

TESTIMONY OF JIM BURNLEY
DEPUTY SECRETARY OF TRANSPORTATION
BEFORE THE SUBCOMMITTEE ON AVIATION
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
CONCERNING OPERATING RIGHTS AT HIGH DENSITY TRAFFIC AIRPORTS
February 6, 1986

MADAM CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

I APPRECIATE HAVING THIS OPPORTUNITY TO APPEAR BEFORE THE SUBCOMMITTEE TO EXPLAIN WHY THE CONSUMER, THE AVIATION INDUSTRY, AND AFFECTED COMMUNITIES WILL BENEFIT FROM OUR NEW APPROACH TO ALLOCATING THE FAA INSTRUMENT FLIGHT RULE OPERATING RIGHTS OR "SLOTS" AT THE NATION'S FOUR HIGH DENSITY TRAFFIC AIRPORTS. WITH ME TODAY IS DEPUTY CHIEF COUNSEL ED FABERMAN FROM THE FEDERAL AVIATION ADMINISTRATION.

THE FORMER ALLOCATION APPROACH

WE ARE ADDRESSING A LONGSTANDING PROBLEM: DAILY AIR CARRIER AND COMMUTER ARRIVALS AND DEPARTURES AT FOUR OF THE NATION'S BUSIEST AIRPORTS -- O'HARE, JFK, LAGUARDIA, AND WASHINGTON NATIONAL -- REACHED SATURATION LEVELS IN THE LATE 1960'S UNDER INSTRUMENT FLIGHT RULE OR "IFR" CONDITIONS. THE FAA THEREFORE IMPOSED MAXIMUM HOURLY TOTALS FOR IFR OPERATIONS DURING CERTAIN HOURS AT EACH AIRPORT, UNDER WHAT HAS BECOME KNOWN AS THE "HIGH DENSITY RULE". THE FAA IMPOSED SPECIAL, DIFFERENT SLOT RESTRICTIONS MUCH MORE BROADLY NATIONWIDE FOLLOWING THE 1981 AIR TRAFFIC CONTROLLER STRIKE, BUT THOSE HAVE BEEN LIFTED AND ARE NOT AT ISSUE. GENERAL

AVIATION OPERATING RIGHTS ARE ALSO NOT AT ISSUE IN OUR NEW RULEMAKING.

SINCE 1968, SLOTS HAVE BEEN ALLOCATED AMONG AIR CARRIERS BY SCHEDULING COMMITTEES AUTHORIZED BY THE CIVIL AERONAUTICS BOARD, WITH ANTITRUST IMMUNITY UNDER SECTION 414 OF THE FEDERAL AVIATION ACT. AT ALL TIMES, HOWEVER, THE FAA HAS STRESSED THAT THESE IFR OPERATING RIGHTS ARE AN ELEMENT OF AIR TRAFFIC CONTROL MANAGEMENT, AND DO NOT AND NEVER WILL CONSTITUTE A PROPERTY RIGHT IN THE HOLDER. THIS SYSTEM WORKED REASONABLY WELL WHEN DEMAND FOR SLOTS AND COMPETITION WAS CONSTRAINED, BUT THE SCHEDULING COMMITTEE MECHANISM HAS NOT RESPONDED WELL TO THE DYNAMIC FORCES OF DOMESTIC AVIATION DEREGULATION. THE LAGUARDIA AIR CARRIER SCHEDULING COMMITTEE, FOR EXAMPLE, HAS REPEATEDLY FAILED TO ACT ON WESTERN AIRLINES' REQUEST FOR 4 SLOTS WHICH WE UNDERSTAND WAS TO PROVIDE SERVICE TO SALT LAKE CITY.

INCUMBENT CARRIERS AT THE AIRPORTS AND NEW ENTRANTS HAVE FOUND IT INCREASINGLY DIFFICULT OVER TIME TO REACH AGREEMENT. THE FIRST FORMAL DEADLOCK OCCURRED AT WASHINGTON NATIONAL AIRPORT IN 1980, WITH MANY FORMAL AND INFORMAL DEADLOCKS SINCE. AMONG AIR CARRIERS, THE COMMITTEES AT O'HARE, LAGUARDIA, AND WASHINGTON NATIONAL WERE DEADLOCKED AT THE TIME WE ISSUED OUR RULE IN DECEMBER. IN FACT, WASHINGTON NATIONAL HAS BEEN DEADLOCKED SINCE AUGUST 1983.

THREE FUNDAMENTAL PROBLEMS AROSE: FIRST, THE INCREASING TENDENCY TO "DEADLOCK" IN SEMIANNUAL SCHEDULING SESSIONS RESTRICTED NEW ENTRY AT THE AIRPORTS; SECOND, EVERY AIRLINE, NEW OR OLD, HAD THE INCENTIVE TO "POCKET" UNNEEDED SLOTS FOR FUTURE USE; AND THIRD, THE STATIC ASSIGNMENT OF SLOTS TENDED OVER TIME TO LOCK IN MARKET STRUCTURES AT EACH AIRPORT AND REDUCE COMPETITION AMONG THE INCUMBENT CARRIERS.

