



AIR TRANSPORT ASSOCIATION

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Part 161 Study Comment Docket
Burbank-Glendale-Pasadena Airport Authority
Bob Hope Airport
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Dear Messrs. Povilaitis and Feger:

On behalf of the airline members of the Air Transport Association of America, Inc. (ATA),¹ we offer the following comments on the Burbank-Glendale-Pasadena Airport Authority's proposed curfew applicable to Stage 3 aircraft operations at Bob Hope Airport (BUR). These comments are based on the application prepared pursuant to Federal Aviation Regulation 161.303 and the Airport Noise and Capacity Act of 1990 (ANCA) and the supporting analysis prepared by the Airport Authority's consultants ("Part 161 Analysis").² As the first application for a Stage 3 restriction under ANCA,

¹ ATA is the principal trade and service organization of the major scheduled air carriers in the United States. ATA airline members are: ABX Air, Inc.; AirTran Airways; Alaska Airlines, Inc.; American Airlines, Inc.; ASTAR Air Cargo, Inc.; Atlas Air, Inc.; Continental Airlines, Inc.; Delta Air Lines, Inc.; Evergreen International Airlines, Inc.; Federal Express Corporation; Hawaiian Airlines; JetBlue Airways Corp.; Midwest Airlines, Inc.; Northwest Airlines, Inc.; Southwest Airlines Co.; United Airlines, Inc.; UPS Airlines; and US Airways, Inc. ATA Airline Associate Members are: Air Canada, Air Jamaica Ltd. and Mexicana.

² Jacobs Consultancy, Official Draft, FAR Part 161 Application for a Proposed Curfew, Bob Hope Airport (March 2008).

this proposal merits close scrutiny and must be viewed in light of the precedents it may set for other airports.

I. INTRODUCTION

At the outset, it is important to note that restrictions on operations of aircraft meeting Stage 3 noise criteria³ are disfavored under U.S. law and policy. Our national aviation policy is premised on full access by aircraft operators to the airports that have received public funding or other subsidies over the years. As the Federal Aviation Administration (FAA) noted in its May 19, 2004 letter to the Authority's consultant, ANCA "reflects the national interest in maintaining the efficiency and capacity of the national air transportation system and ensuring that Federally-funded airports maintain reasonable public access."⁴ While some exceptions exist in the form of airport curfews or operational limits, for the most part these pre-date the passage of ANCA. The criteria for a new access restriction under ANCA and FAR part 161 are appropriately stringent and the process to obtain Federal approval is consequently rigorous.

A. The proposed curfew is inconsistent with international noise policy

Based in large part on the policy embodied in ANCA and the regulations promulgated by FAA at 14 CFR part 161, the U.S. government led an international effort to adopt a balanced approach to noise problems. In 2001, the International Civil Aviation Organization (ICAO) formally adopted the "Balanced Approach" to noise management around airports, which includes four elements: reduction in aircraft noise at the source; land-use planning and management; noise abatement operational procedures; and aircraft

³ 14 C.F.R. part 36.

⁴ Letter from Victoria L. Catlett, Community and Environmental Needs Division, FAA to Max Wolfe, Chief Operating Officer, Landrum & Brown (May 19, 2004).

operating restrictions. The goal is to address the local noise problem in the most cost-effective and least restrictive manner. Under this policy, operating restrictions should only be sought as a last resort when the other elements of the Balanced Approach have been fully considered. The Balanced Approach, in relevant part, calls for any operating restrictions considered to:

- be based on the noise performance of the aircraft;
- be tailored to the noise problem at the airport;
- be limited to restrictions of a partial nature wherever possible;
- take into account the possible consequences for air services without any suitable alternative;
- be introduced gradually over time; and
- take account of the economic and environmental impact on civil aviation.⁵

The Balanced Approach continues to be the internationally-accepted policy for addressing noise issues at airports. In proposing a full curfew on all nighttime operations without fully considering less-restrictive alternatives the Burbank-Glendale-Pasadena Airport Authority is ignoring the fundamental principles of the Balanced Approach.

B. The proposed curfew is out of step with the region's needs

Southern California has been identified by the FAA as one of the areas of the country most in need of airport capacity. Indeed, even after planned improvements at some of the airports, the region will need additional capacity by 2015.⁶ At a time when every avenue is being explored to meet projected demand for air travel in this region, it is

⁵ International Civil Aviation Organization, Assembly Resolution A35-5, "Consolidated statement of continuing ICAO policies and practices related to environmental protection," Appendix E.

⁶ MITRE Corp., "Capacity Needs in the National Airspace System, 2007-2025 – An Analysis of Airports and Metropolitan Area Demand and Operational Capacity in the Future" (May 2007) (FACT 2 Report) at 10-11.

imprudent to even consider placing permanent restrictions on access to one of its most conveniently-located airports.

