

The Thomas A. Roe Institute for Economic Policy Studies

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HOW TO IMPROVE AIR TRAVEL IN AMERICA

INTRODUCTION

America faces a virtual crisis in air travel. Since 1978, when airlines were deregulated, the number of passengers flying annually has increased by over 80 percent. At the same time, the basic infrastructure available to handle this volume remains at pre-deregulation levels. No major new airports have been constructed in the United States since 1974. As a result, airports are becoming increasingly congested, leading to more delays for air travelers and an increased danger of accidents.

In the face of this growing problem, America must find ways to increase the capacity of its air transportation system while making better, more efficient use of existing capacity. Changing the way that airports charge airlines and private pilots for such services as the use of a runway for taking off or landing, or the use of a gate or a hangar, can help with both objectives. Charging premium prices during hours of peak demand would give airport users an incentive to shift their use to airports that are not as crowded or to times of the day when the airport is not as busy. Premium fees also would give airports a substantial amount of new revenue with which to finance their own expansion. The result: peak-hour pricing would increase capacity and use existing capacity better.

Increasing Productivity and Competition. Another measure that would improve American air travel is privatization of airports. This would reduce airport operating costs, increase airport productivity, and increase competition among airlines. And for local governments, which now own almost all major airports, selling them to private owners would be a huge and welcome fiscal windfall.

So long as airports are owned and operated by state or local governments, airports lack the flexibility that private operators have to set prices and

manage their operations. They have little incentive to increase service or reduce costs because they are prohibited from making a profit. To overcome these limitations, airports around the world are privatizing the ownership or at least the management of airport facilities. In Britain, for example, seven major airports were sold outright in 1987. Elsewhere, airports are being leased to private companies, or else private companies are being hired under contract to manage airports for the governments that own them.

Interpreting Statutes. A number of American cities and counties have expressed an interest in such privatization either in selling or leasing their airports or in hiring private firms to manage them. Others have expressed an interest in changing the way they charge for their services to handle more flights, more passengers and more cargo. So far, however, such proposals (with the exception of contract management) have met with an icy reception at the Federal Aviation Administration and the Department of Transportation. Depending on how they are interpreted, various federal statutes restrict the ability of airports that are publicly owned or that have received federal grants to modify their landing fees and other charges to take account of factors such as demand or noise. Instead these airports generally base their fees on such factors as aircraft weight or the historical cost of airport facilities that have already been completed — factors that are economically much less relevant to the actual market value of the services the airports provide. Also, the Department of Transportation provisionally interprets one particular federal statute, Section 511 of the Airport and Airway Improvement Act of 1982, in a manner that makes it almost impossible for state and local governments to sell their airports to private buyers.

The Department of Transportation should reconsider its interpretations of these statutes and adopt a position that facilitates to the greatest extent possible market pricing and privatization. The Department also should consider releasing airports that have received federal airport grants in the past from certain contractual obligations that impede privatization. Finally, to make certain that courts or future administrations do not roll back these efforts to improve air travel, the Bush Administration should seek legislation to remove all legal barriers to rational pricing by airports or the sale of government-owned airports to the private sector.

CONGESTION, DELAYS, AND AIRLINE DEREGULATION

America's airports are becoming increasingly congested, due mainly to the enormous increase in the volume of air travel in recent years. Whereas airlines carried only 275 million passengers in 1978, this number grew to 498 million last year. This increase is a result of airline deregulation in 1978. In that year airlines were given the freedom to fly where they wanted, at times and routes of their own choosing, and to charge whatever they wanted to for their services. This resulted in lower fares, which naturally led to an increase in the volume of air travel.¹

Unfinished Deregulation. Increased flights have also meant increased congestion at airports and delays for air travelers. Many passengers as well as policy makers are inclined to blame delays on deregulation. But the real problem lies with the failure to deregulate the other components of America's air transportation network – the airports and the air traffic control system. These components were left in the hands of federal, state, and local governments and are subject to sharp regulatory restrictions.