FURTHERMORE, THE SCHEDULING COMMITTEE PROCESSES WERE BECOMING LESS AND LESS CONSISTENT WITH THE STATUTORY TEST OF SECTIONS 412 AND 414 OF THE FEDERAL AVIATION ACT FOR ANTITRUST IMMUNITY. UNDER THOSE STATUTORY CRITERIA, WE CANNOT CONTINUE TO APPROVE AN AGREEMENT THAT SUBSTANTIALLY REDUCES COMPETITION IF THERE IS A REASONABLY AVAILABLE, MATERIALLY LESS ANTICOMPETITIVE, ALTERNATIVE.

MADAM CHAIRMAN, BOTH YOU AND THE DEPARTMENT RECOGNIZE THAT THE REGULAR DEADLOCKS IN MOST OF THE SCHEDULING COMMITTEES HAVE STIFLED COMPETITION, AND THAT SLOTS ARE BEING "POCKETED" BY CARRIERS WHO HAVE NO INCENTIVE TO TURN THEM IN FOR USE BY OTHER, POSSIBLY COMPETING, CARRIERS. THESE STATIC CONDITIONS ALSO PREVENTED INCUMBENTS FROM INCREASING THEIR OPERATIONS AT THESE AIRPORTS AND LIMITED THEIR OPPORTUNITIES TO RESPOND TO NEW COMPETITIVE OPPORTUNITIES IN A VERY DYNAMIC INDUSTRY.

I BELIEVE WE ARE BOTH COMMITTED TO ADVANCING THE BENEFITS OF DEREGULATION BY ENCOURAGING REAL COMPETITION AT THESE AIRPORTS AND CITIES, BOTH AMONG THE CARRIERS ALREADY THERE AND BY EXTENDING OPPORTUNITIES TO NEW ENTRANTS. AT THE SAME TIME, WE RECOGNIZE THE NEED TO PRESERVE SMALL COMMUNITY SERVICE, TO MEET OUR INTERNATIONAL OBLIGATIONS AND CONCERNS OF AIRPORT OPERATORS, AND TO CONSIDER THE "SUNK COSTS" AND OTHER COMMITMENTS THAT ESTABLISHED CARRIERS HAVE ALREADY MADE AT THESE AIRPORTS.

TO OVERCOME THE PROBLEMS OF SCHEDULING COMMITTEES, WE PROPOSED A MAJOR REVISION IN JUNE 1984 IN HOW SLOTS SHOULD BE ALLOCATED AND SHIFTED AMONG CARRIERS. OUR OVERRIDING OBJECTIVE WAS TO ESTABLISH A SYSTEM THAT WOULD PERMIT INCREASED COMPETITION, ALLOW NEW ENTRY, ENCOURAGE EFFICIENT USE OF ALL SLOTS, AND PROVIDE MAXIMUM FLEXIBILITY FOR CARRIERS TO MODIFY OPERATIONS CONSISTENT WITH THEIR INDIVIDUAL MARKETING STRATEGIES.

THE DEPARTMENT STUDIED NUMEROUS ALLOCATION POSSIBILITIES DURING THE PAST SEVERAL YEARS. THAT EFFORT CULMINATED IN THE JUNE 1984 RULEMAKING PROPOSALS. THE VAST MAJORITY OF THE COMMENTERS ON THE PROPOSED RULE WE ISSUED IN JUNE 1984 ACCEPTED THE NEED FOR IMPROVEMENT BUT DIFFERED IN THEIR SUGGESTIONS FOR AN ADEQUATE REMEDY. IN ADDITION TO AIR CARRIERS AND COMMUTERS, WE RECEIVED COMMENT FROM FEDERAL AGENCIES (IN PARTICULAR THE JUSTICE AND STATE DEPARTMENTS, THE COUNCIL OF ECONOMIC ADVISORS, AND FEDERAL TRADE COMMISSION), FROM STATE AND LOCAL GOVERNMENT AGENCIES, INCLUDING

AIRPORT OPERATORS, AND FROM AVIATION-RELATED ORGANIZATIONS AND INDUSTRY GROUPS AS WELL AS CONSUMER GROUPS.

IN DEVELOPING THE FINAL RULE, WE REVIEWED THE AVAILABLE OPTIONS. WE LOOKED AT SEVERAL DEADLOCK-BREAKING MECHANISMS COMBINED WITH A USE-OR-LOSE PROVISION. WE ALSO CONSIDERED, IN THE CONTEXT OF "BUY SELL", A NUMBER OF INITIAL ALLOCATION PROCEDURES, INCLUDING VARIOUS AUCTION, LOTTERY, AND FORMULA ALLOCATION APPROACHES. FROM THIS EXTREMELY EXHAUSTIVE PROCESS WE CULLED ELEMENTS FROM A NUMBER OF THE OPTIONS AND INCORPORATED THEM INTO A SOLID, PRAGMATIC AND EQUITABLE FINAL RULE AND PROPOSAL. THE RULE PROVIDES A COMPREHENSIVE AND FAIR REGULATORY FRAMEWORK THAT WILL INCREASE AND ENCOURAGE MORE VIGOROUS COMPETITION AT THE NATION'S FOUR HIGH DENSITY AIRPORTS. IN AN ERA OF AIRLINE DEREGULATION AND ENERGETIC COMPETITION, THESE FACILITIES FOR TOO LONG CONTINUED TO OPERATE IN AN ANACHRONISTIC SETTING.

