

**Statement of the Honorable D.J. Gribbin
General Counsel, U.S. Department of Transportation
Before the
United States Senate
Committee on Appropriations
Subcommittee on Transportation, Housing, and Urban Development
and Related Agencies
Concerning
Airline Scheduling Practices and Airspace Design
April 25, 2008**

Mr. Chairman and Members of the Committee, thank you for the opportunity to testify today. Allow me to use this time to update you on the initiatives taken by the Office of the Secretary and the Federal Aviation Administration (FAA) to address the issue of flight scheduling practices as it relates to the broader issues of airline delays and consumer protection.

The Administration identified the need to respond to the growing consumer impacts of aviation system delays over a year ago. Since then, we have taken a series of important steps, including the President's announcements related to holiday travel. At the direction of Secretary Peters, our Department has developed a comprehensive list of initiatives designed to improve air travel and reduce the impacts of lengthy delays on consumers. While we have maintained a strong focus on short term actions, it is imperative that we not lose sight of the ultimate objective: establishing a sustainable and economically efficient aviation policy that actually reduces delays, not simply treats the symptoms. In order to accomplish this objective, it is important that we reform our economic model for air traffic control services and airport pricing similar to what the Administration proposed last year. Without changes of this magnitude and regardless of regulatory actions pursued, it is inevitable that millions of Americans will experience unreliable air travel options and growing dissatisfaction with the performance of the U.S aviation system.

I. The Problem

We are all too familiar with the litany of statistics that demonstrate without question that action is needed on behalf of air travelers and the aviation sector of the national economy. One of the most compelling statistics is that last year almost 2 million flights operated by large air carriers did not land on time because they were delayed, cancelled, or diverted. That is almost 27 percent of the operations reported by these carriers. Imagine any other business telling its customers that 27 percent of the time the service they paid for is not available as advertised. The Administration has made commitments at the highest levels to address this problem. When Secretary Peters met with President Bush last September, he said, "We've got a problem, we understand there's a problem, and we're going to address the problem."

Unfortunately, Philadelphia is not immune from the problems experienced by many air travelers. The departure and arrival statistics for Philadelphia International Airport

(PHL) provide the proof as recorded by the Department's Bureau of Transportation Statistics (BTS). In 2007, Philadelphia International Airport ranked fifth worst of the 32 major airports in the percentage ranking for on time arrivals—only about 67 percent of flights arrived on time. Similarly, PHL ranked fourth worst of the 32 major airports in on-time departures for 2007 with approximately 70 percent of flights departing on time.

I think we all agree that the air traveler deserves a better approach. Last year, according to the American Customer Satisfaction Index, the satisfaction level with the airline industry overall fell to its lowest level in 7 years. The statistics we gather monthly at DOT confirm deteriorating service levels. In 2007, there was a sharp rise in the number of complaints received by the Department – 13,168 complaints, which is over 58% more than the 8,325 complaints received in 2006. Complaints are continuing at a high rate in 2008 – the Department received 3,152 complaints during the first quarter of this year. For us, the objective is not to parcel out the blame, but to get to the root of the problem – congestion. Consumer satisfaction would be vastly improved if flights simply arrived on schedule. The growing lack of reliability in air travel these days is one of the most significant impacts of congestion.

II. DOT Actions

The Department began to address flight delays and related consumer issues over a year ago. In February 2007, the Administration sent Congress a comprehensive plan for transforming our aviation system to meet our present and future needs. A central reform of the Administration's proposal was the overhaul of the FAA's financing structure to replace the decades old system of collecting ticket taxes with a stable, cost-based funding stream and to facilitate equipping our aviation system with modern Next Generation Air Transportation System (NextGen) technology. The proposal creates a stronger correlation between what users pay and what it costs the FAA to provide them with air traffic control services; thus, providing price incentives for systems users to reduce delays.