As a result, the basic infrastructure available to handle the increased number of flights remains at pre-deregulation levels. No major new airports have been constructed in America since the opening of the Dallas/Fort Worth airport in 1974.² Similarly, a planned modernization of the federally-owned air traffic control system, which would have expanded the system's capacity through the purchase of upgraded computers and radar, has been delayed significantly owing to federal procurement rules. And federal personnel policies make it very difficult to reassign controllers to locations where needs are greatest owing to increased traffic.³

Given the growth in air travel, policy makers must find ways to increase the capacity of America's air transportation system, and to make better, more ef-

1 Although the number of people flying annually was rising even before deregulation, studies indicate that traffic measured in total passenger miles is significantly heavier today than it would have been had regulation continued. See, e.g., Richard B. McKenzie, *Airline Deregulation and Air Travel Safety: The American Experience*, Center for the Study of American Business, forthcoming March 1991; Richard B. McKenzie and William F. Shughart II, *Has Deregulation of Air Travel Affected Air Safety?* Center for the Study of American Business Working Paper No. 107, June 1986, p. 9; Clinton V. Oster, Jr., *The Effect of Deregulation on Airline Industry Employment: Final Report to the U.S. Department of Transportation*, December 1983.

2 A new airport in Denver is under construction, and other airports such as St. Louis's Lambert and Washington's National are planning major expansions in the number of gates. All of these projects have encountered repeated delays.

3 Although the capacity of the air traffic control system as well as of the airports themselves has been greatly taxed by the growth in the volume of air travel, this study focuses only on methods for increasing airport capacity. Ways of increasing the capacity of the air traffic control system will be discussed in a separate paper to be released later this year.

efficient use of existing capacity. Proposals to re-regulate the airlines do not address either of these needs. Such proposals would cut airport congestion by denying consumers the many benefits of deregulation, such as lower fares and increased availability of flights. Congestion thus would be decreased by raising the cost of airfares so that fewer Americans would be able to travel by air. A better way to cut congestion: retain the consumer benefits of deregulation and expand the air system's capacity to handle flights by granting airports the freedom to charge demand-based prices for their services. Even better: privatize airports completely.

THE PROBLEM IS PRICING

Congestion only occurs at particular airports at particular times of the day. Just like automobile traffic on a highway, air traffic at any major airport has "rush hours." The trouble is that the way airports usually charge for takeoffs and landings⁴ gives airlines, passengers, and private pilots little incentive to shift their use to other airports or to less congested times of the day or days of the week. Under current federal regulations and practices, airports charge the same price for landing regardless of the time of day.⁵ Most airports, moreover, base their fees mainly if not exclusively on weight, charging more for heavier craft. Larger, heavier planes required wider, longer, thicker runways. Today, however, costs do not vary as significantly with the weight of a plane. Indeed, a large jet actually may cost less to take off or land if it can get off the runway sooner, making way for another plane. Pricing based primarily on the weight of the plane encourages inefficient use of major airports by smaller planes that could easily land elsewhere at smaller airfields.

If airports were free to charge premium prices to any airplane taking off or landing during "rush hours," or on particularly busy days, then some travelers would choose to fly at other, less congested times when landing fees, reflected in the prices of airline tickets, were lower. Likewise, those who now fly smaller private airplanes into major airports might instead choose to land

4 Under present near-universal practice, airports charge for landings but do not charge a separate fee for takeoffs.

5 Although the emphasis here is on the fact that landing fees and gate rental charges do not vary with time of day, it should be noted that airports generally undercharge for these services at all times of the day, creating a general incentive to overuse the airport system. Because fees are calculated on the basis of historical costs rather than replacement costs, they tend to understate actual airport costs substantially. Thus, present pricing practices entail an enormous implicit subsidy from airport owners to airport users that naturally leads to overuse. See Frank Berardino, "Airport Privatization" (presentation to AAAE/ABA Seminar on Airport Law, October 30, 1990), pp. 7, 16-17.

at nearby smaller airports where landing fees were lower. Or they could fly on commercial airliners instead of in their own planes; this would be the air-travel equivalent of taking a bus or subway instead of driving alone in a car.

Such a pricing approach would help alleviate congestion at airports. Currently, the airlines themselves price tickets in part based on the time preferences of passengers and the capacities of their aircraft. During low-traffic seasons, airlines offer discounts on tickets. By allowing airports to charge higher fees during high-use periods, revenues could be collected to finance badly needed expansion of facilities and infrastructure. Demand-based pricing thus would lead to increased capacity as well as to better use of existing capacity.⁶

Market Pricing Methods. There are several forms of demand-based pricing. Airports, for example, could keep the current system of allowing planes to schedule takeoffs and landings any time they want but base the fee on the time of day, the day of the week, and even the time of the year.

