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September 22, 1999

VIA FEDERAL EXPRESS

Ms. Alva E. Smith
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: Brent M. Christensen v. Suburban O'Hare Commission.
Case No. MUR 4922

Dear Ms. Smith:

Enclosed please find the response of the Suburban O'Hare Commission in the above-captioned matter.

If you or the Commission need any other information regarding this matter, please contact me.

Sincerely,

Joseph V. Karaganis

Enclosures
LJKSC143.DOC

BEFORE THE FEDERAL ELECTION COMMISSION
UNITED STATES OF AMERICA

BRENT CHRISTENSEN, Complainant,	)	
vs.	)	**MUR 4922**
SUBURBAN O'HARE COMMISSION, an unincorporated association of Illinois municipal corporations, Respondent.	)	

RESPONSE OF SUBURBAN O'HARE COMMISSION TO COMPLAINT

NOW comes the Suburban O'Hare Commission and states that the Complaint filed by Mr. Brent M. Christensen in this matter – MUR 4922[1] – is without merit for the reasons stated below.

Summary of Respondent's Position

The newsletter mailing[2] challenged by Mr. Christensen was paid for by the Suburban O'Hare Commission – a governmental body organized under the Constitution and laws of the State of Illinois. Mr. Christensen appears to be arguing that a newsletter mailing published by the Suburban O'Hare Commission violates Section 441d of the Federal Election Campaign Act (FECA), 2 U.S.C. §441d and the corresponding regulation of the Federal Election Commission, 11 CFR §110.11 – charging that the newsletter contained "express advocacy" expressly urging the election or defeat of a candidate and thus failed to contain a legally required disclaimer that the newsletter was not authorized by the candidate. If the newsletter did not contain "express advocacy," there is no requirement for such a disclaimer and this proceeding must be dismissed.

Mr. Christensen's complaint is without merit for the following reasons:

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1 Mr. Christensen has filed an earlier separate complaint in MUR 3896.

2 Mr. Christensen's Complaint failed to include a complete copy of the newsletter and a complete copy is attached hereto as Exhibit 1.

1. The Newsletter does not contain "express advocacy" – it does not contain explicit words (*e.g.*, "Vote for," "Elect") that the federal courts have ruled are constitutionally required elements of "express advocacy." As to the newsletter itself, there is clearly no "express advocacy" in the newsletter – *i.e.*, no express language explicitly urging readers to vote for or against a candidate. As discussed below, the newsletter is classic issue communication and the federal courts have consistently ruled that – absent express language expressly urging the election or defeat of a candidate (*e.g.*, "Vote For," "Elect," etc.) – issue communications such as the newsletter here is constitutionally protected by the First Amendment. This constitutional protection extends to communications that, as here, praise or criticize public officials or candidates – as long as the communication does not contain express words explicitly urging the reader to vote for or elect or defeat a specific candidate.

Here the newsletter engaged in an extensive discussion of major environmental, public health, and safety issues relating to expansion of O'Hare Airport. The newsletter extensively relates the efforts of two Congressmen – a Democrat, Congressman Jesse Jackson, Jr., and a Republican, Congressman Henry Hyde – to protect the citizens of our region with a comprehensive plan to build a new regional airport and stop O'Hare expansion. While praising both Congressmen and various local officials, at no time does the newsletter say "Vote for Hyde" or "Vote for Jackson" – or "Elect Hyde" or "Elect Jackson."

Moreover, the newsletter goes on to emphasize the key election of Governor and United States Senator and lists the announced substantive positions of both the Republican and Democratic candidates for those offices. At no time does the newsletter expressly urge the election or defeat of any candidate.

2. Mr. Christensen's attempt to argue implied advocacy is without merit. Mr. Christensen apparently acknowledges the lack of express advocacy by arguing that – though express advocacy cannot be found in the express language of the

newsletter – such express advocacy can be implied or inferred from the non-express language of the newsletter: *i.e.*, "when read in its totality and drawing all reasonable inferences." (Complaint ¶ 8)

Mr. Christensen's attempt to argue *implied* advocacy under the so-called "reasonable person" test of the Federal Election Commission's regulation, 11 CFR §100.22(b), must fail for two reasons. First, as discussed below, the federal courts have repeatedly ruled that the "implied" advocacy concept embodied in 11 CFR §100.22(b) – and indeed §100.22(b) itself – is unconstitutional as violative of the "express advocacy" requirements of the Constitution.

Second, Mr. Christensen's implied express advocacy argument misreads the requirements of §100.22(b). Even if this regulation had not been voided by the courts as unconstitutional, the newsletter would not be "express advocacy" within the meaning of §100.22(b).

Mr. Christensen correctly notes that the newsletter is complimentary of the efforts of Congressmen Hyde and Jackson to protect the citizens of the region from the problems caused by O'Hare expansion. But simply because Mr. Christensen construes praise of Mr. Hyde as the equivalent of "express advocacy" expressly urging voters to vote for or elect Mr. Hyde does not mean that all reasonable persons would infer that from the newsletter.

Mr. Christensen is himself an announced candidate for Congress. He may have a personal perspective which leads him to conclude that praise for Hyde and Jackson necessarily implies that the newsletter is "expressly" urging voters to vote for or elect Hyde and Jackson. But Mr. Christensen's personal perspective does not satisfy the "implied" advocacy concept embodied in 11 CFR §100.22(b).

I. Background Summary

The Suburban O'Hare Commission is a governmental body organized under the Constitution and laws of the State of Illinois. As discussed below, the Suburban O'Hare Commission represents member communities which are located in the vicinity of O'Hare Airport – addressing concerns of the residents of those communities with problems of safety, noise, and toxic air pollution regarding O'Hare Airport.[3]

As part of its activities over the last several years, the Suburban O'Hare Commission has engaged in a broad range of programs dealing with these problems including: 1) a school soundproofing program, 2) a research and education program on these problems, 3) the operation and maintenance of a radar and noise monitoring system, 4) community forums where public officials and candidates present their positions on these problems to the community, 5) an extended program of "issue" advertising – whereby the Suburban O'Hare Commission has used newspaper advertisements to highlight various issues relating to O'Hare development and its impact on the community, and periodic newsletters to the residents of their communities, and 6) periodic newsletters informing SOC community residents of upcoming events (including elections) and the substantive issues involved in these events.

As part of its education and research program relating to O'Hare expansion, the Suburban O'Hare Commission has worked closely with Congressmen Hyde and Jackson on a program created by Mr. Hyde and Mr. Jackson called *Partnership for Metropolitan Chicago's Airport Future* (Exhibit 2). The Hyde-Jackson "partnership" deals in great detail with the related issues of O'Hare expansion and construction of a new regional airport. The purpose of the newsletter challenged here by Mr. Christensen was to alert voters to vote in the next general election and that their vote would have a major impact

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3 The current member communities of the Suburban O'Hare Commission are Addison, Illinois; Bensenville, Illinois; Des Plaines, Illinois; Elk Grove Village, Illinois, Elk Grove Township, Illinois; Elmhurst, Illinois, Harwood Heights, Illinois, Itasca, Illinois: Lisle, Illinois; Maine Township, Illinois; Park Ridge, Illinois; Roselle, Illinois, Schiller Park, Illinois; Wood Dale, Illinois; and DuPage County, Illinois.

on whether the Hyde-Jackson solution would be implemented.

II. The Legal and Historical Background of the Suburban O'Hare Commission

The Suburban O'Hare Commission is a legal entity created under the express authorization of the Illinois Constitution and statutes. Further, the Suburban O'Hare Commission is a "person" within the meaning of FEC regulations.

The Suburban O'Hare Commission is a political entity authorized by the Constitution and the Statutes of the State of Illinois. Article VII, §10 of the Illinois Constitution expressly provides:

> Units of local government and school districts may contract or otherwise associate among themselves, with the State, with other states and their units of local government and school districts, and with the United States to obtain or share services and to exercise, combine, or transfer any power or function, in any manner not prohibited by law or by ordinance. Units of local government and school districts may contract and otherwise associate with individuals, associations, and corporations in any manner not prohibited by law or by ordinance. Participating units of government may use their credit, revenues, and other resources to pay costs and to service debt related to intergovernmental activities.

The constitutional authorization for intergovernmental organizations such as the Suburban O'Hare Commission is repeated several time in the Illinois statutes. 5 ILCS 220/2 identifies the governmental entities ("public agencies") that may enter into intergovernmental agreements:

> The term "public agency" shall mean any unit of local government as defined in the Illinois Constitution of 1970, any school district, any public community college district, any public building commission, the State of Illinois, any agency of the State government or of the United States, or of any other State, any political subdivision of another State, and any combination of the above pursuant to an intergovernmental agreement which includes provisions for a governing body of the agency created by the agreement.

5 ILCS 220/3 states:

> §3. Intergovernmental agreements. Any power or powers, privileges or authority exercised or which may be exercised by a public agency of this State may be exercised and enjoyed jointly with any other public agency of this State and jointly with any public agency of any other state or of the United States to the extent that laws of such other state or of the United States do not prohibit joint exercise or enjoyment.

65 ILCS 5/1-1-5 states:

> The corporate authorities of each municipality may exercise jointly, with one or more other municipal corporations or governmental subdivisions or districts, all of the powers set forth in this Code unless expressly provided otherwise. In this section "municipal corporations or governmental subdivisions or districts" includes, but is not limited to, municipalities, townships, counties, school districts, park districts, sanitary districts, and fire protection districts.

Pursuant to this constitutional and statutory authorization under Illinois state law, several of the communities surrounding O'Hare Airport created the entity known as the Suburban O'Hare Commission in 1981. Protection of the citizens of their member communities from the problems created by O'Hare Airport is the central focus of the Suburban O'Hare Commission and is reflected in the statement of purposes and objectives stated in Section Two of the 1981 intergovernmental agreement creating the Suburban O'Hare Commission:

> "The purposes and objectives of the Commission shall be as follows:
>
> "A. Study the effect of aircraft overflights over the corporate limits of the Parties on the quality of life within their territory.
>
> "B. Study and recommend solutions to problems created by O'Hare International Airport affecting the lives of citizens of the Parties.
>
> "C. Consult with other communities that are not members of the Commission on common objectives in improving the quality of life of all suburban communities adversely affected by O'Hare International Airport and its overflight operations.
>
> "D. Retain counsel and expert consultants for purposes of studying the legal rights of the Parties and their citizens in relation to O'Hare International

Airport; provided, however, no litigation shall be filed by the Commission in the name of any Party without the Party's prior written consent.

"E. Represent the Parties in administrative proceedings before the Federal Aviation Administration, or any other governmental body having jurisdiction in the affairs of O'Hare International Airport insofar as they might affect the Parties.

"F. Conduct an Information and Education Program for the citizens of the Parties on the operations of O'Hare International Airport, any contemplated expansion thereof and the effects of noise pollution and aircraft-caused pollutants in the atmosphere.

"G. Conduct a public relations campaign acquainting the general public of the adverse effects of O'Hare International Airport operations or any expansion thereof on the citizens of the Parties.

"H. Report to the Parties on a regular continuing basis on the performance of the Commission's duties and new developments in the operations of O'Hare International Airport."

Consistent with its organizational mandate, the Suburban O'Hare Commission has pursued a wide range of activities over the last 18 years – all designed to protect the citizens of the member communities from the adverse effects of expansion of O'Hare Airport. Among the Suburban O'Hare Commission's activities have been:

1. **School Soundproofing.** The Suburban O'Hare Commission sponsored a long successful legal battle – won with the assistance of the DuPage County Board and the DuPage County State's Attorney – to obtain payment of soundproofing funds for more than 22 public schools in DuPage County to prevent injury to education from aircraft noise.

2. **Research and Education.** The Suburban O'Hare Commission has conducted research and education activities on major issues involving O'Hare Airport and proposals for airport expansion. By way of illustration, enclosed as Exhibit 3 is a report SOC published last year entitled *The Shell Game With Slots At O'Hare.* This report contains a detailed analysis of the slot exemption history and the problems of safety, noise, toxic air pollution, and passenger delay that will be created by increased operations at O'Hare – the very subject that is the basis of the newsletter criticized by Mr.

Christensen. Also enclosed by way of illustration is a recent critique by SOC of a proposed air pollution permit for a United Airlines facility at O'Hare and the problems with toxic air pollution at O'Hare (Exhibit 4).

3. **Noise Monitoring System.** The Suburban O'Hare Commission maintains and operates a sophisticated radar system and coordinated noise monitoring system in communities around O'Hare.

4. **Community Forums.** The Suburban O'Hare Commission has conducted a number of large town meetings and community forums where elected officials and candidates are asked to speak on issues relating to airport expansion.

5. **Ad Campaigns** Over the years the Suburban O'Hare Commission has used local newspapers to publish a number of advertisements in local and regional newspapers – discussing various issues relating to O'Hare Airport expansion.

6. **Newsletters.** Over the years since it was created, the Suburban O'Hare Commission has mailed out to the citizens of its member communities a variety of newsletters, identifying the substantive issues surrounding airport expansion and operations, and urging citizens to exercise their electoral franchise to achieve relief and protection from growing problems of noise, air pollution, and increases safety hazards.

III. Mr. Christensen's Complaint

A. The Legal Basis of the Complaint.

Though never stating the legal basis for his complaint – *i.e.,* the statute or regulation he claims has been violated – Mr. Christensen appears to be arguing that the newsletter mailed by the Suburban O'Hare Commission violates Section 441d of the Federal Election Campaign Act (FECA), 2 U.S.C. §441d and the corresponding regulation of the Federal Election Commission, 11 CFR §110.11.[4]

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4 This Response by the Respondent is directed to the issue of whether the newsletter Mr. Christensen complains of violates §441(d) and 11 CFR §110.11. If there is any other statute or regulation to which Mr. Christensen's complaint is directed or which the staff of the Federal Election Commission is concerned, Respondent requests specific notice of such statute or regulation and an opportunity to respond

Section 441d states in pertinent part as follows:

> §441d. Publication and distribution of statements and solicitations; charge for newspaper or magazine space
>
> (a) Whenever any person makes an expenditure for the purpose of financing communications *expressly advocating the election or defeat of a clearly identified candidate*, or solicits any contribution through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, or any other type of general public political advertising, such communication--
>
> ***
>
> (a)(3) if not authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state the name of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate's committee.
>
> (emphasis added)[5]

11 CFR §110.11 in pertinent part provides:

> **§110.11 Communications; advertising (2 U.S.C. 441d).**
>
> (a)(1) General rules. Except as provided at paragraph (a)(6) of this section, whenever any person makes an expenditure for the purpose of financing a communication that *expressly advocates the election or defeat of a clearly identified candidate*, or that solicits any contribution, through any broadcasting station, newspaper, magazine, outdoor advertising facility, poster, yard sign, direct mailing or any other form of general public political advertising, a disclaimer meeting the requirements of paragraphs (a)(1)(i), (ii), (iii), (iv) or (a)(2) of this section shall appear and be presented in a clear and conspicuous manner to give the reader, observer or listener adequate notice of the identity of persons who paid for and, where required, who authorized the communication.
>
> ***

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to specific detailed allegations specifying how such additional statute or regulation has been violated.

5 As the enclosed affidavit by the Chairman of the Suburban O'Hare Commission (Exhibit 5) attests, the newsletter was not authorized by Mr. Hyde nor by an authorized political committee of Mr. Hyde, or its agents or by any other candidate or authorized political committee. Therefore, subsections (a)(2) and (a)(3) are not relevant to this response.

(a) (1) (iii)

(iii) Such communication, including any solicitation, if made on behalf of or in opposition to a candidate, but paid for by any other person and not authorized by a candidate, authorized committee of a candidate or its agent, shall clearly state that the communication has been paid for by such person and is not authorized by any candidate or candidate's committee.

B. Mr. Christensen's Assertions As To "Express Advocacy."

Mr. Christensen's Complaint to the Federal Election Commission makes the charge that the newsletter constitutes "express advocacy" – apparently (though never stated) in violation of §441d and 11 CFR §110.11. Though apparently conceding that the newsletter did not contain express language urging voters to vote for any specific candidate (including Mr. Hyde), Mr. Christensen argues that such express advocacy can be found by inference or implication. Mr. Christensen argues that the newsletter – "when read in its totality and drawing all reasonable inferences expressly advocated the election of several candidates, including Henry Hyde..." (Complaint, ¶ 8) (emphasis added)

Mr. Christensen continues his inference or implication argument, contending that the newsletter – by stating that there were specific problems caused by O'Hare Airport (*e.g.*, noise, toxic air pollution, and safety hazards) and identifying Mr. Hyde as an official who had taken action on these problems – by implication expressly advocated the election of Mr. Hyde. (Complaint ¶ 9)

IV. Mr. Christensen's Complaint is Without Merit

A. The newsletter does not contain express words explicitly urging election or defeat of a candidate in an election – the Constitutional requirement imposed by federal courts in order for the "express advocacy" prohibition of §441d to apply.

The federal courts have made it absolutely clear that for a statement to constitute "express advocacy" the statement must actually and literally urge the election or defeat of a candidate in an election – *e.g.*, "Vote for Hyde," "Elect Hyde," "Vote for Jackson," "Elect Jackson."

Language from which someone might *infer* encouragement to elect or defeat a candidate is not enough to meet the constitutional standard. *See Federal Election Commission v. Christian Action Network*, 110 F.3d 1049 (4th Cir. 1997) (awarding fees to advocacy organization against FEC for asserting implied advocacy test); *Maine Right To Life Committee, Inc. v. Federal Election Commission*, 98 F.3d 1 (1st Cir. 1996) (affirming and adopting the opinion of the district court at 914 F. Supp. 8 holding FEC implied advocacy test unconstitutional); *FEC v. Central Long Island Tax Reform Immediately Committee*, 616 F.2d 45 (2nd Cir.1980); *FEC v. National Organization for Women*, 713 F.Supp. 428 (D.D.C.1989); *Right to Life of Dutchess County, Inc. v. Federal Election Com'n*, 6 F.Supp.2d 248 (S.D.N.Y. 1998) (holding FEC implied advocacy test unconstitutional) .

In the absence of express words calling for the reader of the communication to explicitly vote for or against a candidate, these federal courts have uniformly held that it is unconstitutional for the Federal Election Commission to prosecute a claim of "express advocacy" on the basis of the implied meaning of a communication. These constitutionally required words of express advocacy – actually and explicitly calling for a vote for or against a candidate in an election – must be actually present in the communication and cannot be created by implication or inference.

Even Mr. Christensen appears to acknowledge that the newsletter does not contain the explicit language necessary to rise to the level of express advocacy within the meaning of the constitutional case law cited above. As Mr. Christensen states:

> "[the newsletter] when read in its totality and drawing all reasonable inferences expressly advocated the election of several candidates, including Henry Hyde..." (Complaint, ¶8) (emphasis added)

This acknowledgment and Mr. Christensen's attempt to create express advocacy by inference or implication takes the newsletter out of the clear unequivocal express

advocacy requirement the federal courts have imposed on §441d.

In summary, Mr. Christensen apparently concedes that the requisite explicit "magic words" explicitly urging voters to elect or defeat a candidate – explicit words that federal courts have repeatedly held are constitutionally necessary to constitute "express advocacy" within the meaning of §441d – are not present in the newsletter under challenge here. Nowhere in the newsletter is there any language expressly urging voters to vote for Henry Hyde or any other candidate. Under the federal case law cited above, the newsletter challenged by Mr. Christensen cannot and does not constitute "express advocacy."

Mr. Christensen's complaint boils down to an argument – one that Respondent strongly disputes -- that the *implied* message of the newsletter is that voters should vote for Henry Hyde. As shown in the next section, that argument is wholly without merit.

B. The newsletter does not meet the "implied" express advocacy test of 11 CFR §100.22(b).

Having admittedly failed to bring the Suburban O'Hare Commission newsletter within the constitutionally required "explicit words" test, Mr. Christensen apparently is trying to invoke the Federal Election Commission's secondary definition of "implied" express advocacy contained in 11 CFR §100.22(b). Mr. Christensen relies on the argument that the constitutionally required express advocacy – *e.g.*, that the reader vote for Mr. Hyde or that Mr. Hyde be elected – is implied by the language of the newsletter.

To make this argument, Mr. Christensen apparently relies on the test of subsection (b) of the FEC's definition of express advocacy. Section 100.22(b) finds "express advocacy" by implication when both of the following conditions are met:

> (b) When taken as a whole and with limited reference to external events, such as the proximity to the election, could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s) because--
>
> (1) The electoral portion of the communication is

unmistakable, unambiguous, and suggestive of only one meaning; and

(2) Reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages some other kind of action.

(underscore emphasis added)

Mr. Christensen's attempt to invoke §100.22(b) to claim that the newsletter expressly advocates the election of Mr. Hyde must necessarily fail.

First, §100.22(b)'s express advocacy by implication approach has been repeatedly declared unconstitutional by multiple federal courts as violative of the First Amendment and therefore unconstitutional. Mr. Christensen is therefore relying on a regulatory definition that has been repeatedly declared unconstitutional.

Second, even if the implied express advocacy test of §100.22(b) were constitutional, the facts of this newsletter do not meet the implied express advocacy test of §100.22(b). Nothing in the newsletter leads to the inescapable conclusion – a conclusion about which "reasonable minds could not differ" – that the communication was urging the election of Henry Hyde. The entire purpose of the newsletter is to urge citizens to exercise their elective franchise and vote to make sure that they get relief from the severe noise, air pollution, and safety problems caused by O'Hare. The fact that the newsletter states that Congressman Hyde and Congressman Jackson have formed a partnership to give our communities protection on these issues is a simple statement of fact; that statement cannot be contorted in an implied "express advocacy" to elect either Hyde, Jackson, or any other candidate.

1. Section §100.22(b) has been repeatedly declared void and unconstitutional.

Section §100.22(b)'s attempt to finding such explicit words by implication – by a so-called "reasonable person's" interpretation from the implications of the language in the communication as opposed to the explicit exhortation to vote or elect a candidate –

has been repeatedly rejected by the federal courts. The federal courts have repeatedly ruled that §100.22(b) is unconstitutional as violative of the First Amendment and that the only language that will meet the "express advocacy" requirement is explicit words telling the reader to vote for a candidate or to defeat a candidate. *See Federal Election Commission v. Christian Action Network*, 110 F.3d 1049 (4th Cir. 1997) (awarding fees to advocacy organization against FEC for asserting implied advocacy test); *Maine Right To Life Committee, Inc. v. Federal Election Commission*, 98 F.3d 1 (1st Cir. 1996) (affirming and adopting the opinion of the district court at 914 F. Supp. 8 holding FEC implied advocacy test unconstitutional); *Right to Life of Dutchess County, Inc. v. Federal Election Com'n*, 6 F.Supp.2d 248 (S.D.N.Y. 1998) (holding FEC implied advocacy test unconstitutional).

Given the federal courts clear and repeated rejection of the Section §100.22(b) and the repeated holdings of unconstitutionality, Mr. Christensen's reliance on this regulation is clearly unlawful.

2. Mr. Christensen's interpretation of 11 CFR §100.22(b) is in error.

Mr. Christensen clearly misreads the "reasonable person" standard of §100.22(b). Mr. Christensen appears to believe that the "reasonable person" standard means that an newsletter constitutes "express advocacy" if any "reasonable person" might construe the newsletter as advocating the election or defeat of a candidate – even though another "reasonable person" might not.

But §100.22(b) contains a much more rigorous standard. Language that is "debatable" or which "might" be construed differently by different reasonable persons does not fall within "express advocacy" as defined by §100.22(b).

Section §100.22(b) makes it clear that a communication such as the newsletter here does not meet the implied test of "expressly advocating" unless (1) "the electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one

meaning", and 2) "reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidates." 11 CFR §100.22(b) (emphasis added).

In short, where as here, there is room for debate – with Mr. Christensen having one opinion and the Suburban O'Hare Commission having another – the implied advocacy test of §100.22(b) is not satisfied and there is no obligation to attach the notice. Here the Suburban O'Hare Commission contends that the newsletter described substantive public policy issues to the attention of area residents and urged them to vote – without expressly urging the election or defeat of any specific candidate. The Suburban O'Hare Commission contends that the fact that the newsletter stated facts as to the substantive actions Congressmen Jackson and Hyde had taken to deal with the problems created by O'Hare cannot be universally construed as expressly urging voters to vote for these candidates.

Mr. Christensen has a different view. The very fact that the issue is debatable means that it cannot constitute "express advocacy" under §100.22(b).

Contrary to Mr. Christensen's apparent interpretation, Section 100.22(b)'s test is not what one reasonable person might construe the language to mean. Such an approach would trigger "express advocacy" whenever one could hypothesize – as Mr. Christensen has here – a single "reasonable person" who might construe the newsletter to advocate the re-election of Mr. Hyde (or Mr. Jackson for that matter).