THE PREAMBLE TO OUR FINAL RULE ADDRESSES THE SPECIFIC COMMENTS, AND SETS FORTH THE DETAILED JUSTIFICATION FOR THE NEW RULE. THE FINAL RULE, AND AN ASSOCIATED PROPOSAL, WERE PUBLISHED DECEMBER 16. WE RECENTLY CONDUCTED A PUBLIC HEARING ON THEM ON JANUARY 21.

THE NEW ALLOCATION APPROACH

I WOULD LIKE TO SUMMARIZE THE BASIC ELEMENTS OF THE NEW RULE AND EXPLAIN HOW WE DEALT WITH THE MAJOR ISSUES. GENERALLY, ANYONE MAY PURCHASE A SLOT AT ANY OF THE FOUR AIRPORTS FOR ANY MUTUALLY AGREEABLE CONSIDERATION FROM ANY WILLING HOLDER OF A SUITABLE SLOT. WITH RESPECT TO FUTURE ACCESS, NEW ENTRANTS WILL OCCUPY A MUCH BETTER POSITION IN RELATION TO THE ESTABLISHED CARRIERS THAN THEY DO UNDER THE OLD SCHEME, WITH AS MUCH OPPORTUNITY AS ANY INCUMBENT TO ACQUIRE SLOTS TO ENTER NEW MARKETS. INCUMBENTS AS WELL AS NEW ENTRANTS WILL BENEFIT FROM REMOVING THE REGULATORY HAND OF THE GOVERNMENT AND THE RESTRICTIONS OF THE SCHEDULING COMMITTEES. THEY WILL GAIN THE FLEXIBILITY TO BUY OR LEASE SLOTS SO AS TO INCREASE OPERATIONS AT HIGH DENSITY AIRPORTS OR RE-ALIGN OPERATIONS TO COMPETE MORE EFFICIENTLY. OVER TIME, THE NEW RULE WILL ASSURE A MORE EFFICIENT USE OF SLOTS, BECAUSE INDIVIDUAL BUYERS AND SELLERS WILL HAVE THEIR OWN RESOURCES FULLY AT RISK IN A WAY THAT A COLLECTIVE BODY, SUCH AS A SCHEDULING COMMITTEE, DOES NOT. INDIVIDUAL ENTITIES TRADING IN THE MARKETPLACE HAVE GREATER INCENTIVES TO SEEK THE BEST INFORMATION, TO MINIMIZE TRANSACTION COSTS, AND GENERALLY TO PUT SCARCE RESOURCES TO THEIR HIGHEST AND BEST USE. PROMOTING EFFICIENT SCHEDULING AND ROUTING WILL, OF COURSE, ULTIMATELY BENEFIT THE CONSUMER.

THE TRANSFER OF SLOTS AMONG INDIVIDUAL PARTIES FOR AGREED-UPON CONSIDERATION IS NOT A NEW CONCEPT. IT WAS EMPLOYED ON A LIMITED BASIS IN 1982, IN THE AFTERMATH OF THE ILLEGAL AIR TRAFFIC CONTROLLER STRIKE. AT 22 CAPACITY-CONSTRAINED AIRPORTS, CARRIERS WERE PERMITTED TO BUY AND TRADE SLOTS DURING A 6-WEEK PERIOD. THIS TEMPORARY POLICY ENABLED CARRIERS TO MAKE COMPETITIVE CHANGES IN THEIR SERVICE PATTERNS AND PROVIDED AN OPPORTUNITY FOR NEW ENTRANTS TO OBTAIN SLOTS AT HIGH DENSITY AIRPORTS. IT ENABLED A NEW ENTRANT, PEOPLE EXPRESS, FOR EXAMPLE, TO ESTABLISH HIGHLY COMPETITIVE SERVICES AT NATIONAL AIRPORT BY PURCHASING 10 SLOTS IT HAD BEEN UNABLE TO OBTAIN FROM THE SCHEDULING COMMITTEE. IN OUR VIEW, THE POLICY WAS SUCCESSFUL AND DEMONSTRATES THAT "BUY SELL" CAN WORK WELL.

