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U.S. Department  
of Transportation  
**Federal Aviation  
Administration**

FEDERAL AVIATION  
ADMINISTRATION

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800 Independence Avenue, S.W.  
Washington, D.C. 20591

JUL 14 2004

R. Hewitt Pate  
Assistant Attorney General  
Antitrust Division, Room 3109  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Dear Mr. Pate:

We anticipate that the Secretary of Transportation will soon determine, pursuant to 49 U.S.C. § 41722,<sup>1</sup> that it is necessary to convene a meeting of air carriers with the Administrator of the Federal Aviation Administration (FAA) to discuss flight reductions at Chicago O'Hare International Airport (O'Hare) in an effort to reduce overscheduling and flight delays during peak hours of operation. Because of severe congestion at that airport and the resulting delays and inconvenience to the traveling public, the Administrator intends to convene such a meeting in the immediate future. The purpose of this letter is to describe the format and procedures for the meeting and to ensure that, provided the meeting is conducted in accordance with this memorandum, the Department of Justice would not seek to challenge as a violation of the U.S. antitrust laws any air carrier's attendance at or participation in the meeting or an air carrier's actions taken to comply with an Order of the Administrator issued as a result of the meeting.

<sup>1</sup> In particular, 49 U.S.C. § 41722 provides:

**§ 41722. Delay reduction actions**

**(a) Scheduling reduction meetings.**—The Secretary of Transportation may request that air carriers meet with the Administrator of the Federal Aviation Administration to discuss flight reductions at severely congested airports to reduce overscheduling and flight delays during hours of peak operation if—

- (1) the Administrator determines that it is necessary to convene such a meeting; and
- (2) the Secretary determines that the meeting is necessary to meet a serious transportation need or achieve an important public benefit.

**(b) Meeting conditions.**—Any meeting under subsection (a)—

- (1) shall be chaired by the Administrator;
- (2) shall be open to all scheduled air carriers; and
- (3) shall be limited to discussions involving the airports and time periods described in the Administrator's determination.

**(c) Flight reduction targets.**—Before any such meeting is held, the Administrator shall establish flight reduction targets for the meeting and notify the attending air carriers of those targets not less than 48 hours before the meeting.

**(d) Delay reduction offers.**—An air carrier attending the meeting shall make any offer to meet a flight reduction target to the Administrator rather than to another air carrier.

**(e) Transcript.**—The Administrator shall ensure that a transcript of the meeting is kept and made available to the public not later than 3 business days after the conclusion of the meeting.

## **Meeting Procedures:**

### **1. Notice to Air Carriers and Other Interested Parties**

To assist the Administrator in formulating flight reduction targets, as contemplated by 49 U.S.C. § 41722, and to identify the air carriers that will attend the meeting, the Administrator will send a letter notifying the O'Hare airport operator and each scheduled air carrier serving O'Hare of the meeting. The letter will describe the necessity for the meeting and will identify the periods during a representative business day that the Administrator considers severely congested. The letter will establish the date and time for the meeting and will designate Washington, DC, as the meeting's location. The letter will advise that the meeting and all preparations for it are subject to the antitrust laws and that communications among air carriers regarding competitively sensitive information, such as markets served, prices charged, and marketing plans, could result in a violation of the antitrust laws. Copies of the letter will be sent to the Antitrust Division, as well as to the Air Transport Association, Regional Airline Association, and Air Carrier Association of America.

The FAA Air Traffic Organization will separately provide the O'Hare airport operator and each air carrier serving O'Hare with a summary showing the FAA's current information as to scheduled arrivals and departures at O'Hare (including code-share flights) for each air carrier during each 15 minute period from 6 a.m. to 11 p.m. on a representative business day. A letter enclosed with this summary will request that each air carrier confirm the FAA's current information as to that air carrier's scheduled operations at O'Hare, respond as to whether the air carrier will attend the schedule reduction meeting, and if the air carrier will attend, identify whom its representative will be.

The FAA also will publish in the Federal Register a notice of the meeting that identifies the basis for the meeting, when and where the meeting will take place, and the manner in which the meeting will be conducted. The Federal Register notice will invite all scheduled air carriers to attend and will specify that a transcript of the meeting will be available for inspection in a public docket opened within three business days after the Administrator formally adjourns the flight reduction meeting.

### **2. Establishment and Notice of Flight Reduction Targets**

The Administrator shall establish flight reduction targets, based on the number of flight operations scheduled for a representative business day. As required by the statute, at least 48 hours prior to the meeting, the Administrator will publish notice of these targets on the FAA's website. The notice will specify the total number of reductions sought from the total number of flight operations conducted. The notice will not include carrier-specific limitations, targets, or suggested reductions.

