate reservations per hour – it would hold a total of 32 gate reservations for the operating day. If the airline failed to use one of its gate reservations at least 90% of the time over a three month period, it would be returned to the Port. Moreover, gate reservations would be returned to the Port if an airline failed to fly more than 80% of the maximum target activity level (measured by seats) for that gate reservation. And on top of this turnover, the Port would confiscate gate reservations from incumbents that had met all of their obligations if there was not sufficient turnover at LaGuardia over a three year period. This could lead to a situation where each of the 75 gates at LaGuardia effectively becomes a common-use gate.

Such a rule would impose a heavy burden on the Port Authority, airlines and consumers by constantly confiscating and reallocating operating authorizations as they expire. Much like a computer hard drive, the constant movement of operations and airlines between gates and concourses would lead to fragmentation. However, unlike data – which moves seamlessly through walls at the speed of light – consumers need to know the location of their gate, clear security and walk to their flight in time for

departure. In addition to providing customer convenience, airlines need to build infrastructure at their gates to efficiently operate their flights – and benefit from having their operations consolidated in one or two areas.

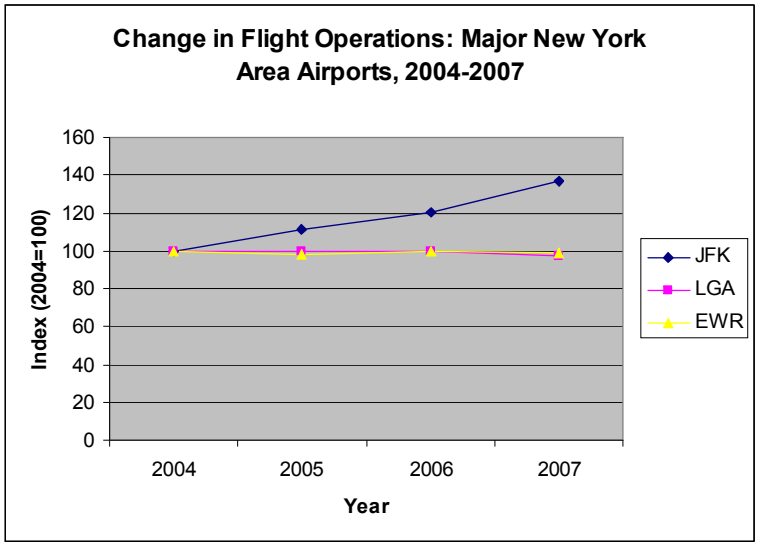
To illustrate this phenomenon, consider a carrier operating in Concourse A in Year 1. In Year 2, this carrier obtains operating authorizations from other carriers, but lacks space in Concourse A to accommodate the new flights. Thus, the carrier obtains real estate in Concourses C and D from the carrier that lost the operating authorizations. Moreover, having every gate be a common use gate would reduce carriers' flexibility during off-schedule operations, as one airline's delay on a gate at 2:00 p.m. would become another airline's problem at 3:00 p.m. Over time, operations will become more and more fragmented – leading to the inefficient use of check-in counters, baggage claim and security checkpoints. This inefficiency will all come at the consumer's expense. However, the Port's proposal fails to take these factors into account (Crain's New York Business, 11/27/06, p. 1).

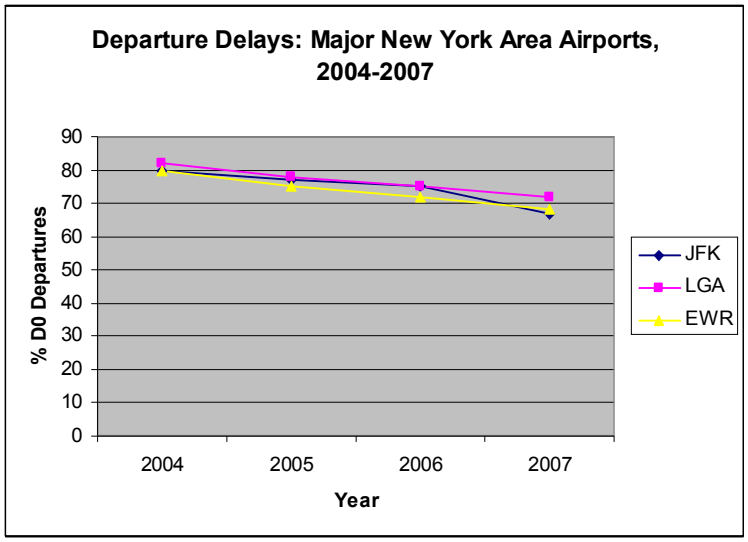
Conclusion

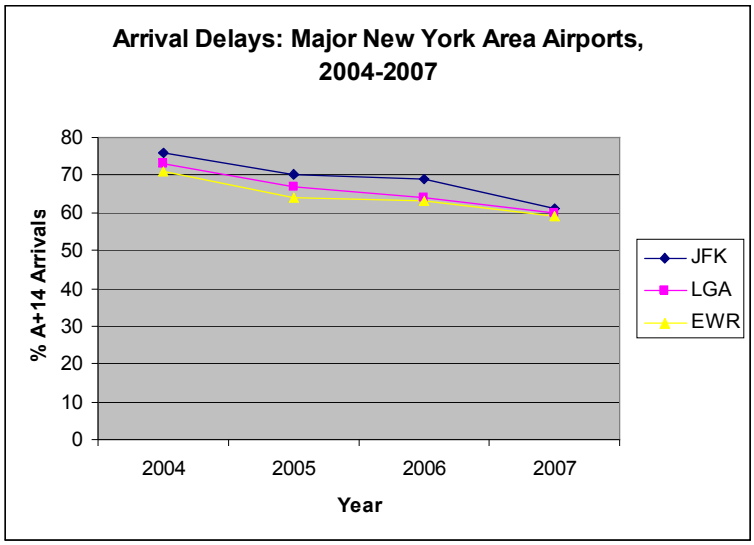
While the Port should be commended for proposing an alternative to the FAA's LGA NPRM, it suffers from the same fundamental flaws. The scheme would do more than simply regulate *capacity* to manage congestion – it would regulate *competition* by telling airlines when and what they can fly into LaGuardia. Moreover, the scheme would be unworkable in reality given the inefficiencies associated with common use gates at a facility like LaGuardia. There is simply no basis for concluding that competition is not alive and well for consumers in the New York region. Given that fact, there is no need to invent a more complex regulatory scheme to manage capacity – the Worldwide

Scheduling Guidelines will be easier to administer, are based on free market principles (as opposed to regulatory control of competition), and will do just as much as either the LGA NPRM or the Port's proposal to reduce congestion and delays for airlines and consumers alike.

GRAPHS FROM AMERICAN AIRLINES SHOWING THE CHANGE IN FLIGHT OPERATIONS AT THE NY AREA AIRPORTS FROM 2004 TO 2007






Arrival Delays: Major New York Area Airports, 2004-2007
% A+14 Arrivals
80
70
60
50
40
30
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0
2004
2005
2006
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Year
JFK
LGA
EWR

APPENDIX F — ATTACHMENTS RELATED TO WORKING GROUP 4 REPORT

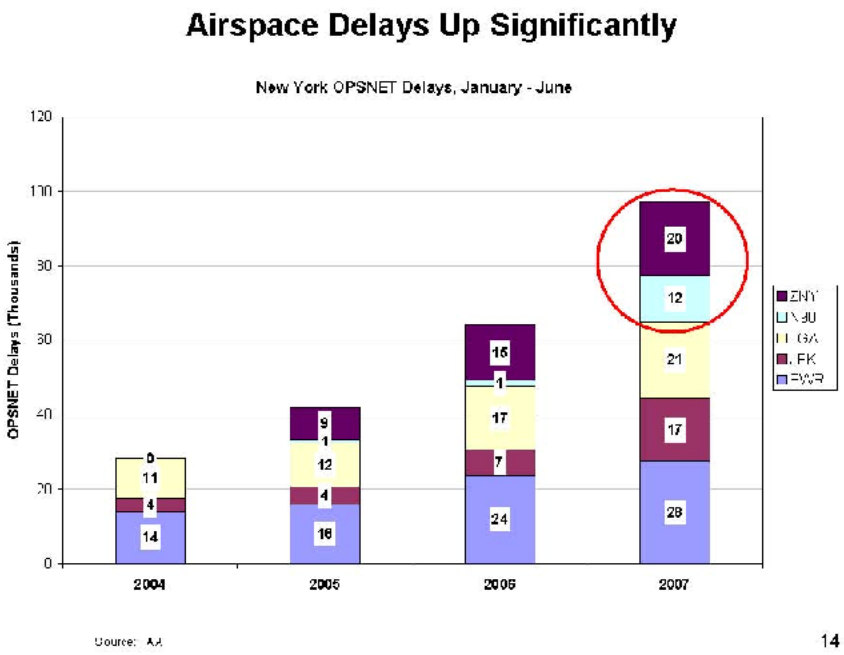
PRIORITY AIR TRAFFIC PREFERENCES

Proposal
During constrained periods, abandon the "first-come, first-served" policy and assign scheduled, commercial operations the highest priority. Accommodate other users of regional ATC services by moving their operations to unconstrained periods.

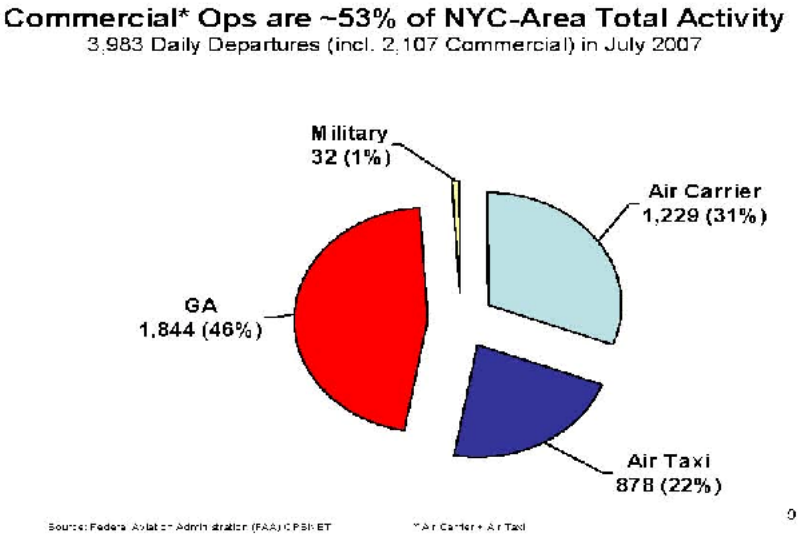
Background
Airspace is a valuable public resource that enables our national aviation system to drive $1.1 trillion in US economic activity. As the airspace above major metropolitan areas becomes saturated with aircraft, our aviation system grinds to a halt -- resulting in significant delays for airline passengers and shippers.

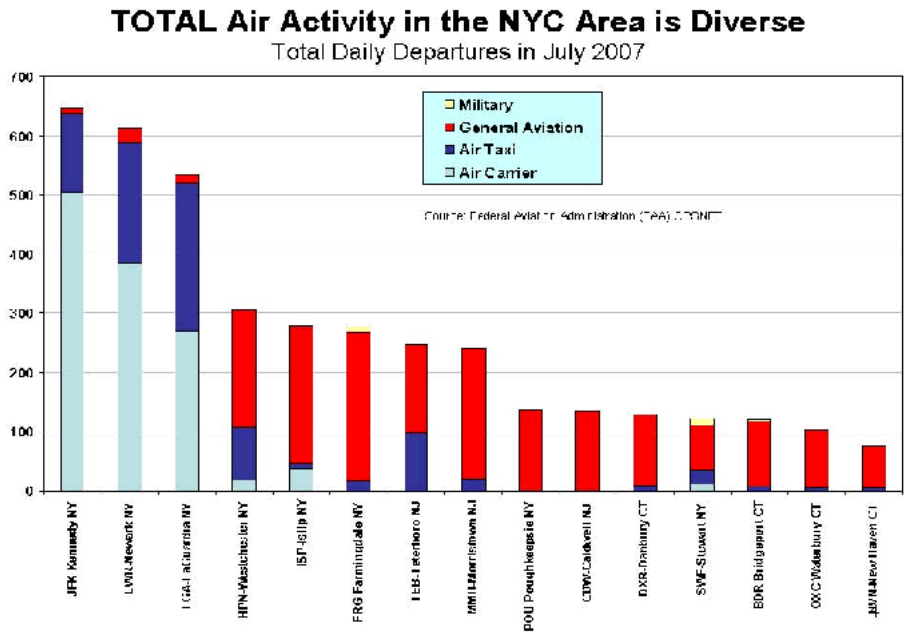
Today the airspace above the New York metropolitan area is complex and constrained. The NY TRACON handles traffic for 15 towered airports and over 30 others.

While delays at the "Big 3" commercial airports have drawn most of the attention, delays attributable to the NY TRACON and NY Center have also increased due to this saturation.



The diversity of the traffic using NY airspace adds to the complexity. Contrary to popular belief, commercial airlines account for only one-half of the traffic in the region.





Justification
NY metropolitan area airspace is a scarce public resource and must be allocated in a way that yields the greatest public value.

Identifying areas of constrained airspace (i.e. chokepoints) and restricting non-essential operations from them will improve the throughput of the major commercial airports (EWR/JFK/LGA).

Air traffic controller workload would also be reduced due to non-essential operations being moved outside the constrained period.

Implementation
During constrained periods (3-9 pm weekdays and selected holidays/special events), FAA will identify constrained airspace and implement an AFP effective for all unscheduled, non-commercial operations. Impacted operators will have the option of routing around the constrained area(s) (FCAs) or moving their flight to a timeframe outside the AFP window.

AIR TRAFFIC PROCEDURES "FIRST COME FIRST SERVED"

The major commercial scheduled carriers serving the three congested New York passenger hub airports have proposed the elimination of the first-come first-served principle of air traffic control. They propose giving priority to their operations over all other use of the areas public aviation capacity and allege this would alleviate record delays at JFK, LaGuardia, and Newark airports.

The reality is that unscheduled non-commercial operators comprise only 2-3% of the traffic at these airports and do not contribute materially to congestion delays. Reliever airports like Teterboro and others accommodate the vast majority of these operations. In addition, the reliever airports are operating below capacity and are not congested, with total traffic at Teterboro in particular declining 9% over the past five years.

This overall decline in general aviation traffic is in stark contrast to the significant growth in commercial scheduled operations at the three primary airports. The over scheduling at JFK in particular is well documented and without some administrative protection, no other operators would ever be able to access the airport. Clearly that is why the former high density rule set aside a few slots for general aviation operations.

