

BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C.

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Application of )  
)  
PRO AIR, INC. )Docket No .99-6683  
)  
for an exemption from 14 C.F.R. Part 32, Subparts K and S, )  
U.S.C. § 41714 as to allow nonstop service to and from )  
LaGuardia Airport )

ANSWER OF THE OFFICE OF THE  
QUEENS BOROUGH PRESIDENT,  
CITY OF NEW YORK, IN OPPOSITION  
TO APPLICATION OF PRO AIR, INC. FOR SLOT EXEMPTIONS

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## I. INTRODUCTION

The President of the Borough of Queens is the highest level county-wide executive in Queens County in New York City. If Pro Air, Inc.'s application for six slot exemptions at LaGuardia Airport ("LaGuardia") is granted, it would have a significant adverse impact on the residents of Queens County which is the home of both LaGuardia and John F. Kennedy International Airport ("JFK"), and which has a population of approximately two million individuals. Because the Borough President is elected and represents the entire county, and works closely with the aviation industry to balance the economic and transportation benefits of that industry with its negative impacts on residents, the Borough President's Office is in the best position to represent Queens County's interests in this proceeding.

While it is true that both airports in Queens generate thousands of jobs and other economic benefits for residents of the county, it is also true that these residents must also bear the burdens resulting from close proximity to the airports, including aircraft noise, air pollution, safety risks, and increased levels of traffic congestion on the airports' access roads, on the airports' tarmacs and runways, and in the skies above and around Queens. These problems are exacerbated near LaGuardia, which is located in the most densely populated residential area of all the airports in the nation.

For the reasons discussed herein, the President of the Borough of Queens in New York City strongly opposes this application for six slot exemptions in its entirety.

## II. BACKGROUND

### A. The High Density Rule

Queens County is, as stated above, the home of both LaGuardia and JFK. These two airports

together handle over 700,000 flights carrying approximately 50 million passengers per year, and these flights impose a tremendous burden upon the two million residents in this borough. Specifically, local residents suffer from a disproportionate amount of aircraft noise, congestion, delays and pollution, and these airport-related impacts have been constant problems in Queens County for many years.

Prior to 1968, there were absolutely no legal or regulatory limits on the number of flights that could be added at LaGuardia and JFK, and eventually the congestion of the aviation system reached a crisis stage. In its 1995 Report to Congress, the United States Department of Transportation (“DOT”) described the problems as follows:

“By 1968, airports and airway systems were near saturation. Among the most congested airports were O’Hare, Washington National, Newark, Kennedy and LaGuardia. For example, reports of extreme delays for aircraft en route to New York were common. On some days, air travel between New York and Washington could take up to four hours. Likewise, both San Francisco and Miami airports reported extensive backups as aircraft waited for clearance to take off for New York. Other flights would never even make it to New York; they were canceled before getting off the ground.”<sup>1</sup>

The Federal Aviation Administration (“FAA”) finally took action against this problem on November 27, 1968 by adopting the “High Density Rule”, which limits the number of flights at “high density” airports during particular hours.<sup>2</sup> The High Density Rule provided tremendous relief to both air travellers and local residents from the problems that had been caused by airspace congestion, and the rule remains the only protection that airline passengers and residents have against a complete return to the problems that plagued the air traffic system in the 1960s.<sup>3</sup>

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<sup>1</sup> Report to Congress: A Study of the High Density Rule, United States Department of Transportation, November 1995, page 22 (footnotes omitted).

<sup>2</sup> 14 C.F.R. Part 93, Subpart K.

<sup>3</sup> For a fuller discussion of the history behind the High Density Rule and the tremendous adverse impact that additional flights have on New York City, see Consolidated Answer of the Office of the Queens Borough President, City of New York, Docket Numbers OST-97-2870, OST-97-2885, OST-97-2932, OST-97-2970, OST-97-298 OST-97-3086, OST-97-3087 (December 3, 1997).

## B. The Statutory Test for High Density Rule Exemptions

In 1994, the United States Congress ordered DOT to undertake a study of the High Density Rule. In addition, during the time period of the study, Congress authorized DOT to grant exemptions under very narrow circumstances, and established a two-part test for evaluating slot exemption applications.