I BELIEVE WE HAVE DEALT SENSIBLY AND FAIRLY WITH THE FUNDAMENTAL CONCERNS ABOUT THE "BUY-SELL" RULE. FIRST, WE HAVE TAKEN PRECAUTIONS TO ASSURE THAT THE INTERESTS OF SMALLER COMMUNITIES TRADITIONALLY SERVED FROM THE HIGH DENSITY AIRPORTS ARE RECOGNIZED. WE HAVE MAINTAINED THE EXISTING NUMBER OF "COMMUTER CARRIER" SLOTS, AND A REQUIREMENT THAT THESE SLOTS BE OPERATED ONLY WITH COMMUTER AIRCRAFT, WHICH WILL ALSO HELP ASSURE SERVICE TO SMALL COMMUNITIES. ON THE OTHER HAND, WE ALLOW AIR CARRIER SLOTS TO BE USED IN COMMUTER SERVICE, SO THAT THE POTENTIAL EXISTS FOR SOME EXPANSION OF SMALL COMMUNITY SERVICE. IN ADDITION, THE SLOTS USED TO PROVIDE ESSENTIAL AIR SERVICE WILL BE PROTECTED. THE RULE PROVIDES THAT EAS SLOTS CANNOT BE SOLD OR

OTHERWISE TRANSFERRED TO ANOTHER CARRIER, EXCEPT IN ONE-FOR-ONE TRADES AT THE SAME AIRPORT, UNLESS THE DEPARTMENT'S EAS OFFICE DETERMINES THAT THERE WILL BE NO HARM TO THE EAS PROGRAM. MOST IMPORTANT, PERHAPS, THE RULE WILL PERMIT COMMUNITIES CONCERNED ABOUT MAINTAINING SERVICE TO PURCHASE SLOTS AND LEASE THEM TO CARRIERS WHICH AGREE TO SERVE THEIR COMMUNITIES.

SECOND, WE HAVE ACKNOWLEDGED THE IMPORTANCE OF OUR INTERNATIONAL OBLIGATIONS AND THE NATION'S FOREIGN POLICY BY PROVIDING THAT SLOTS SERVING FOREIGN POINTS ARE NOT SUBJECT TO "BUY SELL". WE WILL MAKE SLOTS AVAILABLE FOR THESE SERVICES, BUT THESE SLOTS MAY NOT BE BOUGHT AND SOLD. BECAUSE INTERNATIONAL AVIATION IS THE SUBJECT OF NUMEROUS BILATERAL AND MULTILATERAL AGREEMENTS, WE MUST PRESERVE THE AUTHORITY WITHIN THE EXECUTIVE BRANCH TO ALLOCATE SLOTS AS NEEDED TO FULFILL THE TERMS OF OUR AGREEMENTS.

THIRD, WHILE THE AIRPORT OPERATOR ORGANIZATIONS HAVE BEEN CRITICAL OF DOT'S APPROACH, THE ACTUAL OPERATORS OF THE HIGH DENSITY AIRPORTS -- THE NEW YORK/NEW JERSEY PORT AUTHORITY, THE O'HARE AUTHORITY, AND OF COURSE THE FAA AT NATIONAL -- ALL SUPPORT THE "BUY SELL" APPROACH. ONE REASON IS THAT THE CARRIERS' ABILITY TO CONTROL THE NUMBER OF SLOTS THEY OPERATE WILL MAKE THEM MORE STABLE TENANTS.

FOURTH AND MOST IMPORTANT, WE HAVE MADE EVERY EFFORT TO MAKE THE TRANSITION FROM THE CURRENT, BADLY FUNCTIONING SYSTEM TO THE NEW

ONE AS SMOOTH AND FAIR AS POSSIBLE. FOR ONE THING, OUR RULE CREATES AN IMMEDIATE "USE OR LOSE" REQUIREMENT THAT WILL WITHDRAW ALL "POCKETED" SLOTS FOR EQUITABLE REALLOCATION ON A LOTTERY BASIS, AN IMPROVEMENT I KNOW YOU SUPPORT. IN ADDITION, WE HAVE SOUGHT TO AVOID DISRUPTIONS IN SERVICE PATTERNS AND RECOGNIZE THE LARGE INVESTMENTS OF CARRIERS IN THEIR EXISTING ALLOCATIONS, BY "GRANDFATHERING" MOST OF THE SLOTS HELD BY INCUMBENTS AT THESE AIRPORTS.

MEMBERS OF THIS SUBCOMMITTEE AND MANY OF THE COMMENTERS TO THE RULEMAKING HAVE ARGUED THAT IT IS UNFAIR THAT, UNDER THE RULE, INCUMBENT OPERATORS AT THE HIGH DENSITY TRAFFIC AIRPORTS ARE RECEIVING THEIR SLOTS FOR FREE AND WILL BE ABLE TO SELL THEM. NEW ENTRANT CARRIERS AND OTHERS DESIRING TO ADD SLOTS IN THE FUTURE, ON THE OTHER HAND, WILL GENERALLY HAVE TO BUY THEM. SOME OF THOSE WHO ARGUE AGAINST THE ALLEGED WINDFALL ASPECTS OF THE RULE WOULD HAVE THE DEPARTMENT CORRECT THAT PERCEIVED PROBLEM BY PROHIBITING SLOT SALES AND PERIODICALLY WITHDRAWING SOME PROPORTION OF SLOTS FROM INCUMBENT CARRIERS AND ASSIGNING THEM TO THOSE DESIRING TO BEGIN NEW OPERATIONS. THIS WOULD BE THE UPSHOT OF THE BILL S. 1966, FOR EXAMPLE, IN THE VIRTUALLY CERTAIN EVENT THAT SCHEDULING COMMITTEES DEADLOCK.