Raising the long standing and sound practice of first-come first-served for debate is a diversion from the real issue the ARC needs to address. It is the dramatic over scheduling of available capacity by the airlines that has caused the congestion in New York.

General aviation operators are suffering severe delays at their reliever airports from the congestion caused by this irresponsible over scheduling. In fact, an argument can be made that general aviation operations at reliever airports should be protected from the plague of congestion and inefficiency caused by the airlines business practices at the three primary passenger hub airports.

When traffic management initiatives like AFP's and ground delay programs are applied due to commercial airline operations that far exceed available capacity, general aviation operators are captured in the delay allocations fundamentally created by the scheduled commercial carriers. These delays that are applied are not created by the unscheduled traffic at the reliever airports but they do suffer the penalties of capacity abuse by the commercial airlines as they saturate the available capacity associated with the three primary passenger airports.

AIR CARRIER ASSOCIATION OF AMERICA MEMORANDUM

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Ed Faberman, Executive Director
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MEMORANDUM

TO: Working Group 4

FROM: Edward P. Faberman, Executive Director

DATE: November 30, 2007

SUBJECT: ARC Working Group 4 – Priority Air Traffic Services

The ACAA believes it is essential to address a limited delay free program in Working Group 4's review of options to address priority air traffic services.

On bad delay days at LGA and other airports, smaller carriers incur longer delays than the larger carriers that dominate the airports. When delay measures are in place, a higher percentage of smaller carrier flights are impacted and only a limited percentage of large carrier flights are impacted by those same delays. For example, during heavy delays at LGA, delays for small carriers can run for several hours. On those same delay days, large carriers are able to operate large numbers of their flights closer to scheduled times because of the significant number of scheduled operations (10 to 15 roundtrips) in the same market. These larger carriers have greater flexibility because of the many flights, so when they cancel a few flights, they can operate the rest on-time. In addition, passengers of large carriers can be moved to final destinations by various routings through multiple markets served by that carrier or by its alliance partners and their multiple hubs. A new entrant or limited incumbent cannot hold more than 20 slots at LGA due to limitations imposed by FAA regulations. Therefore, new entrants cannot cancel several flights to protect other flights, as the larger carriers are able to do. Similar problems occur at other cities.

To address this inequitable situation, steps should be taken to establish a "level" playing field. One option is to allow smaller carriers to designate a certain number of "delay-free" arrivals that would not be subject to delays (unless unusual conditions exist requiring the FAA to immediately and dramatically limit traffic). Each carrier would

advise the FAA of the arrivals it wanted to designate as "delay free" and the "delay-free" arrivals designated by any one carrier could not amount to more than one arrival in any 60-minute period. We would not object to all carriers receiving the same number of these delay-free flights.

Delay-free arrivals and other options must be fully explored so all carriers can operate with some degree of certainty, even on “delay” days. The delay programs have a significant impact on competition. A primary concern of smaller carriers has been that the FAA has not adjusted the system to reflect the size and scope of small carrier operations. The FAA has taken important steps to improve ATC performance and reduce delays for all parties, but in some cases the impacts on smaller low fare carriers have been significant. To reflect the dramatically changing airline industry, particularly the growth of low fare carriers, and to ensure that low fare carriers remain competitive, we ask that delay reduction procedures be modified to address these concerns so that all carriers operate on an equal basis.

Schedule Compression by Fair Allocation Methods

by

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November 29, 2007

1. BACKGROUND

The IATA Worldwide Scheduling Guidelines describe a relatively orderly system in which airports move from one level to another as the number of scheduled operations approaches the airport capacity. Under the IATA system airports never reach a state of extreme congestion. Rather, as demand approaches capacity, slot controls are put in place in order to prevent such a situation from ever arising. Since the IATA system has not been used in the U.S., there are instances where airports have become highly congested to the extent that schedule compression is required to bring demand to a reasonable level. One can certainly argue that JFK airport is now in such a state. Before a solution is put in place, e.g. the use of the Worldwide Scheduling Guidelines, it is possible that other airports could reach such a state. If this happens then it would be necessary to reduce (perhaps significantly) the number of scheduled operations at one or more airports in order to effectively control congestion. Methods for doing this in an equitable manner are not specified as part of the IATA Guidelines. The purpose of this report is to outline an approach for doing this based on the application of certain principles from the body of knowledge on fair allocation methods (see Young [2]).

The specific situation we address would occur when the number of scheduled operations (arrivals and departures) at an airport exceeded the capacity of the airport. Here capacity would be specified by the number of arrivals and departures the runway system of the airport could sustain within a time window of specified length. Since flight operator schedules vary across the day, it would normally be the case that capacity might be exceeded only over limited time periods. For the methods described in this documents to be necessary it would have to be the case that capacity would be exceeded by a reasonably significant amount over several time windows. It is felt that the current status of JFK airport meets this criterion.

The output of the procedure would be a reduction in the number of scheduled operations so that demand was brought in line with capacity. Thus, for example suppose that the number of scheduled operations between 8:00 and 9:00 AM was 91 but that the declared capacity was 80. Then the procedure would reduce the number of scheduled operations from 91 to 80. This reduction would be accomplished by specifying for each flight operator with scheduled operations in that time window, a reduced number of scheduled operations. Thus, for example, it could be the case that airline A had 10 scheduled operations and the procedure specified that these 10 must be reduced to 8. The procedure labels an operation as either an arrival or departure; the "other" origin or destination airport is irrelevant. Thus, after airline A's operations were reduced from 10 to 8, airline A would be free to use those operations to access any other origins or destinations.

We now describe three key features of the procedure.

Administrative procedure: The procedure is based on the application of a fair resource allocation mechanism. It does not employ a market mechanism. At the same time, we should note that it determines an allocation when there is excess demand. It is not applicable in an obvious way in situations where new capacity becomes available. In such cases, we would strongly favor use of a market-based approach.

Use of fair allocation principles: The procedure draws on techniques from the body of knowledge on fair resource allocation. As such it requires a fair allocation standard, in order to determine what constitutes the most equitable allocation.

Historical rights respected: The allocation standard we recommend be used to guide the fair allocation process is historical airport usage. The use of historical rights makes this allocation process compatible with the IATA Guidelines. We should note that since the number of scheduled operations must be reduced, it is impossible to literally respect historical rights in the sense of insuring that each flight operator is able to maintain the exact number of operations that it has historically employed.

2. FAIR ALLOCATION PROCEDURE

The three major components of the procedure are i) a baseline schedule, ii) a revised level of operations and iii) a fair allocation procedure. The baseline schedule specifies a level of operations (arrivals and departures) for each carrier in each time window throughout the day (or week). The baseline schedule represents the standard to be used in determining what constitutes a fair allocation. That is, it is the historical schedule that represents the "grandfather rights" of the flight operators. There are several alternatives for choosing this to be discussed later. The revised level of operations is the reduced level of operations that the procedure will seek to achieve. Thus, for each time window it specifies a maximum level of operations, which will be lower than the current level in at least some time windows. The fair allocation procedure is the process that starts with the

baseline schedule and removes operations from various flight operators so that the revised level of operations is achieved.

The principal goal of this report is to specify the fair allocation procedure. It can work with several alternative methods for specifying the baseline schedule and the revised level of operations. Before defining the fair allocation procedure, we first provide some thoughts on the baseline schedule and reduced level of operations.

2.1 Determining a Baseline Schedule

The baseline schedule is an essential and very critical input to the process, as it represents the rights of each flight operator and directly determines the resources allocation that each flight operator receives. The most obvious approach would be to pick a "typical" week in the most recent heavily scheduled season and use the schedule for that week as the baseline. For example, in the case of the current activities related to JFK, a week from the summer of 2007 might be chosen. An alternative might be to choose a week from each of three or four recent scheduling seasons and to average the associated schedules in some way. For example, one week from each of January, July and October of 2007 might be chosen for this purpose. Finally, if it were desirable to give longer term history more weight, then a set of weeks from the past 5 years might be chosen and averaged in some way. This would give greater weight to carriers with schedule longevity. Each of these approaches has its own justification. Each constitutes an alternative policy option.

2.2 Determining a Revised Level of Operations

The most typical approach to determining an airport capacity is to set a fixed hourly rate based on an assumption of close to ideal airport conditions. We would recommend a more judicious approach that takes into account the uncertainty associated with airport capacity (due to weather) and the uncertainty associated with flight operations, e.g. the fact that flights can be canceled and/or delayed for a variety of reasons not having to do with airport congestion. With this in mind, it can make sense to set the level of scheduled operations higher or lower than the declared capacity in certain time windows depending on the circumstances. Further, the best capacity profile might involve varying the number of scheduled operations over the course of the day. For example, when one takes into account that certain time windows have a higher value to flight operators (and passengers) than others, the most economic policy can be to schedule a slightly higher level of operations during the most desirable periods, while scheduling fewer flights during the less desirable periods. These periods of lower scheduled operations can serve as "cooling off" periods for high-delay days. The recent thesis of Churchill [1] presents a model for creating capacity profiles of the type just described.

2.3 The Fair Allocation Mechanism

The procedure proceeds from one time window to another, iteratively adjusting the number of operations for each flight operator in the base schedule so that the capacity limit is respected and the revised level of operations is met. In this description we will

use the generic term "operation." As discussed later, this could refer to an arrival, a departure or either, depending on exactly how the process is set up. As a starting example, suppose that a time window currently had 17 scheduled operations but that the revised level of operations indicated a capacity limit of 15. A fair allocation should proportionally reduce for each carrier, a, its current level of operations, O_a. Ideally carrier a's revised level of operations should be 15/17 O_a. Of course, in nearly all cases this approach would not work since 15/17 O_a would not be an integer. Thus, some rounding procedure would need to be applied so that, typically, two carriers would have their level of operations reduced by 1, while all others receive no reduction. This process, of course, might be viewed as unfair, since two carriers would suffer a net loss, while all others would suffer no loss at all. The simple idea behind the fair allocation process is to keep a running tally of such net gains or losses and to take these into account when making decisions for future time windows. Thus, for example, if a flight operator received a net loss in one time window, then that flight operator should receive a net gain in another.

The following table illustrates three iterations of this process.

Airline		Base Ops		Share		Reduced Share		Allocated		Error
		24				**21**		21		
A	→	10	→	10	→	8.75	→	9	→	0.25
B	→	6	→	6	→	5.25	→	5	→	-0.25
C	→	2	→	2	→	1.75	→	2	→	0.25
D	→	6	→	6	→	5.25	→	5	→	-0.25
Airline		Base Ops		Share		Reduced Share		Allocated		Error
		21				**18**		18		
A	→	5	→	4.75	→	4.07	→	4	→	-0.07
B	→	4	→	4.25	→	3.64	→	4	→	0.36
C	→	3	→	2.75	→	2.36	→	2	→	-0.36
D	→	9	→	9.25	→	7.93	→	8	→	0.07
Airline		Base Ops		Share		Reduced Share		Allocated		Error
		26				**22**		22		
A	→	6	→	6.07	→	5.14	→	5	→	-0.14
B	→	3	→	2.64	→	2.24	→	2	→	-0.24
C	→	9	→	9.36	→	7.92	→	8	→	0.08
D	→	8	→	7.93	→	6.71	→	7	→	0.29

In this example, there are 4 airlines: A, B, C and D. The table illustrates the process of reducing operations in each of 3 time windows.

Iteration (time window) #1: In the first time window, the base level of operations is 24 and the reduced level is 21. Each of the 4 airlines starts respectively with 10, 6, 2 and 6 scheduled operations. The "ideal" reduced share for each airline is obtained by multiplying the reduction factor (21/24) by the initial share. Each of these reduced shares is rounded to the nearest integer to obtain the allocated number of operations, i.e. 9, 5, 2 and 5. These values indicate that in this time window airlines A, B and D must reduce their level of operations by 1 and airline C has no required reduction. The Error column gives the difference between the Reduced Share column and the Allocated column. If this value is positive, then the corresponding airline received more than it was owed and if it is negative, then the corresponding airline received less than it was owed. These error values will be carried over to the next iteration (time window) so that the process can correct any loss or gain by adjusting future allocations.

Iteration (time window) #2: In the second time window, the base level of operations is 21 and the reduced level is 18. Note the adjustment in each airline's share that is applied going from the Base Ops column to the Share column. This adjustment is calculated by subtracting the Error column in the previous iteration from the Base Ops column. Thus, airlines that received less than their ideal share in the previous iteration are appropriately adjusted upward. The reduction factor (18/21) is now applied to the Share column to obtain the Reduced Share column. The process then proceeds as earlier to obtain the Allocated column. Thus, in this time window airline A, C and D must reduce their operations by 1 and airline B has no required reduction. Again a new Error column is calculated.

Iteration (time window) #3: In this time window, the base level of operations is 26 and the reduced level is 22. Again the Base Ops column is adjusted based on the Error column from the prior iteration to obtain the Share column. The process proceeds as earlier, multiplying the Share column by the reduction factor (22/26) to obtain the Reduced Share and finally rounding to obtain the Allocated column. The general approach should now be clear.

We should comment on the specific rounding procedure since it might not always be the case that rounding the values in the Reduced Share column to the nearest integer will produce a set of carrier allocations whose sum is the target total allocation. There are actually multiple approaches that could be used, however, the overall procedure is not too sensitive to the specific rounding approach used since the error term is carried over from iteration to iteration. The following approach is probably the most natural.

Define RS_a to be the entry in the Reduced Share column for airline a and TR to be the total reduced share. The procedure will calculate A_a, the entry in the Allocated column for airline a. Note that $\Sigma_a A_a$ should equal TR. We use $\lfloor A \rfloor$ to denote the smallest integer less than or equal to A, i.e. the value obtained by rounding down any real number A.

Rounding Algorithm:

Step 1: *For all a, set* $A_a = \lfloor RS_a \rfloor$. *(Note that* $\Sigma_a A_a \leq TR$*).*
If $\Sigma_a A_a = TR$ *then stop; otherwise go to Step 2.*

Step 2: *Order the airlines according to decreasing value of* $RS_a - A_a$*; break ties arbitrarily.*
For each airline a, in order, set $A_a = A_a + 1$ *until* $\Sigma_a A_a = TR$.

To illustrate how this process would work, let us consider the first iteration of the example given earlier. The initial RS vector is (8.75, 5.25, 1.75, 5.25). This is rounded down in Step 1 to obtain: (8, 5, 1, 5); note that $\Sigma_a A_a = 19 < 21 = TR$. The vector of values of $RS_a - A_a$ is (.75, .25, .75, .25). In Step 2, we order the airlines by A, C, B, D. (note that there were two ties that were broken arbitrarily). Thus, in Step 2, we successively set $A_A = 8 + 1 = 9$ and $A_C = 1 + 1 = 2$. At this point, $\Sigma_a A_a = 21 = TR$ so we stop.