The first part of the statutory test requires a showing that the additional flights are in the “public interest”. To meet this portion of the test, an airline seeking an exemption initially must demonstrate that public benefits would result from the additional flights, such as: (1) the institution of new service, or non-stop service, where none previously existed; or (2) a substantial reduction in airfares in a market which is dominated by a single carrier or which otherwise lacks meaningful price competition. If the applicant makes this showing, then those potential benefits must be weighed against any potential adverse impacts on the public, including: (1) an increase in aircraft noise; (2) more flight delays; (3) worsening of vehicular traffic congestion; (4) a decrease in safety resulting from more congested airspace; and (5) the adverse health impacts from increased air pollution.

If DOT determines that the adverse impacts from the flights outweigh any possible positive benefits, then DOT must deny the slot exemption application. In the alternative, if the applicant demonstrates that the benefits outweigh the burdens of the new service, then DOT must address the second part of the statutory two-part test.

The second part of the test requires the applicant to demonstrate that “exceptional” circumstances warrant the granting of the application. In undertaking this analysis, there are several factors that DOT must consider:

1. Alternative Airports: First, the applicant must demonstrate that it is unable to provide service to the destination through another airport which is not covered by the High Density Rule.

Obviously, if the service can be provided to an alternate airport, then there is no need at all for the slot exemption, and the application must be denied.

2. Alternative Times: Second, if the application relates to an airport which has hours that are not slot-controlled, then the applicant must demonstrate why the service cannot be provided during those hours. Once again, the ability to provide service during non-slot-controlled hours precludes the need for an exemption, and must result in the denial of the application.

3. Purchase or Lease of Slot: Third, the applicant must submit documentary evidence that it could not obtain the necessary slots from an existing holder, either through purchase or lease. Specifically, the applicant must provide: (1) copies of all written communications to other airlines and financial institutions setting forth the terms of any offers to purchase or lease slots; (2) copies of any responses to those requests, including responses setting forth terms different from those offered; and (3) an analysis of the financial impact on ticket prices if the applicant amortized the cost of any purchase or lease over a ten-year period. Without this information, DOT will not be able to determine whether the applicant should be required to purchase or lease slots on the buy-sell market.

4. Reallocation of Slots: If the applicant demonstrates that it cannot provide service to another airport, that it cannot provide service at the requested airport during non-slot-controlled hours, and that the cost of purchasing or leasing the slots would cause ticket prices to become uncompetitive, then DOT will have to decide whether to grant a new slot, or to reallocate an existing slot. If there are existing slots which are being underutilized, then DOT should withdraw those slots and should award them to the new applicant. If there are no underutilized slots, then “exceptional circumstances” exist and new slots can be awarded.

#### C. Environmental Assessment Report Limiting Additional Slot Exemptions for LaGuardia

In October 1997, DOT issued a report entitled Environmental Assessment and Finding of No Significant Impact for Exemptions from 14 CFR Part 93, Subparts K and S for Operations at O’Har

and LaGuardia Airport. That report concluded, among other things, that the environmental assessment discussed therein supported the addition of up to 30 slot exemptions at LaGuardia because, according to the assessment, that number of additional slot exemptions would have no significant impact on the environment. Implicit in DOT's findings is that, at the very least, additional environmental analysis would be required before DOT could grant any exemptions beyond the 30 sanctioned in the report.

It is the understanding of the Borough President's Office that at least 30 slot exemptions have been awarded by DOT since the issuance of the environmental assessment report. Thus, no additional slot exemptions should be granted until a meaningful environmental review of the potential impact of any new flights arriving at or departing from LaGuardia has been conducted.

#### D. Other Proceedings and Statutory Developments

1. 1995 Order Denying a Spirit Airlines Application for Slot Exemptions at LaGuardia (OST-95-265)

In a 1995 order, DOT denied a request by Spirit Airlines ("Spirit") for more flights at LaGuardia because it did not satisfy the exceptional circumstances requirement of the law. Specifically, DOT found that nonstop service already existed between the New York area and the other markets at issue including the Detroit market; the benefits of Spirit's proposal were too speculative in that no quantitative analysis had been provided; and the basics of its operations were considered too risky. The DOT order also suggested that aircraft noise played a part in its decision. Even more significant to DOT was the issue of aircraft delay and congestion at LaGuardia, which have been well-documented problems for years:

"Of much greater significance, however, is the issue of aircraft delay and congestion and the position of the Federal Aviation Administration's Office of Air Traffic System Management (ATM), which bears the responsibility for managing the nation's air traffic system in a safe and efficient manner. Through internal review of Spirit's application, ATM made it clear that it does not support additional operations at LaGuardia for four main reasons. First,