FOR A NUMBER OF REASONS, WE BELIEVE OUR SLOT ALLOCATION RULE WILL CREATE LITTLE, IF ANY, NEW WINDFALL AND, FURTHERMORE, THAT ANY ATTEMPT TO CORRECT THE ALLEGED WINDFALL IN THE MANNER PROPOSED IN

S. 1966 WOULD BE INEFFICIENT, UNFAIR, INEFFECTIVE, AND LIKELY TO BE HIGHLY DISRUPTIVE OF AIRLINE SERVICE.

FIRST, INCUMBENT CARRIERS AT THE HIGH DENSITY AIRPORTS ARE ALREADY ENJOYING A WINDFALL SINCE THEY ARE NOW AND HAVE BEEN USING A LIMITED RESOURCE FOR SOME TIME THROUGH THE MECHANISM OF THE SCHEDULING COMMITTEES. IF THERE IS A WINDFALL, THAT IS IT. THE ONLY REAL CHANGE THE NEW RULE MAKES IS TO ALLOW THOSE SLOTS TO BE SOLD. THIS ABILITY MAY MAKE THEM SLIGHTLY MORE VALUABLE, BUT THE INCREASE IN VALUE WOULD BE MARGINAL, AS DOCUMENTED BY THE COUNCIL OF ECONOMIC ADVISORS' ECONOMISTS WHO COMMENTED TO US.

SECOND, INCUMBENT AIR CARRIERS AND COMMUTERS ALIKE, BOTH LARGE AND SMALL, HAVE EXPENDED HUGE SUMS OF MONEY BUILDING TERMINALS, DEVELOPING HUBS, CREATING CONNECTIONS WITH OTHER CARRIERS, COMMITTING AIRCRAFT, TRAINING AND STATIONING CREWS, LEASING GATE SPACE, AND ADVERTISING AND DEVELOPING MARKETS IN THE HIGH DENSITY AIRPORT CITIES, AND IN THE CITIES SERVED FROM THE HIGH DENSITY AIRPORTS. TO PERIODICALLY TAKE AWAY SLOTS, AS PROPOSED IN S. 1966, WOULD DEPRIVE THESE CARRIERS OF THE PROJECTED BENEFITS OF THESE INVESTMENTS, AND WOULD THEREBY BE EXTREMELY INEQUITABLE TO THE SMALL AS WELL AS LARGE CARRIERS. MOREOVER, TO THE EXTENT THAT CARRIERS EXPECT TO LOSE SLOTS IN A LOTTERY AS THE BILL PROPOSES, THEY MAY REDUCE SUCH INVESTMENTS TO THE DETRIMENT OF THE TRAVELING PUBLIC.

TO THOSE WHO BELIEVE THAT THE SO-CALLED WINDFALL IS CONCENTRATED IN JUST A FEW MAJOR AIR CARRIERS, I MUST STRESS THAT NUMEROUS AIR CARRIERS AND COMMUTER OPERATORS, BOTH SMALL AND LARGE, HOLD SIGNIFICANT NUMBERS OF SLOTS AT THE HIGH DENSITY AIRPORTS. EACH WOULD BE DEPRIVED OF THE BENEFITS OF ITS INVESTMENTS, WITH THE SMALLER OPERATORS BEING MOST SEVERELY AFFECTED.

TO TAKE INVESTMENTS BY THE LARGEST DOMESTIC CARRIER AS ONE EXAMPLE, UNITED AIRLINES HAS PROVIDED FIGURES FOR THE "SUNK COSTS" THAT ARE AT RISK IN A DEADLOCK-BREAKING SITUATION. IT ESTIMATES THAT IT HAS SPENT \$74 MILLION TO DATE FOR TERMINAL FACILITIES AT O'HARE, WITH ANOTHER \$350 MILLION COMMITTED TO A NEW TERMINAL UNDER CONSTRUCTION. ABOUT \$15 MILLION HAS BEEN SPENT AT LAGUARDIA, \$5.5 MILLION AT NATIONAL, AND \$20 MILLION AT JFK. IN CURRENT DOLLARS, THESE INVESTMENTS WOULD APPEAR EVEN LARGER. IT BECOMES UNDERSTANDABLE WHY INCUMBENTS WOULD RESIST A RANDOM, FUNDAMENTALLY IRRATIONAL PERIODIC LOTTERY APPROACH AS A LONG-TERM RESOLUTION AT THE AIRPORTS WHERE THEY HAVE MADE SUCH COSTLY COMMITMENTS.