2.4 Specific Parameters and Features.

Time window width: The entire process operates on a time-window basis and, as such, the time window width is a key parameter. The choices generally considered fall within the range of 15 minutes to 1 hour. Narrower windows limit airline scheduling flexibility, while wider windows run the risk of leading to unbalanced schedules and congestion. For example, with a 1-hour window, one might see the majority of flights in the 7 AM to 8 AM time window scheduled close to 8 AM. This in turn would lead to congestion at this time and significant delays, which could even spill over into later time windows. We will not make a specific recommendation here but only indicate that it is important to insure reasonable balance via narrower time windows to avoid congestion.

Allocation based on arrivals, departures or generic operations: Thus, far we have defined the procedure as allocating operations. In fact, there are two basic alternatives with respect to what rights are allocated. Specifically, are flight operators given the right to schedule a generic operation (arrival or departure) or are they given specific arrival operation and departure operation rights? In the latter case, within each time window, a specific maximum number of arrivals and a specific maximum number of departures would be set. Flight operators would be allocated a specific number of arrival "slots" and a specific number of departure "slots." Certainly, the entire process would be easier to manage if one simply worked with generic operations rather than with arrivals and departures. However, airport runway configurations and procedures generally cannot treat arrivals and departures in a completely interchangeable fashion. Thus, if generic operations were allocated, then it might be necessary to set the maximum number of operations at an artificially low level in order to achieve congestion mitigation goals.

The procedure as stated could be directly applied in the case of allocating generic operations. If specific arrival and departure operations were allocated then some additional controls would have to be put in place. In particular, the simplest direct way of handling this case would be to apply the procedure to arrivals and departures in separate,

independent steps. The problem with such an approach is that a carrier might not receive a compatible set of arrival and departure slots. It is even possible, although fairly unlikely, that a flight operator would receive a different number of arrival and departure slots. A more likely, undesirable outcome would be to receive arrival and departure slots that could not easily be arranged into a set of compatible flights (and aircraft schedules). One approach to avoiding such outcomes would be to initially pair compatible arrivals and departures and then to use the fair allocation procedure to eliminate arrival-departure pairs. Thus, for example, after an initial pairing was determined, the procedure could be executed for arrival slots and then, when each arrival was eliminated, the corresponding departure would be eliminated as well. There are certainly many alternatives for coming up with an initial paring. A very natural approach would be to pair arrivals and departures based on a historical fleet schedule. That is, each arrival would be paired with the departure that succeeded it in a historical aircraft schedule. If such an approach were used then there would not be as great a control over the balance of departures as over arrivals. However, the departures would generally be reasonably well balanced as they would tend to be spaced similar distances from their paired arrivals.

Daily vs. weekly slots: The historical policy used in the U.S. at the High Density Rule (HDR) airports was to allocate slots on a weekday and weekend basis. That is, a single "slot" gave the holder the right to schedule an operation within the specific time window on every weekday. On the other hand, the IATA guidelines define slots on a day to day basis, i.e. there are Monday slots, Tuesday slots, etc. Thus, a flight operator could conceivably operate a flight three days a week and would need to obtain three slots to do so. Under the U.S. HDR system, there was an implicit assumption that any weekday flight would be scheduled on every day of the week and so slots were allocated on that basis. The procedures described in this report could readily be applied to either the daily version of the problem or the weekday version. Because of the presence of many international carriers at JFK, who, at times, operate irregular schedules to some of the more distant destinations, it would appear that the IATA approach, i.e. defining slots for each day, is most appropriate.

Moving operations to less congested time windows: It is possible that there would be time windows at a congested airport where scheduled operations are below the level specified in the revised level of operations. It is also possible that certain carriers might want to move some of their operations into such periods rather than simply eliminating them when schedule reductions are specified by the procedures described earlier. This could be accomplished in an orderly fashion within our fair allocation procedure. We propose to implement this feature (if desired) by allowing flight operators to dynamically participate in the fair allocation process. Specifically, a pool of available slots would be maintained and, whenever a flight operator "lost" a scheduled operation, that flight operator would be given the opportunity to choose from among the slots remaining in the pool.

3. NEW CAPACITY AND MARKET MECHANISMS

The process we have described does not provide a means for accommodating new entrants or flight operators wishing to expand. Nor does it provide a mechanism for dealing with new capacity. We feel that both of these issues should be addressed using market-based approaches. Specifically, it is important to define property rights for the slots that are allocated as part of the process we have described and to allow secondary market trading (buy-sell). Many argue that the secondary market in the U.S. associated with the HDR slots has not operated in a satisfactory fashion. Specifically, in recent years, nearly all transactions associated with the LGA HDR slots have involved situations of bankruptcy or other types of financial distress. Some possible distortions in the market might include competitive advantages to holding slots rather than selling them, or unwillingness of purchasers to pay a fair price when political means to acquire slots for free are available. In any event, we recommend that the Federal Government continue to explore steps that would provide more liquidity in these markets.

It is tempting to try to extend the procedures we have described to allocate new airport capacity. In fact, a fundamental component of our approach is the presence of a baseline schedule on which to base the allocation. In the case of new capacity no such baseline exists. While incumbent flight operators can potentially justify grandfather rights to airport access based on investments made in gates and other resources, no such justification exists with respect to new capacity. Thus, we feel there are strong arguments in favor of the use of market-based approaches, e.g. slot auctions, for allocating new capacity.

References

[1] Churchill, A., 2007 *Determining the Number of Slots to Submit to a Market Mechanism at a Single Airport*, MS Thesis, Department of Civil and Environmental Engineering, University of Maryland.

[2] Young, H.P. 1994. *Equity in Theory and Practice*, Princeton University Press, Princeton, NJ.

AIR CARRIER ASSOCIATION OF AMERICA NY ARC RECOMMENDATIONS

Air Carrier Association of America
NY ARC Recommendations
Working Group 5

1. Within the context of the IATA guidelines, how can the government meet policy goals like providing access to new entrants or ensuring adequate access to small communities?

First, any reference to new entrants in the New York airport system should discuss limited incumbents as well. Limited incumbents and new entrants face the same slot allocation issues that block growth and access at restricted airports. Carriers limited to ten roundtrips cannot compete with carriers that have 50-200 roundtrips! Little has been done to improve competition and if additional access is not provided to new entrants and limited incumbents immediately, competition will erode even further.

Furthermore, while delays can negatively impact the entire market, they have a disproportionate effect on new entrants and limited incumbents, as these carriers have fewer flights. Limited incumbents and new entrants should not be punished for delays and congestion, as these problems are caused by the dominant carriers, who operate hundreds of flights a day. Many of the delays are the result of large carriers using regional jets in order to protect slots from new entrants, even on routes to major hubs that were historically served by full-size aircraft.

Through mergers and slot transactions, slot dominance has continued to increase and new entrants and limited incumbents are left in an impossible search for slots. Allowing large carriers to continue to add service – while limited incumbents have no ability to compete – drives out competitors and establishes competition-free markets. Over a decade has passed without any growth for limited incumbents or entry opportunities for new entrants. Without the FAA's action, large carriers will continue to dominate LGA markets and block competitors from entry.

In order to meet policy goals at LGA, the DOT should immediately withdraw ten percent of all slots held by carriers holding more than sixty (60) operating authorizations and distribute half of the withdrawn slots to limited incumbents operating aircraft with at least 90 seats. The remaining slots should be held and not distributed in order to reduce

system overcrowding and allow flights to operate with fewer delays. Additionally, as other slots are returned for reasons such as use-or-lose, priority in redistribution should be given to limited incumbent carriers.

2. Should the IATA guidelines be supplemented by rules governing the purchase and lease of slots in a secondary market? If so, how?

Yes, IATA guidelines must be supplemented to provide for expansion by limited incumbents. A blind auction secondary market should be created so all carriers have full opportunities to obtain, purchase or lease slots. History has shown that legacy carrier incumbents rarely sell or lease slots to limited incumbents because maintaining market power is so profitable. As the Department of Justice has stated, incumbents with market power "will always have an incentive to outbid an equally efficient entrant for any slots offered." The Department commented:

> "Indeed, an incumbent with market power may well be able to outbid a more efficient entrant, simply because maintaining market power is more profitable than entering a competitive market…once a potential buyer's identity is known to the seller, the seller has every incentive to seek out an incumbent airline that would be willing to offer more money to maintain its market power than the entrant would be willing to apply to erode it."[1]
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> ** ** **
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> First, the mechanism chosen should ensure efficient allocation of scarce capacity at LGA, with slots going to their most productive use. Second, the mechanism chosen should permit competition to flourish. Allowing entrants to compete in a competitive primary market for the purchase of slots will increase the chances that more efficient entrants are able to acquire the slots they need. In order to promote a vibrant and competitive airline system, the scarce LGA capacity should be allocated in a way that encourages rather than discourages competition. Comments of the U.S. Department of Justice, June 20, 2002, Docket 2001-9854.

By using a blind auction mechanism and concealing the identity of bidders, large incumbent carriers will no longer be able to make sales decisions based on a bidder's identity. This will eventually end the dominance over operating authorizations at LGA and will spread control and ownership more equally among all airlines. Blind auctions

[1] Comments of the United States Department of Justice regarding the Notice of Alternative Policy Options for Managing Capacity at LaGuardia Airport and Proposed Extension of Lottery Allocation, Docket No. FAA-2001-9854, p.6.

also benefit the public interest, as they ensure that slots will continually become available and will be accessible by many different holders.

Additionally, in order for the auctions to be fair, a weighted system favoring new entrants and limited incumbents must be used to ensure that smaller carriers have clear opportunities to obtain slots. This will prevent small carriers from continually being outbid by legacy carriers with greater resources. Moreover, slots should not be sold in large groups, as large groupings would be prohibitively expensive for small carriers to purchase and would result in automatic sale to dominant carriers. The March 25, 2005 O'Hare Airport NPRM explained the importance of providing a preference to new entrants and limited incumbents, stating:

> Several factors here suggest that it would be appropriate to provide a preference to new entrants and limited incumbents at the airport. First, as we noted above, the Secretary of Transportation considers a number of matters in the public interest when carrying out the Department's functions, including "placing maximum reliance on competitive market forces and competition. Second, the airline Deregulation Act of 1978, which reduced the regulation of domestic and international air transportation, enunciated pro-competitive policies. When addressing airport access issues, Congress has frequently favored new entrants over incumbents. Congress has added provisions to the statutes governing airport grants and passenger facility charges to encourage airports to adopt policies that will promote competition.

These recommendations are consistent with the FAA's repeated emphasis on the importance of increased competition and the establishment of a competitive environment as a top priority. In fact, in the Congestion Management NPRM (Docket No. FAA-2006-25709), the FAA highlights that it has clear statutory authority to promote competition when it allocates operating authorizations:

> Keeping available a variety of adequate, economic, efficient, and low-priced air services; placing maximum reliance on competitive market forces and on actual and potential competition; avoiding airline industry conditions that would tend to allow at least one air carrier unreasonably to increase prices, reduce services, or exclude competition in air transportation; encouraging, developing, and maintaining an air transportation system relying on actual and potential competition; encouraging entry into air transportation markets by new and existing air carriers and the continued strengthening of small air carriers to ensure a more effective and competitive airline industry; maintaining a complete and convenient system of scheduled air transportation for small communities; ensuring that consumers in all regions of the United States,

> including those in small communities and rural and remote areas, have access to affordable, regularly scheduled air service; and acting consistently with obligations of the U.S. Government under international agreements. (Congestion Management Rule for LaGuardia Airport; Proposed Rule, 71 Fed. Reg. 51360, August 29, 2006.)

The FAA has clear authority to take steps to promote LGA access, transfer slots, and make other changes needed to protect operations and competition at LGA. Operating authorizations were not assigned for life nor with assurances that carriers could do whatever they want with them; to the contrary, all holders were informed that operating authorizations could be recalled.

3. Assuming a cap on operations is required, how do you deal with public policy issues such as small communities and other interests? How might these issues be addressed? Can the market deal with these issues adequately? (Data question: what has happened to small community service at ORD and LGA?)

First, the definition of "small community" must be changed. Second, 15 percent of slots should be set aside for service to non-hub airports. All other slots should be available for service with aircraft of 90 seats or more. When slots are available, they should first be offered to new entrants and limited incumbents.

4. What is the prospect for additional capacity over the short and long term? If and when additional capacity is added, how should it be allocated? If additional capacity comes from air carrier investments, does that change how it should be allocated?

As many as three additional operations per hour could result from short-term improvements. All of these additional operations should be made available to limited incumbents. The FAA should also make immediate changes to slot control hours to make available the hundreds of operating authorizations not utilized on Saturdays and Sunday mornings which the legacy carriers will not return. <u>All</u> additional capacity should first be made available to new entrants and limited incumbents. Carriers that have dominated the airport for 20 years do not need additional flight options.

ADDITIONAL STATEMENT OF FOREIGN CARRIERS ON WORKING GROUP 5 (AIR FRANCE, BRITISH AIRWAYS, LUFTHANSA)

The foreign carriers participating on Working Group 5 support the majority position endorsing application of the IATA Worldwide Scheduling Guidelines (WSG) as promulgated by IATA (without excessive local rules) for allocating capacity at congested NY airports.

The foreign carriers generally endorse the majority position on the issues of Local Rules and New Entrants with some reservations.

The foreign carriers differ with the majority position on the issues of Small Communities, Secondary Trading (except for British Airways), Access to U.S. Airports by Foreign Flag Carriers and Allocation of Capacity Through Market Mechanisms. Their specific positions on each of these issues are set forth in the body of the Final Recommendations.

On the critical issue of Access to U.S. Airports by Foreign Flag Carriers, the foreign carriers' position is that they would only seek a foreign carrier preference if U.S. local rules for new entrants/limited incumbents and small community service go beyond what is provided for under the WSG in order to assure their fair and equal opportunity to compete and to provide for some growth at the airport.

Moreover, extensive local rules that favor U.S. carriers exclusively would require some form of foreign carrier preference if U.S. bilateral obligations are to be met.

Foreign carriers either support or do not in principle oppose secondary trading for NY airports; - they could support postings on an industry "billboard" for informational purposes only; and some would be prepared to consider the specific mechanics of the secondary market post- ARC.

Foreign carriers would also be opposed to use of any market mechanism for allocating existing or new capacity at the airport other than under the IATA Worldwide Scheduling Guidelines.