Airports also could lease or sell rights to take off or land at particular times of the day, every day on an ongoing basis. Users would become owners of particular slots, such as 2:00 p.m. on Saturday, and would be entitled to sell, lease or trade the slots to other users. Thus, for example, an airline that owned the 11:00 a.m. Monday slot but that did not need it during a particular slow month could lease the slot to a busier airline for one month. If an airline was suffering financial difficulties or loss of passengers, it could raise money by selling a slot to another permanently or for the remainder of its lease from the airport. There would thus be a natural tendency for each slot to end up in the hands of whatever airline valued it most, which presumably would be the airline that could get the most passengers at the given time of the day and week. The result would be that slots would be allocated in a way maximizing the number of passengers served by the airport in question at any given time of the day or week.

The Federal Aviation Administration (FAA) has allowed some selling, leasing, and trading of landing slots to relieve congestion at four major airports: LaGuardia and John F. Kennedy in New York City, O'Hare in Chicago, and National Airport in Washington, D.C. The FAA estimates that by the end of this century, 58 airports could require some kind of limitations on access due to congestion.⁷

⁶ Congress recently enhanced the ability of airports to pay for their own expansion by amending the Federal Anti-Head Tax Act (49 U.S.C. § 1513) to allow airports to charge passenger user fees of \$1, \$2, or \$3 per passenger. These fees will be collected by airlines as part of the ticket price. Although the fees do not appear to be designed to vary with the time of day to reflect changing levels of demand, they will give airports greater flexibility in raising revenue for improvements.

⁷ See Apogee Research, Inc., *The Nation's Public Works: Report on Airports and Airways* (Report by the National Council on Public Works Improvements, May 1987), p. 32.

Seeking Market Flexibility. Whether airports are publicly or privately owned, it is important to allow them the freedom to experiment with different pricing approaches, methods and strategies. Through trial and error airports can discover what arrangements work best. By contrast, locking all airports into a single government-mandated formula for congestion pricing of airport use would lack the flexibility of a market approach and ultimately could lead to the same sort of inappropriate charges as are found in current, government-mandated weight-based prices. After all, government bureaucracies have no special knowledge of what prices are best at what times or what airports.

Pricing freedom could have other advantages. Airports in Britain, for example, charge a premium for noisier jets and give a discount to quieter ones.⁸ This gives airlines an incentive to switch to quieter jets while raising funds with which to compensate local victims of “noise pollution” or to buy noise easements on neighboring property. Pricing freedom, also, would allow airports to experiment with the use of other kinds of charges besides landing fees, such as takeoff fees, gate rental, aircraft parking fees, and per-passenger service charges.

THE PRIVATIZATION OPTION

While pricing freedom would go a long way to help relieve congestion at airports, America’s air travel infrastructure would still suffer a major flaw. Most major airports in the U.S. are owned and operated by state or local governments. This imposes significant restrictions on the airport’s ability to manage its operations, to hire and fire personnel, to procure needed supplies and equipment, to expand facilities, and to finance its operations. Yet there is no more reason why airports should be government-owned than there is for any other enterprise.

Other countries are experimenting with privatizing the ownership or management of airport facilities. In 1987 the British government sold its British Airports Authority (BAA), which owns seven major airports, to the public. In the U.S. some airports are being leased to private companies, or private companies are being hired to manage them. Airports in Morristown, Teterboro, and Atlantic City, New Jersey, for example, are leased by private firms, and Burbank Airport in California is privately managed. Companies such as Lockheed Air Terminal, Pan Am World Services, Avco International Services (a division of Combustion Engineering), and Air Terminals Inc. and

⁸ Robert W. Poole, Jr., “Airport Privatization: What the Record Shows,” Reason Foundation *Policy Study* No. 124, August 1990, p. 19.

Airports UK (both subsidiaries of BAA) lease or manage airports in the U.S., Canada, Europe, and elsewhere.⁹

Private ownership of airports would have a number of important advantages over publicly-owned facilities. These include:

1) Maximum Pricing Freedom. As long as an airport is publicly owned, it will be politically difficult to remove all controls on pricing and fees. Even an airport enjoying relative freedom to price its services might be subject to future government controls. For example, many current regulations are the result of Department of Transportation and court rulings limiting both the kinds of charges that can be imposed and the amounts that can be charged.