LaGuardia currently operates at capacity under virtually all operating conditions due to the limitations of intersecting runway operations. Second, ground congestion is currently a problem at LaGuardia due to limited taxiways and staging and holding areas, with virtually no potential for airport expansion. Third, airspace in the New York area is very congested and complex with several major air carrier and general aviation airports in close proximity. Finally, delay levels at LaGuardia and in the New York area are consistently among the highest in the country and have a significant effect on the air traffic system, especially at other airports along the east coast. Increased operations at LaGuardia would increase ground delays for flights at the origin airports waiting to depart for LaGuardia. Based on its expertise and knowledge of air traffic conditions at New York's LaGuardia Airport and the larger New York air traffic region, ATM concluded that granting of the exemptions for ten additional operations at LaGuardia would significantly increase the current level of delay and congestion at LaGuardia as well as in the surrounding airspace."<sup>4</sup>

Note that DOT made this observation five years ago. What was true then with respect to congestion at LaGuardia is certainly true now, a fact to which anyone who has visited LaGuardia and watched aircraft lining up or idling on the tarmac awaiting clearance for take-off can attest.

## 2. Federal Legislation Affecting the High Density Rule

Federal legislation is pending which, among other things, would reauthorize the FAA and affect the High Density Rule by giving what are known as regional jets greater access to high density airports and by easing the standards which must be met by new and limited incumbent air carriers in order to obtain slot exemptions (before the rule is entirely phased out in 2007). The Borough President's Office urges that DOT not rush to judgment on Pro Air's application, given that the imminent change in the law will open new markets, including the Detroit market at issue in this proceeding, to new and existing airlines including Pro Air. If DOT feels compelled to act in an expedited manner, the decision-makers there should keep in mind that the amendments to the High Density Rule have not been enacted yet and that Pro Air is still required to meet the strict standards discussed above.

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<sup>4</sup> Spirit Airlines Order No. 95-8-38, page 9

### III. ARGUMENT

#### A. Pro Air Fails to Meet the Statutory Test for the Award of Slot Exemptions

This request for slot exemptions must be denied because Pro Air has completely failed to meet the statutory requirements for the granting of an exemption to the High Density Rule. The additional flights would have a net negative impact and therefore are not in the public interest. Also, Pro Air has failed to make any showing of exceptional circumstances.

##### 1. Public Interest

Airline passengers seeking to fly between Detroit and New York City have several options from which to choose. In addition, at least one other airline has a pending application for slot exemptions which, if granted, would add still more service between Detroit and New York City. Certainly, there are currently enough routes between the New York City area and the Detroit area for which Pro Air seeks slot exemptions. Pro Air has offered no analysis to demonstrate that there is anything separate and unique about the Detroit market. Moreover, while Pro Air suggests that its proposed route would enhance competition and therefore cause lower fares, the public record of available data demonstrates that there is already an ample range of choices, available at competitive rates.

In addition, Pro Air makes bold claims about the need for and the likelihood of success of this venture; however, it has failed to provide any quantitative analysis by which to gauge even roughly the potential benefits, which are therefore impossible to evaluate. For example, Pro Air provides no information about its ability or willingness to offer service at competitive fares, though it suggests somewhat tentatively that lower fares could result from the additional flights.

The speculative nature of the public benefits that would accrue from any new service must be weighed against the significant adverse impact that would result from the granting of this slot exemption application. Specifically, these new flights would exacerbate the already intolerable levels of noise, pollution, congestion and delays in and around LaGuardia.

As noted above, the High Density Rule was initially instituted as the result of a crisis created by

congestion at LaGuardia, JFK and other over-utilized airports throughout the country. The existing limits on the number of flights at these high density airports have helped to address the issue to some degree, but congestion is still a significant problem, and every new slot exemption exacerbates the problem and threatens to return us to the crisis situation that existed in the past.

In the past, as noted above, DOT has solicited input from the FAA's ATM as part of its slot exemption application review process. ATM is, of course, responsible for ensuring that the air traffic system operates in a safe and efficient manner. As we also noted above, the ATM made clear in 1995, in connection with a slot exemption application by Spirit, that there should be no increase in the number of flights at LaGuardia because it would undoubtedly increase the delays and congestion at the airport.<sup>5</sup> The problems described in detail in the 1995 Spirit Airlines order continue to exist at LaGuardia. Indeed, the most significant changes that have occurred since that time involve the addition of more than 30 new slots.