COMMENTS OF AIRTRAN AIRWAYS ON IATA SCHEDULING GUIDELINES

Comments of AirTran Airways on Work Group 5 Draft
IATA Scheduling Guidelines
November 29, 2007

At the outset of the NY ARC when the five working groups were established, it was understood by at least the ACAA and AirTran Airways, and apparently others, that the discussion regarding IATA scheduling guideline in Work Group 5 was specifically as it might pertain to JFK and possibly EWR, but not LGA. The WG5 draft paper is not consistent with the general understanding that IATA scheduling guideline discussions applied only to JFK. Several comments during the presentation and discussion of the WG5 draft paper, illustrated the confusion held by many, that the recommendations were JFK specific. While the paper has stated the intent is to apply the IATA Worldwide Scheduling Guidelines (WSG) to all New York airports, members of the working group did acknowledge there was no consensus on including LGA, and further pointed out there was very little discussion on the inclusion or application of IATA WSG to LGA.

Additionally, given the confusion of the purpose and scope of this working group, which impacted potential participants, it is inappropriate and somewhat misleading to refer to majority and minority opinions without further clarification.

Nonetheless, we appreciate the opportunity to provide comments for consideration.

While we understand the unique character of JFK as an International hub, albeit with some domestic service, may make the application of the IATA WSG an appropriate mechanism for that airport, we do not believe that is true in any way at LGA, an airport with almost entirely domestic operations.

The DOT charter includes statutory mandates to promote air carrier competition and new entry in the U.S. It has done so through the judicious administration of numerous programs through the years that have facilitated and fostered improved competition at NYC airports by enabling reasonable access to new entrant and limited incumbent carriers and protecting the interests of and service to small communities. As a result, new entrant, limited incumbent and low cost carriers now account for just under 9% of operating authorities at the airport and provide low fare competition in more than 90 O&D citypair markets from LGA. These pro-competitive, pro-consumer achievements would not have occurred under IATA guidelines.

IATA has been clear and consistent in stating that exemptions and local rules, such as those that preserve small community access and that promote competition, are not consistent with and undermines the WSG, which has a primary objective of managing congestion in capacity constrained airports.

From WSG, 14th edition, Section 5.8, "General Principles of Coordination"

- The basic principle of the slot allocation process is historical precedence, which allows airlines to retain slots, which have been allocated to them, and operated by them to certain operating criteria, in the next equivalent scheduling period.

The NY ARC shares the objective of addressing congestion, but as Secretary Peters has stated on opening the ARC, "I am not in favor of a system that limits competition, nor do I want to reduce the ability of new entrants to fly into New York." Clearly the Department doesn't intend to forgo any additional competitive/consumer gains at LGA, so it is difficult to see how the conflicts of DOT's requirements for competition can be reconciled with IATA's objections to local rules.

- There are long standing definitions that establish new entrant/limited incumbent at LGA as a carrier holding fewer than 20 operating slots (10 roundtrips) within the hours of 0700-2100. This number is based on the reasonable assumption of allowing a new entrant an opportunity to compete effectively in U.S. domestic markets with significantly larger incumbent carriers. IATA guidelines should not usurp U.S. policy.

- IATA would reduce that threshold by 75% to only two round trips. It is worth noting the three largest carriers at LGA account for 75% or an average 135 daily departures each. At 2 roundtrips, the IATA standard would suggest that at less than 2% of the largest incumbent's service level a new entrant, limited incumbent has parity.

- The average daily departures per carrier at London Heathrow (LHR) is on 7.8, just 2.8% of the largest carrier's average daily departures at LHR. The nature of service from LHR is uniquely different than LGA: average stage is 1,750 miles, not surprising in that it serves international markets with an average frequency of just 3.97 daily flights per destination. By contrast, the average flight from LGA is 2.2 hours in duration, 576 miles, 67% less than LHR. Each of the five largest O&D market from LGA has between 15 and 35 daily departures on 2 to 3 competitors – at LHR only 36% of markets have daily competition.

- 20% of current departures at LGA are to 38 small communities and 95% of all flights are within the domestic U.S. The NYNJPA has expressed concern that a number of these markets would be at risk without specific rules protecting small community service. IATA has repeatedly stated these sorts of exemptions conflict with the WSG. Only 13% of LHR flights are within the United Kingdom and less than 52% of flights are within Europe.

Just this month, the European Commission issued a report questioning the effectiveness of the IATA scheduling guidelines. Excerpts from the November 15, 2007 report:

- "Although the Regulation has brought some improvements in use of airport capacity, it is not adequate to address the increasing congestion at Community airports."

- The report goes on to reference an EC "action plan" adopted in October 2007 "to achieve a more efficient use of scarce airport capacity possibly accompanied by a more structured approach to market based slot allocation schemes."

- The EC report also notes that – "Local guidelines have the potential to add more flexibility to adapt to local circumstances to allow for better use of existing slots at congested airports. The possibilities to introduce local guidelines should be enlarged."

It seems that we are moving to adopt a system that the EC has already said does not work for congested airports. In the drive to address congestion the working group is proposing a system that the EC reports has failed to address both congestion and competition. Whatever value the IATA rules might have at JFK, they will only make the situation at LGA worse and block competition to the disadvantage of the consumer. As a practical matter the end result is that the passenger will spend the same amount of delay time on the airport runway but pay more for it.

While we are willing to concede there may be valid reasons to allow IATA WSG at JFK, we absolutely object to any consideration of applying IATA guidelines to LGA or other domestic airports. IATA guidelines would undermine the authority of the DOT to perform its responsibility to promote competition and local airports to administer their own facilities.

Adoption of IATA scheduling guideless at LGA, or other U.S. domestic airports would reduce the economic benefits to consumers and communities of vigorous airline competition that has resulted from U.S. and DOT pro-competitive policies.

COMMENTS OF MIDWEST AIRLINES AND ALASKA AIRLINES

Comments of Midwest Airlines and Alaska Airlines

THE LONG-STANDING STATUTORY AND REGULATORY PREFERENCE FOR NEW ENTRANT & LIMITED INCUMBENT AIRLINES IN GENERAL AND AT CAPACITY-CONSTRAINED AIRPORTS IN PARTICULAR

New entrant air carriers ("new entrants") and limited incumbent air carriers ("limited incumbents") have consistently received preferential treatment under the statutes, regulations, and rules that govern the allocation of slots at high-density or congested airports ever since 1985, when the FAA took over the slot administration function previously exercised by airline scheduling committees. Such preferential treatment is consistent with the policy directives that have governed the activities of the DOT and the FAA throughout this period. What follows is a summary of the specific measures and broad policy statements that have established the preference as a deeply engrained element of U.S. domestic aviation law.

- Congress has directed the Secretary of Transportation ("Secretary") to specifically consider as being in the public interest:
    - "encouraging entry into air transportation markets by new and existing air carriers and the continued strengthening of small air carriers to ensure a more effective and competitive airline industry";
    - "the availability of a variety of adequate, economic, efficient, and low-priced services without unreasonable discrimination or unfair or deceptive practices";
    - "placing maximum reliance on competitive market forces and on actual and potential competition";
    - "avoiding unreasonable industry concentration, excessive market domination, monopoly powers, and other conditions that would tend to allow at least one air carrier or foreign air carrier unreasonably to increase prices, reduce services, or exclude competition in air transportation"; and
    - "encouraging, developing, and maintaining an air transportation system relying on actual and potential competition . . .." 49 U.S.C. § 40101(a)(4), (6), (10), (12), (13) (2005).

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- Under the lottery provision of the high-density airports slot allocation and transfer rules adopted by the FAA in 1985, in each round new entrants and limited incumbents may complete their selections before other incumbent carriers are allowed to participate. *See* 14 C.F.R. § 93.225(e) (1997). In addition, in the first round, 25 percent of available slots (but not fewer than two slots) are set aside for new entrants. *See id*. § 93.225(h). If new entrants do not select all the set-aside slots, limited incumbents, i.e. those carriers

holding no more than 12 domestic slots (later raised to 20 in the Aviation Investment and Reform Act for the 21st Century ("AIR 21")), may select the remaining slots before incumbent carriers may participate. *See id.* §§ 93.213(a)(5), 93.225(h). Moreover, before the clock begins to run for purposes of the use-or-lose provision as it applies to slots obtained in a lottery, new entrants are entitled to a 90-day grace period, while all other carriers have only 60 days. *See id.* § 93.227(b).

- In 1986, the FAA issued a Special Federal Aviation Regulation ("SFAR") establishing a one-time withdrawal of five percent of the slots of incumbent carriers at three of the high-density airports – LGA, ORD, and DCA – and a reallocation of those slots by lottery to new entrants and limited incumbents. *See* SFAR No. 48 Special Slot Withdrawal and Reallocation Procedures, 51 Fed. Reg. 8,632 (Mar. 12, 1986).

- In AIR-21, Congress directed the Secretary (i) to grant every new entrant and limited incumbent 20 slot exemptions from the high density rules at LGA, 20 at JFK, and 30 at ORD, *see id.* §§ 41716(b), 41717(c), (ii) to grant 12 beyond-perimeter exemptions at DCA where the resulting service will, *inter alia*, "increase competition by new entrant air carriers or in multiple markets," *id.* § 41718(a), (iii) to grant 12 within-perimeter exemptions at DCA using criteria that promote, *inter alia*, service by new entrants and limited incumbents or service "that will provide the maximum competitive benefits," *id.* § 41718(b), and (iv) to ensure that the Secretary's ongoing examination of slot regulations includes consideration of "the impact of such allocation process upon the ability of new entrant air carriers to obtain slots in time periods that enable them to provide service." *Id.* § 41714(e)(1)(D).

- For the lotteries of slot exemptions at LGA that the FAA conducted on several occasions between 2000 and the termination of the high density rule at LGA, the FAA adopted a process similar to that described in 14 C.F.R. § 93.225, whereby only new entrants and limited incumbents could participate in the first round. *See*, *e.g.*, High Density Airports; Notice of Lottery of Slot Exemptions at LaGuardia Airport, 65 Fed. Reg. 75,765, 75,766, 75,770 (Dec. 4, 2000). Also, under the current order limiting operations at LGA, if the FAA decides to reallocate any slots that are withdrawn, surrendered, or unassigned, it "will conduct a lottery using the provisions specified under 14 CFR 93.225," which, as discussed above, contain preferences for new entrants as well as limited incumbents. Operating Limitations at New York LaGuardia Airport; Notice of Order, 71 Fed. Reg. 77,854, 77,860 (Dec. 27, 2006).

- Under the current regulations addressing delays at ORD, new entrants and limited incumbents may select up to eight arrival authorizations allocated by lottery before any other carrier may participate in the lottery. *See* 14 C.F.R. § 93.30(h).

- Finally, under the FAA's proposed rule for long-term congestion management at LGA, the FAA would reallocate slots in a weighted lottery, in which each carrier's weight is inversely proportional to its share of the total number of slots at LGA, thus heavily favoring new entrants and limited incumbents. *See* Congestion Management Rule for LaGuardia Airport; Proposed Rule, 71 Fed. Reg. 51,360, 51,380 (Aug. 29, 2006).

COMMENTS OF NACA ON IATA SCHEDULING GUIDELINES

MEMORANDUM

TO: DJ Gribbin
Chair, NY ARC

Nancy LoBue
Vice Chair, NY ARC

FROM: Thomas E. Zoeller
President, National Air Carrier Association

SUBJECT: NACA Comments to Working Group 5/IATA Scheduling Guidelines

This memorandum represents the comments of the National Air Carrier Association (NACA) to the paper prepared by Working Group 5 – IATA Scheduling Guidelines, as part of the New York Aviation Rulemaking Committee (NYARC).

NACA represents 15 air carriers, all certificated under Part 121 of the Code of Federal Regulations. Our carriers provide a mix of regularly scheduled and charter passenger and cargo air service. [1] NACA is a participating member of the NYARC, but was not a participant on Working Group 5. We appreciate the opportunity to offer our comments for the record with respect to the recommendations of this working group.[2]

At the outset, we believe it is inaccurate label the proposal to impose IATA Worldwide Scheduling Guidelines (IATA WSG) at the New York/New Jersey airports as "widely supported." First, many carriers, including Virgin America, Alaska Airlines, Midwest Airlines, and the Air Carrier Association of America (ACAA) , all expressed opposition or concern about various aspects of implementing the IATA WSG, especially as it relates to the paltry (i.e., 2 ½ round trip) set aside for new entrants. If this paper is going to the Secretary from the ARC itself, and not just a Working Group, we believe it vitally important (a) to reflect more accurately the opposition of those on the Working Group, (b) the

[1] NACA carriers include: Allegiant Air, ATA Airlines, Atlas Air, Champion Air, Gemini Air Cargo, MAXjet, Miami Air International, North American Airlines, Omni Air International, Pace Airlines, Ryan Air International, Southern Air, Sun Country Airlines, USA3000 and World Airways.
[2] We note that the Air Carrier Association of America (ACAA) has submitted comments on this working group paper as well and NACA concurs in those comments.

opposition of both ACAA and NACA to adoption of the IATA WSG, and (c) the relative absence on the ARC of broader airport, community, and consumer interests. We would strongly urge you as the leaders of the NYARC to ensure the lack of consensus among the broader industry is accurately reflected in anything given to the Secretary.

We also believe it would be helpful to have a more standard format, and list the pros and cons of the proposal. As it is currently presented, the Working Group 5 paper contains "majority" and "minority" views.

We do not believe that imposition of the IATA WSG is proper for any of the PANYNJ airports. The IATA WSG is intended to address capacity at an international airport before there are capacity constraints. None of these airports, including JFK, are simply international airports. Each of the three commercial service airports are vital domestic airports. The use of an international scheduling tool, we believe, is inappropriate for the situation in the New York/New Jersey metropolitan area.

The paper suggests that the IATA WSG:

- is a "dynamic and flexible nature . . .designed to accommodate market and network complexities."
- Offers a "fair and nondiscriminatory system that is globally accepted"

We strongly disagree. The IATA WSG essentially freezes the status quo of level of service at the airport and relies on "historic rights." In addition, we believe that the definition of a "new entrant" carrier, one with fewer than five slots, is far too limited and conflicts with definitions and understanding of that term within the U.S. transportation policy, as stated by both the U.S. Congress and the U.S. Department of Transportation.

Despite the claims of the WG5, we do not believe that the IATA WSG "permits new entrant air access in a manner that the working group in general believes it is equitable." Under the IATA WSG, a new entrant would be permitted two round trips per day. Any ability to expand beyond that allocation requires the carrier to obtain slots on the open market, which may well be closed to new entrant competitors. Large, incumbent carriers likely would be inclined to make slots available to their competitors, when they can achieve scarcity rents by charging higher fares to consumers.

