

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

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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.¹ The significance of this point is that our entire membership is unified in its opposition to the Department of Transportation (DOT)² 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.³ 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.⁴ 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

1 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.

2 References to DOT include the Federal Aviation Administration (FAA).

3 “[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.

4 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.⁵ 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, 2008.⁶

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.

⁵ 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.

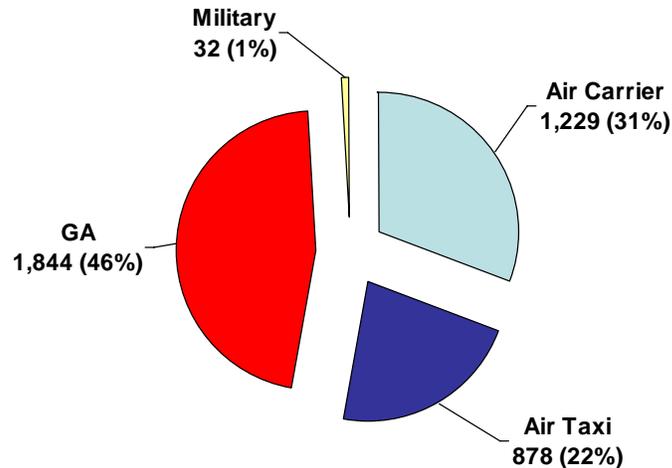
⁶ http://www.faa.gov/news/fact_sheets/news_story.cfm?newsId=10227

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.⁷

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) OPSNET

* 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”).⁸ 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.”⁹ 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.”¹⁰

Regarding the New York City region, the Inspector General noted:

⁷ 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>.

⁸ Report No. CR-2008-28, March 3, 2008.

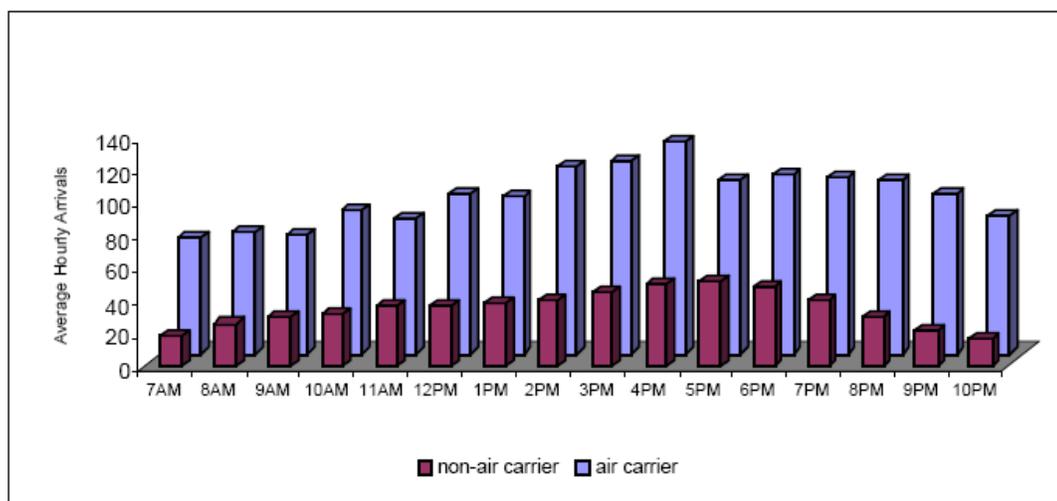
⁹ Id. at 10, 11.

¹⁰ 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).¹¹

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.¹²

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.

¹¹ Id. at 13-14.

¹² 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,¹³ it conveniently claims it has now determined that it can work around that limitation by exercising *procurement and transaction authority*¹⁴ 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”).¹⁵

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

13 See, for example, Pub. L. 109-115 and Pub. L. 110-161.

14 “[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.

15 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.¹⁶ 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

¹⁶ 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.¹⁷

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.¹⁸ At several airports, including Toronto and London Stansted, congestion pricing

17 “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).

18 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.

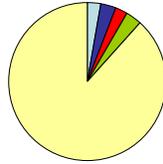
FAA HAS THE TOOLS: AIRSPACE REDESIGN, NEXTGEN AND THE ARC CAPACITY ENHANCING MEASURES

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

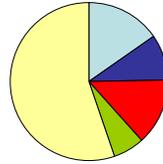
Share of OEP-35 Airport Operational Results, Calendar Year 2007

% of Operations*
NYC/PHL = 12%



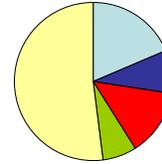
Legend: EWR (light blue), JFK (dark blue), LGA (red), PHL (green), Other (yellow)

% of Delays*
NYC/PHL = 45%



Legend: EWR (light blue), JFK (dark blue), LGA (red), PHL (green), Other (yellow)

% of Delay Minutes*
NYC/PHL = 48%



Legend: EWR (light blue), JFK (dark blue), LGA (red), PHL (green), Other (yellow)

* 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 ones 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.