

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

In the Matter of :
 :
NOTICE OF PROPOSED AMENDMENT TO POLICY : FAA-2008-0036
STATEMENT REGARDING RATES AND CHARGES :
 :
14 C.F.R. Part 93 :

COMMENTS OF AMERICAN AIRLINES, INC.

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April 3, 2008

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COMMENTS OF AMERICAN AIRLINES, INC.

American Airlines, Inc. hereby submits the following comments for the public record with respect to the proposed amendment to the Department's Policy Statement Regarding The Establishment Of Airport Rates And Charges, 73 Fed. Reg. 3310, January 17, 2008.

INTRODUCTION

The Department's desire to implement a system of congestion pricing at the nation's airports is no secret. To the contrary, the Department presses the issue at every opportunity, touting congestion pricing as a market-based solution to air transportation delays. The Department has likened congestion pricing at airports to peak/off-peak pricing of toll roads cell phones. Unfortunately, such comparisons ignore the unique operational complexities of commercial aviation, particularly as compared to a commuter's decision on which road to take, or the time a person decides to make a phone call. Congestion pricing would not be an effective solution to the delay problems plaguing the air traffic system. This conclusion has generated rare consensus among scheduled airlines and general aviation alike.

Any congestion pricing scheme implemented under the Rates and Charges Policy must be cost based and revenue neutral. This requirement makes it unlikely that airport operators could possibly raise fees in peak hours enough to change airlines' scheduling behavior while remaining revenue neutral. Recognizing this fact, the Department proposes allowing airport users to be charged for facilities that are under construction or located at other airports for purpose of boosting fees - a policy that it had previously described as being "unreasonable" (61 Fed. Reg. 32002). The proposed amendment is also an attempt to circumvent the legislative process, and would create a short-term spike in landing fees at best. The Department should not take a bad idea - congestion pricing - and make it even worse by applying it in a manner that would deliver little more than higher prices to consumers.

I. CONGESTION PRICING IS NOT THE SOLUTION TO AIR TRAFFIC DELAYS

A. Proponents Of Congestion Pricing Ignore Operational Complexities That Invalidate Comparisons Of Commercial Aviation To Toll Roads Or Cell Phones

The Department makes no attempt to hide the motive behind its proposed amendment to the Rates and Charges Policy:

"The effect of each of these modifications would be to allow the airport operator to increase the cost of landing at a congested airport during periods of congestion, even if congestion lasts through much of the day. By raising the costs of congested facilities, the airport operator would provide an incentive for current or potential aircraft operators to (1) adjust schedules to operate at less congested times (if they exist); (2) use less congested secondary or reliever airports to meet regional air service needs; or (3) use the congested airport more efficiently by up-gauging aircraft" (73 Fed. Reg. 3313, emphasis added).

Those who promote congestion pricing often compare airports to toll roads and cell phone service. Yet the users of those products do not face the same network complexities as do airlines. Most commuters trying to avoid a higher fee on a toll road could leave an hour earlier for work by simply resetting their alarm clock. People making cell phone calls can choose to wait if their night-and-weekend minutes begin at 9:00 p.m. Airlines do not share the luxury of such broad flexibility, as efficient scheduling is a constant balancing act between economic, operational, and labor constraints.

For example, before American could shift a departure from LaGuardia to O'Hare by an hour to avoid congestion pricing, it would have to fully analyze the ripple effect such a change would create throughout its network. Moving the flight to avoid a peak period would reduce demand, which would reduce revenue in turn. Connecting passengers would lose out on a number of onward flights from O'Hare unless those were retimed as well. The inbound aircraft at LaGuardia would either have to arrive an hour later (potentially eliminating any real reduction in runway or airspace congestion), or sit idle at the gate for an extra hour (reducing efficiency and increasing ground congestion). Flight crews would also have an hour added to their duty day - resulting in less productivity and potential problems with maximum hours. The congestion price would have to exceed all of these added costs to induce carriers to move operations out of peak periods, leading to higher fares and reduced choices - precisely the opposite of what the Airline Deregulation Act was intended to achieve.

