

BEFORE THE
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

DEPARTMENT OF TRANSPORTATION
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DOCKET SECTION

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APPLICATION OF:)
)
AirTran Airways, Inc.)
)
For an exemption from Subparts K and S)
of 14 CFR PART 93 (Slot Restrictions at)
New York LaGuardia Airport) as to provide)
non-stop service between:)
)
Bloomington-Norman, IL/Moline-Quad)
Cities, IL and New York LaGuardia)
(combination service);)
)
Toledo, OH/Akron-Canton, OH and)
New York LaGuardia (combination service);)
)
Knoxville, TN and New York LaGuardia.)
)

Docket OST-97-2557-23

**MOTION FOR LEAVE TO FILE AN OTHERWISE UNAUTHORIZED
DOCUMENT AND RESPONSE OF METROPOLITAN AIRPORT
AUTHORITY OF ROCK ISLAND COUNTY, ILLINOIS**

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Response of Metropolitan Airport Authority

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AUTHORITY OF ROCK ISLAND COUNTY, ILLINOIS**

The Metropolitan Airport Authority of Rock Island County, Illinois ("Authority") hereby moves for leave to respond to the answers of Delta Air Lines, Inc. ("Delta"), Trans World Airlines, Inc. ("TWA"), and the answer and surreply of the Office of the Queens Borough President, City of New York ("Borough President").

Good cause exists for granting the Authority's motion. The Authority is in a position to respond to the misinformation and defective analysis contained

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in the pleadings filed by Delta, TWA, and the Borough President. Allowing the Authority to file its response will help provide the Department of Transportation ("DOT" or the "Department") with a more complete and accurate record without delaying this proceeding. Therefore, the Authority respectfully requests leave to file this response.¹

RESPONSE

The Authority, which owns and operates Quad City International Airport ("Quad City") in Moline, Illinois, files this response to the answers of Delta and TWA, and the answer and surreply of the Borough President in the above-referenced docket in order to correct certain misinformation and defective analysis in those submissions.

Response to Delta's Answer

Delta does not provide service between Quad City and LaGuardia. Delta, nonetheless, weighs in with generalized objections to the possibility that DOT may "create an additional 12 slots at LaGuardia and award them free of charge to AirTran, so that AirTran can implement service between LaGuardia and several smaller cities that are not currently served on a nonstop or single-plane

¹ The Department of Transportation has previously permitted parties who support or oppose an application for exemption to file unauthorized documents in response to an answer or other pleading filed by other parties in the case. See, e.g., Application of Spirit Airlines, 1995 DOT Av. LEXIS 562, *2 n. 4 (Order 95-8-38, OST-95-265, Aug. 24, 1995).

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basis from New York." Delta Answer at 1. Delta further asserts that "[t]he cost of slots and airport facilities are borne by all operators seeking to add service at LaGuardia. Neither AirTran nor any other operator should be awarded a slot subsidy simply because it is unwilling to pay these costs." *Id.* at 3. How ironic that Delta -- which received a windfall of 68 air carrier slots at LaGuardia free of charge when the buy-sell provisions of 14 C.F.R. Part 93, Subpart S were implemented -- is suddenly concerned with airlines receiving "a slot subsidy."² If Delta were willing to part with some of its slots at the same price, i.e., \$0.00, that it paid in 1985, when buy-sell was implemented, perhaps new slots would not have to be created to give new entrants the same opportunities the incumbent carriers at LaGuardia have enjoyed for over a decade.