Failing to satisfy the region's demand for air travel has both environmental and economic impacts. On the environmental side, increasing congestion at airports increases emissions as aircraft spend more time taxiing and idling while queuing for departure or waiting for a gate to become available. Travelers who are unable to fly to their destination conveniently and affordably are likely to drive instead, or drive to an alternate airport, both of which increase vehicle-miles-traveled and associated emissions. In economic terms, aviation is an economic engine for the region, and all residents share in the benefits generated in terms of jobs, tax revenue and business development. A recent study concluded that the quantifiable economic contribution (the sum of the direct, indirect, and induced impacts) of BUR to the Southern California region amounted to \$3,889.1 million in output, 36,226 FTE jobs and \$1,171.6 million in earnings in 2006.⁷ These benefits would be curtailed if demand for convenient and affordable air travel cannot be met.

A regional approach is necessary in order to address both the benefits and the burdens associated with air travel. Simply shifting the noise burden to another airport in the region is unacceptable. Access to *all* airports in Southern California should be preserved.

⁷ Unison Maximus and UCG Associates, Inc., The Economic Impact of Bob Hope Airport, 2006 (May 2008).

C. The existing voluntary curfew is successful and sufficient to address nighttime noise concerns

For over 30 years the Airport Authority has promoted a voluntary curfew for commercial airlines between 10 p.m. and 7 a.m.⁸ According to the Airport Authority, airlines have historically complied with this policy and avoided scheduling flights during this nighttime period with only 5% of all airline flights occurring during the voluntary curfew hours.⁹

The voluntary curfew, combined with overall reductions in source noise from aircraft and what the Airport Authority characterizes as an “aggressive” sound insulation program, has resulted in a significant reduction of noise problems in the communities surrounding the airport. According to its web site:

When the Airport Authority purchased the airport from Lockheed in 1978, over 370 acres of residential land were impacted by average aircraft noise levels of 70 decibels or more. Residential land affected at less than 70 decibels, averaged over a 24-hour period, was considered compatible with state standards in 1978. Now there are approximately 4 acres of residential land impacted at that level -- a 99% reduction. Today, state standards for compatibility have been tightened. Residential land must be in an area affected by less than 65 decibels, on average, to be considered compatible with state standards. Under the new standards, approximately 60 acres of residential land remain incompatible with state standards, which is still significantly less than in 1978, even though today's standards to attain a "compatible" status are stricter than 20 years ago.¹⁰

⁸ In 1981, the airport also adopted a mandatory curfew banning flights at night by jet aircraft with noise levels equal to or louder than Stage 2 as well as certain propeller aircraft with noise levels above approved limits. Stage 2 aircraft were phased out of the U.S. commercial fleet by 2000.

⁹ See http://www.burbankairport.com/noise_issues.htm#OVERVIEW%20OF%20NOISE%20ISSUES, “Overview of Noise Issues (accessed May 16, 2008).

¹⁰ See http://www.burbankairport.com/noise_issues.htm#OVERVIEW%20OF%20NOISE%20ISSUES, “Overview of Noise Issues (accessed May 16, 2008). Note that the number given here for the land remaining incompatible with state standards – 60 acres -- differs considerably from the figures provided in the Part 161 application, which identifies the acreage within the 65 CNEL (1,080 acres in 2005) without regard to whether that land is compatible with the level of noise by virtue of its use (e.g., industrial) or previous sound-proofing of homes, as well as the acreage occupied by noise-sensitive land uses (223 acres in 2005). See 5-4.

By the Airport Authority's own admission, the voluntary curfew has been a remarkable success: the nighttime noise environment at BUR compares favorably to most other commercial airports. As noted in the Part 161 Analysis, "Bob Hope Airport has the lowest percentage of night operations of the [West Coast] airports listed, likely reflecting the effectiveness of the voluntary nighttime "curfew."¹¹ There is strong evidence that the voluntary curfew has been effective in reducing nighttime operations and/or forcing these operations to other airports in the region. Given the success of the voluntary curfew, it is not clear what the marginal benefit of making that curfew enforceable would be.

D. The proposed curfew must meet all aspects of the six statutory conditions

The Part 161 Analysis characterizes "cost-effectiveness" as a "central tenet" of the six statutory conditions that apply to any aircraft restriction.¹² This emphasis on the cost-benefit analysis glosses over the independent requirements of the relevant statutes and suggests that any restriction that has a positive benefit to cost ratio must be approved. However, even a cursory reading of the statutory conditions reveals that they demand far more than simply showing that the purported benefits of a restriction outweigh its financial costs. As detailed in the following comments, the statutory requirements that a restriction be reasonable, not unjustly discriminatory and not burden interstate commerce cannot be satisfied merely through a cost-benefit analysis.