2) Better Management. Private owners and operators are not hampered by government employment or procurement regulations. This means they have greater flexibility and can respond more quickly to consumer demands and market changes. They also have a greater incentive to manage efficiently, to increase service, and to reduce costs. Contrary to the predictions by privatization's opponents, private airport owners have invested heavily in their airports. The annual level of capital investment by BAA in Britain more than doubled by the third year after privatization. Much of this investment has been in such "landside" activities as hotels, restaurants, retail stores, and the construction of a rail line from Heathrow Airport to downtown London. Similarly, the companies operating the Morristown and Teterboro, New Jersey, airports have invested heavily in runway resurfacing, new hangars, a new lighting system, and other renovations and improvements.¹⁰

Privatization can lower operating costs and increase productivity. For example, at BAA's airports, both revenues generated and passengers handled per employee have increased. Operating expenses per passenger have fallen. In the U.S., Burbank Airport handles significantly more passengers per employee annually than other airports with comparable volumes.¹¹

Private management too can reduce greatly the cost of improvements by shortening the planning and construction periods. Example: by completing a \$100 million project in three years rather than in the four years the government might take, a private operator would save approximately \$12 million by not having to pay an extra year for money borrowed at a 12 percent interest rate. Private firms often take only half the time the public sector takes to plan and construct facilities.¹²

9 See Poole, "Airport Privatization: What the Record Shows," pp. 5-7; Robert W. Poole, Jr., "Privatizing Airports," Reason Foundation *Policy Study* No. 119, January 1990, pp. 5-6.

10 Poole, "Airport Privatization: What the Record Shows," pp. 8-10. James L. Gattuso, "Privatization of Britain's Airports: A Model for the U.S.," Heritage Foundation *International Briefing* No. 17, January 23, 1989, pp. 5-6.

11 Poole, "Airport Privatization: What the Record Shows," pp. 11-16.

12 *Ibid.*, pp. 2, 22-23.

3) Increased Competition Among Airlines. Some critics of airline deregulation fear that because some cities and routes appear to be dominated by a single carrier, these carriers might overcharge customers or provide poor service. This has not been a real problem and airport privatization would help head off any chance of it becoming a problem. Privatization would increase both the incentive for and the ability of airports to expand. By increasing the number of gates and terminals and perhaps even airports in a city, there would be more room for other carriers to serve these cities, denying any single carrier a monopoly.

A related worry sometimes cited is that under private ownership, the airports themselves, in contrast to the airlines, might abuse their local monopolies by overcharging their customers. Yet, the "monopoly" status of privately owned airports is not likely to be a problem because of competition between airports. Chicago, Dallas, Houston, Los Angeles, New York, Washington, and many other cities are served by more than one airport. Even in cities with only one major airport, any attempt by that airport to exact monopoly profits would stimulate the expansion of other airports in the area. Many travelers, moreover, are not ultimately destined for a city with a major airport but for a location somewhere between such cities. Travelers to or from New Haven, Connecticut, for example, can choose airports in Hartford or New York.

Airports used as hubs by major airlines, meanwhile, such as Dallas/Fort Worth, Hartsfield in Atlanta, and O'Hare in Chicago, compete with each other even though they are far from each other. Passengers readily can use one hub as well as another, and airlines easily can relocate their hubs from one airport to another, if a host airport charges more than its competitors. Similarly, airports such as Washington's Dulles and Boston's Logan compete with each other for international traffic.

4) Increased Government Revenues. The government entities that own and sell the airports would receive the sale proceeds. These could be substantial. Robert Poole, President of the Reason Foundation, estimates that the Port Authority of New York and New Jersey would receive some \$2.23 billion for the sale of New York's Kennedy and LaGuardia Airports.¹³ BAA was initially sold to the public for approximately \$2.5 billion in 1987; its market value is now around \$4 billion.¹⁴ Once an airport is no longer owned by the government, moreover, it becomes subject to local property taxes. In most major cities, the local major airport represents the largest single piece of real estate in the area. Thus, the potential revenues to be derived from airport privatization are enormous, and they make privatization especially attractive to state and local governments because current federal laws prohibit these governments from making a profit on the airports they own and operate.

