

July 15, 2009

Docket Operations
U.S. Department of Transportation
M-30, Room W12-140
1200 New Jersey Avenue, SE.
Washington, DC 20590-0001

**RE: Docket No: FAA-2009-0546, Notice of Proposed Airport Access
Restriction and Opportunity for Public Comment**

The National Air Transportation Association (NATA), the voice of aviation business, is the public policy group representing the interests of aviation businesses before the Congress, federal agencies and state governments. NATA's over 2,000 member companies own, operate and service aircraft and provide for the needs of the traveling public by offering services and products to aircraft operators and others such as fuel sales, aircraft maintenance, parts sales, storage, rental, airline servicing, flight training, Part 135 on-demand air charter, fractional aircraft program management and scheduled commuter operations in smaller aircraft. NATA members are a vital link in the aviation industry providing services to the general public, airlines, general aviation and the military.

NATA and its members are aware of the significance of the access restrictions proposed by the Burbank-Glendale-Pasadena Airport Authority (Airport Authority) and we appreciate the opportunity to offer our comments. The final decision made by the FAA on this request will set precedence on all future Part 161 access restriction requests.

The FAA is required to disapprove any Part 161 request that fails any of the statutory tests required by 14 CFR 161.305. Those tests require that:

1. The restriction is reasonable, non-arbitrary, and nondiscriminatory
2. The restriction does not create an undue burden on interstate or foreign commerce
3. The proposed restriction maintains the safe and efficient use of navigable airspace
4. The proposed restriction does not conflict with any existing federal statute or regulation
5. The applicant has provided adequate opportunity for public comment on the proposed restriction
6. The proposed restriction does not create an undue burden on the National Airspace System

The proposed restriction is not reasonable, non-arbitrary and non-discriminatory

To determine the reasonableness of a solution, the problem must first be examined. According to the submitted Part 161 study, the Airport Authority has worked with

industry to institute a voluntary nighttime curfew that has been 97% effective in reducing nighttime airline traffic. Also the study notes that a significant noise mitigation program has been undertaken to reduce the effects of noise in neighborhoods surrounding the airport. The FAA has provided the authority with over \$60 million, via Airport Improvement Program grants, to assist in mitigation efforts. The result of these efforts has been a shrinking of the 65 decibel (dBI) Community Noise Equivalent Level (CNEL) contours for the last thirty years. Despite this success, the Part 161 study predicts that the 65 dBI CNEL contour will again begin to grow between now and 2015 due to a predicted increase in nighttime traffic. However, a review of the data to support the 65dBI CNEL expansion claim shows the collection occurred prior to the current economic recession. The recession has had a dramatic impact on the entire aviation industry and the growth anticipated by the airport authority is refuted by all current information. As an example, the study predicted 10% growth in passenger enplanements between 2005 and 2008. During that period, passenger enplanements in fact dropped 4%. In the earliest stages of this study's projections, there is already a 14% gap between projections and reality (See figure 1). These types of problems are why hypothetical future scenarios should not be used as a justification for access restrictions today.

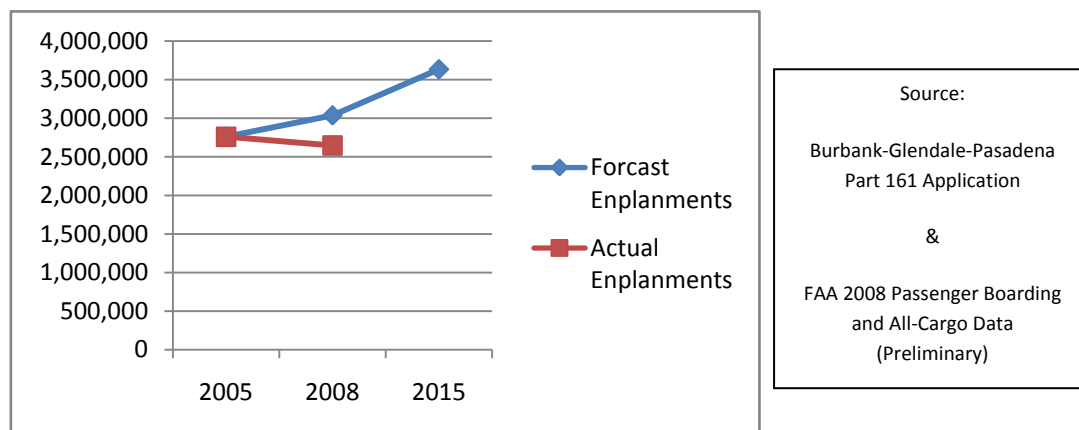


Figure 1 - Comparison of forecasted growth in passenger enplanements to actual growth 2005-2015