Delta asserts that "The Department has in place a market-based mechanism -- the buy-sell rule -- which provides a means for carriers (including AirTran) to obtain slots within the confines of the high density rule." Delta Answer at 3. In fact, the buy-sell rule was in place in 1994, when Congress enacted 49 U.S.C. § 41714(c), the new entrant exception to the high density rule ("HDR") under which AirTran is seeking an exemption for slots. Congress recognized that the HDR had anti-competitive impacts and provided a

² Delta received a total of 189 air carrier slots free of charge for the four slot-controlled airports when the buy-sell rule was implemented: 68 at LaGuardia, 83 at Chicago O'Hare, 30 at Washington National, and 8 at JFK. In light of this, it is peculiar for Delta to characterize a carrier's petition for exemption for a modest number of slots pursuant to 49 U.S.C. § 41714 as "a request for a government handout." Delta Surreply in Valujet Proceeding at 11, incorporated by reference in Delta's Answer in this proceeding (Delta Answer at 2).

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mechanism by which new entrants could obtain a limited number of slots outside of the buy-sell provisions, thus providing them the opportunity, on a small scale, to inject some competition into the high density markets by removing the significant barrier to entry (cost of slots) that the incumbent carriers did not have to overcome when they received their initial slot allocations. It is disingenuous -- not to mention contrary to Congressional intent -- for Delta to suggest that a new entrant must obtain slots only via buy-sell. The Department has already disavowed this approach, stating that it "intends to be more receptive to considering competition as a factor in granting slot exemptions to new entrants under the 'exceptional circumstances' criterion." Department of Transportation Statement on General Accounting Office (GAO) Report, October 1996, at 2.

AirTran represented in its application that it was unable to obtain slots via buy-sell on economically viable terms. In the DOT approvals of applications for exemption under 49 U.S.C. § 41714(c) by Reno Air and Air South, the Department accepted Reno Air's assertion that it "found unacceptable the asking price (in excess of one million dollars) for slots that were available from other airlines during recent years," (1994 DOT Av. LEXIS 551, *8), and Air South's assertion that "it has 'exhausted all reasonable commercially based solutions' to acquire JFK slots," 1996 DOT Av. LEXIS 336, *2. Thus, the standard DOT has applied is not whether slots are absolutely unavailable in the buy-sell market, but rather, whether they are available on terms and conditions that are

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reasonable in order to enable the petitioning carrier to provide the type of service it proposes. Here, clearly, they are not, where the asking price for peak hour slots is believed to be \$2 million, and off-peak slots are estimated to cost \$500,000. United States General Accounting Office, GAO/RCED-97-4, Report to the Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate: AIRLINE DEREGULATION Barriers to Entry Continue to Limit Competition in Several Key Domestic Markets (Oct. 1996) ("GAO Report") at 5.

Delta claims that it does not object to the award of slots in exceptional circumstances, but expresses concern "about the use of the exceptional circumstances criteria for the wholesale issuance of new slots." Delta Answer at 2. This proceeding, however, is not about the wholesale issuance of new slots. Rather, this proceeding concerns a request for 12 specific slots to provide well-defined non-stop or single plane service to four airports and upwards of 20 communities which currently do not have such service to LaGuardia. The circumstances of AirTran's application thus are very similar to the circumstances of the Air South application approved by the Department in 1996. 1996 DOT Av. LEXIS 336, *8-10.

That Delta's objections have nothing to do with the merits of AirTran's specific slot request is evidenced by the fact that Delta incorporates by reference its objections to the use of the "exceptional circumstances" provision that it filed in a totally different docket, OST-97-2442, the Valujet application for exemption. Delta Answer at 2. In the instant proceeding, however, DOT must weigh the

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merits of the AirTran application and supporting materials, not the Valujet application. Indeed, significant issues raised in Delta's pleadings in the Valujet proceeding, which Delta incorporates by reference, are not present in the AirTran case, to wit:

- *Valujet may not qualify as a "new entrant" because it gave up slots it had held since 1985. (Delta Answer in Valujet Proceeding at 7). AirTran has never held slots at LaGuardia, and is unquestionably a "new entrant" under 49 U.S.C. § 41714.*
- *There is already competitive non-stop service between New York and Atlanta. (Id. at 6). There is no non-stop service between New York and Quad City.*
- *"The New York-Atlanta city pair is not endowed with any of the characteristics which the Department has found support exceptional circumstances" in awarding slots to Reno Air to serve O'Hare-Reno, and Air South, "to provide new nonstop service to South Carolina and Georgia" from JFK. (Id. at 9-10). The service proposed by AirTran will provide new nonstop and single-plane direct service from four airports and upwards of 20 communities to LaGuardia, and is thus more like the successful Air South and Reno applications that Delta points to.*