¹¹ Part 161 Analysis, Technical Report 1, Table 35.

¹² Id., Executive Summary at 1.

II. THE COST-BENEFIT ANALYSIS DOES NOT SUPPORT THE PROPOSED CURFEW

Although a positive benefit to cost ratio is not, by itself, enough to meet the statutory conditions, it is a necessary attribute of an approvable access restriction under Part 161. In this case, the Airport Authority's analysis has strained to reach that magic ratio through unsupported assumptions about growth in nighttime operations at BUR, miscalculations of costs attributable to the proposed curfew, and exaggerated benefits flowing from making the voluntary curfew enforceable.

A. The Part 161 Analysis is based on flawed assumptions about growth

The benefits of an enforceable curfew are inflated by unsubstantiated and erroneous forecasts for BUR, particularly in future growth of nighttime operations. To arrive at its forecast, the Part 161 Analysis projects compound annual growth in enplaned passengers of 2.8 percent for the Los Angeles region,¹³ and predicts that BUR will retain its historical average of approximately 10 percent of the regional market between 2008 and 2015.¹⁴ This is an "unconstrained" forecast based on the assumption that airport capacity will be available to accommodate projected demand.¹⁵

BUR currently has 14 gates which handle approximately 330 total operations per day. At certain times of day the airport has excess capacity but the gates are fully utilized during peak periods, including the early morning (7 a.m. – 8:30 a.m.), late morning, mid-afternoon, and early evening. This pattern is reflective of the fact that several airlines have established BUR as a "spoke" airport, feeding traffic to connecting hubs for longer-haul traffic, which means that scheduling is dependent on making connections. Point-to-

¹³ Part 161 Analysis, Technical Report 1 at 20.

¹⁴ Id. at 4 and Table 1.

¹⁵ Id. at 1.

point service offered to and from BUR tends to cluster around times of day most desirable for business travelers (primarily early morning and late afternoon/evening).

Under the 2005 Agreement between the City of Burbank and the Burbank-Glendale-Pasadena Airport Authority,¹⁶ the Airport Authority is prohibited from taking any steps to construct a new terminal prior to 2015¹⁷ and may not expand the existing terminal, add new gates or even authorize additional remote aircraft parking positions during the term of the Agreement.¹⁸ Therefore, it is disingenuous for the forecast to assume unconstrained growth when BUR would not be able to accommodate significant increases in scheduled flights during the times of day when there is greatest demand for travel.

The Part 161 Analysis states that “[a]irlines will continue growth through additional frequencies and destinations, especially low fare service,”¹⁹ and that “additional frequencies to other domestic East Coast destinations are likely.”²⁰ However, these assertions are not supported by any evidence of strong growth in demand or development in a specific market for air service in the BUR area. The passenger carrier forecast is based on 2005-06 traffic levels, factoring in the presence of Skybus which entered the market in mid-2007 and has already gone out of business. Given the state of flux in the commercial passenger airline industry in the past year these forecasts may need to be reconsidered.

¹⁶ Development Agreement between the City of Burbank and the Burbank-Glendale-Pasadena Airport Authority Relating to the Bob Hope Airport (Mar. 15, 2005) recorded with the Los Angeles County Registrar, Doc. 0643306.

¹⁷ Id., § 3.7 (a).

¹⁸ Id., § 3.8.

¹⁹ Part 161 Analysis, Technical Report 1 at 24.

²⁰ Id. at 11

Even if the overall forecast is defensible, which we question, the assumptions regarding growth in nighttime operations are entirely specious. After acknowledging the success of the voluntary curfew, the Part 161 Analysis states, without attribution or reference to any supporting evidence, that “[i]t is reasonable to expect that the percentage of nighttime operations . . . will increase in the future in response to growing passenger demand and airline service development.”²¹ There is simply no rationale provided for the assertion that, after decades of complying with the voluntary curfew, passenger airlines would suddenly begin to schedule flights late at night or very early in the morning.

