

# CONGESTION MANAGEMENT IN THE NEW YORK AIRSPACE

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(110-141)

HEARING  
BEFORE THE  
SUBCOMMITTEE ON  
AVIATION  
OF THE  
COMMITTEE ON  
TRANSPORTATION AND  
INFRASTRUCTURE  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED TENTH CONGRESS  
SECOND SESSION  
JUNE 18, 2008

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**Washington, DC 20515**

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June 17, 2008

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**SUMMARY OF SUBJECT MATTER**

**TO:** Members of the Subcommittee on Aviation  
**FROM:** Subcommittee on Aviation Staff  
**SUBJECT:** Congestion Management in the New York Airspace

**PURPOSE OF HEARING**

The Subcommittee will meet on Wednesday, June 18 at 10:00 a.m. in room 2167 Rayburn House Office Building to receive testimony regarding Congestion Management in the New York Airspace.

**BACKGROUND**

Although the slowing economy and the terrorist attacks of September 11, 2001, temporarily reduced aviation congestion, the number of air travelers has since rebounded and has surpassed the previous record-high level experienced in 2000. With the rebound in airline travel, the number of delayed flights has increased. According to the Bureau of Transportation Statistics (BTS), 2007 marked record airline flight delays of nearly 27 percent, second only to 2000 for delays. The Department of Transportation Inspector General (DOT IG) found that of these delays, 88,234 flights were delayed over an hour, 7,659 had ground delays of two to three hours, and almost 1,700 flights experienced ground delays of over three hours.

Absent aviation system capacity improvements, delays will increase significantly as airline travel continues to increase. The Federal Aviation Administration (FAA) forecasts that, from 2008 through 2021, aviation passenger traffic will increase by 49 percent. This growth will place even greater demands on an already delay-plagued system. The FAA predicts that, absent any changes to the aviation system, delays will increase by 62 percent by fiscal year 2014. The Air Transport Association (ATA) estimates that aviation delays costs the economy approximately \$12.5 billion a year.<sup>1</sup>

<sup>1</sup> ATA, Cost of Delays, (2008), <http://www.airlines.org>.

Due to increased fuel rates, many air carriers have announced decreases to flights within the United States. Most of the cuts have tended to be at non-hub airports, with a 1.5 percent decrease at large hubs between 2000 and 2008.<sup>2</sup> However, although there have been recent air carrier capacity decreases, the Department of Transportation (DOT) believes that delays will still occur at the country's busiest airports, including airports located in the New York (NY) area airspace.

## I. Capacity Constraints

Across the entire national airspace system, according to the FAA, only eight of the top 35 busiest airports in the country have airfield projects under construction. These projects include 3 new runways (Seattle Tacoma, Washington Dulles, and Charlotte Douglas International Airports), 2 airfield reconfigurations (Los Angeles and Chicago O'Hare International Airports), 1 runway extension (Philadelphia International Airport), 1 end around taxiway (Dallas Fort Worth International Airport), and 1 center taxiway (Boston's Logan International Airport). These eight projects will provide the airports with the potential to accommodate about 400,000 more annual operations and improve airport safety and efficiency at a cost of approximately \$4.2 billion with about \$1.1 billion in Airport Improvement Program funding. Only one of these projects, the runway extension at Philadelphia International Airport, is in the New York area airspace. Increasing capacity, however, is not always possible.

According to the FAA, approximately one-third of the nation's flights and one-sixth of the world's flights either start or pass through the airspace that supports New York's three main airports: LaGuardia International (LGA), John F. Kennedy International (JFK), and Newark Liberty International (EWR) accounting for three-quarters of the chronic airline delays experienced today.<sup>3</sup> Accordingly, delays in the northeast have a rippling effect across the country. In 2007, the BTS lists JFK, LGA, and EWR as the three worst on-time arrival major airports in the United States. Less than 60 percent of flights at these airports arrived on-time. According to the BTS, the first third of 2008 was not much better for these airports: LGA ranked last, EWR 3<sup>rd</sup> worst and JFK 6<sup>th</sup> worst for on-time arrivals. Even though in the last twelve months scheduled flights to LGA and EWR fell almost 3 and 4 percent respectively, delays continued to plague these airports. At JFK, scheduled flights have increased 12 percent in the past twelve months, and since 2000, they have increased 27 percent. To decrease the number of delays, capacity needs to be added to the system.

According to the FAA, the New York City metropolitan area (including EWR) has one of the largest challenges meeting current demand with available capacity. Much of the area around these airports is densely populated and some are adjacent to natural resources that prohibit further construction, such as the Atlantic Ocean. According to the FAA, the New York, New Jersey, Philadelphia Metropolitan Area Airspace Redesign (NY Area Airspace Redesign) will play a critical, near-term role in enhancing capacity, reducing delays, reducing emissions, transitioning to more flexible routing and ultimately saving money for airlines and airspace users in fuel costs. The FAA states that by 2011, this project will reduce delays by 20 percent in the NY area airspace and reduce noise levels for 619,023 people who currently experience noise at or above 45 dB

<sup>2</sup> Benet Wilson, Consultant: Competition for Air Service Rises as Capacity Drops, *Aviation Daily*, (June 17, 2008) at 4.

<sup>3</sup> Press Briefing by Senior Administration Officials on Aviation Congestion Announcement, (September 27, 2007), <http://www.whitehouse.gov/news/releases/2007/09/20070927-10.html>.

DNL. Even with these improvements, the NY area airspace congestion will continue to be a challenge.

## II. New York Aviation Rulemaking Committee (ARC)

On September 27, 2007, the DOT announced administrative steps to reduce delays and alleviate related consumer problems. First, DOT created a New York Aviation Rulemaking Committee (ARC) to explore options for addressing airspace congestion and flight delays in the New York area airspace. Members of the ARC included officials from DOT, FAA, the Port Authority of New York and New Jersey (Port Authority), the State of New York, airlines, consumer groups, and other interested parties. Second, DOT sought to increase consumer protection by improving access to DOT's complaint system, stronger oversight of chronically delayed flights, a rulemaking to increase compensation for passengers who are involuntarily bumped due to an oversold flight, effectiveness of contingency plans for tarmac delays, and point of purchase information related to chronically delayed flights. DOT also required the FAA to convene a schedule reduction meeting at JFK. The final step focused on the implementation of the NY Area Airspace Redesign to decrease delays.

The ARC was chartered to explore the options for changing current policy and impacts of those changes on airlines, airports, and the traveling public. The goal was to identify ideas that would reduce congestion and efficiently allocate the scarce capacity of the New York area airports.<sup>4</sup> The ARC's findings were submitted to the DOT on December 13, 2007, in the following categories: Operational/Infrastructure Improvement – New York Airspace Czar, General Aviation, Voluntary Reductions; Congestion Pricing, Auctions, and Aircraft Gauge; Gate Utilization and Perimeter Rule; Priority Aviation Traffic Preferences; and International Air Transport Association Scheduling Guidelines, Other Administrative Options.

The DOT has implemented a number of the operational improvements recommended by the ARC. The ARC reported seventy-seven items to mitigate delays in the New York area airspace; of these, the initial seventeen identified by the Port Authority and ATA in October 2007 are underway and expected to be complete by the summer of 2008. One example is the new take-off patterns at the EWR and Philadelphia International airports, as a part of the NY Area Airspace Redesign project, which allow aircraft to fan out after taking off so that the next aircraft may take off sooner. Others are a new routing alternative that provides an "escape route" into Canadian airspace from the New York region so airlines can fly around summer thunderstorms and high winds, and a second westbound route for aircraft. In April, DOT appointed Marie Kennington-Gardiner to be director of the newly-created New York Integration Office. The DOT also has issued two proposed rulemakings that would impose a slot auction mechanism to redistribute slots at LGA, JFK, and EWR. According to DOT, roughly sixty percent of the seventy-seven items have been fully implemented.

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<sup>4</sup> Letter from D.J. Gribbin and Nancy LoBue, New York ARC Chair and Vice-Chair, to Mary E. Peters, Secretary of Transportation (December 13, 2007).

### III. Flight Caps

On December 19, 2007, in an effort to decrease delays in the NY region, DOT announced voluntary flight caps at JFK.<sup>5</sup> Negotiated by airlines and DOT, caps were set at an average of eighty-two to eighty-three flights an hour beginning March 30, 2008. In March 2008, DOT also announced voluntary flight caps at EWR<sup>6</sup> to an average of eighty-three an hour, beginning on June 1, 2008. Last summer, peak hour slots averaged between 90-100 operations per hour and were predicted to be higher this summer. Under the terms of the hourly caps, airlines may shift their flights to times of the day when the airports have unused capacity rather than the current overloaded peak hours. The voluntary caps at both JFK and EWR, which were agreed to by the carriers, are in place through October 2009, at which time their effectiveness will be re-evaluated. LGA's cap of 75 scheduled and 6 unscheduled flights per hour was set to expire on January 1, 2007; however, the FAA issued an order on December 27, 2007, to retain the cap.

### IV. Auction Proposals

On April 16, 2008, the DOT issued a Supplemental Notice of Proposed Rulemaking (SNPRM) for LaGuardia Airport, which would impose a slot auction mechanism to redistribute slots (also known as operation authorizations).<sup>7</sup> Under the SNPRM, DOT proposed two market-based options that would require a limited number of slots to be made available at LGA through an auction process:

- **Option 1:** All air carriers would be given up to 20 slots a day free of charge for the 10 year life of the rule. Meanwhile, over the next five years, 8 percent of the additional slots total currently used by an airline would be available to any carrier via an auction. An additional 2 percent of the slots would be retired to help cut the record delays at the airport. Half of the 10 percent would be selected by the carrier and half would be selected by the FAA.<sup>8</sup> Under this proposal, FAA would invest proceeds from the one-time auction in new congestion and capacity initiatives in the New York region.
- **Option 2:** Airlines would have access up to 20 slots a day for a 10 year period. Beyond those flights, 20 percent of the slots currently used by the airlines would be made available over the next five years to all airlines through an auction. Under this option, the carriers would retain the net proceeds of the auction.<sup>9</sup>

On May 16, 2008, DOT issued a NPRM, which includes two proposals to maintain caps at JFK and EWR and to allocate a percentage of slots at each airport via an auction:

<sup>5</sup> Operating Limitations at John F. Kennedy International Airport; Order Limiting Scheduled Operations at John F. Kennedy International Airport, 73 Fed. Reg. 3510, (January 18, 2008).

<sup>6</sup> Operating Limitations at Newark Liberty International Airport, 73 Fed. Reg. 29550, (May 21, 2008).

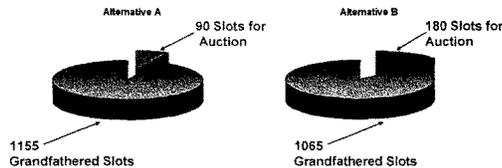
<sup>7</sup> Congestion Management Rule for LaGuardia Airport; Proposed Rule, 71 Fed. Reg. 51360 (August 20, 2006). (2006 LGA NPRM) Under the original 2006 LGA NPRM, the FAA proposed to reallocate annually ten percent of the capacity at the airport based on an undetermined market mechanism and impose an average minimum aircraft size requirement for much of the fleet serving the airport. The original aircraft upgauging proposal (i.e. target average aircraft size ranging from 105 to 122 seats per aircraft) to increase capacity, was withdrawn.

<sup>8</sup> All of the proposals include this procedure for selecting the slots to be auctioned or retired regardless of the percentage (10 or 20 percent).

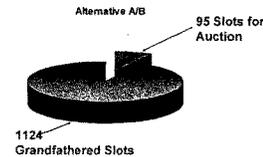
<sup>9</sup> DOT, New Measures to Improve Air Travel Experience, (2008), <http://www.flightgridlocknow.gov/aviation/lagfactsheet.htm>.

- **Option 1:** At JFK and EWR, all air carriers would be given up to 20 slots a day for the 10 year life of the rule. Over the first five years of the rule, 10 percent of the airlines' slots above the 20-slot baseline would be made available via an auction. Airlines would be able to bid on their own slots, and the revenue from the auctions would be invested in congestion and capacity improvements in the region.
- **Option 2:** At JFK only, the FAA would auction 20 percent of the slots above the 20-slot baseline. Airlines would not be able to bid on their own slots, but they would retain the net proceeds of the auction.<sup>10</sup>

**JFK: Alternatives 1 & 2:**  
**total operations impacted over 10 years**



**EWR: Alternatives 1 & 2:**  
**total operations impacted over 10 years**



#### V. Concerns Regarding the Proposals

Many concerns have been raised about the slot auction proposals. First, interested parties who oppose the proposals have questioned whether the DOT/FAA has the legal authority to impose these slot auctions, arguing that the FAA's authority to manage the airspace does not include the power to lease landing rights, auction them, and then retain and use the proceeds from the slot auctions, in the absence of clear delegation of Congressional authority. According to the DOT, the FAA has the legal authority to auction slots because the slots are intangible FAA property. However, the FAA stated in the 2006 LGA NPRM that it lacked the authority, noting 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."<sup>11</sup> Additionally, the DOT has stated that, "carriers have no authority or legal property interest in the slots,"<sup>12</sup> but the FAA has previously allowed the carriers the right to buy, sell and borrow against these "intangible assets."

According to some stakeholders, the slots are the property right of airlines, not the government, and any attempt to take away that property would require due process and just

<sup>10</sup> DOT, *New Measures to Help Avoid Future Abrupt Groundings, Improve Air Travel*, (2008), [http://www.dot.gov/affairs/aviation080516/fact\\_sheet.pdf](http://www.dot.gov/affairs/aviation080516/fact_sheet.pdf).

<sup>11</sup> 2006 LGA NPRM, at 51362.

<sup>12</sup> Madhu Unnikrishnan, *Aviation Week, Airlines Furious Over DOT Slot Move*, quotation attributed to D.J. Gribbin, DOT General Counsel (May 16, 2008).

compensation.<sup>13</sup> Other stakeholders have stated that even if the slots are available, there is no guarantee that land-side resources will be available to accommodate the operations.

Some argue that imposition of slot auctions might limit competition by preventing new entrants and limited incumbent air carriers from entering the market because these carriers may not have the resources that legacy air carriers have to buy the slots necessary to remain viable and competitive.

Another concern is that auctions could increase the monetary cost to travelers in the New York area if airlines pass these market costs on to consumers. Currently, the market value of slots anticipated to be auctioned under the proposed rulemakings is unknown. Stakeholders indicate that additional costs 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.

In addition, concerns have been raised that if carriers are forced to cut back on existing schedules, service to small communities could decrease because there will be pressure on air carriers that lose slots to move slots currently used for small community service to larger, more lucrative markets. Similarly, slots purchased at an auction could be used only for large markets. Concerns have been raised that this could limit the opportunities of those in smaller communities to have reliable access to the New York area and could also erode the hub structures formed at the New York area airports.

DOT has said that under its proposal it intends to allow slots acquired at an auction to be subsequently sold, thereby creating a secondary market for the airlines to buy and sell the slots for value. This would allow carriers to profit from the sale of a public resource. Buying and selling slots could create the same problem as auctions with respect to competition, small community air service and consumers, as noted above.

One alternative to slot auctions proposed by some industry stakeholders is to use the International Air Transport Association (IATA) Worldwide Scheduling Guidelines (WSG) be used to control congestion in the NY region. The IATA, which publishes the WSG, claims that the WSG provides “for the allocation of scarce resources at congested airports on a fair, transparent and non-discriminatory basis.” The slots are managed by a third party coordinator who acts independently of any interested party. Slot allocation under WSG reflects “historic precedence” prior IATA Summer and Winter scheduling seasons. The incumbent carrier, absent abuse, may keep its slots and these slots may not be confiscated for new entry or other purposes. If air carriers do not operate slots at least 80 percent of the time during the season, it is not entitled to those slots in the next scheduling season. Slots not allocated based on “historic precedence” go into a pool where 50 percent are reserved for new entrants and the balance may be assigned to any carrier. The slot coordinator should consider competition, providing a mix of operations, and needs of the traveling public. Carriers are allowed to exchange slots and IATA convenes two annual scheduling conferences to allow airlines an opportunity to trade slots.

According to DOT, it did not choose this option because it claims WSG severely limits competition by not allowing for new entrants at airports fully subscribed, like the airports in the New York area airspace. Further, DOT has expressed concern as to whether allocated slots under a

<sup>13</sup> Ibid.

WSG scheme would become “real property” of the airlines, such that any further attempt to reallocate the slots would constitute a “taking” of airline property.

WITNESSES

MEMBER PANEL

**The Honorable Charles E. Schumer**  
U.S. Senator  
State of New York

**The Honorable Christopher Shays**  
Congressman  
Connecticut, District 4

PANEL I

**Mr. D.J. Gribbin**  
General Counsel  
Office of the Secretary  
U.S. Department of Transportation

**Mr. William DeCota**  
Director, Aviation Department  
Port Authority of New York and New Jersey

**Mr. James C. May**  
President and CEO  
Air Transport Association

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

**Mr. Douglas E. Lavin**  
Regional Vice President for North America  
International Air Transport Association

## HEARING ON CONGESTION MANAGEMENT IN THE NEW YORK AIRSPACE

Wednesday, June 18, 2008

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,  
SUBCOMMITTEE ON AVIATION,  
*Washington, DC.*

The Subcommittee met, pursuant to call, at 10:00 a.m., in Room 2167, Rayburn House Office Building, the Honorable Jerry F. Costello [Chairman of the Subcommittee] presiding.

Mr. COSTELLO. The Subcommittee will come to order. The Chair would ask all Members and staff, everyone in the room, to take their electronic devices and put them on vibrate.

The Subcommittee is meeting today to hear testimony on Congestion Management in the New York Airspace. The Chair will make a brief opening statement and will recognize the Ranking Member for any statement or comments that he may, and then we will go to our first panel which is two Members, both Senator Schumer and our friend, Congressman Shays.

I welcome everyone to the Subcommittee hearing today on Congestion Management in the New York Airspace.

I am pleased to welcome our colleague, Senator Chuck Schumer, who served in the House a number of years before we went over to that other body, and Congressman Chris Shays who will be here momentarily to our hearing today. I am interested in hearing their perspective on this issue.

Over the last year, we have seen record delays and congestion in the skies with nearly 27 percent of flights delayed. According to the Bureau of Transportation Statistics, the Department of Transportation Inspector General found that of those delayed: 88,234 flights were delayed for over an hour, 7,659 had ground delays of between 2 and 3 hours and almost 1,700 flights were delayed over 3 hours.

The New York area airports have been hit particularly hard with delays according to the BTS. Less than 60 percent of the flights arrived on time at these airports in 2007.

The New York airports do not have adequate capacity to meet demand, and the Department of Transportation has capped operations at JFK, LaGuardia and Newark. They have capped JFK at 83, LaGuardia at 75, and Newark at 83 slots.

I believe that any type of administrative cap is a short-term solution to a long-term problem. At O'Hare International Airport, for example, the short-term solution to congestion and delays at the airport was to cap O'Hare International Airport. The long-term so-

lution is making additional capacity improvements like the O'Hare Modernization Program.

On Monday, the FAA announced that the cap is being lifted as the new runway at O'Hare comes online in the fall of this year.

DOT is not only proposing to cap the New York airports but also to auction a percentage of those slots at each airport. Many have questioned both the Department of Transportation's legal authority for such a proposal and the likelihood that slot auctions would decrease congestion and delays.

Under one of the proposals, the auction revenue would revert back to the air carriers with no guarantee that the proceeds would be used to mitigate congestion and delays in the New York airspace.

In my view, auctioning slots is a bad deal for consumers. During these tough financial times for our carriers, consumers are being asked to pay more for less. Any additional costs to assess these markets or access these markets more than likely will be passed on to the consumers, resulting in higher fares and absolutely no guarantee of congestion and delay reduction.

Further, service to small communities has already been affected by carriers pulling down capacity because of increased fuel prices. Should auctioning be allowed, carriers could potentially limit service to small communities in favor of access in the more lucrative markets.

I am interested in hearing from our witnesses on how they believe the DOT cap and slot auctioning proposal will affect service and pricing in the New York airspace and if there will be any significant reduction in congestion and delays as a result of these measures.

With that, I again welcome our witnesses here today. I look forward to hearing their testimony.

Before I recognize Mr. Petri for his opening statement or comments, I ask unanimous consent to allow two weeks for all Members to revise and extend their remarks and permit the submission of additional statements and materials by Members and witnesses. Without objection, so ordered.

The Chair now recognizes the Ranking Member, Mr. Petri.

Mr. PETRI. Thank you very much, Mr. Chairman.

I would like to join in welcoming our, in absentia at this point, our colleague from Connecticut, Chris Shays, and the Senior Senator from the State of New York and former colleague, Chuck Schumer.

I would also like to thank you, Mr. Chairman, for calling this important hearing as we discuss long-term solutions to airspace congestion issues in the New York-New Jersey metropolitan region.

Airline delays continue to be a problem at our most congested airports. According to the Department of Transportation Bureau of Transportation Statistics, Newark, JFK and LaGuardia Airports had the worst on-time performance statistics in our Country last year. Also, according to the Department, the New York area airports account for 75 percent of our chronically delayed flights. So the impact is felt across the airspace system.

It is no surprise that delays are a major inconvenience to air travelers, but they also cost airlines, passengers, and of course, our

economy. According to Travel Industry Association statistics, air travelers avoided 41 million trips this past year due in part to travel delays. According to the group, this costs the U.S. economy roughly \$26.5 billion.

Short-term caps at the three major New York region airports have been agreed to but given the demand for service in and out of the area, it is unlikely that without a long-term solution congestion problems will be abated just by that step.

For the long-term solution, the Department has proposed a cap and auction system to control congestion while attempting to cultivate competition that is often stymied by artificial caps alone. I am interested in hearing from our qualified panel of witnesses about this and other possible mechanisms to address congestion and associated delays.

The traveling public will not tolerate these kinds of delays. The Department has offered its solution. I look forward to discussing it in depth.

Fifteen years ago, when the telecommunications industry was deciding how to best allocate limited spectrum resources, the FCC utilized the auction approach for allocating public spectrum capacity, very similar to what the Department has proposed. So auctions such as these are not unheard of or unprecedented. However, we must carefully consider all possible consequences of the Department's proposal and not rush into any one approach in particular.

Again, I thank the witnesses for appearing today to discuss the Department's auction proposal, especially my colleagues and former colleague, Mr. Schumer.

With that, I thank the Chairman and yield back my time.

Mr. COSTELLO. The Chair thanks the gentleman and now recognizes the Senior Senator from New York, the distinguished Senior Senator, Senator Chuck Schumer.

**TESTIMONY OF THE HONORABLE CHUCK E. SCHUMER, A  
UNITED STATES SENATOR FROM THE STATE OF NEW YORK**

Senator SCHUMER. Well, thank you, Mr. Chairman.

It is great to be here, to be here back in the House where I spent 18 very happy years.

I notice all of the names here. Most of them came after I left in 1998, and the only two people, I was telling Chris, who would be senior to me had I stayed in the House would be Chairman Oberstar and Mr. Petri. I think, Jerry, you came a couple of years after I came in 1981.

But anyway, thank you, and I want to thank both of you for the great job that you do as head of the Aviation Subcommittee, and I appreciate the opportunity to testify.

We can put it simply, Mr. Chairman. The skies over New York are a huge mess, and the sad thing is this could have been avoided. The FAA's incompetence has created the problem, and the FAA can solve it, but they are just focused on untested schemes that don't work instead of doing what needs to be done, giving us an adequate number of controllers.

Now anyone who has traveled in the last year has felt the pain and frustration that defines air travel in the U.S. Delays and cancellations have crippled the entire air traffic system, leaving pas-

sengers stranded across the Country, and it is nowhere worse than in the New York metropolitan area.

Time and time again, we have seen the Department of Transportation attempt to address New York's congestion problems, using ideological market-based theory and other untested experiments. First, it was caps. Then, it was congestion pricing. Now, all we are hearing about are auctions.

Instead of focusing on real, tested solutions to solve this problem like upgrading decades old technology and hiring an adequate number of controllers to staff New York's towers, the DOT continues to miss the point. To make matters worse, the FAA's treatment of controllers has led to an unprecedented rash of retirements, compounding the problem.

The bottom line is that at the current pace and under the current plan, within the next five years, the New York City airspace will be in total gridlock. The wave of controller retirements and the FAA's inability and unwillingness to upgrade antiquated technology will simply cause a meltdown in the New York area and across the Country.

Last summer's travel season was hampered by some of the worst delays ever recorded. Nearly 30 percent of all flights were delayed and cancelled. In a report issued last month by the Joint Economic Committee, which I Chair, we found that these flight delays cost passengers, airlines and the U.S. economy \$40 billion a year and, sadly, it is just the beginning.

To make matters worse, air traffic control towers across the Country are dangerously understaffed. When you look at the workforce nationally, most facilities in the Country have staff levels that are more than 35 percent trainees. In 2007, developmental trainees composed 25 percent of the controller workforce, up from 15 percent in 2004.

Given that the trainees cannot staff a controller position without a fully certified controller supervising, these numbers are alarming.

It is even worse in New York. In New York, when you fully count certified controllers, only excluding trainees, the JFK tower is only 60 percent staffed, having 22 full-time controllers when it should have 37. The LaGuardia tower is 66 percent staffed, having 22 controllers when it should have 36. The Newark Tower is 67 percent staffed, having 27 controllers when it should have 40.

The FAA tries to hide these numbers by including the trainees in the overall number, but we all know that they can't do a job on their own. They have to be with a supervisor.

At the New York Center, which manages traffic entering into New York airspace, the average training time is more than four years, the second highest in the Country. However, most of the 71 controllers in training haven't even started their official training. Since September, 2006, this facility in New York has lost 57 fully certified controllers and only hired 18 to replace them. That is shocking and the greatest level of incompetence that we have seen in the FAA.

Similarly, in the New York TRACON, responsible for all arriving and departing traffic, we have lost 23 fully certified controllers and only gained 1, this month.

Nationally, the culture of fear created by the FAA has led 3,300 controllers to leave the workforce since 2005, and it is going to get worse. Fifteen thousand five hundred more are expected to leave between 2008 and 2017.

In the six months from October of 2007 through March of 2008, 1,000 controllers left the workforce, half of them to retire. Of the FAA's 1,800 new hires in fiscal year 2007, only 150 have been certified.

As the DOT IG report pointed out, the FAA may be hiring new trainees, but they aren't adequately training them to become fully certified professional controllers. The wave of retirements sets up a vicious cycle where there will be more overtime needed and then quicker and more retirements as workers get burnt out. In other words, the next wave of retirements will make this one look like nothing.

If the DOT and the FAA don't take immediate steps to upgrade the technology and improve capacity with the number of controllers going up at New York airports, if they don't hire and train and retain more full-time controllers at New York airports, then we can all look forward to even more congestion and more problems.

Instead of solving the problem as we have talked about—more controllers, better technology—the DOT plans to auction takeoff and landing time slots and New York City's three airports. This will, in no way, reduce congestion in New York's airspace. Instead, this plan could limit consumer choices and have a dire impact on service to small communities as you have mentioned, Mr. Chairman.

I will act quickly to prevent this plan from being implemented. As travelers, we feel the burden of the airline industry gasping to catch its breath. The worst possible thing the Administration could do to passengers and the industry is deliver one big punch in the gut by auctioning off slots at New York airports.

This is an ideological, untested experiment coming from somebody in an ivory tower. There is no proof that the auction plan will do anything to reduce congestion, and yet DOT insists this market-based solution is the only effective proposal.

The DOT's misguided plan to sell takeoff and landing slots to the highest bidder won't make your plane take off any faster. It will just cost you more to fly in and out of LaGuardia, JFK and Newark, and it will throw those airports into chaos. Auctions have no proven track record of working.

They have never been tried in any U.S. airport nor have they been tried at any airport in the world. In fact, the entire plan is modeled after London's road congestion pricing.

I don't know of one expert who believes this plan will work or believes it is beneficial to the consumer. In fact, the Air Transport Association which represents the airlines, the Port Authority of New York and New Jersey, the Airports Council International are all opposed to auctions.

In fact, Mr. Chairman, I believe their plan is unconstitutional and will be challenged in court. I have introduced legislation. I will introduce an amendment to the upcoming FAA authorization to prohibit auctions, and I think it will get widespread support.

In New York City, one of the world's busiest centers, New York should not be the guinea pig in DOT's harebrained congestion experiment.

In conclusion, I spoke to Acting Administrator Sturgell, and I told him I would oppose any experiment in the New York area involving auctions because he couldn't give me a straightforward answer about the FAA's plans. So I have placed a hold on his nomination which still exists today.

Auctions are detrimental to consumer choices. Small communities, low cost airlines will be forced out as the big boys shove them aside.

The auction plan is further flawed by the assumption that all slots are interchangeable. We know that a flight from JFK to London is not interchangeable with a flight from JFK to Buffalo. Long distance and international flights need to take off and land at certain times of the day and need specifically designated large gates and terminals.

So, as I said, I have introduced legislation, supported by both the airlines and the airports including the Port Authority of New York and New Jersey, which will protect travelers by prohibiting the DOT from implementing auctions in New York City or any commercial airport in the Country. Once again, the DOT is putting ideology before efficiency.

My message to DOT and FAA: Put more controllers in the towers. Put forward the new technologies that all the rest of the countries in the world have and get off this goofy, harebrained scheme to auction off slots. It won't solve a thing.

Mr. Chairman, I thank you. I know I went over the time a little bit, but I am passionate about this issue, and I thank the Committee's indulgence.

Mr. COSTELLO. Senator, thank you. We expected you to go over your time.

[Laughter.]

Mr. COSTELLO. Let me comment before I recognize our colleague, Mr. Shays.

Senator Schumer, in my view, you are exactly right, right on point. The idea of auctioning these slots is a bad idea. It is bad for consumers. There is no guarantee that it will relieve or provide any relief whatsoever for congestion and delays.

I also agree, and I think that the FAA lacks the legal authority to proceed in the direction that they are heading in and that it is up to us to make certain that they do not go down that road.

Lastly is we held a hearing last week in this very room, concerning the issue of controller staffing. Everyone gets it but the FAA. Everyone understands that there is a crisis developing in the lack of adequate staffing not only in terms of numbers but experienced controllers.

As you rightly pointed out in your testimony, it is an alarming rate and it is something that should concern all of us.

All of the stakeholders, the airlines, the pilots, the flight attendants, everyone involved in the system gets it except the FAA. I am hoping with our reauthorization bill that we can address that issue and reduce the number of experienced controllers from leaving the job.

