DOCKET FAA-2004-17999,
NOTICE NO. 04-09
NOTICE OF PROPOSED RULEMAKING
PASSENGER FACILITY CHARGE PROGRAM,
NON-HUB PILOT PROGRAM AND RELATED CHANGES

COMMENTS OF THE
METROPOLITAN WASHINGTON AIRPORTS AUTHORITY

The Metropolitan Washington Airports Authority ("Airports Authority" or "Authority") appreciates the opportunity to comment on the Federal Aviation Administration's ("FAA") Notice of Proposed Rulemaking (NPRM) in Docket FAA-2004-17999, entitled "Passenger Facility Charge Program, Non-Hub Pilot Program and Related Changes." The Airports Authority is pleased that the FAA is moving ahead with implementation of the Vision 100-Century of Aviation Reauthorization Act changes to the Passenger Facility Charge (PFC) program. Streamlining the PFC application process will benefit both the FAA and the nation's airports. While this NPRM takes some steps toward easing the administrative burden of PFC's, the Authority hopes that the FAA will commit itself to further streamlining of the PFC process. In particular, the Authority hopes that the proposed changes to the PFC rule for PFC's issued by non-hub airports will be extended to all airports. PFC's were intended to provide airports with a non-federal means of funding airport improvements; unfortunately, the process by which airports obtain PFC approvals rivals, or even exceeds, the process airports must follow to obtain federal grants in complexity and duration. This could not have been the legislators' intent in creating the PFC program.

The Authority supports limiting air carrier notice of PFC's to those carriers with a "significant business interest" at the airport, but notes that the definition of "significant business interest" in 14 CFR 158.3 may be broader than the current requirement to consult with all air carriers and foreign air carriers that have operated at the airport during the previous year. The Authority recognizes that the definition of "significant business interest" comes directly from the Vision 100 statute. The Authority supports the definition's limitation of consultation to air

carriers that had no less than 1 percent of passenger boardings during the prior calendar year or had at least 25,000 passenger boardings at the airport during the prior calendar year. These changes would help ensure that consultation is held with the air carriers that are likely to have a significant interest in the airport. However, the definition goes on to require the airport to consult with any air carrier that "provides scheduled service at the airport," no matter how minimal the air carrier's business is at the airport. The Airports Authority believes it would have been more appropriate to limit consultation to air carriers with at least 1 percent of passenger boardings or at least 25,000 passenger boardings during the prior calendar year and which currently provide scheduled service at the airport.

The NPRM also proposes to alter the public notice and opportunity to comment aspects of the current PFC rule. Currently, the FAA publishes a notice of the PFC application in the Federal Register. The NPRM would require airports to consult with the public and to include the results of this consultation in its PFC application. The FAA would no longer be required to publish a Federal Register notice of each PFC application, but it could still do so if it chooses. The proposed rule changes do not include any standards for when the FAA would publish a Federal Register notice for a particular PFC application, but the preamble to the NPRM indicates that the FAA would expect to publish the notice only if there are significant issues or public controversy. The FAA indicates that dropping the requirement to publish a notice of the application in the Federal Register may allow the PFC application to be processed more quickly.

Adding a requirement for public consultation concerning a proposed PFC will further lengthen and complicate the PFC process for airports. If notice of the PFC application will not be published in the Federal Register it would be appropriate for the rule to reduce the maximum time for the FAA to process the application from 120 days to 60 days. In addition, the Authority requests that the

PFC rule include explicit, clear standards under which the FAA will determine whether a particular PFC notice will be published in the Federal Register. Without these standards, the Airports Authority is concerned that the FAA will be pressured by third parties to publish Federal Register notices for PFC applications that are not significant or controversial, further delaying the implementation of these PFCs.

The Airports Authority supports many aspects of the proposed rule, including the changes to Sections 158.25 that will permit airports to incorporate by reference information contained in a prior application to impose a PFC, if that information has not changed. The Airports Authority also supports most of the proposed changes that are designed to simplify the PFC amendment process so that it is not more complicated than the initial application rules. One aspect of the changes to Sections 158.23 and 158.24 could be clearer, however. These sections state that air carrier and public consultation must occur for an amendment if the amendment request is to (1) Increase the original PFC amount for any project by more than 25%, (2) Change the scope of a project, or (3) Increase the PFC level. The Airports Authority is uncertain what the reference to "increase the PFC level" means. Perhaps it could be clarified to say "Increase the PFC level to be charged to a passenger," if this is what is meant.

In addition to the foregoing comments, the Airports Authority suggests that the FAA consider other changes to streamline the PFC process, including:

1) Where there are multiple projects within a single application, the FAA should permit airports to separate financing costs into a separate project within an application, rather than include the financing costs in the construction project costs. Financing costs vary widely and changes in financing costs lead to many amendments. There would be two benefits to including the financing costs for all projects within an

application as a separate "project" within that application: (1) The costs stated in the application for each of the construction projects would more accurately reflect the hard construction costs, which are less likely to change over time; and (2) Having the "soft" financing costs for all of these construction projects combined into a single "finance cost" project item would mean that only the "finance cost" item would need to be amended if the finance costs change. This should reduce the number of amendments needed.

2) Second, the Airports Authority suggests that the FAA consider eliminating the monthly and quarterly PFC reports from the airlines. Currently, the FAA requires the airlines to file monthly, quarterly and annually – a total of 17 PFC reports a year from each airline. This is a burden not only for the airlines, but also for the Airports Authority. The Authority is required to maintain all of these reports on file, and to pursue missing reports from airlines. There is little the Airports Authority can do to recover missing PFC reports from airlines; the Authority cannot impose penalties on the airlines for non-compliance with the reporting requirement. The only remedy is to report the noncompliance to the FAA, which is not an effective means of securing the missing reports. As a result, it is not uncommon for Authority files to be missing some of the 17 reports required each year for each airline. Failure to maintain a complete set of these monthly, quarterly and annual reports results reflects negatively on the Authority in its annual PFC audit. The Airports Authority strongly suggests that only annual PFC reports be required from the airlines. These reports would contain all of the information that is in the monthly and quarterly reports, and missing annual reports would be much easier to track, and, hopefully, obtain.

The Airports Authority strongly supports the FAA's efforts to streamline the PFC process and hopes that further streamlining efforts will be made in the coming months. Thank you for the opportunity to submit these comments.

Respectfully submitted,

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