Finally, Delta asserts that the "high density rule was promulgated by the FAA based on safety and airport capacity considerations." Delta Answer at 3 (emphasis added). This is simply not true. In fact, the preamble to the high density rule states:

In regard to some of the comments, it appears important to correct any misunderstanding in regard to the purpose of NPRM 68-20. The proposals contained in that notice were intended to provide relief from excessive delays at certain major terminals. They were not, as some persons concluded, intended to correct a safety problem.

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Part 93--SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC PATTERNS,
High Density Traffic Airports, 33 Fed. Reg. 17896 (1968) (emphasis added).

The high density rule does not perform a safety function. The Department has stated that:

Changing the HDR will not affect air safety. Today's sophisticated traffic management system limits demand to operationally safe levels through a variety of air traffic control programs and procedures that are implemented independently of the limits imposed by the HDR. Air Traffic Control will continue to apply these programs and procedures for ensuring safety regardless of what happens to the High Density Rule.

Department of Transportation, Report to the Congress: A Study of the High Density Rule at 3 (May 1995).

Response to TWA's Answer

TWA states that "If the Department grants any of the current applications for LaGuardia slots, it will undoubtedly be besieged by additional filings by other new entrant carriers." TWA Answer at 2. TWA supplies no support for this flat declaration. In fact, the Department previously granted 2 applications for exemption for slots under the "new entrant" provision of 49 U.S.C. § 41714, and has not been "besieged" by additional applications. TWA appears to be saying the Department should not grant any applications for exemptions for slots, because other carriers might then file applications. However, under the statute, the Department must evaluate each application in its own right, on the merits. Even TWA acknowledges that "the Department must still comply with the statute." Id. The statute could hardly be followed by adopting the approach

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suggested by TWA, i.e., by turning down all applications so as to discourage future applications. Department officials have stated publicly that they will seriously consider requests under the "new entrant" provisions, and this course, not the TWA approach, should be followed.

TWA also states that the granting of any applications and the ensuing additional filings will result in "increased congestion at LaGuardia and massive delay costs imposed upon other airlines and their passengers." *Id.* TWA presumably is referring to other airlines such as itself, which received slots for free when the buy-sell rule was implemented and may prefer that other carriers not be given slots on the same cost-free terms.³ But Congress recognized the anti-competitive aspects of the high density rule, including the buy-sell provisions, and specifically provided the mechanism under which AirTran seeks its slots, 49 U.S.C. § 41714(c), in order to overcome, at least partially, the barriers to entry created by the rule.

Moreover, there is no evidence that granting the AirTran application for a modest number of slots will result in "increased congestion" or "massive delay costs" being imposed on other airlines and passengers. See discussion below at 19-23.

³TWA received 194 slots free of charge via grandfathering when the buy-sell rule was implemented. It received 33 slots at LaGuardia, 85 slots at JFK, 40 slots at Chicago-O'Hare, and 36 slots at Washington National.

The AirTran Proposal Will Generate Substantial Traffic

The second point in the TWA Answer alleges that there is simply not sufficient traffic to support LaGuardia service from Quad City. The Authority respectfully submits that this is based on data that creates a misleading impression. The passenger data provided by TWA does not reflect the true demand that exists in the Quad City marketplace.