We know, we have heard from the Inspector General. We have heard from the GAO as to why they are leaving. Morale is at an all-time low. There are major, major problems, and the FAA needs to wake up before there are serious consequences.

Again, Senator, we thank you for your thoughtful testimony. I think you have made your position very clear to this Subcommittee. We realize that you have a full schedule over on the other side of the Capitol, and if you would like to leave at this time we certainly would understand.

Senator SCHUMER. Mr. Chairman, I just want to thank you and thank you for your leadership on this issue. I look forward to working with you because we see things the same way. The FAA is just appalling and has got to be changed.

Mr. COSTELLO. I thank the gentleman and would yield to my friend, Mr. Petri, for his comments.

Mr. PETRI. Thank you very much.

I just would add that one additional facet which wasn't mentioned and that is something called NextGen which is basically digitalizing, moving air traffic control and the whole system to the new technology instead of radar-based satellite. That has the promise, if it can be made, of reorganizing the system and expanding the capacity, but there are a lot of steps between where we are and there.

I urge you and your colleagues in another place to pay attention so we don't end up with a crisis and, frankly, clean up the mess afterward because this involved changing procedures, not just new equipment but whole new ways of analyzing and expanding, changing the parameters for operating the system.

Senator SCHUMER. Ranking Member Petri, I agree. I mean I am frustrated because for years the FAA slow-walked NextGen in an effort just to hold back on costs. I mean the costs are so little compared to the loss of money by people waiting, flights being cancelled.

London, Paris, they are way ahead of us on technology that was developed in America. The previous Administrator seemed to me to just give up her job and let OMB run the show. OMB said you have to cut costs, no NextGen, no controllers, no overtime, and that has helped lead to this problem.

My regret is that the new Administrator doesn't seem to want to make a clean break from those policies, but I know this Committee has been out front on NextGen, and I agree with you completely.

Mr. COSTELLO. We thank you for your testimony, Senator Schumer, and look forward to working with you.

The Chair now recognizes our colleague from the Fourth District of Connecticut, Congressman Chris Shays.

**TESTIMONY OF THE HONORABLE CHRISTOPHER SHAYS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CONNECTICUT**

Mr. SHAYS. Chairman Costello and Ranking Member Petri and Mr. Hall and Mr. Boozman, thank you very much. Mr. Chairman, I am particularly grateful that you have given me this opportunity.

My staff has written a 10-page statement that really is quite excellent. I will put most of it in the record and just make reference to a few parts of it.

Under the integrated airspace alternative, the FAA's preferred airspace redesign plan, significant airplane traffic would be routed over parts of Fairfield County at the expense of the region's quality of life. The FAA has failed to provide any noise mitigation to our region despite the wide swath of land under the Fourth Congressional District that will be adversely affected by planes flying at altitudes as low as 4,000 feet in the southern part of the district.

The FAA is also continuing to implement its redesign despite DOT's auction proposal that could alleviate the need to redesign the airspace altogether.

The FAA is not required to present noise mitigation strategies even though there is significant impact on the region. Because there is no mandate for the FAA to consider quality of life, redirecting air traffic over previously unaffected areas is given the same weight in the agency's decision-making process as keeping traffic over areas that already have air traffic.

Even more concerning, no attempt has been made to utilize unpopulated or less populated tracts of land, industrial or commercial zones, major highway systems or large bodies of water for mitigating noise impact or to set minimum altitudes.

If the FAA had to consider the quality of life impacts of the integrated airspace alternative, it would have never concluded that this airspace redesign was the appropriate first attempt at relieving air traffic congestion. It is unreasonable to design airspace without regard to impacts on the ground.

For this reason, the FAA should adopt a no-action alternative at this time until other congestion mitigation strategies, such as the auction proposal of moving peak flights to off-peak hours have been thoroughly examined or disqualified.

On September 20th, 2007, Congressmen Rodney Frelinghuysen, Scott Garrett, Eliot Engel and I offered an amendment to H.R. 2881, the FAA Reauthorization Act, requiring the GAO to assess the strengths and weaknesses of the FAA's environmental impact, the costs and impacts of redesign and whether the FAA followed the due process in creating their proposal.

It would be interesting to learn, for instance, if the GAO believes that what the FAA is proposing to do at LaGuardia and Newark would eliminate the need for redesign.

I am hopeful this study, which is expected to be released in August of this year, will reveal options as effective a redesigning the airspace to mitigate congestion that will not result in any new residents being affected air noise. It seems to me there are other solutions that should be considered before implementing such a radical alternative that negatively impacts so many thousands of residents throughout the Northeast.

The FAA has consistently stated the only way it can reduce congestion and travel delays is by redesigning the airspace. However, the case for the redesign is built on the flawed premise that delays are caused by the design of the airspace.

This theory neglects to account for inadequate terminal, runway and gate capacity, insufficient air traffic controller staffing, weath-

er and other scheduled flights. It also fails to account for the impact that market-based strategies could have on congestion.

What is particularly frustrating about the FAA's action is the Department of Transportation's implementation of market-based solutions for congestion relief while the FAA refuses to consider the impact of these proposals on airspace congestion. We believe moving flights out of peak travel times and implementing slots and quotas at congested airports would have the same effect as redesign and must be considered.

So let me just conclude. I have asked the FAA and this Committee: Is the airspace redesign the best way we can do to mitigate airline congestion? In implementing the redesign, is it possible we are overlooking other market-based solutions to airline congestion?

I believe the answers to those questions are no and yes, respectively.

Let me just conclude by saying I have never dealt in my entire life in Congress with a more arrogant agency. We understand how it evolved. It is safety and efficiency, and you don't want politicians interfering with safety.

But this isn't an issue of politicians wanting to interfere with safety. We want the FAA to come to our district to explain what they are doing, to have hearings and to respond.

When I requested that they would come in, they wanted to schedule the hearing outside the affected area. When we got them to come into the town, they said they would take no questions and hear no comments from individuals in the district. They just were going to say what they wanted to say and that was it.

I just would hope that, at the very least, we can have an agency that will be more responsive to people, listen to their concerns and take account of their concerns.

Thank you, Mr. Chairman.

Mr. COSTELLO. Mr. Shays, we thank you for your testimony today, and let me share with you my frustration in dealing with this agency.

They are not the most responsive agency, not only to Members of Congress but the public as well. I hope at some point in the future that we will see a change in that attitude and the way they conduct business.

Mr. SHAYS. Mr. Chairman, I think you will because I know of what you and the Ranking Member and the Members would like to achieve, and so I really want to thank you for focusing your attention on this issue.

Mr. COSTELLO. We thank you for your testimony today. We understand that you, as well, have a busy schedule. If you would like to leave at this time, we certainly would understand.

The Chair now would recognize the gentleman from New York, Mr. Hall, for his opening statement. After Mr. Hall's opening statement, we will move to the second panel. Actually, it will be panel one.

If the next panel would quietly come up and take your seat as your nameplate is placed before you, so we can get prepared for your testimony when Mr. Hall concludes.

At this time, the Chair recognizes the gentleman from New York, Mr. Hall.

Mr. HALL. Thank you, Mr. Chairman and thank you, in absentia, to our Senior Senator from New York and to my colleague, Mr. Shays from Connecticut with whom I and a number of others wrote the FAA Acting Administrator on March 12th, urging the FAA to postpone the implementation of the airspace redesign.

I would like to thank you for calling this important hearing today, Mr. Chairman.

As a Representative from the New York City area, my constituents and I are uniquely affected by the policies that the DOT and FAA implement at New York's airports. However, I hope everyone realizes that New Yorkers are not the only people to whom this plan matters. When it comes to aviation, the entire Country is affected by what happens in New York.

Currently, the airspace congestion over New York is unacceptable. Travelers in and out of the city's major airports have to expect multiple hour delays as standard practice, and circling flights waiting for clearance to land have caused unnecessary noise pollution across my district and neighboring districts.

I don't envy the task that DOT and FAA have, to solve these congestion issues, and I have a great deal of sympathy to the difficult choices this decision has left. However, given the complexity of the situation at hand and the current troubles facing the airline industry, the decision you have reached seems well short of the ideal solution.

The need for some limitation on the number of flights at both JFK and Newark has become unavoidable. The popularity of both airports far outweighs their physical capacity to accept their scheduled flights, much less additional ones. However, implementing an auction on previously used slots as part of that cap, especially without the strong support of both the Port Authority and the airlines involved, seems like an unnecessarily difficult and controversial addition.

The FAA has already made the questionable decision to implement the New York-New Jersey area redesign which has led directly to an unacceptable increase in air noise for many of the residents of my district especially in and around the town of Pound Ridge and in parts of Rockland County. This decision has only enhanced my tendency to question the judgment of the FAA's priorities in the New York City area.

I wonder, and I hope that this hearing will help to explain, why other congestion-reducing policies that their participants who need to be involved have already expressed their support for have not been adopted or even considered. For example, if the decision had been made to bring in a cap, why has the FAA opted not to use the worldwide scheduling guidelines?

Why has the FAA failed to increase the number of chronically understaffed air traffic controllers which would clearly result in a reduction in congestion?

Has the FAA fully considered the congestion-reducing benefits of adopting any additional policies that would create a more efficient and effective air traffic management system?

It is my understanding that during the many meetings held last year, the Aviation Rulemaking Committee came up with dozens of recommendations to reduce congestion. Given that the plan cur-

rently being considered will lead to a prolonged and inevitable court battle, we would be better off doing everything noncontroversial and cooperative that we can to make sure that the summer travel season goes off with as little difficulty as possible.

I look forward to the testimony we are about to hear. I state my admiration for Mr. DeCota of the Port Authority's Stewart Air PIN, and I look forward to hearing our concerns addressed.

Mr. Chairman, I yield back the balance of my time.

Mr. COSTELLO. The Chair thanks the gentleman from New York, Mr. Hall, not only for his comments here today but for his deep interest in this issue. He is one of the reasons why we are holding this hearing today. It is at his request because of his interest in seeing that this issue is address. So the Chair thanks the gentleman from New York.

At this time, let me introduce our first panel: Mr. D.J. Gribbin who is the General Counsel, Office of the Secretary for the U.S. Department of Transportation; Mr. William DeCota who is the Director of the Aviation Department, Port Authority of New York and New Jersey; Mr. James May who is the CEO of the Air Transport Association; Mr. Ed Faberman who is the Executive Director of the Air Carrier Association of America; and Mr. Douglas Lavin who is the Regional Vice President for North America, International Air Transport Association.

Gentlemen, you all, I think, have testified here before. We will ask you to summarize your statement in five minutes to allow for questions, and your entire statement will appear in the record.

With that, Mr. Gribbin, you are recognized for five minutes.

**TESTIMONY OF D.J. GRIBBIN, GENERAL COUNSEL, OFFICE OF THE SECRETARY, U.S. DEPARTMENT OF TRANSPORTATION; WILLIAM DECOTA, DIRECTOR, AVIATION DEPARTMENT, PORT AUTHORITY OF NEW YORK AND NEW JERSEY; JAMES C. MAY, PRESIDENT AND CEO, AIR TRANSPORT ASSOCIATION; EDWARD P. FABERMAN, EXECUTIVE DIRECTOR, AIR CARRIER ASSOCIATION OF AMERICA; AND DOUGLAS E. LAVIN, REGIONAL VICE PRESIDENT FOR NORTH AMERICA, INTERNATIONAL AIR TRANSPORT ASSOCIATION**

Mr. GRIBBIN. Thank you, Mr. Chairman and thank you for having me back again before this Committee.

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to testify on behalf of the Department of Transportation's continuing efforts to address aviation congestion. Before I go into detail about the DOT's efforts to address congestion, I want to take a moment to talk about the particularly challenging environment currently facing the airlines.

As my fellow panelists well know, record oil prices, a slowing economy and increased competition are just a few factors that have created a number of significant challenges for airlines, challenges that certainly will change the face of the aviation industry in the years to come.

To meet these challenges, many carriers are raising fares, streamlining operations and reducing service. It is possible that some of these measures will result in reduced congestion.

However, so far, we have yet to see widespread evidence of carriers pulling out of the busiest and most congested airports. For example, the largest carrier at Newark, Continental Airlines, announced just last week that they are limiting service to 15 communities but do not plan—do not plan—on reducing the number of slots they use at Newark.

Additionally, even if some of the busiest airports do see a reduction. As they see that reduction, history tells us that the aviation industry is very cyclical and that service will return to and exceed the record levels we saw last year. That is why we must do something now to fix the problems that caused last summer's horrible delays and not wait for another year of delays before we act.

Some have incorrectly suggested that expanding capacity is the only appropriate response to congestion. The Department believes that expanded capacity is a critical component of the long-term solution to relieve congestion and looks to increase capacity both in the air and on the ground whenever possible. For example, DOT has worked to bring a new runway to O'Hare, implement airspace redesign in New York, implement NextGen, and free up military airspace for use during peak periods.

Capacity increases must be part of the solution, particularly since we expect demand for air travel to resume its robust growth over the coming decade. However, capacity increases, both physical and operational, often take a long time to implement and may be limited in scope.

Sometimes physical capacity cannot be expanded such as at New York City's airports. In addition, operational improvements can help address congestion, but sometimes they cannot provide enough capacity to meet the demand.

When capacity increases cannot create enough supply to meet demand, caps may be necessary. This is what has occurred in the New York region.

Congestion at these three New York airports is not a new phenomenon. Since 1969, JFK and LaGuardia have been capped, and recently Newark was capped after becoming one of the most delay-prone airports in the Country.

Caps solve the problem of congestion because they simply freeze capacity and prohibit new flights from entering the system. Airlines are often enthusiastic in their support of caps at an airport that they already serve because caps limit competition and protect incumbent airlines from new entrants that might offer competing lower fares.

Unfortunately, straight caps without some mechanism to ensure an efficient allocation of scarce slot resources is economically inefficient and stifles competition, leading to reduced service and higher fares to consumers. So, if caps alone are not the long-term answer, the question arises, what is the solution?

It is clear that caps alone do not allocate airspace efficiently. However, solving that problem should not entail government picking the winners and losers and deciding who will be able to enter an airport.

Market-based pricing and ample competition have been demonstrated time and time again as the most effective ways to allocate a scarce resource that is in high demand. Space in a movie

theater, use of cell phones or flights during certain times of day or flights to certain locations are all examples that illustrate that pricing works.

As you all know, last month, the FAA published a notice of proposed rulemaking to manage congestion at JFK and Newark Airports. Like the supplemental proposed rulemaking published for LaGuardia that I discussed the last time I was before this Committee, this proposal recognizes that a simple imposition of caps without some mechanism to ensure preservation of a competitive market is inadequate.

Under this proposal recently introduced, all airlines operating at Newark and JFK would be given up to 20 slots a day for the 10-year life of the rule. Above that baseline, either 10 percent or 20 percent of a carrier's slots would be withdrawn over the first 5 years of the rule and auctioned.

As with the LaGuardia proposal, under this proposal, airlines operating at the two airports will receive a 10-year interest in the world's most valuable aviation assets free of charge, free of question, free of hassle.

Additionally, this proposal, just like the LaGuardia proposal increases competition by creating a robust secondary market for trading slots and provides a way for new entrants to gain entry into a restricted airport.

Mr. Chairman, I appreciate the opportunity to explain our proposals to you for the New York airports. We are firmly committed to the idea that any long-term solution to mitigate congestion at our Nation's airports must preserve competition.

Really, for consumers, what we want to do is provide reliable and affordable air service. While caps do produce reliability, caps, if they are allowed to limit competition, will make travel unaffordable for many Americans, and we think that is unacceptable.

Thank you again for giving this opportunity to testify.

Mr. COSTELLO. The Chair thanks you, Mr. Gribbin, and now recognizes Mr. DeCota.

Mr. DECOTA. Thank you very much, Mr. Chairman. I appreciate the opportunity to be here especially since this hearing is about New York airspace, as is this proposal, which we believe will provide anything but reliable and affordable air travel. I want to thank you.

I certainly want to thank Senator Schumer. His remarks certainly are in parallel with ours and, Congressman Hall, you also. You have been a great leader in helping us in buying Stewart Airport, and I am wearing my Stewart tartan.

So I think we have to think about capacity which is what this is about.

The Port Authority is very committed to providing safe, efficient air travel for people in our region. Our three major airports handle 110 million passengers, 2.7 million tons of cargo and have huge economic activity.

We have taken a number of steps to enhance capacity on the ground. We spent \$15 billion in upgrades to our airport's new terminals, air train systems, runway improvements. We programmed another \$6 billion over the next 10 years to do that.

In November of 2007, we bought Stewart Airport, north of Newburgh, New York. We are putting \$500 million into that.

The Chairman of the Port Authority of New York and New Jersey convened a flight delay task force before the FAA even got involved in the matter, and we came up with 77 initiatives to improve capacity. I understand about 16 of those have been implemented by the FAA.

While we acknowledge the FAA has made a number of investments in aeronautical systems, made operational and procedural changes, the fact is they are unable to accommodate today, with all that investment, the same number of aeronautical operations that they served a decade ago. We are absolutely confounded by this.

The Port Authority has very much attempted to work with the DOT and FAA officials with the problem for the last decade. In 2000, Congress set the goal of opening up access to this very important, popular, yet constrained airport system to stimulate competition and opportunity, and Congress allowed the FAA and DOT nearly 7 years to try to come up with an appropriate framework to deal with this.

The FAA took the challenge. They hired professors at the National Center of Excellence for Aviation Research, NEXTOR, and no one can deny that the FAA didn't spend a lot of time. However, these became academic exercises we came to fear. The professors explained in theory the market-based solutions, but they were never able to demonstrate how it would work in practice.

As the operator of New York's airports, with our proprietary rights and our responsibilities to allocate gates and groundside facilities, we attempted to engage the DOT and the FAA, the airlines and the key stakeholders. Unfortunately, after all of this time, there is no workable solution.

The Administration, in turn, decided to an approach that we, the airport operator, think is not only illegal, but we also think it is disastrous. The vast majority of the carriers, the Air Travelers Association and consumer groups ultimately think this is going to harm them, not to help them.

The LaGuardia order and the subsequent orders at JFK and Newark are attempting to impose slot auctions despite our collective concerns. We regret that we were only given 60 days to comment on it.

It is incomplete. It does not give specifics on how an auction will work. It is deficient in supporting data and analysis, and it appears that the priority is to fast-track these unpopular proposals for implementation before the end of the year.

We are concerned it is fundamentally flawed, it is unworkable, it is unresponsive, it is disruptive, and it is really going to be bad for the traveling public.

So we don't think the FAA has the statutory authority. We don't believe Congress has ever given them the statutory authority. There is nowhere in the FAA Authorization Act that allows that.

We think this is an attack on our proprietary rights, but we won't even get into that at any length.

The notice of proposed rulemaking for LaGuardia fails in its primary objective in reducing congestion delays at LaGuardia. Despite increases in airport capacity I described, despite declining airport

activity—which it is true in this industry environment, delays have increased by more than 50 percent from 2004 to 2008—airspace capacity somehow has declined.

The SNPRM really fails to acknowledge that decline, but it also fails to provide any evidence or analysis of what the capacity is. It fails to provide an indication of whether the FAA can restore airspace. It fails to establish a cap at a level that even seems to be reasonable.

The DOT and this group of academics have obsessed with promoting these auction schemes. Auctions are not the solutions. The fact is when you go through the theory, the mechanics of how it works, where it stumbles in the same place is no recognition there is a real-world concern of how do airlines get gates, how do they get facilities, how do they get baggage belts.

A member of my staff described this as the Fatima moment where supposedly everything just works out. There is some kind of a miracle that occurs.

The proposal is fundamentally flawed, and professors around the world have not been able to do this. This is almost like if the Transcontinental Railroad was constructed in the 1860s in this manner, the East and West never would have met at Promontory Summit, Utah.

The ground facilities don't match with the air facilities. Gates and terminal facilities are not interchangeable. Wide body gates are fungible with regional gates. New entrant carriers can't use multiple terminals. We have a variety of business arrangements that can't be overcome.

The professors always assume in a way it is our responsibility, but they have never figured it out. It highlights a fundamental flaw that, despite this attempt, this obsession with market-based solutions is an ideological solution.

The auction scheme strongly favors big carriers. It doesn't really help the small ones. We are concerned about destinations, the impact on small carriers.

There are so many cities that are vulnerable. They are in our testimony. It is not just a New York phenomenon. It has been proven elsewhere.

Let me just close by saying the bottom line is it is capacity. We need to focus on capacity. It is clear that if capacity is not added in the short term, there needs to be something like a cap.

There needs to be something like IATA scheduling. There needs to be a robust buy-sell rule. But in the long term, it has to be capacity. That is what it is all about.

We are advancing many initiatives to improve capacity in the New York region, building new facilities, really trying to guarantee passengers' accessibility and service, and we remain very committed to work with the FAA, with the DOT and the key stakeholders to come up with the right approach for New York.

Thank you.

Mr. COSTELLO. The Chair thanks you, Mr. DeCota, and now recognizes Mr. May.

Mr. MAY. Before I begin my remarks, Mr. Chairman, I would like to note as a proud member of Clan Donald, we have had a long-

standing relationship with the Stewarts. So I am glad to associate with my friend, Mr. DeCota, here and also with Congressman Hall.

Mr. Chairman, Members of the Committee, thanks for allowing me to appear here today. I would like to report good news about New York and the state of the Nation's industry. Unfortunately, I can do neither.

Yesterday, we announced a revised 2008 forecast. Our airlines expect to lose in the range of \$10 billion this year, a loss on par with the worst year on record.

Soaring fuel prices are the sole reason for those losses. We face a \$62 billion fuel bill this year. That number is greater than the combined fuel expenses for the first four years of this decade for the airlines. That grim news more clearly demonstrates why the airlines are so focused on improving efficiency in the New York airspace.

Redesign of the badly outdated airspace structure combined with improved operational measures and technologies will significantly increase system agility. Smarter, more efficient aircraft departures, routings and landing sequences mean reduced fuel burn and cost savings. Thus, upgrading that outdated air traffic control management system is an absolute key priority right alongside safety for the airlines.

As we start the busy summer travel period, meaningful relief in New York is going to unglue, if you will, the rest of the Country, even further reducing fuel burn and wasted time.

Why? Because although New York has 12 percent of the operations system-wide, it creates 45 percent of the system delays. There is no question that the ripple effect from relief in New York will be significant throughout the Country.

Candidly, New York passengers, especially those coming from small communities, will not escape current capacity cuts. Service may be pared back as fuel prices further erode the carriers' bottom line. That means access will be constrained, hitting the business and leisure traveler and the entire travel and tourism industry hard.

Mr. Chairman, I know this Committee is deeply concerned about what is being done to reduce congestion and flight delays in New York, the financial and cultural center of this Country, a magnet for visitors from all over the world.

Along with the grim news about the airline industry, I have to bring you some grim news about New York. Based on what we have seen since the first of the year, we are not encouraged.

So you might ask yourself what the Department is doing about the ever-growing congestion in New York to make sure that passengers, shippers and airlines and others can get where they want to go on time, and the answer is not much. The lack of relief is despite the fact that airlines have accepted caps at all three airports, reduced flights at peak hours, readjusted schedules and selectively upgraded our aircraft.

Throughout at the airports, the number of planes that move in and out each day, is down the lowest in a decade. Although we are meeting with a newly appointed New York czar later this week, by all accounts, only a very small percentage of the 77 capacity en-

hancements identified by the New York ARC have been fully implemented.

There is no real sense of urgency to get these things done today and not tomorrow. The three-year implementation time line, frankly, is unacceptable. New York and the rest of the Country need relief now.

Instead of moving forward with the capacity enhancements and airspace design with every available resource, with all deliberate speed, DOT is pushing congestion pricing and slot auctions, completely unproven textbook experiments that every graduate student would love to pursue, but no one in the aviation world has ever used successfully.

In the next few months, DOT seems intent on leaving a legacy of failed but extremely costly experiments that do nothing to reduce congestion, and flight delays in New York or, for that matter, anywhere else. In addition to limiting the public's access to New York, auctions and congestion pricing rob the airlines of years of investment and planning as we make clear in our written statements.

Congestion pricing and slot auctions are unlawful, unfair, incredibly costly to passengers, airlines and the economy. These proposals have been tried and failed elsewhere, and they are not going to work here.

Our prescription for New York is simple: Stop talking ideology and experiment and start leaving a legacy that will help, not hurt, the Country.

Devote all the resources necessary right now to implement New York airspace redesign and related initiatives.

Work with the Port Authority and air traffic controllers to implement the near-term capacity enhancements identified last year by the ARC.

Work with the Department of Defense as well as Congress, if necessary, to open up new airways on a more permanent basis.

Accelerate development and implementation of technologies that will bring us NextGen. We talked about it earlier.

And, deploy the worldwide scheduling guidelines.

Mr. Chairman, the ATA and its members are committed to getting the job done with the right solutions. We commend Senator Schumer, Congressman Meeks and others who have introduced legislation to prohibit the Department from engaging in this folly, and we commit to continue to work with you.

Thank you.

Mr. COSTELLO. The Chair thanks you, Mr. May, and now recognizes Mr. Faberman.

Mr. FABERMAN. Good morning, Chairman Costello, Ranking Member Petri and Members of the Committee. I am pleased to be here today to talk about issues that are critical to the Nation's air carriers, communities and to the traveling public.

Our member airlines are dedicated to providing affordable airfare options to all American travelers who receive significant benefits when low fares are available.

We thank this Committee for holding this hearing, for your dedication to enhancing the Nation's air traffic system and for supporting the growth of air commerce and airline competition.

We are at a point in time that if steps are not taken to ensure the dream of deregulation will remain an essential part of U.S. airline service, we may see the disappearance of travel options for millions of travelers. Unfortunately, these are not issues.

Let me read a statement: Throughout the year, there were strong indications that the airport and airways system was on a verge of saturation. The airports serving Chicago, New York and Washington and the airways system connecting them was simply congested during too many hours each day.

That statement was made in 1968.

We absolutely fully support expanding capacity, system changes and what is necessary to help the system run smoothly and to expand. However, other things must also be done to keep options available, particularly supporting deregulation and competition.

We are at a defining point in history. We have seen several carriers, including low cost carriers, file for bankruptcy at the same time, as Jim May noted, costs are out of control and continue to rise.

While we are supposed to have open markets and a deregulated system as a result of the significant increase in operations added at the New York airports, these airports are again closed to competition. The current slot system that has allowed the sale of slots has not promoted competition nor has it improved operations. Airports that are slot-controlled have less low fare service and competition than most other airports.

When addressing closed airports, the Department has correctly stated that it is important to preserve competition. As part of a solution to address congestion, the Department has proposed a market approach that includes an auction.

While there are legitimate questions about the authority to impose auction approaches, we applaud the Department for exploring the options to promote competition. It has been a long time since steps were taken to make sure that would happen.

While an auction approach may not happen and may not be completely possible, steps must first be taken to make sure competitive options survive the current situation faced by the industry. As many carriers announce reductions in operations at major airports, the elimination of aircraft from their fleets and possible mergers, now is the time to start withdrawing some slots in facilities and make them available to carriers with small numbers of slots.

As competition is addressed, we do not object to exploring market mechanisms and considering all options if specific steps are taken for new entrants and limited incumbents. Any mechanism must be a blind sale transfer allocation system as the Department of Justice has said. If not, then those that control will continue to control.

And, we have to address the significant increase in operations of regional jets at major airports, although we fully agree with comments made here this morning that small community service must be preserved.

This Committee has played an active role in improving the Nation's aviation system and in opening doors to competition.

Some of the actions being taken to address delays and congestion could forever close the door on competition and prevent the growth of small carriers and maybe see more of them disappear.

Our dream of deregulation is to create a high-tech, safe, delay-free and secure system that maximizes consumer choices and ensures that low fares are available to all consumers and all communities. Let's not make that dream just a memory. Instead, let's continue to work together to make sure that this becomes a reality.

We look forward to continuing to work with you on this and all other matters.

Thank you.

Mr. COSTELLO. The Chair thanks you, Mr. Faberman, and now recognizes Mr. Lavin.

Mr. LAVIN. Thank you, Mr. Chairman and distinguished Members of the Subcommittee for the opportunity to represent IATA's 230 member airlines at this important hearing today.

Over the past nine months, I have spent much of my professional time representing IATA's members' interest before DOT on the issue of New York congestion. I'd like to share my thoughts on what has been an extremely frustrating and counterproductive DOT process.

First, IATA believes that the one significant step DOT has taken over the past nine months to address congestion in New York was to designate JFK and Newark as level three congested airports under the principles of the Worldwide Scheduling Guidelines or WSG. In doing so, DOT employed an international standard utilized at 140 airports around the world to manage congestion.

IATA supported these temporary caps under the WSG principles as long as they were accompanied by a renewed FAA commitment to increase capacity at the region's airport.

The FAA deserves credit for taking up this challenge, and today we estimate that by the end of this year they will have completed 60 percent of the 77 technology and procedure improvements recommended by the Aviation Rulemaking Committee to increase capacity in the region. While more work needs to be done, we are pleased with the efforts to date and urge this Subcommittee to support the FAA in this important initiative.

While the FAA has been addressing congestion, DOT has spent the last nine months pursuing a quixotic mission to use the New York challenge as an opportunity to impose their free market pricing views on the industry. After three months of ARC meetings, DOT was apparently surprised to find that it was not able to convince the airlines serving New York as well as the Port Authority that peak pricing and slot auctions were the best way to manage congestion at the airports.

Knowing that Congress would not grant it the authority to impose congestion pricing directly, DOT instead moved to change their internal rules to authorize airports to implement their own peak pricing schemes in contradiction of ICAO policies and international law.

Not resting there, DOT is now seeking to establish that airport slots are the property of the U.S. Government and that, supposedly, rich airlines should not receive them without compensation in return. DOT is now proposing to lease their so-called property and, at the same time, confiscate significant numbers of slots from carriers that have invested millions in these airports to support their operations.

To be clear, DOT's auction proposal has nothing to do with curbing congestion and is unnecessary to protect competition at these airports. If DOT wanted to protect competition, one would expect them to implement the WSG as similarly congested airports in London, Paris and Frankfurt and 137 other airports around the world have done before them.

While some have challenged the WSG as anti-competitive, the facts indicate otherwise. London Heathrow has been operating under the WSG since 1993 and has seen 25 new entrants over the past 5 years including Continental, Northwest, U.S. Airways and Delta in the past 6 months.

JFK, Newark and LaGuardia have either been capped or constrained for a long time following WSG principles, and yet they remain some of the competitive airports in the world.

