



**U.S. House of Representatives**  
**Committee on Transportation and Infrastructure**

**James L. Oberstar**  
Chairman

Washington, DC 20515

**John L. Mica**  
Ranking Republican Member

January 6, 2010

David Heysfeld, Chief of Staff  
Ward W. McCarragher, Chief Counsel

James W. Coon II, Republican Chief of Staff

The Honorable Ray LaHood  
Secretary  
U.S. Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, D.C. 20590

The Honorable J. Randolph Babbitt  
Administrator  
Federal Aviation Administration  
800 Independence Avenue, SW  
Washington, D.C. 20591

Dear Secretary LaHood and Administrator Babbitt:

On August 12, 2009, Delta and US Airways announced a large-scale slot trade between the two airlines at New York's LaGuardia Airport (LGA) and Washington National Airport (DCA). As part of the proposed transaction, US Airways would give 125 daily slot pairs at LGA to Delta and receive, in return, 42 slot pairs from Delta at DCA. We are writing to express our concerns regarding the proposed transaction, and to urge you to undertake an extensive review, considering whether allowing major network carriers to increase their concentration and reduce competition at these slot controlled airports could harm consumers and whether anti-competitive effects could be mitigated by making some of the slots available to other carriers. While we understand that this transaction may be undergoing Hart-Scott-Rodino<sup>1</sup> antitrust review with the Department of Justice, we believe that the Department of Transportation (DOT) has broader authority to act in the public interest.

For example, US Airways slot holdings at DCA would increase from 42.7 percent to 53 percent, making US Airways by far the dominant carrier at DCA, while Delta's slot holdings at DCA would decrease from 23.2 percent to 13.1 percent. Furthermore, following consummation of this transaction, US Airways and its code-share partner United will see their market dominance of the entire Washington DC region (including Dulles International Airport) grow from 62 percent to more than 67 percent. By allowing US Airways and Delta to significantly enhance their dominant

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<sup>1</sup> 15 U.S.C. § 18a (1976)

positions at DCA and LGA, respectively, the transaction would increase concentration, while significantly lessen competition at each airport.

Both airlines state that they will maintain and even expand service that the other is currently providing at LGA and DCA, and use larger aircraft with more seats, thereby providing access to more passengers. However, the transaction does not oblige either airline to provide the service that they state they will provide. At the same time, Government Accountability Office (GAO) studies have found that: "Air fares for flights from . . . relatively concentrated airports are substantially higher than fares for travel from airports where there is more competition."<sup>2</sup>

The *Wendell H. Ford Aviation Investment and Reform Act for the 21<sup>st</sup> Century* (AIR 21 – P.L. 106-181) called for the elimination of the High Density Rule (HDR) at LGA on January 1, 2007. Recognizing the demand for access to LGA far exceeds the capacity at the airport, in December 2006 the FAA implemented a short-term Order<sup>3</sup> to maintain slots at LGA after expiration of the HDR while a final congestion management rule was developed. To date, a final congestion management rule has not been developed and the short-term Order was most recently extended in October 7, 2009, through October 29, 2011.<sup>4</sup>

The current short-term Order to maintain slots at LGA allows a lease or trade of slots only through the duration of the Order (hereinafter the "Buy/Sell ban"). The Federal Aviation Administration (FAA) has broad authority to impose such quotas at airports in carrying out its mandate to "assign by regulation or order the use of navigable airspace necessary to ensure the safety of aircraft and the efficient use of airspace . . ." and may "modify or revoke an assignment when required in the public interest."<sup>5</sup> It is our understanding that since US Airways and Delta are seeking to permanently trade slots at LGA and DCA, the airlines are seeking a waiver of the Buy/Sell ban from the FAA. The FAA may grant an exemption from regulations it issues in carrying out this mandate "when the Administrator decides the exemption is in the public interest."<sup>6</sup> We believe that this transaction merits a thorough review to determine whether it is in the public interest, and we believe that the DOT's authority to conduct such a review is not limited to the application of an antitrust legal framework.

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<sup>2</sup> GAO, AIRLINE COMPETITION: Higher Fares and Less Competition Continue at Concentrated Airports, GAO/RCED-93-171 (1993) at 21; See also, "Research has consistently shown that dominated airports tend to have higher airfares than airports that have more competition from other airlines." GAO, AVIATION COMPETITION: Challenges in Enhancing Competition in Dominated Markets, GAO 01-518T (2001) at 2.

<sup>3</sup> Operating Limitations at LaGuardia Airport, 71 Fed. Reg. 77,854 (Dec. 27, 2006).

<sup>4</sup> Operating Limitations at LaGuardia Airport, 74 Fed. Reg. 51,653 (Oct. 7, 2009).

<sup>5</sup> 49 U.S.C. § 40103 (b).

<sup>6</sup> 49 U.S.C. § 40109(b).

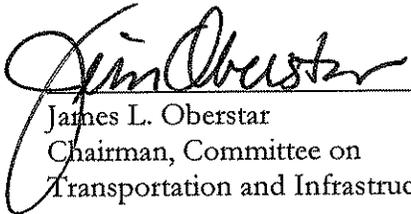
The Honorable Ray LaHood  
The Honorable J. Randolph Babbitt  
January 6, 2010  
Page 3

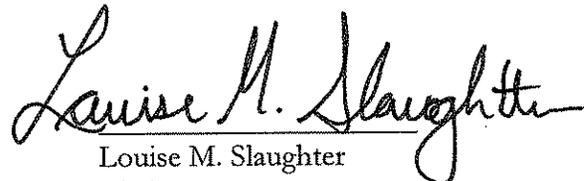
Moreover, we believe that allowing greater concentration of major network carriers (the Bureau of Transportation Statistics ranks Delta/Northwest number one in terms of passenger enplanements, and US Airways number five) at two of the nation's four East Coast slot-controlled airports may contradict the following statutory policy priorities: placing maximum reliance on competitive market forces and on actual and potential competition;<sup>7</sup> avoiding unreasonable industry concentration;<sup>8</sup> and encouraging entry into air transportation markets by new carriers and strengthening small carriers to promote competition.<sup>9</sup>

In conclusion, we urge the DOT to review all of the elements of this proposed transaction and take any actions necessary to ensure the protection of the public interest.

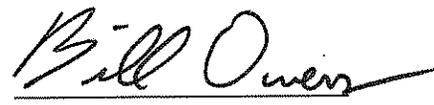
With all best wishes.

Sincerely,

  
James L. Oberstar  
Chairman, Committee on  
Transportation and Infrastructure

  
Louise M. Slaughter  
Chairwoman  
Committee on Rules

  
Jerry F. Costello  
Chairman  
Subcommittee on Aviation

  
William L. Owens  
Member of Congress  
23<sup>rd</sup> Congressional District, New York

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<sup>7</sup> 49 U.S.C. § 40101 (a)(6).

<sup>8</sup> 49 U.S.C § 40101 (a)(10).

<sup>9</sup> 49 U.S.C. § 40101 (a)(13).