The working group claims that this limitation thus "fosters a vibrant secondary market." The only "vibrant secondary market" that is created by the WSG is market of trading slots, not increasing service or competition at the airport. Moreover, there is no secondary market for new entrants or limited incumbent carriers to move their operations. The entire metropolitan area of PANYNJ airports are already operating at or above capacity. To impose the IATA WSG at

one airport and assume that a new entrant or limited incumbent carrier can offer service at one of the other PANYNJ airports is misguided. For some of NACA carriers, the only ability to grow is at one airport, primarily JFK. For international travel, the market reality is that JFK is the entry and departure point for international travel. For carriers that are focused exclusively on international markets, JFK is the cornerstone of their business plan. The IATA WSG essentially destroys any ability for these types of carriers to succeed.

In addition, NACA carriers also offer significant non-schedule commercial service. It is unclear from the working group paper whether such non-scheduled operations are contemplated. It appears our interests were not even considered. Since the carriers do not publish a schedule, it remains unclear whether non-scheduled commercial operations would be able to operate in an airport under the IATA WSG. To the extent that the FAA or DOT would consider imposing these guidelines, NACA strongly urges making slots available for non-scheduled commercial operations. This is clearly something that appears to be contemplated by the working group in acknowledging that the IATA WSG permit for local rules.

While we believe that accommodating charter operations can be accomplished through the adoption of a local rule, we are not satisfied that the goals for other carriers, such as new entrants and limited incumbent carriers, could be satisfied with a local rule. We believe that the Federal transportation policy goals of promoting competition and access for carriers, as well as the need for service to small communities, would create so many local rule exemptions to the IATA WSG that the guidelines would be rendered essentially meaningless.

Finally, we would add that the IATA WSG does not encourage the Federal government or the airport authority to seek capacity improvements, whether through infrastructure or air traffic management. While it is stated that the use of the IATA WSG could be a short-term initiative, the record of other short-term initiatives such as the High Density Rule suggest otherwise. Federal and local resources would be better spent by making the investments in air traffic improvements and ground infrastructure that could expand the capacity of the region and accommodate the competing demands of the legacy carriers, charter carriers, and new entrants/limited incumbent carriers.

If you need any additional information, or wish to discuss these comments, please do not hesitate to contact me at (703) 358-8065 or by email at tzoeller@naca.cc.

AIR CARRIER ASSOCIATION OF AMERICA LETTER TO DJ GRIBBIN

AIR CARRIER ASSOCIATION OF AMERICA

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December 3, 2007

DJ Gribbin
General Counsel
U.S. Department of Transportation
1200 New Jersey Avenue, SE
9th Floor, West Tower
Washington, DC 20590

Re: Comments on Working Group 5 Recommendations

Dear DJ:

The Air Carrier Association of America ("ACAA") hereby submits additional comments on the "Final Recommendation" of Working Group 5.

As discussed at the November 29, 2007 ARC meeting, the opening paragraph of the "Final Recommendation" does not accurately reflect the views of the ARC members. While some parties are willing to consider implementation of the IATA Worldwide Scheduling Guidelines for JFK (and some are also willing to discuss it as an allocation system for EWR), there is significant opposition to the use of the IATA Guidelines for allocation of operations at LGA[1]. The Air Carrier Association is firmly opposed to the use of the IATA Guidelines at LGA and <u>any</u> IATA involvement in LGA operations.[2]

At that same ARC meeting, some carriers claimed that the secondary market works and that a carrier with 2 ½ daily roundtrips can easily add to those numbers. It is important that the record reflect reality: that it is difficult for many carriers to purchase access. As

[1] The number of international operations at LGA is very limited.

[2] Even if guidelines similar to IATA are utilized at JFK and/or EWR, they must provide for access for domestic new entrants and limited incumbents to operate a minimum of six roundtrips per day. No procedure should be considered that further blocks entry and competition at US airports. Carriers that operate hundreds of flights at an airport should not be allowed to close the airport to competition.

DJ Gribbin
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to the purchase of slots at Heathrow Airport, we note a November 12, 2007 Aviation Daily article that states:

> US Airways says the tight slot market at London Heathrow is preventing it from launching flights to the airport, at least temporarily. The airline says it "intends to serve Heathrow someday but has no firm plans at this point." It has to balance the demand for Heathrow with the cost of acquiring slots.

Apparently, US Airways felt the cost was worth it. On November 20th, it announced it would fly to Heathrow from PHL. A number of articles suggest US Airways paid $40 million for the slots and probably obtained them from one of its Star Alliance partners. Domestically, not all carriers belong to alliances and not all carriers could spend large amounts of money for JFK slots to operate domestic flights.

As to suggestions that secondary markets can be used for carriers to add to a few roundtrips, it should be the secondary market process does not open doors for small carriers. The Working Group paper should reflect the U.S. Department of Justice comments about the secondary market in response to the Notice of Alternative Policy Options for Managing Capacity at LaGuardia Airport and Proposed Extension of Lottery Allocation (Docket No. FAA-2001-9854):

> "Indeed, an incumbent with market power may well be able to outbid a <u>more</u> efficient entrant, simply because maintaining market power is more profitable than entering a competitive market…once a potential buyer's identity is known to the seller, the seller has every incentive to seek out an incumbent airline that would be willing to offer more money to maintain its market power than the entrant would be willing to apply to erode it."
>
> * * * *
>
> First, the mechanism chosen should ensure efficient allocation of scarce capacity at LGA, with slots going to their most productive use. Second, the mechanism chosen should permit competition to flourish. Allowing entrants to compete in a competitive primary market for the purchase of slots will increase the chances that more efficient entrants are able to acquire the slots they need. In order to promote a vibrant and competitive airline system, the scarce LGA capacity should be allocated in a way that encourages rather than discourages competition.

As to the Working Group comment that ACAA members received exemptions to operate at LGA, if this statement is to remain in the report, it should note that those exemptions were allocated under Congressional mandates which created one preference for new entrants and limited incumbents. Without that authority, there would be little competition at LGA and the airport would not have the significant benefits it has gained from the service offered by low-cost carriers. The paper should also note that the number of slots

DJ Gribbin
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provided to new entrants is small compared to preferences in the legislation that allowed large carriers to expand. Many large carriers were able to add dozens of operations at LGA because of language in that same legislation and the regional jet flights they added created the congestion that is now being addressed. Moreover, JetBlue is operating at JFK today because of authority granted by DOT.

ACAA opposes any consideration of the IATA guidelines at LGA or other U.S. airports. While the ACAA would not oppose consideration of the IATA Guidelines for international flights at JFK[3], adoption of the IATA Guidelines for domestic service will neither enhance competition nor promote the efficiency of the overall aviation system. Opportunities for new entry and expansion of limited incumbents must be kept available[4].

Please do not hesitate to contact us to further discuss this issue.

Sincerely,

Edward P. Faberman
Executive Director
Air Carrier of Association of America

cc: Nancy LoBue
Rebecca MacPherson

[3] Limited incumbents must be able to operate 10 roundtrips at JFK before the dominant carriers are allowed to expand along with flights outside of the congested hours.

[4] The ACAA supports the comments by the National Air Carrier Association (NACA) on these issues.

UNITED AIRLINES LETTER TO REBECCA MACPHERSON

UNITED AIRLINES

STAR ALLIANCE

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December 3, 2007

Rebecca McPherson
Assistant Chief Counsel for Regulations
Office of the Chief Counsel
Federal Aviation Administration

Dear Rebecca,

Let me begin by thanking you for all your hard work in Chairing Working Group 5. You did an excellent job of pulling together a report that describes what most Working Group members consider to be the best way to control airport congestion, i.e., the Worldwide Scheduling Guidelines. The report also fairly sets forth different perspectives on aspects of the WSG. In response to your invitation to offer supplemental comments, I wanted to share some additional thoughts from United Airlines.

First, as you know, one of the issues that engendered the most discussion was the question of what should be U.S. government policy toward new entrants/limited incumbents. The working group discussed this issue at length, as did the entire ARC, following Virgin America's presentation last week. Much of the discussion referenced historical legislative and regulatory approaches that have at points in the past applied to new entrant/limited incumbent access to congested airports in the U.S. In our view, it is essential that public policies are developed with reference to current market realities, rather than based on historical circumstances that may no longer apply.

I have attached for your reference a recent study prepared by former DOT officials, Patrick Murphy and Randall Bennett. This study clearly reveals that the U.S. airline industry is experiencing a dramatic change in structure that began in 2000. The U.S. domestic airline industry is more competitive than at any time in history and is characterized by the emergence of two distinct business models – network carriers and low-cost carriers (LCC's). LCC's now drive industry growth and fare levels. Network carriers no longer dictate the terms of domestic competition. The results of this study clearly show that market dynamics that underlay historical U.S. policy concerns, like "hub fare premiums," have changed dramatically.

Given the high levels of competition and the continuing evolution of the industry in favor of the LCC business model, we suggest DOT must reevaluate historical policies of government intervention in favor of certain business models or individual firms. In our view, many of these policies can no longer be justified on the basis of a public policy need to promote competition.

1005 Connecticut Ave. NW, Suite 1210, Washington DC 20036

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Second, in Working Group 5 we discussed the New York area, and at times even included PHL, but never spoke of differing rules for LGA versus JFK or EWR. One advantage of the WSG is consistency in application; all airports are treated in a predictable manner on the same timeline allowing for airlines to develop schedule plans and rework those based on feedback as a package, not an individual airport on x day and another airport on y day. Additionally, following commonly accepted guidelines allows airlines to use a single commercially available slot management tool, such as those available from Sabre, Lufthansa Systems, or Gatwick Logistics, for tracking and reporting slots at all domestic and international airports.

Perhaps even more importantly, adoption of the WSG within the U.S. generally would provide a strong basis to prevent the sort of unacceptable congestion and delay problems plaguing New York. The WSG is designed to allow stakeholders to move gradually to slot controls before schedules becomes severely out of alignment with airport capacity. Broad adoption of the WSG would also provide a uniform solution to congestion problems that would not entail lengthy legislative and regulatory processes to address future problems. Therefore, United would strongly encourage broad adoption of the WSG at all current or future U.S. congested airports (including ORD, JFK ,LGA, DCA and EWR) to minimize the financial and operational burden of maintaining various slot management tools each for use at single airports.

Thank you again for your leadership on this important working group.

Sincerely,

Julie Oettinger

cc: DJ Gribbin
Nancy Lobue

A COMPETITIVE ANALYSIS OF AN INDUSTRY IN TRANSITION (GERCHICK-MURPHY REPORT)

By Randy Bennett
Patrick Murphy
Jack Schmidt

July 2007

Executive Summary

The purpose of this study is to examine the competitiveness of the U.S. domestic airline industry following a period of unprecedented financial turmoil and considerable change in industry structure. The study is not limited to a static analysis of competition, but includes an examination of the factors that have driven change so that insights can be gained about implications for the future.

The study has two distinct sections. The first is an analysis of how the industry's structure is evolving. The second is a conventional analysis that examines concentration measures such as the number and types of competitors in city-pair markets. Both approaches unequivocally show that the industry is more competitive now than at any other time in the 12-year period examined. More city-pair markets and more passengers are benefiting from increased numbers of competitors and increased presence of low cost airlines. As a result, domestic average fares adjusted for distance and density (but not cost inflation) were lower for the year ended September 2006 than in 2000, or even 1995.

Industry Structure:

The title of this study does not precisely capture what has occurred in the domestic passenger airline industry during the last six years. Although the title correctly portrays that a transition is still underway, in point-of-fact a major transition in industry structure has already occurred. Indeed, industry snapshots of the latest six-year period and the six-year period that preceded it look so different that a casual observer might think that two different industries are under review. Despite the fact that most of the players are the same, in terms of overall competitive structure two different industries really are involved.

During the past six years the balance of influence in the domestic market has significantly shifted from the network airlines to the low cost airlines. The extent to which their relative positions and performance have changed in such a relatively short time would have seemed totally implausible a short time ago. The network airlines that were the dominant force in the domestic industry during the 1990s no longer drive change either in terms of price or growth, and are unlikely to again do so. Their focus has shifted from intensely competing for domestic market share with low cost airlines to growing international services which also serves to flow greatly increased volumes of international bound passengers and

revenue through their domestic networks. In essence they have turned to their strongest position of competitive strength, their global networks, to revive their profitability, both system-wide and domestically.

Despite the remarkable change that has already occurred, strong low cost airline expansion and resulting market share shifts can be expected for the foreseeable future, and competition will intensify. Low cost airlines will continue to pressure the network airlines to maintain and even expand the strategy that has evolved during the past several years of focusing more on international expansion and less on competing for market share of price sensitive domestic passengers.

The diversity of the two very different business models employed by the large network airlines and the low cost airlines is a key element of the success of deregulation. These two dueling business strategies have provided more intense competition than would occur from a more homogeneous system, and service to a much broader spectrum of demand than would have resulted from either model standing alone. Large network airlines provide the vast portion of service to smaller cities in the domestic market and to cities of all sizes linked to international markets. Low cost airlines provide service to large numbers of price sensitive passengers that would not otherwise have the opportunity to travel by air. Where both models serve, competition is intense and this competition will continue to benefit increased numbers of passengers and markets.

The most obvious difference that signals the important change of the past six years is the extreme variation in financial performance between network and low cost airlines. The network airlines, after experiencing a period of sustained strong profitability from the mid-1990s to 2000, have struggled to return to profitability, particularly in the domestic market. The low cost sector, on the other hand, has remained profitable throughout this period.

Obviously, there were many contributors to industry change, including the terrorist attacks, the Iraq War, SARS, and dramatic increases in fuel prices. However, these exogenous factors affected all airlines. Other changes that are more fundamental and structural in nature have weighed heavily on how the industry has evolved.

One element in the evolution is the emergence of a solid core of low cost airlines that joined the ever growing Southwest. During much of the 1990s, the low cost sector, other than Southwest, constantly struggled for survival, but that is no longer the case. This is a major factor contributing to the network airlines' struggle to regain their financial footing since 2000. The effect of low cost airline entry into a market served by a traditional airline has been demonstrated many times by virtually all who have examined airline industry competition. Although the basic reason for the resulting reduction in fares and surge in traffic is well understood, this study describes in detail the widely divergent sectors of passenger demand pursued by the network and low cost models. In this way,

the study provides insight into the broader implications for network airlines as low cost carriers continue to expand.

While the low cost airlines have continued to grow, the large network airlines, including their regional partners, now offer less domestic capacity than they did in early 2001.