In its Newark-JFK NPRM, DOT acknowledges that WSG is well understood and an internationally-recognized system of slot allocation at congested airports and, indeed, adopts many of the key WSG principles. However, at the same time, DOT argues that a cap under the WSG without so-called market mechanisms will not allow for enough competition.

One must question what competition danger DOT sees that the other 140 airports utilizing the WSG have missed.

IATA is very concerned about the dangerous precedent DOT is setting internationally by pursuing these economics experiments. U.S. and international law, ICAO policies and several court cases have served to restrict governments' ability to pursue congestion pricing in the past. However, since DOT embarked on this mission, we have already seen an aggressive congestion pricing scheme being proposed by Brazil and understand that other countries are now considering the same.

We are particularly concerned that foreign governments will see market mechanisms as an opportunity to raise new revenues from the airline industry to address general budget shortfalls.

Mr. Chairman, I do not need to tell you that this industry is facing an economic crisis beyond that which we experienced post-9/11. At currently predicted fuel prices, IATA members could face an additional financial burden of \$99 billion over the next 12 months compared to 2007. Twenty-four airlines have ceased operations or entered bankruptcy over the past five months.

To put it bluntly, there could not be a worse time for DOT to pursue market experiments that would impose hundreds of millions of dollars of new costs on an industry in crisis, an industry that today supports 7 percent of global GDP and 32 million jobs.

Thank you for your consideration.

Mr. COSTELLO. The Chair thanks you, Mr. Lavin.

Mr. Gribbin, let me begin with you. You have heard in my opening statement, I question the legal authority that the Department has to proceed down this path. You have heard witnesses here today. You sat and just listened to them.

I think everyone questions your legal authority of the Department. So, for the record, why don't you detail for us why you believe, what statute exists that gives you the legal authority to move forward with this proposal?

Mr. GRIBBIN. I would be glad to, Mr. Chairman.

I think, as the Committee may be aware that in the notice of proposed rulemaking for LaGuardia that was supplemental by the recent supplemental notice of proposed rulemaking, the DOT noted that we did not have the legal authority to use market mechanisms to allocate slots. Regretfully, that was inartfully worded.

What the real intent was saying is that what the DOT would prefer before doing this is clear statutory authority focused directly on the auction or congestion pricing of slots.

Because you now have the reauthorization bill, we were sort of thrown into an environment where we needed to explore what legal authority already exists and whether that legal authority allowed any type of use of market mechanisms.

What, in essence, our legal theory rests upon is the fact that slots are property. There is a long history of slots being treated as property. The Court of Appeals for the First District in a bankruptcy hearing case found that they were property.

I think right now it is pretty clear that airlines have booked the value of slots on their books. They have traded them. They have leased them. The FAA has allowed that trading and leasing to occur, so that it is pretty clear that these slots are property and that the airlines, prior to the repeal of HDR on January 1st of last year, that the airlines held a property interest in these.

HDR was repealed. That is now gone. The property interests have now been sort of wiped away, which means that now the FAA has a complete bundle of property interests in these slots.

The FAA has broad, expansive statutory authority to lease both tangible and intangible property. So, if the FAA has property, it can lease that property to others for others to use it.

Slots, as a form of intangible property, can be leased by the FAA. So, really, what we are talking about is just a lease of intangible property by the FAA.

Where the auction kicks in is if the FAA wants to lease that property to the entity that is going to make the highest and best use of that property. That normally is the entity that will pay the most for the property.

So the auction, in essence, is just the mechanism used to determine who values that leasehold the highest, and then FAA will transfer that leasehold, as we propose, for a term of 10 years.

I see the shaking of heads.

So, in essence, it is FAA property. FAA has broad authority to lease property. They are going to lease property.

They don't have to use an auction mechanism to lease property. They could lease property in any mechanism they wanted to. We thought the auction mechanism was the best one to identify who values that property the highest.

Mr. COSTELLO. I would ask the witnesses if they would like to comment on Mr. Gribbin's authority as he has explained it.

Mr. DeCota.

Mr. DECOTA. Thank you, Mr. Chairman.

In our written comments back to the DOT for the docket for LaGuardia, we document extensively some of our beliefs about their lack of legal authority.

We argue that they cannot dispose of property they do not own. We also say that they can't rely upon that kind of authority to ac-

quire property, to circumvent basically their total lack of authority to do with what they are doing. Congress has not given them the authority to raise this revenue or to lease these slots via auctions.

I think the legal history is very clear. I think there is a lot of unanimity up here.

There is an old Sesame Street song: One of these things is not like the other. Four of these things are kind of the same.

I think you will find from four of us, you will get the same legal argument.

Mr. GRIBBIN. It is not often I debate Sesame Street arguments. So I thank Mr. DeCota.

[Laughter.]

Mr. COSTELLO. Mr. May.

Mr. MAY. I would simply reiterate what my colleague, Mr. DeCota, said and not take any more of the Committee's time.

Mr. COSTELLO. Mr. Gribbin, you heard Mr. DeCota testify that over a period of time that the Port Authority made 77 recommendations to the Department, and I think Mr. DeCota said he believes that only 16 of them have been implemented. Do you want to comment on why others have not been implemented or any comment at all?

Mr. GRIBBIN. Sure. I would be glad to comment.

I would also like to comment—Bill and I have talked about this in the past—that actually the idea of auction slots came from the Port Authority. It was proposed by the Port Authority in 2001. We had a conversation about this when I was visiting the Port Authority in New York.

The Port Authority says additional experience led them to the belief that auctions were not a good mechanism. We believe they actually got it right in the first place.

But, yes, on the point of—I lost the question. I am sorry, sir. A comment on the 77 operational improvements?

Mr. COSTELLO. Yes. Have the balance been reviewed and rejected or what is the status?

Mr. GRIBBIN. In October of last year, as we kicked off the ARC, we had a long discussion over what is the best way to address congestion in New York, and both the Port Authority and the ATA at that point in time were not supportive of market pricing and were not supportive of caps.

Their answer was we ought to do operational improvements, and so they came forward and announced at a press conference, 17 operational improvements that the FAA should do instead of imposing caps, instead of using a pricing mechanism.

Our concern was that while 17 operational improvements, while good, wouldn't provide the additional capacity we needed. That said, every one of those 17 operational improvements will be finished by the end of this summer. So we have moved forward on those operational improvements.

Mr. May said that FAA had no urgency about expanding operational improvements. I would argue just the contrary. In fact, I am incredibly impressed that the FAA will be able to get every single one of those 17 done by the end of this summer.

Now we didn't want to stop there. We were looking for any and all ideas that could possibly improve capacity in the New York air-

ports, and so the list of 17 grew and grew and grew and grew and got to 77 operational improvements.

Again, we are working through that list. I think we probably have about half of those underway right now. Some of them have yet to be fully defined as to exactly what that operational improvement will detail, but I think to argue that the DOT and the FAA have set aside an interest in expanding capacity in order to pursue an interest in pricing is just inaccurate.

Mr. COSTELLO. Mr. DeCota, do you want to comment?

Mr. DECOTA. Yes, I would like to respond to the comment that at one point we were supportive of auctions. The reality is at LaGuardia Airport, back in the year 2000 when we were facing rampant congestion, we looked at a variety of different solutions to try to address the capacity issues.

Number one, at that time, we thought it was a LaGuardia-specific situation. You have a 700 acre airport, two 7,000 foot intersecting runways, huge demand by business and high end domestic customers, more airlines wanting to offer service than there is ground capacity in terms of the number of gates.

We, as airport operators, felt we had the proprietary responsibility and right to try to figure out a solution, and we came up with what we call a tool kit of options to explore: congestion pricing, auctions, administrative rules, fixing the old slot rule.

As we looked at auctions and particularly now that we find out it is not LaGuardia problem, we have a New York problem, and the New York problem isn't just the acreage. We have nine runways. We have three major airports. Yet, somehow the airspace can't accommodate the number of planes, as I said in my testimony, that it did 10 years ago.

You start looking at those solutions, and auctions quickly fell off the map. It fell off the map because of the added cost to the airline industry and the customer and possible elasticity of demand which fewer people would come into New York, the blow to tourism, the fact it doesn't really address congestion particularly in the way it is being described and the fact that it really masks the problem.

It masks the problem that the Federal Government has absolutely failed in regard for airspace capacity. It creates enormous instability now and particularly when the airline industry is in such bad financial condition.

It is an absolute experiment. The FAA and DOT have described it as trial. It is not a trial. It is an experiment, and it is a scary experiment, and it does nothing to alleviate congestion. So, at the end of the day, we dispelled that notion.

And so, we moved for capacity. In fact, it was we, our Chairman, Mr. Tony Coscia, who put together a flight delay task force of interested parties in the area. We had CEOs of major corporations, heads of state transportation authorities, airline CEOs and everyone.

The technical committee came together with a set of 77 recommendations which then the ARC, the Aviation Rulemaking Committee, adopted. Our hope is that they all get implemented in one way or another.

Now time and events can eclipse some of them, but it has to be a capacity solution. We have to find out, as I said in my testimony,

why has New York airspace shrunk. The law of physics tells me airspace doesn't shrink, so why am I handling less after I have spent \$15 billion on ground capacity and as I am spending \$6 billion more?

Mr. COSTELLO. The Chair thanks you and now recognizes the Ranking Member, Mr. Petri.

Mr. PETRI. Let me just quickly follow up on that. Do you have any suspicion as to why it has shrunk? Is it, as Senator Schumer said, Federal mal-administration of the air traffic control situation or what?

Mr. DECOTA. Well, ultimately, it has to do with somehow how the entire traffic mix is being handled. We feel that the air traffic control system needs to get updated.

You mentioned yourself, Mr. Petri, that there is a need to move forward on NextGen. I mean I think that is vitally important, that we get past these older, antiquated radio, radar-based, land-based radar beacons that navigate aircraft and move toward satellite-based technology.

Right now, there is this constellation of satellites circumnavigating the earth that are quite available, and there are planes equipped with flight management systems and global positioning systems, and the FAA has pioneered and piloted a number of technologies that have great acronyms: ADS-B, ASDX, RNAV, RNP. All of those things together have a great deal of capability to handle traffic more efficiently.

Why we are handling less traffic now with a higher level of delay is beyond me and is something really the FAA and the DOT, as a parent entity, would really have to be able to address. But it is confounding because we think with nine runways we should be able to do a lot more.

Mr. PETRI. This is for Mr. May or anyone who wants to answer it.

You took EC 1, the way a lot of kids do in college. Why has the price of fuel has gone up for everyone? Is it not just one airline or another? So why is it that this translates into tremendous losses for the airlines rather than higher ticket prices for the traveling public?

Mr. MAY. I think, Mr. Petri, it is a function of the fiercely competitive nature of the business. We have had, I think, somewhere in the range of 20 fuel increases or price increases so far this year.

Be that as it may, ticket prices are still a bargain. Believe it or not. The average ticket one way right now, as of the first of June is about \$191. The cost of fuel per passenger on that same flight is on an average of \$138. Add another \$20 to \$30 for taxes and fees, and that leaves the airlines something on the range of \$27, \$28 to manage all other expenses: wages, benefits, repairs, maintenance, you name it.

So it is a fiercely, fiercely competitive business, and I don't think there is an airline out there that wouldn't like to find a way to raise prices to cover the cost as many other industries have. My dry cleaner at home has a fuel a surcharge, for crying out loud.

All those are challenges in front of us.

Mr. PETRI. In history, I read they had this happen in the railroad industry when it expanded west. I think the Penn Central and New

York, and they got below cost of moving freight. Vanderbilt broke his competitor by basically closing down his railroad and booking all his freight on the other line.

Maybe some airlines ought to try that. If they are spending more to fly their planes and pay the taxes and everything else involved than they are getting in revenue, they might as well put the passengers on someone else's flight.

Mr. MAY. Mr. Petri, I think what you are seeing is the capacity cuts that are taking place in the industry.

I testified yesterday that we have about 100 communities that will almost certainly lose service by the end of this year. That number could grow to 200 because we are simply not going to fly routes that are wholly uneconomical, that are guaranteed money losers, and the public is going to be the worse for that.

Now, off the subject a little bit of today's hearing, I think this Congress needs to understand that it is time for a bipartisan approach that is badly, badly needed to make some very short-term, near-term solutions available that address the high cost of fuel.

It is fine to have long debates over nuclear and supply side solutions and making sure we can drill offshore and not drill offshore and ANWAR or not ANWAR, all of those issues. But the reality is those are long-term solutions.

We happen to think, many other experts in the business happen to think there is a significant premium for speculation in the price of oil. Some have suggested it is as high as \$40, \$50 per barrel.

I think this Congress, in a bipartisan way, ought to force the CFTC to begin to close some of the loopholes that exist in the law and begin to address that immediately. It doesn't fall within the jurisdiction of this Committee, but it is something that is critically necessary for the future of the economy of this Country and the airlines.

Mr. PETRI. Thank you.

Mr. Chairman, I just have one more question. I apologize. I will yield the time back at another hearing.

This was really on the auction question or leasing property or however you want to characterize it. Real estate developers or the GSA or other people spend a lot of time figuring out how they structure these things. I guess there is a rulemaking process going forward.

This may not be the most ideal place to figure out how to structure because of all the size and scope of the congestion problem and everything else, and you may end up giving the whole thing a bad name.

The Mayor of New York has been trying to do congestion pricing. We are trying to do it with highways.

You can lease a whole building or you can do it room by room, periods of time. There are a 101 different variables in how you structure. You can do it as a percentage of the airline revenue, so that would help new entrants get in because it will just be like a passing through, or you can require capital up front and that favors the bigger guys.

So it is not automatically more competitive depending on how you structure the market. Could you address that?

Have you been considering this, what is really going on here?

Mr. GRIBBIN. Yes, Congressman Petri.

I think, first, it is important to understand, as I mentioned in my opening statement, we want to have service that is reliable and affordable. If we don't have operational improvements to meet demand, then we have to have some type of cap. If we have a cap on its own, it is anti-competitive.

The Chairman mentioned we raised the cap in Chicago. We announced we are going to lift the cap in Chicago.

Mayor Daly said, flight caps limit economic growth in the region and if left in place serve as a disincentive for future investment at the airport. Flight caps also negatively impact travelers by artificially constraining the market, forcing higher fares and fewer choices.

That is Mayor Daly speaking.

So I am not sure this is an ideological debate as much as it is one about what happens to a market when you artificially constrain the amount of competition that is allowed in that market.

If we don't have enough capacity, which I think everyone agrees we are unlikely to develop in the near term enough capacity to meet demand, and then if we have to put in place some type of managed controls like caps. I think it is also imperative that we have as part of that, underneath the cap, an auction or some type of market mechanism.

Everyone here has said that auctions don't alleviate congestion, and that is partially true. The congestion is managed with the cap, but the problem is the cure of a cap has a very nasty side effect, and that nasty side effect is limited competition which brings fewer choices and higher fares.

So what the DOT is trying to do is fix the reliability problem with a cap and fix the affordability problem with some type of market mechanism, in this case, an auction.

Now there are a wide variety of ways to structure auctions and how they work. We have proposed rulemakings and we are accepting comments on them because, as you noted and I think Mr. DeCota would agree and Senator Schumer mentioned, since this is in New York City airspace, it is really important.

We want to get this right but also realize that we are proposing to auction a very small slice of existing capacity. We are not throwing up 100 percent of the slots for auction. What we are proposing auctioning works out to be about 7 to 8 percent of the slots over the course of 5 years.

So I think what we have done is we have tailored the solution to the affordability problem. We have a solution that is very small in scope, and we have a solution that we think is manageable in our ability to implement it.

Mr. COSTELLO. The Chair thanks you, Mr. Petri, and now recognizes the distinguished Chairman of the Full Committee, Chairman Oberstar.

Mr. OBERSTAR. Thank you, Mr. Chairman and Mr. Petri for getting together to hold this hearing.

I read your testimony last night and that of the other witnesses. Slots are public assets.

Mr. GRIBBIN. That is correct.

Mr. OBERSTAR. The airspace is the common heritage of all Americans. The notion that airlines can make slots their private property to accrue value, then to be able to sell or lease that asset and pocket the value is repugnant, the only way I can describe it, to me and to the notion of a value of an airspace held and used for the benefit of all Americans and for our national and regional economy.

For the Department to take this step, to assume unto itself authority to hold an auction and have some value and let that value accrue to the airlines is an anathema to me.

You can make all the judicial, legalistic pronouncements you want. Just policy-wise, it is wrong.

What is the next step? Privatizing the DOT? Outsourcing it?

What has been done? What has the Department done to extract more value out of Stewart Airport?

Mr. GRIBBIN. What has the Department done to extract value?

Mr. OBERSTAR. Yes, that is the question.

Mr. GRIBBIN. We have said very positive things about the Port Authority.

Mr. OBERSTAR. What have you done?

Mr. GRIBBIN. I am not sure we had a role to do anything.

Mr. OBERSTAR. Yes, you do. You are the Department of Transportation, the FAA. You have a huge capability. If you think you can arrogate unto yourself the power to auction slots, then you surely have a whole host of authorities you can deploy to support development of Stewart.

What about Atlantic City?

There was a grant made to Atlantic City for a taxiway development. They have a 10,000-foot runway. They need surface transportation, commuter rail or light rail to and from the airport. That could provide some relief. What have you done about that?

What have you done intermodally to relieve the pressures?

Mr. GRIBBIN. Mr. Chairman if I could, sir, I will circle back to your first statement about slots being an anathema.

Mr. OBERSTAR. Sure.

Mr. GRIBBIN. You should know, historically, slots have been held by the airlines and have been traded by the airlines and sold by the airlines.

Mr. OBERSTAR. I know that, and I think that is wrong.

Mr. GRIBBIN. So our proposal actually limits—

Mr. OBERSTAR. Comes the time, we are going to make sure that never happens again.

Mr. GRIBBIN. I think most of the folks sitting to my left would argue for Worldwide Scheduling Guidelines which, in essence, would pass an in-perpetuity right to the airlines, complete ownership, in effect, with some limitations on it to the airlines for those slots.

What we propose instead, is a limited 10-year interest and, in addition to that, not just granting incumbents 100 percent ownership in what they are operating currently.

Mr. OBERSTAR. Well, in that vein, what are you doing to carry out the rulemaking of 2000 that provided that carriers must certify there is new service, that they are stage three compliant, and that there will be additional capacity created?

Mr. GRIBBIN. Well, we have worked on capacity. Let me start with the last one. On the capacity created, as I mentioned before, we pursued very aggressively the 17 operational improvements that were suggested by the Port Authority and the ATA to expand airspace.

In addition, we are pursuing aggressively the NextGen program.

Mr. OBERSTAR. How does the slot auction address those issues?

Mr. GRIBBIN. The problem we are facing in aviation right now, as you are very aware, is that we don't have the ability in the course of the next three, four, five years to ramp up capacity to meet demand. We have demand exceeding capacity in a few spots around the Country: New York, San Francisco, Las Vegas, Houston. I won't list them all, but demand is outstripping supply.

The first and I think preferred approach by everyone on this panel would be to increase supply so that those who want to fly in an airport can fly in an airport and they don't get caught in the kind of horrific congestion we saw last year.

Mr. OBERSTAR. Okay. Look, you are wandering away from me. What is the arrival capacity of LaGuardia, of JFK, of Newark?

Mr. GRIBBIN. The cap at LaGuardia is 75.

Mr. OBERSTAR. Not the cap, what is the capacity?

Mr. GRIBBIN. The cap is set at—

Mr. OBERSTAR. I don't want to hear about the cap. What is the capacity of air traffic control to handle arrivals under ideal weather conditions at LaGuardia, at JFK, at Newark? Do you know that?

Mr. GRIBBIN. Yes, sir. It is where the cap is set. That is why we use the cap.

Mr. OBERSTAR. No. Give me the number. What is it?

The cap is an artificial figure. The actual arrival capacity of those airports is different from the cap. You don't understand that, apparently.

Mr. GRIBBIN. Actually, sir, I do understand that.

Mr. OBERSTAR. Well, then tell me what the number is.

Mr. GRIBBIN. The number is 75 at LaGuardia, 82, 83 at Newark and JFK.

Mr. OBERSTAR. Okay. What have you done to enhance that arrival capacity?

Mr. GRIBBIN. We have implemented New York airspace redesign or we are in the process of implementing New York airspace redesign. We pursued—

Mr. OBERSTAR. Yes, but that, for various reasons not entirely within your control, hasn't been implemented.

I still think you are talking or you are referring to the cap and not to the real capacity. I think we would get a better answer if I talked to air traffic controllers.

Mr. GRIBBIN. I am sorry. I don't mean to disagree or argue with you.

Mr. OBERSTAR. That is all right. You can argue with me.

Mr. GRIBBIN. The cap is set. I mean the goal of placing the cap was—

Mr. OBERSTAR. I know how the cap was set. The point is it is an artificial number.

Mr. GRIBBIN. Well, it is equally artificial to say, what is the operation capacity of the airport? If you plot JFK out of New York and

you put it in Iowa, you could probably get over 100 operations an hour in that airport, but the problem is JFK's airspace conflicts with LaGuardia and Newark, and to a lesser extent——

Mr. OBERSTAR. How many RJs operate out of LaGuardia? How many operations a day are there for RJs?

Mr. GRIBBIN. For regional jets, Mr. DeCota would probably be in a better position to answer that.

Mr. OBERSTAR. All right.

Mr. DECOTA. Yes, Mr. Chairman. There is still a large number of RJs. The fact is that the average seating capacity at those airports is still relatively low.

If I come up with round numbers, there is about 70 people, on average, sitting on a plane at LaGuardia Airport. That indicates a lot of RJs. At Kennedy Airport, the number is about 110. At Newark, it is probably about 100.

But small planes do have a role. We have always said small planes to small places make enormous sense. Small planes to big places don't make any sense, and we still see a lot of RJs operating. Even into the Washington, D.C.-New York corridor where we have 150 plus flights a day, you still see RJs that are being deployed.

Mr. OBERSTAR. The RJs have a slower takeoff rate than the larger capacity aircraft, right?

Mr. DECOTA. Yes.

Mr. OBERSTAR. That has a consequential effect on your capacity, right?

Mr. DECOTA. Exactly. Separation standards between different sized planes, also the difference between propeller planes versus jets, they fly at different altitudes.

Mr. OBERSTAR. So couldn't there be some accommodation, some shifting of certain types of service to Stewart, to Atlantic City at certain times of the day to create more capacity?

Mr. DECOTA. Our big goal in purchasing Stewart, more than size of aircraft, was to figure out a way.

We have a regional airport system that is handling 110 million passengers. We know that 10 million of those passengers would either prefer or be indifferent to using Stewart Airport if their airline, their destination and their time of day, their airfare were available. That is not going to happen anytime soon in a very limited air service airport.

The goal is to figure out a way as to how to attract more of those people that now use Newark, Kennedy and LaGuardia to actually use Stewart Airport, and your question is right on the mark. What do we do to try to make that happen?

The Port Authority's capital plan: We purchased the airport November 1st. The program, \$500 million initially is just capital investment. A lot of that is infrastructure in a very deferred maintenance place but also some capacity improvements, and then we are going to do an air service development program and see how we might lure more air service. That, in turn, would get people who live near Stewart to use Stewart.

Mr. OBERSTAR. Now you are moving in the direction of an answer that I want from the Department of Transportation and not getting it.

They are a multimodal agency. They are not using all the assets at their disposal to enhance the opportunities to relieve the capacity constraints of the airports. So they are shifting to a so-called market-based proposition that does nothing to increase capacity.

That is enough. It is an appalling lack of imagination, frankly, from this Department.

Mr. COSTELLO. Thank you, Mr. Chairman.

Now the Chair recognizes the gentleman from Tennessee, Mr. Duncan.

Mr. DUNCAN. Well, thank you, Mr. Chairman.

Five or six weeks ago, we were told in a hearing in the Highway and Transit Subcommittee that 935 trucking companies had gone out of business in just the first quarter of this year, and that survey only counted trucking companies with 5 trucks or more. Now we hear in Mr. May's testimony that eight airlines have ceased operations since 2007 and one more is in bankruptcy.

I can tell you that it is not that most people think just about the gas because it is so obvious as to how it is going up every day, but because gas and diesel fuel and aviation fuel have gone up and are going up more, everything is going to go up. You mentioned the dry cleaners, Mr. May, but everything is delivered at some point by trucks or trains or airplanes.

You are exactly right. You made a good suggestion there. We need both short-term and long-term solutions.

When President Clinton vetoed drilling in ANWAR in 1995 and several times since then, we have always been told, well, it wouldn't be an immediate help or an immediate solution, and that is true. But we told people years ago it would help out five or six or eight or ten years from now.

George Will pointed out in his column a few days ago that if we were drilling there, the most conservative estimates are that we would have a million barrels a day that would have been flowing down here, 27 million gallons of gas a day.

You know we don't need to drill all of our oil, but we need to drill some more or these speculators and these foreign oil companies are going to be able to keep on raising their prices, and we can do this in an environmentally-safe way.

I have noticed over the years that most of these environmental radicals come from very wealthy or very upper income families. They have wanted gas to go up for years, so people would drive less. But I can tell you they are hurting a lot of poor and lower income and working people in this Country, and this situation is very close to shutting us down economically.

Mr. Gribbin, let me ask you this. Mr. DeCota says in his testimony, cities such as Huntsville, Lexington, Des Moines, Flint, Bangor, Madison, Ithaca, Roanoke and, most important of all, Knoxville are in danger of losing service under these proposals.

Others such as Myrtle Beach, Columbus, Richmond, Savannah, Jacksonville and Buffalo could see reduced service and higher air fares.

Have you taken that into consideration and what do you say about that? Do you think he is wrong in that statement?

Mr. GRIBBIN. Congressman Duncan, I can assure you the Department has no interest in affecting service in Knoxville.

It is a legitimate concern. I think you can look at, again, the relatively small slice.

I think what Mr. DeCota is referring to is if you auction a slot and it is available, the carrier most likely to win that auction is a carrier serving potentially a larger market. Although I am not sure that is always the case, that would make intuitive sense.

So the way that we structured it is in LaGuardia, the perimeter rule stays in place. So you are going to have limited ability for long distance carriers or for international carriers to supplant local service at LaGuardia.

And, we are talking about just over a percentage point a year in the slots that we are auctioning. So there is not going to be any major churning. There is not going to be an abandonment of service to small communities.

I would also touch on the fact that there has been concern about the impact of auctions, the price that it might cost carriers and that those costs may be passed through to consumers.

We have proposed two different auction regimes: one in which money goes to the Federal Government; the other, the money goes to the carriers themselves.

Under the second one, there would be no net increased cost to carriers. So there should be no net increased cost to passengers. In addition, the cost of the auction is maybe a dollar a person whereas the cost of not having a competition could be tens or hundreds of dollars per passenger.

So I don't think you need to worry too much about the service to small communities because of the very limited nature of these auctions.

Mr. DUNCAN. Mr. May, how many flights have your airlines eliminated over the last few months? I didn't catch that.

Also, I am wondering how these voluntary caps that were imposed back in December, how have they been working?

Mr. MAY. Congressman Duncan, our summer schedule is relatively intact because it had been pre-sold. I think most of the significant capacity reductions will begin to be evidenced beginning in September. Although a number of changes have been announced, they haven't necessarily been put into effect.

Most of the folks who are astute observers of the process suggest that if oil stays anywhere near what it is today, it is going to require across the board about a 20 percent cut in capacity which is absolutely extraordinary.

In terms of the voluntary adjustments that have been made at JFK, Newark, et cetera, in the New York market, those went into effect 18 days ago on the first of June. I think it is a little early to tell. I will suggest, as I did in my testimony, that throughput is way down.

Mr. DUNCAN. We have a briefing paper that said December, but I guess maybe that was when the agreement was reached.

Mr. Faberman, real quickly, how many slots do your carriers have now? What percentage of slots or how many slots do they have in New York now?

Mr. FABERMAN. Well, small, low fare carriers have a very small percentage of slots at both LaGuardia and Newark, maybe 4 or 5 percent.

The problem with the caps, although we understand why they are put in place, is that it completely wipes out any ability to add anything. When you have fewer operations at an airport, your costs are higher than carriers that have larger operations because you are paying a lot for people, you are paying a lot for facilities, and you don't have as many flights to spread those costs over.

That is going to be another problem, and that is carriers that have limited numbers of flights may have to start cutting back those flights, and we have already seen some of that happen.

Mr. DUNCAN. All right. Thank you very much.

Mr. COSTELLO. The Chair thanks you and now recognizes the gentlelady from California, Ms. Richardson.

Ms. RICHARDSON. Thank you, Mr. Chairman.

Gentlemen, this morning, I represent the South Los Angeles area, kind of Long Beach, Carson and Compton.

Mr. Gribbin, I would suggest that in addition to the Worldwide Scheduling Guidelines that has been of discussion today in addition to this whole caps idea, you may want to look at what we did there in Long Beach.

We have a noise ordinance of 41 flights. There was much discussion of which airlines get which flights and the whole thing. What we ended up doing was establishing each airline got a certain amount of flights, and then the open available flights, it was done on a rotating basis.

So, for example, let's say there were 10 flights available and let's say JetBlue could get one. Then American could get another one. United could get another one, and it would just keep rotating.

If a particular airline wanted the use of the flight, they could use it. If they didn't, it rolled to the next airline.

And so, I was looking at how the WSG is implemented, and I think you may want to consider looking at this as an option, and I can provide you with some contacts if you don't have it.

I would just like to say that I think one of your worst fears of this panel is having elected officials who fly on a weekly basis. I just flew here on Sunday afternoon. My flight was scheduled at 4:30. My flight didn't leave until about 5:30, 5:45.

It wasn't because the plane didn't have gas. It wasn't due to a lot of the things that you are talking about. The reason why my flight didn't leave is we didn't have attendants available to open up the door and to get the flight going.

So my concern is when we look at why these caps were originally established which was to eliminate the delays and the problems that we were having in the New York area, I think still, though, we have to have an honest discussion.

I can tell you as a Member, if you were to come to us and say, if you could do these things, we could address these problems, I think you would have quite a few Members who would be willing to be supportive. But the problem is even with these things, you still continue to have problems.

We should not have a situation in my area, for example, where two attendants come running up. The flight was supposed to have left at 4:30. They come running up at 4:40. We should have been on the plane at that point and gone. Their excuse was, oh, we just

heard about we needed to man this flight two minutes ago, and we just finished a flight from Hawaii.

So my pushback is I don't agree that it is all of the things that are talked about in here. I think it also a part degree to the lack of adequate personnel.