13 Robert W. Poole, Jr., "Selling LaGuardia and Kennedy Airports," Reason Foundation *Policy Study* No. 208, May 1990, pp. 13-14.

14 Poole, "Airport Privatization: What the Record Shows," p. 4.

OBSTACLES TO PRICING FREEDOM

The principal obstacle to the rational pricing of airport services is the federal government. Examples:

Section 1113 of the Federal Aviation Act of 1958 limits states or other political subdivisions that own or operate airports to collecting “reasonable rental charges, landing fees, and other service charges from aircraft operators for the use of airport facilities.”¹⁵ This provision applies only to publicly-owned airports.

Section 511 of the Airport and Airway Improvement Act of 1982 requires any airport seeking a federal grant to assure the Secretary of Transportation in writing that the airport will be “available for public use on fair and reasonable terms and without unjust discrimination.”¹⁶ This provision applies to any airport, public or private, that has received a federal airport grant.

The Department of Transportation is currently studying the question of whether landing fees based on such factors as demand or noise should be considered fair, reasonable, and nondiscriminatory, or at least not unjustly discriminatory, for purposes of these two statutes. It has not yet taken a firm position on these matters.

Discouraging Decision. The Department, however, disapproved what was probably the boldest pricing experiment undertaken to date. In 1988, the Massachusetts Port Authority (Massport), which operates Boston’s Logan Airport, adopted a new formula for calculating landing fees that put less emphasis on weight. This formula included a new operations fee that was the same for all planes regardless of size. This new formula raised landing fees for smaller planes while decreasing slightly or holding steady the fees for larger planes. The Department of Transportation, however, ruled that the new formula unjustly discriminated against smaller aircraft and that this violated Massport’s federal grant assurances. It ordered Massport to discontinue the program or lose its federal funding. Massport appealed the ruling but lost in court.¹⁷

Although the Department of Transportation’s rejection of the Massport experiment is discouraging, there were two encouraging aspects of its decision. First, although the Department faulted Massport for putting too much emphasis on factors other than weight, the Department did not say that weight was the only factor that could be considered in setting takeoff and landing fees. Just how much emphasis must be put on airplane weight and how much may be put on other factors is not clear. Second, and perhaps even more important, one of the factors the Department mentioned as a basis for its

¹⁵ 49 U.S.C. §§ 1513(a) and 1513(b).

¹⁶ 49 U.S.C. § 2210(a)(1).

¹⁷ *New England Legal Foundation v. Massachusetts Port Authority*, 883 F.2d 157 (1st Cir. 1989).

decision was the fact that Massport's landing fee formula did not include peak-hour pricing. The Department thus implicitly endorsed peak-hour pricing, or at least appeared to do so. However, the Department needs to make its position much clearer than it has so far.

OBSTACLES TO AIRPORT PRIVATIZATION

The major legal obstacle to the privatization of government-owned airports is Section 511 of the Airport and Airway Improvement Act of 1982. This provision says that airports receiving federal funds must assure the Secretary of Transportation in writing that "all revenues generated by the airport, if it is a public airport,... will be expended for the capital or operating costs of the airport, the local airport system, or other local facilities which are owned or operated by the owner or operator of the airport and directly and substantially related to... air transportation."¹⁸

This language raises two difficulties for airport privatization. First, the phrase "revenues generated by the airport" might be construed to include the proceeds from the sale of an airport. If sale proceeds constitute "revenues generated by the airport," then they must be put back into the airport, not withstanding the fact that the government no longer owns the airport. The government, in effect, would have to hand the sale proceeds right back to the buyer. Of course, if the government owns several airports, it could reinvest the proceeds into facilities that they still own.

A second potential difficulty is that, even if the phrase "revenues generated by the airport" refers merely to operating revenues, an airport that has received any federal grants in the past, as virtually all public airports have, may still be subject to requirements imposed by past grant assurances to the Department of Transportation, depending on how the assurances are worded. If so, then while a public authority may sell an airport and keep the proceeds, the buyer may still be required, by contract if not by statute, to reinvest "all revenues generated by the airport" in the airport for the duration of the grant assurances (usually twenty years from the date of the most recent grant) whether such investment is necessary or not. Such a requirement would reduce severely the value of an airport to a buyer and hence diminish the amount any buyer would be willing to pay for an airport in the first place.