The Part 161 Analysis suggests that in addition to the success of the voluntary curfew, the low percentage of nighttime flights compared with other West Coast airports can also be accounted for by BUR’s role in “providing principally shorthaul service, with relatively undeveloped long-haul service.”²² The forecast is ostensibly based in part on “the continued intent of air carriers to develop the long-haul market from the Airport [which] is anticipated to result in increased nighttime operations.”²³ Again, no evidence is presented to back up this assertion although there is a good deal of speculation offered:

Additional night “red eye” departures to long-haul destinations, such as Boston, New York, Washington D.C., will be scheduled. This has historically occurred at the Airport as jetBlue has provided long-haul low-fare service to New York and Orlando, and could be expected to add other major East Coast destinations, particularly to its other East Coast hub, Washington Dulles International Airport. Evening “red-eye” departures to East Coast destinations, which arrive in the early morning, have proven popular with passengers, and certain airlines, such as jetBlue, are expected to continue to develop this sort of service.²⁴

²¹ Id. at 66.

²² Id. at 66.

²³ Id. at 61.

²⁴ Id. at 68-69.

Whether or not the premise of this supposition – that there is a growing demand for overnight service to the East coast – is correct, the conclusion that such flights would necessarily depart after 10:00 p.m. is belied by jetBlue’s current schedule, which offers a nonstop flight from BUR to New York departing at 9:00 p.m.²⁵

In the same vein, the Part 161 Analysis suggests that “while Southwest Airlines does not currently provide long-haul service at the Airport, it has done so at other airports, and could be expected to provide long-haul service in the future as part of its service development.”²⁶ This statement is contrary to Southwest’s historical pattern of operations, which has not included “red-eye” transcontinental flights, and ignores the fact that an airline’s decision to offer long-range service is based in part on its fleet composition and the physical configuration of the airport itself. BUR has a relatively short runway length of approximately 5,000 feet, which would limit the ability of some aircraft to fly nonstop transcontinental routes.

The projected growth in nighttime activity appears to factor in flights that are scheduled to arrive between 9:00 p.m. and 10:00 p.m. but which are delayed into the curfew hours: “Many of these flights will be delayed from time to time by bad weather or traffic-related delays. Since the Airport is at the end of the line, delays occurring earlier in the day at distant locations will ripple through the system until reaching the Airport.”²⁷ While delays are unfortunately becoming a more frequent occurrence, particularly in congested airspace such as Southern California, the fact is that under the proposed curfew

²⁵ Airline schedule accessed through <http://www.burbankairport.com/> on 5/20/08.

²⁶ Part 161 Analysis, Technical Report 1at 69.

²⁷ Id. at 66. See also id. at 69 (“In recent years, an increasing number of arrivals have been scheduled at the Airport after 9:00 p.m. Those scheduled to arrive after 9:30 p.m. are especially vulnerable to arrive after 10:00 p.m. because of delays.”)

these flights would be exempt unless the delay extended beyond 11:00 p.m.,²⁸ and therefore would be unaffected by the proposed curfew. It is not clear whether any “growth” in these irregular operations is included in the forecast under the proposed curfew as well as in the baseline forecast; if not, then the forecast with the proposed curfew understates nighttime operations between 10:00 and 11:00 p.m.(and as a result, overstates the benefits of the curfew).

The forecast for nighttime cargo operations is similarly unsubstantiated and somewhat contradictory. The analysis notes that “the updated forecasts assume that approximately 50% of cargo operations will occur at night in 2015.”²⁹ No evidence is presented to back up this claim. In fact, the forecast assumes that “daytime cargo activity by the major package carriers (FedEx and UPS) will grow at a moderate rate, while nighttime cargo activity, principally Ameriflight, will remain roughly constant.”³⁰ Elsewhere, the Part 161 Analysis states that it is expected that regional/commuter cargo operations, most of which are made by Ameriflight, would decrease as that company discontinues its nightly check service operations in the near future.³¹ Moreover, “Air carrier cargo operations, which are not conducted at night, are not expected to materially change their operational timings.”³² Even the modest projected increase in nighttime cargo operations of an additional one-and-a-half flights per night is unsupported by the Part 161 Analysis.

²⁸ Part 161 Application, Exhibit “A”, Mandatory Curfew Rule 13.C.3.

²⁹ Part 161 Analysis, Technical Report 1 at 62.

³⁰ Id. at 62.

³¹ Id.

³² Id. at 69.

B. The Part 161 Analysis underestimates costs

The Part 161 Analysis significantly understates the costs to passenger and cargo airlines of complying with a mandatory curfew. The Part 161 Analysis assumes that the displaced cargo operations could be shifted to LAX since they already operate there and it “is the next closest airport to the San Fernando Valley area that the carriers serve from Bob Hope Airport,”³³ and projects costs associated with relocating these flights to LAX, including lost revenues, increased costs of operating at LAX compared to BUR and additional trucking costs. Even ignoring the fact that the cargo operators presumably have a sound business reason to serve BUR rather than LAX with this small number of flights, the analysis is based on outdated data and faulty logic.