TAKING WASHINGTON NATIONAL AIRPORT AS A DIFFERENT EXAMPLE, CARRIERS BUDGET \$1 TO \$2 MILLION FOR HOLDING ROOMS, \$140,000 TO \$240,000 FOR LOADING BRIDGES, AND \$1,000 PER LINEAR FOOT IN CONSTRUCTION COSTS FOR COUNTER SPACE, PLUS COMPUTER EQUIPMENT COSTS. WHILE ADDING THE COST OF NEEDED SLOTS COULD BE VIEWED AS

JUST ANOTHER START-UP COST OF DOING BUSINESS, ARBITRARILY WITHDRAWING SLOTS FOR REDISTRIBUTION BY LOTTERY OR OTHERWISE WOULD BE HIGHLY DISRUPTIVE AND UNFAIR TO THE CARRIERS WHO SPENT LARGE SUMS IN EXPECTATION OF USING THE SLOTS THEY HAVE LONG HELD.

FINALLY, PERIODICALLY WITHDRAWING SLOTS AND REALLOCATING THEM BY LOTTERY, AS UNDER S. 1966, DOES NOT CURE THE WINDFALL POTENTIAL, BUT ACTUALLY CREATES A WINDFALL BY ARBITRARILY TAKING THE "SCARCE GOOD" FROM A CARRIER THAT HAS MADE A SUBSTANTIAL INVESTMENT IN RELIANCE ON IT AND GIVING IT TO ANOTHER CARRIER THAT HAS MADE NO SUCH COMMITMENT. MOREOVER, NOT ONLY INCUMBENT CARRIERS BUT ALSO THE CITIES THEY SERVE BENEFIT FROM ANY CURRENT WINDFALL, AND THEIR SERVICE WOULD BE PLACED AT RISK IN ANY PERIODIC, ABRUPT, AND ARBITRARY WITHDRAWAL OF SLOTS NEEDED TO CONDUCT A LOTTERY RE-ALLOCATION. THESE COMMUNITIES SHOULD ASK WHY THEIR SERVICE IS LIKELY TO BE LOST IN SUCH AN ARBITRARY FASHION.

UNDER OUR NEW ALLOCATION RULE, RATIONAL AND BUSINESS-LIKE SCHEDULING DECISIONS WOULD OCCUR WITHOUT GOVERNMENTAL INTRUSION. AIR CARRIERS WOULD SELL THOSE SLOTS ON WHICH THEY ARE MAKING AN INSUFFICIENT RETURN ON THEIR INVESTMENTS TO CARRIERS WHO BELIEVE THEY CAN USE THE SLOTS TO THEIR AND THE PUBLIC'S ECONOMIC BENEFIT. CITIES THAT DESIRE GUARANTEED SERVICE CAN BUY SLOTS OR CONTRACT WITH A CARRIER FOR SUCH SERVICE.

OUR RULE RECOGNIZES THAT THOSE CARRIERS THAT HAVE FOR SOME TIME BEEN TRYING UNSUCCESSFULLY TO OBTAIN SLOTS FROM THE SCHEDULING COMMITTEES DESERVE SPECIAL CONSIDERATION. THUS, NEW ENTRANT CARRIERS WILL BE GIVEN A PREFERENCE IN ANY LOTTERIES OF NEW SLOTS, SLOTS RETURNED TO THE FAA, AND SLOTS WITHDRAWN UNDER THE USE-OR-LOSE PROVISION. HOWEVER, THE SUCCESS OF PEOPLE EXPRESS AIRLINES IN OBTAINING HIGH DENSITY SLOTS DURING THE 1982 LIMITED "BUY SELL" PERIOD DEMONSTRATES THAT THE CONCERNS IN THIS AREA MAY BE SOMEWHAT EXAGGERATED. ALSO, NEW ENTRANTS HAVE HAD AN IMPRESSIVE COMPETITIVE IMPACT SIMPLY BY ENTERING THE CITY MARKETS THAT INCLUDE A HIGH DENSITY AIRPORT. IN WASHINGTON, NEW YORK AIR AND PRESIDENTIAL AIRWAYS HAVE DEMONSTRATED THE EFFECTS OF COMPETITIVE SERVICE AND FARES AT THE REBORN DULLES INTERNATIONAL AIRPORT. IN NEW YORK, PEOPLE EXPRESS HAS HAD A MAJOR IMPACT ON FARES AT ALL AREA AIRPORTS, EVEN THOUGH IT DOES NOT SERVE THE TWO NEW YORK HIGH DENSITY AIRPORTS.