Then we sat on the plane because we didn't have enough galleys, whatever, the things that hold the sodas. Then we had to wait another 20 minutes. I mean clearly there are multiple problems.

What I would like to hear from anyone who would like to respond is, in lieu of these caps, what are you suggesting that we do? Because we want to work with you to fix it, but you have to be forward about fixing it, and that is what my concern is.

Mr. MAY. I suspect that I would probably be the appropriate person to address your concerns, Congresswoman.

First of all, my apologies on behalf of the carrier that your flight was not smoother. We are well aware of service issues that occur on many of our flights.

But I think the fundamental point that we have tried to make here is that to the extent we can deploy Next Generation technologies, New York airspace redesign, all of these improvements to the airspace, the entire Country's airspace will move more quickly and efficiently.

We will have greater abilities to navigate around weather systems.

We can increase the overall capacity of the system so as to permit more efficient operations. That, by the way, also makes us far more fuel efficient and environmentally sound than we would be otherwise.

Rather than have artificial economics caps on overall capacity, we would like to grow the system, make it more efficient, make it more positive so that we hopefully can get back on a more sound economic footing. That would be the direction we think it is most appropriate to head.

Ms. RICHARDSON. So could you provide this Committee with that list and what is prohibiting, what are the barriers that are prohibiting you from achieving that?

Mr. MAY. I would be happy to do that. I think that the Committee has significant input from us on that point. We will repeat it as often as we need to.

Ms. RICHARDSON. I am a new Member. I came to Congress in a special election.

Mr. MAY. Good.

Ms. RICHARDSON. Thank you.

Mr. MAY. Thank you.

Ms. RICHARDSON. Yes, sir. You wanted to say something?

Mr. FABERMAN. I just wanted to add that I agree with everything Mr. May said, but with your example, that is another reason why maintaining competition and promoting options are so critical for all consumers and all communities.

Long Beach is one of the lucky airports that has options. Not every airport does, and I think that is why we also have to focus on not only expanding the system, making it better, but on making sure competition stays in place.

Ms. RICHARDSON. Okay. Thank you, Mr. Chair.

Mr. COSTELLO. The Chair thanks the gentlelady and now recognizes the gentleman from North Carolina, Mr. Hayes.

Mr. HAYES. Thank you, Mr. Chairman.

Mr. May, project yourself into the simulator. We are five miles from the outer marker, and we are in bad weather. We have some problems, and we have to get this thing on the ground. I will be right back to you.

Mr. DeCota, freeze that thing. Why do people go Teterboro and LaGuardia instead of JFK or Newark, in your opinion? Location, right? It is easy to get into the city, assuming you get on the ground, assuming you get a cab and all that sort of stuff.

So what I was discussing with Mr. Oberstar is we keep talking about the five pound diaper syndrome. A five pound diaper will only hold five pounds, and that is where the system is today until we get a more creative, imaginative approach.

I just noticed the other day—I took the train from New York to Washington—far less hassle in terms of what is going to happen, things that can go wrong.

There is a great airport that goes right up the train track at Martin State. It rides out of Baltimore, under-used airport, big long runway. How many Martin States are there around where we could put together kind of a different approach that people could utilize the benefits of both, bigger airplanes into New York, longer flights?

That is worth looking at. So, as a thought, I would like for you to think about that.

But back to your comment, Mr. May, you discussed a number of issues that are critically important for the airline industry. This is an industry that is crucial for commerce, the economy, the future of the Country.

I just had a meeting with one of the major airlines before coming here, and I had the list, and it is important.

All right, here we are. We are on the localizer. We are on the glide slope. We got one engine out. We got electrical problems. We got smoke in the cockpit.

Do we want a non-precision circling approach to the airport or do we want to get on the localizer and the glide slope, knowing that we will be within two feet either way if we keep the needle centered and on the ground, and then we can sort out the problem? What is our choice?

Mr. MAY. I think the choice is obvious, Congressman Hayes.

Mr. HAYES. We want the precise emergency and get on the ground and sort it out. We are facing a crisis with fuel prices, and the answer is doing the things that we have to do. You referenced the four issues that are out there.

The airlines, their direct employees, their indirect employees should be lighting up the e-mails, the telephones, every connection to Congress, saying: Folks, we know there are bipartisan solutions to this. It begins with this. By the way, we want you to be environmentally sound with what you do but, for now, standing up together and saying we are going to address these issues headlong, along with the environmental concerns.

A fellow who is in the business with the Southeastern Energy Alliance sat in my office and said, if you stood up. I even passed a

bill. If you stood up and did that, oil will go down 30 bucks overnight. That is where we need to be.

That is what I am asking you and the airlines and the other industries—because everybody is affected by this crisis which is the price of food, fuel and so on—to say, folks, and there are good people on both sides that want to do it. But when you feel your heat, you see the light. There needs to be more light up here, and it comes from heat, from folks at home.

So what would you recommend, having listened to that, that the airlines and others similarly situated might do to help us see the light up here in Congress and stand up and say to the world: We have energy. We are going to use it responsibly, and we are going to become independent. We are going to fully develop wind, solar, hydrogen. We are going to do it cleanly and carefully.

What do you think that message sends? What happens then?

Mr. MAY. Congressman, if we are at fault for not speaking loudly enough in the past, I suspect that we are in the process of curing that fault right now.

Mr. HAYES. Absolutely. I am not saying you are at fault, but I am saying there is source of energy, a source of illumination, a source of get the picture, and it is the folks who are in the government.

It is not just us here. Help us understand and move responsibly to meet this crisis head on, because if you don't get out of the jam now, long-term doesn't matter. That is how you get to long-term. Will you do that?

Mr. MAY. We will do that.

We communicated with your office with a coalition of over, I think, 30 organizations that range from the Teamsters, to the truckers, to ourselves, to you name it in the business that are trying to impress upon Congress the importance of a bipartisan, underlined, approach. Anything you can do to help break that logjam would be deeply appreciated.

Mr. HAYES. What we can do, again, is get the heat from our constituents, and I have the list. It is important, but it is getting that \$30 knockdown immediately and working our way from there. So help us out.

Thank you, Mr. Chairman.

Mr. COSTELLO. The Chair thanks the gentleman and now recognizes the gentleman from Michigan, Mr. Ehlers.

Mr. EHLERS. Thank you, Mr. Chairman.

I am in a markup just down the hall in the Education Committee, so I am sorry I missed much of the hearing, but after hearing this brief discussion, I can't help responding as a physicist and pointing out something that I think the general public doesn't recognize about the airline industry.

The most crucial aspect of the energy crisis is what happens to the airlines because they basically have no choice but to use petroleum-based fuel.

The reason is simple. If you are flying an airplane, you try to minimize the weight. That means you need a high-energy density fuel which is what the fossil fuels are, a lot of energy for the amount of weight of the fuel.

Our automobiles don't have that requirement. Even our trucks don't have that. It helps, of course, but it is absolutely crucial for the airlines.

So whenever we talk about alternatives to energy, let's recognize we are excluding the airlines or aviation in general because we have to continue unless we develop a higher-energy density fuel which is very, very unlikely.

We can use alternatives for almost all the others. Hybrid automobiles, plug-in hybrids, even better, but you cannot plug in airplanes and you cannot run them on batteries.

Some people have even talked about using hydrogen. I did a quick back of the envelope calculation once and decided the only way hydrogen would work, because it doesn't have very good energy density, if you put all the passengers on the wings and used the fuselage for a fuel tank, then hydrogen might work. But I don't think the people would be too happy to fly inside the wings.

So I just wanted to say I recognize that very important aspect, and I have been trying to convince my colleagues of this too. Whatever alternatives we are talking about, the aviation industry doesn't have an energy alternative. It has to continue using Jet A or 100-LL or whatever type of airplane you have.

So with that, Mr. Chairman, I yield back. Thank you.

Mr. COSTELLO. The Chair thanks the gentleman.

We will give each of our witnesses the opportunity, if they want, to make a final point before we close the hearing, and I will begin in reverse order with Mr. Lavin.

Mr. LAVIN. Thank you, Mr. Chairman.

I notice that D.J. Gribbin talked about Chicago O'Hare, the fact of the success that has happened in Chicago O'Hare in terms of raising the caps.

I think it is important to recognize that Chicago was capped because it was congested. It was managed under the Worldwide Scheduling Guidelines. They focused on capacity, and now they have removed the caps.

Mr. Gribbin also indicated that the WSG provides for a proprietary right for the airlines to the slots. At this point, there will be no slots at Chicago O'Hare Airport because they followed the procedures under the WSG and, as a result, there is no property to argue about.

So we believe that the same holds true for New York. It could hold true for New York as well as the other airports around the world that are congested, and we look forward to continuing to work to try to convince DOT of that fact.

Thank you.

Mr. COSTELLO. Thank you.

Mr. Faberman.

Mr. FABERMAN. Thank you, Mr. Chairman.

I will be very brief. We certainly are willing to look at multiple options for managing capacity. As I said before, those options must allow for entry and some ability to compete.

We have concerns about the WSG guidelines in that it does not allow significant entry into airports.

We also say that although many of the airports we are talking about have some significant amounts of international service, they

also have significant amounts of domestic service and domestic service at all those airports is much greater than the "domestic" service at Heathrow.

I will also note that even though London Heathrow is now, I guess, open, one U.S. carrier was forced to pay \$200 million to get into that airport. I don't think that is the approach we want to take in this Country, but I do think we need to move forward and we need to preserve options for your constituents.

Thank you.

Mr. COSTELLO. Thank you, Mr. Faberman.

Mr. May.

Mr. MAY. Thank you, Mr. Chairman.

We should focus on capacity improvements and efficiency enhancements, not on failed economic theory.

Mr. COSTELLO. Mr. DeCota.

Mr. DECOTA. Thank you, Mr. Chairman, and I do appreciate very much this hearing. You have highlighted so many of the issues.

I will just be brief to say that this has enormous implications for trade, travel, tourism, the economy of New York, the world's largest origin destination market.

The fact is this isn't going to reduce congestion, and this is going to create a great deal of disruption. It is illegal.

We don't even know what the auction procedure was. We were only given it 60 days to comment. We were given incomplete information.

It is ideology in front of efficiency, as someone said.

It is the Administration being very deaf to the incredible challenges of this industry.

Instead of modernizing, adding capacity, bringing forward the air traffic control system, instead of just trying to fix the problems which we as airport directors are trying to do, it is just a bad experience. Obviously, we are very strongly opposed and hope it doesn't happen.

Mr. COSTELLO. Thank you.

Mr. Gribbin.

Mr. GRIBBIN. Thank you, Mr. Chairman. I echo Mr. DeCota's comments. Thanks for having this hearing.

To clarify, if I can just comment, and thank you for letting me go last too, in reverse order. It is quite helpful.

On the Worldwide Scheduling Guidelines front, keep in mind that the Worldwide Scheduling Guidelines do two things. They help allocate space in a rational way that is recognized around the world, and I think, as several panelists have mentioned, the Department has used that and actually recommended using that in the NPRM for LaGuardia and Newark.

However, the Worldwide Scheduling Guidelines also transfer historic rights to incumbents, meaning incumbent airlines. This is what Chairman Oberstar was chafing against. Incumbent airlines, in essence, walk away with a property right for that slot that they can then buy, sell and trade, and the American public doesn't get anything in return.

So, on the large issue of congestion in New York, I agree with Mr. May. The first step ought to be expanding capacity. The Department and the FAA have both aggressively pursued that front.

Because capacity is not going to be able to be expanded to meet demand in the near term, we are left with the option of having some type of demand management in the form of caps.

I think as Mayor Daly, who no one would claim as an ideologue, has said, caps in place by themselves limit investment, limit economic growth and result in higher prices to consumers. So whether it is an auction or some other mechanism, I think it is extremely important that we keep the eye on the ball of congestion and on the ball of affordability.

Mr. COSTELLO. Thank you.

The Chair would ask Mr. Petri if he has closing remarks.

If not, let me thank all of you for being here today to testify before the Subcommittee.

I have to tell you, Mr. Gribbin, that I think that probably Mr. DeCota summed it up pretty well, at least my sentiments, and that is I am very skeptical that this plan of caps and to auction off slots will work or will do anything to help relieve congestion in the New York airspace.

I think that it would be worthwhile to take back to Secretary Peters, Chairman Oberstar's comments about the shocking lack of looking at all of the modes of transportation that are available through the Department of Transportation to help relieve congestion and address some of the problems in New York and the New York airspace as well.

With that, again, I thank all of the witnesses for being here, and that concludes our hearing. The Subcommittee will stand adjourned.

[Whereupon, 11:59 a.m., the Subcommittee was adjourned.]

**OPENING STATEMENT OF  
THE HONORABLE RUSS CARNAHAN (MO-3)  
HOUSE TRANSPORTATION AND INFRASTRUCTURE COMMITTEE  
AVIATION SUBCOMMITTEE**

**Hearing on**  
Congestion Management in the New York Airspace

**Wednesday, June 18, 2008  
2167 Rayburn House Office Building**

Chairman Costello and Ranking Member Petri, thank you for holding this important hearing on managing congestion in the New York airspace.

Though aviation congestion was slightly reduced after the terrorist attacks of September 11, record numbers of Americans are flying again, and we are now facing even greater levels of aviation congestion. Over a quarter of all flights experience some type of delay, and New York airports are some of the busiest in the country. The issue of aviation congestion in the New York airspace must be addressed in order to facilitate smoother travel and improve the image of the airline industry.

A few solutions have been proposed to solve this growing problem. Suggestions such as flight caps and slot auctions are steps in the right direction, but more needs to be done. We must explore all possible alternatives to ease aviation congestion. By doing our homework, we can be sure that the solution we find is the best fit for the situation with the New York airspace.

I am curious to hear more about the possible effects of slot auctioning at JFK Airport. Specifically, I would like to hear about the predicted consequences of applying this plan nationwide. If the results of slot auctioning are positive, applying this to other busy airports may significantly ease all aviation congestion.

I would like to thank the witnesses for joining us today, and I look forward to your testimony.

A handwritten signature in black ink, appearing to read "Russ Carnahan". The signature is fluid and cursive, with a long horizontal stroke at the end.

STATEMENT OF  
THE HONORABLE JERRY F. COSTELLO  
SUBCOMMITTEE ON AVIATION  
HEARING ON  
CONGESTION MANAGEMENT IN THE NEW YORK AIRSPACE  
JUNE 18, 2008

- I welcome everyone to our Subcommittee hearing on  
Congestion Management in the New York Airspace.
  
- I want to welcome our colleagues, Senator Charles Schumer,  
and Congressman Chris Shays, to our hearing. I am  
interested in hearing their perspectives on this issue.
  
- Over the last year, we have seen record delays and congestion  
in the skies with nearly 27 percent of flights delayed,  
according to the Bureau of Transportation Statistics (BTS).  
The Department of Transportation Inspector General (DOT  
IG) found that of those delayed, 88,234 flights were delayed  
over an hour; 7,659 had ground delays of between two to

three hours; and almost 1700 flights were delayed over three hours.

- The New York area airports have been hit particularly hard with delays. According to the BTS, less than 60 percent of flights arrived on-time at these airports in 2007. These airports, at present, do not have adequate capacity to meet the demand and, as such, the Department of Transportation (DOT) has capped operations at JFK, LaGuardia, and Newark; 83, 83, and 75 slots respectively.
  
- I believe any type of administrative cap is a short term solution to a long term problem. At O'Hare for example, the short term solution to congestion and delays at the airport was to cap the airport. The long term solution is making additional capacity improvements, like the O'Hare

Modernization Program. On Monday, the FAA announced that the cap is being lifted as the new runway comes online in the Fall.

- DOT is not only proposing to cap the NY airports, but also to auction a percentage of those slots at each airport. Many have questioned both the DOT's legal authority for such a proposal, and the likelihood that slot auctions would decrease congestion and delays. Under one of the proposals, the auction revenue would revert to the air carriers -- in no way guaranteeing that the proceeds would be used to mitigate congestion and delays in the New York airspace.
  
- In my view, auctioning slots is a bad deal for consumers. During these tough financial times for our carriers, consumers are being asked to pay more for less. Any

additional costs to access these markets more than likely would be passed on to consumers, resulting in higher fares and absolutely no guarantee of congestion and delay reductions. Further, service to small communities has already been affected by carriers pulling down capacity because of increased fuel prices. Should auctioning be allowed, carriers could potentially limit service to small communities in favor of access to more lucrative markets.

- I am interested in hearing from our witnesses on how they believe the DOT caps and slot auctioning proposals will affect service and pricing in the New York airspace, and if there will be any significant reduction in congestion and delays as a result of these measures.

- With that, I want to again welcome our witnesses today and I look forward to their testimony.
  
- Before I recognize Mr. Petri for his opening statement, I ask unanimous consent to allow 2 weeks for all Members to revise and extend their remarks and to permit the submission of additional statements and materials by Members and witnesses. Without objection, so ordered.

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STATEMENT

BY  
CONGRESSMAN ELIOT ENGEL, OF NEW YORK

TO  
SUBCOMMITTEE ON AVIATION

FOR HEARING ON  
CONGESTION MANAGEMENT IN THE NEW YORK  
AIRSPACE

JUNE 18, 2008

Chairman Costello, Ranking Member Petri--

Thank you for allowing me to testify before your subcommittee today. I am pleased to see that you are taking up such an important topic, and I appreciate the opportunity to discuss this issue as it relates to the 17<sup>th</sup> District of New York, which I am privileged to represent.

Early last year, we were informed by the FAA of their plan to implement a redesign of the airspace in the northeast, which would negatively affect Rockland County, which I represent. I wanted to know more about the redesign, so I investigated the maps and other

materials on their website, and my staff did the necessary research. After looking at the information, I could not determine how many more planes would be flying over my District if the FAA changed the airspace to their preferred alternative. The maps were extremely vague, with no landmarks or cities identified.

Only through persistent inquiries to the FAA, most of which yielded little new information, did I finally learn that their plan would send up to 400 additional flights every day over Rockland County, at altitudes as low as 5,000 feet. This translates to one flight every two to three minutes over a previously quiet suburban area.

Although I strongly disagreed with their decision to send hundreds of new planes over Rockland every day, the plan itself wasn't the FAA's only problem. The bigger issue was how they tried to implement this plan without telling the very people who would be most affected by the redesign. Although a number of town hall meetings were held in the region, the FAA avoided going to Rockland County. Only through my efforts did I finally get the FAA to hold a town hall meeting in Rockland County, where 1,200 attended and spoke in universal opposition to this plan. Before this meeting the FAA arrogantly decided not to consider Rockland County's views. The FAA maintained it was too late to take their voices into consideration. Of course, it would be too late if they stubbornly kept their mindset of ignoring the views of Rocklanders before the close of the official comment period. At least the FAA did eventually meet my demands and come to Rockland to listen to my affected constituents. Unfortunately, the FAA didn't learn from the universal opposition to their failed plan, as they continue to pursue the flawed redesign plan.

Throughout the whole process, the FAA has made it difficult, if not impossible, to get accurate information on the effects of the airspace redesign. For example, over a year after it was announced

to us, we STILL don't know how loud it will be when 400 planes fly overhead every day. We don't know how much additional pollution this will cause. We don't know how it will affect the disproportionate rate of childhood asthma in my District. This level of secrecy is simply unacceptable.

Everyone in this room knows that we must do something to prevent this summer from turning into the disaster of delays we experienced last summer. However, it seems to me the solution is not to implement a flawed airspace redesign proposal that will relieve little, if any, congestion. The FAA estimates that this will possibly save a couple of minutes per flight. However, they can't say this for sure. Last year, all Members supported the call for a GAO to study the effectiveness of this redesign. And despite the fact that the GAO is currently studying whether this will actually have any benefit on congestion, the FAA is rushing full speed ahead to implement their plan before the study is completed.

Over time we have witnessed a number of different strategies to reduce regional delays without adversely affecting thousands of people. Reinstating flight caps at Newark, La Guardia and JFK can help to reduce delays. Opening up military airspace, as the President did over the holidays, is another way to help. Expediting the implementation of the NextGen air traffic control system will offer positive benefits as well.

I ask my colleagues of this subcommittee to put yourself in the position of the 300,000 people who live in Rockland County, as well as the countless others the FAA failed to properly consult in the drafting of this flawed proposal. Think about trying to read a book in your quiet living room, and then imagine someone turns on the vacuum cleaner every two minutes for the entire day. My constituents choose to live in Rockland County because they wanted to get away from the noise of the city. They didn't choose to buy a house next to an airport. They live 30, 40, even 50 miles

from the nearest major airport, and they have had little say in this redesign plan. I ask you to take this lesson into account: today's airspace redesign harms people and their quality of life in my district. Tomorrow, another redesign effort can have the same negative impact on your constituents. If this plan goes forward, I fear for the quiet neighborhoods across the county.

Mr. Chairman, Ranking Member Petri, I thank you again for convening this hearing, and for allowing me to testify on this important issue.



Statement of Rep. Harry Mitchell  
House Transportation and Infrastructure Committee  
Subcommittee on Aviation  
6/18/08

--Thank you Mr. Chairman.

--And thank for your continued leadership in addressing our aviation system's capacity issues.

--As you know, delays at just a handful of airports, in the New York area or elsewhere, can have debilitating ripple effects on the rest of the nationwide system.

-- According to the Department of Transportation's Inspector General, just seven airports now account for 72 percent of all air travel delays.

--And these delays are significant.

-- 2007 was the second worst year in history for airline delays since they started keeping comprehensive statistics. More than a quarter of all flights were delayed.

--And as demand for air travel increases, the need for additional capacity is becoming even more acute.

--Despite recent flight cuts, the FAA forecasts that, between 2008 and 2021, aviation passenger traffic will increase by 49 percent.

-- In my home state of Arizona, this kind of long-term demand is growing even more rapidly.

--Phoenix Sky Harbor Airport is already the nation's 8<sup>th</sup> busiest, and the FAA is warning that the metropolitan area will need significantly more capacity by 2025.

--If we fail to expand the Valley's aviation capacity, we could end up being the next big, national aviation bottleneck.

--The good news is, we have a unique opportunity to do just that.

--Unlike New York, we have the opportunity to develop another commercial airport to provide additional capacity.

--Thanks to a lot of hard work by our local leaders, we are developing Phoenix-Mesa Gateway Airport as a compliment to Sky Harbor.

--I want to thank you again, Mr. Chairman, for taking the time earlier this year to come see for yourself what we're doing to increase capacity in the Valley.

--I know you understand how important these capacity issues are.

--I look forward to today's hearing.

-- I yield back.

STATEMENT OF  
THE HONORABLE JAMES L. OBERSTAR  
CONGESTION MANAGEMENT IN THE NEW YORK AIRSPACE  
JUNE 18, 2008

I want to thank Chairman Costello and Ranking Member Petri for holding this hearing to discuss the complex issue of air traffic delays in the New York airspace. In particular, this hearing focuses on Department of Transportation's (DOT) efforts to impose administrative caps and initiate slot auctions at New York's three main airports: LaGuardia, John F. Kennedy International (JFK), and Newark Airport.

One of the most difficult issues that we face is the growing problem of congestion and delays. According to the DOT, 2007 was the second worst year for delays since 1995, with nearly 27 percent of flights arriving late, and unprecedented ground delays. This is especially true at the New York airports. Approximately one-third of the nation's flights and one-sixth of the world's flights either start or pass through the airspace that supports LaGuardia, JFK and Newark. Accordingly, delays in the northeast have a rippling effect across the country.

In 2007, the BTS lists JFK, LaGuardia, and Newark as the three worst on-time arrival major airports in the United States. Less than 60 percent of flights at these airports arrived on-time. According to the BTS, the first third of 2008 was not much better for these airports: LGA ranked last, EWR 3<sup>rd</sup> worst and JFK 6<sup>th</sup> worst for on-

time arrivals. Even though in the last twelve months scheduled flights to LGA and EWR fell almost 3 and 4 percent respectively, delays continued to plague these airports. At JFK scheduled flights have increased 12 percent in the past twelve months, and since 2000, they have increased 27 percent. While other parts of the United States may see a downturn in traffic due to air carrier capacity decreases, flights to the New York area airports are still very much in demand.

Since last summer, the DOT has taken several steps to combat delays in the New York airports, including imposing administrative caps at LaGuardia, JFK and Newark. In addition, the DOT has proposed to conduct slot auctions at all three airports. I have several serious concerns with the Department's slot auction proposal.

First, I have learned that FAA believes that it can implement auctions without legislation authorizing them. Many question whether the FAA has the legal authority to impose slot auctions, arguing that the FAA's power to manage the airspace does not include the authority to lease landing rights, conduct an auction of them, and then retain and use the proceeds for further congestion mitigation or allow the carriers to keep them, in the absence of clear delegation of Congressional authority. The FAA itself determined in 2006 that it lacks the power to implement congestion pricing or slot auctions. In a proposed rulemaking regarding LaGuardia Airport, the agency stated 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.” However, in the current proposals, the FAA appears to be taking the position that it has the right to charge for its services on the basis of the highest bid, rather than the cost to FAA of providing the service. FAA needs to explain what statutory authority it has for assessing this type of charge.

Second, I am seriously concerned that imposition of slot auctions could limit competition by preventing entry of new carriers and limited incumbent air carriers, that often do not have the resources of the legacy air carriers to buy the slots necessary to remain viable and competitive. In addition, auctions could increase the monetary cost to travelers in the New York-metro area, with no guarantee of delay reduction and a potential loss of flights and service options.

Moreover, if carriers are forced to cut back on existing schedules, service to small communities could decrease because there will be pressure on air carriers that lose slots to move slots currently used for small community service to larger, more lucrative markets. Similarly, slots purchased at an auction are likely to be used only for larger markets. This would limit the opportunities of those in smaller communities to have reliable access to the New York area and could also erode the hub structures formed at the New York area airports.

DOT has said that it intends to allow slots acquired at an auction to be subsequently sold. This would allow carriers to profit from the sale of a public resource. Buying and selling slots would create the same problem as auctions with respect to competition, small community air service and consumers. There is a broader policy issue: I question whether the sale of slots to a carrier that may not produce any real competition is the best use of these slots, which are a resource in the public's domain.

I look forward to hearing the testimony of the witnesses today. The issue of delays and congestion in the New York area will not go away anytime soon. I hope we can all work together to find some near-term solutions to avoid total gridlock, as we press ahead with critical, long-term improvements.

**Testimony of Congressman Christopher Shays**  
**“Congestion Management in the New York Airspace”**  
**Subcommittee on Aviation**  
**House Committee on Transportation and Infrastructure**  
**June 18, 2007**

Chairman Costello, Ranking Member Petri and the Aviation Subcommittee, I appreciate the Subcommittee’s willingness to discuss congestion mitigation strategies for the northeast and look forward to a meaningful discussion about the benefits, drawbacks and unintended consequences redesigning the airspace will have on air travel, congestion, the environment and quality of life on the ground.

First, let me say I understand the Federal Aviation Administration’s (FAA) desire to improve efficiency at LaGuardia, Kennedy, Teterboro, Newark and Philadelphia. Many business travelers are frustrated by the long delays at these airports.

Airline passenger volume continues to increase and the percentage of flights delayed 15 minutes or more in 2007 is close to surpassing the record set in 2000. Statistically, there was a significant increase in congestion and delay throughout the national aviation system in 2007. The situation has been especially noticeable at certain key airports, like JFK. Seventy-five percent of chronically delayed flights nationwide arrive and depart from New York airports.

The Bureau of Transportation Statistics reported between 1995 and 2008, the number of airline operations increased from 1,785,000 flights to 2,389,000 flights, or 25 percent. During that same time period, the percentage of on-time arrivals dropped from 78 percent to 72 percent, while the percentage of late arrivals increased from 15 percent to 21 percent.

With that being said, I am concerned the FAA and DOT are apparently implementing two strategies for congestion mitigation irrespective of one another. The first is the proposed air space redesign, and the second is the imposition of flight caps at the nation’s busiest airports. Furthermore, the FAA’s continued refusal to consider the impact market-based changes will have on the need to redesign the airspace is troubling.

Under the Integrated Airspace Alternative, the FAA’s preferred airspace redesign plan, significant airplane traffic would be routed over parts of Fairfield County at the expense of the region’s quality of life. Redding, Ridgefield, Weston, Wilton, New Canaan, Darien and Stamford would experience significant air traffic overhead because the redesign would shift the approach for flights to LaGuardia from the north.

The FAA has failed to provide any noise mitigation to our region, despite the wide swath of land over the Fourth Congressional District that will be adversely affected by planes flying at altitudes as low as 4,000 feet in the southern part of the district.

The FAA is also continuing to implement its redesign despite DOT's auction proposal that could alleviate the need to redesign the airspace altogether.

#### Inadequate noise mitigation strategies

The FAA is not required to present noise mitigation strategies even though there is significant impact on the region. Because there is no mandate for the FAA to consider quality of life, redirecting air traffic over previously unaffected areas is given the same weight in the agency's decision-making process as keeping traffic over areas that already have air traffic.

Even more concerning, no attempt has been made to utilize unpopulated, or less populated, tracts of land, industrial or commercial zones, major highway systems or large bodies of waters for mitigating noise impact, or to set minimum altitudes.

If the FAA had to consider the quality of life impacts of the Integrated Airspace Alternative, it would have never concluded this airspace redesign was the appropriate first attempt at relieving air traffic congestion.

It is unreasonable to design airspace without regard to impacts on the ground. For this reason, the FAA should adopt a "no action" alternative at this time until other congestion mitigation strategies, such as the auction proposal or moving peak flights to off-peak hours, have been thoroughly examined and disqualified.

#### Government Accountability Office (GAO) Study

On September 20, 2007, Congressmen Rodney Frelinghuysen, Scott Garrett, and Elliot Engel and I offered an amendment to H.R. 2881, the FAA Reauthorization Act, requiring the GAO to assess the strengths and weaknesses of the FAA's environmental impact study, the costs and impacts of redesign, and whether the FAA followed due process in creating their proposal. It would be interesting to learn, for instance, if the GAO believes that what the FAA is proposing to do at LaGuardia and Newark would eliminate the need for a redesign.

I am hopeful this study, which is expected to be released on August 1 of this year, will reveal options as effective as redesigning the airspace to mitigate congestion that will not result in any new residents being affected by air-noise.

#### Other Congestion mitigation strategies

It seems to me there are other solutions that should be considered before implementing such a radical alternative that negatively affects so many thousands of residents throughout the Northeast.