Flight delay problems – including cancellations and missed connections – are the number one air traveler complaint. That is why addressing aviation congestion is a critical component to improving consumer satisfaction with the aviation industry. The year 2007 was the second worst year for delays since 1995, and the first two months of 2008, while slightly better, are the third worst for flight delays during that time of year. Since one-third of the air traffic moves through New York airspace, the three airports in the New York City metropolitan area had the highest percentage of delayed flights last summer, and delays in New York cascade throughout the system, the Department chose to focus its initial efforts in the New York area.

Given the record delays last summer, in July 2007, Secretary Peters formed an internal New York Air Congestion Working Group and tasked them with developing an action plan to reduce congestion and delays at airports in the New York City region and improve customer satisfaction. The working group developed a plan, which included establishing a New York Aviation Rulemaking Committee (ARC), holding scheduling

reduction meetings, implementing operational improvements, and enhancing customer satisfaction. Since forming the New York Air Congestion Working Group, the Department has taken a number of actions to implement the working group's recommendations.

A. Aviation Congestion Mitigation Efforts

Last September, Secretary Peters formed a New York Aviation Rulemaking Committee (ARC), which was composed of representatives from passenger and cargo airlines operating out of LaGuardia, John F. Kennedy International (JFK), Newark Liberty International (Newark), and Teterboro Airports, airline and airport trade associations, the Port Authority of New York and New Jersey (Port Authority), passenger rights advocates, and representatives from FAA and DOT. The ARC had the monumental task of researching and vetting the options for reducing congestion in New York's major airports over the course of merely three months. The Administration wanted to have a robust discussion and input from all interested parties before moving forward with a policy action.

Incorporating the information received from the ARC, the Department is undertaking several actions to address aviation congestion in New York.¹ These actions include:

- Caps on hourly operations at JFK;
- Proposed caps on hourly operations at Newark;
- Completion of 8 of the 17 airport and airspace recommended operational improvements identified by the Air Transport Association (ATA) and the Port Authority of New York and New Jersey. We expect to complete the remaining 9 recommended improvements by summer 2008;
- Establishing an executive-level Director position at the FAA to head the New York Area Program Integration Office;
- Further implementation of New York/New Jersey/Philadelphia airspace redesign; and
- Proposed amendments to the Airport Rates and Charges Policy.

During the holiday season, the Department also instituted other measures to mitigate flight delays, such as negotiating an agreement with the Department of Defense to open military airspace for commercial use. We are also continuing our outreach efforts with various stakeholders, including consumer groups, airports, and airline CEOs.

We are making better use of our skies to limit the impact weather has on travelers. Last week, the Secretary announced new air traffic measures designed to help cut delays this

¹The New York Aviation Rulemaking Committee Report can be accessed at:
<http://www.faa.gov/library/reports/media/NY%20ARC%20Final%20Report.pdf>

summer. The first involves new and greater flexibility for aircraft to use alternative routes in the sky to avoid severe weather. This includes a new routing alternative that provides an “escape route” into Canadian airspace from the New York metropolitan area so airlines can fly around summer thunderstorms and high winds. In addition, the FAA will open a second westbound route for aircraft, akin to adding another interstate highway lane in the sky. This would in effect provide a parallel route along a heavily-traveled aviation corridor, helping cut westbound delays from the New York area.

Straight caps (hourly limitations on flight operations during certain peak hours) without some mechanism to ensure an efficient allocation of scarce slot resources is not economically efficient and, therefore, not our preferred option. Given the urgent need for action, however, it was necessary at the New York City area airports. The Port Authority elected not to pursue various delay reduction approaches, and the President and Secretary Peters would not tolerate delays like those that occurred last summer. The caps at JFK took effect on March 30, and we expect to issue a final order for Newark soon (the comment period on the notice proposing caps at Newark closed on April 1). The caps at JFK (and Newark, if adopted,) are scheduled to expire on October 24, 2009. It is also worth noting that because it is so heavily influenced by events in New York airspace, Philadelphia stands to gain from improvements that can be made in the New York area.

