BEFORE THE
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, D.C.

In the Matter of OPERATING LIMITATIONS AT CHICAGO O'HARE INTERNATIONAL AIRPORT	)	Docket No. FAA-2004-16944

RESPONSE OF ATLANTIC COAST AIRLINES d/b/a INDEPENDENCE AIR

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Dated: August 13, 2004

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Atlantic Coast Airlines d/b/a Independence Air hereby responds to the FAA's Notice of Scheduling Reduction Meeting and Request for Information published in the Federal Register on August 2, 2004 (69 Fed. Reg. 46201). ACA participated in both the public and confidential meetings with the FAA held on August 4, 2004 and shares the objective of the FAA to reduce the number of delays experienced this year at O'Hare International Airport ("O'Hare"). ACA will continue to cooperate with the FAA to achieve this goal. However, the FAA must recognize the reason for the increase in delays has nothing to do with carriers serving O'Hare, other than American and United. These two carriers are, have been, and undoubtedly, will continue to engage in a struggle for market share at the only large U.S. airport that is a strategic hub for two major air carriers. Neither carrier will willingly cede market share to the other and, hence, both carriers have continued to increase the number of their daily O'Hare operations. Whatever solution the FAA devises, it must be targeted at the carriers that have created the delay situation and not at those few carriers that offer the consumer real choice at an

airport that is dominated by major network air carriers and their numerous code share partners.

That American and United dominate O'Hare is beyond peradventure. Between the two carriers, and their respective domestic and international code share partners they conduct 92% of the arrivals at O'Hare between the hours of 0700 through 2059. And the number of arrivals conducted by these carriers, including domestic code share partners, is shown to be increasing no matter what date range is analyzed as will be described below. The increase in O'Hare operations that has resulted in the delays, and about which the FAA is properly concerned, is the product of the scheduling decisions of American and United and any solution to the O'Hare delay problem must be addressed by these carriers.

Not only is O'Hare controlled by American and United, other major carriers, including Continental, Delta and Northwest, which were permitted to enter into a tripartite code share agreement in 2003 and their respective code share partners, conduct almost all of the other domestic air carrier operations at O'Hare. The combined share of of all these major carriers, in terms of arrivals in impacted hours is 98%. Carriers, like ACA d/b/a Independence Air, America West, and Spirit, only conduct a grand total of 22 daily arrivals at O'Hare during the impacted hours of 0700 through 2059. These carriers, which are not aligned with any of the major carriers, offer the only competitive spur to the network carriers that dominate O'Hare and their meager presence at O'Hare should not be jeopardized by this FAA exercise.

It is well documented that network carriers will not offer lower air fares unless they are required to do so to maintain a competitive balance with low cost, low fare carriers. Examples of this marketplace reaction are legion. Only when Independence Air entered the Dulles-O'Hare market did United react by matching all of Independence Air's Dulles-O'Hare fares albeit on a carefully capacity controlled basis. For example, prior to June 16, 2004, the first day of Independence Air operations between Dulles and O'Hare, United's one-way walk-up fare in the market was $699.00. On the day of Independence Air's entry in the market, United began offering a capacity limited one-way walk-up fare of $79.00. And even having matched Independence Air's O'Hare fare, United still files a $699.00 walk-up fare. The competition-based public policy embedded in the federal transportation statute requires the federal government to pay particular attention to the competitive impact of its O'Hare schedule reduction decision making process.[1]

Other examples of the means by which carriers are compelled to compete on price abound. Southwest's recent entry into the Philadelphia market required USAirways to react by lowering its fares at its hub airport. And low fares from Ronald Reagan Washington National Airport ("DCA") were only recently been made possible by the policy pursued by the DOT to award exemption slots to dedicated low-fare carriers and

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[1] 49 U.S.C. §40101 requires the DOT Secretary to consider as being in the public interest the development of an air transportation system that is based on the availability of low-priced services; the placement of maximum reliance on actual and potential competition; the avoidance of unreasonable industry concentration and excessive market dominance; the encouragement and maintenance of a system relying on actual and potential competition; the provision of efficiency, innovation and low prices in air transportation; and the encouragement of the entry into markets by new and existing air carriers. §40101(a) (4) (6) (10) (12) and (13).

thereby raise the level of fare competition at DCA, where none historically existed.[2] In short, the FAA and the DOT must carefully balance the desire and need for reducing O'Hare flight delays with the need to insure that those few carriers that discipline the market for O'Hare air travel are not either pushed out or forced to reduce their already limited service in the name of airspace efficiency, particularity since these carriers represent just 1.8% of daily arrivals within the impacted hours.