The FAA has consistently stated the only way it can reduce congestion and travel delays is by redesigning the airspace. However, the case for the redesign is built on the flawed

premise that delays are caused by the design of the airspace. This theory neglects to account for inadequate terminal, runway and gate capacity; insufficient Air Traffic Controller Staffing; weather; and over-scheduling flights. It also fails to account for the impact market-based strategies could have on congestion.

What is particularly frustrating about the FAA's actions is the Department of Transportation's implementation of market-based solutions for congestion relief, while the FAA refuses to consider the impacts of these proposals on airspace congestion. We believe moving flights out of peak travel times and implementing slots and quotas at congested airports would have the same effect as a redesign, and must be considered.

I have to ask the FAA and this committee: is the airspace redesign the best we can do to mitigate airline congestion? In implementing the redesign, is it possible we are overlooking other market-based solutions to airline congestion? I believe the answers to those questions are no and yes, respectively.

The DOT's imposition of flight caps at LaGuardia, Kennedy and Newark as a congestion mitigation strategy presents a unique opportunity to evaluate a congestion mitigation strategy that would not require redesigning the airspace. I believe redesign implementation should be postponed until we can determine whether these caps effectively reduce delays and congestion at three of our busiest airports.

I am interested to assess the effect the temporary cap has on passenger service and airline delays at Newark upon its expiration on October 29, 2008.

The FAA has also implemented an 83 flight-per-hour cap at Kennedy in New York and Newark in New Jersey. Last year, Kennedy handled about 100 flights per hour and Newark about 95 flights per hour at peak times. The caps will remain in place at Newark and Kennedy for two years, which will provide an opportunity to compare flight delays and cancellations.

To generate revenue for additional market-based congestion mitigation strategies, the DOT has proposed an auction system for flights during peak hours whose profits would be placed in the General Aviation Fund and used for mitigation activities like taxiway expansion and Air Traffic Control System (ATCS) upgrades. The auction system will provide incentives for airlines to operate more flights during off peak hours.

For example, if a peak travel time occurs between 7 a.m. and 9 a.m. at LaGuardia, it seems to me we should encourage airlines to schedule flights between 5 a.m. and 10 a.m. to reduce the volume of passengers traveling at once.

Simultaneously, we need to examine the schedules of airlines operating out of overbooked metropolitan airports and adjust their arrival times to account for predictable delays.

For instance, on a Monday morning at LaGuardia, there are regularly more than a dozen commercial flights on the taxiway waiting for clearance to take off. Since the scheduled departure times for these flights are known in advance, I believe it is reasonable require the airlines to provide a more accurate estimated time of arrival.

Finally, I am concerned that increasing capacity in the air will not matter if we don't provide additional terminals and runways to get more planes off the ground. The bottom line is there is a finite number of planes that can safely take off and land in a given period of time.

#### Growing Opposition

In addition to an inadequate assessment of alternative congestion mitigation strategies, it seems to me the FAA has overlooked the growing opposition of residents on the ground.

A petition circulated throughout Connecticut's Fourth Congressional District has garnered the support of 5,500 residents. The petition stated, "We believe that the true social costs of the FAA's proposal have not been adequately evaluated, particularly the increased noise levels, which will cause irreparable harm to our communities."

Jim Gerlach (PA), Rob Andrews (NJ), Joe Sestak (PA), Scott Garret (NY), John Hall (NY), Eliot Engel (NY), Rodney Frelinghuysen (NJ), Nita Lowey (NY) and I wrote FAA Acting Administrator Robert Sturgell on March 12 urging the FAA to postpone the implementation of the airspace redesign. Concern is mounting from the tri-state area.

Our letter stated, "If the GAO finds significant flaws in this plan or the methodology used to develop it, Congress should have an opportunity to work with the FAA to address these concerns before its implementation is irreversible."

The bottom line for me is the FAA is using a flawed process to reach an even more flawed conclusion. We cannot simply ignore the impacts of air noise on the ground. Subsequent attempts to measure and then mitigate the hugely negative impacts are inevitably inadequate. We should all take a step back here and look at the big picture, and then focus on the less radical alternatives before subjecting millions more to the burden of air noise.

Thank you for your time and consideration of the unintended consequences the redesign of the New York/ New Jersey/Philadelphia Northeast Airspace will have on the ground.

**TESTIMONY OF WILLIAM R. DECOTA  
AVIATION DIRECTOR  
THE PORT AUTHORITY OF NEW YORK & NEW JERSEY**

**U.S. HOUSE OF REPRESENTATIVES  
TRANSPORTATION AND INFRASTRUCTURE COMMITTEE  
SUBCOMMITTEE ON AVIATION**

**Hearing on Congestion Management in the New York Airspace  
June 18, 2008**

Good morning. I am William R. DeCota, the Director of Aviation for the Port Authority of NY & NJ, which operates LaGuardia, John F. Kennedy International, Newark Liberty International, Stewart International and Teterboro airports.

The Port Authority is committed to promoting safe and efficient air travel connecting the New York metropolitan region with the rest of the world. Our three major airports handle over 109 million passengers and 2.7 million tons of cargo and generate over \$57 billion in annual economic activity. The Port Authority has taken various steps to enhance capacity and meet the demand for air travel. Over the past ten years, we have invested over \$15 billion in upgrades to our airports and have programmed an additional \$6 billion over the next decade. In November 2007, we purchased the leasehold interest in Stewart International to help meet the growing regional demand for air travel. Also in 2007, the Port Authority's Chairman, Anthony Coscia, convened the Flight Delay Task Force, composed of senior airline, business, FAA and state and local leaders which identified over 77 initiatives to improve capacity and reduce delays at our airports.

We also know that the FAA has made investments in aeronautical systems. However, despite these investments, the FAA has been unable to accommodate the same number of annual operations in the New York region as they were a decade ago. We are confounded by this.

The Port Authority has also attempted to work with U.S. DOT and FAA officials on the problem of flight delays for nearly a decade.

In April 2000, Congress had the noble goal of opening up access to the nation's most important, popular, yet constrained airports to stimulate competition and provide opportunity for entry to new markets. For the New York area airports, Congress allowed the FAA and DOT nearly seven years to figure out an appropriate framework.

The FAA took the challenge, engaging the National Center of Excellence for Aviation Research (NEXTOR) universities to examine a range of administrative as well as market-based solutions. No one can deny that the FAA did not spend a lot of time and money on this research effort.

However, we grew to fear these academic exercises. While the professors might be able to explain "in theory" how a market-based solution could solve all the problems at my airports, they were never able to demonstrate how it would work

in practice. As the operator of the New York area's key airports, with our proprietary rights and responsibilities to allocate gates and terminal facilities and manage the groundside facilities, the Port Authority attempted to fully engage the DOT and FAA as well as the airlines and other key stakeholders in evaluating potential options to enhance capacity and efficiency and to promote competition and diversity of service at the airports.

Unfortunately, after seven years we are no closer to a workable solution. Rather, the Administration has chosen to impose an approach that we, as the airport operator, think is not only illegal but also disastrous; that the vast majority of the carriers, including the legacy and low cost carriers, are opposed to; and that consumers, represented by such groups as the Air Travelers Association and the Business Travelers Coalition, believe will ultimately harm rather than help them.

The SNPRM for La Guardia and the NPRMs for JFK and Newark are attempting to impose slot auctions despite our collective concerns. We particularly regret that the LGA SNPRM provided only 60 days for comment despite being incomplete; it fails to provide either specific auction rules or the statutory authority for such activity by the FAA. It is also deficient in its supporting data and analyses. Despite requests from both airport and airline stakeholders for a reasonable comment period and corrected information necessary for a proper evaluation of the proposals, it appears that the priority is to fast-track these half-baked, unpopular proposals for implementation before the end of the year.

We are concerned that the Administration's approach is fundamentally flawed, unworkable, unresponsive to the problem, and disruptive to the airport, to air carriers schedules, and ultimately, to the traveling public.

To start, we believe that the FAA lacks the statutory authority to lease slots at rates determined by an auction. *Nowhere in the Federal Aviation Act is there a declaration that slots are property and nowhere is there the authorization to auction or lease slots for monetary compensation there from.* We believe that the FAA would need Congressional authority to lease slots at rates determined by auction. The FCC's auction of radio wave spectrum serves as an example of Congressional authorization required to endow an agency with the power to raise revenue by requiring payment in return for permitting someone to engage in regulated conduct. The FCC, like the FAA, did not have the authority to raise revenue by permitting regulated conduct (there broadcasting, here flying into LaGuardia) until Congress granted it that authority in 1993 to auction off permission to use specified frequencies. We believe that without Congressional authorization, the FAA's auctioning of "slots" amounts to an unauthorized tax without the Congressional authorization to do so.

We are also very concerned that these proposals represent an attack on the proprietary rights of airport operators and will do significant damage to long-standing business arrangements at the New York area airports. However, rather

than address this issue at this time, I want to focus my comments on the shortcomings of DOT's scheme.

The SNPRM fails to achieve one of its two primary objectives – reducing congestion and delays at LaGuardia. Despite no changes in airport capacity, and declining aircraft activity, LaGuardia delays have increased by more than 50% from 2004 to 2008. The Port Authority therefore concludes that airspace capacity has declined. The FAA SNPRM clearly defines airspace management as the FAA's responsibility. The SNPRM fails to acknowledge that airspace capacity has declined, fails to provide any evidence or analysis of what the new airspace capacity is, fails to provide any indication of whether the FAA can restore airspace capacity to previous levels, and fails to establish the cap at a level that matches current airspace capacity which is now below runway capacity. While the DOT and NEXTOR have been obsessed with promoting auction schemes, they have failed to address one of their core responsibilities.

**Auctions are not the solution.** For seven years the NEXTOR professors tried to show us how auctions could work in the aviation context. With great theoretical detail, they spoke on the mechanics of the auction and their philosophical belief that a market-based solution would solve all issues. However, each of the NEXTOR presentations would stumble at the same place – there was no recognition of the real world concern of how the winning bidder would have access to the appropriate gate, check-in facilities, baggage belts,

lounges, and other terminal and landside facilities needed to actually operate the slot.

A member of my staff referred to this as the "Fatima moment". After espousing all wonders of how an auction would work, the professors would simply say that the Port Authority would figure out how to provide operational sustenance to the new carrier – that is, a miracle would occur.

From this airport operator's perspective, it is not that easy, and I cannot operate my airports in this manner.

We have discussed these concerns at length with the FAA, DOT and their consultants. We gave them numerous tours of the Airport and identified the various constraints that we operate under at LaGuardia. Despite these efforts, the Administration's original NPRM for LaGuardia contained some rather disturbing language on this subject. Although they acknowledged the landside constraints and our existing business arrangements, they and NEXTOR tried to assume them away by reminding the Port Authority about its grant assurances that ensure access to its airports. While we have made and continue to make reasonable efforts to accommodate new entrants and others at our airports, we cannot accept wholesale disruption of our operations.

Their proposal is fundamentally flawed in that it did not properly marry the airside capacity with landside capacity. We can only imagine what would have ensued if DOT and their professors were around when the transcontinental railroad was constructed in the 1860's – the east and the west would have never met in Promontory Summit, Utah.

**Gates and terminal facilities are not interchangeable.** We applaud this Committee's recognition that airport gates are not interchangeable in hearings conducted in 2000. However, the experts at DOT fail to acknowledge this fact. A wide-body aircraft cannot be accommodated at a regional jet gate. A new entrant carrier cannot operate efficiently if its flights can only be accommodated in different terminals. Furthermore, the Port Authority has developed various business arrangements – legal, binding contracts -- with our airline tenants that provide the operational framework and financial underpinnings for the development of the airports. These contracts cannot be ignored.

The professors providing auction advice to the Administration admitted in a publication released last year that they "... **assume** that the FAA has established the number of slots that will be available for auction based on runway and landside capacities. The leaseholder of that slot is given the right to trade or sell this slot for any portion of the leasing period in a secondary market. **The leaseholder also receives the corresponding rights to terminal space, e.g. ticketing, baggage, and gating facilities and will pay the "going rate" for**

**these facilities based on the current long-term contracts with the local airport authority."**

This is not the case. And, it highlights the fundamental flaw in the Administration's scheme. Despite some recent efforts by the FAA to address flight delays and congestion and identify options to enhance capacity, the DOT has been obsessed with imposing so-called "market-based" auctions as an ideological solution ignoring all practical realities and shortcomings.

And, we believe that these shortcomings are significant.

We are concerned that auctions will reduce, not enhance, competition. The auction schemes will strongly favor those larger airlines with the most cash on hand to buy slots at a price above those with less cash on hand. It is possible that the larger carriers could use their relatively stronger balance sheets (despite the current financial challenges faced by the industry) to outbid the smaller, non-legacy airlines that help stimulate competition. The "value" of a slot could be driven by the benefits a large carrier would reap from eliminating competitors rather than from the operation of the slot itself. The SNPRM appears to encourage this behavior since it explicitly exempts so-called Unrestricted Slots (which are slots awarded via an auction) from any minimum usage standard. In fact, our analysis indicates that the low-cost carriers that have gained access to

LaGuardia will lose the largest share of their operations. The result could be a significant increase in airfares.

We are also concerned that the number of destinations, particularly small communities, served from our airports will be impacted. The Port Authority has long been an advocate for ensuring that service to small communities is preserved and our own analyses has shown that this service was particularly vulnerable to market-based solutions. We have suggested various proposals over the years to include either a set-aside or slots or gates for small communities.

The impact on small community service has been evident during the first NEXTOR exercises conducted in 2004 about LGA with airline and airport participants. The results showed that communities with populations under 500,000 were likely to lose frequency of service, if not lose the service completely. In a presentation prepared for the Transportation Research Board in January 2005, NEXTOR acknowledged that for communities of this size, the number of frequencies was slashed from 130 per day to 60 and for communities between 500,000 and 1 million, the number of operations plummeted from 118 per day to 60.

Let me give you an idea of the service that is vulnerable: cities such as, Huntsville, Lexington, Des Moines, Flint, Bangor, Madison, Ithaca, Roanoke,

Knoxville... unfortunately I could go on ... could not only lose service to LGA, but to the greater New York City area. Others, such as Myrtle Beach, Columbus, Richmond, Savannah, Jacksonville, and Buffalo could see reduced service and higher air fares.

And this is not only a New York phenomenon. In 2005 NEXTOR conducted a study called: Using Auction-Based Slot Allocation for Traffic Demand Management at Hartsfield Atlanta International Airport: A Case Study. It found that "As expected, when money is the only determination factor, small aircraft with less revenue are the first to be eliminated from the auction process.... As a result, potential distortions of the marketplace could impact negatively access to small communities or fair competition."

More recent analysis from the NEXTOR professors has identified three communities that would lose service altogether, but given the economics of the aviation industry at the moment; I firmly believe that this analysis is woefully underestimating the impact.

Small communities in general are served by fewer carriers than larger ones. There are 21 small and non-hub markets with service to LaGuardia on a single carrier. When a small community loses service on its only carrier to LaGuardia, it is unlikely that community will regain the service, since the carrier gaining the slots in the auction may not even serve the community in question. The FAA did acknowledge that the cost per seat of the auction price is "2 to 6 times higher for

regional jets and turboprops". Because that most of the small and non-hub markets are served by regional jets and turboprop aircraft, the auction schemes give these markets a significant cost disadvantage against larger markets. There is a very real risk that a significant portion of the small communities will lose their air service to LaGuardia and not gain a replacement carrier.

It is clear to us, given these fundamental flaws, that DOT's proposed auction scheme is not the right solution for the New York airports. Although market-based solutions may have a place in the aviation industry, such approaches must be carefully crafted together with the airport operator who is in the best position to know how and when it can be employed.

We firmly believe that there are proven alternatives, such as an IATA-like scheduling process in conjunction with both local leasing practices and policies and a specific federal set-aside for small community service. If adopted, this approach would maintain competition, diversity of service and reasonable air fares for the traveling public. An IATA-like process would incorporate the airside and landside capacities into the slot allocation process as well as providing accommodations for new entrants. Local leasing policies would be important to promote the efficient use of facilities consistent with market demand. Federal rules could identify a certain portion of slots exclusively for service to small and non-hub communities.

We also believe that transparent buy/sell rules, along with the elimination of the current regulatory uncertainty, would establish a working market for slots. Most markets do not have auctions, but work and establish fair value without much difficulty. This secondary market would promote efficiency and competition by allowing carriers to sell and trade slots.

Further, we are advancing several major initiatives to enhance capacity at LaGuardia and the New York area airports including further airfield pavement projects to improve the efficiency of the airport, planning for a new central terminal building to increase gate size at LaGuardia, and the funding the Stewart Airport rail study to enhance Stewart as a viable alternative airport. We remain committed to working with the FAA and key stakeholders in advancing the right approach for the New York region airports.



**THE PORT AUTHORITY OF NY & NJ**

William R. DeCota  
Director

JUL 09 2008

June 27, 2008

Honorable Thomas E. Petri  
Ranking Republican Member  
Subcommittee on Aviation  
U.S. House of Representatives  
Washington, DC 20515

Dear Congressman:

Please find below our answers to your questions in response to the hearing your committee had on June 18<sup>th</sup>.

- *Can you describe the Port Authority's efforts over the past 10 years or so to reduce congestion?*

The Port Authority has taken many steps to enhance capacity and meet the demand for air travel. Over the past ten years, we have invested over \$15 billion in upgrades to our airports and have programmed an additional \$6 billion over the next decade. These include new terminals, roadways and rail access projects, runway access improvements, modernization of airfield instruments, and rehabilitation of runways and taxiways – all projects with the potential to add efficiency to airport operations and to reduce delay. We have also expanded runways and taxiways to handle the largest planes each airport can handle including the A380.

One particularly important initiative is the \$150 million JFK Flight Delay Reduction Program. This series of projects will increase operational flexibility on the airfield by creating capacity for simultaneous operations on the three runways and reducing queuing times on taxiways. Simply put, it will allow more planes to take off and land at any given time, getting passengers to and from their destinations.

Further, in November 2007, we purchased the leasehold interest in Stewart International to help meet the growing regional demand for air travel. The modernization and expansion of this airport is expected to help meet the growing regional demand for air travel and alleviate delays at the three major airports. Currently we are reviewing options to improve access to Stewart, including conducting a study on options for direct rail access to link Stewart to Manhattan.

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**THE PORT AUTHORITY OF NY & NJ**

Also in 2007, the Port Authority's Chairman, Anthony Coscia, convened the Flight Delay Task Force, composed of senior airline, business, FAA and state and local leaders which identified over 77 initiatives to improve capacity and reduce delays at our airports.

The Port Authority, since the passage of AIR-21 in 2000, has also focused on leading the policy review and technical analyses of a variety of administrative as well as market-based alternatives to address congestion issues and to promote the efficient use of our airports. We examined using a gate leasing policy to promote the efficient operation of LaGuardia.

- *Since the administration is only proposing to auction about 20 slots a year, it does not sound like it would be too disruptive. Am I wrong? Why would that be such a problem to the Port Authority?*

It is a problem. Just because the administration reduced the number of slots impacted under its auction scheme doesn't make a fundamentally flawed and bad idea any better. Our primary concern is that even a limited auction scheme will reduce competition and negatively impact small community service.

The Port Authority's goal has always been to address congestion and to promote efficiency, while enabling competition, access for new entrants, and preserving service to small communities. The auctioning of slots will do nothing to achieve those goals.

Worse, it will be a distraction for the FAA from its primary responsibility to address the worsening congestion and delays at LaGuardia Airport. We would ask why the administration is dedicating so many resources and making such an effort to impose an auction scheme that impacts "only" 14 to 36 slots a year under the two options when it has allowed delays to increase over 50% at the Airport over the past four years?

The proposal would also disrupt the Port Authority's existing business arrangements and leases with the airlines. The auction proposal could require the reallocation of two to five gates per year with significant costs incurred by the Port Authority and the airlines for relocation and restructuring of leasehold areas.

The administration's proposal is fundamentally flawed in that it did not properly marry the airside capacity with landside capacity. Gates and terminal facilities are not interchangeable. We applaud this Committee's recognition that airport gates are not interchangeable in hearings conducted in 2000. However, the experts at DOT fail to acknowledge this fact. A wide-body aircraft cannot be accommodated at a regional jet gate. A new entrant carrier cannot operate efficiently if its flights can only be accommodated in different terminals. Furthermore, the Port Authority has developed various business arrangements - legal, binding contracts -- with our airline



**THE PORT AUTHORITY** OF NY & NJ

tenants that provide the operational framework and financial underpinnings for the development of the airports. These contracts cannot be ignored.

Sincerely,

A handwritten signature in black ink, appearing to read "William R. DeCota". The signature is fluid and cursive, with a large initial "W" and "D".

William R. DeCota  
Director  
Aviation Department



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**Testimony of Edward P. Faberman  
Executive Director, Air Carrier Association of America**

**Before the**

**U.S. House of Representatives  
Committee on Transportation and Infrastructure  
Subcommittee on Aviation  
Regarding**

***“Congestion Management in the New York Airspace”***

**June 18, 2008**

ACAA Statement  
June 18, 2008

**UNITED STATES HOUSE OF REPRESENTATIVES  
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE**

**Congestion Management in the New York Airspace**

**June 18, 2008**

**STATEMENT OF EDWARD P. FABERMAN  
EXECUTIVE DIRECTOR, AIR CARRIER ASSOCIATION OF AMERICA**

Good morning Chairman Costello, Ranking Member Petri, and Members of the House Transportation and Infrastructure Subcommittee on Aviation.

I am very pleased to be here today to talk about issues that are critical to the nation's air carriers, communities throughout the country, and to the traveling public. My name is Ed Faberman and I am Executive Director of the Air Carrier Association of America. The ACAA and its low-fare carrier members are dedicated to providing affordable airfare travel options to all American travelers who receive significant benefits when low-fare options are available in their communities.

We thank this Committee for holding this hearing, for your dedication to enhancing the nation's ATC system, and for supporting the growth of air commerce and airline competition. We are at a point in time that if steps are not taken to ensure that the dream of deregulation will remain an essential part of U.S. airline service, we may see the disappearance of travel options for millions of travelers.

We note statements on these issues by committee members:

Chairman Oberstar:

The House Subcommittee on Aviation (May 14, 2008) – “[A] reduction in competition [is] likely to lead to higher fares, a deterioration in service, and financially weakened survivors.”

Hearing of Subcommittee on Aviation (March 18, 1999) “deregulation has saved the traveling public \$12 billion a year. And the answer to much of the woes that we are hearing today is competition, not necessarily more regulation... The Department has to be vigilant to assure that there is competition for carriers, because competition is the best way to assure that they clean up their own act.”

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Ranking Member Mica

House Subcommittee on Aviation (July 12, 2006) – “It is clearly in the best interest of consumers for the invisible hand of the marketplace, not the heavy hands of Congress or federal bureaucrats, to set air fares and service options.”

Subcommittee Chairman Costello:

"Competition is what is keeping prices reasonable today. If you eliminate competition, the fewer airlines you have, the fewer choices people have."

February 15, 2008 NBC News broadcast.

Subcommittee Ranking Member Petri

House Subcommittee on Aviation (April 25, 2007) “Overall, airline deregulation has brought better service and lower prices to the majority of communities around this Country.”

These statements support the need for the Department of Transportation to take immediate steps to ensure that true competition will continue.

We appreciate the situation faced by Secretary Peters and Acting Administrator Sturgell in addressing delay and congestion issues that are once again plaguing the industry and disrupting the travel plans. We are glad to be discussing these issues alongside D.J. Gribbin and representatives of the Port Authority and other carriers. Unfortunately, these are not new issues.

What year was this statement made:

“Throughout the year, there were strong indications that the airport and airway system was on the verge of saturation, especially within the so-called golden Triangle -- Chicago, New York and Washington. Flight delays were far beyond mere annoyance and inconvenience. Time spent in holding patterns became all too frequent. For example, traveling between New York and Washington sometimes took as long as four hours. The airports serving all three of these cities and the airway system connecting them were simply congested during too many hours each day. This deplorable situation was

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uppermost in the minds of local and federal transportation officials, including DOT/FAA, and local airport operators. And in the minds of airline and their passengers. Everyone agreed that airport and airway capacity in critical areas of the nation needed to be increased, but there was no consensus as to how soon this could be accomplished, or exactly what to do in the meantime.”

THIS STATEMENT DESCRIBED CONDITIONS IN 1968!!

During the fall of 1968, the Secretary and the Acting Administrator of the FAA expressed the belief that governmental action limiting operations at some of the busiest airports would probably become necessary. Unfortunately, those restrictions have now been in place for **40 years**.<sup>1</sup>

<sup>1</sup> FAA has on multiple occasions in the past addressed growing congestion problems. Unfortunately, the fixes developed have closed markets and limited competition. In 1968, the Acting Administrator of the FAA (Notice of Proposed Rule Making and Notice of Public Hearing; 33 FR 12580, September 5, 1968) stated:

Delays of varying magnitude are encountered at many terminal areas... Congestion at these terminals frequently requires the imposition of traffic flow restrictions creating backup delays throughout the air transportation system. A reduction in air traffic delays can be accomplished only by increasing the capacity of the system or decreasing the demands placed upon it. Certain changes in air traffic and airport procedures and practices are already planned by the FAA to increase aircraft handling capacity.

FAA has on multiple occasions in the past addressed growing congestion problems. Unfortunately, the fixes developed have closed markets and limited competition. In 1968, the Acting Administrator of the FAA (Notice of Proposed Rule Making and Notice of Public Hearing; 33 FR 12580, September 5, 1968) stated:

Delays of varying magnitude are encountered at many terminal areas... Congestion at these terminals frequently requires the imposition of traffic flow restrictions creating backup delays throughout the air transportation system.

A reduction in air traffic delays can be accomplished only by increasing the capacity of the system or decreasing the demands placed upon it. Certain changes in air traffic and airport procedures and practices are already planned by the FAA to increase aircraft handling capacity.

On November 9, 1969, as a response to the delays in terminal areas, the FAA established the high density rule. When the rule was promulgated, the FAA stated, "the rule should be considered to be only a temporary solution." Unfortunately, thirty-nine years later the high density rule remains in place at Ronald Reagan Washington National Airport ("National") and La Guardia Airport ("LaGuardia") and may have to be reinstated at other airports to prevent continued delays.

The FAA addressed delays/congestion in 1984 and 1987:

There can be little doubt that our nation's air transportation system is currently facing a substantial delay problem. According to DOT, airlines and travelers suffered 39,000 delays of more than 15 minutes in July of this year alone... It

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While we agree that it is important to reduce delays and congestion throughout the system and create a method of distributing airport capacity for the long term, immediate steps must also be taken to ensure that airline competition and deregulation do not become only memories of a system that used to exist. If immediate steps are not taken to strengthen competition, we will forever lose those critical options.

The airline industry is at a defining point in its history. We have recently seen several low cost carriers file for bankruptcy and cease all operations. At the same time, airline costs are out of control and they continue to rise. As this happens, barriers to entry increase.

While we are supposed to have open markets and a deregulated system, as a result of the significant increase in operations added by the dominant carriers at EWR, JFK, and LGA, all New York airports are once again closed to competition (ORD is also closed to entry). After closing these airports, the Department has not taken the necessary, corresponding steps to promote entry and competition.

Airports that are slot controlled have less low fare service and competition than most other airports in this country. Legacy carriers control 95% of the slots at LGA, EWR and ORD. At LGA, small carriers are limited to 10 roundtrips.

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is premised on the view that a significant part of the delays stems from the hubbing practices of various carriers that results in the concentration of many flights within a short period of time every day. We tentatively concluded, however, that airline scheduling practices were a significant source of delays, since airlines appeared to be scheduling more flights at peak periods at major airports that could be accommodated by the available taxiways, runways, and airspace... Our show-cause order relied upon the excess schedules operated at Atlanta and Boston to show that airline scheduling practices cause much of the delay problem. [Docket 42410, "Application For Discussion Authority and Prior Board Approval of Carrier Agreements to Integrate Schedules," Order 84-8-129], "Order Granting Discussion Authority," August 31, 1984]

We find that the discussions are necessary to help alleviate the serious inconveniences caused the traveling public by the worsening delay problem, and that the discussions should therefore be approved and granted antitrust immunity. We are reluctant to authorize carrier schedule discussions, but the worsening delay problem demands that action be taken to help alleviate the problem. We believe that scheduling discussions are the only available alternative that can be (Docket 44634, "Discussion Authority For Carrier Agreements to Shift Schedules," Order 87-3-39, "Final Order Granting Discussion Authority," March 11, 1987)

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The one "closed" airport that has competition is JFK because the Department took specific action to provide JetBlue (formerly New Air) with significant entry at the airport when it first started its operation.<sup>2</sup>

When addressing closed airports, the Department has on multiple occasions emphasized the importance of preserving competition.

At the NY Scheduling Meeting (October 23, 2007), Secretary Peters stated:

"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."

FAA and DOT have repeatedly emphasized the importance of increased competition and frequently stated that establishing a competitive environment is a priority.<sup>3</sup> The LaGuardia Airport Congestion Management NPRM highlighted that

<sup>2</sup> JetBlue has a major presence at JFK because in Order 99-9-11 (September 16, 1999), the Department granted New Air Corporation (now JetBlue) 75 slot exemptions at JFK. In that order, the Department clearly emphasized the importance of low-fare competition at airports dominated by legacy carriers:

The GAO's 1996 study, Airline Deregulation: Barriers to Entry Continue in Several Key Domestic Markets (the GAO Report), stated that "control of slots by a few airlines greatly deters entry at key airports in Chicago, New York and Washington." We made clear our support for increased competition and our willingness to invoke available tools to promote competition when we stated in our January 6, 1997, response to the GAO Report that "the Department intends to be more receptive to considering competition as a factor in granting slot exemptions to new entrants under the exceptional circumstances criterion."

\* \* \* \*

As we noted earlier, many authorities, including members of Congress, have concluded that the High Density Rule is a serious barrier to entry, which has had a dampening effect on domestic airline competition.

\* \* \* \*

JetBlue's business plan is to bring to the New York metropolitan area and many of its short- and medium-haul communities of interest a route system of price-competitive transportation services comparable to those that Southwest Airlines has brought to other cities throughout the nation. It is indisputable that Southwest has had a singularly positive effect on fare competition in literally every market it has chosen to serve. In many other markets, other low-fare new entrants have also had a salutary impact on domestic fares. Wherever those carriers have gone, fare competition has followed and traffic has increased, in many cases dramatically.