The Part 161 Analysis estimates that most of the cargo currently carried on these nighttime flights (89.5%) – an average of 22.64 tons per flight – would need to be trucked the extra distance from LAX to the ground sorting facilities of each carrier. According to the Part 161 Analysis, the average additional distance from LAX to the FedEx ground sorting facilities serving Bob Hope Airport is approximately 18.5 miles, or about 60 minutes travel time, while the UPS ground sort centers are in between both airports, so the additional distance is less than 2 miles.³⁴ Based on average truck size and block hour operating costs, the analysis concludes that additional trucking costs for both carriers combined would be \$22,750 a year in 2008, increasing a modest amount to \$28,438 a year by 2015.

However, the actual experience of UPS in shifting some operations to LAX during recent construction at BUR suggests that this estimate falls far short of increased

³³Part 161 Analysis at 4-17 – 4-18

³⁴ Id. at 4-19.

trucking costs, which likely would be closer to half a million dollars on an annual basis.³⁵

Some of this difference may be due to the rapidly rising cost of fuel: The analysis used 2004 block hour costs of operating an 18-wheeler, which were inflated by 5% to yield estimated 2006 block hour costs. Since then, the national average price of diesel fuel has more than doubled: from \$1.81 per gallon in 2004³⁶ to \$ 4.50 per gallon in May 2008.³⁷

Estimates of costs to passenger carriers similarly understate the curfew's financial impact. Again, the cost of fuel plays a role – since 2004 jet fuel prices have risen from \$1.21 per gallon in 2004 to \$2.85 in the first quarter of 2008 – a 136% increase.³⁸ The Part 161 Analysis takes into account the estimated cost of diverting delayed flights that otherwise would arrive after 11:00 p.m. and the cost of repositioning aircraft due to cancelled flights,³⁹ but inexplicably does not fully account for the cost of cancellation itself.⁴⁰ Elsewhere, the analysis projects that a total of 374 flights would be cancelled under the full curfew in 2015,⁴¹ of which only 36 are assumed to require repositioning of aircraft.⁴² Industry cost estimates range from \$6,000 to \$10,000 per cancelled flight,⁴³

³⁵ Information provided to ATA by UPS, April 2008.

³⁶ Internal Revenue Service, "Trucking Industry Overview - History of Trucking" available at <http://www.irs.gov/businesses/article/0,,id=170623,00.html> (accessed on May 23, 2008).

³⁷ Energy Information Administration, Weekly Retail On-Highway Diesel Prices, average price nationwide for all types of diesel fuel as of May 19, 2008 available at <http://tonto.eia.doe.gov/oog/info/wohdp/diesel.asp> (accessed on May 23, 2008).

³⁸ Annual Crude Oil and Jet Fuel Prices, available at <http://www.airlines.org/economics/energy/Annual+Crude+Oil+and+Jet+Fuel+Prices.htm> (accessed May 23, 2008).

³⁹ Part 161 Analysis at 4-26, Table 4-14 and p. 4-27, Table 4-15.

⁴⁰ The Part 116 analysis references lost ticket revenue from passengers on cancelled flights who cannot be rebooked on other flights operated by the same airline, *see id.* at 4-23, but does not provide a breakdown of those costs or explain the basis for the calculation. Similarly, the analysis references cancellation fees for crew hotel rooms but not other costs (overtime, etc.) associated with crew members working cancelled flights.

⁴¹ *Id.* at 6-6, Table 6-2.

⁴² *Id.* at 4-26, Table 4-14.

⁴³ This includes lost revenue (e.g., rebooking passengers on other airlines or refunding tickets), opportunity costs (e.g., rebooking passengers on later flights, aircraft utilization), additional crew costs, and costs of accommodating passengers (e.g., hotels, meals and ground transportation) borne by the airline.

which, if the projections of cancelled flights are correct, could result in an additional \$2.2 – 3.7 million in annual costs attributable to the curfew by 2015.

C. The Part 161 Analysis overstates the benefits of the proposed curfew

As acknowledged in the Part 161 Analysis, preliminary conclusions indicated that the full curfew would not have a reasonable chance of producing benefits within the noise-impacted area (i.e., 65 CNEL) that would equal or exceed expected costs.⁴⁴ In order to achieve the desired benefit-cost ratio, the Airport Authority staff and consultants had to artificially inflate the projected cost of noise mitigation *without* the curfew, so that the costs foregone by virtue of the curfew (i.e., the benefits of the curfew) would appear larger. The “projected savings in this [noise mitigation] program would be the largest monetized benefit of each of the three curfews.”⁴⁵

As discussed above, this was accomplished in part by overstating projected increases in operations, thereby expanding future noise contours beyond what is reasonably supported by evidence. In addition, the Airport Authority “reexamined” long-standing FAA guidance that permits use of Airport Improvement Program (AIP) grants to sound-insulate homes outside of the 65 CNEL⁴⁶ contiguous to homes within the noise-impacted area “if necessary to achieve equity in the neighborhood.”⁴⁷ However, the Airport Authority fails to note that this exception is limited to a “*reasonable additional number* of otherwise ineligible parcels” and that what is reasonable may be determined

⁴⁴ Part 161 Analysis, Executive Summary at 4.