The validity of the Authority's traffic analysis is demonstrated by the success of Frontier's service from Bloomington/Normal to Denver, as well as AirTran's service to Orlando from both Quad City and Bloomington/Normal, despite prior passenger levels that mirrored the levels TWA ascribes to Quad City-LaGuardia. These routings are financially successful for the airlines involved, yet if the carriers had relied on the historical data such as that provided by TWA, they would have foregone very strong market opportunities. Based on the same factors that worked in these other markets, the Authority believes that AirTran's low-fare service to New York/LaGuardia will have excellent consumer support. The Authority agrees with AirTran that there is sufficient demand to make the service profitable.

The Authority believes that:

- (1) the current reporting system upon which the figures cited by TWA are based does not fully capture the existing traffic that travels between Moline and LaGuardia, particularly connecting flights between regional carriers and jets;
- (2) Demand is further demonstrated by the strong support from 40 companies employing thousands of workers in the Moline area who have submitted letters in support of the AirTran application in this

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docket, and who indicate that the proposed direct/nonstop jet service will provide significant benefits in the conduct of their business in the very important NY market for their goods and services; and

- (3) Market stimulation by the nonstop/direct jet service provided by a low cost carrier -- whose fares will likely be one-half those of the current Quad City-LaGuardia fares -- will stimulate additional traffic, a phenomenon the Department has recognized in two reports issued in the 1990s.⁴

⁴ DOT reported that "when Southwest entered its first California Corridor airport pair -- Oak-ONT -- prices declined by 60 percent and traffic tripled. . . [In] another remarkable response to Southwest's entry in the OAK-BUR airport pair in 90/2. . . [p]rices dropped 55 percent and traffic increased six-fold." Office of Aviation Analysis, U.S. Department of Transportation, THE AIRLINE DEREGULATION EVOLUTION CONTINUES: The Southwest Effect (May 1993). These markets, unlike Quad City-LaGuardia, already had non-stop jet service prior to the low cost carrier's entry into the market. Thus, market stimulation from AirTran's proposed service could be even greater. Just last year, DOT stated that "The consumer benefits of low fare service are enormous and are growing on a daily basis. We estimate that consumer savings are now \$6.3 billion annually, up from \$4.5 billion just 9 months earlier . . . Today, one of every seven domestic passengers is flying because of the increased competitiveness resulting from low fare service. Virtually all domestic traffic growth in recent years is attributable to the spread of low cost service. Office of Aviation and International Economics, U.S. Department of Transportation, The Low Cost Airline Service Revolution (April 1996) at 1-2.

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The Authority's analysis of the strength of the market is supported by a number of examples where implementation of jet service enjoyed strong support that had not been evidenced by prior historical data, such as the following:

Traffic Demand (Based on DOT Data)

	Passengers per day <u>each way (PDEW)</u>
<u>Market: Quad City - Phoenix</u>	
1985 - no direct service	9.6
1989 - two nonstop and direct flights, America West	47.6
<u>Market: Bloomington/Normal - Denver</u>	
1995 - no direct service	3.0
1997 - a single, one-stop daily jet, Frontier	20.0

These data do not reflect the additional flow traffic that connected over the carriers' respective hubs. Frontier data is based on current traffic levels since service was initiated in December 1996.

Annual Traffic is Estimated at Between 120,000 and 140,000 Passengers

Without burdening the Department with tables of data, the implementation of jet service in the Quad City/Bloomington/Normal - LaGuardia market is expected to have enormous stimulative effects on air traffic. Based on the demonstrated demand of nearly 50 daily passengers each way that developed between Quad City and Phoenix, the combination of Quad City and Bloomington/Normal demand will generate sufficient traffic to support AirTran's proposed LaGuardia service.