<sup>3</sup> Promoting entry and competition is also an essential mandate placed on the Department by Congress when it enacted the Airline Deregulation Act of 1978 49 U.S.C. 1301 – which charges the Department with facilitating new entry and competition in the airline industry. Under 49 U.S.C. § 40101:

(a)...the Secretary of Transportation shall consider the following matters, among others, as being in the public interest and consistent with public convenience and necessity.

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there is clear statutory authority to promote competition when allocating slots/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. (Docket FAA-2006-25709, 71 Fed.Reg. 51360, Aug. 29, 2006.)

The “Notice of Alternative Policy Options for Managing Capacity at LaGuardia Airport and Proposed Extension of the Lottery Allocation,” June 12, 2001 (Docket 2001-9852), stated:

It is DOT’s intention to develop a full array of public policy tools to develop a comprehensive aviation strategy that focuses on ways to reduce delays, improve airport capacity management, enhance competition, and promote the efficiency of the overall aviation system.

The option should be flexible enough to allow policy makers the opportunity to address certain policy goals such as ensuring air carrier competition and service to small communities.

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(7) The prevention of unfair, deceptive, predatory, or anti-competitive practices in air transportation and the avoidance of

A. unreasonable industry concentration, excessive market domination, and monopoly power; and other conditions;

B. that would tend to allow one or more air carriers unreasonably to increase prices, reduce services, or exclude competition in air transportation.

(9) The encouragement, development, and maintenance of an air transportation system relying on actual and potential competition to provide efficiency, innovation, and low prices, and to determine the variety, quality, and price of air transportation services.

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We are not operating in an environment where costs are stable – rather costs, including fuel, security and facility expenses, continue to significantly increase. Smaller carriers are not in a position to take extra steps at all airports to manage costs because they may have limited operations and facilities at those airports. Therefore, the costs for smaller carriers are higher at many airports. To manage those costs, it is essential that these carriers are allowed to expand their presence at these critical airports.

Although the Department has repeatedly stated that one of its primary objectives is to promote competition, it has not taken steps to increase the small percentage of flights operated by low-fare carriers at closed airports.

The current allocation system which is based on grandfathering of the slots while allowing each slot holding carrier to determine to whom and under what conditions they would lease or sell slots is anti-competitive.

As part of its “solution” to address congestion and entry at the New York airports, the Department has proposed a market approach that includes an auction. The comment period for the auction proposal closed this week, and various parties oppose the auction notice. Many questions remain about the Department’s auction proposal.

We understand the concerns raised by a number of parties with auctions.

We believe that it may be appropriate to consider market approaches as a longer term solution. As we review market approaches, however, immediate steps must be taken to make sure competitive options survive the current situation faced by the industry. As large carriers announce a reduction in operations at major airports, the elimination of aircraft from their fleets and possible mergers, now is the time to withdraw slots and facilities and make them available to carriers with small numbers of slots. Before a market mechanism is implemented, the Department must first make slots available to smaller carriers. To do this, the Department should withdraw some slots held by carriers holding more than seventy-five (75) slots as of January 1, 2008 and distribute those slots to limited incumbents operating aircraft with at least 110 seats

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that do not have codeshare arrangements or are partially owned by another carrier at the same airport that holds more than twenty slots.

We agree that market approaches should be considered if they promote competition. While the current Department Market Mechanism Notice would take slots from incumbents to redistribute them, it will not necessarily lead to the growth of competition. Allowing carriers with hundreds of slots to bid on slots against a carrier with 20 slots is unlikely to result in significant changes in slot ownership and will not increase competition. Moreover, it would be difficult for a carrier with a few operations at an airport to spend millions of dollars to outbid dominant carriers and still offer low fares.

After providing slots to smaller carriers, we do not object to the consideration of market mechanisms. To be considered, market approaches need to first enhance competition and any procedure to sell or lease slots must ensure that all carriers have a chance to bid on operating authorizations. Therefore, a blind mechanism must be implemented. 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.”<sup>4</sup>

The Department of Justice also noted:

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<sup>4</sup> 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.

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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.

To promote competition, the following requirements must be implemented as part of any market approach:

- First, provide slots to limited incumbents.
- Second, reserve some number of slots only for new entrants and limited incumbents.
- Third, establish a blind sale/transfer allocation system for any proposed sale or lease of slots.

#### **Conclusion**

This Committee has played an active role in improving the nation's aviation system and in opening doors to competition and travel options for consumers. The ACAA applauds statements supporting competition made by Committee Members and on actions taken by the Committee. We thank you for holding these hearings. We are anxious to work with the Committee and the Administration to address issues that significantly impact carriers, passengers and communities.

It is essential that we create a first rate system that makes flying easier and safer. At the same time we must continue the dream of deregulation. All actions taken must ensure that competition is not blocked. Some of the actions being taken to address delays and congestion could forever close the door on competition and prevent the growth of small carriers at major airports. Special care must be taken to ensure that this does not happen. Our dream of deregulation is to create a high tech, safe, "delay free" and secure system that maximizes consumer choices and ensures that low fares

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are available to all. Let's not make that dream just a memory. Instead, together let's make this dream become a reality.

We look forward to working with you on this and all matters. Thank you.



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July 2, 2008

The Honorable Thomas L. Petri  
Ranking Member  
House Committee on Transportation & Infrastructure  
Aviation Subcommittee  
2462 Rayburn House Office Building  
Washington, DC 20515

Dear Ranking Member Petri:

The Air Carrier Association of America ("ACAA") is pleased to provide responses to the questions you raised in your letter of June 18, 2008, as a follow-up to the June 18 hearing on "Congestion Management in the New York Airspace." These are very important issues. We are at a time that if steps are not taken to strengthen the industry and promote competition that many travelers and communities may lose travel options.

Our responses to the questions raised are as follows:

**1. What aspects of the Department's plan do your members oppose?**

**RESPONSE:**

The current allocation system, which has been based for approximately 28 years on grandfathering of slots while allowing each slot holding carrier to determine to whom and under what conditions they would lease or sell slots, is anti-competitive.

As part of its "solution" to address congestion and entry at the New York airports, the Department of Transportation has proposed a market approach that includes auctions. Many questions exist about the Department's auction proposal.

While those issues are considered, immediate steps must be taken to ensure that competitive options survive the current situation faced by the industry. As large carriers

The Honorable Thomas L. Petri  
Ranking Member  
House Committee on Transportation & Infrastructure  
Aviation Subcommittee  
July 2, 2008  
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announce a reduction in operations at major airports that are closed to entry, the elimination of aircraft from their fleets and possible mergers, steps should be taken to withdraw under-utilized slots and facilities from the carriers that control those airports and make them available to carriers that can expand service and fare options.

It is important that access be increased for carriers operating aircraft with at least 110 seats that do not have codeshare arrangements or are partially owned by another carrier at the same airport that holds more than twenty (20) slots<sup>1</sup>. If large carriers lose some slots, they will still have more slots than they held five years ago and will still dominate those airports.

If steps are first taken to increase entry, market approaches could then be considered to further promote competition with a longer-term market proposal. While the current Department Market Mechanism Notice would take slots from incumbents and redistribute them through an auction, it will not necessarily expand competitive options. Auction approaches have never been used to promote access and competition. Allowing carriers with hundreds of slots to bid on slots against a carrier with only a few slots will not result in significant changes in slot ownership and will not increase competition. Moreover, it would be difficult for a carrier with a few operations at an airport to spend millions of dollars to outbid dominant carriers for a few flights and still offer low fares. Therefore, until the above-stated concerns are addressed and details of the auction proposal are developed, auction approaches should not be implemented.

As we have emphasized, slot distribution mechanisms must enhance and increase competition. To be considered, the following requirements must be included as part of any distribution proposal:

- Provide slots to independent limited incumbents.
- If a buy-sell rule remains in place, some number of slots should be distributed in a market only for new entrants and limited incumbents, and
- Any mechanism created must include a blind sale/transfer allocation system for any proposed sale or lease of slots.

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<sup>1</sup> Carriers receiving the slots would be able to utilize the slots within one year after they were made available.

The Honorable Thomas L. Petri  
 Ranking Member  
 House Committee on Transportation & Infrastructure  
 Aviation Subcommittee  
 July 2, 2008  
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**2. What percentage of the slots at the New York airports are held by low fare carriers currently?**

**RESPONSE:**

While we are supposed to have open markets, all New York airports are closed to competition and have basically been closed for thirty-eight years. A few carriers already dominate the entire New York market and each of the three primary airports.<sup>2</sup>

<sup>2</sup> **TOTAL NEW YORK SLOT HOLDINGS**

**JFK Slot holdings**

Delta/Northwest	1115 slots	28.06%
	<u>60 slots</u>	<u>1.01%</u>
<b>TOTAL</b>	<b>1175 slots</b>	<b>29.07%</b>

JetBlue	1136 slots	28.59%
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Other low fare carriers		1%
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**LGA Slot Holdings**

USAirways	381 slots		
United	<u>60 slots</u>		
	<b>441 slots</b>	<b>35%</b>	(If Alliance is finalized)

Delta/Northwest	230 slots		
	<u>49 slots</u>		
<b>TOTAL</b>	<b>279 slots</b>	<b>23.9%</b>	(If merger is approved)

Continental	34 slots		
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American	162 slots		
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Low-fare carriers		5%	
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**Newark Airport Slot holdings**

Continental	2833	72.5%
American Airlines	193	5.0%
United Airlines	125	3.2%
Delta Airlines	113	2.9%

The Honorable Thomas L. Petri  
 Ranking Member  
 House Committee on Transportation & Infrastructure  
 Aviation Subcommittee  
 July 2, 2008  
 Page 4

As mergers take place and alliances expand, a few carriers will increase their control. After closing these airports, the Department has not taken the necessary, corresponding steps to promote short-term entry and competition.

Airports that are slot-controlled have less low-fare service and competition than most other airports in this country. Legacy carriers control 95% of the slots at LGA and EWR. At LGA, small carriers are limited to 10 roundtrips.

The one "closed" airport that has competition is JFK because the Department took specific action to provide JetBlue (formerly New Air) with significant entry at the airport when it first started its operation.<sup>3</sup> The Department has not utilized the authority used to allow JetBlue to enter the closed JFK to allow any other carrier to enter those airports.

Therefore, as costs increase and other small carriers face bankruptcy and may have to close operations, we could see the end of competition (ATA and Skybus have closed operations while Frontier Airlines filed for Chapter 11 bankruptcy protection).

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Northwest Airlines	83	2.1%
US Airways	92	2.4%
Low-fare carriers		4%

<sup>3</sup> JetBlue has a major presence at JFK because in Order 99-9-11 (September 16, 1999), the Department granted New Air Corporation (now JetBlue) 75 slot exemptions at JFK. In that order, the Department clearly emphasized the importance of low-fare competition at airports dominated by legacy carriers:

The GAO's 1996 study, Airline Deregulation: Barriers to Entry Continue in Several Key Domestic Markets (the GAO Report), stated that "control of slots by a few airlines greatly deters entry at key airports in Chicago, New York and Washington." We made clear our support for increased competition and our willingness to invoke available tools to promote competition when we stated in our January 6, 1997, response to the GAO Report that "the Department intends to be more receptive to considering competition as a factor in granting slot exemptions to new entrants under the exceptional circumstances criterion."

\* \* \* \*

As we noted earlier, many authorities, including members of Congress, have concluded that the High Density Rule is a serious barrier to entry, which has had a dampening effect on domestic airline competition.

\* \* \* \*

JetBlue's business plan is to bring to the New York metropolitan area and many of its short- and medium-haul communities of interest a route system of price-competitive transportation services comparable to those that Southwest Airlines has brought to other cities throughout the nation. It is indisputable that Southwest has had a singularly positive effect on fare competition in literally every market it has chosen to serve. In many other markets, other low-fare new entrants have also had a salutary impact on domestic fares. Wherever those carriers have gone, fare competition has followed and traffic has increased, in many cases dramatically.

The Honorable Thomas L. Petri  
Ranking Member  
House Committee on Transportation & Infrastructure  
Aviation Subcommittee  
July 2, 2008  
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Numerous reports and articles have studied the effects of low-cost carrier ("LCC") entry into market and have identified benefits that result from such entry. Specifically, studies have found that the entry of LCCs results in lower fares for consumers, increases in airport traffic and improvements in overall efficiency in the airline industry. Lower fares allow travelers to fly more often, leading to an increase in airport traffic. Studies have also found that the entry of LCCs into the market results in efficiency improvements in the airline industry. The business model employed by LCCs has allowed them to take advantage of lower costs, keep downward pressure on airfares, and has forced legacy carriers to provide more consistent service. LCCs operate far more efficiently than legacy carriers. Steps need to be taken to preserve and expand these benefits.

It is essential that we create a first rate system that makes flying easier and safer. At the same time we must continue the dream of deregulation. All actions taken must ensure that competition expands and does not disappear. Some of the actions that have been taken (freezing all operations) and are being considered (IATA rules) to address delays and congestion could forever close the door on competition and prevent the growth of small carriers at major airports. Special care must be taken to ensure that this does not happen. Our dream of deregulation is to create a high tech, safe, "delay free" and secure system that maximizes consumer choices and ensures that low fares are available to all. Too many questions exist about auction approaches to have them considered at this point. Immediate steps must be taken to ensure competition will expand. This is particularly essential as costs remain out of control and the industry faces flight cuts and consolidation. It is time to make the dream of competition a permanent reality.

We look forward to working with you and the Committee to ensure that the public continues to have travel choices!

Very truly yours,



Edward P. Faberman  
Executive Director

**Statement of the Honorable D.J. Gribbin  
General Counsel, U.S. Department of Transportation  
Before the  
U.S. House of Representatives  
Committee on Transportation and Infrastructure  
Subcommittee on Aviation  
Concerning  
Aviation Congestion Management  
June 18, 2008**

**Introduction**

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to testify again on the Department of Transportation's (DOT) continuing efforts to address aviation congestion.

**Status of the industry**

Before I go into detail about the DOT's efforts to address congestion, I want to take a moment to talk about the particularly challenging environment currently facing the airlines. As my fellow panelists well know, record oil prices, a slowing economy, and increased competition are just a few factors that have created a number of significant challenges for airlines – challenges that certainly will change the face of the aviation industry in the years to come.

To meet these challenges, many carriers are raising fares, streamlining operations, and reducing service. It is possible that some of these measures will result in reduced congestion – however, so far we have yet to see widespread evidence of carriers pulling out of the busiest (and most congested) airports. Although, Continental announced just last week that they are eliminating service to 15 communities, it is likely that the busiest and most congested airports will not see an overall reduction in service – and even if there is a reduction, history tells us that the aviation industry is very cyclical and that service will return to – and exceed – the record levels we saw last year.

In 2007, the aviation industry recorded the second worst year for delays since 1995; 27% of flights were delayed or cancelled in 2007. Both the frequency and the severity of ground delays were unprecedented. The costs of delays are huge – the Senate Joint Economic Committee estimates that last year flight delays alone cost passengers, airlines, and the U.S. economy over \$40 billion. Additionally, the Travel Industry Association estimates that air travelers avoided over 41 million trips last year – leading to lost revenues and taxes of over \$26 billion.

The cost of delays and congestion to the U.S. economy is huge and that is why, even if carriers reduce flights this summer enough to reduce congestion, we still must do something to fix the problems that caused last summer's horrible delays. We simply cannot wait until there is another summer of record delays before we do something to fix the system. That is why the Department will continue working on its initiatives to address congestion and introduce competition at capped airports.

**LaGuardia/JFK/Newark Background:**

As you all know, the Department recently published notices of proposed rules intended to manage congestion at LaGuardia Airport (LaGuardia), John F. Kennedy International Airport (JFK), and Newark Liberty International Airport (Newark). We believe these proposals will ultimately provide travelers with more reliable service while maintaining competition among the many carriers in a vibrant New York market.

Congestion at these three New York airports is not a new phenomenon. Since 1969, the High Density Rule (HDR) has effectively capped LaGuardia to a limited number of operations per hour and capped JFK during its peak hours. Although Newark was once subject to the HDR, the FAA suspended its application in 1970 due to the fact that capacity was meeting demand. In recent years, however, operations have bogged down to the point where Newark is now one of the most delay-prone airports in the country. Current and anticipated demand during peak hours at all three airports approaches or exceeds runway capacity, causing volume-related delays, which can be aggravated by weather or other operating conditions. Operational improvements have not increased the capacity of the New York area to a point where the unconstrained demand for air service can be met without excessive congestion. Therefore, for now, all three airports are capped.

Straight caps without some mechanism to ensure an efficient allocation of scarce slot resources is economically inefficient and, therefore, not our preferred option. Our preference is to see airports address their challenges locally through implementation of capacity enhancing projects or procedures, whenever possible. However, the federal government will be involved once a congested airport impacts the rest of the national airspace. In this case, New York air congestion causes delays throughout the U.S., so the federal government cannot ignore the problem. Given the urgent need for action, caps were necessary at the New York City area airports.

When we consider economic regulatory issues, the Department has a statutory obligation to place maximum reliance on competitive market forces and on actual and potential

competition. We know, however, that caps hinder the ability of air carriers to initiate or expand service at capacity constrained airports. Therefore, when seeking a solution to the aviation congestion issues that we currently face in the New York area, the Department must act to both promote competition by permitting access to new entrants, and to recognize the long-term investments in airports made by existing carriers. We do not believe that a simple imposition of caps without some mechanism to preserve competitive market forces benefits aviation consumers or the airlines.

With this in mind, we have set forth proposals for the New York area airports that we believe would reduce congestion the smartest way—by using market incentives to assist in the efficient allocation of airspace. Although market-based mechanisms are the most effective way to allocate scarce resources—like slots—we have taken a very conservative approach to introducing these mechanisms with this proposal. The vast majority of hourly operations at the airport, as much as 90 percent or more, would be “grandfathered” and leased to the existing operators for non-monetary consideration. The market-based aspect of our proposal involves auctioning off leases for only a limited number of the remaining slots.

**Are there alternatives to caps and auctions?**

Expanded Capacity

Some have incorrectly suggested that expanding capacity should be the only government response to congestion in New York City and around the country. This view largely ignores the tremendous short-term opportunities to utilize existing capacity more efficiently. It also ignores the physical, economic, and political constraints on capacity expansion in many parts of the U.S. aviation system.

The Department shares the view that expanded capacity is a critical component of the long-term solution to relieve congestion and get travelers to their destinations on time and in a humane fashion. We are intensely focused on such solutions, both at the FAA with implementation of the Next Generation Air Transportation System (NextGen) and at the Department level. The FAA is hard at work bringing new technology and techniques online to unsnarl air traffic delays, and we appreciate the funding Congress has appropriated for these purposes. In recognition of these critical enhancements, the President’s FY 2009 Budget Request would more than triple the investment in NextGen technology – providing \$688 million for key research and technology to help meet the nation’s rapidly growing demand for air travel, including the transformation from radar-based to satellite-based air traffic systems.

The FAA will begin rolling out several elements of the NextGen system this summer. This rollout will include the national debut of Automatic Dependent Surveillance-Broadcast (ADS-B) technology in Florida.

The FAA has chosen Miami as the key site for the installation and testing of Traffic Information Services – Broadcast (TIS-B) and Flight Information Services – Broadcast (FIS-B). These broadcast services are the transmission of weather and traffic information to the cockpit of properly equipped aircraft. In order to provide the services in roughly the southern half of the state, the contractor, ITT will install and test eleven ground stations in this area, including five at airports (Lakeland Linder Regional, Dade-Collier, Florida Keys Marathon Airport, Boca Raton Airport, and Sebastian Municipal).

The ITT installed equipment is currently undergoing a Service Acceptance Test (SAT) which began in May. In November 2008, the agency expects to commission (the FAA calls this an In-Service Decision or ISD) these broadcast services (TIS-B and FIS-B). Following the successful completion of ISD, the FAA can exercise an option in the ITT contract to deploy the services nationwide

The transition to ADS-B technology will allow the nation's air traffic control system to change from one that relies on radar technology to a system that uses precise location data from a global satellite network. Over the next few years, the FAA will also install and test ADS-B for use in Air Traffic Control Separation Services. The key sites for this initiative are Louisville, Philadelphia, the Gulf of Mexico, and Juneau. The FAA plans to commission the ADS-B services in September 2010 and complete a nationwide rollout by 2013.

The FAA also recently completed stage 1 implementation of its Airspace Redesign Project for the New York, New Jersey, Philadelphia area. The goal of the Airspace Redesign Project is to enhance the efficiency and reliability of the airspace structure and the air-traffic control system for pilots, airlines and the traveling public. The project modernizes the structure of the air traffic environment in an environmentally responsible manner, while laying the foundation for NextGen. Moreover, it will help to accommodate growth while enhancing safety and reducing delays. While airspace redesign will provide greater efficiencies and some congestion relief, it is not a complete solution.

The Department looks to increase capacity both in the air and on the ground whenever possible. Our support for expansion of O'Hare International Airport is one concrete example. The fruits of these efforts became clear on Monday when the FAA announced that it would allow the flight caps put in place at O'Hare in 2004 to expire because of the

additional capacity the airport will gain from its new runway. Capacity increases must be part of the solution, particularly since we expect demand for air travel to resume its robust growth over the coming decade, despite the current temporary pause due to economic conditions. This is especially true in the nation's busiest metropolitan areas. However, capacity increases, both physical and operational, often take a long time to implement and may be limited in scope. Sometimes physical capacity cannot be expanded, such as at LaGuardia Airport. Operational improvements can help to address congestion, but sometimes they cannot provide enough capacity to meet demand. For example, in New York, even with the implementation of all the operational improvements initially suggested by the Air Transport Association (ATA) and the Port Authority, congestion was expected to double this year, assuming the FAA took no further action and the airlines moved forward with planned increases in their schedules.

There are additional solutions. Basically, we have a choice between two fundamentally different approaches – administrative remedies and market-based solutions. We believe that outdated government policies relying on administrative remedies alone have led to an inefficient allocation of the airspace, and that moving towards a system that includes market-based solutions will reduce these inefficiencies and contribute to an improved flying experience for air travelers.

#### Administrative Allocation

Instituting administrative remedies, such as caps, is an effective, but not efficient way to reduce delays. Limiting the number of flights into an airport will reduce congestion at that airport. The Department decided to institute a short-term cap at JFK and Newark airports because something needed to be done to avoid a repeat of the flight delays that we experienced last summer. However, caps are not the best solution for improving travel options for passengers.

Airlines are often enthusiastic in their support of caps at an airport they already serve. When a cap is established, incumbents are protected because they typically maintain their market share and the potential for new competition is diminished. The incumbent airlines' support for such a policy makes sense, because limited competition makes them more profitable and protects them from new entrants that might want to compete by offering lower fares.

Although caps protect existing airline business, they also prevent airlines from adding capacity at an airport unless they are able to obtain a slot from a competitor. As a result, one of the best-known problems with slots is that they encourage airlines to “babysit” slots, i.e., underutilize the slot by flying multiple small aircraft into an airport to

maximize the number of slots an airline can occupy at the lowest possible cost.<sup>1</sup> As a result, slots do not always go to those who value them the most and who will use the capacity in the most efficient manner.

This limitation on capacity and competition naturally leads to fare increases at an airport, because it creates a scarce commodity, and passengers pay a premium for that commodity.

If caps are not the long-term answer, then the question arises – what is the solution?

#### Market-Based Remedies

Alfred Kahn, an airline economist and former Chairman of the Civil Aeronautics Board, said: “Whenever competition is feasible, it is, for all its imperfections, superior to regulation as a means of serving the public interest.” Secretary Peters echoed that sentiment when she said: “Our preference is to find a way to let market incentives do the job, and not to return to the days of government-regulated flights and limited competition.” Although the Department instituted caps as a short-term measure, we continue to explore market-based remedies as a long-term solution to congestion.

It is clear that the current system does not allocate airspace capacity efficiently. Solving that problem, however, should not entail government picking “winners and losers,” particularly when, as currently structured, everyone involved in air travel feels like they are the loser—both those getting terrible service and those getting blamed for providing terrible service.

Market-based pricing has been demonstrated time and again as the most effective way to allocate a scarce resource that is in high demand. Space in a movie theater, use of cell phone infrastructure, or flights during certain times to certain destinations are all examples that illustrate that such pricing works. Pricing can balance demand with available capacity, resulting in less congestion and more reliable schedules. Also, pricing sends better signals as to where the system needs extra capacity, and it can supply the revenues to add such needed capacity.

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<sup>1</sup> GAO report GAO/RCED-99-234 notes on p. 16 that “For example, because the regulations allow a slot to go unused for up to 20 percent of the time, a carrier with five slots in 1 hour must operate only four flights in that hour on any day to obtain 80-percent use for each of its five slots. The carrier is allowed to “rotate” its four flights across the five slots over the 2-month period to prevent FAA from withdrawing the slot. The practice of a carrier’s rotating actual flights among its allocated slots is commonly referred to as ‘babysitting.’ FAA officials emphasized that babysitting is not prohibited by existing regulation, provided that a slot meets the minimum-use requirements.” See <http://www.gao.gov/archive/1999/rc99234.pdf>

Changing from the traditional, increasingly inefficient administrative controls to a market-based system has generated a fair amount of concern, primarily from the airlines. Change is difficult, and the airlines' concerns are understandable. In fact, very similar arguments were made by the airlines in opposition to deregulation. Concerns were raised about disruption to the industry, lack of a track record, and disruption to business models. However, the ATA Airline Handbook includes a long list of benefits that resulted from deregulation. The Handbook notes that deregulation stimulated competition, led to rapid growth in air travel, and reduced fares by more than 50% in real terms. We believe that market-based remedies directed at congestion will improve airline service like deregulation did.

#### **Why caps must be combined with auctions – and how it will result in lower fares**

Implementing caps without any additional market-based mechanism for encouraging competition only increases the cost to consumers, since a lack of competition keeps fares high. A March 2001 Government Accountability Office (GAO) report found that “dominated markets tend to have higher airfares than airports that have more competition from other airlines.” Fares in dominated markets averaged 41 percent higher than in markets where there was aviation competition. The difference in fares is largely attributed to the exclusive access granted to incumbent airlines and the incumbent airlines' ability to prevent new entrants from gaining entry to create a competitive market. Instituting slots without a market-based mechanism creates just this exclusivity of access by granting extensive landing rights to incumbent airlines and barring new, competitive entrants into the country's busiest airports.

Granting slots without market-based mechanisms creates a system where incumbent airlines fight to maintain large shares of the airport traffic and to limit the ability of low-cost carriers to compete. The 1996 DOT report *Low Cost Airline Service Revolution* details this anticompetitive culture at capped or dominated airports. The report identifies slot hoarding as one of the key characteristics of such a culture. Federal regulations require airlines to use their slots at least 80% of the time in order to retain possession of them. However, by splitting up larger flights into smaller ones (“downgauging”) or by setting up a rotating schedule, airlines have unnecessarily taken up more slots than they would require to competitively serve their customers. Slot hoarding prevents new entrants from taking available slots and increases airplane throughput without increasing passenger throughput, adding greatly to congestion. The report maintains that the high fares charged at these dominated airports create incentives for an airline to use anticompetitive measures to discourage new entrants.

Using the historical backdrop of slots as a guide, we believe that integration of a market-based system into the proposal for slot caps is necessary to protect consumers and a competitive market. Estimates from the DOT's 1996 report valued savings from new entry competition at 35 percent for round-trip flights and 40 percent for one-way flights. A case-specific study on the effect of Southwest Airlines noted that with the opening of just one route between Oakland International Airport and Ontario International Airport in Los Angeles, fares dropped 60% and traffic tripled, increasing both passenger throughput as well as savings for consumers. Even nearby airports not directly offered service experienced a decrease in fare costs of up to one-third. Southwest is just one example of low-cost carriers whose entry into the market drove down prices and increased passenger throughput at previously dominated airports.

#### **What have we proposed?**

Last month, the FAA published notice of a proposed rule that would replace the orders imposing operating limits at JFK and Newark and establish a new rule limiting operations at these airports. Instead of reliance on repeated piecemeal approaches to limit and manage operations at JFK and Newark, we believe a better course is to adopt a longer-term rule dealing with the congestion and delays that we expect to persist at those airports. Although we continue to work toward capacity improvements, this proposal will complement capacity enhancement efforts.

Like the proposal for LaGuardia that I discussed the last time I was before this Committee, this proposal recognizes that a simple imposition of caps without some mechanism to ensure preservation of competitive market forces is inadequate. While this proposal is similar to and intended to mesh with the LaGuardia proposal, neither is reliant on the other for final action.

Under the proposal for JFK and Newark, all airlines operating at Newark and JFK would be given up to 20 slots a day for the 10-year life of the rule. The proposal offers two options for JFK. Under the first, 10 percent of the airline's slots above the 20-slot baseline would be made available via an auction. The revenue from those auctions would then be invested in congestion and capacity improvements in the region.

Under the second option for JFK, the airlines would auction 20 percent of slots above the 20-slot baseline and keep all of the proceeds. Depending on the option, between 91 and 179 slots at JFK would be affected out of 1,245 total slots at the airport.

The proposal also calls for auctioning 10 percent of slots at Newark Airport above the baseline annually for the first five years of the rule. As a result, only 96 slots out of a total of 1,219 slots at the airport would be auctioned over the 10-year span of the proposal.

As with any pricing plan pursued by the Department, this proposal for JFK and Newark complies with our international obligations and will not competitively disadvantage domestic carriers. Under this proposal, foreign carriers and domestic carriers are treated the same.

As with the LaGuardia proposal, under this proposal, airlines operating at the two airports would receive a 10-year interest in some of the world's most valuable aviation assets, free of charge, free of question, and free of hassle. Additionally, this proposal – just like the LaGuardia proposal – increases competition by creating a robust secondary market for trading of slots and allowing a way for new entrants to gain entry into a restricted airport.

### **Conclusion**

Mr. Chairman, I appreciate the opportunity to explain to you our proposals for the New York-area airports. We are firmly committed to the idea that any long-term solution to mitigate congestion in the Nation's airspace must include a market-based mechanism. Caps alone have proven to be insufficient, and perpetuating the kinds of delays we experienced in the summer of 2007 is not tolerable.

I would be pleased to provide you or your staff with any additional information that might help explain our proposals and I would be happy to answer any questions you might have.

**Testimony of Mr. Douglas E. Lavin  
Regional Vice President (North America), International Air Transport  
Association**

**Committee on Transportation and Infrastructure's  
Subcommittee on Aviation  
United States House of Representatives**

May 6, 2008

Mr. Chairman, distinguished Members of the Subcommittee.

My name is Douglas Lavin. I am the Regional Vice President for North America for the International Air Transport Association (IATA).