B. Congestion Pricing Would Discriminate Against Service To Small Communities And U.S. Flag Carriers

Congestion pricing would also adversely impact small communities and U.S. flag carriers. For example, an Airbus A380 flying from JFK to Dubai would have far more passengers and revenue over which the congestion price could be spread than a regional jet flying to a small community. Simple economics dictates that the A380's operator would be willing to pay a higher price than would the airline operating regional service. While the Department suggests that forced up-gauging is a good thing (73 Fed. Reg. 3313), it ignores the fact that demand drives aircraft size - and an A380 flying to a small community would be economic folly.

Compounding the problem is the fact that many of the flights serving small communities feed long-haul international service. By eliminating flights providing feed, the Department would be making it harder for U.S. flag carriers (that are in a unique position to serve the behind-U.S. gateway customer) to launch new international service. As a result, foreign flag carriers - which have the ability to flow traffic behind their European gateways without being subjected to congestion pricing - giving them an inherent advantage against their U.S. competitors on long-haul routes.

C. Concerns About Congestion Pricing Were Fully Expressed In The Department's 2007 Aviation Rulemaking Committee - Yet Appear To Have Been Ignored

Proponents of congestion pricing fail to fully appreciate its unintended consequences, despite the fact that the airline industry has been extremely consistent in voicing its concerns. The Department launched an Aviation Rulemaking Committee in September 2007 to explore

various options for solving the delays and congestion plaguing New York airspace and airports. The Committee was a collection of stakeholders from the airline industry, airports, consumer groups and the government. Over the course of nearly three months, these stakeholders spent extensive time and resources discussing specific policy ideas. The working group assigned to congestion pricing raised a number of concerns - and industry stakeholders were nearly unanimous in criticizing such a scheme.

Unfortunately, the Department seemingly had its mind made up before the Committee's report was issued. American appreciates that the Department has chosen to focus on designing a solution to the serious problem of air traffic delays, and as such we were active participants in the Committee. Yet the Department appears to have given lip service to the industry's opinion while continuing to move toward a pre-determined outcome. Finding the right solution is too important for the Department to ignore these serious concerns.

II. THE PROPOSED AMENDMENT WOULD BE BAD PUBLIC POLICY AND LEAD TO HIGHER FARES FOR CONSUMERS WITHOUT A REDUCTION IN DELAYS

A. The Proposed Amendment Would Be Even Worse Than "True" Congestion Pricing, As The Revenue Neutrality Required By Existing Law Would Guarantee That Consumers Pay More While Schedules Remain Unchanged

The Department admits that the proposed amendment would not lead to "true" congestion pricing because existing law requires airfield rates and charges to be revenue neutral (73 Fed. Reg. 3313). This raises real questions as to whether rates could be increased enough during peak hours to influence scheduling behavior. For example, a 2005 Eclat study questioned whether airlines "would move a peak flight

based on a \$300-\$2,100 cost difference or whether the peak fee would simply result in shifting a portion of the profits from the profitable peak-hour flight to the airport or government" (Aviation Daily, October 5, 2005).

One specific concern that American raised in the working group was that setting the wrong congestion price would lead to higher fares with no reduction in delays. Even toll roads - the example most often cited by proponents of congestion pricing - show signs of this phenomenon. While American doubts that the right price could ever be predicted far enough in advance and with such precision as to make congestion pricing a workable solution, the statutory requirement that airfield charges be revenue neutral virtually guarantees that the price would be set too low to influence behavior. As discussed above, there are numerous factors an airline would need to consider before moving a flight out of a peak-hour period. The cost of re-timing the flight - reduced demand, diminished connectivity, lost productivity of aircraft and crews - would likely dwarf even the highest allowable congestion price implemented through the proposed amendment.