UNDER A NOTICE OF PROPOSED RULEMAKING ISSUED ALONG WITH THE "BUY SELL" RULE, A ONE-TIME WITHDRAWAL AND REALLOCATION OF UP TO FIVE PERCENT OF THE SLOTS AT HIGH DENSITY TRAFFIC AIRPORTS IS PROPOSED. HOWEVER, IT IS ENVISIONED THAT SOME OF THE FIVE PERCENT WOULD BE AVAILABLE THROUGH THE OPERATION OF THE "USE OR LOSE" PROVISION IN THE NEW RULE. THUS, WITHDRAWAL AND RESULTANT SERVICE DISRUPTIONS WOULD OCCUR ONLY ONCE AND WOULD BE HELD TO A MINIMUM. THIS LOTTERY, AS PROPOSED, WOULD BE CONDUCTED JUST AS THE LOTTERY IN THE FINAL RULE, WITH A PREFERENCE OF 15% OF THE SLOTS FOR NEW

ENTRANTS, AND AWARD OF 4 RATHER THAN 2 SLOTS AT A PARTICULAR AIRPORT.

IT WAS POINTED OUT AT THE TIME OF OUR JANUARY 21 PUBLIC MEETING THAT THE POSITIVE IMPACT OF THIS PROPOSAL ON NEW ENTRANTS AND SMALL INCUMBENTS COULD BE MAGNIFIED SEVERALFOLD WITHOUT INCREASING THE 5% WITHDRAWAL LEVEL BY SIMPLY EXCLUDING THE LARGER ESTABLISHED CARRIERS WHICH HOLD SIGNIFICANT NUMBERS OF SLOTS FROM THE LOTTERY ALLOCATION. THIS IS AN ISSUE THAT IS CURRENTLY BEFORE US AS A PART OF THE RULEMAKING PROCESS.

I WOULD LIKE TO CONCLUDE THIS DESCRIPTION OF THE RULE BY POINTING OUT THAT THE ONLY EFFECTIVE MEANS TO "RECAPTURE" ANY WINDFALL WHICH MAY RESULT FROM THE SALE OF SLOTS, AND SHORT OF DISRUPTING THE WHOLE SYSTEM OF SERVICE AT THE FOUR AIRPORTS, IS TO IMPOSE SOME FORM OF TRANSFER FEE AS AN ADJUNCT TO "BUY SELL". THERE IS NO STATUTORY AUTHORITY FOR THAT APPROACH, AND WE BELIEVE WE HAVE PURSUED THE LEAST DISRUPTIVE METHOD TO MOVE FROM THE UNACCEPTABLE STATUS QUO TO A VASTLY MORE EFFICIENT SYSTEM.

THE S. 1966 APPROACH

HAVING SUMMARIZED THE DIRECTION WE HAVE CHARTED IN OUR REGULATION, I WOULD LIKE TO EXPLAIN MORE FULLY WHY WE DO NOT BELIEVE THE PENDING BILL S. 1966 CAN ACCOMPLISH THE SAME PURPOSES. PUTTING ASIDE THE "USE-OR-LOSE" REQUIREMENT OF S. 1966 ALREADY

INCORPORATED IN OUR RULE, THE ONLY OTHER SIGNIFICANT CHANGE THAT YOUR BILL WOULD MAKE TO THE STATUS QUO IS TO ADD A DEADLOCK-BREAKING MECHANISM TO THE SCHEDULING COMMITTEE TECHNIQUE FOR REALLOCATION OF SLOTS. IN THE EVENT OF FAILURE TO OBTAIN UNANIMITY AMONG AIR CARRIERS, A VIRTUAL CERTAINTY, YOUR BILL WOULD REQUIRE THE FAA TO RECALL A "REASONABLE PERCENTAGE OF SLOTS CURRENTLY IN USE" FOR PURPOSES OF A LOTTERY IN WHICH NEW ENTRANTS COULD PARTICIPATE. AN ESTABLISHED CARRIER WOULD ONLY BE PROTECTED FROM "LOSS OF AN UNDUE PROPORTION OF ITS SLOTS" IN THE EVENT OF RECALL.

WE BELIEVE THIS DEADLOCK-BREAKING APPROACH HAS FIVE WEAKNESSES. FIRST, THE FAA BECOMES THE ARBITER OF A "REASONABLE PERCENTAGE" OF SLOTS NEEDED TO ENSURE COMPETITION AT EACH AIRPORT. THIS IS A VIRTUAL REPLAY OF THE PRE-1978 ATTEMPT TO HAVE THE GOVERNMENT, IN THE FORM OF THE CAB, ARBITRATE AIRLINE COMPETITION, BUT MERELY IN A DIFFERENT FORUM. AS AN ECONOMIC AND LEGAL MATTER, JUSTIFICATION OF PRECISELY WHAT "REASONABLE PERCENTAGE" IS NEEDED TO ENHANCE COMPETITION WILL BE DIFFICULT IF NOT IMPOSSIBLE, SINCE WE WON'T CONTROL WHICH SLOTS WILL COME OUT OF WHICH MARKETS, NOR WHICH MARKETS WILL BE SERVED BY THE SLOTS IN NEW HANDS. COMMENTS ON OUR PROPOSAL TO DO THIS ON A ONE-TIME, VERY LIMITED BASIS HAVE POINTED OUT THE DIFFICULTIES.