IATA represents 230 carriers engaged in scheduled international transportation of passengers, mail and cargo by air. 71 of those airlines fly into and out of New York area airports on a scheduled basis. All of the major U.S. network carriers are members of IATA.

IATA appreciates the opportunity to brief the Subcommittee on IATA's position on the proposal by the U.S. Department of Transportation's Federal Aviation Administration to manage congestion at New York Area airports. IATA places a high priority on the effective management of these airports because of the direct impact congestion has on our members that fly into and out of the region as well as the secondary impact New York congestion has on operations across the U.S. and around the world.

Since September 2007, DOT and the FAA have focused considerable time and resources in an effort to address congestion in the New York region. Likewise, domestic and international airlines, domestic airports and the associations representing them have made a tremendous investment of time and resources to identify and promote solutions to this challenge on an expedited basis.

Unfortunately, IATA's domestic and foreign member airlines have been uniformly disappointed with the efforts to date by DOT on this important task. Rather than focusing its limited resources on increasing capacity at these gateway airports, DOT, with the support of the White House, has spent inordinate amounts of time attempting to implement so-called "market mechanisms" to limit carriers' access to New York airports.

A review of DOT activities in this regard over the past 9 months is instructive:

### **A Short History of DOT's Efforts to Address Congestion in New York**

In September 2007, President Bush and Secretary Peters' announced their intention to take steps to address unacceptable congestion at New York airports. In the short term, DOT designated Newark and JFK as congested airports, and subsequently implemented a temporary cap and the allocation of slots roughly following the principles of the Worldwide Scheduling Guidelines (WSG), an internationally recognized set of standards to manage scarce airport resources. They also worked with the Department of Defense to open restricted airspace during peak holiday periods. Finally, they created the Aviation Rulemaking Committee (ARC), made up of DOT officials and representatives from domestic and foreign airlines and the New York Port Authority, to advise Secretary Peters on how to address NY congestion.

From September to December 2007, the ARC met on a weekly basis to identify short and longer-term solutions to congestion at New York area airports. Five working groups were established to study and report back to the Secretary on such options as operational and infrastructure improvements, the use of so-called "market mechanisms" (e.g. auctions/congestion pricing), gate utilization, priority air traffic preferences and the WSG and other "administrative options." In the end, the large majority of the airlines participating and the Port Authority made it clear to Secretary Peters that:

- FAA and DOT need to place a high priority on increasing capacity at New York airports through the expedited implementation of NextGen technologies and procedures as well as the New York Airspace Redesign;
- Congestion pricing and auctions are not effective means of either addressing congestion or allocating scarce resources; and
- While operational and infrastructure improvements are being made, DOT should manage congestion within the general framework of the WSG

Despite this clear and unequivocal guidance, DOT announced in January 2008 that it intended to lease any new capacity that came on line at JFK via an auction process. It announced an identical approach for Newark in March 2008. Equally surprising given the ARC consensus against congestion pricing, DOT announced in January 2008 proposed amendments to the DOT 1996 Policy Regarding Rates and Charges that would in effect give airports the ability to use pricing to manage congestion under very broadly defined circumstances. DOT acknowledged that this was their best opportunity to impose congestion pricing without having to go to the Congress for authority to in effect impose taxes.

<sup>1</sup>IATA strongly protested this action as a contravention of U.S. law, ICAO policy

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<sup>1</sup> Under Article 1 of the Constitution, Congress is the "sole organ for levying taxes." *National Cable Television Association 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 are classic taxes because these measures are designed to discourage

and international practice that airport charges must be revenue neutral, cost based and tied to services actually provided to airlines. The industry is now waiting for what we fear will be a final DOT rule implementing this illegal pricing scheme.

Finally, on April 17, 2008, DOT issued a Supplemental Notice of Proposed Rulemaking (SNRPM) extending caps at LaGuardia through 2019, followed by a May 16, 2008 Notice of Proposed Rulemaking (NPRM) doing the same at Newark and JFK. Rather than implementing the WSG to manage these airports, DOT argued that U.S. sovereignty over and control of the airspace gives it a property interest in the slots at congested airports. DOT proposes to lease the slots at these airports for a period of ten years. More troubling, DOT proposes to withdraw a significant number of slots from airlines operating at the three airports and auction them off to the highest bidder as a means to increase competition. IATA considers this yet another example of DOT seeking to conduct economics experiments with New York at a time when its focus should be on managing existing congestion and undertaking urgent efforts to expand capacity at these three airports.

### **Discussion**

Since September 2007, DOT has set forth three overall goals for addressing congestion in New York: reduce congestion, allocate scarce airport resources and minimize disruption associated with implementing any suggested improvements.<sup>2</sup> It is useful to review DOT's progress in regard to all three goals since September 2007:

#### **1. Reduce Congestion**

The most effective step DOT has taken over the past nine months to address congestion in New York is to designate Newark and JFK as Level Three airports, which resulted in temporary cap on operations, the designation of an FAA coordinator, and the holding of schedules reduction meetings under the broad terms of the WSG. IATA supported DOT's actions in this regard as long as these measures were accompanied by a renewed commitment to increase capacity at the region's airports. To that end, the ARC made 77 recommendations on ways to increase capacity over the short, medium and long term. The ARC also recommended that DOT appoint a "New York Czar" to oversee rapid deployment of these operational and infrastructure improvements.

IATA has been supportive of the work the FAA has done since September 2007 to increase capacity at Newark, JFK and LaGuardia airports through operational

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takeoffs and landings during peak hours by making operations during those times more expensive. Congress may delegate its taxing authority but it must be "clearly delineated."

<sup>2</sup> NY ARC Report, December 13, 2007, page 1

and infrastructure improvements in the region. The ARC identified 27 short-term initiatives to improve delays by implementing available technologies and/or by modernizing outdated policies and procedures. The FAA agreed to address 17 of these initiatives in the short term. While 14 of the original 17 initiatives are complete as of June 1, the remaining three items are delayed due to lack of internal support and likely not to be completed in 2008. Overall, 60% of the 77 ARC recommendations are expected to be completed by the end of 2008. IATA is also pleased with the appointment of Marie Kennington-Gardiner to the position of NY Area Integration Office Director (NY Czar) and hope that the Congress, the FAA and its bureaucracy provides her with the resources and support she needs to address this important task. While much difficult work remains, we believe that the continued focus of the FAA on increasing capacity is the best opportunity to address congestion in New York in the short and long term.

## **2. Allocation of Scarce Resources**

While the FAA has made progress in increasing capacity, DOT has spent the last nine months devising new and untested "market mechanisms" to limit carrier access and, more recently, increase competition at New York airports. The DOT suggests that "simply imposing a cap and then doing nothing to ensure that there are competitive market forces and actual and potential competition is unacceptable."<sup>3</sup>

First, one has to challenge DOT on their assumption that a cap alone would hurt competition at JFK and Newark. JFK was capped from 1969 to 2006 under the High Density Rule (HDR) and Newark has been significantly constrained for some time. Today, the two airports currently have a combined 1,142 daily flights operated by more than 100 U.S. and foreign airlines. 78 airlines at JFK and 58 airlines at Newark operate non-stop flights to 159 and 164 cities around the world respectively. It is anticipated that the majority of these 100 airlines would continue to operate at these airports whether or not a cap is in place. Slot auctions and congestion pricing cannot be justified as needed to increase competition at these airports.

Further, IATA and its member airlines, along with the Port Authority, the ATA and non-IATA members serving the New York market, have consistently argued that DOT should utilize the Worldwide Scheduling Guidelines to manage the limited resources at these key airports. The WSG was established more than 60 years ago specifically to serve as a comprehensive set of guidelines for the "allocation of scarce resources on a fair, transparent and non-discriminatory basis". Today, the WSG is utilized at 140 congested airports worldwide, including at Chicago's O'Hare Airport, to manage the scarce airport resource through the establishment of slots, which permit take-off or landing during specified time periods. Slot

<sup>3</sup> 73 Fed Reg. 29630 (May 21, 2008).

allocation under the WSG is based on "historical precedence," wherein a carrier that operates a slot on a consistent basis during the previous season is entitled to assignment of those slots again in the subsequent season. By following this approach, the WSG enables consumers to gain the benefits of regularity of services over time. It also enables airlines to reap the benefits of their investments in developing new routes and/or increased frequencies. Slot allocation is conducted twice a year on a global basis at IATA facilitated meetings under the direction of independent airport coordinators appointed by the respective governments responsible for the particular airports.

DOT officials have argued that the WSG is not an effective way to fairly allocate a scarce resource as it rewards airline incumbents at the expense of new entrants. DOT has also argued that implementation of the WSG would in effect result in the incumbent airlines having a property right in the slots at the New York airports, contrary to their belief that the slots are owned by the U.S. Government. While DOT acknowledges that airlines have made multi-million dollar investments to support their operations, they have argued that the "historic precedence" in effect grants airlines valuable government property without compensation.

To the contrary, 60 years of experience around the world has demonstrated that the WSG effectively manages a scarce resource while allowing for meaningful competition. Under the WSG, carriers who do not operate slots at least 80% of the time during the season for which they were allocated are no longer entitled to historic preference for those slots during the next scheduling season. Those slots not allocated based on historical performance are placed in a "slot pool," 50% of which are set aside for new entrants (defined as carriers holding less than four slots a day at the airport). Further, the WSG establishes several additional criteria that should be considered by the slot coordinator when allocating slots from the slot pool, including encouraging competition, allowing for a mix of operations between short and long haul and consideration of the needs of the traveling public.

During the ARC process, some limited incumbents seeking additional slots at Newark and JFK during congested hours argued that the WSG definition of new entrant, combined with the limited number of slots that become available each year via the "use or lose" provisions make it impossible for new entrants to gain meaningful access to congested airports.

It is interesting to note that DOT dismissed these arguments when denying Virgin America's request that 30 slots be set-aside for them at JFK as part of the cap implementation process. DOT pointed out that even with a cap there is ample opportunity to allow limited incumbents increased access to the congested airport:

All carriers will have an opportunity to acquire and to retime operations at JFK while this Order is in effect. Under this Order, all carriers have the opportunity to trade with others for Operating Authorizations at times that are more desirable to them. In addition, all U.S. and foreign carriers have the opportunity to lease Operating Authorizations from other carriers for the duration of this Order.<sup>4</sup>

DOT's argument in this regard is reflective of experiences at other congested airports around the world. For example, London Heathrow Airport (LHR) has been operating under EU Slot Regulation since 1993 (based on the WSG). Slot coordination has helped allocate scarce capacity while allowing for increased competition via the WSG "use or lose" provision as well as secondary trading. For example, over the last five years, LHR added 25 new entrants despite this cap, including Continental Airlines, Northwest Airlines, U.S. Airways and Delta, which all gained access via secondary trading following the revised U.S. –EU Air Services Agreement.

Given this experience, we question DOT's belief that the WSG as currently configured does not allow for effective competition at congested airports. However, if that concern remains, it is important to note that there are provisions in the WSG to allow governments to institute "local rules" to address particular concerns that they do not believe are adequately addressed by the WSG principles. For example, DOT has the option of implementing a local rule to foster a secondary market, as called for by DOT in their most recent NPRM. DOT could also expand the definition of a new entrant to allow for greater access for smaller carriers to the slot pool. While implementation of local rules diminishes the strength of the WSG as a global scheduling standard, they are much preferable to governments creating their own unilateral system to allocate congested resources, as is now being proposed by DOT in New York.

### **3. Minimizing disruption associated with implementing suggestions**

With 74 IATA members flying into and out of the New York Region and accounting for the majority of services offered, we have a significant interest in the implementation of effective management tools at these airports. However, equally importantly, we are concerned about the disruption the DOT proposals could cause to the global aviation system, particularly in the international context. There are four areas of significant concern in this regard.

First, while New York airports are critical in their own right, it is important to recognize that Newark and JFK serve as important hubs in an overall international aviation system. To put it in simple terms, a departure at JFK is an arrival at London or Paris or Beijing and potentially a connection beyond those airports. An efficient global aviation system has as its basis common rules and

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<sup>4</sup> 73 Fed Reg. 3514 (January 18, 2008)

regulations (such as the WSG) that ensure the seamless operation of hundreds of carriers at thousands of airports across 24 time zones. Throughout DOT's consideration of ways to address congestion at airports, there has been a lack of appreciation for the impact unilateral U.S. "market mechanism" experiments may have on what are by definition complex and interconnected international operations. This includes both the slot confiscation proposed for the New York airports as well as the proposed changes to the DOT rates and charges policy that would serve to encourage airports to manage congestion through pricing mechanisms. DOT's theories to the contrary, airlines may send regional jets during congested hours not to cause delays, but instead to provide feed from local communities to European flights that have only limited departure windows. Using pricing and auctions to change that dynamic will impact large and small communities both here and around the world. Disrupted operations in the name of economics experiments will not serve the public good.

Second, both the congestion pricing and slot confiscation proposals raise the possibility of limiting the growth of international carriers at New York airports. DOT's proposal as drafted would have only a limited short-term impact on foreign carrier operations into New York. However, it is safe to assume that over the 10-year life of this proposed rule, foreign airport operations would be constrained by these provisions. This raises implications for existing bilateral aviation agreements between the United States and other countries where certain access is guaranteed and growth is anticipated.

Third, IATA is concerned about the precedent that the DOT's pursuit of market mechanisms would set for foreign governments. Up until DOT's pricing fixation, airports and governments around the world have been constrained from pursuing congestion pricing and slot auctions because of accepted ICAO and international law that primarily restrict monopoly pricing of airport access to actual costs incurred. The few efforts to establish congestion pricing mechanisms at large airports have been successfully challenged on the basis of discrimination against classes of airlines (including a U.S. Government challenge to proposed congestion pricing at Heathrow). U.S. and foreign carriers have been fortunate that these policies and successful legal challenges have prevented an opening of a "Pandora's Box" of charges and auctions by governments seeking opportunities to raise new revenue from airlines and airports.

Unfortunately, DOT's pursuit of market mechanisms has already served to signal a loosening of accepted international constraints on congestion pricing. For example, the Brazilian aviation authorities (ANAC) recently proposed to increase parking fees at Sao Paulo International Airport on U.S. and other carriers that have long layovers at the airport in an effort to redirect those planes to other airports. This would result in an increase in fees paid by U.S. carriers and others of between \$15,000 and \$90,000 per flight per day. We do not believe ANAC would have pursued this pricing scheme but for the U.S. Government's signal to the international community that congestion pricing is acceptable. We understand

that other governments are now also considering implementing congestion-pricing schemes. Further, the DOT NPRM offers industry some assurances that the funds raised under these pricing schemes would be used for some yet to be defined capacity building projects. While we have doubts about DOT's commitment in this regard, we are very concerned that other governments will simply use funds raised to address general budget shortfalls.

Finally, one cannot minimize the negative impact these provisions would have on the airline industry and its passengers. Slot auctions and congestion pricing will conservatively lead to hundreds of million dollars in additional costs for incumbent airlines. Slot auctions will in effect penalize airlines that have already made significant investments in their operations at these airports by requiring them to pay for the privilege a second time. Airlines are not in a position to accept this additional financial burden. As such, these costs will have to be borne by our passengers in the form of increased ticket prices and fewer flights. To be clear, auctions and congestion pricing will have no impact on delays at New York area airports. Instead, passengers will face further inconvenience, increased cost and decreased service at a time when we can all afford it the least.

### **Conclusion**

Airlines are today facing the challenge of remaining viable business entities in a market that has seen a tripling of oil prices since 2006 and a two-fold increase in the last year alone. At currently predicted fuel prices, IATA airlines could face an additional financial burden of \$99 billion over the next 12 months compared to 2007. A total of 24 airlines have ceased operations or entered into bankruptcy protection in the past five months. Many more airlines will not survive the New Year. Quite simply, airlines are facing a crisis that is beyond that which they experienced post 9/11.

The leaders of the world's airlines met in Istanbul on June 2-3, 2008 as part of the IATA World Aviation Summit. The CEOs of these airlines adopted a resolution at that Summit calling on governments and the entire industry value chain to show leadership and responsibility in this time of crises. They called on governments to refrain from imposing multiple and additional punitive taxes and charges that will only deepen this crisis while at the same time take the steps necessary to modernize the air transport infrastructure eliminate wasteful fuel consumption and emissions.

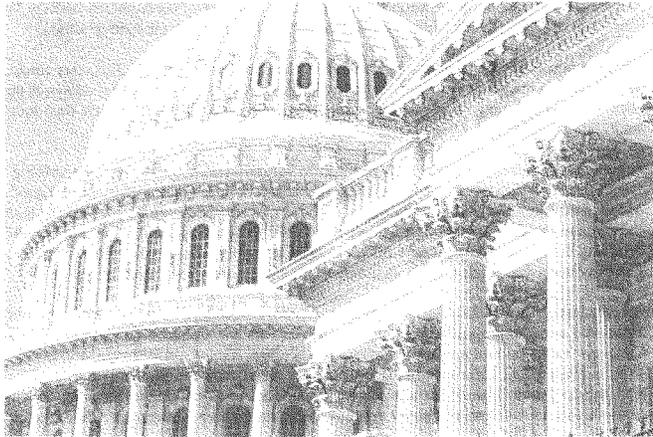
DOT's determination to significantly raise costs to airlines through "market mechanism" economics experiments is exactly the type of activity this industry cannot afford during this crisis. It is estimated that international aviation supports 7% of global GDP and 32 million jobs. Proposals like these coming out of DOT cannot help but having a negative impact on this important economic engine.

We therefore urge the U.S. Congress to direct DOT to:

- Continue to focus all available resources on making needed operational and infrastructure improvements in the New York region to increase capacity at these airports
- Include Newark, JFK and LaGuardia in the WSG process until such time as new capacity measures make the cap unnecessary
- Cease all efforts to experiment with “market mechanisms”

Thank you for your consideration.

*Congestion Management in the New York Airspace*



Statement of James C. May  
President and CEO  
Air Transport Association of America, Inc.  
before the  
Subcommittee on Aviation  
of the  
Committee on Transportation and Infrastructure

June 18, 2008



AIR TRANSPORT ASSOCIATION

## INTRODUCTION

ATA member airlines, which carry more than 90 percent of domestic passenger and cargo traffic, reflect the changing and diverse nature of commercial aviation today. Our membership includes the leading network passenger and low-cost carriers, and both large and small cargo carriers.<sup>1</sup> The significance of this point is that our entire membership is unified in its opposition to the Department of Transportation (DOT)<sup>2</sup> proposed congestion management proposals. As this committee knows, it is not often that our competitive, sometimes fractious, membership fully aligns on a policy issue. Congestion management is one of those issues.

ATA is also aligned with the airport community, including the Port Authority of New York and New Jersey, in opposing the DOT auction proposal. Perhaps an even rarer state of affairs.

DOT proposals to “manage” congestion in New York airspace – slot auctions and congestion pricing – reflect what is manifestly a very poor policy judgment about how to address delays in the New York area. It is a poor policy choice because these proposals are designed to conceal the root problem underlying delays.

Congestion and delays in New York result from several factors, but the primary, driving factor is DOT failure to supply the airspace and air traffic management infrastructure this country needs. The commerce of the United States – indeed of the world – drives airline scheduling and by seeking to curb artificially the demand for airspace and air traffic services, DOT proposals harm U.S. commerce and the national economy, harm the local economy of New York City, and harm the competitiveness of U.S. airlines in the global aviation marketplace. Simply put, these proposals are a confession of failure.

Equally important, DOT lacks statutory authority for its congestion management proposals. The fees associated with the proposed auctions are new user fees that Congress has prohibited.<sup>3</sup> Furthermore, when Congress wants to grant an agency authority to conduct auctions, it knows how to do so. It has not done so here. Indeed, DOT has acknowledged, on more than one occasion, that it does not have authority to mandate congestion management measures.<sup>4</sup> This leads inexorably to the question of why does DOT continue to waste valuable taxpayer dollars pursuing unlawful measures that will not work?

The real solution to congestion lies in DOT pushing ahead with the tools it does have. Instead of trying to manipulate airline scheduling through artificial means, DOT should manage the airspace and the air traffic control system more effectively and efficiently: implement airspace redesign and related initiatives; work with the Department of Defense and Congress, as necessary, to open up new airways on a permanent basis; accelerate development and implementation of the technologies that will bring us NextGen; and work with the Port Authority of New York and New Jersey and Philadelphia International Airport, and the airlines, to implement the numerous near-term capacity enhancement measures that were

<sup>1</sup> ATA is the principal trade and service organization of the U.S. scheduled airline industry. The members of the association are: ABX Air, Inc.; AirTran Airways; Alaska Airlines, Inc.; American Airlines, Inc.; ASTAR Air Cargo, Inc.; Atlas Air, Inc.; Continental Airlines, Inc.; Delta Air Lines, Inc.; Evergreen International Airlines, Inc.; Federal Express Corporation; Hawaiian Airlines; JetBlue Airways Corp.; Midwest Airlines; Northwest Airlines, Inc.; Southwest Airlines Co.; United Airlines, Inc.; UPS Airlines; and US Airways, Inc. Associate members are: Air Canada; Air Jamaica; and Mexicana.

<sup>2</sup> References to DOT include the Federal Aviation Administration (FAA).

<sup>3</sup> “[N]one of the funds in this Act shall be available for the Federal Aviation Administration to finalize or implement any regulation that would promulgate new aviation user fees not specifically authorized by law after the date of the enactment of this Act...” 2008 DOT Appropriations Act, Pub.L. 110-161, 121 Stat. 2379, and prior annual appropriations acts.

<sup>4</sup> For example: “In the [2006 LGA] NPRM, the FAA stated that it did not have the authority to reallocate Operating Authorizations via a market-based mechanism...The FAA continues to believe that it cannot rely on a market-based allocation method under a purely regulatory approach, which is why it explicitly sought legislation on this matter.” Supplemental Notice of Proposed Rulemaking, 73 Fed. Reg. 20852 (April 17, 2008). See Section III, for further discussion of this point.

identified by the New York Aviation Rulemaking Committee last year. To the extent operations at New York (or other) airports must be capped, DOT should adopt fully the *Worldwide Scheduling Guidelines*, which contains a well-established and accepted slot allocation process, coupled with a vibrant and transparent secondary slot market.

Finally, DOT has lost sight of the ancient maxim, *primum non nocere*, “first, do no harm.” The U.S. airline industry is reeling from oil shock like no other U.S. industry and it is unlikely to survive in its present form. Eight U.S. airlines have ceased operating since the end of 2007 and another airline is operating in Chapter 11. Instead of experimenting with illegal and ill-conceived plans to suppress demand for air transportation services, the Department should assess what it can do to relieve the industry of unnecessary costs and regulatory burdens.

#### DOT CONGESTION MANAGEMENT PROPOSALS IGNORE REALITY

##### *DOT Congestion Management Proposals*

DOT has proposed two measures to “manage” congestion in the New York region. The first proposal would modify the joint FAA/DOT formal policy on airport rates and charges to permit – indeed encourage – airports to increase the costs they charge to airlines for operating during congested time periods. Because airport charges must, as a matter of law, be cost-based, DOT has proposed measures that would allow airports to artificially increase the costs that can be passed on to airlines.

The second proposal is an experiment to auction slots at each of the three primary New York City airports. Each year for the next five years, FAA will confiscate slots from carriers and then auction them off to the highest bidder.<sup>5</sup> In ten years, all slots would automatically terminate and revert back to the FAA, leaving carriers without any idea of their ability to operate their schedules. This feature is inconsistent with encouraging carriers to invest in the operations, facilities, aircraft and employees necessary to compete at LGA.

As discussed in Section III below, both of these proposals are legally deficient and, for that reason, cannot be implemented. However, they are also the outcome of poor policy judgments because they ignore operational reality.

##### *Weather, Not Air Carrier Schedules, Causes Delay*

In the FAA’s own words:

Bad weather causes 70 percent of all delays. The situation is worse during the summer: unlike winter storms, which take time to develop and move slowly, summer storms can form quickly, stretch for hundreds of miles and travel rapidly over large portions of the country, grounding flights and sending chain-reaction delays throughout the nation’s airspace system. *FAA Fact Sheet*, May 22, 2008.<sup>6</sup>

Little can or need be added to this revealing statement. When it comes to airline delays, the chief culprit is weather. It is obvious, of course, that the impact of bad weather is greatest where air traffic is heaviest, such as in the New York region. But, that is not justification for DOT experimental proposals, especially when other contributing factors – discussed below – are considered.

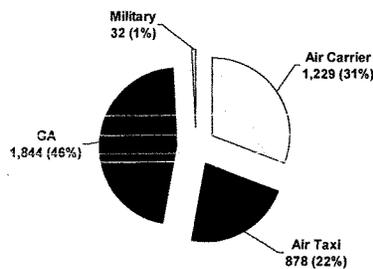
<sup>5</sup> DOT proposes two options for how the proceeds will be used. Under Option 1, DOT claims the proceeds will be used to mitigate congestion in the New York region; under Option 2, the proceeds would be paid to the air carriers from whom the slots were taken. But under Option 2, more slots would be confiscated – 20 percent instead of 10 percent.

<sup>6</sup> [http://www.faa.gov/news/fact\\_sheets/news\\_story.cfm?newsId=10227](http://www.faa.gov/news/fact_sheets/news_story.cfm?newsId=10227)

*New York Airspace Has Significant Non-Air Carrier Jet Traffic That Contributes to Congestion*

We have testified on several occasions that business jet operations are a significant contributor to congestion and delays in the New York region. We pointed out last September, for example, that air carrier and air taxi (primarily regional airline) operations combined accounted for just 53 percent of the New York City activity based on July 2007 data. In the future, this number is likely to decrease further given the schedule reductions airlines have begun to announce.<sup>7</sup>

Commercial\* Operations are ≈53 percent of NY-Area TOTAL Activity  
3,983 Daily Departures (incl. 2,107 Commercial) in July 2007



Source: Federal Aviation Administration (FAA) OASMET

\* Air Carrier + Air Taxi

Remarkably, this fundamental fact is ignored by DOT demand-management proposals. In light of recent findings by the DOT Inspector General, this oversight is puzzling and should be a serious concern to this Committee.

In March 2008, the DOT Inspector General released a report on use of the National Airspace System ("NAS").<sup>8</sup> In his report, the Inspector General found that "business jets' NAS usage is considerable," with "[n]on-air carrier jets accounting for 12 percent of tower and 13 percent of terminal area control services in 2005."<sup>9</sup> The Inspector General added: "To put this in perspective, ... business jets' tower and terminal area control services in FY 2005 was about one-third of air carrier jets."<sup>10</sup>

Regarding the New York City region, the Inspector General noted:

<sup>7</sup> The multiple factors affecting congestion and delays are addressed at length in our written statement before this Committee on the subject of Airline Delays and Consumer Issues, September 26, 2007, available at <http://www.airlines.org/government/testimony/ATA+Testimony+-+Airline+Delays+and+Consumer+Issues.htm>.

<sup>8</sup> Report No. CR-2008-28, March 3, 2008.

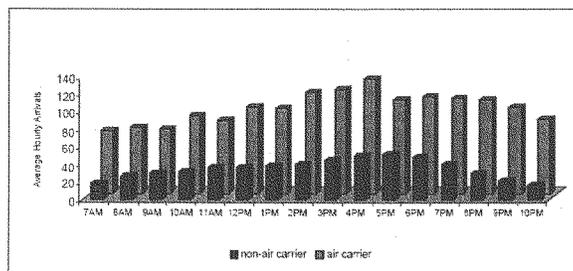
<sup>9</sup> Id. at 10, 11.

<sup>10</sup> Id. at 12.

the New York TRACON facility handles three large primary airports, [footnote omitted] primarily serving air carriers, and 12 outlying towered airports, primarily serving non-air carriers. Non-air carriers accounted for 20 percent to 30 percent of the peak level of instrument approach operations at the New York TRACON. (emphasis added).

[B]oth air carriers and non-air carriers were competing for terminal area control services during the same busy, congested time periods. For example, at the New York TRACON, non-air carriers exhibited the same time of day peaking in demand for terminal services as did air carriers (see figure 5).<sup>11</sup>

Figure 5. New York Terminal Control Area - FY 2005  
Instrument Approach Operations by Hour of Day  
(Includes Outlying Airports)



Source: OIG Analysis of FAA Data

Likewise, the Inspector General found that non-air carrier use of the New York Terminal Control Area peaks during the afternoon hours and contributes to congestion.<sup>12</sup>

These findings by the Inspector General further highlight a significant policy deficiency of DOT congestion management proposals: DOT has ignored the very serious and significant contribution to delays and congestion in New York airspace from business jet and high-performance general aviation operations. DOT auction and congestion pricing proposals cannot succeed if they ignore these operations.

The obvious related point, of course, is that by ignoring non-air carrier jet operations in New York airspace, the proposals – particularly the auction proposals – shift the entire cost of reducing congestion and delays (financial and operational) onto air carriers and their passengers and shipping customers. Rather than seeking a fair and balanced solution, DOT's proposals amount to yet another subsidy for business jet owners and other non-air carrier jet operators. Such a burden on commercial air carriers and their customers is patently unfair.

<sup>11</sup> Id. at 13-14.

<sup>12</sup> Id. at 13.

## DOT AUCTION AND CONGESTION PRICING PROPOSALS ARE UNLAWFUL

The FAA's own clear and unqualified words in 2006 condemn its current auction and congestion pricing proposals:

[A] legislative proposal to Congress . . . will seek authority to utilize market-based mechanisms at LaGuardia in the future. Such 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. If Congress approves the use of market-based mechanisms as we plan to propose, a new rulemaking would be necessary to implement such measures at LaGuardia. FAA Notice of Proposed Rulemaking – *Congestion Management Rule for LaGuardia Airport*, 71 Fed. Reg. 51,360, 51,362 (Aug. 29, 2006).

FAA could not have been more direct: We do not have the authority to impose so-called “market-based approaches,” so we will ask Congress to give us that authority. True to its word, the administration’s FAA reauthorization bill included provisions to give FAA authority to implement market mechanisms to allocate slots. But, as we all know, that bill has not passed yet. Consequently, by its own admission, FAA lacks statutory authority for the auction and congestion pricing rulemakings.