Secretary's Authority. However, regardless of which interpretation is correct, the Secretary of Transportation has all the legal authority he needs to eliminate this obstacle to airport privatization. While the Secretary may not approve an airport development grant to a public airport unless he has first received a reinvestment assurance, there is nothing that prohibits the

¹⁸ 49 U.S.C. § 2210(a)(12). This is the statute that prevents state and local governments from making a profit on the airports they own and operate.

Secretary, acting on behalf of the U.S. in its capacity as a party to the contract, from subsequently waiving compliance with this particular assurance after a grant has already been approved, paid and used, if doing so would be in the public interest.

Waiving compliance with a particular airport's reinvestment assurance to facilitate privatization would not in any way circumvent the will of Congress. After all, when it enacted the Airport and Airway Improvement Act of 1982, Congress chose to make privately-owned airports eligible to receive federal airport grants, something that had not been the case under prior law. By doing so, Congress implicitly recognized that privately-owned airports can serve the purposes of the grant program. However, Congress did not choose to require private airports seeking federal grants to provide a reinvestment assurance to the Secretary. Section 511's requirement that the Secretary receive a written assurance that "all revenues generated by the airport... will be expended for the capital or operating costs of the airport" only applies "if it is a public airport."¹⁹ Significantly, of all the required written assurances set out in Section 511 (there are seventeen in all), this is the only one that contains such a limitation. All the others apply to public and private airports alike.

Albany Proposals. The Department of Transportation is currently examining both the scope of the phrase "revenues generated by the airport" and the extent of the Secretary's authority under the Airport and Airway Improvement Act to waive compliance with revenue reinvestment assurances, and it has not yet reached any firm conclusions on these issues. In the meantime, however, the Department has resisted all proposals for selling or leasing airports, including the repeated efforts by Albany County, New York. After its initial proposal to sell its airport was rejected in 1989, the County submitted several new proposals involving either leasing or contract management. This time, although the Department did not reject the contract management proposals, it did reject a proposal to lease the airport, telling the County that because of the Department's concerns over where the application airport revenues are spent, the County could only lease the airport to another government entity.²⁰ Since there are no other governmental entities to whom Albany can profitably lease its airport and since the contract management proposals were not nearly as attractive financially, the County has given up on its plans to privatize its airport.²¹

19 49 U.S.C. § 2210(a)(12). Under the statutory definition, only an airport that is "under the control of a public agency, the landing area of which is publicly owned" is considered a "public airport." Airports which are used for public purposes but which are privately owned are called "public-use airports." See 49 U.S.C. §§2202(a)(17), 2202(a)(18).

20 Letter from Leonard L. Griggs, Jr., Assistant Administrator for Airports, Federal Aviation Administration, to James Coyne, County Executive, Albany County, New York, December 6, 1990.

21 See Warren Brookes, "Plans to Privatize Forsaken?" *The Washington Times*, December 28, 1990, p. F1.

RECOMMENDATIONS

Last year in his *Statement of National Transportation Policy*, Secretary Samuel Skinner explicitly recognized the “need to give greater attention to the potential for capacity-enhancing pricing techniques in transportation, such as peak-period or congestion pricing,” calling such techniques an “important way to encourage the most effective use of existing facilities” that also “can generate significant revenues to support capacity enhancements and expansion.”²² In regard to privatization, he said:

Private firms that own and maintain transportation infrastructure and provide transportation services are a vital part of the Nation’s transportation system.... For the transportation system to sustain performance and accommodate increasing traffic, continuing and substantial infusions of private capital will be needed, even in areas that have traditionally been entirely within the public sector in this country. Government bodies at all levels must encourage and welcome private participation and investment in transportation.... [T]he private sector can be a major source of much-needed additional transportation capacity.²³

Secretary Skinner explicitly included “airports” in his list of “areas where increased private sector participation in transportation offers significant benefits.”²⁴ The Secretary has it in his power to take major steps toward both these goals. If airport congestion is to be alleviated through rational pricing and privatization, the following actions should be taken:

1) The Secretary of Transportation should announce that takeoff or landing fees or other user charges based on such factors as demand or noise will not be considered unfair, unreasonable, or unjustly discriminatory.

