



November 3, 2015

The Honorable Anthony R. Foxx
Secretary
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

The Honorable Michael P. Huerta
Administrator
Federal Aviation Administration
800 Independence Avenue, SW
Washington, DC 20591

Dear Secretary Foxx and Administrator Huerta:

The undersigned U.S. airlines jointly submit this letter to underscore their strong support for the efforts of the Federal Aviation Administration (“FAA”)/U.S. Department of Transportation (“DOT”) to reform the existing “slot management” regulatory regime at LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport (collectively, the “NYC Airports”).

New York City is the largest and most important air travel market in the United States, and has a significant influence on air traffic and airfares in the rest of the country. Today, because the number of permitted takeoffs and landings at the NYC Airports – each of which requires an assigned slot – is tightly regulated and dominated by three large incumbent airlines, consumer airfares at the NYC Airports consistently feature among the highest for major U.S. airports. Indeed for many travelers, including tourists, families and groups, and small businesses, traveling to or from New York is a financial hardship or even prohibitively expensive.

This letter highlights the consensus among the undersigned in support of key elements of the pending FAA/DOT notice of proposed rulemaking (“NPRM¹”) and focuses on the urgent need to ensure that slots are made available to “new entrant” air carriers. Each of the undersigned is a “new entrant” air carrier (as that term is defined in the NPRM²) at one or more of the NYC Airports. We urge the FAA/DOT to move forward with the proposed rule and, in finalizing the NPRM, focus on specific measures that will maximize opportunities for new entry. Only this will restore competition and create the lower fare options needed by the traveling public.

¹ Slot Management and Transparency for LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport, Proposed Rule, Docket FAA-2014-1073, 80 Fed. Reg. 1274 (Jan. 8, 2015). Each of the undersigned carriers has submitted separate comments in response to the NPRM.

² The NPRM defines a “new entrant” air carrier as one that holds or operates fewer than 20 slots on any day of the week at a given NYC Airport. NPRM at 1300.

The undersigned carriers have been frustrated in their attempts to obtain slots at commercially viable times of the day to provide this needed new service and competition at the NYC Airports. Not surprisingly, the large incumbent slot holders strenuously oppose the FAA/DOT proposal and insist there are no competition or access problems at the NYC Airports, despite numerous government and private studies to the contrary. They would have the FAA/DOT cement the status quo by making permanent the FAA temporary orders limiting operations at these airports.³

Such an outcome would lock in the large incumbents' vast holdings of slots, most of which they received free of charge from the U.S. government, and resurrect the same buy/sell mechanism which was in place when the High Density Rule applied at these airports. This mechanism stymied, rather than enabled, new carrier access. The incumbents' defense of the status quo predictably serves their commercial interests at the expense of competition and consumers.

Importantly, the use-or-lose aspect of the status quo permits the large incumbent airlines to underutilize their assigned slots, and even not use some of their slots at all, by allowing them to aggregate their slot usage over multiple slots, thereby masking the total level of slot underutilization. The large incumbents also significantly underutilize slots by operating inflated schedules in dense markets using small aircraft. This increases congestion while serving fewer passengers and results in high airfares.

When the large incumbents cannot maintain nominally compliant utilization levels even under today's highly forgiving slot utilization rule, they "babysit" slots for each other under cooperative arrangements that promote their mutual interest in keeping slots out of the hands of new entrants, thereby foreclosing competition. These practices have established an impenetrable barrier to new entry at the all-important NYC Airports.

In short, large incumbent carriers consciously seek to maintain their vise grip on hundreds of slots while new entrants with specific plans to introduce new service at these airports struggle to obtain (through allocation or purchase) even one or two slot pairs. That it took three extraordinary large transactions between legacy carriers in recent years – two mergers and a slot swap – coupled with government intervention to provide even modest opportunities for new entrants to purchase slots (albeit at windfall prices) underscores that the existing slot management rules are antithetical to new competitive entry and thus the public interest. It is only to prevent entry and new competition that the large incumbent slot holders so vigorously urge that the current temporary orders (and regime) be made permanent. Doing so would, of course, kill the FAA/DOT effort to facilitate competitive new entry at these airports.

New entry at the NYC Airports is particularly essential in the wake of recent mega-mergers among the nation's largest carriers. These mega-mergers have transformed the airline industry, resulting in extraordinary concentration of the U.S. domestic market – and slots at NYC Airports – in the hands of just three airlines, namely, American, Delta, and United. Those three carriers account for 91% of all slots operated by U.S. passenger carriers at Newark, 88% of such slots at LGA, and 63% of such slots at JFK.⁴ By contrast, new entrants operate less than 1% of

³ These "temporary" orders have now been in effect for more than seven years.

⁴ See Comments of Alaska Airlines, May 8, 2015 (Docket FAA-2014-1073), Exhibit B.

slots held by U.S. passenger carriers at JFK, less than 2% of such slots at EWR and about 1% of such slots at LGA.⁵

Even on a level playing field, competing with such dominant and resourceful incumbents would be a significant challenge. Today, with new entrants largely excluded from the playing field at the NYC Airports, competition is severely limited. The government's task – indeed its statutory responsibility – is to fix this problem by ensuring that new entrants gain meaningful access to these vital airports. Ample authority exists to address this issue, including authority to reallocate a modest number of slots at each airport from large incumbents to new entrants and limited incumbents.⁶

New entrant carriers are not alone in criticizing the highly anti-competitive and anti-consumer status quo at the NYC Airports. The Port Authority of New York and New Jersey and such objective and authoritative sources as the Government Accountability Office and the U.S. Department of Justice have voiced the same concerns. The FAA/DOT, recognizing these problems could not be ignored (as the large incumbents would prefer), issued a proposed rulemaking in January 2015. The NPRM's very modest package of proposals would slightly reform the existing slot regulatory system at the NYC Airports by (among other things) increasing transparency, requiring more efficient slot usage, promoting reallocation of unused and underutilized slots, and fostering a secondary market for slots. These proposals are welcomed and might incrementally improve the situation if finalized, but they will not fix the fundamental competition and consequent high airfare problems caused by essentially closed access to new entrants.