Low cost airline expansion is not the only revenue-side phenomenon that has confronted the network airlines. A second major change involves a large decline in the numbers of passengers willing to pay higher fares. Even for the ever shrinking minority of passengers who travel in markets where low cost airlines are not present, the network airlines' ability to segment the market and charge time-sensitive business travelers higher prices has been significantly eroded. The result has been the loss of several billion dollars a year in revenues.

Placed in historical context this is a change of great consequence. In essence, almost three decades after deregulation demand has asserted itself. The primary service providers are no longer able to control supply that is made available to different segments of demand and in so doing maximize the price most passengers were willing to pay. The industry is now demand driven and not supply driven. Customers are insisting on lower prices and greater supply for price sensitive travelers. The implications of this for the airline industry are profound.

These two revenue-side phenomena that have challenged the network airlines – loss of marketshare and erosion of pricing power – point to another area of this study – costs. Many observers are familiar with the period of rapid cost escalation experienced by the network airlines beginning near the end of the 1990s and extending into 2001. It has now become clear that this inflation occurred just as the low cost airline sector began to solidify, which in turn was followed by the early stages of the weakening in high-fare demand in late 2000 and early 2001. These developments were then punctuated by the terrorist attacks of September 11. This combination of rapidly increasing costs and declining revenues led to the most intense efforts possible by the network airlines to reduce their costs. They have all had great success in doing that, both within and outside the bankruptcy process, but given that a cost gap of almost 50 percent with low cost airlines continues to exist, have they done enough?

For the near term, at least, it would seem that they have, as in their sixth year of recovery the network airlines have begun to report a return to profitability in the domestic market. But continued improvement in the financial recovery is far from certain for a number of reasons. First, the current recovery in the domestic market is largely the result of international expansion rather than regaining competitive influence in the domestic market. For the year ended September 2006, passengers and revenue related to domestic travel by the network carriers remained lower than in CY 2000, but the domestic portions of international trips

have increased markedly and now account for 25 percent of revenues that flow through the domestic networks. While the network airlines have found a new source of revenue to replace that lost in the domestic market, the long-term effects of continuing to add capacity in international markets remains to be seen.

Second, the low cost airlines continue to expand and in so doing continue to erode revenue pools traditionally held by the network airlines. Although low cost airlines now have a presence in markets that account for about three-fourths of domestic passengers, they can be expected to continue to gain market share in many if not most of those markets, and continue to expand into others given their current cost advantage over the network airlines. It is also significant that increased low cost airline market share is not solely the result of their aggressive growth, but also a function for network airline passengers and revenue decreasing as low cost airline presence increases and expands the market.

Third, the network airlines' return to profitability in the domestic market, even with the revenue benefit from international expansion, while clearly a positive, has come at the cost of shrinking their domestic networks. Since network size or scope is normally considered to be a key advantage of a network, the network airlines' apparent need to continue to shrink their domestic networks cannot be considered a positive sign going forward. It is unclear whether continued international expansion will change this dynamic, or whether new types of network airline responses will emerge.

Industry observers, and other airline managers for that matter, have consistently underestimated the ability of the low cost carrier sector of the industry to adapt. Despite a history of change, at nearly any point in time many observers would offer the opinion that low cost airlines are running out of opportunities and the prospects for further expansion are limited. Given the long tradition of adjusting to meet marketplace needs and opportunities, both here and abroad, the failure to anticipate still more change in the faster growing low cost industry sector would seem short sighted. New low cost business models are now being tested in the domestic market and expansion of low cost service into international markets could radically change the industry structure in the domestic market as well. While the network airlines can adapt to new situations the low cost airlines can also change.

<u>Conventional Competitive Analysis</u>:

Consistent with the results of this study's structural analysis, an analysis of traditional trends and concentration measures also demonstrates that the domestic airline industry is now more competitive than at any time during the past 12 years examined in this study. In fact, the airline industry is likely the most competitive it has ever been. More city-pair markets and more passengers are benefiting from increased numbers of competitors, increased presence of low cost airlines, and lower fares.

At the national level long term declines in real ticket prices and increases in traffic levels have continued. While broad measures of industry concentration ratios have fluctuated only slightly since 1995, the composition of airline industry competition has undergone great change with respect to the presence of low cost competitors.

In terms of passengers carried, Southwest is by far the largest domestic airline, carrying almost 50 percent more passengers than the second largest airline – American. Two other low cost airlines, JetBlue and AirTran, have recently entered the ranks of the top 10 airlines. Low cost airlines now account for 30 percent of domestic passengers, but more importantly they compete in markets that account for three of every four passengers. This, of course means that three quarters of air travelers are directly benefiting by the downward pressure the low cost competitors place on fares.

With respect to city-pair markets, measured either in terms of the presence of low cost airline competition or the numbers of competitors, competition has not just continued to increase throughout the 12-year period studied, it has accelerated. The result has been a remarkable reduction in prices. In 2006, overall average fares (unadjusted for inflation) were 7.2 percent lower than in 2000, and only 4.2 percent higher than 12 years ago. But adjusted to reflect changes in distance and density that have occurred, nominal average fares in 2006 are 10 percent lower than those in 2000, and are 2.4 percent lower than 12 years ago. Adjusted for cost inflation average fares for September 2006 were 20 percent lower than for either 2000 or 1995, and declined for all density increments examined, including the smallest markets.

The single area that has not been significantly affected by low cost entry has been service to the smaller cities, the vast majority of which are served only by the network airlines primarily with their regional partners. Nevertheless, between 2000 and 2006 competition measured by numbers of competitors has actually increased more in the smallest markets than in any other market density category. Adjusted for cost inflation, average fares in the smallest markets were 12 percent lower for the year ended September 2006 than in 2000, and 18 percent lower than in 1995. The likely reasons for this are twofold.

As smaller cities are heavily dependent upon network airlines for service, the network airlines, in turn, have developed a growing dependence upon revenues generated at those cities where they have little low cost airline competition. This is not unlike their efforts to shift focus from competing with low cost airlines to increasing international revenues flowing through their domestic networks. The increased competition in the smaller markets is made possible by virtue of smaller cities being linked to multiple network hub airports. As low cost airline expansion increases competitive pressures in larger markets, the network airlines will now become even more dependent on revenues from smaller cities.

In addition, competition at small communities benefits from new technology regional aircraft that enable service to more distant competing network hubs. Furthermore, increasingly independent regional airlines, either on their own or in affiliation with low cost airlines, offer the prospect for even more competitive benefits for smaller cities.

Given DOT's long-standing concern about higher prices charged by network airlines at their network hub cities, "hub premiums" were also examined. Hub premiums are calculated by comparing prices for service to and from hub cities with fares charged in other markets of comparable distance and density. Along with industry prices that have significantly declined during the past six years, premiums at most network airline hub cities have also declined, primarily as a result of low cost airline entry. With but a single exception at Cincinnati, low cost airlines have a growing presence at all network hub cities and should continue to discipline prices in hub markets.

The complete report can be found on the NY ARC KSN site (https://ksn.faa.gov/km/aee/nyarc).

LETTER FROM VIRGIN AMERICA, INC., TO D.J. GRIBBIN

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December 12, 2007

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The Honorable D.J. Gribbin
General Counsel
U.S. Department of Transportation
1200 New Jersey Avenue, S.E.
Washington, DC 20590

Re: Working Group 5; IATA Worldwide Scheduling Guidelines

Dear D.J.,

Thank you for the opportunity to reply on behalf of Virgin America Inc. ("Virgin America") to the letter and study submitted and funded by United Airlines regarding allocating scarce capacity in New York. To provide balance in the presentation of the NYARC's views to the Secretary, I understand that you will be providing a copy of this letter with your transmittal on Working Group 5 ("WG5"), which we appreciate.

As you know, we believe that congestion management in New York or elsewhere ought not to come at the expense of competition, and that the government should not implement the IATA World Schedule Guidelines ("WSG") to address scarce domestic capacity. Doing so would create a huge financial windfall to incumbent carriers, shut out new entrants, erect formidable barriers to entry, encourage slot hoarding, and facilitate incumbent attempts to extract scarcity rents from consumers—a very anti-competitive, anti-consumer result.

The entire premise of the WSG—granting rights of "historic precedence" in perpetuity—is antithetical to the Airline Deregulation Act and 30 years of DOT precedent. As Virgin America emphasized during WG5's discussions, this formula not only insulates incumbents from new entry and competition, but the "new entrant" access under the WSG is available only if capacity is declared available, and only then to a carrier that operates no more than two daily roundtrips at the airport. The WSG therefore effectively shut out new entrants and purports to send them to a secondary market, where incumbents would have economic incentives to hoard slots rather than supply them to competitors.

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The Department and FAA consistently have taken into account their statutory mandate to promote new entrant and limited incumbent competition when administering the Federal Aviation Act and adopting regulations to allocate scarce capacity at congested airports in the U.S. You are well aware of this extensive precedent, which includes 5% withdrawals from incumbent carriers upon creation of the Buy Sell Rule in 1985 under President Reagan, and extensive slot exemptions during the Bush and Clinton Administrations, including over 75 slots given free of charge to JetBlue in 1999.

Large airlines favoring the wholesale adoption of the WSG in the U.S. have argued that meaningful competition will be assured through a "vibrant secondary market," pointing to London's Heathrow ("LHR") as an example. Make no mistake: there has been very little new entrant competition at LHR over the last five years. Indeed, only two of the 21 new entrants at Heathrow between 2003 and 2008 now hold sufficient slots to operate at least two daily roundtrips. Only 0.5% of slots have come on the market from use-or-lose provisions. Recent U.S. "non-incumbent" transactions only underscore this difficulty, with US Airways apparently obtaining one pair of slots at LHR for $40 million—from its alliance partner. The FAA and Department of Justice repeatedly have noted the lack of new entrant opportunities as a result of the secondary market.

In response to Virgin America's position that congestion management must not come at the expense of competition, both United and the Air Transportation Association have cited to a United-funded study, *A Competitive Analysis of an Industry in Transition: The U.S. Airline Industry*,[1] for the proposition that the industry is more competitive than ever before, with low cost carriers ("LCCs") accounting for a significant share of total domestic enplanements. We offer the following observations on the Study.

First, the LCCs' share of the overall U.S. market has little relevance to questions on how new entrants will obtain meaningful access at specific city pairs and markets, especially one so large and important as New York. Second, the only access at slot-controlled airports in the U.S. for new entrants during the time period examined by the study's authors (2000-2006) was largely the result of slot exemptions. Third, while the Study concludes that competition has driven down average domestic fares, NY area fares actually have been steadily increasing. The latest data prepared by DOT's Office of Aviation Analysis on the 81 largest domestic markets reveal that average fares in the NY

[1] Gerchick Murphy Associates, LLC, A COMPETITIVE ANALYSIS OF AN INDUSTRY IN TRANSITION: THE U.S. AIRLINE INDUSTRY, available at http://www.gerchickmurphy.com/files/study.pdf.

The Honorable D.J. Gribbin
December 12, 2007
Page 3

area have actually increased by nearly 12% over the last two years.[2] New York is now the sixth most expensive market of the 81 cities tracked by DOT. Virgin America, which now competes in four of the 10 most expensive domestic long-haul city pairs,[3] is eager to bring travelers in this region even more low fare options. Finally, LCC success has come about because they can enter markets that need service and lower fares, which would not happen under the WSG.

In sum, Virgin America urges the Department to strike the proper balance between policies to reduce intolerable passenger delays with adequate accommodation for new airlines to enter and compete in a meaningful manner at New York airports. The Department and FAA have provided careful consideration to the many thoughtful comments submitted by a diverse group of stakeholders throughout the entire NYARC process, and we appreciate the opportunity to share these observations. Thank you for your leadership efforts.

Very truly yours,

Kenneth P. Quinn
Counsel to Virgin America Inc.

cc: Nancy Lobue
Rebecca McPherson

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[2] *See* DOT Office of Aviation Analysis, DOMESTIC AIRLINE FARES CONSUMER REPORT, at Table 2 (First Quarter 2007 and First Quarter 2006).

[3] *Id.* at Table 1. Long haul ranking based on domestic city-pairs greater than 2,200 miles.

400686823V1 Pillsbury Winthrop Shaw Pittman LLP

APPENDIX H — GENERAL COMMENTS

AIRCRAFT OWNERS AND PILOTS ASSOCIATION LETTER TO DOT SECRETARY

AOPA
AIRCRAFT OWNERS AND PILOTS ASSOCIATION
421 Aviation Way • Frederick, Maryland 21701-4798
Telephone (301) 695-2020 • FAX (301) 695-2375

Phil Boyer
President

November 14, 2007

Honorable Mary Peters
Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

Re: NYC Aviation Rulemaking Committee

Dear ~~Secretary Peters~~ Mary:

The Aircraft Owners and Pilots Association (AOPA), representing more than 414,000 pilots across the country is pleased to be a participant in the aviation rulemaking committee (ARC), established to reduce congestion in New York City (NYC). Your leadership is critical as the Department evaluates the various recommendations being developed by this committee to meet the early December 2007 deadline established by President Bush. AOPA wants to assist you in this effort and has developed the attached "New York Congestion White Paper."

It is crucial that the Department address the primary issues of airline scheduling and the physical limitation of an airport to handle a given amount of traffic, airline decisions to operate smaller aircraft, and airline promotion of travel during peak hours without setting the expectation of delays.

I want to emphasize that non-commercial general aviation operations are not the cause of congestion in New York. The Federal Aviation Administration's (FAA) operational data shows that since 2001, non-commercial operations at the New York Tracon (N90) are down by more than 15 percent, and the total number of non commercial operations at Teterboro, New Jersey (TEB) are down by more than 40 percent. The FAA data also reveals that non-commercial operations are less than three percent of New York's LaGuardia and Kennedy airports and Newark, New Jersey's airport. These facts must be considered as the solutions are developed.

Ultimately, the Department must identify a set of solutions that tackles the real problems without adversely affecting those that do not contribute to the problem, the AOPA membership. We propose a list of short and long term recommendations for inclusion in the ARC deliberations and the Department's subsequent action plan.

We believe it is important that the DOT and FAA have access to a list of balanced solutions that enables you to reach an informed decision and achieves the desired outcome to address the delay problems in the New York area.

Sincerely,

Phil Boyer

Member of International Council of Aircraft Owner and Pilot Associations

NY Congestion White Paper
Aircraft Owners and Pilots Association

November 13, 2007

In October 2007 the Department of Transportation established an Aviation Rulemaking Committee (ARC) for the New York City area, designed to explore market-based mechanisms and other options for addressing airspace congestion and flight delays in the New York area. The Aircraft Owners and Pilots Association (AOPA) has developed this white paper for the Department's consideration as they deliberate on the NYC delay issue.