### **3. Conduct of the Meeting**

The meeting will be conducted under the following procedures:

- a. The meeting will be chaired by the Administrator or by a delegate of the Administrator.
- b. The meeting will be open to attendance by the O'Hare airport operator and all scheduled air carriers, and the FAA will transcribe the meeting.
- c. Representatives of the Department of Justice will be invited to attend.
- d. At the beginning of the meeting, the FAA will announce that, pursuant to advice from the Department of Justice, no communication will be permitted by any air carrier representative in the presence of any representative of another air carrier regarding the subject of flight reductions at O'Hare or regarding any other competitively sensitive information, including but not limited to markets served, prices charged, and marketing plans.
- e. The Administrator will then distribute to the meeting's attendees a list of the number of flights, not specific as to air carrier, during each 15-minute period from 6 a.m. until 11 p.m. on a representative business day, and she will identify any periods that she considers severely congested, as well as general targets for flight reductions during those periods.
- f. Each air carrier serving O'Hare and attending the meeting will then be invited into a separate and confidential session with representatives of the FAA Air Traffic Organization, at which the air carrier will be asked to offer flight reductions or schedule modifications. Only representatives of that air carrier and the U.S. government will be permitted to attend the offer sessions; however, the sessions will be transcribed.
- g. Any offer of flights reductions should specify the precise number of arrivals and departures, if any, the submitting air carrier is willing to remove from each of the severely congested periods identified by the Administrator, indicating whether the flight operation(s) would be cancelled or moved to another time period. The offer may not be explicitly contingent on specific flight reductions by other air carriers but may be conditioned on the Administrator's implementation of an overall reduction of specified numbers of flight operations toward the target during the periods in question. The offer may not contain information from the air carrier on markets served, prices charged, marketing plans or other competitively sensitive matters.
- h. After the completion of all such sessions, the FAA Air Traffic Organization: will review the offers made; will revise, in light of the offers made, the list of the number of flights, not specific as to air carrier, during each 15-minute period from 6 a.m. until 11 p.m. on a representative business day; and will consult with the Administrator. The Administrator will distribute to the meeting's attendees the carrier non-specific list of the number of flights on a representative business day, and she will identify any periods that she continues to consider severely congested and identify targets for flight reductions during those periods.
- i. At her discretion, the Administrator or her delegate may repeat steps (f) through (h), and she may continue the schedule reduction meeting as she deems necessary.
- j. If the Administrator determines that identifying carrier-specific targets would facilitate voluntary flight reductions and schedule modifications, the Administrator may advise each air carrier separately and confidentially of flight reduction targets specific to that air carrier. No carrier-specific information will be provided to any air carrier other than information regarding that air carrier; however, the Administrator may make general assurances with respect to the overall proportionality of the flight reductions among the air carriers serving O'Hare.

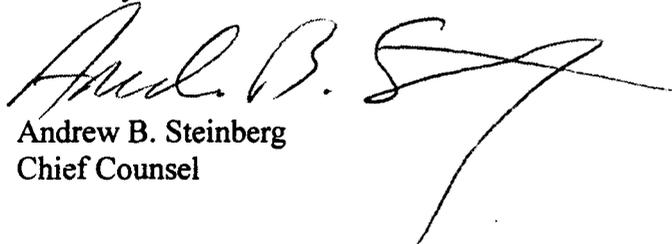
- k. Following the Administrator's identification of further flight reduction targets, each air carrier attending the meeting that serves O'Hare will be invited to a separate and confidential session with representatives of the FAA Air Traffic Organization, at which the air carrier will be given the opportunity to submit a new or revised offer of flight reductions or schedule modifications.
- l. At her discretion, the Administrator or her delegate may repeat steps (j) and (k), and she may continue the schedule reduction meeting as she deems necessary.
- m. The Administrator may terminate the schedule reduction meeting at her discretion.

#### 4. Order of the Administrator Concerning Delays at O'Hare

The FAA Air Traffic Organization will review the final offers of each air carrier attendee of the meeting and recommend a proposed flight reduction plan to the Administrator. After the Administrator's review and approval of the plan, the resulting schedule reductions, including carrier-specific limitations, will be published in the Federal Register as a final order of the Administrator. The final order of the Administrator will be in effect for no more than twelve months and will specify a method by which air carriers adversely affected by the order may be relieved of its effect. The order will also be subject to modification by the Administrator.

Please inform me if these procedures are acceptable to you.

Sincerely,



Andrew B. Steinberg  
Chief Counsel