On the contrary, Section 100.22(b) requires a finding that no reasonable person could conclude other than that the newsletter was urging the re-election of Mr. Hyde (and Mr. Jackson as well). In other words, Section 100.22(b) requires a finding that all reasonable persons would reach the same conclusion.

Conclusion

The Suburban O'Hare Commission respectfully urges the Federal Election Commission to dismiss Mr. Christensen's Complaint and to close this case:

1. The newsletter challenged by Mr. Christensen does not (by his own acknowledgment) contain the express words explicitly urging the defeat or election of a candidate – *i.e.*, the explicit words constitutionally required to apply §441d's "express advocacy" provision. Issue communications such as the newsletter here are constitutionally protected even though the communication criticizes or praises an elected politician.

2. Mr. Christensen's implied advocacy requirement under 11 CFR §100.22(b) must fail for two reasons:

   a. The federal courts have repeatedly held that §100.22(b) – and the implied advocacy rationale on which it is based – are unconstitutional and void.

   b. Even if §100.22(b) were constitutional, Mr. Christensen's argument – that a communication is express advocacy if a single reasonable person might construe the communication to urge election or defeat of a candidate – does not meet the requirements of §100.22(b).

Respectfully submitted,

Joseph V. Karaganis
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Chicago, Illinois 60610
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Fax: 312-836-9083

General Counsel of the
Suburban O'Hare Commission
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Exhibit 1

SOC NEWS

TUESDAY - NOVEMBER 3
KEY VOTE ON NEW O'HARE RUNWAYS, O'HARE EXPANSION

On Tuesday November 3, voters in Suburban O'Hare Commission (SOC) communities have a critical opportunity to decide the future of our communities and the related issue of O'Hare expansion — including the explosive issue of new runways and major traffic expansion at O'Hare and the increased noise, toxic air pollution and safety concerns that will result from such expansion.

On November 3, we will elect a new Governor, a new United States Senator, a Congressman, and numerous other state and local officials. The new Governor, the new United States Senator, and our Congressman will be key players in the decisions as to O'Hare expansion — including the new runways and O'Hare air traffic growth being pushed by Chicago.

Their decisions as to O'Hare expansion — and the related problems of noise, toxic air pollution and safety problems associated with O'Hare traffic — will have a dramatic effect on quality of life in our communities, the value of our residential property, and the health of our children and families. **Your vote on November 3 for candidates for these offices will decide your future.**

Who is SOC?

The Suburban O'Hare Commission is a consortium of the local governments in your communities organized to protect your quality of life and health in the face of attempts to expand O'Hare. SOC is non-partisan and does not endorse any particular candidate. But we believe it is critical that you know the positions of the major candidates on these issues and equally important that you vote on November 3.

What's the Problem?

Noise. At 900,000 flights per year O'Hare is bursting at the seams. Right now tens of thousands of homes in our communities suffer unacceptable levels of noise as thousands of planes from O'Hare operations roar over their homes day and night.

Toxic Air Pollution. Noise isn't the only problem. By concentrating thousands of aircraft operations at O'Hare every day, the toxic emissions from all those aircraft create a cloud of toxic air pollution that drifts into many of our residential neighborhoods. These toxic pollutants — which our neighbors often call "that kerosene smell" — is actually made up of highly hazardous chemicals such as Benzene, Formaldehyde, and

EXHIBIT 1

a host of so-called PAHs (Polynuclear Aromatic Hydrocarbons). These chemicals are known to cause cancer and other serious health problems for adults and especially for children and the elderly.

Safety Hazards. In addition to noise and toxic air pollution, continuing to stuff more and more planes into O'Hare is an invitation to a safety disaster — both for airline passengers and the residents of our communities who live under the flight paths. O'Hare was designed over 40 years ago for a much lower level of operations. The only way Chicago, the FAA, and the airlines get their 900,000 current flights is by squeezing the aircraft operations closer and closer together — especially in bad weather and at night.

Property Value. Next, there is the issue of property value. Numerous studies have shown that a home adversely impacted by aircraft noise sells for a significant loss in sales price as compared to a similar home not impacted by noise. Our homeowners are already suffering serious financial loss from the current levels of noise at O'Hare.

What's the Future — a million more new operations at O'Hare?

Your vote on November 3 will determine the future. Air traffic demand is already outstripping the capacity at O'Hare. FAA and the State of Illinois predict that passenger demand will grow in coming years to a demand level of 1,500,000 — 2,000,000 aircraft operations — up to a million more operations than currently use O'Hare.

Chicago and the dominant airlines at O'Hare want to stuff most of this growth into a vastly expanded O'Hare — adding several hundred thousand more flights each year over your homes and making the problems of noise, vibration, toxic air pollution, safety risks, public health, and property devaluation much worse. To accomplish this goal, they want to stuff O'Hare by adding new runways at O'Hare and also by increasing O'Hare capacity through a variety of terminal and roadway changes.

What's the Solution — the Hyde-Jackson Partnership.

Congressman Henry Hyde and Congressman Jesse Jackson, Jr. — a Republican and a Democrat — have offered a bipartisan "WIN/WIN" solution to the problem of air traffic growth in our region. They have called for:

1) a ban on further O'Hare expansion — including a ban on new runways — and

2) the fast-track construction of a new regional airport to serve in partnership with a vital O'Hare and Midway. Under the Hyde-Jackson proposal, the new airport would be able to handle the new air traffic growth in an environmentally acceptable manner through the use of large open space buffers — something O'Hare does not have.

Further, unlike the proposal being put forward by Chicago, the Hyde-Jackson proposal keeps all the economic benefits associated with air traffic growth in the metropolitan Chicago region. Chicago proposes shifting some traffic growth — and the jobs and economic benefits — to other cities such as Denver and Dallas.

VOTE ON NOV. 3

Who can do something about the O'Hare problem and the Hyde-Jackson "WIN/WIN" solution?

The key officials who can prevent this problem from getting worse — and solve the current problems — are the new Governor, the new United States Senator, our Congressman, and state senators and representatives.

The Governor. The Governor has the power under existing state law to prohibit construction of new runways and other changes designed to expand O'Hare. Conversely, the new Governor can let the massive O'Hare expansion and new O'Hare runways go forward. The next Governor will also have the power to take action against the toxic air pollution and noise problems at O'Hare. It is obvious that whomever we elect as Governor is critically important to your quality of life, your health, your safety and the value of your home.

United States Senator. Our United States Senator is critical to the battle over airport expansion. If our next Senator is beholden to Chicago, he or she will work in favor of massive O'Hare expansion and against a new regional airport. Conversely, an independent Senator will work with Congressman Hyde, Congressman Jackson and our new governor to block further O'Hare expansion and to build the new regional airport.

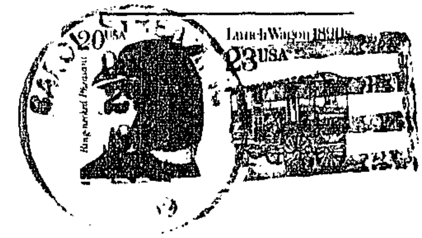
Congressman. Congressman Hyde has been a tenacious and aggressive fighter on our behalf on the issues of O'Hare expansion. He recently single-handedly defeated attempts to add more than 60 new slots at O'Hare. Congress has announced that next year will be the "Year of Aviation" in Congress. The debate over expansion of O'Hare and construction of a new regional airport will be at the center of the action. It is essential that we have a strong and knowledgeable advocate on this issue as our Congressman.

State Legislators. The new Governor is going to have to work with the Legislature to get additional O'Hare protection laws passed and to build the new airport. State Senate President Pate Philip and House Minority Leader Lee Daniels have pledged to work with Congressmen Hyde and Jackson to achieve the two goals of the bipartisan Hyde-Jackson Partnership: 1) a ban on further O'Hare expansion — including a ban on new runways — and 2) the fast-track construction of a new regional airport to serve in partnership with a vital O'Hare and Midway. In Cook County, State Senator Marty Butler and Representative Rosemary Mulligan have promised to fight for a strong air toxics protection bill to address the air toxics issue around O'Hare.

Other Officials. It is important to remember that over 100 mayors and communities representing both political parties — Republican and Democrat — have endorsed the goals of the bipartisan Hyde-Jackson Partnership. While local officials don't have the same direct authority over the issues as do federal and state officials, their voices count. One local candidate who has spoken out very strongly in favor of the goals of the Hyde-Jackson Partnership is Aurelia Pucinski, candidate for President of the Cook County Board. In DuPage County, Bob Schillerstrom, candidate for President of the DuPage County Board — along with the members of the DuPage County Board — have been strong advocates of the Hyde-Jackson Partnership.

VOTE ON NOV. 3

SUBURBAN O'HARE COMMISSION
117 E. Green Street
Bensenville, IL 60106



RETURNED TO SENDER
Attempted-Not Known
Insufficient Address
No such street ____ number ____
No such office in state ____
Do not remail in this envelope

CANDIDATES' POSITIONS ON O'HARE EXPANSION (NEW RUNWAYS) AND NEW REGIONAL AIRPORT

	DOES THE CANDIDATE <u>OPPOSE</u> O'HARE EXPANSION INCLUDING NEW O'HARE RUNWAYS?	DOES THE CANDIDATE <u>SUPPORT</u> FAST-TRACK CONSTRUCTION OF A NEW REGIONAL AIRPORT?
GOVERNOR		
George Ryan	YES - Unequivocally	YES - Unequivocally
Glenn Poshard	Won't commit; says he isn't sure	Won't commit; says he isn't sure
UNITED STATES SENATOR		
Carol Mosely-Braun	Says she is against new runways	Won't commit; says she has not taken a public position
Peter Fitzgerald	YES - Unequivocally	YES - Unequivocally

VOTE ON NOV. 3

EXHIBIT C

The Partnership For Metropolitan Chicago's Airport Future:

A Call For Regional Leadership

by

Henry J. Hyde

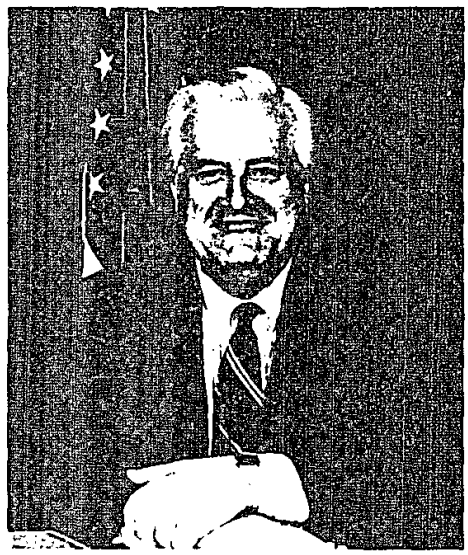
&

Jesse Jackson, Jr.

Members of Congress

October 1997

EXHIBIT 2



Congressman Henry Hyde

Congressman Jesse Jackson, Jr.

An Open Letter to State and Regional Leaders in Metropolitan Chicago and Throughout Illinois

We are two Chicago area Congressmen from different districts, different political parties, and with different political philosophies. Yet we share a common affection for the Metropolitan Chicago Region and the economic welfare, public health, and quality of life of the residents of our region.

For these reasons, we have formed a partnership to take action on the most significant economic and environmental issue facing our region: Metropolitan Chicago's Airport Future.

Chicago has long prided itself on being the transportation center of the Nation — from the days of canoes, steamers, and wagon trains to the rise of the railroads and the growth of commercial aviation. But for more than a decade, Chicago — and the economic and political leaders of our State and Region — have been frozen in a seemingly irreconcilable dispute over Metropolitan Chicago's Airport Future.

And while we remain frozen in gridlock, our region is hemorrhaging hundreds of thousands of jobs and billions of dollars in economic benefits that are beginning to go and will continue to go to other states and other regions because of our failure to take definitive action.

Let there be no mistake. We agree with Chicago Mayor Richard M. Daley when he says that O'Hare Airport is one of the major engines that drives our economy. And we both support a continuing vital role for both O'Hare and Midway.

But the stark facts tell us and the region that by relying solely on O'Hare and a supporting role by Midway we are courting economic disaster for the metropolitan region and the State and serious environmental harm to O'Hare area communities. O'Hare is indeed a major economic engine. But we must create additional economic engines — not to detract from O'Hare — but to meet the needs of the region.

We wish to resolve our concerns over new airport development and protection of O'Hare communities in a non-adversarial manner. But while we continue to wish to reach agreement amicably, we and those who share our view of the Region's needs must recognize that we are in a knock down drag out fight for the future of the region. The opponents of new airport development (primarily the airlines) have waged an expensive, vitriolic — and thus far successful — campaign of disinformation and regional divisiveness. They have often taken off the gloves and — when it comes to taking liberties with the truth — often hit below the belt.

It's time for us — and for those who believe in the economic future of Metropolitan Chicago as the nation's premier air transportation center — to fight back. For that reason, we have revisited the issues surrounding air transportation in our region to give regional leaders our perspective and recommendations on the need for action.

Further, we are offering a variety of action proposals which we believe will address the major points of opposition to rapid fast-track construction of a third airport and protection of the already overburdened O'Hare communities. While we offer many suggestions, we are open to dialogue and compromise on all items — save two:

1. there must be fast-track construction of the new airport, and

2. there must be a ban on further O'Hare expansion — including a permanent ban on new runways at O'Hare.

We ask for the help, cooperation, and leadership of all our colleagues in the Illinois Congressional Delegation and our Republican and Democratic colleagues in the Illinois General Assembly. Further, we ask for the help and leadership of Governor Edgar and all the candidates for statewide office in the 1998 election.

We look forward to working with you in our Partnership for Metropolitan Chicago's Airport Future.

Henry J. Hyde

Jesse Jackson, Jr.

I. EXECUTIVE SUMMARY

Eight years ago, Congressman Henry Hyde urged the political leaders of our State and Region to take prompt action to build a new regional airport for Metropolitan Chicago. He warned that political gridlock in building new airport capacity threatened Chicago's premier status as the Nation's center of air transportation — with consequent loss of thousands of jobs and billions of dollars in economic benefits to our State and our Region. And he emphasized that the answer to our region's needs lay not in adding new runways to jam more aircraft operations into an already overstuffed O'Hare but by fast-track construction of a new regional airport — an airport that would serve as a vital partner in a regional airport system with O'Hare and Midway.

Eight years later, Congressman Hyde and his colleague Congressman Jesse Jackson Jr., have revisited the issues surrounding our regional air transportation needs and find that, as the saying goes, "the more things change, the more they stay the same."

- Eight years ago, Hyde warned of the loss of thousands of jobs and billions of dollars in annual economic benefits if the State and the Region did not rapidly build major new air transportation capacity. Eight years later, Congressmen Hyde and Jackson find that three separate studies confirm that the Region and the State will indeed lose hundreds of thousands of new jobs and billions of dollars in new annual economic benefits if major new airport capacity is not built.

- Eight years ago, Hyde warned that the issue of whether and where to build a major new regional airport — and the related controversy of new runways at O'Hare — would be the central issues in the 1990 statewide election campaign. Eight years later, Hyde and Jackson emphasize that in the 1998 election, Republican and Democratic candidates alike can no longer duck the issue. As Hyde's and Jackson's analysis demonstrates, candidates that endorse construction of new runways at O'Hare: 1) inevitably doom the new regional airport; 2) inflict the pain, noise and air pollution of hundreds of thousands of new flights upon already overburdened O'Hare communities; and 3) guarantee the export of hundreds of thousands of new jobs and billions of dollars in economic benefits to other states and regions. Candidates that duck and dodge the issue with noncommittal generalities cause equal harm to our regional economy by encouraging the very inaction and gridlock

that are causing the hemorrhaging of airport related jobs to other states and regions.

- Eight years ago, Congressman Hyde identified many of the parochial political and economic interests that had created the political gridlock preventing construction of a new airport. Eight years later, Congressmen Hyde and Jackson find that political gridlock even more entrenched.

The Partnership For Metropolitan Chicago's Airport Future

But unlike eight years ago, Congressmen Hyde and Jackson are no longer content to wait for others to take action. In what at first seems like an unlikely alliance, two of our Region's most well known Congressmen — Henry Hyde and Jesse Jackson, Jr. — have formed "The Partnership for Metropolitan Chicago's Airport Future." Hyde, a Republican, and Jackson, a Democrat, find common ground in their shared belief that our State and our Region must take action now to undertake fast-track construction of the new regional airport and to protect the long-suffering communities around O'Hare. And Hyde and Jackson share further common agreement that a number of aggressive and concrete steps must be taken now to achieve these objectives — including a permanent ban on new runways at O'Hare.

Taking note of recent developments in Illinois politics, Hyde and Jackson have issued a "Call for Regional Leadership" — calling out to governmental, business, labor, and citizen leaders from across the Metropolitan Region to cast aside their political differences and join in a bipartisan program to meet these objectives.

The central components of **"The Partnership for Metropolitan Chicago's Airport Future: A Call for Regional Leadership"** are:

- **Fast-Track Construction Of A New Regional Airport — The Airport Should Be Open And Operating By 2005**

- **A Ban On Further O'Hare Expansion — Including A Permanent Ban On New Runways At O'Hare.**

Hyde and Jackson emphasized that the two issues are inseparable. One can't be for new runways at O'Hare and be realistically considered a supporter of the new airport. Conversely, one cannot be a supporter of a new airport while endorsing construction of new runways at O'Hare.

To achieve these objectives, Congressmen Hyde and Jackson put forward the following program elements:

Firm Commitments From The 1998 Candidates

Congressmen Hyde and Jackson — along with the members of the Partnership — will ask each Gubernatorial and Senate candidate of each party in the 1998 election to pledge that they are for fast-track construction of a new regional airport and support a ban on new runways at O'Hare.

Setting The Agenda For The Regional Summit

Taking Chicago Mayor Richard M. Daley up on his offer of a regional economic summit, Congressmen Hyde and Jackson — at the urging of the members of the Partnership — agreed to co-sponsor the summit with Mayor Daley, Governor Edgar, and the announced candidates for Governor and Senate. At the summit, the number one agenda item will be fast-track construction of the new regional airport and a permanent ban on runways at O'Hare.

Guaranteed Protection For Midway

Congressmen Hyde and Jackson — and the Partnership — will urge guaranteed protection of Midway and its continuing economic vitality as part of any legislative package on airport issues.

Guaranteed Protection Of Downstate Road Funds

Congressmen Hyde and Jackson — and the Partnership — will urge guarantees to downstate communities that downstate road funds would not be used for third airport development and infrastructure.

A Fair Mechanism For Shared Political Control Of Regional Airport Development

Congressmen Hyde and Jackson — and the Partnership — will urge a fair mechanism whereby Chicago and its regional suburban neighbors would share in the economic benefits and political control of the regional airport system. Included within that mechanism would be provisions to encourage minority participation in construction and operations activities throughout the metropolitan airport system.

Assurance Of Adequate Federal Funding For New Airport Development

Noting that both Midway and O'Hare were built largely with massive federal subsidies, and that the current federal subsidy structure was premised on the assumption that the funds would be used for a new airport in Illinois, Congressmen Hyde and Jackson — and the Partnership — will urge a reorientation of federal airport construction funding programs to insure adequate airport development.

Protection Of United And American Funds At O'Hare

Congressmen Hyde and Jackson — and the Partnership — will urge guarantees that new airport development will not use United and American airline funds to build the new airport.

High Speed Rail (Passenger And Cargo) Network Between Downtown Chicago And Three Major Airports

Congressmen Hyde and Jackson — and the Partnership — will urge a coordinated high speed rail between downtown Chicago and between all three regional airports. The high speed rail system would also be designed to accommodate cargo transfer thus, giving air cargo-related businesses enormous flexibility in using all three regional airports.

Protection Of O'Hare Area Business Infrastructure

Noting that the campaign of fear-mongering waged against the new airport has caused unwarranted concern among O'Hare area businesses, Congressmen Hyde and Jackson — and the Partnership — will urge protection to northwest suburban business communities to refurbish infrastructure to reduce the fear of cost differential with the new airport.

Air Toxics Relief For O'Hare Communities

Congressmen Hyde and Jackson — and the Partnership — will urge a joint federal/state air toxics control program designed to measure toxic air pollution from O'Hare and to reduce levels of air toxics in surrounding communities to health protective levels.

A Halt To Piecemeal Jamming Of More Flights Into O'Hare

Noting the noise, air pollution and safety concerns raised by the practice of Chicago and the FAA jamming more and more flights into O'Hare on a piecemeal basis, Congressmen Hyde and Jackson — and the Partnership — will urge a halt to FAA approvals of air traffic and related procedures for increasing new aircraft operations into O'Hare.

II. THE MORE THINGS CHANGE, THE MORE THEY STAY THE SAME

Eight years ago, Congressman Henry Hyde published a monograph entitled "Chicago's Airport Future." In it he urged Illinois' Democratic and Republican political leadership to set aside parochial differences and engage in "fast-track" construction of a new regional airport to serve with O'Hare and Midway as part of a regional airport system — all designed to make the Metropolitan Chicago Region the Nation's pre-eminent air transportation center. His words then on a variety of related airport issues facing our region are even more relevant now than they were in 1989:

Hyde's 1989 Concerns About The Economic Welfare Of The Region And The Need For A New Airport

It is painfully obvious that we must build new airport facilities soon enough to recapture, maintain, and even expand market share, and big enough to grow to meet rising demand.

Continuing to place our primary reliance for capturing and maintaining transfer market share on an already overstressed O'Hare is idiotic. To aggressively attract the volume of transfer traffic which we want to expand and maintain our market share, the metropolitan Chicago area should now be building a 21st century "SuperPort" which has the flexibility to meet even the most optimistic forecasts.

The economic significance of taking prompt aggressive action now cannot be overemphasized. If the FAA forecasts for national traffic growth and Chicago's estimates of the economic benefits (i.e., jobs and expenditures) resulting from handling transfer traffic are even modestly accurate, the metropolitan Chicago area is losing billions of dollars every year it delays constructing a new airport. ... Construction alone would create thousands of jobs for workers in the Chicago metropolitan area.

Hyde's 1989 Observations On The Region's Political Gridlock

In words sadly even more relevant today than they were eight years ago, Congressman Hyde described our regional political gridlock:

> *Instead of discussing and resolving our respective concerns openly, we are engaging in destructive infighting amongst ourselves — ignoring both our opportunity and our responsibility. While we fight, the problems only get worse.*
>
> *As a Congressman whose district encompasses a major portion of the airport as well as large residential areas around O'Hare, I have a political and personal commitment both to the economic welfare of the region as well as the quality of life of my noise battered constituents. I believe it imperative that we stop the infighting and immediately begin working together to address the issues of airport development for metropolitan Chicago.*
>
> *We must take the kind of aggressive action needed now both to achieve our economic objectives and to ameliorate the damage we are currently inflicting on tens of thousands of homeowners and their families.*
>
> *If we don't act now to build airport facilities of sufficient size to meet our economic objectives for air traffic market share in the 21st century, we will likely be judged to have provided too little, too late to prevent permanent atrophy of Chicago's market position in national air transportation. But we cannot build such facilities if their operation will continue or exacerbate the pain and injury currently being inflicted on hundreds of thousands of our citizens because of our earlier failure to properly plan and implement airport facilities.*

Hyde's 1989 Warning That Stuffing More Flights Into O'Hare Is Not The Solution

Hyde stressed that trying to jam more aircraft into O'Hare would only exacerbate the already intolerable environmental (noise and toxic air pollution) and safety concerns created by the existing levels of traffic:

> *...[J]amming more aircraft operations into O'Hare ...reduces the already thin safety margins that exist at O'Hare. Congestion, delay and safety are critically interdependent. Increasing margins of safety invariably increases delay.*

Conversely, reducing delays at O'Hare often reduces existing margins of safety.

To put more aircraft operations into O'Hare without increasing the already intolerable delays necessarily means taking shortcuts. It means taking such steps as reducing the separation distance between aircraft, increased use of converging runways during bad weather or other measures currently under consideration by the FAA to wring more flight operations out of congested facilities. (See, e.g., Airport Capacity Enhancement Plan 1988 (DOT/FAA/CP/88-4).)

The problem with such measures is that they put added stress on an already over-stressed facility. To maximize safety, O'Hare needs fewer flights, not more.

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That O'Hare noise is a major problem is self-evident. Thousands of families living in the vicinity of O'Hare cannot get a decent night's sleep; their children cannot study; and basic family activities such as conversation, watching television or listening to music are severely disrupted.

