

**BEFORE THE
U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, D.C.**

In the matter of)
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CONGESTION MANAGEMENT RULE FOR)
JOHN F. KENNEDY INTERNATIONAL AIRPORT)
AND NEWARK LIBERTY INTERNATIONAL)
AIRPORT)
)

Docket FAA-2008-0517

**COMMENTS OF
THE REGIONAL AIRLINE ASSOCIATION**

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July 21, 2008

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With exorbitant fuel prices and a depressed economy already pushing Regional Airline Association (“RAA”) members¹ to the brink, the Federal Aviation Administration (“FAA”) seems determined to push them over the precipice by imposing taxes-by-auction on use of the JFK and Newark Liberty airports. As airlines, airports (including the Port Authority of New York and New Jersey), members of Congress, communities and other governments have demonstrated repeatedly, the FAA’s proposals to drive regional airlines and small community air service out of New York-area airports by confiscating slots and auctioning them off are both

¹ Aerolitoral, Air Canada Jazz, Air Serv International, Air Wisconsin Airlines, AirNet Systems, American Eagle Airlines, Atlantic Southeast Airlines, Big Sky, Cape Air, Caribbean Sun Airlines, Chautauqua Airlines, Colgan Air, Comair, Commutair, Compass Airlines, Empire Airlines, Era Aviation, ExpressJet, Federal Express Corporation Feeder Aircraft Operations, Flight Options, LLC, GoJet, Grand Canyon Airlines, Great Lakes Airlines, Gulfstream International Airlines, Horizon Air, IBC Airways, Island Air, Mesa Airlines, Mesaba Airlines, New England Airlines, Piedmont Airlines, Pinnacle Airlines, Inc., PSA Airlines, Republic Airlines, Salmon Air, Scenic Airlines, Shuttle America Airlines, Skybus Airlines, Inc., Skyway Airlines, SkyWest Airlines, Trans States Airlines and US Airways Express.

terrible public policy and completely unlawful. By this Notice of Proposed Rulemaking (“EWR/JFK NPRM”), FAA nonetheless proposes to extend its unwise and unlawful proposals for LaGuardia International Airport to the two other major airports serving metropolitan New York: Newark Liberty and JFK.

For reasons stated by participants throughout the New York ARC process and the LaGuardia rulemaking proceedings,² RAA strongly opposes FAA’s proposal to confiscate slots at Newark Liberty and JFK and auction them to the highest bidder as if they were FAA’s property to sell and states as follows in opposition to the proposal.

1. No airlines are more adversely affected by delays than RAA members, which are often the first to have their flights cancelled and the last out when delays occur. For this reason, RAA members are first in line to support FAA’s efforts to expand capacity, particularly in the New York area, by acting promptly on the 77 recommendations made by the New York ARC and by implementing the long-overdue NextGen air traffic control system based on a fair funding mechanism. Pending completion of these initiatives, caps on the number of operations at the New York-area airports are the only means to alleviate congestion and delays in the New York region. While caps can alleviate congestion, the FAA’s proposal to auction off confiscated slots does absolutely nothing to relieve congestion.

2. Confiscating slots and auctioning them off to the highest bidder does not create a true primary market for slots, and auctions provide no improvement whatever over the current secondary market for slots. One of the most important characteristics of a true “market” is the expansion of capacity and new competition from additional entrants when high demand results in

² See Supplemental Notice of Proposed Rulemaking Concerning Congestion Management at New York LaGuardia Airport, FAA Docket 2006-25709 and the comments in that proceeding.

supra-competitive prices. No matter how high the prices reach for slots in the New York area, however, capacity expansion will be entirely dependent on governmental expansion of airport and airways facilities, and no new entrants can possibly provide additional airport or airway capacity in competition with the Port Authority or the FAA. Thus, claims that the FAA's auction proposal is "market-based" are misplaced.

3. As comments on the LaGuardia proposals have amply demonstrated, the FAA has no regulatory authority to conduct slot auctions, and it cannot rely on its property management authority to regulate and auction slots at airports. Thus, FAA clearly has no authority to auction slots. Moreover, FAA's proposal to confiscate slots and resell them to others raises both due process and takings issues, particularly since FAA cannot claim slots are "property" for purposes of its property management authority but "non-property" when they are being confiscated from airlines. Finally, the FAA's Initial Regulatory Evaluation relies on a faulty premise – that caps will not exist without auctions – thereby vastly inflating the alleged economic benefits of the confiscation and auction proposal. The Initial Regulatory Evaluation also understates the estimated costs of the proposal by failing to account for the value to the carrier of a confiscated slot, the cash costs of acquiring a slot by auction, the costs to both New York and other cities from lost air services between them, and the costs to passengers and shippers required to find alternative modes of transport between New York and other points when service between them is lost or reduced.

4. Although the proposal to introduce economic regulation by effectively determining what types of markets will receive air service is unlawful because FAA lacks such authority, if FAA were to engage in economic regulation, adopting the proposed auction rules for JFK and Newark would violate the Department's mandates to maintain "a complete and convenient

system of continuous scheduled interstate air transportation for small communities and isolated areas,” to provide for “the continued strengthening of small air carriers” and to maintain a “viable, privately-owned United States air transport industry” (49 U.S.C. § 40101) by promoting policies that would have severe, adverse economic impacts on regional airlines, their customers, their employees and the communities they serve. Although the FAA claims that there would be no adverse impact on small communities because no cities with populations of less than 50,000 were receiving air service at Newark or JFK, that claim appears to be factually incorrect since both Bangor, Maine and Burlington, Vermont have census populations below 50,000 and received such service. Maintaining New York air service for small hub and non-hub airports is extremely important to passengers and shippers who depend on such service and to maintaining the economic viability of those small cities even though their populations may be greater than 50,000. With 70% of the U.S. airports in the contiguous 48 states relying entirely on regional aircraft for service and flights to over 100 airports jeopardized by FAA’s New York-area auction proposals, severe adverse impacts would result if such proposals were adopted.

5. With conditions facing the airline industry, and regional airlines in particular, at least as bad as the conditions resulting from 9/11, this is the worst possible time to impose an unlawful experiment that would clearly affect adversely airline economics that are already deteriorating rapidly. Hard-hit by exorbitant fuel prices and a recessionary economy, many airlines are already entering bankruptcy and terminating their services altogether. Most airlines that have avoided bankruptcy are reducing flights throughout their systems, terminating service entirely at numerous cities, eliminating employees and aircraft, and reducing their commitments to regional airlines and smaller communities. As a result, fomenting additional disruption to air service and imposing additional costs on airlines through imposition of an auction experiment at New York

area airports would be particularly ill-advised at this time. With caps already in place and airlines reducing service significantly starting in September, implementation of projects already under way to relieve New York-area congestion should bear fruit this year without imposing untested and potentially-disastrous confiscation and auction schemes on New York-area airports.

For the foregoing reasons and the reasons stated in the LaGuardia rulemaking proceeding on auctions, RAA strongly opposes the FAA's unwise and unlawful proposal to confiscate and auction slots at Newark and JFK.

Respectfully submitted,



Roger Cohen
President
Regional Airline Association

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