Charging an airplane the full market cost of its taking off or landing need not be viewed as inherently unfair or unreasonable. Similarly, there is nothing discriminatory about demand-based landing fees so long as the fees are the same for all planes landing at the same time of day, barring relevant differences in aircraft size or noise level. The Department’s restrictive interpretations of pricing statutes seem to be at odds with, and certainly are not required by, the statutes’ language. Since the price system, moreover, is the key to maximum use of existing airport capacity, the Secretary ought to resolve any doubts by construing these provisions to allow demand-based pricing.

22 U.S. Department of Transportation, *Moving America: New Directions, New Opportunities*, February 1990, p. 48.

23 *Ibid.*, p. 58.

24 *Ibid.*

2) The Secretary of Transportation should reconsider the Department's anti-privatization interpretation of Section 511 of the Airport and Airway Improvement Act of 1982.

Although the precise meaning of the phrase, "revenues generated by the airport" does not obviously and explicitly include the proceeds from the sale of an airport, the term most likely refers only to operating revenues. After all, the sale price represents the price the buyer pays for the right to receive "all revenues generated by the airport" in the future.

3) The Secretary of Transportation should consider waiving compliance with the reinvestment assurances in existing and future grant contracts in order to facilitate privatization.

The Secretary has the legal authority to waive the reinvestment requirement. This would not contravene the will of Congress and would be in the public interest.

4) The Secretary of Transportation should seek legislation to remove all legal barriers to rational pricing by airports or to the sale of government-owned airports to the private sector.

To make it unlikely that courts or future administrations will roll back market reform efforts, the laws that presently impede these efforts should be changed. To make clear that even government-owned airports may charge takeoff as well as landing fees,²⁵ Section 1113 of the Federal Aviation Act of 1958 would have to be amended explicitly to include takeoff fees; this section presently only mentions "rental charges, landing fees, and other service charges... for the use of airport facilities."²⁶

CONCLUSION

Primarily as a result of deregulation, the volume of air traffic in the U.S. has grown enormously in recent years. At the same time, the basic infrastructure available to handle this increased volume has remained at pre-deregulation levels. Not surprisingly, this results in the congestion which rightly angers many American air travelers. The ways to alleviate the congestion and delay are not by reimposing regulation of routes and fares but by deregulating the rest of America's air transportation network. Re-regulation would neither increase system capacity nor make more efficient use of existing capacity; what would do both is giving airports the freedom to charge demand-based prices for their services. By charging premium prices during periods of peak

²⁵ Even if airports choose not to charge a separate fee for takeoffs, a takeoff fee will always be implicit in the landing fee. However, if such fees are to vary with congestion and time of day, then the two kinds of fees probably should be separated to reflect the fact that airport congestion levels can change significantly between the time at which a plane lands and the time at which it takes off again.

²⁶ 49 U.S.C. § 1513(b).

demand, airports can give their users an incentive to shift their use to other airports or to other, less congested times of the day. Moreover, by collecting premium fees, airports would derive revenue with which to finance badly needed expansion of facilities and infrastructure.

If airports are to be given maximum pricing freedom, and if the benefits to consumers from airport pricing freedom are to be as large as possible, then airports must be sold to the private sector. Although the benefits of giving airports pricing freedom would be considerable even if the airports remain in government hands, there would be many important benefits from privatizing airports, including reduced airport operating costs and increased safety. If, for political reasons, airports cannot be sold outright, then they should be leased to private operators under long-term leases. If even the idea of leasing airports to the private sector is unacceptable, the governmental entities that own the airports should at least be allowed to hire private contractors to manage and operate the airports for a flat fee or for a percentage of profits or losses generated.

Freedom to Experiment. At the same time, while the greatest possible benefits can only be obtained through privatization, many of the benefits of pricing innovation and demand-based pricing would accrue whether or not airports were privatized. Therefore, even if airports are not privatized, and even if they remain under government management, they should at least be given the freedom to experiment with different pricing arrangements and to charge prices for the various services they sell, such as takeoff or landing slots, gates, hangar space, and so on, that reflect demand.

Last year's *Statement of National Transportation Policy* clearly noted the value of demand-based pricing in coping with congestion and the importance of increasing private sector investment and participation in the provision of transportation infrastructure, including airports. The Department of Transportation thus should modify its policies toward demand-based pricing and privatization to give these strategies a chance.

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