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October 29, 2004

Docket Management Facility
U.S. Department of Transportation
400 Seventh Street, SW
Room PL-401
Washington, D.C. 20590-0001

RE: Docket No. FAA-2004-19411, Proposed Reservation System for Unscheduled Arrivals at Chicago O'Hare International Airport

Dear Sir or Madam:

The National Air Carrier Association (NACA), on behalf of its member airlines[1], submits the following comments on this FAA Notice of Proposed Rulemaking that would implement a reservation system restricting the number of "unscheduled" aircraft arrivals at Chicago's O'Hare International Airport (O'Hare) during the period November 1, 2004 through April 30, 2005.

The FAA proposes to limit "unscheduled" operations to no more than four arrivals per hour between the hours of 7 a.m. through 8:59 p.m. daily. The proposal would further limit these operations to no more than two arrivals in any 30 minute interval during the reservation period. The FAA notes that this allocation mechanism for unscheduled arrivals is similar to that used for the "Other" category of operation in the current High Density Rule (HDR) at 14 CFR part 93.

One of the FAA's stated reasons for proposing these rules is that O'Hare's on-time arrival rate for November 2003 was just 57 per cent, ranking it last among the 31 major airports in the US. FAA's analysis shows that at least part of the reason for these delays is a scheduled volume of traffic that exceeds the airport capacity. These delays at O'Hare had a significant detrimental effect on air traffic and flight operations all across the U.S. In spite of that existing condition, air carriers publishing schedules in the Official Airline Guide (OAG) have shown their intent to add still more operations at O'Hare for the period of this Order. The FAA further explains that, in an August 18, 2004 Order, it has already allocated 88

[1] NACA's members include: Air Transport International, ATA Airlines, Centurion Air Cargo, Champion Air, Express.Net Airlines, Falcon Air Express, Gemini Air Cargo, Miami Air International, North American Airlines, Omni Air International, Ryan International Airlines, Southern Air, TransMeridian Airlines, USA3000 Airlines and World Airways.

arrivals per hour to "scheduled" operations in an effort to address the operations scheduled in the OAG.

FAA proposes to exempt helicopter operations and flights by foreign air carriers, except those flights conducted by Canadian air carriers. The FAA will accommodate declared emergencies without regard to the reservations, and certain non-emergency flights in support of national security, law enforcement, or similar requirements may be accommodated with prior FAA approval.

FAA has assumed in its analysis that the economic effect of this rule will be minimal and that operators of unscheduled flights, as defined herein, have more discretion and more flexibility than scheduled operators in terms of the flight planning time and the arrival time. Alternatives suggested include varying the arrival time or day or landing at another airport in the Chicago area.

NACA Comments

We accept the facts presented by the FAA that the air traffic system at O'Hare cannot safely and economically accommodate all the flight arrivals forecast for the period November 1, 2004 and April 30, 2005, under all potential weather conditions. We applaud the FAA for taking the initiative to rectify the unacceptable situation and for making this proposal. We are dedicated to assisting the FAA in finding solutions that continue to offer a safe air traffic operation and that provide for the maximum utilization of available capacity for the traveling and shipping public. We are grateful for the opportunity to comment and to recommend alternatives to those proposed by the FAA.

In general, we agree with the scheme proposed by the FAA. It is not unlike the scheme that has been in place for decades for high density airports as shown in 14 CFR part 93. We also agree with the types of operations FAA would place in the unscheduled category. However, we believe the term "unscheduled" can be explained more clearly, and we propose a change below. Once the term "unscheduled" is more clearly explained, we do not agree with the FAA's hypothesis that all unscheduled operations have more discretion and flexibility than scheduled operators in terms of the flight planning horizons and arrival times. We have elaborated on that in our comment concerning Public Charter operations in our comment on Section 5 in number four below[2].

Specific Comments

1. In Section 1. *Applicability,* the FAA proposes to exclude helicopters and <u>foreign air carriers</u> from the reservation system. NACA opposes exemptions for foreign air carriers

[2] Apple Vacations West, Inc. and The Mark Travel Corporation have filed comments that provide excellent descriptions of Public Charter operations. NACA endorses the comments of these two indirect air carriers.

flying "unscheduled operations" that do not operate via the air carrier's homeland. While, in general, we believe all commercial operations should have to abide by this reservation system, we do not object to exemptions for any foreign air carrier scheduled operations and/or for those foreign air carrier unscheduled operations that operate between the foreign air carriers' homeland and the U.S.