We still believe that there is a need for market-based measures to allocate capacity, and the Department continues to explore such measures. For example, there are options available to airports in lieu of caps. Our preference is to see airports address their challenges locally; however, the Federal Government will be involved once a congested airport impacts the rest of the national airspace. New York air congestion causes delays throughout the U.S.

In January, we issued a notice that proposed providing airports with a new and useful tool to price access to their facilities better. The FAA proposal would make three changes to the airports rates and charges policy. The first change would clarify that airports may use a two-part fee structure with an operation-based and weight-based element. The second change would permit an operator of a congested airport to charge for work under construction. Finally, the third change would expand the authority of an operator of an airport system to charge users of the congested airport in the system for the airfield costs of other airports in its system. If adopted, the amendments would allow a congested airport to charge prices commensurate with the true costs of using its runways. In return, this will provide users better incentives to consider alternatives, such as scheduling flights outside of peak demand times, increasing aircraft size to use the congested runways more efficiently or meeting regional air service needs through alternative, less congested facilities. The comment period ended on April 3, and we hope to act on the proposal soon.

Per landing charges are a much better proxy for costs than weight-based charges. Since 2002, the amount of small aircraft (planes with fewer than 100 seats) flying into New York area airport increased substantially. Small aircraft flights at JFK increased 393%; Newark increased 53%; and LaGuardia increased 48%. The way we charge for airport

use is an important contributor to this trend. Economists on both sides of the political aisle have acknowledged this relationship.

We share 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 NextGen and at the Department level. The FAA is hard at work bringing new technology and techniques on-line 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 double 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 ADS-B program will change the nation's air traffic control system from one that relies on radar technology to a system that uses precise location data from a global satellite network. The FAA has chosen Miami as the key site for installation and testing of two broadcast services of the ADS-B program - Traffic Information Services – Broadcast (TIS-B) and Flight Information Services – Broadcast (FIS-B). These broadcast services transmit weather and traffic information to the cockpit of properly equipped aircraft. The FAA plans to commission these broadcast services in November 2008 and can then begin nationwide deployment.

Over the next few years, the FAA will also install and test ADS-B for use in Air Traffic Control Separation Services. Philadelphia is one of the key sites for this initiative. The FAA plans to commission the ADS-B services in September 2010 and a nationwide rollout by 2013.

B. Consumer Protection Initiatives

While relieving congestion will go a long way in addressing consumer issues, the Department also is undertaking a number of consumer-specific measures. Our consumer protection initiatives have advanced a great deal in the last six months. This is due in part to the appropriation by Congress of \$2.5 million targeted to improving consumer protections, and I can assure you we are putting it to good use. The funding is being used for additional staff to pursue investigations and enforcement actions, improvements to our aviation consumer protection Web site and consumer complaint system, brochures for air travelers to help them understand their rights and responsibilities, and a series of public forums to listen to air travelers and the problems they have experienced.

The Department has initiated three rulemakings to enhance passenger rights and protections. In November 2007, the Department issued a proposal to double the limits on the compensation required to be paid to “bumped” passengers and extend the compensation requirement to smaller aircraft. Just last week Secretary Peters announced

final changes to the so called “bumping rule,” which takes effect next month. Under the revised rule, fliers who are involuntarily bumped will receive up to \$400 if they are rescheduled to reach their destination within two hours of their original arrival time or four hours for international flights, and up to \$800 if they are not rerouted within that timeframe. The new rule also covers more flights, including those operated with aircraft seating 30 people or more; the current rule covers flights with 60 seats or more. The amount of these payments are determined by the price of the ticket and the length of the delay, and are in addition to the value of the passenger’s ticket, which the flyer can use for alternate transportation or have refunded if not used. As the Secretary has noted, it is difficult to compensate for a missed family occasion or business opportunity, but this rule will ensure flyers are more fairly reimbursed for their inconvenience.

The Department also published a proposal to enhance the on-time performance data that carriers currently report to the Department so that the Department, the industry, and the public have access to more complete information on flights that are cancelled, diverted, or experience gate returns. We hope to take final action soon.