⁴⁵ Id. at 5, 4-4.

⁴⁶ The FAA uses a metric known as DNL, and has established 65 DNL as the threshold for aircraft noise that is incompatible with residential use. California uses a slightly different metric – CNEL – which FAA accepts for purposes of environmental analysis and noise mitigation in California.

⁴⁷ Part 161 Analysis, Executive Summary at 5, citing Federal Aviation Admin., Order 5100.38C, sec. 810.b, p. 137 (June 28, 2005).

by reference to “neighborhood or street boundary lines . . . *in addition to numbers of properties.*”⁴⁸

It has long been understood by airport proprietors as well as by community leaders that this type of “block rounding” may be used where a strict adherence to the 65 CNEL threshold would produce an absurd result – for instance, where homeowners on one side of a cul-de-sac were offered sound insulation while those on the other side were not eligible. It is not intended to be used to expand a legitimate noise mitigation program well beyond the area that is considered, under objective criteria, to be noise impacted. At most, a small fraction of the houses included in the sound insulation program should fall under this exception. In this case, although the Part 161 Analysis does not provide a breakdown of the properties within versus those “contiguous to” the 65 CNEL, the mere fact that a positive benefit-cost ratio is dependent on including properties outside of the 65 CNEL raises questions.

Furthermore, sound mitigation programs must take into account the insulating effect of existing construction on indoor noise levels. Generally, mitigation is eligible for federal funding only to the extent that it will achieve the “target” interior noise level of 45 DNL.⁴⁹ In certain structures, particularly multi-family residences such as apartment buildings, the existing construction provides 20 dB or more of noise reduction. Of the structures included in the projected noise insulation program, 1,495 are multi-family

⁴⁸ FAA Order 5100.38C, § 810.b at 137 (emphasis added).

⁴⁹ Id., § 812.a.5 at 141.

dwellings.⁵⁰ Some of these may already achieve interior noise level of 45 dB or less, and may not require sound insulation even if they are *within* the 65 CNEL.⁵¹

Moreover, although the Part 161 Analysis states that the current residential acoustical treatment program includes contiguous properties outside the 65 CNEL,⁵² and that this is in keeping with past Airport Authority policy,⁵³ this is not borne out by comparison of the current acoustical treatment boundary with the projected baseline boundary for 2015.⁵⁴ It appears that the expansion of the program under the “reexamination” of FAA policy marks a significant change from historic approaches to sound insulation at BUR. To the extent that the Airport Authority takes a more liberal view towards including contiguous properties in a future sound insulation program this approach must be applied consistently in the projected program with and without the curfew, which does not appear to be the case.⁵⁵ Otherwise, the benefit attributed to the curfew is overstated.

According to the Part 161 Analysis, under all of the future scenarios the noise insulation program boundaries “were adjusted to follow streets and natural neighborhood boundaries to achieve a more equitable set of boundaries from the viewpoint of local residents.”⁵⁶ However, it is not clear what some of those “natural neighborhood boundaries” are or how they were selected.

⁵⁰ Part 161 Analysis at 4-7, Figure 4.2.

⁵¹ See Order 5100.38C, sec. 812.a.5, p. 141 (“If, for example, existing construction or the location of the structure within the noise contour causes the structure to already meet or exceed the interior target of DNL 45 dB, additional noise insulation normally is not justified.”)

⁵² Part 161 Analysis, Executive Summary at 6.

⁵³ Id. at 4-5.

⁵⁴ See id., Figure 4-1.

⁵⁵ Compare id., Figure 4-2, depicting projected acoustical treatment program boundaries under the curfew alternatives *with* Figure 4-1, depicting the baseline (no curfew) projected boundaries.

⁵⁶ Id. at 4-3.