Even if the FAA and DOT choose not to consider (as they should) the competitive impact of any order to reduce O'Hare arrivals, the focus of this exercise should properly be on American and United. It is these two carriers that have created the problem and this is evident by the fact that the FAA logically sought a solution with these two carriers in January and again in April of 2004 with the objective of reducing O'Hare flight delays. A look at the O'Hare flight arrival statistics demonstrates this point. From April 2000 to August 2004, American and its domestic partners *increased* their O'Hare operations by 110 daily flights. For its part, United and its code share partners exceeded even American's increase, by scheduling and operating 200 *additional* daily O'Hare flights over the same time period. All other carriers operating at O'Hare (both domestic and international) increased their activity by just 16 daily flights from April 2000 to August 2004, compared to 310 added by American and United.[3] These statistics are all the more dramatic because the operational levels of American and United were high in 2000 when

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[2] Just this past Monday August 9, 2004 the DOT awarded two DCA exemption slots to Spirit Airways, and denied the applications of Northwest and Comair, primarily based on Spirit's proposal to offer lower fares in the DCA-Myrtle Beach market and the absence of low fare offers from the other applicants. Order 2004-8-3, pages 6-7.

[3] Source: FAA Report, Docket No. FAA-2004-16944-27.

relatively robust economic conditions prevailed and carriers were responding to increased passenger demand.

American and United also are observed as having increased O'Hare flights when comparing their respective June 2002 operational levels (just before slot controls at O'Hare were lifted) with August 2004 levels.[4] American and United, more than any other carriers at O'Hare have contributed to the delays plaguing the airport and must be the carriers that are primarily responsible for meaningful and real reductions in their respective service levels.

And if no action is taken by these carriers, the situation may actually get worse. Just in the months of June and July of this year United has issued no less than six press releases touting new nonstop or increased nonstop service from O'Hare adding numerous additional daily frequencies.[5] In announcing these new O'Hare services, United made no mention of any reduction in O'Hare operations to offset these new or expanded services.

Claims by both American and United of having made cuts in response to the FAA's earlier request, have intentionally been exaggerated so to falsely claim the high ground in the debate over whether they have contributed to the problem. The schedule cuts that American and United point to were, for the most part, simply the movement of

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[4] American increased O'Hare operations by 42 daily flights and United by 66 daily flights. Source: FAA Report, Docket No. FAA-2004-16944-29

[5] United press releases; United Begins Daily Nonstop Service between Chicago and Honolulu, June 3, 2004; United Airlines Launches Daily Nonstop Service Between Chicago O'Hare and Osaka Kansai, June 10, 2004; United Airlines Announces Start for New Nonstop Chicago-Shanghai Service, June 29, 2004; United Announces Significant Service Expansion from Chicago O'Hare and Washington Dulles, July 20, 2004; United Launches Nonstop Chicago-Maui-Kona Service with Introductory Fares, July 27, 2004.

flights into periods of time that are less congested at the airport.[6] Indeed, between American and its wholly-owned subsidiary carriers operating as American Eagle, only eliminated six flights during the January and April scheduling reduction exercises out of a total of 7,486 weekly flights[7]. And these American and American Eagle cuts were not nearly large enough to offset the 11.8% increase in August 2004 scheduled flights, compared to August 2003.[8]

For its part, United also increased its O'Hare flight operations over this same time period by 31 flights per day, although it claims the opposite based on a carefully selected time period and by confusing flight time shifts with absolute flight reductions.[9] Despite their claims, American and United have caused the O'Hare delay situation to worsen by adding a total of over 131,000 weekly seats at O'Hare over the twelve months ending August 2004. On what possible basis can these carriers blame the O'Hare delay problem on any other carrier than themselves?

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[6] ACA does not oppose the elimination of operational peaks by the movement of flight arrivals into period of time that do not exceed a properly determined target level of arrivals. ACA does object to the characterization of such schedule changes as a schedule *reduction* as American and United claim they implemented earlier in 2004.

[7] American Airlines Corporate Press Releases dated February 4, 2004 and April 21, 2004. *Aviation Daily*, August 4, 2004 edition citing analysis of the Seabury Airline Planning Group. Weekly flights of American and American Eagle as of August 2004.

[8] According to the Seabury Airline Planning Group American increased weekly O'Hare flights an average of 113 per day (793 per week) from August 2003 to August 2004. *Aviation Daily*, August 4, 2004 edition.

[9] Indeed, for all of the public pronouncements offered by American and United about their cooperation with the FAA in January and again in April to eliminate O'Hare flights, statistics provided by the FAA indicate that American *added* three flights at O'Hare comparing January with August 2004 schedules and United cut only a single flight over this eight month period.

Having set up this strawman claim of O'Hare flight reductions, representatives of American and United have been quoted in the trade and general press that they have been responsible corporate citizens by voluntarily reducing their O'Hare flight schedules as requested by the FAA, while other carriers, notably ACA, have increased their O'Hare operations. As noted, this is hardly true given that both carriers made significant increases in their O'Hare flight operations in their strategic battle for market share. And at least as to ACA, operating as Independence Air, it is certainly not true as the carrier has most recently *reduced* its O'Hare operations by over 90%.