The third rulemaking, an Advance Notice of Proposed Rulemaking, requested comments on various proposals designed to provide consumers information or enhance consumer protections, including proposed requirements that airlines: create legally binding contingency plans for extended tarmac delays, respond to all consumer complaints within 30 days, publish complaint data online, and provide on-time performance information for international flights. The Department is currently considering the comments received. The next step would be issuance of a Notice of Proposed Rulemaking seeking comments on any proposals the Department decides to advance after reviewing the public comments.

In addition to these rulemakings, the Secretary formed a "Tarmac Delay Task Force" in December. The purpose of the task force is to study past delays, review existing and other promising practices, and develop model contingency plans that airlines and airports can tailor to their unique operating environments to mitigate the impact of lengthy ground delays on consumers. The task force also will consider possible unintended consequences that solutions to tarmac delays may pose for travelers. The task force is composed of 35 individuals representing a broad cross-section of airlines, airports, consumer groups, and other stakeholders. The first meeting of the task force was held February 26, and the next meeting is scheduled for April 29. The Department expects that the task force will meet at least three more times in 2008 and will complete its work by the end of the year. In my opinion, the Task Force is working well and will be the source of best practices that will improve the travel experience when things do go wrong.

Three other important initiatives of our Aviation Enforcement Office deserve mention. The office has plans to conduct on-site enforcement investigations of five large airlines this fiscal year to evaluate their compliance with consumer protection requirements. In addition, the office will be holding three Aviation Consumer Protection Forums across the country to educate consumers regarding their rights as air travelers and to hear first-hand their concerns about air travel. The office is also continuing its investigation of

unrealistic scheduling by large airlines, targeting chronically delayed flights. During the fourth quarter of 2007, the number of such flights decreased dramatically, and in 2008, the Aviation Enforcement Office will be applying a somewhat more rigorous set of criteria during its review.

Some have argued that airlines have individually or collectively scheduled flights during periods of the day in which the system is simply unable to handle the volume without resulting delays. I would like to assure the Committee that the Department of Transportation has sufficient authority to investigate unrealistic scheduling and, if necessary, penalize actions that we deem to be unfair or deceptive trade practices. Although a congested system is not necessarily evidence of unfair or deceptive practices, we will continue to diligently investigate potential evidence of such practices and take any appropriate action.

We are well aware that tarmac and flight delays are making air travel an unpleasant experience for passengers. The Department will continue to take action to ease uncertainty and reduce inconvenience for passengers.

III. Addressing the Problem and Not the Symptom

While we are working to improve consumer protections, we do not want to lose sight of the fact that the underlying cause of much of the occasional misery attributed to air travel is congestion and delays. For this reason, the Department has been engaged in a discussion over the last several months with a wide variety of stakeholders on the efficacy of using a better economic model to balance supply and demand in a sustainable way.

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 efficiently. It also ignores the physical, economic, and political constraints on capacity expansion in many parts of the U.S. aviation system.

The Department looks to increase capacity whenever and wherever possible. Our support for expansion of Philadelphia International Airport and O'Hare International Airport are concrete examples. Philadelphia in particular is proposing major capacity enhancements to accommodate current and future aviation demand in the Philadelphia metropolitan area during all weather conditions. Key features of the proposal consist of major airfield improvements, including construction of one or more new runways and related facilities. Capacity increases must be part of the solution, particularly considering that we expect more than 1 billion air passengers by 2016. 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 is the case with 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 have led to an inefficient allocation of the airspace, and that moving towards a market-based system will reduce these inefficiencies and contribute to an improved flying experience for air travelers.

A. Administrative Remedies

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 legacy 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.² 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.