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Clearly, forecasting the traffic that will be generated by the AirTran proposal is not an exact science, particularly since there is no prior nonstop or direct service to New York. However, supportable conclusions can be drawn from the prior experience noted above. Quad City Airport serves a population of approximately 700,000. This population base generated approximately 48 passengers per day each way to Phoenix, which has a population of 2.6 million, about 55% the size of the "three county" service area of LaGuardia consisting of Queens, Manhattan, and Nassau. Even absent the specific, identified interest of key corporations in using the proposed air service to LaGuardia, the traffic generated to LaGuardia from Quad City would be expected to approximate 87 passengers per day each way, i.e., 48 passengers divided by 0.55. Bloomington/Normal serves a population of 800,000, about 14% larger than that of the immediate service area of Quad City. Using the same methodology, Bloomington/Normal would be expected to generate about 14% more daily passengers than will Quad City, or approximately 100 passengers per day each way. Combined, the two airports would then be expected to provide 187 daily passengers to AirTran each way. Annualized, this indicates a market of approximately 134,600 passengers for AirTran.

The Authority recognizes that this estimate is affected by a range of corollary factors. However, it is clearly supported by real world experience in the Quad City and Bloomington/Normal markets and by DOT studies of the impact of low-fare service in various markets nationwide. The Authority believes it

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more accurately portrays the likely demand for the proposed service than does TWA's estimate of only 12 daily passengers.⁵ Indeed, the Authority feels that its projection is conservative.

Response to Answer of the Queens Borough President

As a local governmental body itself, the Authority respects the right of the elected and appointed officials of the Borough of Queens to determine the views of the Borough's residents and present them to the Department in this proceeding. However, on an issue involving the application of federal statutes and interstate commerce, the Department must, of course, be guided by the pertinent federal authority.

Safety

The Borough President raises the issue of the impacts of the proposed flights on air safety in the New York area and purportedly supports these concerns by citing a newspaper article that appeared in Newsday. Presumably, the Department can obtain direct information on air safety from the FAA, not newspaper reports. The hazards of using newspaper reports to raise safety concerns is illustrated by the fact that the Borough President cites the Newsday

⁵ The Department has previously recognized that new non-stop service could "generate a substantial volume of new discretionary traffic" in the context of the Air South application for exemption. 1996 DOT Av. LEXIS 336, *9. Based on its traffic analysis, the Authority believes that non-stop service between Quad City and LaGuardia can also generate a substantial volume of new discretionary traffic.

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article for the proposition that a 30% increase in operational errors in the New York area "is due, in part, to the large number of flights at the New York City airports" and that the FAA was considering a recommendation to reduce the number of flights at the airports. Borough President Answer at 4, citing Newsday, May 1, 1997 at A7. However, the cited article also includes a quote from the FAA's assistant division manager for air traffic management that "The data isn't complete yet. . . The trend is that these errors take place in light, occasionally moderate traffic." (emphasis added). This hardly supports the notion that the incidents occur because of overcrowding of the skies.

The article refers to incidents involving the New York Air Route Traffic Control Center ("ARTCC"), which the article says "handles high-altitude traffic over the New York and Pennsylvania areas as well as transatlantic flights 3,000 miles into the Atlantic." Thus, the incidents are not specific to LaGuardia operations. In fact, it is not clear if any of the incidents involved LaGuardia traffic. If the Borough President believes that there is a potential safety problem, based on the Newsday article she cites, it is odd that she would suggest that AirTran should fly into Newark or White Plains,⁶ when increased operations from those airports would also increase operations in the New York ARTCC.

In any event, the Department has previously disavowed any correlation between the High Density Rule and safety:

⁶ Surreply by the Office of the Queens Borough President to the Response by the Central Illinois Regional Airport at Bloomington/Normal ("Borough President Surreply") at 3-4.

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The increased level of operations projected if the HDR is modified or lifted will not be permitted to compromise air safety. Air Traffic Control will continue to follow and enforce its standard practices and procedures, and to take appropriate actions as necessary, to ensure air safety regardless of whether the HDR is continued in full, modified, or abolished.

Report to the Congress: A Study of the High Density Rule at 7.

Thus, the issue of safety is a red herring in this proceeding.