Based on housing standards published by the Department of Housing and Urban Development, tens of thousands of our residents live in a residential environment which is "unacceptable." From a property value standpoint, FAA acknowledges, and most real estate appraisers know, that the intense noise around O'Hare causes a severe loss in residential property value. And no one has taken the time to measure the human cost in lost education and diminished quality of life suffered by our residents.

Hyde's 1989 Concern About Chicago's Agenda For New Runways At O'Hare

In his 1989 monograph, Congressman Hyde took direct exception to Chicago's plans to build new runways to stuff more traffic into O'Hare and oppose construction of the new regional airport:

Hiding in the weeds as a major threat to aggressive action on a metro Chicago "SuperPort" is Chicago's desire to add more runways at O'Hare.

Rather than build an environmentally sound new airport, Chicago wants to add new runways at O'Hare. Though Chicago will deny that it has such plans, Chicago's own Master Plan stated unequivocally that the Chicago area will lose the transfer traffic market unless either: a) a new airport is constructed, or b) new runways are built at O'Hare. The Master Plan even contains the drawings for the new runway locations.

Adding runways at O'Hare would compound what is already an environmental disaster. Even Chicago in its Master Plan acknowledged that adding runways would allow a level of air traffic that would be environmentally unacceptable. Despite this environmental unacceptability, Chicago is aggressively fighting a new airport and is actively pushing the option of new runways at O'Hare.

As long as the issue of new runways remains an option for Chicago, the economic development of a new metro SuperPort is imperiled. Chicago will argue that putting more traffic into O'Hare obviates the need for a new airport. The specter of new runways will haunt the timing and the size of the new metro "SuperPort."

It's time for Illinois' political leadership to put a stake in the heart of the new runway nightmare at O'Hare.

...[T]he State of Illinois clearly has the legal authority to prevent such destructive construction. The only question is whether it has the political will.

Hyde's 1989 Paper Predicted That The Intertwined Issues Of New O'Hare Runways And A New Airport For The Region Would Be A Major Issue In The 1990 Statewide Elections — An Omen For The Elections Of 1998

It is a safe political bet that any statewide candidate in the 1990 elections — be it for Governor, Attorney General, or United States Senator — is going to have to take a clear stand on the mutually inconsistent issues of additional runways at O'Hare vs. development of a new SuperPort.

To oppose a ban on new O'Hare runways is in reality a vote against the new airport and its economic benefits and a vote against relief for the long suffering residents around O'Hare.

Our elected officials have dodged the issue for too long.

Hyde's 1989 Concern Over The Politics Of Obstruction And Division Blocking The Region's Air Transportation Needs And The New Regional Airport

Hyde also identified the principal obstructions to the critical development of the third airport — the City of Chicago and the airlines dominating O'Hare (United and American):

The State of Illinois and the State of Indiana have begun a planning process which may get us a modest supplemental airport in 20 years. Chicago and the major airlines at O'Hare have opposed even this modest effort. The FAA, though paying lip service to the need for a new airport, has hardly been shaking the rafters in moving forward on a time critical basis.

If there is such a crisis, why are we moving at such a snail's pace? The answer is simple. Several of the key political players in this process are more concerned about their individual political and economic turf than the economic welfare of the region. The major airlines and the City of Chicago have demonstrated a bizarre schizophrenia — completely inconsistent with their announced desire to accommodate air traffic growth in the region.

***

United and American dominate O'Hare and don't want a new airport which would allow significant competition to enter the Chicago market. Rather than share in a bigger piece of a bigger pie, these airlines wish to keep the biggest pieces of a smaller pie — all to the detriment of the economic welfare of their regions.

This same seeming economic schizophrenia has infected our local leadership in Chicago. While the political and economic leadership of two of the nation's busiest hubs have called for major new airports in Denver and Atlanta, Chicago's political leadership has fought development of a new airport for metropolitan Chicago. The very Chicago leadership that five years ago ballyhooed the need to accommodate future

passenger traffic for the jobs and economic growth it represents now calls for sending much of this traffic to other hubs in other states rather than build a new airport for metropolitan Chicago.

Why would Chicago fight a new airport and call for sending transfer traffic to other cities? Again, simple turf protection. Chicago plainly wants to protect O'Hare and its political dominance of that facility even if Chicago's opposition to a new airport is damaging to the region's economy.

Fast Forward To 1997 — Eight Years Later Much Remains The Same

Eight years after Congressman Hyde published his monograph, many things have changed but much remains the same:

- **Chicago's 180 degree spins.** *In the eight years since the Hyde* Paper, the City of Chicago has engaged in a series of 180 degree spins:

  1) In 1990, Chicago reversed its opposition to a new airport and :

     - Acknowledged that a new airport was essential to the Region's economic welfare; acknowledged a new airport would bring hundreds of thousands of new jobs and billions annually in new economic benefits into the region;

     - Acknowledged that even a vastly expanded O'Hare could not handle the Region's traffic growth needs; and

     - Acknowledged that letting traffic growth be sent to other regions would cost the region billions in benefits and hundreds of thousands of lost jobs.

  All these acknowledgments by Chicago lead to Chicago's proposal for a new airport at Lake Calumet. Chicago even drafted a Regional Airport Authority Bill that would have placed all the Region's commercial airports under a Regional Authority — controlled by appointees of the Governor and the Mayor of

Chicago — which would have the power and financial wherewithal to build the new regional airport.

2) After the defeat of Chicago's Lake Calumet proposal, Chicago again has reversed its position 180 degrees and now argues against a new regional airport and argues (in tandem with the airlines dominating O'Hare) that the excess demand that cannot be handled at O'Hare — which represents hundreds of thousands of new jobs and billions in new regional economic benefits — should be sent to Dallas-Ft. Worth and Denver, costing our region and our workers huge losses in employment opportunity.

3) After the defeat of Chicago's Lake Calumet Proposal, Chicago again has reversed its position 180 degrees and has opposed passage of the very bill it helped draft in 1992 — a Regional Airport Authority Bill. Indeed, Chicago now opposes draft legislation which is word for word the same bill that Chicago drafted in 1992. The only change in Chicago's earlier Lake Calumet bill extending several thousand words: the name of the new regional airport has been changed from "Lake Calumet Airport" to "South Suburban Airport."

- **Snail's Pace of Progress by the State of Illinois.** Eight years later, despite years of paper shuffling, the State of Illinois has not moved aggressively enough on building a new airport. In 1989, Illinois had paper studies covering several feet of shelf space. In 1997, Illinois has several more shelf feet of paper studies and yet has still failed to turn a single spade of dirt for a new airport.

- **A Massive Airline Campaign of Disinformation and Divisiveness.** Eight years later, huge amounts of airline money have been used to mount a propaganda campaign against a new airport and in favor of new runways at O'Hare. This campaign has been marked by blatant appeals to regional divisiveness — hoping to pit the economic hopes and fears of one area of our region against the other. United Airlines and American Airlines have convinced many local business interests that:

  1) sending out of our Region billions of dollars of annual economic benefits and hundreds of thousands of jobs to Dallas-Ft. Worth and Denver is good for our Region's economy; and

  2) maintaining high monopoly-based business fares at O'Hare is good for Chicago business travelers.

- **Fortress O'Hare Monopoly and Lack of Competition Still Imposed Huge Fare Penalty on Region's Business Travelers.** Eight years later, O'Hare time-sensitive business travelers still pay an enormous premium because of the lack of competition to service next-day business travelers. By using their near monopoly position at "Fortress O'Hare," United and American extract a huge monopoly fare penalty from Chicago area business travelers — making Chicago less competitive and more costly as a place to do business.

- **Increasing Noise and Toxic Air Pollution Inflicted on O'Hare Communities.** Eight years later, O'Hare area communities suffer even more frequency of noise and toxic air pollution, as Chicago — along with United and American — has jammed more and more aircraft into an already burdened O'Hare.

- **Increasing Safety Risk and Decreasing Margins of Safety at O'Hare.** Eight years later, Chicago, the FAA and the airlines continue to incrementally stress our margins of safety at O'Hare by bringing ever greater numbers of operations into O'Hare — squeezing out increments of capacity by bringing in the planes closer and closer together.

- **Huge Loss of Jobs and Economic Benefits to Region.** Eight years later, Chicago and the airlines at O'Hare still argue against a third airport — urging the Region to export hundreds of thousands of jobs to other regions of the country, with the concomitant loss of billions in economic benefits and the loss of hundreds of thousands of jobs in the Metropolitan Chicago Region. Sadly, by default, Chicago and the airlines are winning this argument and we are already losing jobs and economic benefits to other regions due to our failure to build the new regional airport.

- **Economic Consensus That Region Must Build New Capacity.** Eight years later, we have seen a consensus develop — with at least three economic studies concluding that the Region will lose billions in annual economic benefits and will lose 300,000 to 500,000 new jobs if major new airport capacity is not built soon.

- **Small Illinois and Midwest Communities Squeezed Out of Regional Air Transportation Market.** Eight years later, we see

smaller Illinois communities and communities from other nearby states such as Wisconsin and Michigan squeezed out of the Chicago regional air transportation market because of the Fortress O'Hare monopoly .

III. REVISITING THE ISSUES

In the past eight years, opponents of new airport construction have waged a massive campaign of disinformation and division. Because the issues of a new airport and the related issue of new runways at O'Hare are so important to our State and our region, we believe that it is important to revisit and re-examine some of the major issues and the claims that have been made concerning these issues. We believe that an objective reader cannot ignore the economic and environmental facts developed by this analysis. We further believe that such an objective reader can only conclude — based on these facts — that:

- The only way that this State and Region can avoid the loss of hundreds of thousands of new jobs and billions of dollars in new economic benefits to other states and other regions is to rapidly build a south suburban regional airport.

- New runways at O'Hare are not the answer and indeed are at the core of the region's problem. Such runways will not provide sufficient capacity to meet the region's air transportation needs and will necessarily drive vast numbers of new jobs and billions in benefits out of the region. Moreover, such runways will bring even more intolerable levels of noise and toxic air pollution to O'Hare communities, which — unlike an environmentally buffered new airport — will be immediately impacted by the hundreds of thousands of new additional flights that new runways will bring. Finally, by delaying a new airport for many years, if not decades, new runway expansion at O'Hare virtually assures that neither the land, the financing, nor the will to build a new airport will ever be available.

A. The Economic Issue Facing Our Region — Loss Of 300,000 To 500,000 Jobs If We Do Not Build Major New Airport Capacity

1. Three Separate Studies Say Our Region Will Lose Hundreds of Thousands of Jobs and Billions of Dollars in Annual Economic Benefits if We Do Not Build Major New Airport Capacity.

There are at least three studies — by three divergent interests — that all reach the same conclusion: If this region and State do not build major new commercial airport capacity soon, we will lose hundreds of thousands of jobs and billions of dollars annually in new economic benefits that will then go to other states and regions that have the needed airport capacity.

What makes this consensus interesting is that each of the three groups have significantly different approaches to addressing the issue. But each group agrees that our failure to build this new capacity will have catastrophic economic effects on our regional economy and on metropolitan Chicago's historic position as the Nation's leading transportation center.

The State of Illinois Study. The State of Illinois has studied the issue of a new airport for a number of years. There is no secret about the State's position. The State advocates construction of a new regional airport. And the State studies predict that our failure to build a new airport will result in a loss of 500,000 jobs to our region and several billion dollars in annual economic benefits.[1]

The Northeastern Illinois Planning Commission (NIPC) Study. As a planning agency depending for its very survival on funding from the State and Chicago, NIPC has been infected by the very decisional gridlock pervading the rest of our regional politics. The State wants the new airport; Chicago opposes it. NIPC refuses to make a recommendation. Yet even NIPC agrees that failure to build major new airport capacity in our region will cost us 380,000 jobs.[2] Though recognizing the catastrophic loss of these jobs NIPC refuses to take a stand on where the new capacity should be built — *i.e.*, at a new regional airport or at an expanded O'Hare. (**Note:** As discussed below, even the most aggressive advocates for an expanded O'Hare acknowledge that even with massive expansion, O'Hare cannot possibly handle the growth our Region needs to accommodate.)

The Civic Committee of the Commercial Club Study. The Civic Committee of the Commercial Club has long been an

1 *South Suburban Airport Master Planning and Environmental Assessment: Economic Impact Assessment: Economic Impact Assessment Build vs. No. Build* Illinois Department of Transportation (April 3, 1995)

2 *Adjustments To Regional Forecast Totals Assuming Air Service Capacity Constraints*, NIPC staff memorandum to NIPC Planning Committee, March 1, 1995

advocate of additional runways at O'Hare to accommodate traffic growth at O'Hare. Yet this group —like the State of Illinois and NIPC — has recently published a study that predicts that failure to build major new airport capacity in our region will cost us between 330,000 and 500,000 jobs and several billion dollars in new annual economic benefits to our region..[3] (**Note:** Again, the Civic Committee, like NIPC, fails to specify what physical facilities would be needed to handle the projected traffic growth at O'Hare.)

2. The Bottom Line: More Flights = More Jobs for the Region.

The bottom line on the issue of airport development in the region is very simple. For decades there has been common agreement among Chicago, the State of Illinois, and most business experts that:

MORE FLIGHTS = MORE JOBS FOR REGION

It is important to emphasize that Chicago and the airlines have historically been quick to point out that the number of flight operations are intimately tied to the number of jobs and the amount of economic benefits we in the region receive from our air transportation facilities.

According to Chicago and the airlines:

One year of employment is created for every:

- 4 airport arrivals or departures
- 48 international or 111 domestic passengers boarding a flight
- 32 visitors getting off a flight in Chicago
- 67 tons of Cargo shipped from Chicago's airports

$100,000 of personal income is created for every:

- 9 airport arrivals and departures
- 118 international or 281 domestic passengers boarding a flight

3 *Economic Impact of Expansion in Airport Capacity on the Chicago Region: A Report to the Civic Committee of the Commercial Club of Chicago* (September 19, 1996) (prepared by The University of Illinois and the Federal Reserve Bank of Chicago)

- 86 visitors getting off a flight in Chicago
- 152 tons of Cargo shipped from Chicago's airports[4]

Using these or similar projections, Chicago and the airlines claim — and we accept for purposes of analysis — that O'Hare generates hundreds of thousands of current jobs in the Metropolitan Region and in excess of 10 billion dollars annually in economic benefits for the region. Using similar projections, in 1990 and 1992 Chicago said that — above and beyond O'Hare's economic contribution — a new third airport at Lake Calumet would produce in excess of 10 billion dollars in new economic benefits for the Region and hundreds of thousands of new jobs.

The bottom line is that if we can attract air transport traffic to our Region — and accommodate it in an environmentally satisfactory way — we can reap hundreds of thousands of new jobs and billions in new economic benefits for our region.

Chicago and the airlines have repeatedly acknowledged these facts and even boasted about the contribution of airline travel to our regional economy. Yet when it comes time to deliver on the hundreds of thousands of new jobs and billions in economic development that construction of a new airport would bring, Chicago and the airlines say ship the jobs and the billions in benefits to regions outside of Illinois.

B. Crunching The Numbers — Where To Put 40 Million New "Enplanements" And Over 1,000,000 New Flight Operations

When speaking of airport development and capacity need, airport planners speak in terms of "enplanements" — people getting on planes. Using figures agreed to by the State of Illinois, NIPC, and the City of Chicago, it is obvious that we have to build new capacity in our Region to handle at least 40 million new enplanements and approximately 1,100,000 new operations— either at O'Hare or at a new airport — if we wish to meet the demand for air transportation in our region.

4 Source: Lobbying package of Airlines and City of Chicago in Opposition to S. B. 1245 (1996) in Illinois General Assembly

The arithmetic is simple. The State of Illinois says — and these projections have been agreed to by NIPC and Chicago — that our regional demand will grow over the next 20 years to 90 million enplanements from a 1993 total of 34.8 million enplanements. The State and NIPC assume that some of that 90 million enplanement can be handled by Milwaukee's Mitchell Field and significant growth at Midway — leaving 73 million enplanements to be handled at O'Hare, or O'Hare in combination with a new airport.

O'Hare at its current level of operations handles approximately 33 million enplanements at 900,000 operations. Simple arithmetic says that O'Hare must accommodate 40 million new enplanements — above and beyond the 33 million enplanements O'Hare currently handles (*i.e.*, 73 million minus 33 million = 40 million) if it is to meet regional demand.

Here are the agreed demand numbers for the region for the year 2020:

Total 2020 regional demand	90 million enplanements
Demand that can be handled by Milwaukee Mitchell and an expanded Midway	17 million enplanements
2020 demand that must be handled by either O'Hare alone or O'Hare plus a new Regional Airport	73 million enplanements
Current enplanement load (1996) at O'Hare	32-33 million enplanements
Shortfall in new enplanements that must be accommodated above O'Hare's current load at either O'Hare or O'Hare plus a new Regional Airport.	40 million <u>new</u> enplanements

Let's assume for the moment that we do not build a new regional airport. How do we handle the 40 million new enplanements at O'Hare — above and beyond the 32-33 million currently handled at O'Hare? O'Hare currently handles its existing load of 32-33 million enplanements with approximately 900,000 operations (*909,000 in* 1996). The ratio of enplanements to operations has remained virtually constant for the last several years — with the average enplanements per operation ranging between 34 and 35 enplanements per operation. At 35 enplanements per operation, the number of operations necessary

to carry the 40 million new enplanements is 1,142,857 new operations — above and beyond the 900,000 operations currently at O'Hare.[5]

The typical airline and Chicago response to calculations like these is that they overstate the number of needed operations because the planes will be larger and the number of enplaning passengers per plane will be greater. Neither the airlines nor Chicago nor the FAA provide any data to support these claims; and the actual data collected at O'Hare over the last several years shows the average size of aircraft actually decreasing — not increasing. Yet even if one accepts, for the sake of discussion, FAA's projections of greater numbers of enplanements per aircraft, the number of new flight operations that will be required to carry the 40 million new enplanements will total over 950,000 new flights.[6]

What this means is that unless we build a new airport soon, O'Hare will be asked to accommodate an additional 950,000 to 1,100,000 flights above and beyond the already more than 900,000 flights currently operating each year at O'Hare. Alternatively, if O'Hare cannot handle these new flights and the flights are diverted to other regions, our Region will lose hundreds of thousands of jobs and billions in new economic benefits.

Current O'Hare load	33 million enplanements	900,000 flight operations
Future additional demand	40 million new enplanements	950,000 to 1,100,000 new operations

5 Source of the flight operations calculation is the FAA statistical information provided in the FAA's annual *Aviation Capacity Enhancement (ACE) Plan*. The average enplanements per operation at O'Hare over the last several years has stayed steady at between 34 and 35 enplanements per operation. Dividing 40 million enplanements by 35 enplanements per operation yields an operations level for the new additional operations of 1,142,857 new operations — above and beyond the 900,000 operations currently at O'Hare

6 The FAA projects — without supporting documentation — that enplanements per operation will rise from the current level of 35 enplanements per operation to 42.9 enplanements per operation. See 1996 FAA *Aviation Capacity Enhancement Plan Airport Database*, available on CD-ROM from the FAA. In reality, FAA has acknowledged that the average aircraft size at O'Hare has actually been decreasing — not increasing. "Average aircraft size [at O'Hare] in all stage length categories over 249 miles has been decreasing since 1979." A Study of the High Density Rule (FAA May 1995), Technical Supplement #2, at 47 (emphasis added).

C. A Vastly Expanded O'Hare Cannot And Should Not Accommodate The Expanded New Traffic

The question immediately arises: Can or should O'Hare accommodate 73 million enplanements (33 plus 40)? The answer is clearly no — on both counts. Does anyone really expect O'Hare area residents to sit still for over a million new flights above and beyond the 900,000 already over their heads and homes? Does anyone realistically believe that even with two new runways, O'Hare can accommodate the million new operations — above and beyond the 900,000 current operations?

It is patently obvious that O'Hare cannot accommodate over 1,000,000 new operations — *above and beyond the 900,000 it already carries.*

The new noise monitoring system installed by the Suburban O'Hare Commission, as well as Chicago's own noise monitoring system, show that the existing levels of harmful aircraft noise extend far beyond the noise levels and geographic extent previously acknowledged by Chicago.

Beyond the noise, consider the toxic air pollution created by O'Hare. Currently, the 900,000 operations create levels of toxic air pollution — including such harmful chemicals as Benzene and Formaldehyde — that would not be allowed from a federally licensed toxic waste dump. The State of Illinois ranks O'Hare as among the top five largest toxic pollutant emitters in the State; yet officials look the other way when asked to control and reduce O'Hare's toxic air pollution. Imagine the additional impact of another million flights on the toxic air pollution levels around O'Hare.

Finally, there is the question of safety. Safety at O'Hare is already overtaxed at 900,000 operations. The FAA and Chicago are able to jam more traffic in only by using a host of questionable techniques to squeeze planes closer together and inevitably stress the existing margins of safety. To try to put several hundred thousand more flights into that space is playing Russian Roulette with the safety of the flying public and the residents who live under O'Hare's flight paths.

D. The Chicago/Airline Approach — A LOSE/LOSE Proposition For O'Hare Communities And The Region

But Chicago and the airlines have a fall-back position — designed to defeat the new regional airport we desperately need and keep the high fare/monopoly lock United and American have on time-sensitive Chicago area business travelers. They say let O'Hare grow to 50,000,000 enplanements — an almost 40% increase from current levels — with an increase in flights of between 300,000 to 500,000 operations.

Even this 300,000 to 500,000 level of flight operations increase will wreak environmental havoc on neighboring O'Hare communities in added noise and air pollution.. If the current levels of noise and toxic air pollution in communities around O'Hare are unacceptable, how can anyone justify adding 300,000 to 500,000 new flights at O'Hare?

Moreover, Chicago and its O'Hare airline allies have a plan to address the 23 million enplanements Chicago's plan cannot handle — *i.e.*, the 73 million enplanements O'Hare needs to handle minus the 50 million enplanements Chicago and the FAA say O'Hare will handle with new runways and associated expansion elements.

What's Chicago and the airlines' plan? Send the 23 million enplanements that the expanded O'Hare cannot handle — and the hundreds of thousands of jobs and billions of dollars in associated economic benefits from that traffic — to other competing regions, namely Denver where United has a hub and Dallas-Ft. Worth where American is headquartered. Chicago and the airlines have expressly stated their goal of shipping air traffic and the associated jobs and economic benefits out of our region into other states:

> *The question arises when you look at connecting traffic. And the airlines have made it clear that they don't need a new airport for connecting traffic. There are many existing airports elsewhere, where the airlines already have major investments, that they can route their connecting passengers through.*
>
> *Testimony of Chicago Aviation Commissioner David Mosena before the Illinois House Executive Committee March 2, 1995*

***

All the studies done to date have shown that there is more than enough capacity at the existing airports to handle all the Origin and Destination demand through the year 2020, and the only reason additional capacity would be needed would be to allow growth in connecting traffic.

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To make room for additional connecting passengers, it is far more likely that the airlines will route these passengers through existing, paid for facilities with excess capacity — like United's hub at Denver or American's hubs in Nashville and Dallas/Ft. Worth — than by investing in a brand-new $5 billion dollar airport.

Airline Industry Lobbying Package submitted to Illinois Legislature January 1996

Result for our region? A loss of hundreds of thousands of jobs and billions in economic benefits for the region.[7]

Essentially, Chicago and the airlines are offering a LOSE/LOSE proposal to the region:

1. The State and Region lose the hundreds of thousands of jobs and the billions in economic benefits when the 23 new million enplanements even a vastly expanded O'Hare cannot handle are accommodated by airport capacity in other states and other regions.
2. The O'Hare neighbor communities lose when the Chicago/Airline program to stuff 300,000 to 500,000 new flights into O'Hare produces major increases in noise frequency, air pollution, and increased safety concerns.

7 While our region loses by shifting these flights to hubs at Denver and Dallas, United and American continue to benefit from the revenues produced by the flights. Their position — along with their desire to maintain a virtual monopoly on time-sensitive high-yield business travel in our region — makes perfectly rational economic sense for these airlines. See our discussion of the Fortress O'Hare monopoly infra. Unfortunately, what is good for United and American is destructive to our region's economy. What is good for us is keeping these flights, and the jobs associated with these flights here in our region.

E. The Debate Over Transfer Traffic

To understand how the airlines and Chicago can, with a straight face, ship hundreds of thousands of jobs and billions in economic benefits out of the region, the reader must appreciate the nature of the "transfer" traffic market and the historic role the Chicago area has played in serving as the air transportation crossroads of the Nation.

Most Chicago area citizens and many in the media think that our past and future economic goal should be to provide good air service to travelers to and from Chicago. But in reality, less than half of our air passenger traffic consists of persons traveling to and from the Chicago area.