That should be the end of the story, but it is not. FAA now attempts to qualify its 2006 admission by stating that it analyzed the issue of statutory authority too narrowly. While still acknowledging that it lacks *regulatory* authority to impose market-based mechanisms because of the annual appropriations prohibition against promulgating or collecting new user fees,<sup>13</sup> it conveniently claims it has now determined that it can work around that limitation by exercising *procurement and transaction authority*<sup>14</sup> to auction slots at the three primary New York area airports. That view of the law is incorrect for several reasons, which are discussed at length in ATA comments in response to the FAA supplemental notice of proposed rulemaking (the “SNPRM”).<sup>15</sup>

Briefly, the FAA does not have authority to auction slots using its procurement and transaction authority because:

- It cannot do indirectly what it is prohibited from doing directly. The “transaction authority” that the FAA argues is independent of its regulatory authority (and which it cites as the statutory basis for auctioning and leasing slots) is, in fact, linked to its regulatory authority because the FAA may engage in transactions only if they are “necessary to carry out the functions of the Administrator and the Administration.” Thus, in this instance, the “function of the Administrator” being exercised is the function of managing the navigable airspace, which is a regulatory function required by 49 U.S.C. § 40103(b) (“The Administrator *shall* . . . assign by regulation or order the use of the airspace . . .”). But, as even the FAA acknowledges, the appropriations prohibition on new user fees discussed previously prevents it from using its regulatory authority for market mechanisms. Therefore, FAA cannot use its *transaction* authority to implement a prohibited *regulatory* action.
- 49 U.S.C. § 40103(b), on which FAA relies to promulgate the auction rules, provides specific but limited authority for the FAA to regulate the airspace to ensure the safety of aircraft and the efficient use of airspace and to prescribe *air traffic regulations* on the flight of aircraft. This language does not

<sup>13</sup> See, for example, Pub L. 109-115 and Pub. L. 110-161.

<sup>14</sup> “[T]he FAA’s authority is not limited to regulatory action. The agency has independent authority to dispose of property (footnote omitted), and regulatory action is not required prior to the lease of property.” 73 Fed. Reg. 20852.

<sup>15</sup> See Comments of Air Transport Association of America, Inc., June 16, 2008, Docket No. FAA-2006-25709.

remotely suggest that the FAA is authorized to auction off the right to conduct operations in navigable airspace. When Congress wants an agency to conduct such an auction, it is explicit. Congress knows how to authorize auctions when it chooses to do so, as it did in great detail and at great length when it authorized the Federal Communications Commission to conduct spectrum auctions. 47 U.S.C. § 309(j). It has not done so here.

- Auctioning slots effectively amounts to the imposition of a tax designed to discourage airlines from using the navigable airspace at congested airports during peak periods. Since only Congress can levy taxes, the FAA cannot impose charges that amount to a tax unless Congress has clearly expressed its intention to delegate such authority to the agency and articulated intelligible guidelines for making the assessments. 49 U.S.C. § 40103(b) cannot be read as constituting such a delegation.
- The slots that FAA would create under the SNPRM, which FAA describes as “reservations of airspace,” are not considered “property” in the hands of the FAA that the agency can dispose of using its property-management authority under 49 U.S.C. §§ 106(l)(6) & 106(n) and 49 U.S.C. § 40110(a). Those provisions apply to the acquisition and disposition of the FAA’s real and personal property. A slot – in essence a license or permission to use navigable airspace – is the product of regulatory action by FAA in capping hourly operations at the airport. The resulting permission to use what has become constrained navigable airspace is not real or personal “property” of the FAA – just as other licenses or permits issued by governmental authorities are not “property” of the issuing agency.<sup>16</sup> The awkwardness of the FAA proposed lease form for slots underscores the fiction of characterizing slots as property of the FAA that it can dispose of by lease.
- Because the auction price for slots would not be cost-based, it would violate the requirements of the Independent Offices Appropriations Act (the “IOAA”), 31 U.S.C. § 9701, which allows agencies to charge recipients of special governmental services for the cost to the agency of providing those services. Here, the cost to the FAA would be its actual costs incurred to allocate slots by auction. The slot auction prices that are contemplated under the SNPRM, however, would not be related to those costs as they would result from a bidding process.
- The FAA has no authority to determine how auction proceeds would be used. Nothing in the Transportation Code or the IOAA authorizes the FAA to retain the auction proceeds and expend them on “congestion management in the New York City area,” as the agency proposes to do under SNPRM Option 1. Instead, the auction proceeds under that option (assuming a market-based auction were otherwise lawful) would have to be deposited into the general fund of the U.S. Treasury pursuant to the Miscellaneous Receipts Statute, 31 U.S.C. § 3302(b). The FAA’s expenditure of auction proceeds without a congressional appropriation also could violate the Anti-Deficiency Act, 31 U.S.C. § 1341(a)(1).
- Likewise, SNPRM Option 2 (where the original slot holder would be allowed to keep the proceeds net of the FAA’s auction-related expenses) is not authorized. Option 2 amounts to the forced sale of slots by unwilling sellers, rather than a transfer from the FAA to a carrier. There is no transfer from the FAA to a carrier, required by the FAA transaction authority construct under 49 U.S.C. §§ 106(l)(6) & 106(n). Nor could the FAA rely on the IOAA as authority for Option 2 because the auction proceeds, which are being retained by the original slot holder, do not constitute a charge made to recoup the cost of special services being provided by the agency.

Likewise, the proposed rates and charges policy change is illegal. Airports are bound by the principle of “revenue neutrality,” which means that the total fees and charges collected from airlines must approximate an airport’s cost of providing facilities and services. To the extent the policy change purports

<sup>16</sup> In contrast to the FAA, which creates the slots by regulatory action but has no property interest in them, airlines to which slots are issued do have a property interest in slots. That property interest is recognized by third parties (including lenders to whom slots may be pledged as collateral) and by the FAA itself (which allows slots to be bought and sold in a secondary market).

to allow airports to violate this principle, it is illegal. Moreover, each of the three individual policy changes DOT proposes is legally deficient. Taken as a whole, the congestion pricing proposal, if adopted, is unlawful and will only inject uncertainty for both airlines and airports, thereby causing controversy and disputes. Such controversies will, in turn, undermine the DOT policy of supporting negotiated agreements because airports will be able to unilaterally impose conditions that otherwise would be subject to negotiation. Airport proprietary powers are limited, and it is our view that airports are preempted by federal law from seeking to affect airline routes and services by means of unilaterally imposed pricing schemes.<sup>17</sup>

#### AUCTIONS AND CONGESTION PRICING WILL NOT REDUCE CONGESTION OR DELAYS, AND ARE FRAUGHT WITH PROBLEMS

At the most fundamental level, auctions and congestion pricing have nothing to do with reducing congestion or delays. They are simply a means of allocating limited airport access. Capping operations, as the FAA has done at the three New York area airports, is the mechanism that reduces delays by limiting the number of operations. This fundamental point cannot be overstated. DOT proposals do not address, and will not impact, congestion or delays.

#### *Auctions*

No airport or government agency auctions access to airports. DOT seeks to break new ground. But auctioning airport access is fraught with technical and operational problems and will not work.

The DOT auction proposal requires DOT to design, implement and maintain a slot auction mechanism that accommodates the complexities and interdependencies of airline schedules. Airline schedules at one airport are highly interdependent with schedules and operations at other airports across an airline's system and across the entire day, and limitations imposed by slot holdings at other airports, as well as operating limitations (voluntary curfews, connecting schedules), add layers of complexity. The ability to submit and accept package bids (bids conditioned on winning matched pairs of slots at different airports or sets of slots at the same airport) likely will be a critical factor in an auction system. There is little experience in any context, and none in the airline system context, to serve as a model for developing and operating an efficient auction mechanism that deals with these levels of complexities. It is not clear at all that DOT is capable of developing such a complex auction system on its own or with outside assistance.

Notwithstanding these complexities, DOT anticipates that it will be able to issue a request for proposals, select an auction design vendor, resolve numerous outstanding questions about the auction process and determine the auction design, rules and procedures, obtain and test the auction software, train FAA and carrier personnel, and then implement an auction by December 2008 – in less than six months. DOT aspirations are wholly unrealistic and should be cause for concern.

#### *Congestion Pricing*

Congestion pricing has proven to be an utter failure wherever it has been tried. A 2005 survey of the literature addressing congestion pricing along with an analysis of peak pricing schemes in Boston, New York and London concluded that institutional barriers prevent peak pricing from being used effectively in the airport context.<sup>18</sup> At several airports, including Toronto and London Stansted, congestion pricing

<sup>17</sup> "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).

<sup>18</sup> Joshua L. Schank, "Solving airside airport congestion: Why peak runway pricing is not working," *Journal of Air Transport Management* 11 (2005) 417-425.

programs (perhaps better described as peak-hour charges) simply have been ineffective in reducing demand for airport access. Congestion during peak hours remains a problem and there is a waiting list for access and/or more slots.

At other locations, including the Cayman Islands and Haiti, so-called congestion charges are merely excess charges to raise revenue. Although characterized as congestion charges, demand at these airports does not exceed capacity and there is no congestion problem.

From a policy perspective, congestion pricing will not work in the airline context because, unlike toll roads where commuters have a choice of routes (secondary surface roads, primary surface arteries or interstate highways), typically no choice exists for airlines and their customers. Passengers will continue to demand flights at particular times and in particular markets, and airlines will respond with schedules to meet that demand.

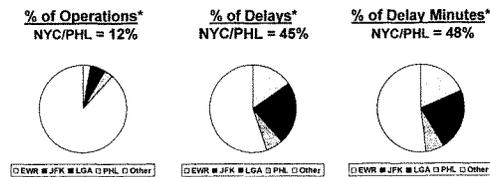
Also, unlike the roadway and variably priced electricity examples, where the driver or electricity customer pay the fee directly, congestion fees would be imposed on airlines and not the consumer who drives airline scheduling. This means the ultimate consumer is shielded, either partially or completely, from the congestion fee, thereby making it ineffectual at changing consumer behavior.

Finally, congestion fees ignore the investment by airlines in routes, equipment, facilities and personnel. Those investments in most cases have been substantial and, for this reason, airlines will be unwilling to alter their service patterns in response to congestion fees. Airlines will be forced to try to pass them on to consumers, which is difficult in the industry's highly competitive environment, or to simply absorb them, an alternative that cannot be sustained in today's cost environment.

#### FAA HAS THE TOOLS: AIRSPACE REDESIGN, NEXTGEN AND THE ARC CAPACITY ENHANCING MEASURES

As we have said before, the solution to delays lies not in suppressing demand, but in expanding capacity to satisfy that demand, thereby fostering the health of not just the airline industry, but the entire U.S. economy. All stakeholders, but especially FAA, must be relentless in their efforts to enhance capacity. It is well documented that delays in New York impact the entire National Airspace System. Accordingly, FAA should devote whatever resources are necessary to enhance capacity and operational efficiency in the New York area.

EWR/JFK/LGA/PHL Drive Disproportionate % of Delays  
Share of OEP-35 Airport Operational Results, Calendar Year 2007



\*Share of OEP-35 total  
Source: ATA analysis of FAA OPSNET

One measure that we recommended last September, and that we continue to press, is accelerating implementation of the New York/New Jersey/Philadelphia airspace redesign project. This project will enhance both capacity and the efficiency of operations in the Northeast, while reducing the overall number of people exposed to aircraft noise. It is a win-win. Although FAA is moving forward on this project, more can be done to accelerate its implementation, and this committee can assist that effort by keeping the FAA focused on achieving results.

Another measure that we recommended was the appointment of a single person to be responsible for managing and implementing all of the capacity enhancement measures in the New York region – the “New York Czar.” That person was appointed recently (although at a much lower reporting level than we had anticipated) and we look forward to working closely with her to affect positive change in New York. This committee can assist this process by holding the FAA accountable for establishing clear objectives and metrics to measure performance to those objectives, and by requiring regular reports.

Getting to NextGen, the FAA Next Generation Air Traffic Management System, is of critical importance. It is a massive undertaking with many moving parts, and FAA must avoid the failures of past large-scale development and acquisition projects. All of the agencies that have a role in this effort but, particularly the FAA as lead agency, must stay focused and devote the resources necessary to get it done as quickly as possible. Again, oversight by this committee will assist this effort.

Last fall, ATA participated on the DOT New York Aviation Rulemaking Committee, and was instrumental in helping to develop a list of 77 delay reduction initiatives for the New York area airports. FAA committed to completing 17 of those initiatives by this summer. As of this date, 12 have been completed and five more are in process; an additional 21 measures also are in process. We and our members will work with the New York Czar to assist these efforts and push for their early completion, and we look forward to working with this committee to assure the success of these efforts.

In addition to the critical measures noted above, ATA has urged the FAA to move forward as quickly as possible on the following recommendations:

- Ensure real-time access to military airspace
- Repair its relationship with the controller workforce

- Increase the controller workforce at any/all New York area facilities in order to achieve maximum operational efficiency
- Take advantage of new RNP routes in the West Atlantic and leverage new automation tools that reroute flights around weather
- Use Airspace Flow Programs to filter business jets out of congested chokepoints during peak periods – especially afternoon peaks
- Utilize multiple runways, including converging runway operations where appropriate
- Assign scheduled operations a higher priority than other system users
- Improve surface management systems (traffic flows between runways and gates) – in particular continue accelerated deployment of ASDE-X
- Eliminate miles-in-trail departure restrictions to airports greater than 500 miles away
- Expanded use of low-altitude arrival and departure routes (“capping” and “tunneling”)
- Realign/relocate arrival, departure and overflight routes to avoid conflicts that drive inefficient routings

NOW, MORE THAN EVER, DO NO HARM

When ATA testified last September, we were optimistic that the industry finally had turned the corner from the deep, post-9/11 downturn. We stated then:

It is safe to say that the U.S. airline industry is in a recovery period from the extreme downturn experienced between 2001 and 2005, when the industry sustained over \$35 billion in net losses. In 2006 the industry earned \$3 billion net profit, and we project a \$5 billion net profit for 2007. Airline employment is on the rise, as is capital spending, which is good news for airlines and their shareholders, employees and the many local economies that depend on a healthy airline industry to drive commercial activity, jobs and tourism.

Unfortunately, our optimism for a continued recovery has been crushed under the weight of skyrocketing fuel prices that could not have been predicted. Today, just nine months later, the U.S. airline industry faces losses that will rival, if not exceed, the losses from the 2001-2005 period. The meteoric rise in jet fuel prices – to prices never imagined in anyone’s worst nightmare business case – is driving the industry to the brink of imploding. The numbers tell the story:

- Crude oil hit an all-time high of \$138.51 per barrel on Friday, June 6, 2008, marking a one-day rise of \$10.58 – an increase of over 8 percent.
- Several analysts predict that oil will hit \$150 per barrel in July, and some are predicting even higher prices by year-end.
- From January 1, 2008, through June 6, 2008:
  - Crude oil spot prices averaged \$107.52 per barrel, versus \$60.55 during the same period in 2007
  - Jet fuel prices averaged \$134.18 per barrel, versus \$80.37 during the same period in 2007
  - Gasoline prices averaged \$114.40 per barrel, versus \$83.03 during the same period in 2007
  - Jet fuel prices averaged \$26.66 per barrel more than crude oil and \$19.78 per barrel more than gasoline
- The portion of an airline ticket needed to pay for fuel is now 40 percent, up from 15 percent in 2000

- Scheduled air service has been eliminated in almost 60 communities nationwide that had service in 2007
  - Nearly 40 additional communities are slated to lose all scheduled air service later in 2008
- Mainline domestic capacity is being slashed. Some examples:
  - Continental will reduce domestic mainline capacity by 11 percent in the fourth quarter
  - US Airways will reduce domestic mainline capacity by 6 to 8 percent in the fourth quarter 2008, followed by an additional 7 to 9 percent in 2009
  - United will reduce domestic mainline capacity by 14 percent in the fourth quarter 2008, with additional reductions planned for 2009
  - American will reduce domestic mainline capacity by 11 to 12 percent in the fourth quarter 2008
- The industry is rapidly approaching 20,000 job cuts and early-out offers
- Eight U.S. airlines have gone out of business since the end of 2007 and another is operating in bankruptcy
- U.S. airlines are projected to spend \$61 billion on fuel this year, \$20 billion more than in 2007 – an increase equivalent to the compensation and benefits of 267,000 airline workers or the acquisition of 286 new jets
- ATA forecasts a full-year industry loss of \$5 to \$10 billion for 2008, and absent a dramatic drop in the price of fuel, a multi-billion dollar loss again in 2009. JP Morgan projects an operating loss of \$7.2 billion in 2008 and an even higher operating loss in 2009

Under these circumstances, the government's first reaction should be "do no harm" – avoid adding unnecessary costs and regulatory burdens. Simply put, the industry needs the government to apply a degree of critical analysis to its own actions to determine what needs to be done to ensure public safety and security, what needs to be done to improve operations and efficiency, and then take only those actions that are necessary at this time. Experimenting with demand management in New York is not needed now, regardless of one's views on its merits. Now is not the time to conduct an experiment that will add out-of-pocket expense for airlines, and create greater uncertainty about schedules and aircraft utilization.

Furthermore, in light of dramatic schedule changes and reductions that airlines have announced and which become effective later this year, it is likely that the New York region will see a noticeable improvement in delays. Although the schedule changes will not impact the level of delays this summer, it is likely that delays will be positively impacted next summer. This is another reason DOT should not advance its proposals now.

#### CONCLUSION

Instead of advancing illegal and ill-conceived notions intended to suppress demand – at a time when airlines are attempting to survive (literally) unheard of fuel prices coupled with consumer demand that is falling through the floor because of a weak U.S. economy – DOT and the FAA should be focusing on fixing the underlying problem: insufficient airspace capacity in the New York region and an aged and inadequate air traffic control system. Stifling demand will have serious adverse consequences for airlines, consumers and New York area residents who rely on passenger and cargo air transportation services and a vibrant tourism industry.



AIR TRANSPORT ASSOCIATION

■ JAMES C. MAY  
PRESIDENT AND CEO

July 7, 2008

The Honorable Thomas E. Petri  
Ranking Member, Subcommittee on Aviation  
House of Representatives  
2251 Rayburn House Office Building  
Washington, DC 20510

Dear Ranking Member Petri:

Thank you for your letter of June 18, 2008, following up on the hearing on "Congestion Management in the New York Airspace." You asked the following question:

As much as passengers like regional jet service, it's impossible to ignore the strain they can put on throughput through the system. In the face of rising fuel costs, and the pressures to generate as much revenue as possible out of each flight, are airlines going to need to reduce flights by regional jets?

While we could spend considerable time debating whether regional jets "strain [system] throughput" more than other aircraft, that is not your question. The heart of your question is whether airlines will need to reduce regional jet operations in response to rising fuel costs. The simple answer is that airlines will have to reduce both mainline and regional jet operations in order to cope with current economic conditions. Those conditions include dramatically higher fuel costs that continue to rise swiftly, softening demand and the inability of airlines to raise their fares fast enough to keep pace with rising fuel prices. Which aircraft are removed from flying ultimately depends on a number of factors, including where they are deployed, the current makeup of each airline's fleet and a host of financing and lease terms and conditions. Consequently, I cannot say that airlines will need to reduce regional jet flights more than mainline flights.

Thank you for the opportunity to respond to your question. Please do not hesitate to contact me if you have additional questions.

Sincerely,

■  
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AIR TRANSPORT ASSOCIATION

✉ JAMES C. MAY  
PRESIDENT AND CEO

September 4, 2008

The Honorable Laura Richardson  
House of Representatives  
2233 Rayburn House Office Building  
Washington, DC 20515-0537

Re: Response to Follow-up Question: June 18, 2008 Hearing on Congestion  
Management in New York Airspace

Dear Congresswoman Richardson:

Thank you again for the opportunity to testify before the Subcommittee on Aviation during its hearing on *Congestion Management in New York Airspace*. This letter responds to your request for a list of initiatives that could improve the National Airspace System (NAS) and the barriers facing the implementation of the initiatives. I repeat the question immediately below, followed by my answer.

**Question:** Could you provide this committee that list [*improvements needed*] and what is prohibiting, what are the barriers that are prohibiting you from achieving that?

**Answer:** The Federal Aviation Administration (FAA) should expedite implementation of capacity initiatives in the New York region. The region impacts delays throughout the NAS and currently accounts for nearly 45 percent of all delays nationwide. Growing complexity and congestion in the area, coupled with an airspace structure essentially unchanged since the 1960s, cost passengers, airlines and the U.S. economy billions of dollars each year.

In December 2007, the Department of Transportation (DOT), FAA, industry, New York-New Jersey Port Authority and consumer representatives identified 77 capacity initiatives to reduce delays and improve efficiency in the New York region. To date, FAA reports that it has implemented 21 initiatives, with full implementation on a four to five year rollout. The reality, however, is that many initiatives noted as "completed" are not fully

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The Honorable Laura Richardson  
September 4, 2008  
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implemented and/or are not being used as designed. Neither the FAA nor airlines are able to realize the benefits of some initiatives, so the impact to date on congestion is minimal.

FAA should devote the necessary resources and leadership to expedite the full, operational near-term implementation of the initiatives to bring much needed relief to congested New York airspace. Unfortunately, at this point, the overall program cost, benefits and system requirements have not been determined through a comprehensive master plan, nor have objective metrics been put in place to measure their impact on system performance and interrelationships. Although we understand that FAA is making progress on both an integrated master plan and objective metrics, these components are absolutely essential.

In addition, FAA should accelerate deployment of technologies and procedures to reduce delays and enhance capacity in other capacity-constrained areas of the United States that could benefit immediately from localized near-term deployment of NextGen technologies. Focused capacity enhancement programs should be implemented in other congested metro areas, sooner rather than later.

Coupling procedural changes with emerging and existing technologies will safely reduce congestion and improve NAS efficiency. Key recommendations include:

- Reduce enroute and terminal spacing of aircraft where feasible
- Examine and revalidate all existing air traffic restrictions
- Apply Area Navigation (RNAV) <sup>1</sup>/Required Navigation Performance (RNP)<sup>2</sup> procedures where appropriate
- Accelerate development, certification and utilization of surface management systems to optimize aircraft ground movements and increase safety
- Accelerate development and approval of independent closely spaced parallel runway operations
- Develop expandable air traffic facilities that completely and singularly incorporate new technology
- Limit nonessential traffic during constrained periods; abandon “first come-first served” principle and adopt policy centered on the “greatest public good” concept

The barriers to achieving successful expedited implementation of the capacity initiatives include local political opposition to airspace improvements, such as ongoing legal and political challenges to implementation of the New York-New Jersey Airspace Redesign

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<sup>1</sup> Area Navigation (RNAV) is a method of air navigation that allows an aircraft to choose any course within a network of navigation beacons, rather than navigating directly to and from the beacons. This can conserve flight distance, reduce congestion and allow instrument flight plans into airports without beacons.

<sup>2</sup> Required Navigation Performance is the navigation performance necessary for operation within a defined airspace.

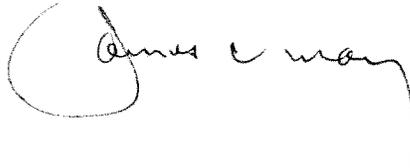
The Honorable Laura Richardson  
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plan; the lack of a single, very senior-level executive with authority to unify various interdepartmental disciplines and funding sources to focus solely on New York issues; conflicting priorities; a lack of accountability; and the need to enhance dialogue among the FAA, airlines, air traffic controllers and airports. While we are encouraged by the efforts of the recently appointed Director of the New York Program Integration Office to develop a master integrated plan for the implementation and funding of key New York capacity initiatives, elevating this position further is critical to ensure New York area improvements remain a high agency priority.

Finally, and significantly, focusing on ill-conceived, untried slot auctions that will not reduce flight delays and congestion in the New York area is wasting valuable resources at the DOT and FAA. The agencies should forgo economic experiments and focus on workable, attainable capacity enhancing initiatives.

I hope you find this letter responsive to your request at the hearing. Please let me know if you have additional questions.

Sincerely,

A handwritten signature in black ink, appearing to read "James C. May". The signature is written in a cursive style with a large, looping initial "J".

U.S. Senator Charles E. Schumer  
Remarks as Prepared  
House Subcommittee on Aviation:  
Congestion Management in the New York Airspace  
June 18, 2008

First, I'd like to thank Chairman Costello and the Aviation Subcommittee for holding this hearing today on such an important issue and allowing me to speak.

Anyone who has traveled in the last year has felt the pain and frustration that now defines air travel in the U.S. Delays and cancellations have crippled the entire air traffic system leaving passengers stranded across the country. Time and time again, we've seen the Department of Transportation attempt to address New York's congestion problems using ideological, market based theory, and other untested experiments.

First it was caps, then it was congestion pricing, and now all we're hearing about are auctions. Instead of focusing on real, tested solutions to solve this problem, like upgrading decades old technology and hiring an adequate number of controllers to staff New York's towers, the DOT continues to miss the point. To make matters worse, the FAA's treatment of controllers has led to an unprecedented rash of retirements thus compounding the problem.

The bottom line is that at the current pace and under the current plan, within the next five years the New York City airspace will be in total gridlock. The wave of controller retirements and the FAA's inability and unwillingness to upgrade antiquated technology will simply cause a meltdown in New York and across the country.

Last summer's travel season was hampered by some of the worst delays ever recorded by the FAA – nearly 30% of all flights were delayed or cancelled. We all remember countless reports from travelers who were stranded on the tarmac for hours on end, and whose flights were cancelled, forcing them to miss out on long-awaited summer vacations or important business meetings. In a report issued last month by the Joint Economic Committee, of which I am the Chair, we found that these flight delays cost passengers, airlines, and the U.S. economy over 40 billion dollars. Sadly, this is just the beginning.

To make matters worse, air traffic control towers across the country are dangerously understaffed. When you look at the workforce nationally, most facilities in the country have staff levels that are more than 35% trainees. In December of 2007, developmental trainees comprised 25% of the national controller workforce, up from about 15% in 2004. Given that the trainees cannot staff a controller position without a fully certified controller supervising, these numbers are alarming.

In New York, when you count fully certified controllers only, excluding trainees, the JFK tower is only 60% staffed, having 22 full time controllers when it should have 37. The LaGuardia tower is only 60% staffed, having 22 full time controllers when it should have 36. The Newark tower is only 67% staffed, having 27 full time controllers when it should have 40. The FAA will give you higher staffing numbers, but that's because their numbers are doctored to include trainees who cannot staff a position without supervision.

At the New York Center, which manages traffic entering into the New York airspace, the average training time at New York Center is slightly more than four years, the second highest in the country. However most of the 71 controllers in training have not even started their training. Since September of 2006, this facility has lost 57 fully certified controllers and only seen 18 hired to replace them. Similarly, the New York TRACON, responsible for all arriving and departing traffic, has lost 23 fully certified controllers to retirement and resignation, and only gained one just this month.

Nationally, the culture of fear created by the FAA has led 3,300 controllers to leave the workforce since 2005 with 15,500 more expected between 2008 and 2017. In just six months from October of 2007 through March of 2008 nearly 1,000 controllers left the workforce – half of them to retire. And of the FAA's 1,800 new hires in FY07, only 150 of them have been fully certified. As the recent DOT IG report pointed out, the FAA may be hiring new trainees, but they aren't adequately training them to become fully certified professional controllers. It doesn't help to include trainees in your staff counts when these controllers can't work unless a full time controller is overseeing them.

This wave of retirements we are seeing just sets up a vicious cycle where there will be more overtime needed, then quicker and more retirements as workers get burnt out. In other words, the next wave of retirements will make this one look like nothing. The bottom line is that New York's towers are understaffed, controllers are retiring in droves, and our air traffic controllers continue to operate with equipment that over 50 years old.

If the DOT and FAA don't take steps upgrade the technology, improve capacity at New York's airports and hire, train and retain more full time controllers, then all we can look forward to is even more congestion and problems. The key is enhancing capacity at the airport and fully staffing the control towers.

Now, the DOT plans to auction off takeoff and landing time slots at New York City's three area airports. This will in NO WAY reduce congestion in New York's airspace. Instead, this plan could limit consumer choices and have a dire impact on service to small communities. And I will act quickly to prevent this plan from being implemented.

As travelers, we feel the burden of an airline industry gasping to catch its breath, and the worst possible thing the Administration could do to passengers and the industry in general is to deliver one big punch in the gut by auctioning off slots at New York's airports.

As I've said multiple times before, this is an ideological, untested experiment from those in an Ivory Tower. There is no proof that DOT's auctions plan will do anything to reduce congestion, yet DOT insists that this market-based solution is the only effective proposal. The DOT's misguided plan to sell take-off and landing slots to the highest bidder won't make your plane take off faster, it will just cost New Yorkers more to fly and throw LaGuardia, JFK and Newark into chaos.

Auctions have no proven track record of working. They have never been tried in any U.S. airport, nor have they been tried at any airport in the world. In fact, the entire plan is modeled after London's road congestion pricing plan. I don't know of one expert who believes this plan will work or is beneficial to the consumer. In fact, the Air Transport Association which represents the airlines, the Port Authority of NY and NJ and the Airports Council International, which represents the airports across the country, are ALL opposed to slot auctions. In fact, their plan is unconstitutional and will be challenged in court.

Airports in the New York City area, which are some of the world's busiest, should not be the guinea pigs in DOT's harebrained congestion experiment. When I spoke to Acting Administrator Sturgell, I told him that I would oppose any experiment in the New York area involving auctions, and because he couldn't give me a straight-forward answer as to the FAA's plans, I placed a hold on his nomination which still exists today.

Auctions will also be detrimental to consumer choices. Small communities in New York State and across the country, like Buffalo and Syracuse, will inevitably see a decrease in service when airlines abandon smaller routes in favor of more lucrative long-distance and overseas flights. Under this proposal consumers will most likely see low-cost air service cramped out of the market and additional expenses airlines incur to buy slots will inevitably be passed along to consumers. This is the last thing consumers need.

This auction plan is further flawed by the assumption that all slots are interchangeable. However, we all know that a flight from JFK to London is not interchangeable with a flight from JFK to Buffalo. Long-distance and international flights need to take off and land at certain times of the day, and large planes need specifically-designated large gates and terminals.

The DOT claims that auctions are part of a market-based solution to address congestion, but as you can see auctions will do nothing more than hurt consumers by and make our domestic airlines less competitive.

So, today I have introduced legislation supported by both the airlines and the airports including the Port Authority of New York and New Jersey, which will protect travelers by prohibiting the DOT from implementing auctions in New York City or at any commercial airport in the country. I cannot stress enough how important this legislation is. The DOT insists that auctions are the only viable solution to congestion problems in New York but as you can see, this is no solution at all. My bill protects the proprietary rights of the airports while preserving the airlines ability to offer consumers the best variety of air service they can provide.

Once again, the DOT is putting ideology before efficiency and the almighty dollar before New Yorkers and passengers around the country. It is time to put an end this scheme once and for all.