Because of these issues, NATA is highly suspicious of the conclusions reached by the study and also references the comments submitted by the National Business Aviation Association, which cast strong doubt on the predictions of future increases in size of the 65 dBI CNEL.

With this understanding of the problem, we must then look at the proposed solution to determine its reasonableness. The Airport Authority has chosen the most restrictive possible solution to the problem, a nighttime curfew. Matching the most restrictive solution possible to a problem that has been effectively managed by non-restrictive means is not reasonable on its face. Taking into account that the results and methodology of the predicted increase in 65 dBI CNEL contour sizes are in question and that other less restrictive options providing even more benefit for the cost have been evaluated (NATA does not necessarily endorse those options), the choice of the most restrictive solution possible is absurd.

The reason that the airport authority has chosen a nighttime curfew as a solution can only be because it is measuring success by an arbitrary standard, which also fails the statutory test required by 14 CFR 161.305. The Executive Summary of the Part 161 study states the goal of the airport authority:

The Burbank-Glendale-Pasadena Airport Authority (the Airport Authority), the owner and operator of the Bob Hope Airport, has adopted by resolution the goal to “eliminate or significantly reduce nighttime noise at [Bob Hope] Airport now and in the future.”

By setting its goal as the complete elimination or significant reduction of nighttime noise and then ignoring options that could reduce or mitigate the effect of nighttime noise, the Airport Authority has acted arbitrarily. The entire Part 161 application submitted by the Airport Authority seems to be designed to justify the imposition of an arbitrary restriction that, rather than addressing the reality of the situation, meets the authority’s goal of totally eliminating nighttime noise.

Another of the statutory requirements that underpins reasonableness is the cost-benefit analysis. If a proposed restriction can show a reasonable chance that it will provide higher benefits than costs it may be more likely to be deemed reasonable.¹

To provide a positive benefit to cost ratio for the proposed restriction, the Airport Authority first increases the 65 dBI CNEL contour to account for the supposed increase in future noise and calculates the number of homes requiring acoustical treatment, then subtracts the number of homes that would still need acoustical treatment if the restriction were instituted. The resultant number (1996) is multiplied by the estimated cost for acoustically treating the homes (\$43,000) to arrive at a benefit of \$88,828,000. This benefit is actually a savings of federal dollars since the money to treat these homes acoustically would be received through the FAA grant process.

This raises two additional issues with the Part 161 study. First a large number of the homes designated as being in need of acoustical treatment fall outside of the 65 dBI CNEL contour. The FAA does allow for:

“a reasonable additional number of otherwise ineligible parcels contiguous to the project area (to be included), if necessary to achieve equity in the neighborhood.”

Viewing the maps included in the Part 161 study quickly shows that a large number of homes not contiguous to properties inside the 65 dBI CNEL contour have been included, some homes actually being two blocks away. Because of this expansion of eligible homes and the fact that the proposed net benefit of imposing a nighttime curfew is only 21% of the

¹ It should be noted that a Cost-Benefit analysis showing a positive benefit to cost ratio is not the sole criteria for determining a restriction reasonable.

total estimated savings in acoustical treatment, the cost-benefit ratio may very well be negative, a sure sign of unreasonableness. Secondly, the funds that the study claims to be saving as a benefit have been paid as aviation related taxes into the Airport and Airways Trust Fund for the purpose of expanding and maintaining access to the National Airspace System (NAS). Claiming to have “saved” these funds by decreasing access is nonsensical. Removing the “saving” of these funds from the cost-benefit analysis would change the projection from a \$19 million dollar benefit to a \$70 million loss. The Airport Authority must not be allowed to claim that “saving” funds paid for by taxes on NAS users for the purpose of expanding access to the NAS by restricting that same access is a benefit. In addition, these funds would not actually be saved, just diverted to other projects (at Bob Hope Airport or other airports). A realistic review of the cost-benefit analysis shows clearly that the proposed restriction is unreasonable.