These "origin-destination" passengers include all our metropolitan business and recreational travelers, as well as all those people from other areas who wish to visit the Chicago area for business, personal matters or recreation. They include all the people we work hard to attract, including all our convention and business visitors.

If meeting the air travel needs of our Chicago area "origin-destination" passengers were all we were concerned about, our discussion could end now. O'Hare has more than enough capacity to accommodate our "origin-destination" traffic for many years to come. Indeed, were "origin-destination" traffic needs our only concern, we could dramatically reduce the number of flight operations at O'Hare — dramatically reduce the noise injury to residents living around O'Hare — and easily meet the requirements of "origin-destination" traffic for a long time.

But meeting the needs of our "origin-destination" traffic is only part of the story. Chicago and other major airport centers — such as Denver and Atlanta — have competed aggressively for the so-called "transfer" market. More than one-half of the air travelers passing through O'Hare never set foot outside the terminal, and never spend a dime in Chicago area hotels, restaurants, or meeting facilities. These are so-called "transfer" passengers, traveling (for example) from Des Moines to Cleveland with a transfer at Chicago.

This so-called "transfer" traffic is very important to our regional economic welfare. For the airline personnel and the air travel service industries based in metropolitan Chicago, that transfer traffic means thousands of jobs and billions of dollars of associated spending in our region. Equally important, the flexibility in travel schedules created by serving the transfer traffic market allows our region to provide an extremely attractive base for businesses to establish corporate

headquarters and marketing centers. The same flexible flight schedules that service the transfer market allow the Chicago-based business traveler a wide range of options in using Chicago as a base of operations.

The competition for the transfer traffic market is intense. If we in metropolitan Chicago want to retain — and indeed expand — our market share, we will have to aggressively identify and implement those actions necessary to attract transfer traffic.

After acknowledging in the Lake Calumet Airport proposal the importance of the transfer traffic market to the economic health of our region and our historic and future role as the Nation's transportation crossroads, Chicago has done another economic flip-flop. Chicago and United and American airlines now say that the transfer traffic is of no economic value to our region. By shipping this traffic to United's hub at Denver and American's hub at Dallas, Chicago and these airlines claim that we have more than enough capacity at O'Hare to meet the growth in our origin-destination traffic.

If we were to accept such sophistry and agree that transfer traffic is of no value to our region, the debate would be over. We could cut the air traffic at O'Hare by more than 50%. Our O'Hare communities would get much less noise and air pollution and there would be no loss to the region's economy. Further there would be no need to debate either the construction of the new airport or expansion of O'Hare — since an O'Hare with less than half of its current traffic would have more than enough capacity to accommodate all expected origin-destination growth with its existing facilities, with no new runways and no other expansion.

But neither we nor Chicago or United and American really believe this argument. Imagine Chicago's and the airlines' reaction if we suggested cutting existing transfer traffic out of O'Hare. Chicago and the airlines would rightfully claim — as they have to the Illinois Legislature — that this transfer traffic is critically important to our regional economy and brings hundreds of thousands of jobs and billions in benefits to our region.

And the same logic and common sense that would call for rejection of any proposal to cut the transfer traffic out of O'Hare also calls for rejection of Chicago's and the airlines' proposal to ship this future transfer traffic — and the jobs and economic benefits that come with it — to other states and other regions.

F. The Hyde/Jackson Approach — WIN/WIN For The Region And The Environmentally Battered O'Hare Communities

We find that the Chicago/Airline solution is unacceptable for several reasons. First, it is unacceptable because it sends hundreds of thousands of jobs and billions of dollars in economic benefits out of our region and our state. Even with a vastly expanded traffic level at O'Hare, Chicago and the airlines acknowledge that 23 million enplanements and several hundred thousand operations — along with the hundreds of thousands of jobs and billions in economic benefits they represent — would be sent out of our State and our region to other states.

Second, the Chicago/Airline approach is environmentally unacceptable because of the tremendous burdens it places on O'Hare area communities. The additional noise and toxic air pollution represented by 300,000 to 500,000 additional flights squeezed into O'Hare — in addition to the 900,000 operations currently there — is simply unacceptable.

We, however, propose a WIN/WIN solution for the State and the Region. We propose a vital O'Hare at its current levels of operations joined by a new regional airport to handle the new traffic growth in an environmentally acceptable manner. With this system in place, O'Hare communities are spared the further insult of a massive increase in air traffic while the region is assured of the full economic benefits of all the traffic growth staying in our region. The region gets all the hundreds of thousands of new jobs and all the new economic benefits. The O'Hare communities get a modicum of protection.

G. Balance And Economic Equity

The pairing of O'Hare and Midway with a new south suburban airport — and the preservation of hundreds of thousands of new jobs for our region — has other beneficial effects as well. Chicago proudly claims that the economic and job benefits of O'Hare are spread across a multi-county metropolitan region. But even Chicago and most independent observers would agree that the economic benefits of O'Hare are concentrated more strongly in northwest Chicago and the northwest suburbs surrounding O'Hare than they are in south Chicago and the suburbs of south Cook County, and in Will and Kankakee Counties.

Whatever the benefits of O'Hare, they are harder to see in Robbins, Calumet City, and Ford Heights than they are in Arlington Heights and Schaumburg. A fair observer would agree that a sense of economic

fairness and equity — as well as a desire to more uniformly balance regional development — would suggest that the new air traffic would best be served by a new regional south suburban airport, rather than jammed into an already overburdened O'Hare.

There has been much discussion of late regarding concerns over real and perceived economic disparities between various areas within our six county metropolitan region.[8] But whatever the outcome of such discussions — and many of us may have respectful disagreements in such discussions — this much is clear:

A new south suburban airport — bringing hundreds of thousands of new jobs and billions of dollars of additional economic benefits to our region — will do much to redress any economic disparity that may exist in our region and will serve as a second "economic engine" to drive our regional economy forward for the benefit of all our citizens. A new south suburban regional airport will do much to achieve regional economic balance and economic equity within our region.

Many sections of the south side and south suburbs have been in an economic nose-dive for decades. Massive corporate disinvestment has left many south Cook County communities with shuttered factories, abandoned malls, boarded-up homes and concomitant demands on social services.

Economic benefits mean hundreds of thousands of jobs — but they also bring something else. The commercial development associated with a new airport will see a rise in property values and a parallel rise in property tax revenues for area schools on the south side and south suburbs. When this happens, the children of Ford Heights, Harvey and Dixmoor will be able to attend schools comparable to those in Elmhurst, Park Ridge and Arlington Heights. With better schools and restored infrastructure, these communities can be proud partners with their northern and western neighbors in a strong and fair regional economy.

Most everyone, from Chicago to Cairo, can agree that the best way to reduce unemployment, disinvestment, and the resulting problems with crime, drugs, despair and hopelessness is to put people to work at good jobs with good salaries.

8 See *e.g.*, Orfield, Myron. *Chicago Regional Report, A Report to the John D. and Catherine T. MacArthur Foundation* (October, 1996); *Mapping The Future, Resource Materials For Regional Conversations* (MacArthur Foundation)

It's time to lift the level of the airport debate above petty politics — and to focus on the high road common ground of economic development, public health protection, and regional welfare that a third airport will bring.

H. The New Airport Would Benefit The Entire State

The financial gains of the third airport will not be limited to one section of the Region, or even one section of the State. All of the Chicago metropolitan area and many downstate communities stand to gain. With a new airport in partnership with a vital O'Hare and Midway, Chicago would regain its rightful place as the Nation's air transportation center. The three airports (New York has three; Washington, D. C. has three; and Los Angeles has five) would provide the Region with plenty of runway space for large and small planes far into the next century. For years O'Hare has been squeezing out planes from small markets to make room for larger planes. In short, residents and investors from downstate communities like Peoria, Moline, Danville, and Decatur have been increasingly locked out of the Chicago air transportation market.

I. The Politics Of Fear And Divisiveness vs. The Politics Of Hope And Cooperation

Those who have opposed the new south suburban airport have thus far successfully blocked the new airport using the politics of fear and division — both in setting different areas of our state and region against each other and in falsely playing on the fears of separate constituencies in our region. Thus these new airport foes have deliberately played off northwest suburbs against south suburbs; Republicans against Democrats; downstate communities against the metropolitan region.

These opponents never come out in a straightforward fashion and admit to the fact that under their scenario they will send hundreds of thousands of jobs and billions in economic benefits outside the region. Instead they falsely seize on one argument or another that can create a backlash of fear in a given constituency.

Thus they tell the downstate communities that the new airport will divert road funds from downstate projects. They tell northwest suburbs that a new airport will kill O'Hare and the economic vitality of the communities around O'Hare. They tell Democrats that the new airport will mean a Republican takeover of O'Hare and its political patronage. They tell supporters of Midway that a new airport will kill Midway.

Each of these arguments has but one focus — kill the new regional airport and the hundreds of thousands of jobs and billions in economic benefits it would otherwise bring. But each argument is tailored to play upon the individual fears of an isolated constituency.

In contrast we, as Congressmen representing different areas of the entire Region, are seeking common ground to keep these jobs and benefits in our Region. To the downstate communities we say that the State and the Region — and we — should be willing to work with you to guarantee that no downstate road funds would be used for infrastructure for the new airport.[9] To the supporters of Midway — and include us among them — we say that we will work with you to provide guarantees for Midway's continued vitality.

To the Democrats and the Republicans who are worried about political control, we say that there should be a fair system of representation that should allow each political constituency in the region to have a fair say in the operation of the Region's airports. If necessary to develop the coalition needed to build the third airport, we could support an organizational structure which keeps control of O'Hare — subject, of course, to the ultimate authority of the State over all its political subdivisions — in the hands of the City of Chicago.

To the businesses around O'Hare which have been told that a new airport will kill O'Hare, we say look at the facts. There are several major metropolitan areas which have a multiple airport system (*e.g.*, New York, Washington, D. C., Los Angeles). In none of these cities has one airport (*e.g.*, Newark, La Guardia, or JFK) cannibalized the economic vitality of the other.

Nevertheless, we are willing to sit down with northwest suburban business leaders to assure them that a new airport will be part of an airport system that includes a vital O'Hare. To those worried that a new airport will offer lower costs (because of lower cost new infrastructure) we are certain that a fair mechanism can be developed to assist in upgrading O'Hare area business infrastructure to address the competition.

9 As noted above, we also say that major new capacity at a south suburban airport will enhance opportunities for access to commerical air service access by downstate communities that are slowly being squeezed out of O'Hare.

J. Understanding The Financing Of Airport Construction — The Historic Role Of Federal Assistance

Airport opponents have said that the airlines will not pay for construction of a new airport. But most people do not understand that most airport construction funding — including construction at O'Hare — is done with federal taxpayer dollars and not with airline funds. Indeed, much of the facilities at Midway and O'Hare have been constructed with federal taxpayer dollars. Thus, the airlines have long received direct and indirect government-funded facilities — construction subsidies not enjoyed by most businesses.

We do not believe that any airline funds from airlines at O'Hare and Midway should be used to construct the new regional airport. We do believe, however, that the same kind of federal subsidies that have been used to build other airports — including O'Hare and Midway — should be available to construct the new regional airport.

Historically , there have been two sources for funding of airports: 1) federal "ticket tax" moneys (called "AIP" or Airport Improvement Program funds) from the federal Airport Trust Fund collected on every ticket sold in the United States, and 2) municipally issued General Airport Revenue Bonds ("GARBs"). Quite often an airport project would be funded in an 80/20 split — 80% coming from a federal AIP grant and 20% from GARBs issued by the municipal airport proprietor.

The airlines for whose operations the runways and terminals were built received two major subsidies. First was the direct federal AIP grant of up to 80% of the cost. None of the airlines serving the airport are required to repay the AIP grant. Second was the municipal status of the GARBs which — though paid by the airlines -- were treated as tax deductible revenue bonds which received a major interest rate discount due to their tax-free municipal status.

In the 1980s, the amount of AIP funds available for airport construction was reduced due to federal government attempts to use these funds: a) to balance the deficit, and b) to pay for the operations of the FAA. In response to this lowering of available AIP funds, the airlines and airport operators lobbied Congress for legislative approval of a new federally authorized head tax — called the Passenger Facility Charge (PFC) — of $3.00 per passenger.

This additional federal PFC tax was passed in 1990 at the direct request of major airport operators such as the City of Chicago. Chicago lobbied to use the PFC taxes collected at O'Hare to build a new regional airport at Lake Calumet.

In the passage of the 1990 legislation a dangerous and destructive loophole was created. Whereas Airport Improvement Program (AIP) funding at a local airport had to be directed and approved by the state transportation agency, the federal Passenger Facility Charge (PFC) funds went directly to the airport proprietor — thus eliminating state authority to direct where the funds should be spent in the State.

However, since the defeat of Chicago's proposal for the Lake Calumet Airport, Chicago has hoarded the revenues from these federally authorized PFC taxes and has refused to allow their use for a new regional airport. Ironically, Chicago has used a portion of the revenues collected at O'Hare to give money to Gary, Indiana's airport. This transfer of money's collected at O'Hare to Gary was designed to block attempts by the State of Illinois to build the new south suburban airport.

Chicago's conduct in hoarding these PFC funds is a major impediment to new airport construction in Illinois. Let's be clear. No Chicago commercial airport — be it Midway, O'Hare or a new regional airport — can likely be built without an extremely high level of funding subsidized by the federal government. Midway and O'Hare were built primarily with heavy doses of federal tax revenues and tax free bond subsidies. Much of the construction going on at O'Hare today is being built with federally authorized PFC funds.

What becomes obvious from this discussion is that some major forms of direct and indirect federal financial subsidy have been necessary for the development of Midway and O'Hare and will be necessary for the construction of the new regional airport. Whether these funds are derived from the federally authorized PFC revenue stream or the federal AIP funds is irrelevant. The reality is that a major infusion of such funds will be necessary for construction of the third airport.

Chicago and the airlines have been effectively able to stop federal financial assistance to the new airport. Chicago wrongly claims that the federally authorized PFC revenue stream belongs to Chicago — not the federal government. Despite his promise to Congress to use the PFC revenues for a new airport, Chicago's mayor now refuses to share these revenues. The airlines serving O'Hare claim that these federally authorized PFC funds belong to them *(i.e.*, United and American).

In truth, these funds belong neither to Chicago nor the airlines. The airlines' only investment at O'Hare is their commitment to repay GARBs — which are only used to finance a portion of the construction. The airlines at O'Hare do not own the federally authorized PFC revenue stream, which are not GARBs and which the airlines have no duty to repay.

Nor does Chicago own this revenue stream. The federal legislation creating the federal PFC head tax requires FAA approval for Chicago to both "impose" and "use" the PFC revenues. Chicago must have FAA's approval to collect the tax and separately must have FAA's approval to "use" the tax. Thus the FAA has the power to refuse Chicago's request to impose or use PFC funds or alternatively to condition Chicago's use of these funds for the benefit of the air traveling public and for the benefit of environmentally sound air transport facilities in the region.

It is obvious that the financial logjam has to be broken and that — like Midway and O'Hare — substantial direct and indirect federal financial assistance has to be provided for construction of the new airport. This can happen in a variety of ways.

First, Chicago can join with the State and the rest of the region in forming a Regional Airport Authority with supervisory control over all the metro region commercial airports. This was the mechanism proposed by Chicago and Governor Edgar in the Lake Calumet proposal in 1992 and would have allowed a regional authority to use PFC revenues collected at O'Hare for construction of a new airport. That was Mayor Daley's plan then and we would endorse passage of such legislation now.

Second, the federal government can stop Chicago from hoarding the PFC revenue stream — either legislatively or through FAA action. This hoarding is creating a massive loss of needed capacity in the region and Illinois Congressional Leadership would have every reason and justification to demand that the FAA order the funds freed up to enable third airport construction. Alternatively, either Congress or the FAA could impose a moratorium on Chicago's use of the PFC funds until agreement had been reached on use of a portion of the funds for a new airport.

The bottom line is that there are a variety of mechanisms available — either at the federal or the state level — that can bring an end to the financial gridlock caused by Chicago's hoarding of the PFC funds. That there must be an end to such gridlock is clear and it is our duty on a responsible bipartisan basis to break the gridlock and get the new airport sufficient federal financial assistance.

K. Understanding The Opposition's Motivation — The Anti-Trust And Monopoly Pricing Issue

In the 19th century, the railroad industry provided invaluable public service to the Nation in moving goods and people across the country. Today, the airline industry performs an equally valuable service, moving our people and cargoes around the Nation and around the world.

But in the 19th century the railroad industry began to engage in a series of practices — which while perfectly rational from the internal business perspective of the railroads — were highly destructive to important regional and national economic values of the Nation. These destructive practices included such tactics as predatory pricing, monopoly pricing of captive markets, and a host of other pricing and service practices designed to help the economic bottom line of the railroad industry at a severe cost to the consuming public and the regions and cities dependent on rail service for the economic well being of their citizens.

These abuses led to the entire statutory and regulatory development of our Nation's anti-trust laws, designed to prevent the concentration of monopoly power. Unfortunately for Chicago and many other similarly situated cities in our country, the airline industry has copied to a fare-thee-well many of the same pricing and monopoly abuses for which the railroads were infamous.

Since the late 1970s, the airlines have developed what they refer to as "Fortress Hubs" in various cities around the country. By controlling the majority of the traffic at these Fortress Hubs, the controlling airlines can charge monopoly fares to time-sensitive business travelers — secure in the knowledge that there is no effective competition to force lower fares.

The monopoly pricing is not in the tourist or excursion fares. It is in the fare structure imposed on the time-sensitive business traveler, the business person who must leave Chicago tomorrow for a destination in another major business center and must return to Chicago quickly.

For this time-sensitive business traveler, United and American have a lock on high-priced business fares. The following is a list of recent next-day unrestricted fares between Chicago O'Hare and many of the Nation's major business centers:

	American	United
NY LaGuardia	$1,018	$1,018
Washington National	$1,092	$1,292
Los Angeles	$1,856	$2,076
Atlanta	$986	$1,104
Denver	$1,166	$1,414

Nor does Midway provide truly effective competition to the Fortress Hub at O'Hare. First, Midway airlines do not serve on a direct non-stop basis many of the business markets served out of O'Hare. Second, even in those markets they do serve, the volume of seats out of Midway does not match the number of seats out of O'Hare. Whatever slight adjustments are made to address any competitive volume at Midway are not significant when viewed in terms of total seat volume serving the market out of O'Hare.

In short, for the time-sensitive business traveler from Chicago to many of our Nation's major business markets, United and American at their "Fortress O'Hare" are able to extract monopoly fare premiums out of Chicago business travelers. The cost to Chicago area businesses for this monopoly premium by United and American at Fortress O'Hare is huge. The State of Illinois estimates that Chicago business travelers pay a monopoly premium of between 200-300 million dollars annually due to lack of competition.

Here then is the real reason why United and American have waged such a vitriolic and aggressive campaign against construction of a new airport. A new airport means that significant long-haul competition — not just the stop-to-stop short-hop discount airlines out of Midway — can come into the metropolitan Chicago market. A new airport means an end to the monopoly business fare gravy train that Fortress O'Hare

has provided United and American. A new airport means significantly reduced fares for the time-sensitive Chicago business traveler and significantly less monopoly profits for American and United.

L. Chicago's Plans Include New Runways And Massive Growth With Much Of The Excess Traffic And Hundreds Of Thousands Of Jobs Transferred To Other States And Other Regions

While we engage in a rhetorical debate about a new airport vs. O'Hare expansion, Chicago is actually moving forward with its secret master plan for expansion at O'Hare.

Chicago has desperately tried to keep its plans secret from the public and other governmental officials. But details of the plan — created by Chicago and officials from United and American — are starting to leak out. We now know this about the elements of Chicago's new and still hidden "Master Plan" for the development of O'Hare:[10]

- Chicago's Master Plan calls for O'Hare growing from a current level of 32-33 million enplanements and 900,000 operations in 1996 to 50 million enplanements and up to 1,400,000 operations by the year 2010.

- To accommodate the massive growth in operations and people at the Airport, Chicago's new Master Plan program contains the following elements:

  1. Two new runways

  2. Extensions on several of the existing runways

  3. Extensions of several of the existing terminal buildings

  4. A new Ring Road around O'Hare with Western Access and a redeveloped and expanded eastern access at I-90 and Bessie Colman Drive.

10 The elements of Chicago's Master Plan are slowly being disclosed as a result of a lawsuit filed by the State's Attorney of DuPage County and the County of DuPage, the towns of Elmhurst, Bensenville and Wood Dale, and by Congressman Hyde and State Senate President Philip. In discovery in that case, Chicago has been held in contempt of court for its decision to hide over 45,000 pages of documents relating to its expansion plans at O'Hare.

- These elements are being and will be constructed on a piecemeal basis. By building many of the elements of this Master Plan now on a piecemeal basis, Chicago hopes to make its vision of Chicago's airport future a *fait accompli*.

- Because the expansion can only handle an additional 17 million enplanements, Chicago will have to send 23 million (*i.e.*, 40-17=23) enplanements to other regions such as Dallas-Ft. Worth and Denver.

With this expansion Chicago and the airlines will argue that there is no need to discuss a third airport for many more years since the O'Hare expansion — with its several hundred thousand new flights — allows us to delay a decision on the third airport. Apart from the unacceptable environmental impacts on O'Hare communities, this piecemeal expansion of O'Hare inevitably will kill the new airport. By the time we get around to deciding on a new airport site 15 or 20 years from now, there won't be any sites available and the jobs and economic development that would have come with that new airport will be little more than a pipe dream.

M. The Delay/Capacity Game

In the public relations game that surrounds much of the debate about the new airport and O'Hare expansion, no topic has been the subject of more disinformation than that of new runways and the issue of "delay" at O'Hare.[11] But few if any have bothered to look at the underlying data and facts. When one undertakes such an examination, one discovers that much of the talk of a need for new runways to reduce "delay" at O'Hare is pure public relations hype — designed to mask Chicago's and the airlines campaign to expand capacity and push more flights through O'Hare.

11 Nowhere was this disinformation greater than in the press play Chicago and the airlines gave to the so-called "Delay Task Force Report" prepared by Chicago's consultant under FAA sponsorship. Though publicly touted as a report addressing delays (which turned out to be computer simulated "delays" that did not exist in the real world) the internal FAA and Chicago documentation shows that the whole exercise was to develop a program for expanding capacity at O'Hare. Internally the Delay Task Force Report was called the "Capacity Enhancement Report" and the so-called "Delay Task Force" was internally known as a "Capacity Design Team."

Delays are Way Down at O'Hare

Chicago and the airlines argue — and the State of Illinois has accepted their argument — that a new runway is needed at O'Hare to reduce delays at O'Hare. They have argued that delays are rising at O'Hare.

There is only one problem with this argument. When asked to produce hard facts demonstrating an increase in delays, Chicago, the FAA, and the airlines are forced to admit that no such data exists.

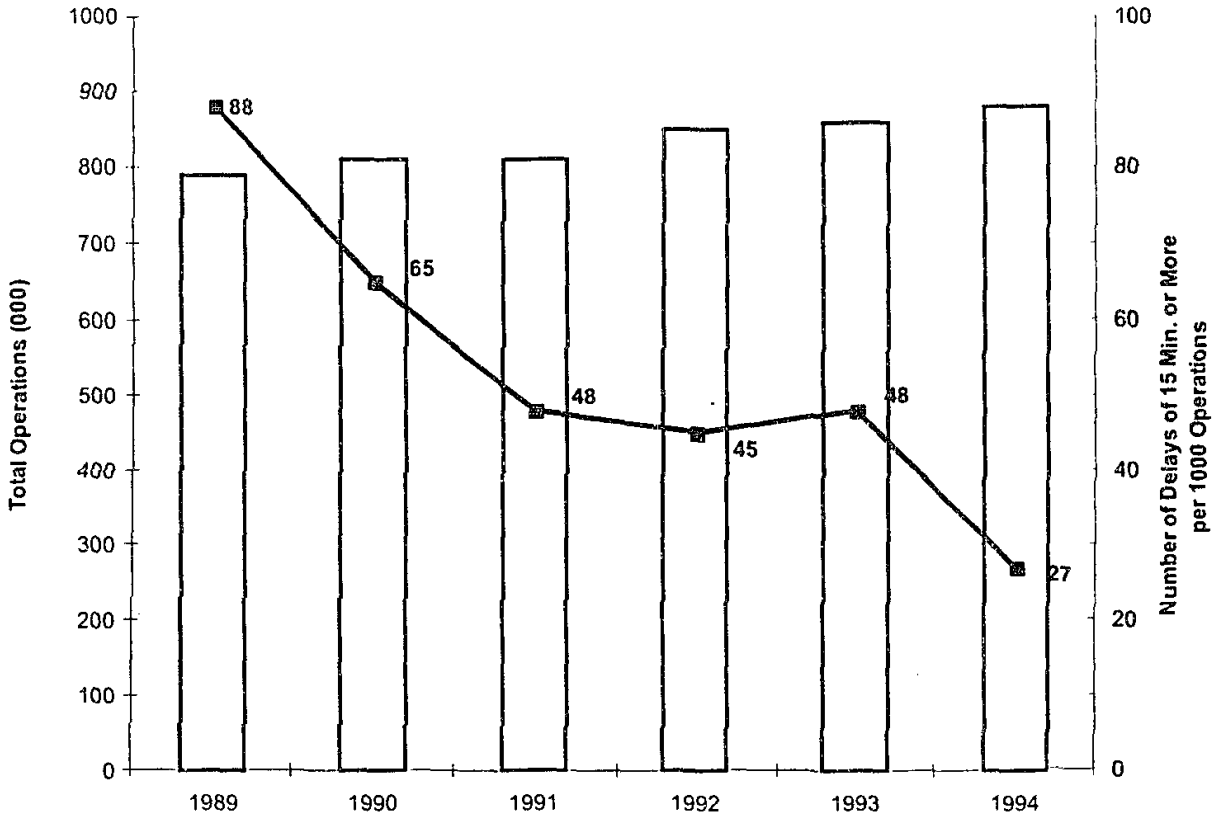
On the contrary, the available data[12] shows that delays at O'Hare have steadily and dramatically decreased over the years.