Many airlines will be observing the progress of this application because they too would like to have more access to LaGuardia. At least two other airlines are seeking a total of 20 new slot exemptions to increase their operations at LaGuardia. These airlines and others will seek to use this case as precedent, if Pro Air is awarded the slot exemptions and, we fear, the High Density Rule will gradually be eroded by new and incumbent airlines seeking slot exemption one handful at a time. Thus, while each individual airline might claim that its own request would result in only a small percentage increase in the total number of flights at the airport, each application must be assessed based on the already overcrowded nature of the airspace, as well as the impending increase in the number of flights.

The Borough President's Office specifically noted the importance of considering the cumulative impact of additional flights in its opposition to Spirit's 1995 application. In the resulting decision, DC agreed with this office:

We find [the Borough President's] arguments regarding increased congestion at LaGuardia persuasive. We cannot accept the characterization of the increase in

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<sup>5</sup> Spirit Airlines Order No. 95-8-38, Page 9

air traffic as modest based solely on the calculation of Spirit's aircraft operations as a percent of total aircraft operations during the slot period without any consideration being given to the timing of the operation.<sup>6</sup>

Assuming for the sake of argument that there is any validity to Pro Air's unsubstantiated claim of benefits that would result to the Detroit market if DOT were to grant the slot exemptions, there are still some questions as to how much the public would actually benefit. Specifically, the decision-makers DOT should ask how much longer delays, caused by aircraft idling on the tarmac or circling overhead awaiting clearance to take-off or land, respectively, will the average traveller endure just to save a few dollars?

Having failed to demonstrate the existence of any clear public benefits, and with this lack of benefits greatly outweighed by the burdens that would be imposed upon the community, it is clear that Pro Air has failed to establish that its application would be in the public interest. Accordingly, the application must be denied.

It should also be noted that, to the best of our knowledge, the Port Authority of New York and New Jersey, which operates LaGuardia, opposes the addition of any new slots. Indeed, if the very entity which manages the airport refuses to support this application, then DOT should not even consider granting the request for slots. After all, some deference must be accorded the Port Authority, which has to deal with the daunting task of managing LaGuardia on a daily basis.

### 3. Exceptional Circumstances

Although Pro Air's inability to meet the "public interest" test requires the denial of its slot exemption application, it is clear that the applicant has also failed to meet the second part of the two-part test, because there are no exceptional circumstances which justify the granting of this application.

#### a. Service from an Alternate Airport

There is no basis for granting a slot exemption if the applicant is able to serve the intended destination through another airport which is not covered by the High Density Rule. In this case, Pro .

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<sup>6</sup> Id., page 9

has offered no reason why the proposed services must be provided through LaGuardia, as opposed to JFK (at non-slot-controlled hours), Newark, and/or other regional airports which might have space available.

Simply put, New York City (and its environs) is a competitive market served by more than one airport. LaGuardia, JFK and Newark all serve the same primary business market in the region – Manhattan – and all three airports have similar travel times and transportation costs to the main Manhattan business districts. If Pro Air is determined to provide more service to Detroit, then it is fit to explore options at the region's other airports.

b. Purchasing Slots on the “Buy-Sell” Market

Pro Air has failed to demonstrate that it cannot simply purchase or lease slots on the “buy-sell” market. As far as can be determined from Pro Air's application, it does not appear that Pro Air has made a serious attempt to purchase or lease any slots. Pro Air has not indicated what amounts it would be willing to pay for the six requested slots, how much those slots would cost, and what impact those costs would have on its fare structure. As a result, Pro Air has completely failed to provide DOT with a sufficient factual basis to find that slot exemptions are necessary.

As this office has noted previously, DOT must require that the applicant submit evidence setting forth the terms of any offers to purchase or lease slots, as well as the response to those requests. DOT will then be able to determine the impact of the cost of a slot, amortized over a ten-year period, on the fares that would be charged by the applicant. If an applicant has based a slot application on a promise of price competition, then it must also show that the cost of the slots would eliminate that competitive advantage. If, on the other hand, the applicant can provide competitive prices by spreading the cost of the slot over a number of years, then the airline should be required to obtain the slot on the buy-sell market, and should not be provided with free slots by DOT.