What *is* apparent from examination of the maps provided in the Part 161 Analysis is that the boundaries of the projected sound insulation program under the baseline noise contours (i.e., without a curfew) encompass ***entire blocks*** outside of the projected 65 CNEL to the northeast, west-southwest and south-southwest of the airport.⁵⁷ The structures that are actually *within* the year 2015 65 CNEL in this area appear to number between 170 and 200 – far short of the 2,069 residences estimated to be eligible for sound insulation under the Airport Authority’s newly-discovered policy of including contiguous properties in its program.⁵⁸ Thus, “otherwise ineligible” structures included in the new projections under the block-rounding concept appear to make up a significant percentage of the total. While a precise count is difficult based on the exhibits provided, it appears that approximately ***80 percent*** of the residential parcels included in the projected baseline acoustical treatment program for 2015 are ***entirely outside*** the 65 CNEL.⁵⁹ This is not only an indefensible distortion of the FAA’s policy on sound insulation programs, it is in direct contravention of the FAA’s previous advice to the Airport Authority to confine the calculation of benefits to the 65 CNEL contour.⁶⁰

The Part 161 Analysis also grossly overstates the benefits attributable to the curfew from increased property values for residences which would be subject to slight lower nighttime noise levels. Using a hedonic property model, the Part 161 Analysis came up with an estimated net present value \$67,201,000 for the full curfew.⁶¹ However,

⁵⁷ Id., Figure 4-1

⁵⁸ Id. at 4-6, Table 4-1. Note that the exhibits included in the Part 161 Analysis show lot lines, not structures. Therefore it is difficult to reconcile the numbers provided in the text with the maps in the exhibits.

⁵⁹ See id., Figure 4-1.

⁶⁰ Id. at 4-1; *citing* letter from Victoria L. Catlett, Community and Environmental Needs Division, FAA to Max Wolfe, Chief Operating Officer, Landrum & Brown (May 19, 2004).

⁶¹ Id. at 4-11 and Appendix D.

both the methodology used and the conclusions derived are seriously flawed, as outlined in detail in comments submitted by the National Business Aviation Association, Inc.

(NBAA).⁶²

III. THE PART 161 APPLICATION DOES NOT SUFFICIENTLY ADDRESS THE BURDEN ON INTERSTATE COMMERCE

The Part 161 Analysis fails to fully disclose and evaluate the impact of a curfew at BUR on the larger aviation system, both within California and throughout the United States. An underlying assumption within the Part 161 Analysis is that the current BUR nighttime traffic could be seamlessly shifted to other area airports. This ignores the realities of a region in which surface traffic is often at a standstill and capacity is constrained at nearly all of the airports either through infrastructure issues or artificial operating restrictions.

The two airports that are projected to get most of the displaced traffic from BUR are Ontario, a commercial service airport, and Van Nuys, a general aviation airport.⁶³ Although Ontario has sufficient capacity to handle additional flights, it is 53 miles from BUR, which makes it a less-desirable alternative than LAX, which is 29 miles away, or Long Beach, which is 36 miles from BUR.⁶⁴ However, both of those airports are currently capacity-constrained. In addition, Long Beach has a nighttime curfew in effect during the same hours proposed by BUR, and LAX is undertaking its own Part 161 study to consider mandatory nighttime procedures.

⁶² See Review of Burbank Part 161 Study, GRA Incorporated (June 2008), attached as Exhibit A to NBAA's comments.

⁶³ Part 161 Analysis at 6-9.

⁶⁴ Id. at 6-10, Table 6-5

The curfew is projected to impact direct service to or from 15 other airports by a total of 1,135 flights in 2015.⁶⁵ These are not trivial impacts – the Part 161 Analysis estimates that at least one flight a day would be affected to or from Washington, D.C., Phoenix and San Francisco. The loss of connectivity to the national aviation system is not evaluated or monetized, and therefore is not factored into the cost analysis of the proposed curfew.

Even if the impact on air service is not taken into account, the burden on passengers and shippers must be considered. BUR is considered an origin and destination or “O&D” airport that draws from a relatively small “catchment area” – for the most part made up of those potential travelers that are closer to BUR than to any other airport. The value to a traveler of having convenient service at a nearby airport may be lost if airlines are unable to offer departures in the early morning hours (often desirable for business travelers) or if delayed evening arrivals are diverted to LAX or Ontario, necessitating an additional ground journey to get to the passengers’ intended destination.

IV. THE PART 161 APPLICATION DOES NOT SUFFICIENTLY ADDRESS THE DISCRIMINATORY EFFECT OF THE CURFEW

The proposed curfew would result in an inequitable distribution of costs and burdens that have not been sufficiently considered in the Part 161 Analysis. The Airport Authority appears to take the rather simplistic view that since the proposed curfew would apply to all classes of airport users (with, of course, exceptions for aircraft used for law enforcement, firefighting, disaster relief and medical aircraft engaged in “active emergency operations,” as well as military aircraft⁶⁶), that it is therefore not “unjustly

⁶⁵ Id. at 6-12, Table 6-7.