Accordingly, the undersigned new entrant carriers urge that the following key elements be included in the final rule:

- **Tightening the Slot Utilization Rule.** Adopting the tested approach used by other airports operating under IATA's Worldwide Slot Guidelines, the NPRM proposes to amend the existing slot utilization rule to prevent aggregating slots to meet the minimum usage requirement and require carriers to maintain at least 80% usage of each slot based on "the same flight or series of flights." We support this proposal and urge the FAA/DOT to enforce it rigorously in order to prevent slot hoarding by the large incumbent carriers and increase opportunities for new entrants to obtain slots at these airports.
- **Aggressive Action to Allocate Slots to New Entrants.** The FAA should revoke any individual slot that is not actually used 80% of the time and reallocate it to a new entrant air carrier. In addition, new entrants should receive priority in the distribution of any new or unallocated slots. New entrants should be afforded a 180-day exemption from the slot

⁵ See *id.*, Exhibit A.

⁶ The FAA has the legal authority to reallocate slots to new entrants and limited incumbents. 49 U.S.C. § 40103(b) grants the FAA broad authority to "develop plans and policy for the use of the 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 large incumbent carriers' comments on the NPRM ignore both Congressional intent set forth in the Airline Deregulation Act to promote competition and low fares and decades of agency and judicial precedent. See, e.g., *Northwest Airlines, Inc. v. Goldschmidt*, 645 F.2d 1309, 1316 (8th Cir. 1981) (upholding DOT's reliance on pro-competition objectives to reallocate slots to new entrants under 49 U.S.C. § 1348(a), the predecessor to 49 U.S.C. § 40103(b)).

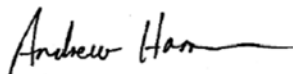
utilization rules to afford them time to obtain gates, ticket counters and other facilities and establish their new services at the airport.

- **Establishing a Robust Secondary Market That Affords New Entrants a Fair and Reasonable Opportunity to Acquire Slots.** The FAA/DOT proposed five alternative secondary market structures. Each of the undersigned carriers has its own specific views as to the optimal secondary market structure. Fundamentally, however, we agree that the development of a robust secondary market is an essential element in improving opportunities for new entrants to gain access to the NYC Airports. We note, however, that an improved secondary market mechanism is unlikely to produce meaningful benefits until new entrants have gained a modicum of scale at the NYC Airports. A secondary market will not work effectively while a very high percentage of slots operated by incumbents are held off the market.
- **Rigorous Review of Standalone Slot Transactions That Raise Competitive or Public Interest Issues.** The FAA/DOT have exercised, and should exercise, their statutory authority to review slot transactions that raise competitive or public interest issues. The undersigned carriers agree that such reviews should be undertaken for any slot transaction involving eight or more slots, as proposed in the NPRM. With reference to smaller slot transactions, DOT retains discretion under 49 U.S.C. § 41712(a) to investigate and prohibit any unfair method of competition raised by a transaction, including the division of transfers into smaller pieces in order to circumvent the agencies' oversight.
- **Evaluate Proposals for a Minimum Average Seat Requirement.** As noted above, the legacy incumbents underutilize a significant number of slots by operating a large percentage of small aircraft even in big city markets. This phenomenon does not exist to the same degree at non-slot controlled large U.S. airports, where there is less incentive to "cover" capacity through the use of smaller aircraft (i.e., small aircraft are used only for their optimal purpose – to serve smaller end markets). Several commenters have argued that the FAA/DOT should restrain the artificially high usage of smaller aircraft, which they submit wastes valuable slots, either by imposing limits on the percentage of operations that can be conducted with small aircraft or providing for a minimum average seats per aircraft requirement. The FAA/DOT should give serious consideration to these proposed remedies.
- **Allocate Slots to New Entrants Via Statutory Exemption.** The Secretary of Transportation should use his authority under 49 U.S.C. § 41714(c) to allocate slot exemptions to new entrant carriers to promote competition.

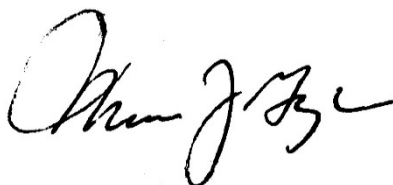
In conclusion, we urge the FAA/DOT to finalize new and effective slot rules for the NYC Airports as soon as possible. In considering each element of the proposal, the FAA/DOT should prioritize new entry in order to maximize competition, increase service options, and ensure more efficient use of slots. This will fulfill the agencies' mandate to serve the interests of the traveling

public, not only at the NYC Airports, but in the myriad cities and communities throughout the United States for which competitive air service to New York is of vital importance.

Respectfully submitted,



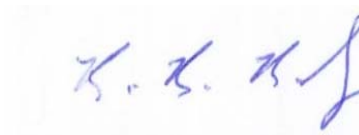
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