Until June of this year ACA conducted 124 arrivals at O'Hare. With the rebranding of ACA as Independence Air, it now conducts a total of 12 arrivals, of which only 3 occur within quarter hour periods that has been deemed oversubscribed by the FAA. This is a radical reduction of 90% of ACA O'Hare's operations. In other words, ACA has reduced scheduled O'Hare arrivals resulting in a substantial elimination of its operations at O'Hare, a claim neither American and United can make.

The attempts of United, and to a lesser degree American, to blame ACA for O'Hare flight delays is shameful. As noted, ACA had reduced O'Hare arrivals by 90% . United seems to think that since the ACA service reduction was tied to the termination of ACA's flying as a United Express carrier at O'Hare, that ACA's historic O'Hare arrivals should for all purposes be counted as United operations. This United position ignores several pivotal facts. First, United neither owned nor controlled ACA during the time

ACA operated as a United Express carrier.[10] ACA operated as a United Express carrier based on a code share agreement that was negotiated and renegotiated on an arms length basis. ACA conducted operations at O'Hare and elsewhere under its own certificate of public convenience and necessity and FAA-issued air carrier certificate. ACA scheduled its own aircraft and crews and was legally responsible for the conduct of its operations. ACA even indemnified United for any claims that could have been brought against United arising out of the acts or omissions of ACA. In other words, ACA, as ACA, and not United, conducted air carrier operations at O'Hare and has done so since 1998.

Prior to November 2000 ACA also shouldered the load factor risk associated with the operations of ACA's flights as a United Express carrier at O'Hare and elsewhere. After November 2000 ACA restructured its economic arrangement with United such that United paid ACA a per departure fee for its services. However, this arrangement, made at arms length, did not change the legal equation and ACA remained liable to its passengers as an air carrier to its own right, and to United for any third party claims.

Apart from these facts, United also ignored that during the period 1998 through 2000, when United was unable to grow its operations at O'Hare, United encouraged ACA to seek and obtain slot exemption authority in the name of ACA, since United was not eligible for such relief from the FAA High Density Airport Rule.[11] And ACA was

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[10] By Order 98-4-21 the DOT found ACA to meet the definition of a new entrant air carrier at O'Hare because it was an independent air carrier that was neither owned or controlled by United and thus eligible to receive O'Hare exemption slots. Order 98-4-21 at pages 16-17.

[11] The award of O'Hare exemption slots under §41714 could only be made to new entrant and limited incumbent air carriers as defined by the Federal Aviation Regulations and the statute.

successful in obtaining such authority having accumulated no less than 42 O'Hare exemption slots from the DOT.[12] These slots were awarded to ACA by name or in the name of the communities to be served by ACA from O'Hare. In other words, ACA had a presence at O'Hare that was only made possible because the DOT found that as a matter of law ACA was not the alter ego of United and therefore was eligible for O'Hare slot exemption authority. With the termination of the O'Hare slot regime, ACA continued to conduct operations made possible by the prior slot exemption awards and these awards were greater in number (42) than the current number of arrivals operated by ACA as Independence Air. Therefore, neither United nor American can legitimately claim that ACA has increased its presence at O'Hare since commencing operations as Independence Air, when in historical terms, ACA's operational footprint at O'Hare was substantially larger than is now the case.[13]

Finally, unlike American and United, that based on published reports have failed the heed the FAA suggestion for schedule reductions, ACA reiterates that it is prepared to cooperate with the FAA and DOT in search for a solution to the O'Hare schedule delay problem. Of course, ACA agrees with those who urge that the hourly or quarter hour targets levels must be set by the FAA on the basis of a reasonable and not overly-conservative set of assumptions. But once these target levels are properly set and verified, American and United must be expected to reduce their operations that the two

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[12] See DOT's Orders 98-4-21, 99-3-12, 99-7-17, 99-9-16, 99-12-26, 2000-1-3.

[13] To the extent United has replaced ACA at O'Hare by contracting for the services of other of its existing or new regional air carriers, the increase in flights associated with such operations are properly attributed to the new or expanding operators or United—not ACA.

carriers have intentionally grown over the past year thereby creating the problem the FAA now seeks to address. There is no credibility in the positions of American and United that they are immune from making any additional schedule reductions (when in fact they not only have not decreased operations, but have increased their respective O'Hare scheduled services) and that other O'Hare carriers must now be required to do so. With only 12 daily arrivals (only three of which are in oversubscribed quarter hour periods) ACA is hardly a prime contributor to the problem. Nor has ACA, operating as Independence Air, increased its presence at O'Hare, despite claims to the contrary. ACA is operating at O'Hare at a lower level today than the DOT authorized it to do when in 1998 through 2000 ACA obtained O'Hare exemption slots based on its status independent of that of United. In short, ACA has been part of the solution. If only American and United were prepared to play more constructive roles in this exercise (and stop their inappropriate naming calling) other O'Hare carriers, including ACA, would undoubtedly cooperate with the DOT and FAA in the interest of finding a solution.

Respectfully submitted,

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Dated: August 13, 2004