² 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>

A less apparent problem is the perverse incentive that appears when caps are being contemplated at an airport for the first time. In such a situation, incumbents are encouraged to build up flight operations in advance of a capping action, simply to generate a better base for the future allocation of slots. Thus, the talk of a heavy handed and artificial solution to a problem actually exacerbates the congestion problems at the airport. For example, when the FAA began to intervene at Newark Liberty and JFK airports by designating both airports Level 2, Schedule Facilitated, airports under International Air Transport Association guidelines, the schedules that the air carriers proposed for the summer of 2008 reflected growth that appeared to be enhanced by the signals that the FAA intended to address the congestion problem with a cap.

If caps are not the answer, then the question arises – what is the solution?

B. 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 longer-term solution to congestion.

Last week, Secretary Peters announced the Department’s proposal for a new way to manage congestion at New York’s LaGuardia Airport in a Supplemental Notice of Proposed Rulemaking (LaGuardia SNPRM).³ Even though this facility has been capped since 1968, it is still consistently one of the top three most delayed airports in the nation. Under a supplemental rulemaking, the Department is proposing two market-based options that would require a limited number of flights operated by the airlines in a given day, known as slots, to be made available through an auction process.

Under the first option, all air carriers would be given up to 20 slots a day for the 10 year life of the rule. Meanwhile, over the next five years, 8 percent of the additional slots currently used by an airline would be made 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. Proceeds from the auction would be invested in new congestion reduction and capacity improvement initiatives in the New York region.

The second option also gives airlines permanent access to 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 other airlines through an auction. Under this option, the carriers would retain the net proceeds of their auctioned slots.

Both options provide financial stability to the airlines operating at LaGuardia by providing them with a defined right to operate at the airport for a decade, something they

³ 73 Fed. Reg. 20846 (April 17, 2008).

do not have today. These rights are given in recognition of the significant financial investment the airlines have made in the airport's infrastructure.

This plan strikes a sound balance between protecting investments by incumbent carriers and ensuring that all airlines have the ability to fly to New York's LaGuardia. While the status quo at LaGuardia has led to stagnant service, delays, and unnecessarily high fares, open access and competition will help give flyers more choices, fewer delays, and lower fares.

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. Increases in fares under a pricing regime would be an indicator that more capacity is needed. In terms of efficiency, the current system focuses on airplane throughput. Instead, the objective of airspace and airport management policies should be passenger throughput. Proper pricing can increase the number of passengers served at an airport, even if the number of planes does not increase. And a framework to establish proper price signals need not be disruptive to the operations of airports.

Changing from the traditional, increasingly inefficient administrative controls to a market-based system has generated a fair amount of concern, primarily from the airlines. The following discussion outlines the issues related to pricing that were considered by the ARC. It details concerns expressed about pricing and how those concerns can be addressed.

Track Record in Aviation – Some opponents to market-based pricing believe it does not have a proven track record in aviation, and that implementation of such pricing for airspace will devastate the industry. Further, they do not believe that experience with such pricing in other industries provides a meaningful parallel for application in the airline industry.

We live in a market economy which allocates scarce resources through pricing. This model has been adopted because history has demonstrated repeatedly that markets are the most efficient means of allocating a scarce commodity. While the aviation industry is unique in a number of respects, there is no reason to believe that market-based methods will fail if applied to this industry.

In fact, market-based pricing has been used effectively in the United States for aviation. Boston's Logan International Airport applied a pricing plan in 1988 that dramatically reduced congestion at that airport. While the plan was later found to be out of proportion to the need to reduce congestion, because it operated during non-congested as well as congested periods market-based pricing at Logan Airport did reduce congestion. In addition, the Port Authority of New York and New Jersey applied pricing in 1968 to control congestion. The pricing worked initially; however, the fee was not increased with time and eventually became ineffective.

Those questioning the efficacy of market-based pricing in aviation need look no further than airline pricing policies. Airlines already apply a market-based pricing model to airline travel. When searching for low fare flights to your destination, inevitably the cheapest flights to be found are those departing or arriving at the least desirable times. By pricing flights at less attractive times at a lower level than flights at popular travel times, airlines are incentivizing consumers to move to a less congested flight. However, this congestion fee does not reduce overall congestion in the system, because it does not impact the way the airlines themselves are charged for air traffic control and airport services.