The Issue: Congestion at the New York City Airports

Fact #1: General Aviation Operations are not Contributing to the Airline Delay Problem

- The majority of delays are related to weather, and the remainder of the delays is airline induced or air traffic control delays.
- Nationwide, general aviation aircraft operations have declined by 17 percent since 2000. (Rep. Jerry F. Costello, September 26, 2007.)
- According to FAA statistics, air carrier operations have grown in the New York area by 15 percent since 2001 while general aviation activity has decreased 9 percent
- General aviation (noncommercial) traffic at the three NYC airports continues to be less than 3 percent of the total operations.
- General aviation operations at Teterboro Airport, the NYC's largest reliever airport were the same in Fiscal Year (FY) 2006 and 2007. Over the past five years, traffic levels at the Teterboro Airport are down.
- General aviation flights to satellite airports are nearly always segregated from airline flows to the three NYC airports. Air traffic controllers report that operations at reliever airports are segregated from the air traffic flows to the three NYC airports most of the time, meaning that general aviation does not affect airline operations.
- NATCA Eastern Regional Vice President Phil Barbarello verified these facts on October 4, 2007, (Aviation Daily) when he said it's not true that business jets are causing delays in the New York area because they have "separate arrival fixes and separate airspace when they enter the New York Terminal Radar Control (TRACON) area, and they don't impede air carriers. In fact," he added, "bizjet arrivals are often restricted to accommodate airline arrivals at Newark."
- General aviation operations accommodate airline demand. When weather permits, general aviation aircraft are encouraged to depart Teterboro airport under visual flight rules (VFR), using the Dalton Departure, and transition to instrument flight rules (IFR) when outside of the New York area.

Fact #2: Airline Schedules and Aircraft Sizes Generate Flight Delays and Passenger Travel Problems.

- At certain times of the day, the airline's arrival/departure schedules exceed runway benchmark capacities at LaGuardia (LGA), John F. Kennedy (JFK), and Newark (EWR) airports.
- Since 2004, JFK's scheduled operations have increased 44 percent. (Agham Sinha, MITRE, September 26, 2007.)
- JFK had the worst on-time rate in July 2007, with 57 percent of flights arriving on schedule. (Boston Globe, September 5, 2007)
- According to former FAA Administrator Marion Blakey, the airlines are operating flights with smaller aircraft, which affects passenger travel.
  "Similarly, as airlines work to control costs per emplanement, they are using increasing numbers of small aircraft."
- This is reflected in key facts from the DOT Inspector General Calvin L. Scovell III:
  - *The number of scheduled flights (capacity) decreased from 5.5 million in 2000 to 5.0 million in 2007, a drop of 9 percent. Scheduled seats also declined by over 9 percent between 2000 and 2007, from 510 million to 462 million.*
  - *Even though the number of flights and seats declined, passenger enplanements went up over 12 percent, from 312 million passengers in 2000 to 350 million passengers in 2007.*

Fact #3: Non-Commercial Traffic in the NYC Area is Declining

In FY 2007 the commercial aviation operations were higher than FY 2001, while general aviation operations were lower in FY 2007 than FY 2001. The FAA data below shows these and other facts.

2001 Traffic Levels

ATC Facility	Total 2001	Commercial 2001	Non-Commercial 2001	Percent GA of Total
N90	2,070,713	1,438,358	661,743	32.0%
JFK	340,459	331,808	8,156	02.3%
LGA	404,206	393,205	10,798	02.7%
EWR	462,202	445,582	16,437	03.5%
TEB	267,794	54,460	202,538	76%

2007 Traffic Levels

ATC Facility	Total 2007	Commercial 2007	Non-Commercial 2007	Percent GA of Total
N90	2,095,818	1,521,770	562,673	28.0%
JFK	453,258	359,771	7,245	01.6%
LGA	401,410	390,349	10,700	02.7%
EWR	444,973	429,357	15,453	03.4%
TEB	202,193	77,131	124,765	61.7%

Fact #4: The Capacity Issues in New York are Limited by Runways

- Airports have not expanded capacity. No new runways have been built for years.
- The airspace used by turbojets was nearly doubled in 2004 when the FAA implemented Domestic Reduced Vertical Separation Minimums (D-RVSM) nationwide.

Both Immediate and Longer Term Solutions are Available to Address Delays at the NYC Airports:

1. *Align schedules with capacity benchmarks.* The Federal Aviation Administration (FAA) has issued "Capacity Benchmarks" for each of the nation's busiest airports. These benchmarks lay out how many flights can physically and safely arrive at and depart from a particular airport at a given period of time and at peak travel hours. The benchmarks then compare the airport's capacity limit to how many flights the airlines have, in fact, scheduled for arrival and departure during that time period. FAA data shows that airline-scheduling practices at the three NYC area airports significantly exceed these capacity limits, with the result being that the number of flights scheduled to depart cannot possibly depart when scheduled and as advertised. The airlines should be required to align schedules with the capacity benchmarks. Establishing the correct benchmark is critical.
2. *Implement operational changes to air traffic procedures that improve the flow of traffic in the NYC area.* Task the RTCA Airspace Working Group to focus on quickly implementing these improvements.
3. *Provide Truth in Scheduling.* Inform all passengers flying to or from NYC that the flight they may choose to buy a seat on will experience regular and frequent delays due to the airline's choice of aircraft size and schedule.
4. *Provide Truth in Reservations.* Before allowing passengers to make a reservation during peak hours, make sure that passengers are aware of other lower peak travel options, and that there are airports in the New York City metropolitan area that may be better options for their travel.

5. *Evaluate Air Traffic Control facilities to ensure they are adequately staffed with trained controllers.* It appears there may be open positions at the New York Air Route Air Traffic Control Center (ZNY ARTCC), the NYC TRACON (N90) and the JFK Air Traffic Control Tower (ATCT). According to the National Air Traffic Controllers Association (NATCA):
    - ZNY ARTCC: There are 370 positions authorized with 304 on board (234 certified professional controller and 70 trainees);
    - N90: There are 270 positions authorized with 200 onboard (178 certified professional controllers and 22 trainees); and
    - JFK ATCT: There are 37 positions authorized with 32 on board (24 certified professional controllers and 8 trainees)
6. *Encourage airlines to use more of the airports in the NYC metro area.*
7. *Identify options for more runways at existing airports.*
8. *Airlines operating to and from the three NYC airports should be required to equip with RNP and ADS-B "IN."* The airlines indicate these systems can increase capacity, and efficiency. The technologies promise to improve the number of hourly operations per runway.

E-MAIL MESSAGE FROM DAVID STEMPLER TO DJ GRIBBIN AND NANCY LOBUE

Subject: Air Travelers Association Principles and "Passengers First"
Proposed Solutions
From: David Stempler <David.Stempler@AirTravelersAssociation.com>
Date: Tue, November 27, 2007 10:47 pm
To: "DJ Gribbin (E-mail)" <dj.Gribbin@dot.gov>, Nancy LoBue
<nancy.lobue@faa.gov>
Cc: All NY ARC members

D.J. and Nancy:

As the airline passenger/consumer member of the New York Aviation Rulemaking Committee ("NY ARC"), I want to again thank you both for allowing me to participate in all five of the Working Groups. It has not only allowed me to provide the airline passenger perspective in each of these Working Group meetings and telecons, but also enabled me to be aware of: items that do not fit squarely in any of the Working Groups; items that should be moved from one Working Group to another Working Group; items that fall between the "cracks" of the Working Groups; and items that were never raised for discussion in the NY ARC or any of the Working Groups. Because of ! this, I would like to present a number of items that I would propose be considered by the NY ARC.

Before describing those items, I would like to state for the written record, a number of procedural items that I have talked about in the NY ARC meetings but would like to have included in the written record of the NY ARC.

I. <u>AIR TRAVELERS ASSOCIATION PRINCIPLES CONCERNING AIRLINE AND AIRLINE PASSENGER ISSUES.</u>

1. <u>A free, deregulated airline market is the best "market-based" solution for airline congestion and delays.</u>

   A. The Air Travelers Association believes that a free, deregulated airline market is the best "market-based" solution to provide the best airline service for airline passengers. The Association opposes any artificial, non-market based solutions at airports and on airlines, except restrictions required for safety and application of the laws and regulations that apply to all companies, such as antitrust, tax, etc.

      (1) We do not believe in slot restrictions, perimeter rules, or other types of artificial congestion solutions. If an airport is too congested, passengers will go to other airports, use other means of transportation, or not travel at all, but passengers will decide what is best for them in each individual case. Passengers will "vote with

their wallets" if they approve or disapprove of the level of congestion, delay, and pricing of tickets for travel.

(2) Congestion pricing has been discussed in the NY ARC. Congestion pricing is already in effect with airline "yield management". Airlines charge more (or do not offer discount seats) at congested times of the day.

(3) If restrictions or limitations must be made on airline operations, they should be as limited as possible, while measuring them against the Aviation System Standards, as described below.

B. "What's the Other Choice?"

As I have mentioned many times in the NY ARC meetings and telecons, every proposal for congestion relief should not just be examined in a vacuum, but compared to other choices. "What's the Other Choice?" should always be asked when viewing a solution. A choice may be bad, but it may be a better choice than the other choice being offered.

C. "Don't Reinvent the Wheel"

If there has been a previously used and successful solution for a problem, do not try solutions that have not been tested or vetted in advance. Innovative solutions can be very positive, but sometimes can result in unintended consequences. In addition, when proposing previously used and successful solutions for a problem, we are always concerned about allowing exceptions to these solutions, because of our concern that it can an avalanche of other exceptions, and the previously used and successful solution can collapse like "death from a thousand cuts".

2. "Aviation System Standards" – The Air Travelers Association believes that the following criteria should be used to measure each of the proposals to reduce congestion presented to the NY ARC.

A public aviation system should provide the following benefits for the public.

A. Provide service for the most number of people, not the most number of aircraft – the most number of people include the most number of passengers and the most number of package shipper and recipients.
B. Provide service to the most number of destinations.
C. Provide service at the lowest possible prices.
D. Provide the most competitive service with the most number of choices -- the most number of airlines, flights, airports, and alternative transportation choices.
E. Provide service at the most convenient airport for passengers.
F. Provide service at the most convenient times for passengers.
G. Provide service with the shortest total travel times for passengers to and from their destinations.

H. Provide service with highest, best, and most efficient use of the aviation infrastructure.

I. Provide service, while disturbing and inconveniencing the fewest number of non-travelers.

J. Provide service with the lowest negative environmental impact.

II. "PASSENGER FIRST" PROPOSALS TO BE ADDED TO THE LIST OF ITEMS FOR REVIEW BY THE NY ARC.

The following are some of the "Passengers First" solutions for review by the NY ARC. Because there is no "silver bullet" solution to the New York aviation congestion problem, which alone would produce a significant improvement to congestion and delays, the Air Travelers Association believes that aggregating a number of smaller improvements will hopefully produce the significant improvement that we are looking for."

➢ Eliminate All Corporate Jet Operations at LaGuardia Airport and Convert the Corporate Jet Ramps for Use by Airline Aircraft as Delayed Aircraft Holding Pads.

- Eliminating corporate jets would immediately add airline operating slots at LaGuardia Airport and serve the greatest number of people. Corporate jets have multiple other convenient airports that they can use instead of LaGuardia, but airlines can only use Islip Airport in Eastern Long Island and Stewart Airport in Duchess County, New York, both inconvenient for airline p! assengers traveling to Manhattan.

- Delayed aircraft holding pads are airport ramps where airliners can park after pushing back from the gate and required to wait prior to take-off, or are delayed after landing. When airliners are parked at these holding pads, passengers can use cell phones, move around the cabin, use aircraft lavatories, and in an emergency, passengers can safely be removed from the aircraft. These pads are e! xpensive and take a long time to build. By taking over corporate jet aircraft facilities, these holding pads can be available almost immediately and serve the interests of a far greater number of passengers than corporate jets.

➢ Do Not Permit "Non-Standard" Departures at LaGuardia Airport.

- "Non-Standard" departures involve the use of a runway by an aircraft, when that runway is not then in use. Aircraft requests for "non-standard" departures at LaGuardia often arise because the aircraft, as loaded, cannot take-off and climb within required FAA and other operational requirements from the runway in use. "Non-standard" departures can result in substantial disruption a! nd delays at LaGuardia. It is like sending a car down the opposite direction of the Long Island Expressway in rush hour, with all the disruptions and delays that would cause.

- To reduce delays at LaGuardia, the FAA should not permit "non-standard" departures at LaGuardia at any time. If wind, weather, or heat conditions do not

permit an aircraft to take-off on the runway then in use, then the aircraft must offload cargo, passengers, luggage, fuel, or other weight items to take-off on the runway in use, wait until the conditions are favorable for the runway being used, or cancel the flight.

- Eliminate All Published Airline Connections at LaGuardia Airport.

  - The highest, best, and most efficient use of LaGuardia Airport is based on its proximity to Manhattan. Because of this, only passengers originating from and destined to LaGuardia should be served at LaGuardia.

  - To reduce unnecessary passenger demand at LGA, the U.S. Department of Transportation should prohibit airlines from publishing airline connecting flights through LaGuardia. Published connections represent less than 5% of total passengers at LaGuardia, but this is extra passenger demand that is not needed at LaGuardia. These connecting passengers can be served through other hub airports.

- Consider Eliminating the 1500-mile Perimeter Limitation for Flights to and from LaGuardia. Allow Airlines to Move Beyond Perimeter Flights from JFK Airport to LaGuardia, and Reallocate Slots at LaGuardia to Accomplish This.

  The 1500-mile LaGuardia perimeter limitation is a rule of the Port Authority of New York and New Jersey. With the congestion and delay situation that is now being faced in the New York metropolitan area, the elimination of the LaGuardia perimeter rule, along with allowing airlines to move beyond perimeter flights from JFK Airport to LaGuardia, and together with other changes, trades, compromises, and adjustments could allow a reduction of congestion at JFK Airport and reduce delays in the New York area.

- For all Airline Delays and Congestion, Change the DOT and FAA Definitions of "Delay". They are Antiquated, Unrealistic, and Out of Keeping with the Current Congestion Reality. Fix the Definitions and Passengers Will Get a More Realistic Understanding of the Congestion/Delay Situation.

  - The DOT definitions of when a flight is delayed, as arriving 15 minutes after the scheduled arrival time is not meaningful in today's congested flying environment. This 15-minute standard does not relate to the scheduled flight time of a trip. A 15-minute delay on a one-hour flight (25% of the trip time), is more significant that a 15-minute delay on a 6-hour flight (about 4% of the trip time). Actually, in today's flying environment, no passenger would seriously complain about a 15-minute delay.