Noise

The Borough President also claims that "The increase in noise from AirTran's service will, in fact, have a noticeable impact on Queens, and this was recognized by the Department in its rejection of a similar application filed two years ago by Spirit Airlines." Borough President Surreply at 3, citing DOT Order 95-8-38 at 9. The Authority respectfully submits that a careful reading of the Department's decision in the Spirit proceeding shows that, although parties opposed to the application asserted that the proposed service would produce adverse noise impacts, the Department did not rely on those assertions in denying the application. In fact, the Department noted that the City of Detroit:

secured an analysis of the impact of Spirit's proposed service on the noise environment at LaGuardia and Detroit City Airport This analysis used the FAA's Area Equivalent Method (AEM) as a screening tool to see whether the proposed service would result in a significant increase in average annual noise levels. Spirit states that the analysis showed that increases in average annual noise levels at both airports would fall far below the level determined by the FAA to be legally significant and therefore noise contours were not required to be re-drawn. It also indicated that any change in noise contours would be so minimal that no significant number of additional persons would be brought within the 65 DNL contour at either airport.

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Order Denying Request for Exemption, 1995 DOT Av. LEXIS 562, *22 (Order 95-8-38, OST-95-265, Aug. 24, 1995) ("Spirit Order").

The Authority points out that, in compliance with 49 U.S.C. § 41714, AirTran will provide the proposed service with Stage 3 aircraft. The Department recognized that this statutory provision addressed noise issues by requiring the use of Stage 3 aircraft. *Id.* at *22. Nonetheless, the Department stated that it would "allow expanded arguments regarding noise and the public interest." *Id.*

The Authority respectfully suggests that, in the context of the overall statutory/regulatory scheme governing aircraft noise and airport access, the Department may be entertaining issues not intended by Congress. In addition to the Stage 3 requirement in § 41714, Congress has also spoken on the relationship between noise concerns and interstate air commerce in the Airport Noise and Capacity Expansion Act of 1990, 49 U.S.C. § 47521 *et seq.* In that Act, Congress determined that, if airport proprietors -- who have far greater authority to impose noise restrictions than surrounding communities, whose police powers to control aircraft noise have been pre-empted by federal law (City of Burbank v. Lockheed Air Terminal, Inc., 411 U.S. 624 (1973)) -- seek to impose noise or access restrictions affecting Stage 3 aircraft without the users' consent, they may do so only if they obtain the Secretary's approval. FAA, to whom the Secretary has delegated his authority, has promulgated regulations requiring airports to submit detailed, rigorous cost/benefit analyses identifying the economic costs of the restrictions on interstate commerce compared to the

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noise benefits obtained. See 14 C.F.R. Part 161, Subpart D. In this context, it would be anomalous, indeed, if the Department were to heed the Borough President's call to deny the requested exemption, and thus access to LaGuardia Airport, based on vague and unsupported assertions of noise impacts.

The Borough President asserts that the DOT's 1995 high density rule study noted that "there would be a significant impact to the large population which resides within the airport's DNL 65 contour" if the rule were relaxed or eliminated. Answer of Borough President at 6. Instead, DOT found that even with the 70 additional flights it assumed would be generated by elimination of the rule, "[n]one of the population living within LGA's DNL 65 countour (sic) [will] experience a noise increase of 1.5 dB or greater," which is the FAA's measure of significant impact. See Report to Congress: A Study of the High Density Rule at 12. Given that the proposed AirTran flights -- which total only one-sixth of the number of flights analyzed in the DOT study -- will be conducted with Stage 3 aircraft, it is difficult to understand how the proposed AirTran flights could be characterized as having significant impacts on the population residing within the DNL 65 contour.

Competition

The Borough President's discounting of the significance of increased competition in evaluating exemption requests is contrary to the Department's policy. In response to a GAO recommendation that Congress consider revising the legislative standards governing the Secretary's granting of additional slots

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to accommodate new entrants, making competition a key criteria, the Department states that:

Even without a change in the legislation, the Department intends to be more receptive to considering competition as a factor in granting slot exemptions to new entrants under the "exceptional circumstances" criterion. The use of exemptions may be a more effective way than a slot pool to target increased competition where it would be most effective.