14 CFR 161.305 requires that any proposed access restriction also be nondiscriminatory. The Airport Authority claims that because a nighttime curfew affects all users equally, by denying them use of the airport, it is nondiscriminatory. NATA argues that denying use of the airport to users that have very little impact on noise is in fact discriminatory. Discrimination is not necessarily only singling a specific class of users for restriction but is also applying a restriction uniformly to all users regardless of their contribution to the perceived problem.

The proposed restriction would create an undue burden on interstate commerce

In its efforts to make the argument that banning nighttime traffic from Bob Hope Airport would not create an undue burden on interstate commerce, the Airport Authority offers the following three points:

1. *Based on a cost-benefit analysis, the potential benefits of the restriction would exceed the potential cost*

As noted previously, the cost-benefit analysis offered by the Airport Authority is dubious at best. Because the restriction does not actually save any federal money – it just causes it to be allocated to different areas – the restriction actually has a cost of \$70 million to affected businesses. Imposing this cost in the middle of a recession for the purpose of solving a problem that does not currently exist and is only projected to occur by a study that stretches the limits of acceptable methodology is unquestionably an undue burden.

2. *Affected carriers would have a reasonable chance to continue service*

While affected airlines may or may not have a reasonable chance to continue service, other carriers such as Part 135 On-Demand air carriers (charter operators) would most likely be unable to continue basing operations at the airport. Unlike scheduled airlines, charter operators provide flexible-schedule air transportation to their users. Charter operators faced with being denied access to their hangar facilities and maintenance

personnel if a flight ran too late into the evening due to a change in the customer's itinerary could be forced to face the high costs of finding suitable facilities at another airport, if those facilities even exist. Again, these costs must be weighed against the fact that overall effects from noise at the airport have been decreasing for over 25 years.

3. *Comparable facilities and services are available at another airport in the market area*

The existence of comparable facilities and services does not alone show that the proposed restriction is not an undue burden. The requirement, and associated costs, of being forced to use facilities at other airports, as discussed above, is itself an undue burden when considering the positive effects of current non-regulatory measures.

The proposed restriction will threaten the safe and efficient use of airspace

An FAA report titled "Capacity Needs in the National Airspace System, 2007-2025" identified the airspace in southern California as possibly already being limited.

"Airspace limitations also impact capacity. The ability of the airspace around many of the airports to accommodate more arrivals and departures may be limited, especially where there are several major airports in the same area (Southern California, Northern California, Chicago, New York, Philadelphia, and Southern Florida)" (emphasis added)

The restriction proposed by the Airport Authority will reduce the options for air traffic bound for the southern California region. This reduction in available airports will require more aircraft being funneled into fewer airports and reducing the overall efficiency of the already limited airspace.

The proposed restriction conflicts with federal grant assurances

Because the proposed restriction is neither reasonable nor non-discriminatory, its imposition would violate federal grant assurance requiring the Airport Authority to make the airport available to the public on reasonable and non-discriminatory terms.

Conclusion

The Airport Authority has adopted the goal of "eliminating or significantly reducing nighttime noise" and is asking the FAA to approve a nighttime ban on air traffic at a public use airport for the purpose of reducing noise. Since noise effects around the airport, as measured by 65 CNEL contours, have been shrinking for the last 30 years the authority justifies its actions by producing a factually unsound study that predicts that noise will increase over the next six years.

Allowing the airport authority to impose the most restrictive solution possible to a problem that does not yet even exist will set a precedent that will have a chilling effect on airport access across the United States. The Airport Authority's request to impose a nighttime curfew at Burbank Airport does not meet the requirements of 14 CFR 161.305.

The National Air Transportation Association respectfully requests the FAA deny the Burbank-Glendale-Pasadena Airport Authority's request to impose nighttime access restrictions at Bob Hope Airport on the grounds that the request does not meet the requirements of 14 CFR 161.305.

Sincerely yours,

Michael France
Manager, Regulatory Affairs
National Air Transportation Association