B. The Department Called Its Proposal To Allow Airport Operators To Charge Airlines For Facilities Either Under Construction Or At Another Airport "Unreasonable" In 1996

The proposed amendment is not the first time the Department has considered the issue of allowing airport operators to collect landing fees from airlines for facilities currently under construction. In 1996, the Department held that:

"In addressing this subject, the Department must strike a balance between conflicting concerns. On the one hand, when fees are based on cost, it is generally unreasonable to charge users for facilities they do not benefit from or use. Based on this principle, current users generally should not be charged, as a cost item, the capital costs of projects not yet in operation." (61 Fed. Reg. 32002, emphasis added).

The only countervailing policy mentioned by the Department - "not work[ing] a financial hardship on airport proprietors or unduly interfere[ing] with cost-effective airport expansion" (Id.) - has nothing to do with congestion pricing. The Department should not ignore this well-reasoned precedent in an effort to allow airport operators to increase landing fees.

Yet the proposed amendment does precisely that in an attempt to slip congestion pricing into the Rates and Charges Policy. It is manifestly unfair to charge airlines at one airport for facilities at another. This is particularly true where the beneficiaries of facilities at one airport are competing directly with the airlines paying fees at another. The Department must not interfere with competition between carriers by giving preferences to some airlines at the expense of others.

Another fundamental flaw in the proposal is the fact that the increased fees that would be generated by allowing airport operators to charge for facilities under construction would be temporary. Since airport operators could not double-collect for construction costs, the ability to include facilities that are being built in the current rate base would by definition reduce the future rate base. Thus, while a

short-term spike in fees might result, levels would quickly return to normal. The proposed amendment would at best be a short-term approach to a problem requiring a long-term solution.

C. The Proposed Amendment Advance A Policy Inconsistent With Federal Statutory And Case Law

The Department's proposal to allow airports to charge current airfield users for projects still under construction or located at another airport is contrary to Supreme Court precedent. See Northwest Airlines v. County of Kent, 510 U.S. 355, 366-69 (1994) (requiring airport fees to be based on a fair approximation of use of the facilities and not be excessive in relation to the benefits conferred). The proposed amendment violates this requirement by allowing an airport operator to charge users at one airport for facilities under construction (and thus not currently used) or at another airport and potentially enjoyed only by their competitors.

In Denver v. Continental Airlines, 712 F. Supp. 834, 836 (D. Colo. 1989), the Court considered whether the Anti Head-Tax Act prohibited the imposition of fees at Stapleton Airport to pay for construction at Denver International. The Court held that:

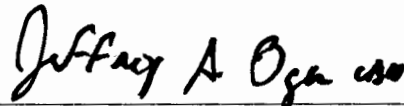
"The plain language of the statute clearly prohibits the assessment of the costs of planning, acquiring or developing a new airport facility through the rates, fees and charges to the airlines now using Stapleton. The airline charges currently imposed by Denver to recover new airport costs are the very type of charges that Congress sought to pre-empt in the Anti-Head Tax Act. Simply stated, since the airlines are unable to use airport facilities which do not yet exist, Denver cannot charge them and their passengers for any costs connected with a replacement facility before that facility is in use." Id. at 839-40 (emphasis added).

For the Department to amend the Rates and Charges Policy in a way that invites airport operators to violate existing federal statutory and case law would do little but invite costly litigation and create conflict rather than consensus.

CONCLUSION

The Department's proposed amendment to the Rates and Charges Policy is an unwise and unworkable attempt to fix a problem that requires serious attention. Congestion pricing has been almost universally rejected by the airline industry as a solution to airport delays. "True" congestion pricing is also prohibited by existing law. The proposed amendment would lead to higher prices for consumers and have little or no impact on schedules or delays. The Department should look beyond congestion pricing and focus on increasing capacity at airports and in our airspace. The traveling public deserves no less.

Respectfully submitted,



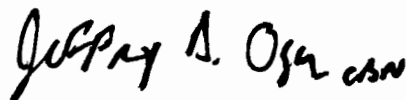
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April 3, 2008

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document by email on the following persons:

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