Department of Transportation Statement on General Accounting Office (GAO) Report, October 1996, at 2. The Assistant Secretary for Aviation and International Affairs highlighted this policy in testimony before the Senate Aviation Subcommittee just last month. See Statement of Charles A. Hunnicutt, Assistant Secretary for Aviation and International Affairs, Department of Transportation, Before the Senate Commerce, Science and Transportation Subcommittee on Aviation, May 13, 1997, at 5.

The Borough President asserts that AirTran's thesis that an exemption would increase competition does not justify granting the exemption because "an increase in competition is inherent in every additional flight at every airport." Borough President's Answer at 9 (emphasis in original). The Borough President suggests that AirTran should just obtain slots through the buy/sell mechanism FAA has provided. The Borough President has opposed every application for exemption for slots at LaGuardia, and her view appears to be that DOT should deny every application for exemption for slots at LaGuardia, regardless of their merits. However, the Borough President's views are not consistent with the intent of Congress. As noted above, Congress was aware of the buy-sell provision

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when it enacted § 41714(c). It was precisely because the buy-sell mechanism was inadequate to facilitate service by new entrants that Congress enacted the provision. Moreover, Congress did not intend to exempt LaGuardia from the new entrant provisions, as the Borough President would prefer. Congress's intent is clear from the fact that Congress explicitly exempted Washington National Airport, but did not exempt LaGuardia from those provisions.

Congestion and Delay

The Borough President asserts that the Department's 1995 study of the high density rule "concluded that the benefits of relaxing or eliminating the rule at LaGuardia were greatly outweighed by the costs associated with additional delays and increased noise." Answer of Borough President at 6 (emphasis added). The Authority disagrees. In fact, Exhibit 2 on Page 9 of the report shows that elimination of the rule results in consumer benefits of \$238 million and benefits to airports of \$14 million, for a total of \$252 million. Consumer delay costs are shown to be \$149 million, and airline delay costs are shown as \$64 million for a total of \$213 million. This would yield a net benefit of \$39 million. However, inexplicably, the Department includes as an additional cost to the airlines \$56 million in "lost fare premiums," i.e., the oligopoly profits that would be lost due to increased competition! The Authority does not believe that considering lost oligopoly profits to be a "cost" of relaxing or eliminating the high density rule is consistent with the Congressional direction to the Department to consider as being in the public interest:

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(11) avoiding industry concentration, excessive market domination, monopoly powers that would tend to allow at least one air carrier or foreign air carrier unreasonably to increase prices, reduce services or exclude competition in air transportation;

(12) encouraging, developing, and maintaining an air transportation system relying on actual and potential competition--

(A) to provide efficiency, innovation, and low prices; and

...

(13) encouraging entry into air transportation markets by new and existing air carriers and the continued strengthening of small air carriers to ensure a more effective and competitive airline industry.

49 U.S.C. § 40101 (a)(11),(12), and (13).⁷

The Authority thus believes that more recent statements by the Department expressing concern with the high fares at slot controlled airports, and a willingness to be receptive to applications for exemption on competitive grounds better reflect the Congressional mandates cited above. The Authority also believes that the discussion above demonstrates that the report cited by the Borough President does not show that the benefits of relaxing or eliminating the rule at LaGuardia are greatly outweighed by the costs.

Another alternative discussed by the Department in the 1995 study is retention of the rule and adding additional slots for priority users. In this regard, the Department assumes 10 additional daily operations, and projects \$12 million

⁷ GAO pointed out in the May 13, 1997 Senate Aviation Subcommittee hearing that if lost fare premiums are considered a cost to incumbent airlines, then the increase in revenues for any competing airlines that began service to the airport should be considered an offsetting benefit, but the DOT report does not include such benefits.