Rationale: Under its bilateral aviation agreements, including all Open Skies agreements, the U.S. is obligated to accept scheduled service operations across designated city pairs by foreign air carriers that have been designated for those scheduled operations by their governments. The U.S. is also obligated to approve charter (i.e., "unscheduled") operations that are flown between the homeland of the foreign air carrier and the U.S. These are known as "Third" and "Fourth" Freedom charter operations. However, operations of "*fifth freedom charters*", as defined at 14 CFR §212.3 that include both "Fifth" and "Seventh Freedom" passenger traffic, are not guaranteed under our bilateral agreements. Our agreements on charter operations are limited to Third and Fourth Freedom traffic, unless specifically approved by the U.S. Department of Transportation by special application. Because they are not guaranteed, the U.S. Department of Transportation (DOT) has every right to condition any foreign charter applications to abide by this SFAR. It is the expectation of U.S. air carriers that the Department will do so. Thus, we request that the FAA make the change to the language in this Order suggested below. To not require foreign *fifth freedom charter* operators to abide by the reservation system will give foreign charter air carriers an enormous competitive advantage over U.S. charter carriers under the reservation system described. Given the volatile nature of the airline industry, even a slight advantage on behalf of foreign carriers can mean financial ruin for U.S. carriers. Tour operators and air charter brokers, in their obligation to maximum their investment returns, will be compelled to select a foreign carrier if those carriers are not subject to this reservation system. Limiting the foreign air carrier exemption to scheduled service and "third" and "fourth freedom" charters will in no way impact 19 USC 2531-2533. Furthermore, assuming the FAA makes the changes to the reservation system recommended for Public Charters below, foreign air carriers applying for "*fifth freedom charters*" would be treated equally under that change.

NACA Recommendation: Rewrite the exemption in Section 1 to read: ***This SFAR does not apply to helicopter operations and to unscheduled flights by foreign air carriers that are conducted via the foreign air carrier's homeland, except those flights conducted by Canadian air carriers.***

NACA also recommends that the FAA exempt from this reservation system the use of O'Hare airport as an "alternate airport" and to accommodate arrivals under those circumstances where use of an alternate airport is generally deemed appropriate. Alternate airports are selected and filed because they have the best available alternative operating conditions to those at the intended destination. As a matter of public safety, these flights should be permitted to divert to O'Hare without reservations.

2. In Section 2. *Operational Limits*, the FAA proposes to limit unscheduled operations to four arrival reservations per hour and no more than two arrival reservations during each half hour for the peak period 7 a.m. through 8:59 p.m. Central Time.

NACA Comment: The air traffic rules for "High Density Airports" at 14 CFR 93.123 previously permitted 10 "Other" air traffic operations per hour at O'Hare. Those operations included takeoffs and arrivals. Thus, those regulations permitted the equivalent of 5 arrivals per hour for many years. We also note that the previous rule permitted 145 "air carrier and commuter" (scheduled) operations per hour. That is the equivalent of 72.5 scheduled service arrivals per hour. In a separate Order, the FAA has recently increased scheduled arrivals to 88 per hour. We are gladdened to see the increased O'Hare capacity over the years, but do not accept the rationale for now decreasing unscheduled operations to 4 arrivals per hour. With the prospect of increasing economic opportunities at O'Hare for all commercial operations, and increased demand for general and business aviation arrivals due to the closure of Meigs Airport, we humbly request that FAA share the increased capacity with unscheduled operators by raising the arrivals from the 4 per hour proposed to 6 per hour. In so doing, we note that a ratio of scheduled to unscheduled operations that is similar to the previous ratio will be achieved (approximately 15:1).

NACA Recommendation: Change the number of unscheduled operations permitted to six (6) arrival reservations per hour and no more than three (3) arrival reservations during each half hour for the peak periods described.

3. In Section 4. *Terms*, the explanation of the term "unscheduled operation" is confusing. It includes "irregular charter", not a familiar term in the airline industry, and makes no mention of the charters that are regularly conducted between O'Hare and another service point. For example, Public Charters operate on a regular basis and have always been included in the "other" category in 14 CFR Part 93.