Pro Air, in contrast, has wholly failed to provide any of the necessary information. Without this essential data, it is impossible to determine whether Pro Air could purchase the necessary slots and still maintain competitive prices. Pro Air's application must therefore be denied. See Spirit Airlines, Order No. 95-8-38, page 8 (failure of airline parties to provide any more than “a limited amount of evidence

regarding slot availability” made it “impossible for [DOT] to properly weigh this issue”).

c. Reallocation of Existing Slots

Even assuming that Pro Air was able to demonstrate that it could not simply add flights at Newa could not add flights at JFK during non-slot-controlled hours, and could not feasibly purchase or lease slots and provide competitive service, DOT still must determine whether it should award a slot exemption or should reallocate a slot from an existing holder. By using its reallocation powers, DOT will be able to achieve all of the benefits that would accrue from the additional service, without increasing the number of flights at the airport, and therefore without adding to the noise, pollution, congestion, safety and delay problems suffered by the community. Only if DOT cannot reallocate slots can a finding of “exceptional circumstances” be made justifying the award of new slots to the applicant.

d. The Application also Fails to Meet the New *Frontier Airlines* Standard of Review

In its October 24, 1997 decision in Frontier Airlines, DOT appeared to modify the statutory test established by Congress for the evaluation of slot exemption applications, and created a new standard of review.<sup>6</sup> The Queens Borough President objected strongly to the Frontier Airlines decision and joined with New York City Mayor Rudolph Giuliani in the filing of a lawsuit challenging the validity of that decision.<sup>7</sup> Nevertheless, Pro Air’s application must be denied because it fails to meet even the new standard enunciated in Frontier.

In Frontier, DOT expanded the “exceptional circumstances” test by “recognizing the need for competitive service in a market, especially low-fare competitive service”. DOT also determined that slot exemption applications seeking to provide “significantly lower fares in noncompetitive or underserved markets ... can meet the exceptional circumstances criterion, “ thus essentially merging t

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<sup>6</sup> Frontier Airlines, Order No. 97-10-17 (October 24, 1997).

<sup>7</sup> City of New York v. Slater, No. 97-4358 (2d Cir.).

“exceptional circumstances” test with the “public interest” test.<sup>1</sup>

DOT attempted to clarify its new decisional guidelines by stating that it would consider the following three factors in evaluating the “public interest” and “exceptional circumstances” tests:

- DOT will “favor” proposals from airlines that will use Stage 3 aircraft;
- DOT will require a “reasonable expectation” that the proposed service is operationally and financially viable; and
- DOT will “place a premium” on the introduction of: (a) new nonstop service; and (b) new service by airlines that “have the demonstrated potential to offer low-fare competition”, where there is “single carrier service and the market can support entry”, or where existing services do not produce “meaningful price competition.”<sup>2</sup>

Concerning the second of the above considerations, it is not clear that Pro Air’s proposed service is “operationally and financially viable.” In rejecting Spirit’s exemption application in 1995, DOT held that the application was too speculative and too risky. Likewise, Pro Air’s application gives rise to a number of questions about both its operations and finances. Operationally, the Borough President’s Office understands that there is simply no time available for additional operations during LaGuardia’s peak travel hours. We would hope that very early morning flights and very late evening flights would be ruled out as commercially unfeasible and as entirely too disruptive to the densely populated residential neighborhoods which adjoin the airport. We cannot comment on Pro Air’s financial circumstances, except to speculate that six new operations at LaGuardia would represent a significant increase in Pro Air’s operations (and a commensurate increase in its spending). At the same time, there is no guarantee either that there is enough demand for the additional service or that, even assuming that there is, that Pro Air has the financial and operational wherewithal to successfully implement the service or to compete effectively with the larger airlines which service the New York-Detroit routes.

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<sup>1</sup> Frontier Airlines, pages 3-5.

<sup>2</sup> Id., page 4.

The issues raised by the third component of the new DOT standards discussed in the Frontier Airlines decision (i.e., whether the proposed service represents new, non-stop service or whether the airlines have the potential to offer low-fare competition, in an area where only one carrier is providing service or where existing services do not produce meaningful price competition) have been discussed elsewhere in this submission. Specifically, there is already adequate service to Pro Air's target market and, further, Pro Air has not demonstrated an ability or willingness to offer the proposed service at competitive fares.

B. The Proposed Slot Exemptions Would Negatively Impact Airline Operations and the Environment.

1. Negative Impact on Airlines Operations

The congestion at LaGuardia, as has been discussed elsewhere in this submission, puts great strain on the airport's (and other airports') operations, on the airlines attempting to run on schedule, and on the surrounding community (both in terms of increased traffic levels and with respect to more noise and pollution.)

In light of the problems particular to LaGuardia, the Borough President's Office urges DOT to carefully assess this application, applying the current legal standards. Otherwise, flight delays will continue to get longer, thereby frustrating all airlines, first at an operational level and, eventually, financially, as travellers decide they can no longer tolerate the delays at LaGuardia and begin to explore other options.