The official data record is the FAA's own ATOMS system. And the data from ATOMs shows that delays at O'Hare have decreased by 70% since 1989 and are lower in 1995 than they were in 1985. Indeed, delays per operation at O'Hare in 1995 were lower than at Midway in 1995.[13]

12 There are two sources of data used by the FAA to quantify the amount of delay experienced at the Nation's Airports:
-The first data source is FAA's official Air Traffic Operations Management System (ATOMS). This is the official data collected by FAA personnel at O'Hare and the Nation's other major airports.
-The second delay data source is unofficial information prepared by individual carriers and reported to the FAA. There is no independent auditing of the accuracy of this second data source. Historically this data source was called the Standardized Delay Reporting System or "SDRS." (See FAA 1988 *Airport Capacity Enhancement Plan* at 1-7). In recent years the name has apparently changed to the Airline Service Quality Performance (ASQP) database. (See FAA 1996 *Airport Capacity Enhancement Plan* at 20).

13 Source FAA 1996 *Airport Capacity Enhancement Plan* and database. Nor does data supplied by United and American in the SDRS/ASQP database show any major increase in delays at O'Hare over the last twenty years. Indeed the delays reported by the airlines at O'Hare are roughly the same as they reported in the late 1970s.

OPERATIONAL DELAY RATE, 1989-1994[14]



The New Runways are for Increased Capacity and A Massive Flight Increase

If the data at O'Hare fail to demonstrate any increase in delays, and indeed actually show a dramatic drop in delays, why the push for new runways? The new runways will allow Chicago to get the so-called "High Density Rule" lifted and thus be able to push hundreds of thousands of new flights through O'Hare.

O'Hare is essentially a dual parallel runway airport designed in the *50's and built in the 60's and* 70's. It has three sets of dual parallel runways. Chicago and the airlines have plans to install two new runways — one in a Northwest/Southeast direction and one in an

14 See A Study of the High Density Rule (FAA 1995) at 36. This graph shows that delays are decreasing while *traffic is increasing — a phenomenon* that can occur by piecemeal increase in airport capacity through either physical improvements or change in air traffic control procedures.

East/West Direction. This would give Chicago two sets of what are called "triple parallels."

Because of O'Hare's essentially dual parallel nature, the FAA recognized long ago that O'Hare was reaching its capacity. As a stop-gap measure in the 1970s, FAA allowed the use of a third converging runway in good weather conditions. But because this stop-gap measure — while allowing more flights into the airport — also created more congestion, FAA imposed what is known as the High Density Rule. This rule limits the flights at O'Hare to 155 flights an hour in good weather conditions.

Chicago and the airlines say that the delay is caused by bad weather conditions, called "IFR" (Instrument Flight Rule) conditions. But what Chicago and the airlines don't reveal is the relationship between good weather and bad weather conditions in the High Density Rule. The High Density Rule is currently 155 operations per hour in VFR (Visual Flight Rules) conditions, which is a combination of balancing the highest output capability of the airport in good visibility conditions with the output capacity of the airport in low visibility conditions. In effect, the low-visibility limits control not only what may be put through the airport in bad weather, but also control what may be put through the airport in good weather as well, since the good weather limit is based on this good weather/bad weather combination of balanced capacity.[15]

By raising the volume of traffic one can bring in during IFR conditions, the airlines can also raise the total volume of traffic they can bring in during VFR conditions. Thus with triple parallel runways, Chicago and the airlines can get the ceiling on the High Density Rule lifted and push hundreds of thousands of additional flights into O'Hare.

And as noted above, any doubt about Chicago's real plans for the new runways at O'Hare are slowly leaking out. Chicago is currently building pieces of its "mini-master plan" to grow O'Hare from its current level of 33 million enplanements to an expanded level of 50 million enplanements. The new runways and associated elements of the master plan call for an increase in flight operations by 300,000 to 500,000 new flights at O'Hare.

15 For a discussion of FAA's concept of Balanced Airfield Capacity and the relationship between IFR and VFR conditions in setting the hourly limit, see FAA, *A Study of the High Density Rule, Technical Supplement No. 3* at B-2, *et seq.*

It's More Than Just Kerosene

Recently, a trustee in Elk Grove Village, a former United employee, spoke of helping his neighbor power wash the outside of his house. In his words, there was enough kerosene in the water coming off the house to fuel a 727.

But his and our concerns are not limited to the problems of kerosene-coated houses and cars. O'Hare's dirty (but not so little) secret is the issue of air toxics. Air pollution from O'Hare consists of burned and unburned jet fuel aerosols containing dozens of carcinogenic organic compounds —including Benzene and Formaldehyde.[16] When one concentrates 900,000 flight operations in the closely confined space of O'Hare and its immediate surrounding communities, the inevitable result is a high concentration of a host of toxic pollutants in a pollution cloud over and around O'Hare. And unlike the new regional airport — which will by design have a significant land buffer to assist in the dispersal of these toxic pollutants to keep them away from residential areas — there is no such buffer at O'Hare.

IEPA acknowledges that O'Hare with its 900,000 aircraft operations ranks in the top 3-5 sources of toxic pollutant emissions in the state — comparable to major coke plants and refineries. Yet neither Chicago nor IEPA measures the quantity or chemistry of toxic pollutants coming from O'Hare and being deposited in our communities.

Read The Fine Print

Chicago and the IEPA say that O'Hare emissions appeared to be in compliance with NAAQS (National Ambient Air Quality Standards). However, as IEPA has admitted, these NAAQS standards do not address the specific health risks presented by the toxic and hazardous air pollutants emitted at O'Hare. For example, the NAAQS for Ozone and Carbon Monoxide are based on health studies specific to those pollutants and do not address the health hazards presented by toxic pollutants such as Benzene and Formaldehyde — which are pollutants associated with O'Hare emissions. Neither IEPA nor Chicago samples

16 See Toxic Emissions From Aircraft Engines (United States Environmental Protection Agency 1993)

for toxic or hazardous pollutants such as Benzene or Formaldehyde around O'Hare.

Nor does the fact that much of the IEPA's and the federal EPA's permitting programs focus on "stationary" sources allow the agency to ignore the massive scope of the O'Hare toxic emissions problem. Our children do not know whether the toxic pollutants they breathe from O'Hare operations come from either stationary or mobile emission sources associated with the airport. Further, existing federal and state laws clearly give federal and state officials power to control the air pollution aspects of O'Hare.

Nor does the fact that individual aircraft meet the "end-of-the-pipe" emission standards for jet engines resolve the problem. A single automobile on the street may not pose a health risk, but an automobile emitting pollutants in compliance with "end-of-the-pipe" standards can be deadly in a constricted environment when thousands of autos are concentrated in one location. Similarly, whatever the state of compliance with individual jet engine emission limitations, the concentration of thousands upon thousands of these aircraft in a confined atmospheric locale creates major unacceptable health hazards for our communities.

Our concerns over the toxic and hazardous pollution from O'Hare operations has impacts on both current and projected operations at O'Hare. The available evidence — both in data and through individual citizen experience — indicates that current levels of operations at O'Hare create toxic ambient air concentrations in our communities above acceptable levels. Further, proposed expansion of O'Hare operations will only make an already intolerable toxic ambient air situation even worse.

The Scandalous Failure To Protect Our Public Health From O'Hare Emissions

Thus far, O'Hare has led a charmed life with regard to toxic emissions. Despite repeated complaints by residents and local officials, there is no testing program in place to measure the concentrations of these toxic pollutants -- either as they are emitted at O'Hare or in the concentrations of these toxic pollutants in the communities around O'Hare. Nor is there a control program to reduce these emissions to health protective levels. If General Motors or U. S. Steel or Amoco tried to run a major industrial plant with the volume of O'Hare's toxic emissions without testing and without pollution controls, they would be shut down and fined. Yet O'Hare is spewing out thousands of tons of these toxic materials each year with impunity.

Worse Than A Toxic Superfund Dump

How bad is the toxic air pollution emitted from O'Hare operations into neighboring communities? We can't definitively say, given the failure to test for these pollutants. However, based on anecdotal test data from Midway — which emits far smaller amounts of toxic pollutants — Midway emissions are several hundred times higher than would be allowed from a federal Superfund toxic dump site. This means, based on all available evidence, that O'Hare operations emit carcinogenic toxic compound into residential communities around O'Hare at several hundred times that which would be allowed from a federal Superfund toxic dump site.

NO MORE RUNWAYS AT O'HARE

Ever since the 1990 election, we have been playing a game over an administrative runway ban on new runways at O'Hare. The Governor has said that he will prohibit new runways at O'Hare unless there is a "consensus" among impacted suburbs around O'Hare to accept new runways. In turn, Mayor Daley has tried to create such a "consensus" by patching together a collection of suburbs with either no significant impact or which are under the political influence of pro-runway forces like Rosemont.

Yet the majority of the communities truly affected by the noise and toxic air pollution at O'Hare are represented by the Suburban O'Hare Commission (SOC). Over 75% of the voters in the SOC communities — representing hundreds of thousands of people living in close proximity to O'Hare — have repeatedly voted against new runways in numerous referenda putting the issue directly to them. It's time that we stop playing the shifting word game called "consensus" and give these communities the protection they need and deserve — a permanent legislative ban on new runways at O'Hare.

Without a ban on new O'Hare runways:

- Chicago will force several hundred thousand new flights into O'Hare — with all the associated noise and added toxic air pollution those flights represent.

- The O'Hare expansion will effectively be used by opponents of the new regional airport to "deep six" any realistic chances for construction and operation of that airport. Why build a new airport now when we can stuff several hundred thousand more flights into O'Hare?

- The region will lose several hundred thousand jobs and billions of dollars in new economic benefits when the expanded O'Hare is unable to meet projected demand and the new growth is channeled — as desired by Chicago and the airlines — to other states and other regions.

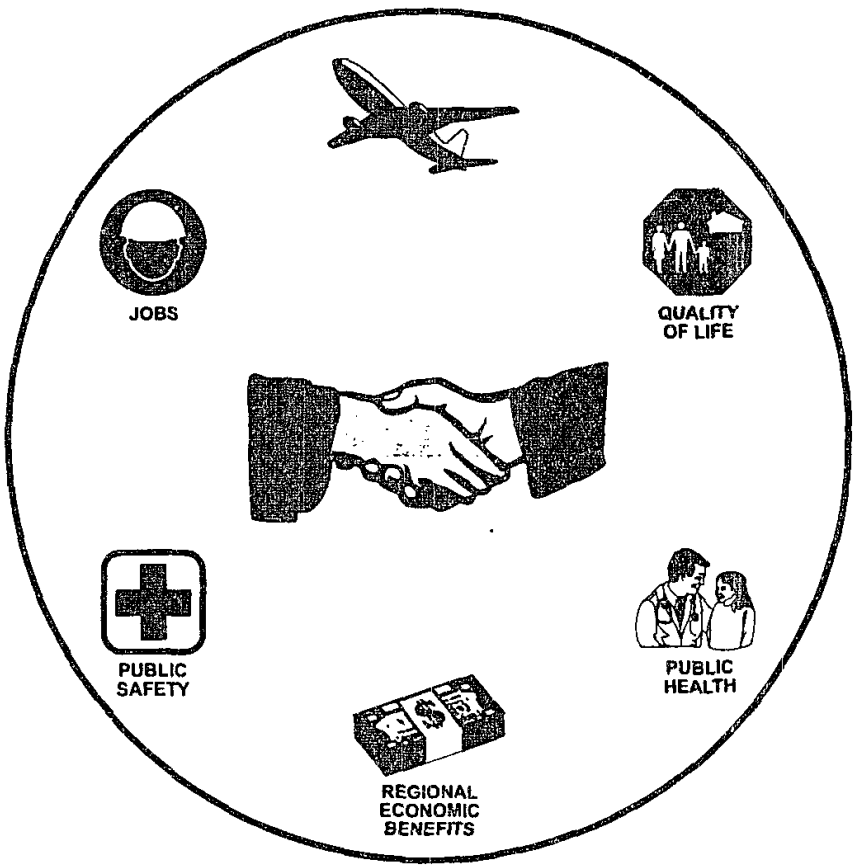
What Congressman Hyde said eight years ago is equally applicable today.

> *Hiding in the weeds as a major threat to aggressive action on a metro Chicago "SuperPort" is Chicago's desire to add more runways at O'Hare. Rather than build an environmentally sound new airport, Chicago wants to add new runways at O'Hare.*
>
> *As long as the issue of new runways remains an option for Chicago, the economic development of a new metro "SuperPort" is imperiled. Chicago will argue that putting more traffic into O'Hare obviates the need for a new airport. The specter of new runways will haunt the timing and the size of the new metro "SuperPort."*
>
> *It's time for Illinois' political leadership to put a stake in the heart of the new runway nightmare at O'Hare.*

CONCLUSION

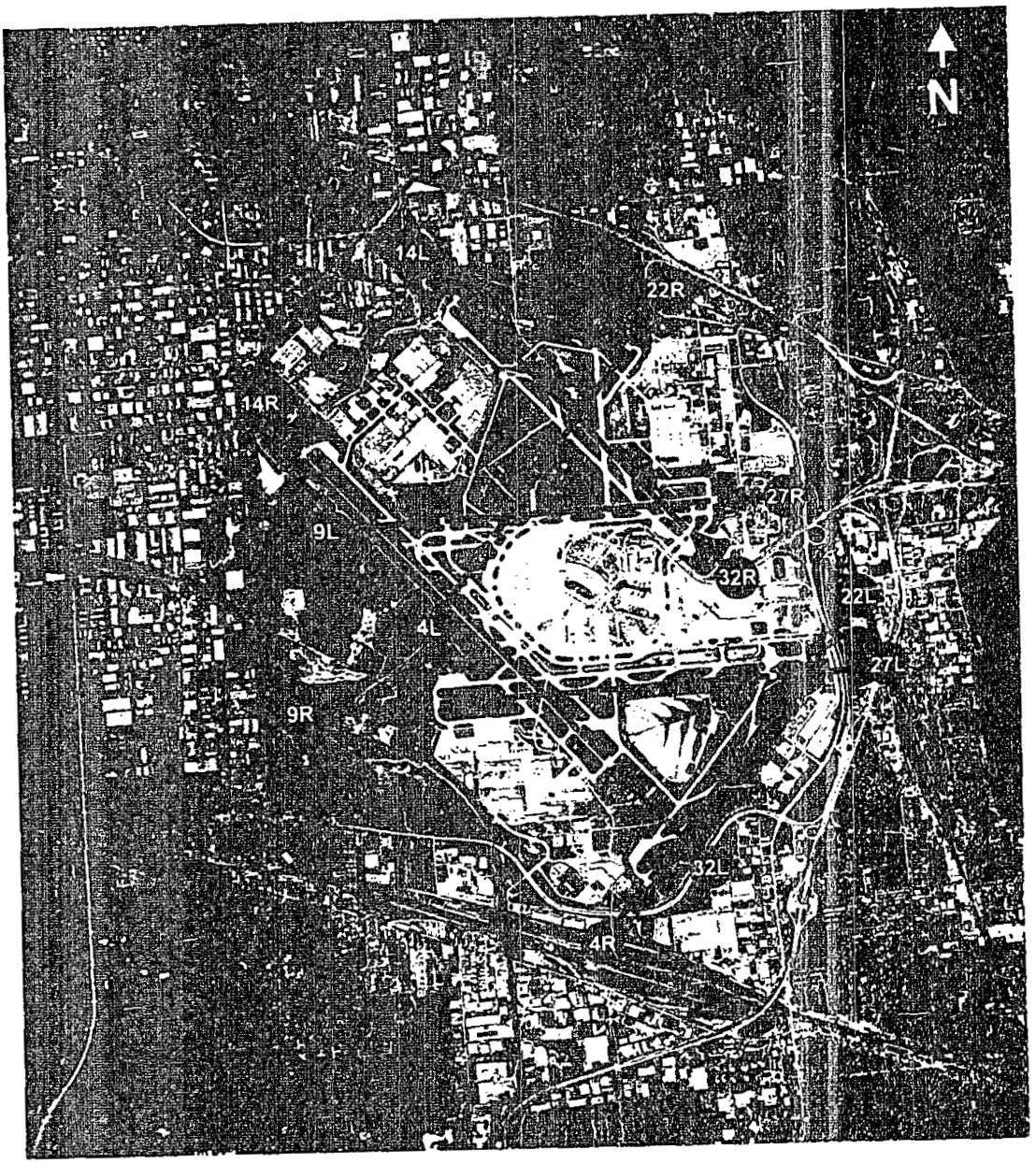
In every battle over public policy there is a time to stand and fight for what's right for our people and our communities. The time to stand and fight — and win — the battle for a new regional airport and for permanent protection against new O'Hare runways is now.

We ask for the help of everyone — Republican, Democrat, Independent, Business, Labor, Environmentalists, County Boards, State Legislative leaders and members, our fellow members of the Illinois Congressional delegation. Finally, we ask for the help and leadership of the candidates for state and federal office in 1998. This issue — and the hundreds of thousands of jobs, billions of dollars in economic benefits, and the health and quality of life of O'Hare communities — is the number one issue of the 1998 campaign. It's time to stand and deliver.



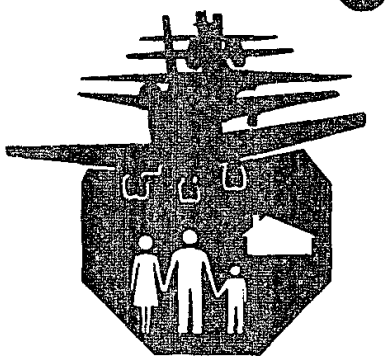
The Partnership For Metropolitan Chicago's Airport Future

Exhibit



THE SHELL GAME WITH "SLOTS" AT O'HARE

EXHIBIT 3



SUBURBAN O'HARE
COMMISSION

THE SHELL GAME WITH "SLOTS" AT O'HARE

A Report to
Congressman Henry Hyde,
Congressman Jesse Jackson, Jr.
and
Senator Carol Moseley-Braun,
Senator Richard Durbin
and
Congressman Glenn Poshard
and
Illinois Secretary of State George Ryan

PREFACE

There are currently pending before Congress two bills – S. 2279 and H.R. 2478 – which propose to add a number of additional "slot exemptions" to O'Hare.

The current slot proposals illustrate the confusion – much of it deliberate – that surrounds the airport controversy in metropolitan Chicago and the interrelated subjects of demand, capacity, traffic growth, safety, monopoly fares, public health issues, O'Hare expansion, and the new metropolitan Chicago regional airport. This study by the Suburban O'Hare Commission (SOC) demonstrates:

1. There is no additional capacity to add additional slots at O'Hare. Attempts to jam more flights into O'Hare will create serious delays for all passengers using O'Hare and will reduce the margin of safety for both O'Hare passengers and residents of surrounding communities.

2. The more than 100 slot exemptions granted since 1994 have exhausted the questionable marginal incremental capacity of four slots per hour found to exist by USDOT in its 1995 report, *A Study of the High Density Rule*. The DOT found that O'Hare had the capacity for 159 flights per hour -- four above the High Density Rule limit of 155 per hour. Because of the more than 100 slot exemptions already granted, the four slot per hour incremental capacity claimed by the DOT in *A Study of the High Density Rule* is already exhausted.

3. Contrary to the 1994 law that first created slot exemptions, most of the slot exemptions granted since 1994 have been given to affiliates of United Airlines and American Airlines (the dominant airlines at O'Hare) under the preposterous claim that affiliates of these dominant airlines are "new entrants"-- a claim directly contrary to the letter and intent of the 1994 statute to bring in new competitors. A slot exemption law that was to enhance competition by bringing in new competitors to United and American has instead been violated in order expand the monopoly power of United and American at Fortress O'Hare.

4. Nor, contrary to popular misconception, were most of these more than 100 slot exemptions given to truly "underserved" communities in the Midwest – another claimed justification for exceeding the High Density Rule limit. Instead, most of the domestic slot exemptions were for cities that are far distant from Chicago and the Midwest and which have access to national and international service through other hub cities.

5. Further, United and American have abused the letter and intent of the law by engaging in what United calls "musical slots" -- applying for slot exemptions in cities they already serve. Once they received the exemption, they have pulled the regular service slots from those cities and used those slots for purposes not in the 1994 statute – essentially gaining slot exemptions by a bait-and-switch technique.

6. United has correctly observed that any incremental slot exemptions (if indeed any additional incremental capacity exists) are a "zero sum" game. Giving slot exemptions

for one use automatically and necessarily precludes their use for another purpose. Given the profligate and illegal grant of slots to United and American affiliates under the 1994 statute, the "zero sum" rule dictates that the government has little or no capacity available to serve demand for exemptions for the purposes authorized by the 1994 statute – *i.e.*, essential air service communities, international operations, and new competitive entrants.

7. By adding broad and ill-defined exemption categories in the proposed Senate (McCain/Moseley-Braun/Durbin) bill (non-stop regional jet service) and the house bill (communities not receiving "adequate" service), the proponents of additional slots at O'Hare have exacerbated the "zero sum" game. For every slot exemption given to non-stop regional jet service — most likely to United or American affiliates and most likely to a city outside the Midwest already served by another hub — DOT will be necessarily precluded from giving a slot exemption to an essential air service community in the Midwest, or to an international operation, or to a new competitive entrant.

8. The mythical "military" slots are not available. Apart from the claimed incremental slot capacity between the 155 operations per hour limit of the High Density Rule and the 159 operations per hour claimed by FAA in its 1995 HDR study, proponents and some misinformed members of the press have claimed that the slot exemptions were coming and could come from supposedly "unused" military slots at O'Hare. FAA has ruled that the any unused military slots (encompassed in the "other" category of 14 CFR § 93.123) have already been used up for other purposes. Further, an analysis of FAA data shows that the military used less than ½ slot per hour at O'Hare in 1997 — far less than the exemptions already granted since 1994 and far less than the additional exemptions proposed in the new legislation.

9. Included in the proposed Senate bill (McCain/Moseley-Braun/Durbin) is a proposal to transfer approximately 16 slots per day that the FAA currently allocates to international service (primarily for foreign carriers) and give these slots to United Air Lines for domestic routes. Such a transfer would not only be a huge subsidy to United, the transfer would dramatically reduce the United States ability to meet international aviation agreements — especially in light of the exhaustion of incremental capacity by slot exemptions already illegally given to United affiliates. Further, United is on record (in fighting domestic slot exemption awards to other carriers) stating that, given the "zero sum" game and extremely limited slot capacity, the best use of any open slots at O'Hare is for international traffic, not domestic operations.

The current slot proposals also illustrate – often in the very words of those who oppose development of a new airport – that current demand at O'Hare has outstripped its capacity. The issue facing the state and federal officials who represent Illinois is not just how to address a problem that will arise in 20 years. The problem is now and our officials can no longer put off the tough and uncomfortable decisions that our State and region have been unwilling to make over the last decade. Our political leaders of both parties have to bite the bullet and reconcile themselves to the immediate need for third airport construction in Illinois.

