

UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
WASHINGTON, D.C.

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Comments of	)	
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THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY	)	Docket No.
	)	FAA 2008-0036
	)	
Notice of Proposed Rule Making Policy	)	
Regarding Airport Rates and Charges	)	

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COMMENTS OF  
THE PORT AUTHORITY OF  
NEW YORK AND NEW JERSEY

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The Port Authority of New York and New Jersey (“the Port Authority”) appreciates this opportunity to respectfully submit comments regarding the proposed changes to the 1996 Policy regarding Airport Rates and Charges. The Port Authority welcomes any move toward providing greater flexibility in the setting of rates for operation of the airports. We have long expressed the view that airports need such flexibility in establishing reasonable and non-discriminatory rates and charges tailored to our individual airport and economic goals. The Port Authority is committed to providing its airport customers with safe, fast and efficient air travel. Passengers rely on our airports for leisure travel and to maintain New York’s standing as a global economic center – supporting business travel for industries like finance and tourism that drive economic growth. Last year, the region’s three major airports – John F. Kennedy International (JFK), LaGuardia, and Newark Liberty International – handled more than 109 million passengers and 2.7 million tons of cargo. The combined impact of aviation operations, airport investment and tourism resulted in almost a half million jobs, \$20.5 billion in wages, and more than \$57 million in annual economic activity. Although we believe that increasing capacity has to be the focus of any delay reduction effort, the Port Authority acknowledges that significant capacity increases cannot be achieved immediately. In the interim, the Port Authority believes that available capacity must be carefully managed. We applaud the FAA for the proposed clarifications and modifications to its rates and charges policy because a flexible rates and charges policy will allow the Port Authority to optimize the operation of its airports.

However, as to the proposed modifications and clarifications in this NPRM, the Port Authority is concerned that they are too vague to provide clear guidance to airport operators and will ultimately lead to litigation between the airlines and operators. Further, adoption of the policy amendment is unlikely to have a significant impact on airport congestion, although it would result in a substantial financial burden for carriers whose fleets are predominantly small and medium sized aircraft.

The policy proposal does not change the methodology for determining costs at the airport as laid out in the 1996 Rates and Charges Policy. Airports remain limited to “historic costs” in determining the fees and charges to the airlines. What the FAA proposes are minor amendments and clarifications that allow for a redistribution of

historic costs to increase the fees associated with operating at the airport during the congested times of the day, and reducing to some extent fees associated with operating during the off-peak hours. The notice proposes to achieve this redistribution by explicitly acknowledging the ability of airport operators to establish a two-part landing fee structure consisting of both a per-operation charge and a weight-based charge, in lieu of the standard weight based charges. The FAA proposal suggests that by allowing airport operators to make a portion of the fee fixed, regardless of aircraft size, it could have the effect of discouraging the use of smaller regional jets in favor of larger aircraft.

For LaGuardia, JFK and Newark Liberty, such a split fee would have this effect. Depending on the split between the two parts, the per-seat charge on the smallest of planes could increase from between 40% and well over 450%, with a fee that is primarily fixed. In any case, the increase in seat charge is so significant that it would compel airlines to reduce or eliminate that type of aircraft, which are the only source of access to many small communities.

The FAA and US DOT have long been strong supporters of service to smaller communities; encouraging competition in service to those communities to keep prices affordable. On April 1, 2008, the DOT issued an order inviting communities to apply for grants under the Small Community Air Service Development Program – a program created by Congress to improve air service to communities that suffer from insufficient air service or unreasonably high fares. In November 2004, the FAA's NEXTOR exercise on congestion pricing demonstrated that the consequence of charging for the use of a slot at congested airports was a significant decrease in flights and seats available in communities with populations between 550,000 and 1 million. A two-part fee, therefore, would ultimately result in a reduction of flights to those communities and most likely a reduction in the number of carriers serving those communities, leading to fewer flight choices and higher consumer costs

However, it is not just the very smallest of aircraft that would experience increases. In evaluating the impact of a two-part fee at LaGuardia, JFK and Newark Liberty, the increase would affect not only small regional jets of 40 to 70 seats, but also aircraft as large as 180 seats. Although the rate of increase at a smaller proportion of fixed to variable fee would be less, the increase grows quickly as the fixed fee proportion rises. Such an increase in operating costs would discriminate against airlines whose fleet mix is largely made up of small to medium sized aircraft. As an example, JetBlue, the largest carrier at JFK, serving 13.5 million passengers last year, has a fleet mix entirely of small to medium sized aircraft. The largest aircraft in the fleet is the 160-seat A-320. JetBlue is an important carrier for many smaller cities that rely on it for access to New York City, such as Portland, Me, Rochester, NY and Burlington, VT. To see any substantial decrease in fees, such an airline would need to increase substantially the proportion of their fleet made up of wide body jets or larger, which would not be viable in less dense air travel markets, thereby leading to an elimination of this service. Also, the costs of these aircraft replacements, if the airline could afford to make them, would likely more than offset the anticipated savings in airport fees.

The FAA proposal does not authorize congestion pricing per se, but a redistribution of historic costs from the uncongested time of day to the congested part of the day. While the addition of a two-part fee will create a substantial fee differential for

small to medium sized aircraft, the shifting of costs from off-peak to peak would have a negligible impact for larger aircraft.

Aside from the devastating impact on small aircraft and small community service at a highly demanded airport with very few off-peak hours, the FAA proposal would not be effective. In addition, since the 1996 Rates and Charges Policy states that airport fees may not exceed current operating costs and historic capital costs, and the proposed change does not modify that stated restriction, the proposed change does not provide for collection of any additional revenue. Even if these time-shifted charges were applied only to the congested part of the day, they would not be significant enough to provide a financial incentive to affect airline decision-making.