  - The FAA's definition of when an airport is in delay is based on the unencumbered taxi-out times from each gate to the end of the runway, like in the middle of the night. Actual taxi-out times at each airport at congested times of the day should be the benchmark for whether any airport is in delay.

Thank you for including these principles and proposed solutions in the official record of the NY ARC.

Respectfully submitted,
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REGIONAL AIRLINE ASSOCIATION NY ARC COMMENTS

New York ARC Comments

Regional Airline Association
December 7, 2007

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INTRODUCTION

The Regional Airline Association (RAA) represents 43 member airlines that provide virtually all of the U.S. domestic scheduled service on aircraft seating fewer than 100 passengers. RAA appreciated the opportunity to represent these airlines on the DOT NY Aviation Rulemaking Committee (ARC), and to participate specifically in Working Groups 2, 3 and 4.

However, it is noteworthy that RAA was the *only* representative of the regional aviation industry invited to join the more than 40 some parties on the ARC, despite the following facts:

- Some 23% of the U.S. domestic passengers flew on a regional aircraft in 2006.
- Regional aircraft flew 49%, virtually one-half the scheduled domestic departures.
- Regional aircraft account for some 40% of the U.S. scheduled fleet
- More than 70% of the communities across the country receive scheduled service *exclusively* on regional aircraft.
- Regional aircraft offer nonstop service to 150 destinations from the New York airports. In most of these communities, regionals provide the *only* scheduled service into New York. (See attached maps)

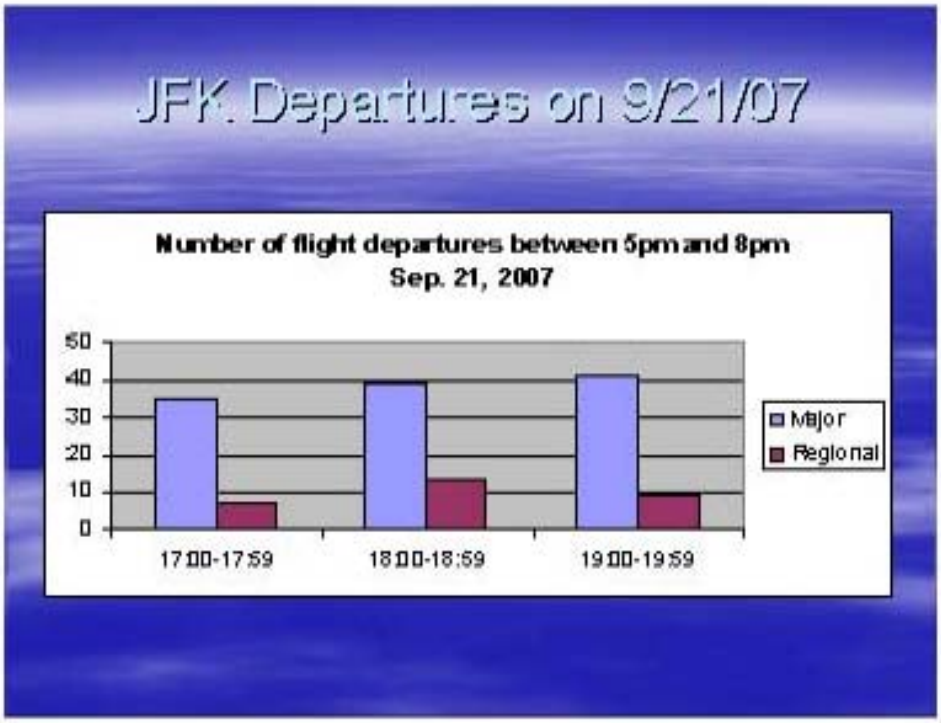
Most of the domestic passenger service on regional aircraft is provided in partnership with "network" hub and spoke airlines, which generally manage all of the joint scheduling and marketing. In this regard, RAA shares most of the issues and concerns that these network airline representatives have raised during the ARC process. To avoid duplication, RAA offers these supplementary comments to be considered in connection with the various Working Group and ARC reports.

RAA COMMENTS

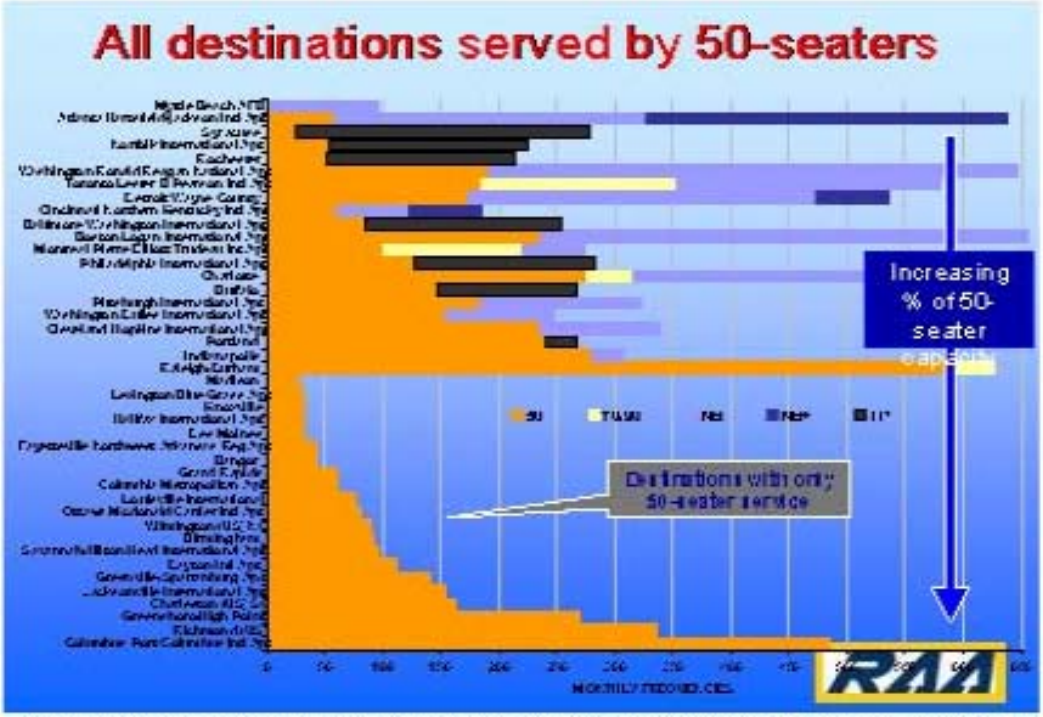
RAA provides the following comments to assist DOT as it considers policy and regulatory proposals on the stated purpose of the NYC ARC: to find ways to increase capacity and reduce flight delays in the New York region.

Because existing flights between New York airports and the small hubs and most medium hubs are on regional aircraft, the so-called "market-based" schemes (congestion pricing, auctions, etc.) designed to re-distribute aviation capacity in the New York region have the likely potential to reduce, or perhaps even eliminate, service and competition between New York and these communities.

- These pricing schemes make regional flights more expensive, and with these additional costs spread over smaller aircraft carrying fewer passengers in less dense O&D markets, there is the very real likelihood communities will suffer reduced service to the New York airports.
- Reduced service could lead to fewer competitors, perhaps even monopolies, in those communities that retain service.
- The peak periods at JFK are already dominated by flights using aircraft with more than 70 seats operated to meet market demand during peak periods, as shown below:



- There is no evidence that replacement flights by different airlines with larger aircraft would improve operational performance. And competition, particularly in small and medium hub communities, would *worsen* under this scenario since *fewer*, rather than more communities could support competitive service to LGA with larger aircraft.
- Any forced or mandated "upgauging" requiring that service to all medium hubs be operated with aircraft larger than 90 seats would virtually wipe out existing service to dozens of communities, many of which today enjoy *competitive* service into the New York's LaGuardia Airport. (See map of LGA service on regional jets)



- New York, particularly LGA, is one of if not the highest yield market in the U.S. Airlines currently have every incentive to maximize both the size of aircraft and the number of passengers per flight – particularly with $100 barrel oil. If airlines *could* schedule larger planes into New York (regardless of destination) they would be doing so now.
- Market forces are currently "upgauging" the nation's regional fleet (both jet AND turboprop), with the average aircraft seat capacity increasing 46% from 2002, from an average of 35 to a current average of 51 seats per flight.
- This natural upgauging has also been occurring at LGA, which last year saw an uptick in average aircraft seating capacity – a trend that is expected to continue as airlines are replenishing their fleets with larger 70 and 90 seats RJs.
- The "market based" schemes envision, at a minimum, new administrative processes, if not creation of whole new bureaucracies. The Draft WG2 paper Scenario 1 Hybrid Congestion Pricing/Auction proposal creates a Soviet-sounding "Pricing Board" (a term that makes us nostalgic for the less Orwellian "Civil Aeronautics Board").
- One real world example of "auctioning" of a limited, perishable product in New York may be ticket scalping for Broadway shows. For example, tickets this Friday night for "Young Frankenstein" (face value of $87-$377) ranged up to $945 each on Stub Hub. "Auctioning" does not add any additional capacity, nor, obviously, does it reduce demand during the peak.
- Service between New York airports and dozens of cities could be adversely affected if service by aircraft with 70 or fewer seats were reduced by the elimination of all service, elimination of competitive service or reductions in frequencies.

- As noted by ATA, American Airlines and others in their WG3 submissions, the proposed LGA gate leasing policy designed to "maximize the throughput" at the airport by requiring gate usage by larger aircraft is flawed in several respects:
    - In upholding the LGA perimeter rule, the court found that regulating ground congestion was at the "core" of an airport's function. Increasing the number of passengers transiting the existing terminal and roadside facilities will only *worsen* ground congestion levels. Anyone who has ever tried to navigate LGA's Central Terminal on a weekday afternoon – let alone the Grand Central Parkway getting to or out of the airport – would argue that adding *more* people and vehicles to the ground mix serves no good public purpose.
    - Since LGA currently has the lowest load factor of the three NYC airports, requiring *larger* planes would be creating more unused capacity, and making poorer use of scarce resources, including jet fuel. Today, if the 7.8 million seats flying empty out of LGA every year were filled, those seats alone would represent the 31st largest airport in the U.S., bigger than such major hubs as Oakland, St. Louis and Pittsburgh.
- From an operational perspective, there has been no evidence that replacing regional aircraft with larger planes will increase air traffic capacity or reduce delays, and in fact, substituting nimble regional planes with larger planes may actually aggravate the current situation.
    - From a landside terminal perspective, there is no doubt that regional aircraft can access smaller, tighter aircraft parking spaces than larger jets.
    - Enplaning and deplaning a regional aircraft requires less time and space than for a larger airplane.
    - Regional aircraft, which generally fly shorter hauls, put less strain on limited terminal capacity at the baggage carrousel, particularly since regional passengers have the ability to check bags planeside.
- Congestion pricing/auctions neither create any new capacity nor reduce congestion unless caps are placed on the number of flights operated. In that case, the caps, not the congestion pricing/auction mechanisms, reduce congestion to the same extent that the same cap would regardless of the system used to distribute the capacity established by the caps. Instead, the congestion pricing/auction mechanisms would simply redistribute existing capacity, jeopardizing billions of dollars in airline investment in New York area facilities and route development and altering service patterns in ways that would clearly diminish access between New York and small and medium hub cities throughout the country. Moreover, if the congestion pricing or auction revenue accrues to the airport authorities or the federal government, these entities would have a substantial incentive to decrease capacity to enhance their revenues by limiting the scarce resource to maximize the revenues. Either mechanism imposes a tax on airlines and their passengers, which DOT lacks authority to do. Moreover, as FAA has recognized, congestion pricing makes no sense where demand is constant throughout the day, as it has been at LaGuardia and would become at Newark and JFK. Neither DOT nor FAA has the explicit statutory authority required to engage in auctions of existing capacity, and both congestion pricing and auctions would be so disruptive to airlines and their customers that litigation and legislative scrutiny would surely ensue if any such proposals were adopted. Although FAA has suggested that changes to the rates

and charges policy could be accomplished to move toward congestion pricing, even changes to that policy would require extensive rulemaking proceedings and risk reversal by Congress, the courts, or both. Clearly, any of these policies would also be challenged by foreign governments if DOT attempted to impose them on foreign airlines, and any program imposed only on U.S. airlines but not their foreign competitors would be a travesty of U.S. transportation policy and fail to address congestion caused by peaking of international flights in the evenings.

- Before embarking on any radical changes that would adversely affect longstanding service patterns, airline operations and investments and airline passengers who would lose all service, all competitive service, or prime-time service to New York, DOT should implement far less drastic measures which, coupled with changes already afoot in the marketplace, could reduce congestion in the New York area significantly by next summer.
- As all participants in the ARC process recognize, the critical first steps to be taken involve enhancements to FAA and airport operations to increase capacity and thereby reduce delays. Thus, the recommendations of Working Group 1 regarding immediate and mid-term steps to ease congestion are of primary importance. By the same token, the draconian cuts at JFK implied by setting hourly caps far lower than actual operations conducted successfully in the past must be reconsidered to avoid an unacceptably large gap between supply and passenger demand and to avoid spreading congestion problems to other airports in the New York area and beyond.
- Once all possible immediate steps to enhance capacity have been taken, voluntary flight reductions and rescheduling by the principal airlines serving JFK should also contribute to reductions in delays and cancellations. Similarly, using the IATA mechanisms to secure voluntary reductions and rescheduling will enable foreign airlines to participate along with U.S. airlines in the effort to ameliorate delays at JFK, which also affect the foreign airlines and their customers. With skyrocketing fuel prices and daily announcements that airlines are reducing the flights they had planned for 2008, forecasts of substantial flight increases for next summer made months ago may no longer be accurate, and airlines may well be willing to reduce their schedules at JFK or reschedule their operations to conserve fuel.
- Under these circumstances, the drastic changes considered by DOT and FAA (auctions, congestion pricing and severe reductions in hourly flights at JFK) and by the Port Authority (economic regulation by gate leasing) and the unintended consequences they would be likely to engender should, at the very least, be deferred pending implementation of all possible measures to increase capacity in the New York area in the short term and of voluntary reductions through DOT/FAA and IATA mechanisms at the New York airports.
- Mechanisms such as congestion pricing, auctions and up-gauging by gate leases or penalties that would adversely impact small and medium hub communities or operations by fuel-conserving regional jet aircraft at the New York area airports must be avoided to ensure that DOT meets its mandate to ensure that "consumers in all regions of the United States, including those in small communities and rural and remote areas, have access to affordable, regularly scheduled air service." (49 U.S.C. § 40101(16))