The Suburban O'Hare Commission is addressing this report to a select group of federal and state public officials:

- The report is addressed to Congressmen Hyde and Jackson because they have been in the front line in calling for the fast-track construction of an environmentally sound new regional airport to provide the capacity necessary to meet the needs of the region. See *Chicago's Airport Future: A Call For Regional Leadership* (1997).

- The report is addressed respectfully to Senators Moseley-Braun and Durbin because their so-called "compromise" is no compromise at all, but will lead to severe adverse consequences for O'Hare travelers, the region's economy, lack of service to truly underserved communities, and environmental and safety problems at O'Hare. For some reason, Senators Moseley-Braun and Durbin were not given complete information and have entered into a slot exemption "compromise" that is highly destructive to the region, our international responsibilities, and to communities around O'Hare.

- Finally, the report is addressed respectfully to the two candidates for Illinois governor – Congressman Glenn Poshard and Illinois Secretary of State George Ryan.

  Congressman Poshard is a respected and knowledgeable member of the House of Representatives Transportation Committee and certainly is in a position to influence the proposed legislation being put forward by that Committee.

  Illinois Secretary of State Ryan – as the leader of the Republican party in Illinois – has been an outspoken advocate in favor of a new regional airport and against further expansion of O'Hare. As the leader of the Republican party in Illinois, he should be able to call on Republican unity from the Republican members of the Illinois congressional delegation to oppose these destructive slot exemption proposals.

But more than the immediate concern over these destructive slot exemption proposals, the facts and realities behind these slot proposals make even more urgent the need for decisive action to build the new regional airport.

Respectfully, senior Democratic officials like Senators Moseley-Braun and Durbin and Congressman Poshard have to stop avoiding an open and candid discussion of these issues and stop avoiding taking clear stands on these issues for fear of alienating Chicago's mayor – an adamant opponent of the new airport and ardent advocate of O'Hare expansion.

Respectfully, the Republican candidate for governor, Secretary of State George Ryan must bring the currently divided ranks of Republican state and federal legislators together to ensure the achievement of the two goals Secretary Ryan has forcefully espoused – fast track construction of a new airport and no further expansion of O'Hare.

EXECUTIVE SUMMARY

The Confused Rhetoric Over "Slot" Proposals

During the summer of 1998, there have been several congressional proposals to add "slot exemptions" at O'Hare International Airport. Despite widespread community opposition to increased flights at O'Hare, various Senators and Congressmen have claimed that adding such slots is necessary for a variety of reasons – including a plea for "increased competition" and providing service to "underserved markets".

After a great deal of media publicity over a proposal which purported to add 100 slots per day at O'Hare, Senators Carol Moseley-Braun and Richard Durbin announced with great fanfare that they had negotiated with Senator McCain to reduce this number of "slots" to 30 additional slots per day.

Much of the talk of allowing additional slots also centered around airline and press claims that the United States Department of Transportation – based on its 1995 report, *A Study of the High Density Rule* – had discovered significant new capacity at O'Hare which could be made available for these new operations.

Further, there was much talk that many current slots at O'Hare – as many as ten per hour – were used by military aircraft, and that with the movement of the Air Guard and Reserve units out of O'Hare these slots would be available to accommodate new operations.

All the rhetoric has now been focused into two bills now pending before Congress. S. 2279 is the McCain/Moseley-Braun/Durbin "compromise" bill which calls – contrary to their press statements – for the addition of 46 slots at O'Hare. H.R. 2478 is the House version of the bill. It would add 29 slots per day at O'Hare. In addition, a proposed amendment to H.R. 2478 would add 16 more slots above the 29.

Rather than rely on confusing media stories about the slot situation at O'Hare, the Suburban O'Hare Commission (SOC) has undertaken a study of the *existing* slot exemption legislation that was passed by Congress in 1994 and the implementation of that slot exemption authority by DOT and the airlines. This study shows that much of the rhetoric is misleading – either due to a lack of information or due to a deliberate attempt to mislead the public and Congress.

The 1994 Slot Exemption Law

The 1994 law – like the proposed law – purported to authorize the USDOT to grant slot exemptions at O'Hare for certain strictly limited public policy purposes. Section 41714 of the 1994 law allows the award of slot exceptions for only the following reasons: 1) to serve underserved communities expressly identified as "essential air service communities", 2) to allow international flights to come into O'Hare, and 3) to foster new competition in what is a notoriously non-competitive Fortress Hub by allowing "new entrants" into O'Hare to compete with the dominance of the United and American hub-and-spoke network.

The 1995 DOT High Density Rule Study

Coupled with the authority for slot exemptions passed in the 1994 legislation was a mandate that USDOT conduct a detailed study of the capacity at O'Hare and other slot-controlled airports to determine what additional capacity – if any – was available at O'Hare. In May 1995 the DOT issued its 4-volume report, *A Study of the High Density Rule.* That report concluded that O'Hare's capacity was 159 operations per hour – four more than the 155 operations per hour limit in the DOT's High Density Regulation for O'Hare. 14 CFR §93.123.

In June, 1995 the USDOT publicly announced that DOT would *not* increase the slot limits at O'Hare from 155 to 159 flights per hour because the increase in the limit from 155 per hour to 159 per hour would *dramatically* increase the delays experienced by air traffic at O'Hare. Moreover, this major increase in delay would not only impact the incremental four additional flights per hour but would also cause a major increase in delays for *all* the other 155 flights per hour. A fact most people forget – but one that the FAA acknowledges – is that added delays created at the margin of capacity by adding just a few flights, *e.g.,* four per hour, can have dramatic and exponential delay impacts on *all* the traffic using the airport.

SOC's study shows that despite this finding and decision by DOT in 1995, DOT has (since 1995) awarded more than 100 slot exemptions – *most of them illegally – above and beyond* the 155 per hour limit. Indeed, the evidence is clear as a result of these added slot exemptions, that more than 159 operations per hour are *currently* operating at O'Hare – above the limit that DOT's study said was the safe capacity of O'Hare.

There is simply no more room to safely cram additional flights into O'Hare above the more than 159 slots per hour currently awarded – without seriously increasing delays for all passengers at O'Hare and without seriously reducing the margin of safety for both O'Hare passengers and the safety of those who live around O'Hare.

FINDINGS

Among the findings of the SOC study are:

1. There is no additional capacity at O'Hare.

There is no additional capacity at O'Hare to accommodate the proposed slot additions. The proposal is based on the false premise that there is additional incremental capacity as a result of the 1995 DOT Study which found that O'Hare had a capacity of 159 operations per hour – four slots above the 155 slots per hour limit of the High Density Rule.

> **More than 100 new slot exemptions – *above and beyond* the 155 per hour slot limit of 93 CFR §93.123 – have already been awarded at O'Hare since 1994. Based on simple arithmetic and an inquiry to the FAA, it appears that O'Hare is currently operating at or above the 159 operations per hour which DOT has determined is O'Hare's capacity.**

Given these pre-existing awards of more than 100 slot exemptions since 1994, there is no more room to add 30 more additional slots at O'Hare without creating enormous delays and serious safety hazards. FAA has recently confirmed in 1998 to the State of Illinois that the 159 per hour operations level is FAA's current best estimate of the capacity at O'Hare.

2. Blatant illegalities in post-1994 slot awards – have expanded the monopoly power of American and United at Fortress O'Hare.

Most of the 100 slot exemptions awarded since 1994 are blatantly illegal awards of new domestic service slots to affiliates of United and American, the two dominant carriers at Fortress O'Hare. Nothing in the 1994 statute authorizes such awards and the award of these slots allows these two dominant carriers to expand the very monopoly positions that the 1994 statute was directed against. Luckily, because United and American candidly exposed the illegality of the slot awards to each other in pleadings before the DOT, we have the benefit of their legal documents and admissions in the DOT docket to buttress SOC's findings.

The DOT has awarded United's affiliate airlines – operating under the name "United Express" – more than 50 slot exemptions at O'Hare since 1994 claiming that these "United Express" airlines (Great Lakes Aviation, Trans States, and Atlantic Coast, all d/b/a "United Express") were "new entrants" under the provision of 49 U.S.C. §41714 that was designed to encourage new competition to come into the airport.

American Airlines has correctly criticized these exemptions to United's affiliates as a subterfuge. American challenges DOT's decision to classify these United affiliates as "new entrants". DOT says that United can get away with this subterfuge because United's affiliates are "franchise" operators (and thus qualify as "new entrants") whereas American Eagle is a corporate subsidiary of AMR and would not qualify as a new entrant. American quite properly states that this is a distinction without meaning and notes that all the United Express passengers think of the United Express flights as part of United and all of the American Eagle flights as part of American. As American points out, a customer coming into a McDonald's does not know whether the store he is entering is company-owned or a franchisee. For all practical purposes, these United Express affiliates are as much a part of United – for purposes of the new entrant/stimulating competition criterion – as American Eagle is part of American.

The end result of this "new entrant" subterfuge is to greatly enhance United's hub-and-spoke system and expand United's dominance in the Chicago market on an even broader scale than before. Thus a statute whose basic justification lay in the enhancement of competition by bringing in new entrants has been used to subvert both the letter and the spirit of the statute.

Not content with violating the letter and spirit of the statute with its massive awards of exemptions to United, DOT then proceeded to violate the statute again by making the equivalent of "new entrant" awards to American, even though DOT knew American could not qualify under the "new entrant" subterfuge DOT had used for United's "franchisees". American applied

for slot exemptions for new service to Duluth, MN.; Fayetteville, Ark.; and Shreveport, La. *None of this service* qualified under any of the three statutory exemptions of §41714.

To get around this hurdle, DOT engaged in a game of "musical slots" (United's term, not ours). DOT literally played a "shell game" where it took 16 slots already used by American for essential air service to Bloomington, Champaign and Lacrosse – told American to use those slots for new service to Duluth, MN.; Fayetteville, Ark.; and Shreveport, La. – and then "awarded" "new" essential air service slots to American for Bloomington, Champaign and Lacrosse. United properly criticized this award as totally without statutory justification. DOT had used a shell game to award slot exemptions for service that was not authorized by statute.

The bottom line is that most of the more than 100 slots awarded since 1994 have been to United or American affiliates – and most of those awards are blatantly illegal.

3. The "Underserved Community" Myth

The express restrictions of the 1994 statute were to limit exemptions to EAS (Essential Air Service) communities, international flights and to new entrants. We have already shown that virtually all of the more than 100 exemptions were given to United or American affiliates. The evidence is also clear that the vast majority of the domestic slot exemptions given to United and American affiliates – more than sixty exemptions – were <u>not</u> to EAS communities.

Moreover, contrary to popular misconception, the great bulk of these slot exemptions are *not* for service to Midwestern communities that somehow cannot get service to O'Hare.

Rather than serve close-in Midwestern destinations, these slot exemptions have been awarded to relatively distant non-Midwestern cities who are readily served by other hubs such as Atlanta, Washington-Dulles, Cincinnati, and Pittsburgh. Charleston, West Virginia; Wilkes-Barre, Pennsylvania; Montgomery, Alabama; Chattanooga, Tennessee; Roanoke, Virginia; and Shreveport, Louisiana are hardly Midwestern cities that have been deprived of access to the Chicago market and have no alternative hubs. As Delta's affiliate, Comair, pointed out many of these communities have adequate service to other hub cities in the South, Southeast, and Midwest.

4. "Musical Slots"

Moreover, even where a few slots have been awarded for Midwestern cities, these have been part of the "musical slots/shell game" that both United and American have criticized – and then employed to their advantage. For example DOT awarded United – again without meeting the requirements of the 1994 Act (§41714) – slot exemptions for flights from Dubuque, Iowa and Sioux Falls, South Dakota to O'Hare. While these might be considered Midwestern cities for which service ought to be provided if there was capacity at O'Hare, American correctly points out that United *already* had service from these cities to O'Hare and – upon receipt of the slot exemptions – promptly canceled this pre-existing service and used the slots for other traffic apart from Dubuque, Iowa and Sioux Falls, South Dakota. This is the very same kind of improper "musical chairs/shell game" that United criticized when DOT let American do it. These

communities already have the service and the slot exemptions allowed the dominant O'Hare to pull this service – in effect giving slot exemptions for other purposes not encompassed within the statutory requirements

5. The "ZERO SUM" Game

United Airlines has correctly pointed out that the meager "excess" capacity of O'Hare (to the extent that it has not been exhausted with existing 1995-1998 exemption awards) is extremely limited. United has correctly stated that the award of slot exemptions – assuming there is any incremental capacity at O'Hare – is a "ZERO SUM" game. Award of slots for one purpose necessarily limits the ability to award slots for other purposes.

For every slot exemption DOT awards to a "new entry" for domestic service to promote competition, DOT necessarily excludes a slot that could go to either an essential air service community (EAS) or to an international flight. For every slot exemption given to international flights, DOT necessarily excludes a slot that could go to either a "new entry" for domestic service or an EAS community.

United strongly emphasized that – given the extremely limited amount of available slot exemptions (only four according to the 1995 DOT High Density Report) – the slot exemptions ought to be given to that traffic that brings the highest yield to the nation and the region rather than wasted on lower benefit traffic.

United has pointed out that the highest economic yield to the nation and the region comes from international flights and that – given O'Hare's meager incremental capacity – slot exemptions ought to be given to international flights instead of new slots for domestic service.

The point United makes is a valid one: Incremental slot capacity (if it does exist given the exhaustion of the four slots found in the 1995 DOT High Density Study) is a "zero sum" game. Even assuming that some slight additional capacity exists – and even assuming that the nation is willing to impose additional delays on *all* the O'Hare travelers to award those incremental slots – the amount of incremental slots available is small and finite. Giving those slots to regional jet non-stop domestic service automatically precludes those slots from being used for essential air service communities or for international service. Conversely, giving those slots to EAS service or international, automatically precludes the opportunity to award those slots to new entrants in domestic service.

Given the profligate award of more than 100 slot exemptions by DOT since 1995 – using up the four theoretical slots the DOT found were available in its 1995 High Density Rule Study – it is extremely unlikely that there is additional capacity to provide the additional slots contained in the McCain/Moseley-Braun/Durbin 30 new slot exemption bill. Even if there is, it will come at a cost of imposing increasing delays on *all* O'Hare passengers.

6. The McCain/Moseley-Braun/Durbin "compromise" bill (S.2279) and the companion House Bill compound the "Zero Sum" problem.

The current proposals before Congress compound the "zero sum" problem by adding more categories to the already exhausted and overbooked marginal exemption capacity at O'Hare. While keeping the exemption categories of essential air service, international service and "new entrants", both the House and Senate bills add new categories for exemption on top of the already existing exemption categories. The House version adds communities "not receiving sufficient air service" (whatever that means). The Senate adds communities served by non-stop "regional jet" service (whatever that means). Moreover the Senate version (and a House suggested alternative) would transfer 16 additional slots from international service to United Airlines for use in domestic service.

Each of these additional categories (insufficient air service, non-stop regional jet service; transfer of slots to United) will necessarily compete with the pre-existing exemption categories for a limited number of slot exemptions (which, as discussed below, have already been exhausted by the post 1994 slot exemptions).

The McCain/Moseley-Braun/Durbin proposal – by adding a fourth category of non-stop regional jet service to the previous three categories of EAS, international, and new entrant – makes it very likely that one or more important categories of traffic will be squeezed out in favor of another category. For example – as United has pointed out in another context – allocating these new slots to commuters or to non-stop regional jets necessarily precludes their use to meet international needs or the needs of closer in Midwestern communities whose traffic level cannot support regional non-stop jet service.

Finally by stuffing more aircraft operations into the margin of O'Hare's capacity, the McCain/Moseley-Braun/Durbin proposal will necessarily create significant new delay problems for *all* O'Hare passengers and create self-fulfilling pressure for new expansion at O'Hare. According to the delay curve presented in the 1995 DOT High Density Rule Study, adding the four flights per hour would significantly increase the delay suffered by all passengers at O'Hare. At the margin of O'Hare's capacity where these flights are added, each additional flight added has an exponential impact on the delays suffered by all other flights. The McCain, Moseley-Braun, Durbin proposal would add another two flights per hour on top of the four flight maximum found by DOT's 1995 High Density Rule Study to be the maximum incremental capacity available at O'Hare.

7. The Mythical Military Slots are not available.

In addition to distortion and confusions about the slot exemptions under §41714 – *above* the 155 operations per hour High Density Rule (14 CFR §93.217) – several advocates of more operations at O'Hare have argued that FAA should allow the use of "unused" "military" slots that are supposedly available *within* the 155 slots of the High Density Rule. There are several problems with this argument.

There are no slots at O'Hare dedicated to military operations. There is a category called "other" under 14 CFR §93.217 which includes other kinds of aircraft operations that do not fit into scheduled commercial or scheduled commuter. This "other" category (10 slots per hour) includes general aviation, military, nonscheduled commercial aircraft and any other miscellaneous nonscheduled operations.

Further, according to the FAA, in 1997 military operations averaged approximately 5 flights per day – or less than ½ slot per hour. Thus more than 95% of the operations in the "other" category are operations other than military.

None of these other slots is "unused". A check with FAA revealed that all of the 10 other slots are fully used. Further, FAA, when faced with the argument for reallocating the "other" category has stated that such action would require a full notice and comment rulemaking to change the HDR rule. FAA has declined to shift these "other" slots to commercial or commuter.

8. The 30 proposed additional slots – above and beyond the more than 100 new slot exemptions already awarded above 155 - will exacerbate delays for all O'Hare travelers and create a self-fulfilling pressure to increase O'Hare's capacity.

Adding slots at the margin of O'Hare's capacity will increase delays for all traffic using O'Hare – including the 155 operations per hour in the base slot rule. By continuing to squeeze in traffic at the margin and thus exacerbating delays for *all* O'Hare travelers, the DOT, the airlines, and those supporting slot increases are creating a self-perpetuating cycle where more flights create more delays and create more pressure to expand O'Hare's capacity to "reduce delays".

Delay and capacity are two sides of the same coin. By "reducing delays" through such devices as air traffic control procedures to bring aircraft operations closer together (*e.g.* Land and Hold Short, high speed exits, reduced separations) the FAA is necessarily increasing capacity at the airport.

FAA and Chicago claim that they are not taking any steps to increase the capacity of O'Hare. If that statement is true (and no capacity enhancement steps are underway) then the necessary and inescapable conclusion is that adding more slot exemptions will dramatically increase the delay experienced by all travelers at O'Hare – not just the delays experienced by the additional exemption flights. That is the finding of the 1995 DOT HDR Study and is an inescapable finding if no capacity expansion is undertaken.

However, if FAA and Chicago are not telling the truth and they are engaged in capacity enhancement at O'Hare, the public is entitled to the truth. For the last several years, the FAA and Chicago have engaged in a public relations charade in Chicago – claiming that various construction and changes in ATC procedures are simply "delay reductions".

But these same so-called "delay reduction" devices are the same devices used to *increase capacity* by allowing *increased volumes in traffic* to use the airport at the same level of delay as the lower volume of traffic experienced prior to the implementation of these devices. This

relationship between delay and capacity increases is well-known inside FAA. *See e.g. Airfield and Airspace Capacity/Delay Policy Analysis*, FAA-APO-81-14.

Yet FAA masks its attempts to increase capacity at O'Hare by calling its activities "delay reduction." Indeed, of the several dozen individual airport engineering studies funded by FAA for all major airports across the nation – all but one are titled "Capacity Enhancement Reports", reflecting FAA's acknowledgment that the purpose of the air traffic control procedures and construction recommended in the reports was to *increase* the capacity of the airport to handle increased volumes of traffic. The only Capacity Enhancement Report which did not have "capacity enhancement" in its title is the so-called "Delay Task Force" Report for O'Hare (although the internal FAA and Chicago documents identify the report as a Capacity Enhancement Report.)

There are several significant problems with these "delay reduction/capacity expansion measures". First, since they are applied at the margin, they do not increase the capacity of the airport to handle the total current and forecast demand for the airport. Thus O'Hare will continue to face the "zero sum" game where significant elements of traffic demand – be it international, domestic, underserved communities, or new entrants – continue to be shoved out of the Chicago market.

Second, as long as demand exceeds capacity and as long as demand continues to grow, the delays – which are the supposed justification for the new procedures – necessarily return to the delay levels that existed before the so-called "delay reduction" device was employed. Thus, like the proverbial new lane on an expressway designed to "reduce" congestion, the new capacity simply brings the delay back – but now experienced by a greater volume of traffic.

Third, and perhaps most importantly, absent major construction at O'Hare (*e.g.*, new runways) – or, as SOC advocates, construction of a third regional airport – the only way to expand the capacity of a finite physical structure and finite airspace at O'Hare is to *bring the aircraft closer together in time and space*. These techniques – *which are applied primarily in bad weather and low visibility when safety hazards are the greatest* – necessarily reduces the margin of safety for both passengers at O'Hare and residents of the surrounding communities.

9. The McCain/Moseley-Braun/Durbin proposal necessarily reduces the margin of safety at O'Hare.

This attempt to compress more aircraft operations in the same time and space to increase the capacity of O'Hare is reflected in a variety of "capacity enhancement" measures that O'Hare and the FAA have employed in recent years as part of their "capacity enhancement" program at O'Hare. These measures, or variants of these measures are set forth in the 1991 O'Hare *Capacity Enhancement Report* (publicly known as the Delay Task Force Report) and in various editions of the FAA's *Aviation Capacity Enhancement* Plan.

The measures include such techniques as reducing runway occupancy time, reducing the separation distance between arriving aircraft, land-and-hold-short operations in the "wet" (so called "wet stops"), and land-and-hold-short operations at night. Among the current operational

changes under consideration by the FAA are such dubious devices as allowing "triple converging runway arrivals" in the dark or in bad weather conditions, nighttime land-and-hold-short operations, and jamming more aircraft into the arrival queue at the so-called arrival "cornerposts" (This last process is the so-called Chicago Terminal Area Project or CTAP). Almost all of these procedures are designed to put more planes closer together in time and space in bad weather and low visibility conditions.

All of these changes have significant risk. If our political leaders continue to support the squeezing of more and more aircraft into the finite airspace and airport facilities at O'Hare, they are risking a major disaster. Many political leaders – including Illinois Secretary of State George Ryan and Congressman Henry Hyde – have emphasized this risk and have called for a stop to this continued piecemeal ratcheting process where more and more flights are squeezed into O'Hare

10. The McCain/Moseley-Braun/Durbin proposal represents a massive subsidy to United Airlines while threatening the ability of the Chicago region to meet international growth opportunities and obligations.

In arguments to the Department of Transportation, United has argued that the four slot per hour incremental capacity was an extremely limited resource which should be carefully rationed and given only to the highest benefit traffic. According to United, that traffic was international traffic which provided the greatest economic benefits to the nation and to the Chicago region.

United used this argument in an attempt to persuade DOT not to award slot exemptions for domestic service to competitors. United argued that the scarce O'Hare slots should be reserved for high yield international traffic and that domestic flight demand should be routed to Midway. United argued – correctly – that for every scarce O'Hare slot exemption awarded to a domestic operation, that was one less slot that would be available for meeting international needs.

However history has shown that – rather than reserve these scarce slots for international flights – United has had its affiliates grab most of the 100 exemptions granted to expand United's domestic service with slot exemptions to places like Wilkes-Barre, Pa., Roanoke, Va. and Chattanooga, Tn.

This slot-grabbing game between United and American – using up scarce and limited incremental capacity for non-stop regional jet domestic service – has more than used up the four slot per hour incremental capacity found by DOT to be available at O'Hare.

United's actions – in declaring the higher value of international flights over domestic on the one hand, while grabbing up slot exemptions for domestic service on the other – have caught United in a logical bind that relates to the history of the high density rule.

In 1985, the DOT grandfathered hundreds of domestic slots at O'Hare and awarded them at no cost to United and American. This grandfather gift was worth hundreds of millions of dollars to United and American and allowed them the capacity lock that has led to their dominance at O'Hare. Though giving United and American this enormous gift of government resources (the

slots), the DOT reserved its prerogative to periodically transfer some of those slots to serve international operations. Currently, FAA transfers approximately a net of 16 slots from United to accommodate international flights.

Directly contradicting its argument that the highest and best use of scarce slot resources at O'Hare be allocated to international flights as opposed to domestic operations, United has long argued that the FAA should not transfer slots from United's domestic operations to be used by international carriers. United has argued that FAA and DOT should find these slots from some other source. United's problem, however, was that while it was extolling on one side of its mouth the importance of reserving the four slot per hour (1995 HDR Study) incremental capacity for international operations, United and American were exhausting this incremental four slot per hour capacity for new domestic operations.

Incredibly, at the same time United and American were exhausting the incremental four slot per hour in capacity in a war to expand domestic slots, United was telling the FAA that these very same four slots were available to accommodate international flights. Based on this asserted four slot incremental capacity United argued that the FAA should cease its seasonal transfer of slots from domestic carriers to international carriers and award slot exemptions to international carriers.