⁶⁶ Part 161 Application, Exhibit “A”, Mandatory Nighttime Curfew, Rule 13.B.

discriminatory.”⁶⁷ The Airport Authority blithely ignores FAA’s previous guidance that a complete ban on *all* nighttime operations, regardless of their noise level, might be found to be unjustly discriminatory because it would restrict aircraft that don’t contribute to the noise problem.⁶⁸ Instead, the Part 161 Analysis focuses on other airports in the region that have “[l]ongstanding blanket nighttime restrictions” and suggests that since these restrictions have not been found to be unjustly discriminatory, neither should the proposed curfew for BUR.⁶⁹

All of the other curfews or operating restrictions cited are grandfathered under ANCA, and thus have not been subject to the rigorous review under Part 161, although they are still subject to legal challenges under other statutes or Constitutional claims. In fact, at least one California airport with a grandfathered curfew, Mineta-San Jose International Airport, had to revise its restrictions to apply on the basis of noise in order to avoid its invalidation on the basis that it discriminated against heavier, but less noisy aircraft.⁷⁰

The proposed BUR curfew has a discriminatory, or at the very least an inequitable effect in its distribution of costs and benefits. As acknowledged in the Part 161 Analysis, “[t]he costs of the proposed curfew would be borne largely by cargo carriers and courier services”⁷¹ yet the projected growth in operations – which is what drives the increase in noise contours – is among business jets (4.4% annual growth rate), mainline and regional passenger airline jets (1.8% and 3.4% annual growth rates, respectively) and large and

⁶⁷ Part 161 Analysis, Executive Summary at 12.

⁶⁸ See letter from Victoria L. Catlett, Community and Environmental Needs Division, FAA to Max Wolfe, Chief Operating Officer, Landrum & Brown (May 19, 2004).

⁶⁹ Part 161 Analysis, Executive Summary at 12.

⁷⁰ See Letter from David L. Bennett, Director, Airport Safety and Standards, FAA to Ralph G. Tonseth, Director of Aviation, City of San Jose (Oct. 2, 2003).

⁷¹ Part 161 Analysis, Executive Summary at 2.

medium turboprops (3.7% annual growth rate).⁷² This disconnect makes it even more difficult to justify a noise abatement program that focuses its punitive impact on a small subset of airport operators.

V. THE AIRPORT AUTHORITY AND THE FAA MUST ANALYZE THE ENVIRONMENTAL IMPACTS OF THE PROPOSAL

The Part 161 Analysis gives short shrift to the potential for negative environmental impacts stemming from the proposed curfew, stating only that “the Airport Authority will prepare a categorical exclusion” for the proposal in accordance with FAA guidance, and that “further environmental analysis may be appropriate under applicable State and Federal law prior to a final action implementing the restriction.”⁷³

Without the benefit of this additional environmental analysis, it is difficult to quantify the extent of environmental harm that could result from a curfew at BUR, but a qualitative evaluation suggests that there may be significant air quality impacts resulting from the displacement and diversion of flights from BUR to other airports in the region. As noted above, Ontario is *53 miles* from BUR, which would require most passengers on these displaced flights to travel a significant distance by alternate mode – most likely automobile – adding vehicles to already-congested highways. Similarly, flying cargo into LAX instead of BUR would require additional trucking, and the associated emissions. Given the congested state of highways in the region, each additional vehicle mile traveled (VMT) accounts for even more emissions than it would in a less-congested area.

⁷² Part 161 Analysis, Executive Summary at 8.

⁷³ Part 161 Analysis, Executive Summary at 23.

VI. Conclusion

For the foregoing reasons, ATA believes that the Part 161 Analysis is insufficient to support approval of the proposed operating restriction on Stage 3 aircraft. While some residents of the three communities surrounding the airport may be disturbed by aircraft even at the low levels of operation at night, by any objective measure there is no significant nighttime noise problem at BUR. Moreover, unlike most large hub airports, BUR's status as an O&D airport with a relatively small catchment area means that whatever demand exists for early morning or late-night flights is likely generated by the local community. Since the benefits of convenient air service accrue to the community it should be prepared to shoulder its share of the burden of aircraft noise.

According to the Airport Authority, it has spent more than \$6 million pursuing an enforceable curfew that would replace a highly successful voluntary curfew, with only marginal benefits. The benefit-to-cost ratio of this process is just one more piece of evidence that the entire Part 161 Analysis has been undertaken with only one result in mind – a total curfew at BUR. If the Airport Authority is serious about fulfilling the requirements of Part 161, it will withdraw this application and take a hard look at less restrictive and more cost-effective alternatives – including abandoning its single-minded pursuit of a mandatory curfew in favor of the very effective voluntary curfew that is in place today.

Respectfully submitted,



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