NACA Recommendation: Change the description of the term to read ***"Unscheduled Operation" is an operation other than one regularly conducted as scheduled service by an air carrier or commuter air carrier between O'Hare and another service point. Unscheduled operations include all charters (including Public Charters), general aviation, military, and public aircraft flights and other irregular operations by commercial air carriers, including hired aircraft service, ferry flights and other non-passenger flights.***

Rationale. There are many years of precedent for including Public Charters in what is now being termed an "unscheduled operation". NACA and its member air carriers agree that all charters, including Public Charters, should be included in "unscheduled operations" for the purposes of this Order, but highlight the criticality of our remarks on Section 5 below.

4. In Section 5. *Reservation Procedures*, the FAA states they will accept requests for unscheduled reservations no more than 72 hours prior to the proposed time of arrival at O'Hare.

NACA Comment. While we agree that this system can work for many operations described as "unscheduled", the 72 hour reservation gate is entirely inappropriate for Public Charter operations. Public charters reservations should be permitted up to six months in advance of arrival. Additionally, we feel certain it is in the public interest to grant some priority to scheduled all-cargo operations that may not be filed in the Official Airline Guide and to certain urgent unscheduled all-cargo flights.

Rationale. Public Charter operations are charters operated in accordance with the Department of Transportation's regulations at 14 CFR Part 380. These regulations require that a prospectus be filed with the DOT that includes the flight schedule, a listing of the origin and destination cities, dates, type of aircraft, number of seats and charter price for each flight. Furthermore, once a charter program is approved, 14 CFR §380.12 states that *"The charter operator may not cancel a charter for any reason (including insufficient participation) except for circumstances that make it physically impossible to perform the charter trip, less than 10 days before the scheduled date of the departure of the outbound trip."*

Public Charters are approved by DOT and held out to the Public six months to a year in advance of operation. The organizing of a Public Charter requires detailed, long-term planning and coordination, often with foreign government officials to obtain corresponding landing and departure slots at foreign airports. Once booked, changes to arrival and departure scheduled at these foreign airports are nearly impossible to coordinate. These charters also involve exquisite planning with hotels, ground transportation, and many other businesses to ensure a high probability of success. Charter airlines and their indirect air carrier partners cannot turn off all these plans nor can they have a high probability of success of notifying their passengers of changes within 72 hours. Furthermore, Public Charters make maximum utilization of airspace and airport slots. Aircraft used average between 160-245 seats, which is larger than the average size of all the aircraft in scheduled service when regional aircraft are included. Additionally, Public Charter load factors at O'Hare average greater than 75 per cent, and on-time performance averages greater than 90 per cent. These operations are a model for the air transportation industry. Public Charters simply cannot be placed in the same 72-hour mold with truly unscheduled flights by 2-10 seat general aviation, business and/or on-demand charter operations, and/or with ferry flights. It would not be in the public interest to do so.

NACA Recommendation. a. Add a new fifth sentence in Section 5.a. to read as follows: ***Reservations for Public Charter flights may be requested upon approval of the Public***

Charter prospectus by the Department of Transportation, but not earlier than six months prior to the arrival at O'Hare.

b. Modify the current fifth sentence by adding "Other" at the beginning to read "***Other requests for reservations will be accepted 72 hours prior to the proposed time of arrival at O'Hare.***

c. In Section 5.c., add a new first and second sentence to read as follows: ***The ARO will allocate an entire Public Charter schedule within seven days of the date of receipt of the reservation request, but no more than six months in advance of the proposed time of arrival at O'Hare. If a conflict is noted, the ARO will propose a change to the Public Charter schedule that is no more than 30 minutes before or after the requested time. With no less than 72 hours notice, the ARO may notify the direct air carrier in a Public Charter, and the air carrier must accept, up to 30 minutes delay for a particular arrival that has been previously approved.***

We note that, historically, Public Charters have not exceeded approximately six-to-eight arrivals per day within the period required for reservations. That number of operations is only 10% of the total unscheduled arrivals recommended by NACA. On the other hand, it is our estimate that those Public Charter operations will serve more than 50 per cent of the public flying under an "unscheduled operation". Thus, this change to accommodate advance reservations by Public Charters is clearly in the public interest.

We are well aware of planned airspace capacity enhancements and commend the FAA for initiating programs to increase capacity at O'Hare and other major airports. We are enthusiastic stakeholders in the planning and implementation of those programs and pledge our assistance to making them successful, as we pledge our support to this reservation system for unscheduled arrivals at O'Hare.

Respectfully Submitted
National Air Carrier Association

Ronald N. Priddy
President