The problem with United's argument is that all the theoretically excess incremental capacity has been used up by United and American's domestic expansion. Whatever capacity that could have been used for international slot exemptions has been exhausted. To recite United's own "zero sum" argument, for every slot exemption awarded domestically, there is one less slot to be awarded for an international operation.

Based on a detailed analysis of United's arguments, FAA rejected United's argument that the roughly 16 net transfers from United to international operations should cease. FAA has stated that this slot transfer is essential if the United States is to meet its international obligations under bilateral aviation agreements.

Having failed before the FAA United has now made overtures to the Congress, hoping to get from legislation what it could not get administratively. A little noticed provision of the McCain/Moseley-Braun/Durbin proposal now proposes to remove the slots from their current international assignments and transfer them back to United.

Based on United's own arguments, its demand for reassignment of these international slot transfers to United's domestic operations should be denied. United itself has argued that the best use of a scarce slot resource is for international operations. If United wants to expand domestic service, United can – as United itself argued when stating that the slots should be preferentially reserved for international operations – bring additional domestic service into Midway (or a new regional airport).

11. The Forgotten Issues of Public Health and Environment

The McCain/Moseley-Braun/Durbin proposal speaks of an incremental "environmental" review of any additional flights. But SOC is painfully aware of how FAA plays the "environmental" review game at O'Hare.

First, FAA plays games in describing the "baseline" conditions at O'Hare – both as to noise and as to toxic air pollution.

As to noise, FAA uses an "annual average" which grossly understates the noise impact in communities around O'Hare. Though FAA itself says that adverse impact is measured on a 24-hour average basis (a debatable proposition by itself), FAA then uses a 365-day *average* of 24-hour *averages* to define the impacted area.

As to toxic air pollution, the federal Administration refuses to tell our communities the identity, concentration, and quantity of toxic chemical exposure caused by O'Hare's current operations – let alone incremental expansion.

Having deliberately understated (or totally ignored) the baseline environmental impacts on our communities, the federal government then proceeds to use the FONSI (Finding of No Significant Impact) device to ignore the systemic impact of the various related activities in bringing more flights into O'Hare. The "capacity creep" of the post-1994 slot exemptions has allowed slots for more than 40,000 new annual flights at O'Hare and has allowed United and American to shift existing commuter slots to noisier and more environmentally impacting routes. Yet none of this impact – and the related impact of the serial capacity expansion steps being undertaken at O'Hare – is given systematic environmental analysis.

12. Democratic and Republican Leadership at the state and federal levels must address the need for major new capacity in the Chicago Region NOW.

The analysis contained in this report demonstrates what all of us intuitively know. The demand for air transport service currently outstrips the available airport capacity of the Chicago region. Even United – in its analysis of the "zero sum" game we face, necessarily concedes that current demand outstrips O'Hare's capacity. Thus we have a situation where the DOT determined 159 slots per hour have already been used up with wasteful and illegal awards to United and American for non-critical domestic service – while our needs for servicing significant new competition, essential air service communities, and international growth will likely be unmet. Even the little additional increment of current demand that will may be met will at the expense of delays for all O'Hare passengers,

This problem – of current demand exceeding supply – becomes even worse when one examines future projections of demand. Whether one accepts the FAA's most recent questionable figures or the NIPC approved regional projections of the State of Illinois, the future demand far outstrips O'Hare's capacity by several hundred thousand flights annually. The delays, congestion,

environmental, public health, and safety concerns of trying to jam several hundred thousand additional flights into O'Hare leaves rational leadership with one of two choices:

1. Send the traffic growth outside the Region with a loss of hundreds of thousands of jobs and billions in economic benefits. This phenomenon is already occurring as United is shifting substantial portions of its growth to Denver.

2. Build major new capacity at a new regional metropolitan Chicago Airport to handle the new growth that O'Hare obviously cannot take now, let alone the future growth projected for the Region. Both O'Hare and Midway would continue to serve as vital partners in a metropolitan airport system.

We recognize that United and American have fought – along with Chicago – against a new regional airport and for expansion of O'Hare. United's and American's reasons are simple; they do not want major new capacity that could attract major new competition into the region spoiling the pricing monopoly they currently enjoy at O'Hare. Chicago's reasons for opposition are less clear but appear to be centered on a fear of loss of political control.

The airlines have funded their opposition with huge political contributions – being equal opportunity givers to both political parties. *Chicago* magazine reports a recent pasta dinner where one United executive (and his Democratic lobbyist associate) contributed $65,000 in cash and airline tickets to the national Democratic party. The *Chicago Tribune* claims that whenever Republicans in the state legislature want to raise money, they simply raise the specter of a regional airport authority bill – sending airline lobbyists down to Springfield with major donations.

Whatever the reasons, the airlines and Chicago have put together a coalition of Democrats and Republicans committed to massive expansion of O'Hare and against construction of a new regional airport. Aiding them is a Democratic Administration in Washington – staffed by many former employees of the Chicago Department of Aviation – who have constantly thrown roadblocks in the path of the new regional airport while constantly supporting O'Hare expansion.

On the other side are Republican and Democratic leaders like Congressman Hyde, Congressman Jackson, Illinois Secretary of State Ryan, Senate President Pate Philip and Illinois House Minority Leader Lee Daniel who are strongly committed to no further expansion of O'Hare and for fast-track construction of a new regional airport.

Waffling in the middle are politicians who either profess to be against expansion of O'Hare while equivocating on a new regional airport or who dodge the issue and refuse to take a stand on either O'Hare expansion or the need for a new regional airport. It's time for these political leaders – and Senator Moseley-Braun, Senator Durbin, and Congressman Poshard are among them – to take a clear stand on these issues. Are they for an expanded O'Hare? If so how much expansion? Are they for a new regional airport? If so, when and how will they insure its rapid construction?

The debate over the "slot exemptions" at O'Hare and the issues surrounding that debate illustrate that this controversy is not over some problem in the far distant future. The time for decision and action is now.

THE SHELL GAME WITH "SLOTS" AT O'HARE

A. The Existing High Density or "Slot" Rule

The High Density Rule for O'Hare stems from an FAA response to a condition that is self evident at O'Hare. The "demand" for aircraft operations that would – assuming no limits on O'Hare capacity – otherwise use the airport is limited by the finite "supply" (or capacity) of the airport to accommodate that demand. Unless limits or controls are placed on the level of operations that use the airport (the level of "demand"), the uncontrolled demand will overwhelm the capacity of the airport and unacceptably high levels of congestion and delay will result[1].

To control demand so that delays did not rise above unacceptable levels, the FAA in 1968 promulgated what is known as the "High Density Rule"[2] now codified at 14 CFR §93.123.

	Airport			
Class of User	**LaGuardia**	**Newark**	**O'Hare n2 n3[3]**	**Washington National**
Air carriers	**48**	**40**	**120**	**37**
Commuters	**14**	**10**	**25**	**11**
Other	**6**	**10**	**10**	**12**

1 For a discussion and illustration of the relationship between demand, capacity and delay see FAA's report entitled *Airfield and Airspace Capacity/Delay Policy Analysis*, FAA-APO-81-14 and in the attached chart showing the relationship between delay and the growth in traffic volume (See chart at p. 33, *infra*) See also FAA's annual report entitled *Airport Capacity Enhancement Plan* where FAA acknowledges that so-called reductions in delay are really means to increase capacity to handle more traffic.

2 For a history of the development of the High Density Rule, *See* Gleimer, *Slot Regulation at High Density Airports: How Did We Get Here and Where Are We Going*, 61 Journal of Air Law and Commerce (May/June 1996).

3 The hourly numerical limits at O'Hare are further limited by the following conditions:
n2 The hour period in effect at O'Hare begins at 6:45 a.m. and continues in 30-minute increments until 9:15 p.m.
n3 Operations at O'Hare International Airport shall not –
(a) Except as provided in paragraph (c) of the note, exceed 62 for air carriers and 13 for commuters and 5 for "other" during any 30-minute period beginning at 6:45 a.m. and continuing every 30 minutes thereafter.
(b) Except as provided in paragraph (c) of the note, exceed more than 120 for air carriers, 25 for commuters, and 10 for "other" in any two consecutive 30-minute periods.
(c) For the hours beginning at 6:45 a.m., 7:45 a.m., 11:45 a.m., 7:45 p.m. and 8:45 p.m., the hourly limitations shall be 105 for air carriers, 40 for commuters and 10 for "other," and the 30-minute limitations shall be 55 for air carriers, 20 for commuters and 5 for "other." For the hour beginning at 3:45 p.m., the hourly limitations shall be 115 for air carriers, 30 for commuters and 10 for "other," and the 30-minute limitations shall be 60 for air carriers, 15 for commuters and 5 for "other."

B. The 1994 Congressional Statute Creating Slot Exemptions

In the 1994 FAA Authorization Administration Act, P.L. 103-305, Congress created three very limited exemptions for the 155 slots per hour limitation at O'Hare:

1. **Essential Air Service.** (49 U.S.C. §41714(a)) These are communities which are expressly defined under federal statutes 49 USC §4731 et seq[4].

2. **International Flights.** (49 U.S.C. §41714(b)) These are slots for international flights that could otherwise not get access to the airport.

3. **New Entrants.** (49 U.S.C. §41714(c)) The concept here was to allow new airlines to enter into a "Fortress Hub" so as to increase competition and try to break the monopoly stranglehold of the dominant carriers at a Fortress Hub such as O'Hare.

The logic and public policy behind these exemptions was clear. There are a limited number of communities expressly designated "essential air service" communities where access to O'Hare was considered essential[5]. Similarly, Congress wanted to try to accommodate international traffic if we are to be able to negotiate and honor bilateral and multi-lateral agreement for access to foreign destinations. Finally, no one would quarrel with the need to stimulate new competitive entries to bring new fare competition into Fortress Hubs such as O'Hare[6].

C. In 1995 the DOT published its Congressionally mandated report, *A Study of the High Density Rule* – concluding that O'Hare had a theoretical capacity of 159 operations per hour (four more than the 155 in the HDR) – but declined to increase the limit from 155 operations because of the increased delays involved.

As part of the 1994 legislation, Congress directed the Department of Transportation to conduct and complete an exhaustive study as to whether there was additional capacity at the High Density Rule Airports and whether the High Density Rule should be lifted.

In May 1995, USDOT released its four volume report, *A Study of the High Density Rule,* and in June 1995 announced that on the basis of this study, DOT would not change the slot limits – either at O'Hare or at any other HDR airport.

4 "EAS is a program that was developed by Congress in conjunction with airline deregulation in an effort to help ensure that smaller communities are provided with the air service necessary to link them to the national air transportation system. To the extent necessary, carriers may receive subsidies to operate to certain EAS points." Gleimer, supra, at 887 n.43

5 One of the purposes of the 1994 legislation was to restore EAS service to communities which had lost pre-existing EAS service to O'Hare. See DOT order 94-10-47, at p.2.

6 The problems with high monopoly supported business fares at Fortress Hub Airports have been repeatedly identified by both GAO and DOT.

In its 1995 HDR study, USDOT found that the "balanced capacity" of O'Hare was 159 operations per hour or four operations per hour higher than the 155 slots allowed under the HDR regulation[7]. However, the DOT decided against allowing an increase in the slots from 155 to 159 per hour because the increase in allowed slots would increase delays[8].

It is these four slots per hour – from 155 to 159 – that Congress and various advocates of additional slot exemptions have been basing their various demands for additional slot exemptions at O'Hare. However, as discussed below, not only will these additional slots lead to additional delay for all O'Hare travelers, but these four hypothetical additional slots have already been exhausted by the grant of more than 100 slot exemptions at O'Hare by USDOT since 1995.

D. A Study of the Slot Exemptions granted under §41714 since 1995 shows that more than 100 slot exemptions have been granted – more than using up the four slot per hour increment in the 1995 DOT study of the High Density Rule.

The USDOT maintains a detailed Internet docket of all slot exemption requests, all pleadings filed by those in support or opposed to the request, and the written decisions of the DOT in granting or denying the request. SOC has examined this docket for all slot exemptions granted since the 1994 legislation and has found that more than 100 slot exemptions have been awarded.

It must be remembered that these more than 100 slot exemptions operate *above* the 155 operations per hour limit set by 93 CFR 93.123 and are included in the roughly 15 hour period (6:45 AM to 9:15 PM) that the slot limitation is in effect. Simple arithmetic (100 plus exemptions divided by 15 hours) dictates that for at least several hours per day, the FAA's theoretical capacity for O'Hare of 159 operations per hour is currently being exceeded.

7 HDR Report p. 53 FAA has recently advised the Illinois Transportation that as of 1998, the estimated hourly capacity at O'Hare remains at 159 operations per hour.

8 Under the USDOT analysis, the delays created by going from 155 operations per hour to 159 operations per hour resulted in almost a doubling of the delays – from 11.8 to 23.7 minutes per operation. Id at 59. Thus, whatever benefits were derived from the additional four flights per hour had to be balanced against the fact that *all* the other flights (i.e. the base case 155 flights) would suffer an almost doubling of delays if the slot increase were to be allowed. The reason why a small incremental increase in demand at the margins of an airport's capacity can result in a dramatic increase in overall delays is explained and illustrated in FAA's Report entitled *Airfield and Airspace Capacity/Delay Policy Analysis*, FAA-APO-81-14, and in chart showing the relationship between delay and the growth in traffic volume (chart at p.33 , infra). As traffic is allowed to grow at the margin of an airport's capacity, small incremental increases in traffic can cause overall average delays for *all* traffic to rise exponentially. Neither the FAA nor the Airlines want Congress or the public to understand this relationship, or the corresponding fact that so-called "reductions in delay" through changes in Air Traffic Control (ATC) procedures and physical construction at the airport necessarily also increase capacity of that airport to carry more traffic. Just as we have all experienced the impact of adding another lane to a busy highway, temporary delay reductions at airports are invariably followed by delays again rising to historical levels but now at a much higher volume of traffic. If traffic demand is rising and remains in excess of supply (capacity) as it will at O'Hare, any so-called delay reductions will simply result in higher levels of traffic at the airport with delays again rising to historical levels.

Order #	Number of Slot Exemptions	Carrier
Domestic		
94-9-30	5	Reno Air
94-10-47	24	Great Lakes Airlines (United Express)
94-11-12	4	Great Lakes Airlines (United Express)
97-1-7	20	Great Lakes Airlines (United Express)
97-10-16	2	Reno Air
98-4-21	16	Trans States (United Express)
98-4-21	5	America West
98-4-21	16	Simmons (American Eagle)
98-4-21	16	Atlantic Coast (United Express)
Subtotal	108	
International		
97-3-31	4	Turkish Airlines
97-04-11	6	Polish National Airline (LOT)
98-4-28	1	Lufthansa
98-6-8	2	Iberia
Subtotal	13	
Total	121	

Given DOT's express findings that the capacity of O'Hare is 159 operations per hour – and the fact that the extra four slots per hour in excess of the 155 per hour limit of §93.123 are already used up – there is no room for 30 more slots to be provided at O'Hare.

Remember that DOT declined to open up the 155 operations per hour limit because of concerns that adding the four additional slots would increase delay. Remember too that at the margin of capacity – where O'Hare currently is – adding additional operations has ripple delay effects across the entire universe of O'Hare travelers.

We are literally at the stage where every additional flight operation allowed at O'Hare will have potentially serious delay consequences for the *entire* traveling population using O'Hare. Preliminary delay figures released by the FAA suggest that delays are again rising at O'Hare – suggesting that the additional slot exemptions already awarded have had an adverse effect on the entire O'Hare traveling population.

E. Instead of bringing in new competition – a key justification for allowing slot exemptions – virtually all of the more than 100 new slots exemptions since 1994 have been illegally awarded to United or American or their affiliates – thus expanding the monopoly stranglehold that United and American have at O'Hare.

Much of the political rhetoric supporting allowance of slot exemptions has been based on the common desire to bring new competitors into O'Hare where United and American control over 80% of the traffic. Indeed, the 1994 legislation provided for slot exemptions for "new entrants". 49 U.S.C. §41714(c)[9].

Yet an analysis of the more than 100 slots awarded since 1994 for domestic operations shows that by far the lion's share of these 108 slots went to United Express and American Eagle – captive affiliates of United and American.

Slot Exemptions Awarded for Domestic Operations		
94-9-30	5	Reno Air
94-10-47	24	(United Express) Great Lakes Airlines
94-11-12	4	(United Express) Great Lakes Airlines
97-1-7	20	(United Express) Great Lakes Airlines
97-10-16	2	Reno Air
98-4-21	16	(United Express) Trans States
98-4-21	5	America West
98-4-21	16	(American Eagle) Simmons
98-4-21	16	(United Express) Atlantic Coast
Total	108	

After accounting for 28 slot exemptions given to United Express for Essential Air Service (94-10-47, 94-11-12[10]) that leaves 80 slot exemptions that were awarded for reasons other than

9 The problem of monopoly pricing and the high cost of business fares at Fortress Hubs has been well documented by US DOT, GAO, and the Illinois Department of Transportation (IDOT) United and American control over 80% of the traffic at O'Hare. IDOT estimates that because of this monopoly control by American and United, the traveling public pays a monopoly penalty of 250-300 million dollars per year. The "new entrant" provision of the 1994 law was intended to bring in new competition.

10 In order 94-11-12 issued on November 17, 1994 – *before* the grant of more than 80 additional non EAS exemptions, the DOT expressly declined to grant any additional EAS exemptions because of the "significantly increased operational delays" that would be caused. "We are unprepared to authorize any additional EAS operations at O'Hare since *significantly increased operational delays could result.*" 1994 DOT Av. Lexis at 4 (emphasis added). DOT then proceeded to award 80 more slots *outside* and in violation of the letter and intent of the statute.

essential air service and international. Of these 80 slots, 68 (or 85%) were awarded to United or American affiliates under bizarre reasoning that United Express was a "new entrant" and that American should somehow receive additional slots as compensation for the slots awarded to "new entrant" United Express.

The USDOT concluded in Orders 97-1-7 and 98-4-21 that the United Express affiliates were independent entities of United. In order 98-4-21, DOT has explained that the United Express affiliates qualified as new entrants because they were in effect contract franchisees of United and not wholly owned. In contrast, DOT could not use the same twisted reasoning for American Eagle since American Eagle is a wholly owned subsidiary of AMR, parent of American Airlines.

American properly charged that the attempt of United Express affiliates to claim that they were "new entrants" was a sham in violation of the letter and intent of the statute. One can hardly claim that allowing increased United Express service into United's primary hub qualifies as new competition for United Airlines – the dominant carrier at O'Hare. As stated correctly by American:

> "To favor the United carrier group over the American carrier group, based on whether regional operations are conducted by franchisees (United Express) or by corporate affiliates (American Eagle), is simply irrational. Such an artificial distinction is utterly irrelevant to the competitive reality of the online network services that United and American provide via their respective hubs at O'Hare. Most passengers neither know, nor care, whether regional affiliates such as United Express or American Eagle are franchised or owned..."
>
> "Indeed, the extraordinary degree of control United exercises over its United Express partners makes clear that there is no significant difference between United's direction of its franchisee operations, and American's direction of American Eagle operations."[11]
>
> *****
>
> "From a marketing and consumer point of view, they are identical. ... A McDonald's restaurant that is owned by a franchisee is every much a McDonald's as a company-owned restaurant. Trans-States is as much a part of the United Express group as a company-owned subsidiary."[12]

It is apparent that the 1994 legislation set off a war between United and American – the two proverbial 800 pound gorillas at O'Hare – on three related fronts:

11 OST-97-2368-17 Pleading by American Eagle

12 OST-97-2368-24 Pleading by American Eagle opposing the slot award to United Express affiliate Trans States.

1. American and United each wanted to use the slot exemptions to expand its own monopoly power at O'Hare, even though Congress did not intend the letter or spirit of the slot exemption provision to benefit the expansion of either American's or United's monopoly power.

2. American and United each wanted to prevent the other from gaining slot advantage. Because of this strategic jockeying, we have the benefit of American and United exposing the illegalities of each other's (and DOT's) improper exemptions.

3. American and United – United especially – wanted to use up the available slots so that new competitors could not enter the market.

As characterized by Delta's affiliate, Comair, the flurry of slot exemption applications by United and American since 1994 were nothing more than a battle to expand their hub dominance:

> "[E]xcept for Reno Air (which has/had a close relationship with American), *all the applicants are controlled by either American or United* in terms of O'Hare operation (none is really a new entrant) and *the requests simply constitute a battle between the two carriers which dominate the hub and an effort by those two carriers to expand that hub's dominance in the nation.*"[13]

United was not the only culprit in the illegal abuse of the slot exemption process. American – after correctly charging that the DOT's awarding of dozens of slots to United Express for non-essential service was illegal – then supped at the trough itself. American's point was that if the Department was going to illegally give slots to United, American should get slot exemptions as well.

Having illegally granted dozens of slot exemptions to United Express, DOT didn't hesitate to illegally award slot exemptions to American Eagle. Not content with violating the letter and spirit of the statute with its massive awards of exemptions to United, DOT then proceeded to violate the statute again by making the equivalent of "new entrant" awards to American, even though DOT knew American could not qualify under the "new entrant" subterfuge DOT had used for United's "franchisees". American applied for slot exemptions for new service to Duluth, MN.; Fayetteville, Ark.; and Shreveport, La. *None of this service* qualified under any of the three statutory exemptions of §41714.

As noted above DOT had engaged in the fiction that United Express affiliates were "new entrants" but had concluded that American Eagle could not get similar treatment because American Eagle was owned by AMR, American's parent. Therefore, in order to give American slot exemptions for non-EAS domestic cities – thus not meeting any of the statutory standards

13 OST-97-2368-32 Pleading of Comair in opposition to requests by United Express and American Eagle for slot exemptions, at 2. (emphasis added)

(no EAS/no international/no new entrant) – DOT had to engage in what might be called creative illegality.

To get around this hurdle, DOT engaged in a game of "musical slots" (United's term, not ours). DOT literally played a "shell game" where it took 16 slots already used by American for essential air service to Bloomington, Champaign and Lacrosse – told American to use those slots for new service to Duluth, MN.; Fayetteville, Ark.; and Shreveport, La. – and then "awarded" "new" essential air service slots to American for Bloomington, Champaign and Lacrosse.

United properly criticized this award as totally without statutory justification[14]. DOT had used a shell game to award slot exemptions for service that was not authorized by statute.

Thus, we have a situation where dozens of slots have been awarded at O'Hare to the dominant carriers – all in violation of the statute – with increased delays to all the O'Hare traveling public, and with reduced safety margins necessitated by the increased traffic at the margin of O'Hare's capacity. Further, as discussed below, United has properly characterized the finite and limited incremental slot capacity (assuming it has not all been used up) as a "zero sum" game.

For every slot given to feed the growth of United and American's domestic monopoly, there is one less available slot to meet the needs of international aviation – which United says is the type of traffic most valuable to the nation and to the regional economy – and to undeserved essential air service communities. Since the more than 100 slot exemptions already given out since 1994 means that O'Hare is already operating at more than 159 operations per hour – four above the 155 per hour limit of the HDR and at the 159 limit decreed as the capacity of O'Hare by DOT – the profligate and improper issuance of slot exemptions to United and American means that future exemption requests for international service and EAS communities will be penalized.

F. Most of the communities for which Slots Exemptions were awarded were not "underserved" and alternative hub centers were available.

The express restrictions of the 1994 statute limited exemptions to EAS (Essential Air Service) communities, international flights and to new entrants. We have already shown that virtually all of the more than 100 exemptions were given to United or American affiliates. The evidence is also clear that the vast majority of the domestic slot exemptions given – more than sixty exemptions were not to EAS communities.

Moreover, contrary to popular misconception, the great bulk of these slot exemptions are *not* for service to Midwestern communities that somehow cannot get service to O'Hare.

Rather than serve close-in Midwestern destinations, these slot exemptions have been awarded to relatively distant non-Midwestern cities who are readily served by other hubs such as Atlanta,

14 OST-97-2985-154 Objections of United to award of slot exemptions to American.

Washington-Dulles, Cincinnati, and Pittsburgh. Charleston, West Virginia; Wilkes-Barre, Pennsylvania; Montgomery, Alabama; Chattanooga, Tennessee; Roanoke, Virginia; and Shreveport, Louisiana are hardly Midwestern cities that have been deprived of access to the Chicago market and have no alternative hubs. As Delta's affiliate, Comair, pointed out many of these communities have adequate service to other hub cities in the South, Southeast, and Midwest.

