

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

Docket No. FAA-2014-1073; RIN 2120-AJ89

NOTICE OF PROPOSED RULEMAKING: SLOT MANAGEMENT AND TRANSPARENCY
FOR LAGUARDIA AIRPORT, JOHN F. KENNEDY INTERNATIONAL AIRPORT, AND
NEWARK LIBERTY INTERNATIONAL AIRPORT

**COMMENTS OF THE CALIFORNIA AIRPORTS COUNCIL IN SUPPORT OF THE
SAN FRANCISCO INTERNATIONAL AIRPORT SUBMISSION**

Jim Lites, Executive Director
CALIFORNIA AIRPORTS COUNCIL
1510 14th Street
Sacramento, CA 95814
916.553.4999
jlites@calairportscouncil.org

May 8, 2015

This letter is transmitted in support of the comments submitted by the San Francisco International Airport in response to the Notice of Proposed Rulemaking (NPRM) Slot Management and Transparency for La Guardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport, Docket No. FAA-2014-1073; RIN 2120-AJ89.

The California Airports Council (CAC) is comprised of the 33 Part 139 airports in California. Our mission is to educate the public and policymakers about California's commercial service airports and the role they play in California's transportation sector and our state, regional and local economies. Collectively, California commercial airports represent about 13 percent of all United States commercial aviation activity and processed over 190 million passengers in 2014, more than any other single state.

CAC believes that the interests of airports are congruent with the FAA's as articulated in the NPRM and that no National Aviation System (NAS) decision should be made without the active involvement of the affected airport. National aviation policy must balance efficient use of congested airport facilities with protecting access to the NAS for many small commercial service airports. Airports such as SFO and LAX represent vital links for communities that have over the last decade lost significant shares of their air service. Research shows when congestion management strategies are used at airports, particularly through the imposition of slot controls, important FAA and public airport interests such as competition and small community access suffer disproportionately. Given the critical benefits to competition and access when airports are involved in managing use of their facilities, the CAC believes great care should be taken before ceding any control or management of the process to airlines. The CAC believes that the process is best managed by the local airport proprietor in conjunction with the FAA in consultation with the airport's airline partners. Over the last several years of growth, amid several airside challenges, SFO has proven fully capable of balancing important public interests.

The CAC is especially pleased to see that the NPRM's goals of (a) "placing maximum reliance on competitive market forces," (b) "avoiding airline industry conditions that would tend to allow at least one air carrier unreasonably to increase prices, reduce services, or exclude competition" and (c) "encouraging entry into air transportation markets by new and existing air carriers," all reflect FAA's statutory mandates. The CAC agrees that attention to these obligations "benefits the flying public by providing price competition and expanded service."

The CAC is concerned that the NPRM's proposed slot management regime leaves little room for airport proprietors to collaborate with FAA in implementing the NPRM's proposals. The CAC believes FAA's exclusion of airport proprietors from the slot allocation and transfer process ignores applicable federal aviation law and will make it difficult for FAA to meet the NPRM's goals.

The intended benefits the NPRM seeks would best be achieved if airport proprietors are fully integrated into the slot allocation and management process. The CAC concurs with the comments of SFO suggesting four adjustments to the NPRM proposal:

- (1) Clarify the role of airport proprietors and air carriers in slot management;
- (2) Tailor the application of slot guidelines to specific airports and rely on affected airport proprietors' expertise and knowledge of their own local conditions;
- (3) Create a secondary market for slot transfers that incentivizes pro-competitive transfers and maximizes active participation by new entrants and smaller carriers; and
- (4) Enhance the force and utility of the revisions to the "use it or lose it rule," including placing a time limit on slot allocations, requiring air carriers to rebid for slots on a regular basis, and sharing slot usage reports with airports.

In the view of the CAC, these proposed refinements to the NPRM, will allow FAA and airport proprietors to work together to better serve the travelling public, promote competition among airlines, ensure equitable access for small communities, and enable air carriers to make better informed decisions in seeking to use or release slot assets.

Slot controls and other FAA traffic management mechanisms directly affect California's commercial airports efforts to provide competitive and diverse services to and from the New York/New Jersey region. Slot allocations and transfers, represent important air service development opportunities for airports by creating and defining the pool of potential competitors available to provide service to the airport. Air service development is an essential function necessary to sustain an airport's financial and economic vitality and to serve the evolving needs of the airport's diverse constituencies.