We urge Pro Air to seek other commercially viable options, including the possibility of using another of the region's airports, as JetBlue soon will be doing, flying to and from JFK. Also, Pro Air should await enactment of Congress' FAA reauthorization bill, which should have the effect of providing more access to local airports.

2. Negative Impact on Environment

The Queens Borough President's Office's position on noise and pollution caused by aircraft passing over the densely populated residential neighborhoods near LaGuardia is well known. While we

appreciate the need for a vital aviation industry, both in terms of providing jobs to New Yorkers and terms of providing revenue to the economy we also believe that there should be some minimal consideration given to the quality of life of those who live near the airport.

Clearly, all the activity at an airport has some impact on the surrounding community's environment. The Borough President's Office believes that, throughout the years, parts of Queens have been overwhelmingly affected by their proximity to the airport or to flight paths to or from the airport. Residents have nearly reached a saturation point and surely are entitled to a meaningful environmental review before one more flight is added at LaGuardia. Therefore, in accordance with the 1997 DOT report discussed above, which found that no significant impact on the environment would result from to 30 more flights per day (a number which already has been attained), we respectfully request that a meaningful and comprehensive environmental impact study be conducted before any new flights are added at LaGuardia.

#### IV. DOT Must Hold an *Ashbacker* Hearing Before Granting Any Additional Slots

In *Ashbacker Radio Co. v. F.C.C.*, (326 U.S. 327 (1945)), the United States Supreme Court held that where multiple parties have applied for a limited federal right and the applications are mutually exclusive, the federal agency may not grant the right to one applicant without providing a consolidated review of all applications. The *Ashbacker* doctrine has been followed by DOT in other contexts, such as the grant of international route authority, where a comparative review occurs before any awards are made.

In the *Frontier Airlines* decision cited above, DOT decided to expand upon its existing statutory authority for review of slot exemption applications by applying a more relaxed scope of review than the standard set forth by Congress. In doing so, DOT made clear that some applicants who meet the new standard would still not receive exemptions, because only a limited number of slots were available. As stated by DOT:

“Even though we are expanding the use of our exemption authority, it is clear that we cannot grant all of the applications that might be made under this statute. We emphasize, therefore, that the number of available slots is very limited, and we may have to apply our guidelines on an increasingly more restrictive basis or even deny applications that otherwise meet the standards

set forth in this order.”

Thus, it is clear that slot exemptions at JFK and LaGuardia are a limited federal right, and that competing applications for such slots are mutually exclusive under Ashbacker.

Simultaneous with the issuance of its decision in Frontier Airlines, DOT also released the above mentioned environmental assessment report which made a finding of no significant impact based upon an analysis of 30 additional flights. As stated above, DOT already appears to have granted 30 slot exemptions since the issuance of the report, and thus there should be, at most, only a minimal number of slots available, and then only in the most compelling cases.

Spirit Airlines, Midwest Express (in a joint application with the Des Moines International Airport) and Pro Air all now have pending applications seeking a total of 26 slot exemptions at LaGuardia. Accordingly, in the unlikely event that DOT determines that Pro Air has demonstrated that the additional flights would be in the public interest and that exceptional circumstances exist, then DOT would have to analyze all of the other pending requests, and determine which airlines have made similar showings. If the airlines which have met the statutory test, if any, are seeking to add too many more daily flights, then the requests ought to be mutually exclusive, and DOT must undertake a comparative proceeding to choose the best applications before it can grant any slots. If DOT instead grants some applications without deciding others, or without comparing the relative benefits and burdens of the different proposed flights, then it will have acted in a manner inconsistent with the Supreme Court’s mandate in Ashbacker.

## V. Conclusion

For all the reasons stated above, the Borough President’s Office requests that Pro Air’s application be denied in its entirety. The applicant has not presented a compelling case under the controlling law in support of its application, particularly when one considers the negative impact that six new flights at LaGuardia would have. While a strategy to add flights at LaGuardia might fit within Pro Air’s business plans, that strategy is not necessarily consistent with the slot exemption procedures imposed by Congress.

If DOT is not inclined to deny the application outright on the grounds that Pro Air has simply fail to meet the applicable statutory requirements, then the Borough President's Office requests in the alternative that DOT do the following: postpone a decision until Congress acts on the FAA reauthorization bill and, in any case, commission a substantive and comprehensive environmental impact study with respect to LaGuardia.

Again, the Borough President's Office concedes that the aviation industry is a vital component of the economic well-being of New York City and Queens, but also believes that the quality of life of the borough's citizens is at least equally important.

Respectfully submitted,

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