Cost to Consumers – Arguments have been made that market-based pricing could increase the monetary cost to travelers, if airlines pass congestion fees on to consumers. This argument, however, ignores two facts: (1) limiting competition by capping an airport creates significant upward pressure on fares and (2) congestion fees will be offset by congestion savings.

The increased cost of a congestion charge is likely to be more than offset by the downward pressure on fares brought about by additional competition. Statistics show that when a low cost carrier enters a new market, the additional competition results in a fare decrease. When Southwest entered the market in Philadelphia in May 2004, the result was an immediate fare decrease of 24%. Three years later, in the 4th quarter of 2007, the average air fare in Philadelphia was still down 12% from the 4th quarter of 2003, before Southwest entered the market. While it is still unclear how much airlines will pay in an auction for slots at LaGuardia, it is likely that competition from new entrants will result in greater fare savings, which will offset any increases as a result of the purchasing slots.

Similarly, we need to explore the costs of instituting market mechanisms compared to the costs of various alternatives (including capping access to an airport or allowing substantial increases in delays).

In fact, congestion is expensive. According to the ATA, congestion costs the economy over \$12.5 billion a year. The New York City Comptroller has estimated that congestion costs travelers to New York City an additional \$187 million. Reducing congestion will produce increased system reliability and dramatic savings for consumers. Market-based

pricing would decrease congestion and thereby decrease the costs that flow from congestion.

Market-based pricing makes the costs consumers already pay for flying into a congested market transparent and gives them the ability to avoid the higher costs by traveling during less congested periods. When scarcity exists, consumers pay higher costs. In the case of aviation, those costs are paid in terms of wait times or higher fares due to slot controls or pricing. Only with market-based pricing do consumers have the choice of avoiding higher prices. Some airlines now charge more for additional leg room. If passengers will pay for additional leg room, they almost certainly will pay to arrive on time.

Government Tax – One of the principal points argued by those opposed to market-based mechanisms is that the organizations that control airport and airspace access are both monopolies and, therefore, are themselves not market-based. For this reason, pricing of airport or airspace access would operate as a government tax, rather than a market price between two private entities.

The details of how the proceeds of a pricing mechanism might be spent are important and if the proceeds are dedicated to expanding capacity and funding specific projects at the airports, then the revenue would be directly used to alleviate the congestion that generated the proceeds and would not be a tax. In recognition of this concern, under first option proposed in the LaGuardia SNPRM, the FAA would spend any proceeds from an auction on congestion and delay management initiatives in the New York City area, after recouping the costs of the auction. Under the second proposed option, the airlines would retain the proceeds of the auction.

Relationship Between Physical Assets and Investments – Many airlines have invested hundreds of millions, and even billions, of dollars in terminals, gates, hangars, and other facilities at airports. Those airlines using special revenue facility bond financing gain tax preferences due to the public nature of the facilities whose financings they underwrite. They give up the facility to the airport proprietor at a predetermined date. The airlines also realize that the airport proprietor ultimately controls the use of the facilities for the benefit of the public. Nonetheless, those airlines are concerned that they would lose the ability to realize a return on those investments, if a pricing program resulted in the airlines not being able to fly their traditional schedule. Conversely, if reallocation of slots is achieved through imposition of a market-based pricing mechanism that does not recognize historic rights, some are concerned that the new owners of slots would not be able to gain access to the gates and ticket counters controlled by the former owners of the slots.

Any pricing mechanism pursued by the Department will recognize these concerns. Since the advent of the competition plan requirement in AIR-21, the Department has been educating airport proprietors about their responsibilities to accommodate all requesting carriers on a reasonable basis. Airlines are aware that their unused gate leaseholds may be accessed by other carriers, due to the unavailability of common-use gates and if the need arises. In addition, the Department would manage any market-based system in

such a way as to recognize the legitimate interests of those airlines, which have made significant investments in existing infrastructure, to realize an adequate return on those investments. The Department does not want to create a disincentive for future airline investment in aviation infrastructure.