At the Port Authority metropolitan airports, LaGuardia, JFK and Newark Liberty, congestion is the norm throughout most of the day. If the Port Authority were to shift to a fee that was mostly fixed and to a lesser extent variable, the amount of money raised during the peak would far exceed the fees paid by the carriers in the off-peak. Put differently, the amount of cost associated with the public aircraft facilities currently allocated to off-peak users that could be shifted to the peak period is negligible. Even if carriers in the off-peak were charged nothing, the amount of total fee that could be shifted to the congested part of the day would result in a less than 40% increase in the fee per aircraft, for the proposal to remain revenue neutral. With such a small allowable cost differential, only \$4.00 per seat, the policy is not likely to have the intended effect on the airlines' decision-making regarding aircraft operations at the airport.

The examples above are based on an arbitrarily selected allocation of costs to assess fixed per-operation charges and weight-based charges because the proposed rule does not provide any detailed guidance on how this redistribution should be carried out; the proposed rule only prescribes that the charges must be just, reasonable, and equitably apportioned among the categories of users. This indeterminate guidance is in itself a defect in the proposal. Without clear guidance as to allocation methodology that airports may use,<sup>\*</sup> experience dictates that any methodology chosen by an airport would be the subject of challenge and litigation by the affected airlines.

The ruling also proposes permitting the operator of a congested airport to incorporate the cost of airfield facilities under construction (including costs associated with reconstructing facilities) into its landing fees. The FAA proposal offers two alternatives for applying these additional charges, either during congested periods or, at congested airports, throughout the day. This proposal offers airports some increased flexibility in allowing them to pass on costs to the airlines a little earlier than was allowed in the past. Further, it allows greater predictability in rates and charges to the airlines, since the airport operator would not need to wait for completion of the project, but could begin charging from a fixed date. This predictability and ease of administration would be a benefit in calculating airport fees, but a limited benefit only. Again, since the 1996 Rates and Charges Policy states that the capital component of airport fees must be based on historic capital costs, the proposed change merely redistributes the incidence of a small portion of the fees related to the project – from after the completion of a project to before completion of a project – for those airports who may take advantage of the proposed change. Even this limited benefit does not have universal application. At the

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<sup>\*</sup> In addition to permitting airports to choose a methodology, which satisfies the general criteria in the proposal.

New York metropolitan airports, there would not be a substantial financial benefit from this new policy due to the way the Port Authority currently finances its construction projects.

The third proposed change to the 1996 Rates and Charges Policy would allow an airport operator to include capital costs associated with development of secondary or reliever airports in assessing fees charged to the airlines operating at the airport operator's congested primary airport. The proposal suggests that by allocating these costs to the congested airport, the airlines will be encouraged to adjust their schedules to shift operations to less congested times or from congested airports to reliever airports. The selection of an airport by an airline is more dependent on airline travel market forces such as traveler demand and airline ticket price than on the difference in airport fees. The current cost of operating at JFK, LaGuardia and Newark greatly exceeds the cost of operations at Stewart International, but, we do not see many airlines choosing to relocate their services from the more expensive airports. Furthermore, as is the case with other aspects of the proposal, the methodology for allocating these capital costs to the other New York Metropolitan airports is a subject which the airlines could be expected to litigate in the absence of guidance from the FAA as to a "safe harbor" allocation which the Port Authority could rely upon in any effort to craft a reasonable allocation methodology upon which to assess such fees.

Finally, the DOT proposal, which encourages that these modifications should be made in consultation with the airlines overlooks the fact that the airlines would have very little incentive to agree to an effective congestion fee, as such a fee would consist of higher charges to operate flights during the peak times when passenger demand is greatest. This is even truer at JFK, LaGuardia and Newark Liberty since congestion occurs throughout most of the day, so that there would be little opportunity to avoid these increased costs by shifting flights to other times of the day. Given the existence of operating authorizations at LaGuardia and the caps currently in place or imminent at JFK and Newark Liberty, there would appear to be little opportunity to shift flights at all without the airline purchasing a new slot from the FAA during the limited uncongested hours of the day. Ultimately, the airlines would be forced to bear these increased costs without any relief being provided for delays. Further, given the greater financial impact on airlines flying smaller fleets of aircraft, such changes are likely to be viewed as discriminatory and airlines would not consent to them willingly.

Although The Port Authority of New York and New Jersey supports the FAA's efforts to provide more flexibility in the calculation of fees and charges for use of airport facilities, it is crucial that any modifications to the current policy be clearly defined. Without such clarity on how the policy can be implemented, the proposed policy would not be a speedy fix by next, but would be a recipe for years of litigation between the airports and the airlines.

Furthermore, congestion pricing will not necessarily solve the problem of airport delays at the nation's most congested airports. First, as is the case for JFK, LaGuardia and Newark Liberty, many of the nations' busiest airports experience congestion throughout most of the day. Second, given that airport costs are a comparably small portion of the cost structure of the airline, the effects of congestion pricing might be substantially reduced, if not eliminated by much larger economic factors such as fuel costs.

Clearly, flight delays plague the nation's aviation system. As many in the industry have observed, what is needed is technological and other improvements to increase capacity at our nations' airports, rather than methods of redistributing the current resources. The Port Authority endorses and supports efforts by the FAA and other federal authorities in their efforts to aggressively pursue measures that will encourage rational scheduling of flights while maximizing new capacity.