In order to attract new service and foster competition on existing routes, slot controlled airports and airports served by flights to and from slot controlled airports must be aware well in advance of any allocation of slots or slot transfers of the number and timing of any slots that will be potentially made available by incumbent slot holders.

Given the CAC member airports, as well as other non-California airports' interest in efficient and competitive slot management, we strongly urge the FAA to provide airports with a meaningful role in slot allocation and management. The CAC is concerned the FAA will not be successful in achieving the NPRM's goals if it ignores airport proprietors' knowledge of airport facilities and local market conditions when making decisions about slot allocation and use. Unfortunately, that is precisely what FAA proposes in the NPRM, asserting the FAA has the power to unilaterally set the cap on the number of slots at each PANYNJ airport and that this power includes the authority to assign slots to particular carriers on what appears to be a permanent basis. The CAC agrees with the position of SFO, that it is legally incorrect for the FAA to determine slots are in effect airline property rights. The FAA's contention is inconsistent with DOT and FAA's historic approaches and contrary to the NPRM's stated goals.

The CAC concurs with the SFO position that the FAA's stance that the agency can grant or allocate slots to particular air carriers without the active involvement and input of airport proprietors, is incorrect. Without considering airport policies, including contracts that govern the

use of airport facilities, FAA's view interferes with airport proprietors' protected role under federal law to manage their facilities. Simply put, the FAA cannot legally or practically determine or control which flights enter and exit airports without input from airport proprietors. The CAC urges the FAA to not provide slots as gifts to the airlines and instead to work with each impacted California airport on a carefully tailored plan for setting local capacity limits and allocating the slots or operating authorizations.

All parties involved will benefit when airport proprietors are involved in the slot usage and transfer process because airport proprietors are in the best position to assess their own ability to expand land-side capacity, taking into account existing configurations, patterns of aircraft operations (including markets and types of aircraft), weather conditions, access to capital, and the role of other airports in a regional airport system. Airports have the proper incentives and data to advise FAA and air carriers of the effects of these conditions and to help all interested parties use that data to make informed decisions about slot usage.

The CAC urges the FAA to adopt rules that require gathering input from airport proprietors and a notice and comment process for affected airport proprietors before initial slot controls, allocations or transfers are made. FAA's slot management rules should also describe how airport proprietors will be consulted when delays and congestion arise. This involvement will allow airport proprietors to provide valuable information regarding local conditions and constraints to carriers interested in obtaining a slot.

The CAC is concerned that the Worldwide Slot Guidelines (WSG) place little to no importance on airport-specific concerns and do not create any meaningful role for airport proprietors to guide or even influence scheduling decisions. In fact, the only role the WSG create for airport proprietors is an encouragement that a congested airport "examine its capacity" and "implement the necessary capacity enhancements," without any consideration of practical considerations such as space, funding, or local markets and politics. The CAC supports the SFO position strenuously opposing the adoption of the WSG in a form that fails to account for important airport-specific considerations.

As FAA has acknowledged, the WSG tend to favor incumbent airlines over new entrants. Adoption of the WSG here would therefore weaken the pro-competition goals the NPRM espouses and undermine years of effort by FAA to ensure that new entrants and limited incumbents are accommodated at constrained New York airports. Under the NPRM, FAA proposes to grandfather "all existing slot allocations ... for both the summer and winter scheduling seasons," allowing incumbent carriers to retain most of their existing slots. This flawed mechanism for allocating capacity effectively declares airport slots to be air carrier property in perpetuity.

This argument is at odds with FAA's own regulations, which make clear that slots "do not represent a property right" and "may be withdrawn at any time." 14 C.F.R. § 93.223(a). The use of the WSG approach would effectively "lock out" future start-up carriers and limited incumbents from initiating or expanding current services. This is a result diametrically opposite to what is required of the FAA. FAA needs to be especially mindful of potential anticompetitive

May 8, 2015

airline behavior as it fashions its slot management rules. The CAC asserts an application of the WSG grandfathering existing slot allocations for an indefinite period would violate the FAA's affirmative obligation to promote competition. Formalizing airport proprietor consultation and input in slot allocation and transfer decisions provides a better way forward.

We thank you for the opportunity to submit this letter in support of the SFO comments on this rulemaking and to provide the perspective of all California Part 139 airports.

Sincerely,

A handwritten signature in black ink that reads "Kimberly J. Becker". The signature is written in a cursive, slightly slanted style.

Kimberly J. Becker
President