We recognize the concern about disruptions to the industry in the LGA SNPRM. The proposals would grant 10-year leases to airlines currently serving LaGuardia for at least 20 of their current slots. Such an approach recognizes the historical investment by airlines at the airport and the community, and will avoid disruption to the national air transportation system.

Additionally, the Airport Council International, North America, expressed concerns that the Department's LaGuardia SNPRM might interfere with the airport's ability to manage its own facilities. The Department has consistently worked with airports to give them additional tools to manage their airports and reduce delays – such as through our rates and charges policies – and we will continue to work to develop better delay and congestion management tools that do not overstep our regulatory authority to manage the airspace and respect the airports need to manage its own facilities. The Port Authority has failed to use this tool and not managed congestion at LaGuardia for 40 years.

Reduced Demand for Air Travel – Some civic leaders were particularly concerned about the impact market-based pricing might have on the affordability of traveling to the New York City. As noted above, however, consumers are paying a heavy price in terms of congestion. It is unlikely that slightly higher prices during peak periods would serve as a greater deterrent than the chronic delays New York City currently experiences. In fact, a *USA Today* article published last year noted that savvy travelers avoid New York City whenever possible. That can change if market-pricing can play an appropriate role.

Additionally, by establishing a market mechanism whereby slots will be allocated to the most efficient user, the incentive will be for the slots to go to the airline with the most efficient use of the slot – which will likely be the airline that is able to bring the most passengers in on a plane. This should result in increased passenger throughput at an airport – even as the physical number of planes coming through the airport remains steady – and result in greater availability of seats and downward pressure on ticket prices.

Economic Disruption – Given the sharp increase in fuel prices, airlines are understandably concerned about any additional financial burden generated by pricing. In addition, the airports have billions of dollars of debt and other financing tied to the financial health of the airlines. The Department understands the financial environment in which airlines and airports are operating. Any market-based solution will need to be implemented in a manner that does not unduly disrupt the current system.

The recent LaGuardia SNPRM will result in a very small number of flights being auctioned off annually – under options 1 and 2, fourteen or thirty-six slots out of 1168 slots, respectively, will be auctioned annually for the first five years of the rule, with no required auctions for the last five years of the rule. This is a very small number of slots

that will be auctioned – and while some will claim that any disruption is problematic, we expect that numerous experts and economists will chide the Department for having auctioned what they view as too small of an amount. This SNPRM is attempting to strike a balance between competing views and to spur a secondary, voluntary market whereby airlines can freely trade slots and excess capacity to the highest bidder able to realize the best economic use of the slot.

Impact on Small Communities and General Aviation – There are concerns that market-based pricing would limit general aviation access to airports and would make it difficult for carriers to continue adequately serving small communities. While market-based pricing does an excellent job of allocating resources to those who can realize the most economic value from that resource, such pricing does not allow for the societal value placed on certain activities. The Department will monitor whether modifications to market-based mechanisms are necessary to provide for continued service to small communities and continued access for general aviation. If the Department were to publish a final rule that would auction slots at LaGuardia, the Department will carefully analyze and consider the impacts an auction will have on service to small communities.

IV. Conclusion

Our objective is to address the fundamentals of the problem of aviation congestion and achieve solutions that are long-term and that provide maximum benefits to the traveling public and the vital industry that serves them. The basic question for us is whether to continue to apply temporary band-aids to the problem, or whether to seek solutions that will do a better job of allocating our scarce airspace. We believe that we must take positive, immediate steps to deal with a dynamic air transportation system that has far outpaced earlier efforts at improvement. Air travelers deserve to fly the safest and most reliable air system possible. The time has come to bring aviation into the 21st century and more fully allow market forces to work.

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.

Thank you again for this opportunity to testify. I will be pleased to answer any questions you may have.