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in new service benefits for passengers, offset by \$11 million in increased passenger delay costs, \$4 million in additional delay costs for airlines, and \$1 million for additional revenues to airports. Report to the Congress: A Study of the High Density Rule, Exhibit 5.10 at 92. The Department concludes that this results in a net cost of \$2 million. Id. However, in the narrative discussion entitled "Other Alternatives," the Department concludes that

If the HDR is retained, there may be other ways to increase the net benefits from operations at the LGA. Specifically, it should be noted that there are likely to be significant consumer benefits if additional opportunities are provided for flights to new domestic and Canadian points

Id. at 94.

The Department has also stated that "Low fare stimulated demand has very positive implications for the airline industry labor force, and promotes substantial economic growth to the benefit of consumers, local communities, travel related industries, and the aerospace industry." Office of Aviation and International Economics, U.S. Department of Transportation, The Low Cost Airline Service Revolution (April 1996) at 2. In view of these statements, and those cited above in footnote 4, the Authority believes that the benefits of the proposed low fare air service by AirTran were not fully captured by the 1995 DOT report (which, of course did not focus on AirTran's specific proposal). Therefore, the Authority submits that the Borough President's reliance on the 1995 report in opposing AirTran's application is misplaced.

Response of Metropolitan Airport Authority

Finally, the Borough President states that "Since Congress authorizes the Secretary to grant exemptions to the High Density Rule 'unless such an exemption would significantly increase operational delays,' there is no congressional authorization for the Secretary to grant AirTran's request." Answer of Borough President at 6-7, citing 49 U.S.C. § 41714 (italics added by Borough President). The Borough President has misstated the applicable law. The quoted provision appears in paragraph (2) of subsection (a) of Section 41714 which applies to "Making Slots Available for Essential Air Service."⁸ It does not appear in Subsection (c), "Slots for New Entrants," the provision under which AirTran is seeking an exemption. Thus, the provision cited by the Borough President is inapplicable to this proceeding.

Given that the Department, in other exemption proceedings, has considered potential delays as a factor in reaching a decision, the Authority will address that issue on the merits. The Department's 1995 report showed that adding 10 flights could cause average delays to increase from 10 minutes to 11 minutes, and flights with delays of 15 minutes or more could increase from 10% of total flights to 12% of total flights if airlines did not cancel flights, and from 5% to 7% if airlines do cancel flights. Report to the Congress: A Study of the High Density Rule, Exhibit 5.10 at 92. These figures do not support the Borough

⁸ Paragraph (a)(3) provides that, "If the Secretary finds that an exemption under paragraph (2) would significantly increase operational delays, the Secretary shall take such action as may be necessary to ensure that an air carrier providing or selected to provide basic essential air service is able to obtain access to a high density airport. . ."

Response of Metropolitan Airport Authority

President's assertion that granting AirTran's request would significantly increase operational delays.

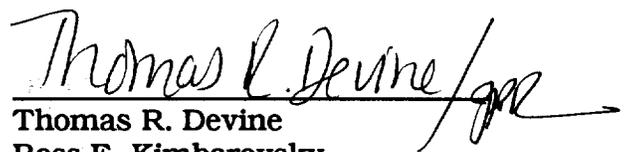
Conclusion

The relevant circumstances of AirTran's application for an exemption are comparable to those in which the Department granted the exemption requests of Reno Air and Air South. Based on the identified corporate demand, and the low-fare, highly competitive service to be provided, sufficient traffic will be generated between Quad City/Bloomington/Normal and LaGuardia to support the proposed service. Granting the exemption would enable non-stop or single plane service from four airports and twenty communities to the key business market that is currently underserved. Accordingly, the Department should grant AirTran's application.

Dated: June 20, 1997

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I caused the following persons to be served on June 20, 1997, with a copy of the Motion for Leave to File an Otherwise Unauthorized Document and Response of Metropolitan Airport Authority of Rock Island County, Illinois via U.S. first class mail, postage prepaid:

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