SECOND, FROM THE PERSPECTIVE OF NEW ENTRANTS ESPECIALLY, A LOTTERY IS NOT A SATISFACTORY BASIS FOR MAKING BUSINESS DECISIONS ABOUT

ENTERING ANY PARTICULAR MARKET. IT WOULD LITERALLY BOIL DOWN TO THE "LUCK OF THE DRAW" WHETHER A PARTICULAR SERVICE COULD BEGIN. VALID MARKET ANALYSIS WOULD BE IMPRACTICAL UNDER SUCH CONDITIONS. ALSO, THE NUMBER OF SLOTS A CARRIER COULD OBTAIN UNDER SUCH A MECHANISM IS MINIMAL, WITH NO REAL OPPORTUNITY TO OBTAIN THE NUMBER OF SLOTS NEEDED TO INITIATE SERVICE. THE OPPORTUNITIES FOR SMALL INCUMBENTS WOULD BE ALMOST NON-EXISTENT. THIS IS WHY A NUMBER OF POST-DEREGULATION NEW ENTRANTS SUPPORT "BUY SELL". IN CONTRAST, THE EXISTENCE OF A MARKET IN SLOTS, AS PROVIDED IN OUR NEW RULES, PERMITS A SOLID FINANCIAL ANALYSIS OF COSTS, DEMAND, AND OTHER COMPETITIVE FACTORS WITH RESPECT TO MARKETS CONSCIOUSLY CHOSEN.

THIRD, INCUMBENTS WOULD STILL HAVE LITTLE, AND PERHAPS REDUCED, FLEXIBILITY TO INCREASE OPERATIONS OR ADJUST SCHEDULES AT HIGH DENSITY AIRPORTS IN ORDER TO RESPOND TO COMPETITIVE NEEDS AND OPPORTUNITIES.

FOURTH, COMMUNITIES OTHER THAN THOSE WITH PROTECTED EAS SERVICE UNDER S. 1966 WOULD STAND TO LOSE THEIR FLIGHTS IN "THE LUCK OF THE DRAW". I ASK YOU TO CONSIDER WHAT SERVICE IS MORE SUSCEPTIBLE TO LOSS UNDER A PERIODIC WITHDRAWAL MECHANISM. I SUGGEST IT MIGHT BE THE VERY SERVICE YOU ARE TRYING TO PRESERVE -- THAT WHICH SERVES MID-SIZED COMMUNITIES AT CONVENIENT HOURS BUT DOES NOT PRODUCE THE BEST LOAD FACTORS. UNITED AIRLINES INDICATED AS MUCH AT OUR PUBLIC HEARING. IT IS IMPORTANT TO STRESS THAT UNITED AND OTHER MAJOR CARRIERS SERVE THESE MID-SIZE MARKETS, WHILE NEW

ENTRANTS COULD BE EXPECTED TO SERVE HIGH VOLUME AND HIGH FREQUENCY MARKETS.

FIFTH AND MOST IMPORTANT, S. 1966'S PROCESS WILL END IN THE ULTIMATE DEADLOCK, WHEN ALL INCUMBENTS HAVE BEEN GROUND DOWN TO THE POINT WHERE A FURTHER LOSS WOULD CONSTITUTE AN "UNDUE PROPORTION" LOST. THIS HAS EFFECTIVELY OCCURRED UNDER THE NATIONAL AIRPORT COMMUTER COMMITTEE'S DEADLOCK-BREAKING MECHANISM. NOT ONLY WOULD THE APPROACH BECOME INEFFECTIVE IN THIS WAY, BUT IT WOULD CAUSE A HIGHLY ARBITRARY AND ECONOMICALLY INEFFICIENT REDISTRIBUTION OF SLOTS ALONG THE WAY. IT IS FOR THIS REASON THAT THE REGIONAL AIRLINE ASSOCIATION SUPPORTS THE "BUY SELL" APPROACH RATHER THAN THE MECHANISM THE COMMUTERS HAVE BEEN USING.

IN CLOSING, I WOULD LIKE TO POINT OUT THAT THE SLOT SESSIONS CONDUCTED TO ESTABLISH EACH CARRIER'S BASE ALLOCATIONS OF SLOTS, ALONG WITH THE PUBLIC HEARING FAA CONDUCTED TWO WEEKS AGO ON OUR NEW RULE AND PROPOSAL, BOTH STRONGLY INDICATE THAT WE HAVE A WORKABLE BASIS TO SHIFT FROM THE PAST, INADEQUATE MECHANISMS TO A FLEXIBLE, EFFICIENT, AND EQUITABLE ALLOCATION TECHNIQUE. I HOPE DISCUSSION AND DETAILED ANALYSIS OF THE ISSUES AS A PART OF THE RULEMAKING WILL CONVINCEN YOU OF THE SIGNIFICANT OVERALL BENEFITS OF THE "BUY SELL" RULE.

THIS COMPLETES MY STATEMENT. WE WOULD BE PLEASED TO RESPOND TO THE COMMITTEE'S QUESTIONS.