Moreover, even where a few slots have been awarded for Midwestern cities, these have been part of the "musical slots/shell game" that both United and American have criticized – and then employed to their advantage. For example DOT awarded United – again without meeting the requirements of the 1994 Act (§41714) – slot exemptions for flights from Dubuque, Iowa and Sioux Falls, South Dakota to O'Hare. While these might be considered Midwestern cities for whom service ought to be provided if there was capacity at O'Hare, American correctly points out that United *already* had service from these cities to O'Hare and – upon receipt of the slot exemptions – promptly canceled this pre-existing service and used the slots for other traffic apart from Dubuque, Iowa and Sioux Falls, South Dakota. This is the very same kind of improper "musical slots/shell game" that United criticized when DOT let American do it. These communities already have the service and the slot exemptions allow them to pull this service – in effect giving slot exemptions for other purposes not encompassed within the statutory requirements.

Again, because of the extremely limited and finite incremental capacity available at O'Hare – if any, given the 121 slot exemptions since 1994 – any slot exemptions given for service to "underserved" communities necessarily takes away equivalent ability to provide slot exemptions for EAS communities, international service, and new competitive entrants. As Delta's affiliate Comair has pointed out, it is a misnomer to characterize cities like Charleston, West Virginia; Wilkes-Barre, Pennsylvania; Montgomery, Alabama; Chattanooga, Tennessee; Roanoke, Virginia; and Shreveport, Louisiana as "underserved". There are other hubs in other cities like as Atlanta, Washington-Dulles, Cincinnati, and Pittsburgh that can and do serve these cities.

In truth none of these communities are "underserved". They are just served by different hubs in other regions of the country. Even it they were "underserved", their needs can be addressed by servicing these communities through hubs with less capacity limitations than O'Hare – hubs that have plenty of capacity. The question Congress must ask is whether – given our concerns about meeting international needs, the need to service EAS communities, and the need to bring in truly new competitors into O'Hare – the scarce slot capacity which is presumed to exist at O'Hare (which DOT says has already been used up) should be squandered on service to communities that can readily be served elsewhere.

As United has cogently argued, these scarce slot resources should be saved and husbanded to provide slots to the traffic that is most valuable to our region (see discussion below.). Providing 30 more slot exemptions for so-called "underserved" to compete with the existing three categories of §41714 – especially given the more than 100 exemptions already issued – is unwise, economically wasteful, and will exacerbate the delays experienced by all travelers at O'Hare.

G. The "ZERO SUM" Game. United has correctly pointed out that – given O'Hare's meager capacity – there are a very limited finite amount of possible slot exemptions at O'Hare and that awards for one purpose automatically restrict slot exemption awards for other purposes.

Soon after the 1994 slot exemption statute was passed, USDOT made a variety of statements emphasizing that the new slots that were available should be provided to new domestic competitors. In opposition to DOT's stated intent, United made a number of statements which emphasized the scarce amount of any available slot exemptions and the need to prioritize the award of those exemptions for the best possible benefit to the nation and region.

United Airlines has correctly pointed out that the meager "excess" capacity of O'Hare (to the extent that it has not been exhausted with existing 1995-1998 exemption awards) is extremely limited. Award of slots for one purpose necessarily limits the ability to award slots for other purposes.

> "[The need to carefully ration the slot exemptions] becomes especially meaningful in light of the Department's finding in Simmons that the number of slots it can create by exemptions from the HDR *is both finite and 'very limited.'* Order 97-10-16, at 4. Given the limited amount of capacity available at O'Hare under the HDR, *applications for exemptions are, for all practical purposes, mutually exclusive. Each exemption reduces the Department's ability to grant other exemptions.*"[15]

United strongly emphasized that – given the extremely limited amount of available slot exemptions (only four according to the 1995 DOT High Density Report) – the slot exemptions ought to be given to that traffic that brings the highest yield to the nation and the region rather than wasted on lower benefit traffic.

> "[Given the fact that each exemption granted reduces the ability of the DOT to grant other exemptions, the] Department, therefore has a special responsibility to ensure that its decisions are based on sound economic analysis and will maximize consumer welfare."[16]
>
> *****
>
> "New airside capacity the department creates under the HDR at O'Hare *is fungible*, and *ultimately finite*. The *award of new slots* for *any of the exemption*

15 United Pleading opposing DOT statements of policy that slot exemptions should be used to allow new competition for domestic operations at O'Hare OST-95-368-9 at 8-9. (emphasis added)

16 Id at 9

uses is mutually exclusive. An allocation of slots under the [new entrant] "exceptional circumstances" provision precludes their award for use at an essential air service community. In economic terms, *the allocation of this finite capacity is a zero sum game, imposing on the Department of Transportation an obligation to do its best to insure that new slots are put to their highest and best use.*"[17]

United pointed out that the highest economic yield to the nation and the region comes from international flights and that – given O'Hare's meager incremental capacity – slot exemptions ought to be given to international flights instead of new slots for domestic service.

"[T]here can be no doubt that new international services at O'Hare are likely to have a significantly greater impact on the local, regional and national economies that are new domestic services operated with narrow-bodied aircraft."[18]

*****

"These data [data comparing greater economic benefits from international vs. domestic operations] clearly tend to confirm that the benefit to the Chicago economy from new international service would greatly exceed those from a domestic flight."[19]

*****

"[W]henever an exemption slot at O'Hare is given away for a new entrant for domestic service, the Department reduces its ability to grant future international applications, causing a permanent loss of the potential economic gains such service would produce."[20]

The point United makes is a valid one. Incremental slot capacity (if it does exist given the exhaustion of the four slots found in the 1995 DOT High Density Study) is a "zero sum" game. Even assuming that some slight additional capacity exists – and even assuming that the Nation is willing to impose additional delays on *all* the O'Hare travelers to award those incremental slots – the amount of incremental slots available is small and finite. Giving those slots to regional jet non-stop domestic service automatically precludes those slots from being used for essential air service communities or for international service. Conversely, giving those slots to EAS service

17 United Pleading in FAA Regulatory Docket #29009 at 3. (emphasis added)

18 United Pleading opposing DOT statements of policy that slot exemptions should be used to allow new competition for domestic operations at O'Hare OST-95-368-9 at 9

19 Id at 10

20 Id at 11

or international automatically precludes the opportunity to award those slots to new entrants in domestic service.

H. The McCain/Moseley-Braun/Durbin "compromise" bill (S.2279) and the companion House Bill compound the "Zero Sum" problem.

Given the profligate award of more than 100 slot exemptions by DOT since 1995 – using up the four theoretical slots the DOT found were available in its 1995 High Density Rule Study – it is extremely unlikely that there is additional capacity to provide the additional slots contained in the McCain/Moseley-Braun/Durbin 30 new slot exemption bill. Even if there is, it will come at a cost of imposing increasing delays on *all* O'Hare passengers.

Further, the McCain/Moseley-Braun/Durbin proposal – by adding a fourth category of non-stop regional jet service to the previous three categories of EAS, international, and new entrant – makes it very likely that one or more important categories of traffic will be squeezed out in favor of another category[21]. For example – as United has pointed out in another context – allocating these new slots to commuters or to non-stop regional jets necessarily precludes their use to meet international needs.

Finally, by stuffing more aircraft operations into the margin of O'Hare's capacity, the McCain/Moseley-Braun/Durbin proposal will necessarily create significant new delay problems for *all* O'Hare passengers and create self fulfilling pressure for new expansion at O'Hare. According to the delay curve presented in the 1995 DOT High Density Rule Study, adding the four flights per hour would significantly increase the delay suffered by *all* passengers at O'Hare. Since these four slots per hour are already exhausted any addition slot exemptions would exacerbate the delay.

At the margin of O'Hare's capacity where these flights our added, each additional flight added has an exponential impact on the delays suffered by all other flights. The McCain, Moseley-Braun, Durbin proposal would add another two flights per hour on top of the four flight maximum found by DOT's 1995 High Density Rule Study to be the maximum incremental capacity available at O'Hare.

21 Rather than regional jet service, the House adds a fourth category which it calls communities "not receiving sufficient air service." §101(c)(1). Unlike the relatively narrow categories of exemption under the 1994 statute, both the House and Senate new exemptions are very open-ended - allowing a flood of exemption proposals for service across the country by United and American. Note that neither the new Senate or new House exemptions prevent these new slot exemptions from being awarded to United or American - continuing to expand their monopoly position at O'Hare.

I. United's request for domestic slots to be taken from international carriers is wrong and runs contrary to what United told the Department of Transportation.

As shown above, in arguments to the Department of Transportation United has argued that the four slot per hour incremental capacity was an extremely limited resource which should be carefully rationed and given only to the highest benefit traffic. According to United, international traffic provided the greatest economic benefits to the nation and to the Chicago region.

United used this argument in an attempt to persuade DOT not to award slot exemptions for domestic service to competitors. United argued that the scarce O'Hare slots should be reserved for high yield international traffic and that domestic flight demand should be routed to Midway. United argued – correctly – that for every scarce O'Hare slot exemption awarded to a domestic operation, that was one less slot that would be available for meeting international needs.

However history has shown that – rather than reserve these scarce slots for international flights – United has had its affiliates grab most of the 100 exemptions granted to expand United's domestic service with slot exemptions to places like Wilkes-Barre, Pa., Roanoke, Va. and Chattanooga, Tn.

This slot-grabbing game between United and American – using up scarce and limited incremental capacity for non-stop regional jet domestic service – has more than used up the four slot per hour incremental capacity found by DOT to be available at O'Hare.

United's actions – in declaring the higher value of international flights over domestic on the one hand, while grabbing up slot exemptions for domestic service on the other – have caught United in a logical bind that relates to the history of the High Density Rule.

In 1985, the DOT grandfathered hundreds of domestic slots at O'Hare and awarded them at no cost to United and American. This grandfather gift was worth hundreds of millions of dollars to United and American and allowed them the capacity lock that has led to their dominance at O'Hare. Though giving United and American this enormous gift of government resources (the slots), the DOT reserved its prerogative to periodically transfer some of those slots to serve international operations. Currently, FAA transfers approximately a net of 16 slots from United to accommodate international flights.

United has long argued that the FAA should not transfer slots from United's domestic operations to be used by international carriers. United has argued that FAA and DOT should find these slots from some other source. United's problem, however, was that while it was extolling on one side of its mouth the importance of reserving the four slot per hour (1995 HDR Study) incremental capacity for international operations, United and American were exhausting this incremental four slot per hour capacity for new domestic operations.

Incredibly, at the same time United and American were exhausting the incremental four slot per hour in capacity in a war to expand domestic slots, United was telling the FAA that these very

same four slots were available to accommodate international flights. Based on this asserted four slot incremental capacity, United argued that the FAA should cease its seasonal transfer of slots from domestic carriers to international carriers and award slot exemptions to international carriers.

The problem with United's argument is that all the theoretically excess incremental capacity has been used up by United's and American's domestic expansion. Whatever capacity that could have been used for international slot exemptions has been exhausted. To recite United's own zero sum argument, for every slot exemption awarded domestically, there is one less slot to be awarded for an international operation.

Based on a detailed analysis of United's arguments, FAA rejected United's argument that the roughly 16 net transfers from United to international operations should cease.

Having failed before the FAA, United has now made overtures to the Congress, hoping to get from legislation what it could not get administratively.

Based on United's own arguments, its demand for reassignment of these international slot transfers to United's domestic operations should be denied. United itself has argued that the best use of a scarce slot resource is for international operations. If United wants to expand domestic service, United can – as United itself argued when stating that the slots should be preferentially reserved for international operations – bring additional domestic service into Midway (or a new regional airport).

In rejecting United's request for transfer of the slots, the FAA rejected the very arguments that are now being put forward to add new slot exemptions at O'Hare – *i.e.*, (1) a claim that the HDR Study found significant new capacity above the 155 operation per hour limit and (2) a claim that within the 155 per hour limit there was unused capacity in the "other" category:

> "We do not find valid the City's [Chicago's] comment that withdrawal of slots for bilateral agreement purposes is no longer valid: (1) in view of the Department's HDR Study; and (2) the utilization of 'other' slots used by general aviation and military operations. While the Department's [HDR] Study did indicate that O'Hare's balanced airfield capacity could exceed the allocated quota by an additional four flights per hour, the Study also *predicted increased delays. The Department then concluded that the projected costs to consumers, airlines and communities currently outweigh the benefits that might accrue if the HDR was removed or modified."*
>
> "[T]he use of designated slot reservations in the 'Other' category would also require a regulatory change. It is important to note that the pool of slots for the 'Other' category, consisting of 10 slots per hour, are used primarily by general aviation. While the Air National Guard based at O'Hare has been using a number of the 'Other' slots, this use is not on a consistent, day-to-day basis, but rather *ad hoc.* Since 1995, the number of annual military operations has steadily declined from approximately 3,100 operations to 1,900 operations in 1997 (Conversely,

general aviation operations have increased in the same period.) In contrast, granting United's request for an exemption effectively would return 16 slots per day to United, which translates into over 5,800 annual operations at O'Hare."[22]

The relationship between the limited capacity of O'Hare and the need for a new regional airport cannot be overemphasized. In an earlier statement, DOT emphasized that the limited capacity at O'Hare – *coupled with the lack of availability of another airport* – compelled FAA to withdraw slots from United in order to meet international obligations:

> "The Department believes that if vacant slots are not available to accommodate international services by foreign airlines... it must continue to withdraw slots to meet U.S. international obligations... U.S. air services agreements give foreign airlines access to the point Chicago, and they must be able to exercise that authority. Moreover, if U.S. airlines retain the ability to increase international service from Chicago, their foreign counterparts that have Chicago authority must also have that opportunity. Given the capacity constraints *and the lack of an alternative airport*, it is only through the slot withdrawal process that access can be made available to foreign airlines."[23]

The irony here is that DOT's reluctance to terminate the practice of transferring slots to service foreign carriers stemmed in great part from DOT's observation that the Chicago area did not have the capacity to accommodate the international traffic, and *that absent a new regional airport* or an expanded capacity at O'Hare, the Department had no alternative other than to transfer slots from United to the international traffic.

Here United is on record that international traffic should be given slot priority over domestic traffic (see discussion above). Further, United has domestic slots transferred to service international traffic because there is no alternative airport in the Chicago area (unlike metropolitan New York) for this international traffic to go. In contrast, United claimed earlier, that domestic traffic could go to Midway.

United has been the chief opponent of development of a new regional airport. Given United's refusal to support State of Illinois efforts to build additional airport capacity, United can't complain about being hoisted on its own petard by keeping the slot transfers with the international traffic.

22 FAA Order in Regulatory Docket #29009 March 25, 1998 at 9-10

23 55 FR 53238 December 27, 1990. DOT went on to point out that DOT "is also supporting an additional airport for the Chicago area". However, since that time, the Clinton Administration – staffed heavily by former officials in the Chicago Department of Aviation – has opposed new airport development.

Moreover, given the frantic exhaustion of incremental slot exemptions to United and American affiliates as "new entrants", there is likely little or no capacity to gain the existing 16 international slots from slot exemptions without creating significant delays.

In sum, United's request that Congress cut out existing international service and re-transfer these slots to United is wholly without merit and runs contrary to both United's earlier arguments in favor of international traffic and the exhaustion of any excess slot capacity by United's "new entrant" gamesmanship over the last two years.

J. The Mythical Military Slots are not available.

In addition to distortion and confusions about the slot exemptions under §41714 *above* the 155 operations per hour High Density Rule (14 CFR §93.217), several advocates of more operations at O'Hare have argued that FAA should allow the use of "unused" "military" slots that are supposedly available *within* the 155 slots of the High Density Rule. There are several problems with this argument.

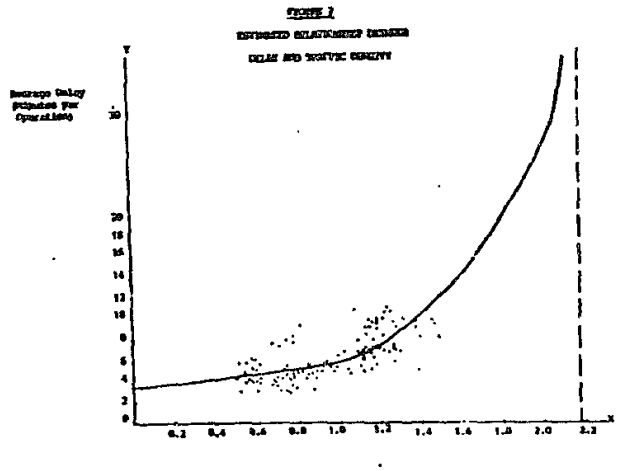
There are no slots at O'Hare dedicated to military operations. There is a category called "other" under 14 CFR §93.217 which includes other kinds of aircraft operations that do not fit into scheduled commercial or scheduled commuter. This "other" category (10 slots per hour) includes general aviation, military, non-scheduled commercial aircraft and any other miscellaneous non-scheduled operations.

None of these other slots is "unused". A check with FAA revealed that all of the 10 other slots are fully used. Further, FAA, when faced with the argument for reallocating the "other" category has stated that such action would require a full notice and comment rulemaking to change the HDR rule. FAA has declined to shift these "other" slots commercial or commuter.

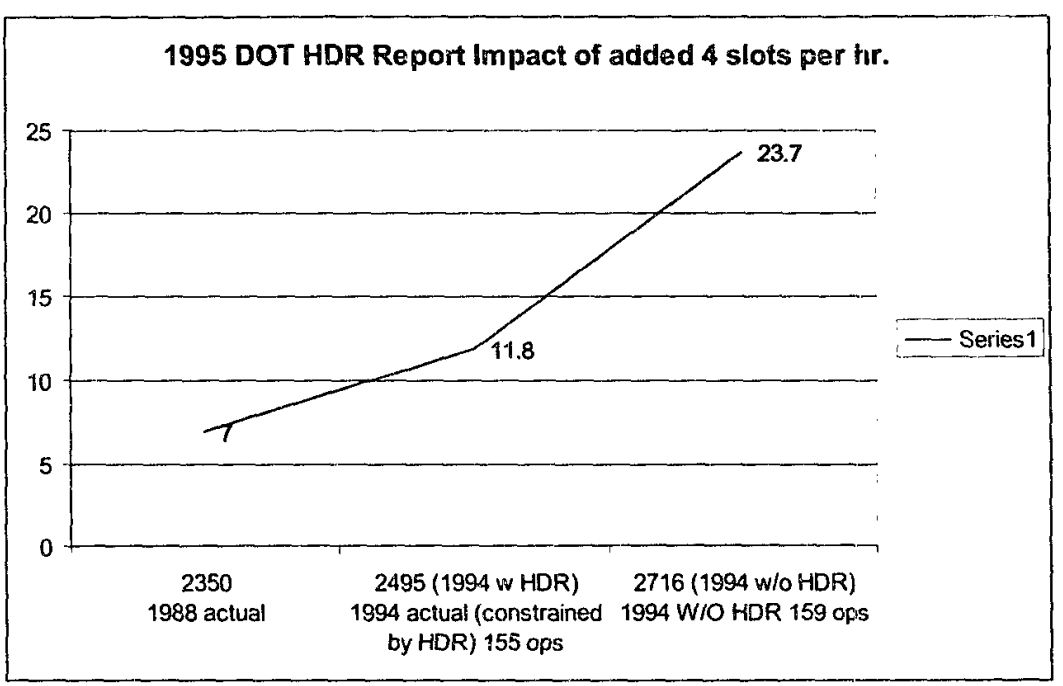
As noted above, the FAA rejected Chicago's argument that these 10 "other" slots were somehow available. The military use of those slots is minuscule – less than one slot per hour – and the rest of those slots are currently in use by traffic the FAA and DOT consider to be valuable traffic.

K. Increasing the slot exemptions even by a small amount will result in significant delays for <u>all</u> O'Hare travelers.

As the DOT's 1995 report, *A Study of the High Density Rule*, emphasized, capacity and aircraft delays are highly interrelated. When an airport has considerable excess capacity delays rise gradually as more aircraft are processed through the airport. However, when the airports' capacity is already stressed by existing demand, studies have shown that even a small addition of aircraft operations at the margin — such as are proposed here — can have a very severe impact on delays experienced by <u>all</u> O'Hare travelers.



As this diagram from the FAA report *Airfield and Airspace Capacity/Delay Policy Analysis*, FAA-APO-81-14 demonstrates, as traffic demand at an airport starts approaching its physical capacity, delays start rising dramatically. Small increments of traffic can be added but only at a cost of creating significant delays for all the traffic using the airport.



This phenomenon is well illustrated by DOT's findings in the 1995 High Density Rule Study. DOT found that merely adding 4 flights per hour to the 155 flights per hour would almost double the delays faced by all O'Hare travelers – including the travelers in the base 155 operations per hour.

Some but not all the increased delays predicted by DOT have occurred. The reason all of these delays have not been observed can be found in the continuing FAA practice of squeezing – with a significantly reduced margin of safety – more and more aircraft operations closer together in time and space. (See discussion below.)

Moreover, this dangerous game of squeezing more and more aircraft into a finite amount of space and time has both theoretical and common sense limits. FAA has recently provided Congressmen Hyde and Jackson with FAA"s estimate of traffic demand growth at O'Hare to the year 2020. That demand forecast has several apparent flaws which have been criticized by the State of Illinois as not using correct input data and assumptions.

Accepting for the sake of argument, the validity of the FAA 2020 forecast, it is obvious that demand for air transportation in the future will overwhelm O'Hare's already stressed-to-the limit capacity.

Forecast Operations Per Day	
1988 actual	2350
1994 actual (constrained by HDR)	2495
1994 W/O HDR	2716
FAA 1998 year 2020 demand	3559
State of Illinois 73 million 2020 enplanements demand	4464

It is obvious that an airport that has difficulty handling the 1994 daily demand of either 2495 or 2716 operations would virtually collapse at the demand represented by either the FAA forecast (1.227 million operations) or the State of Illinois forecast (1.54 million operations).[24]

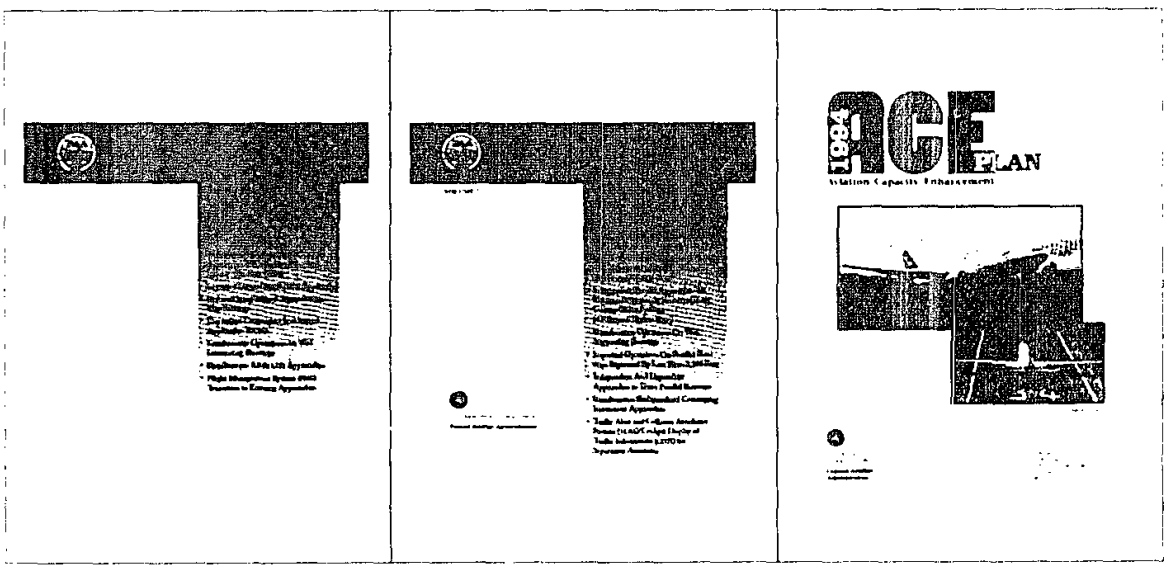
L. The Safety Risks of Continuing To Squeeze More and More Aircraft Operations Into O'Hare

There are safety consequences as well. The only way to add more flights at the margin in a physically constrained environment such as O'Hare – without increasing delays – is to pack the aircraft operations closer together. There are only 60 minutes in an hour and any sixth grade student challenged by a word math problem knows that – to get more operations into that 60 minute period – the FAA must shorten the average time it takes for a plane to land and take off. That necessarily means bringing the operations closer together in time and space.

Indeed, that is exactly what the FAA and Chicago, O'Hare airport's operator have been trying to do for the past several years. For several years FAA has been conducting a "capacity

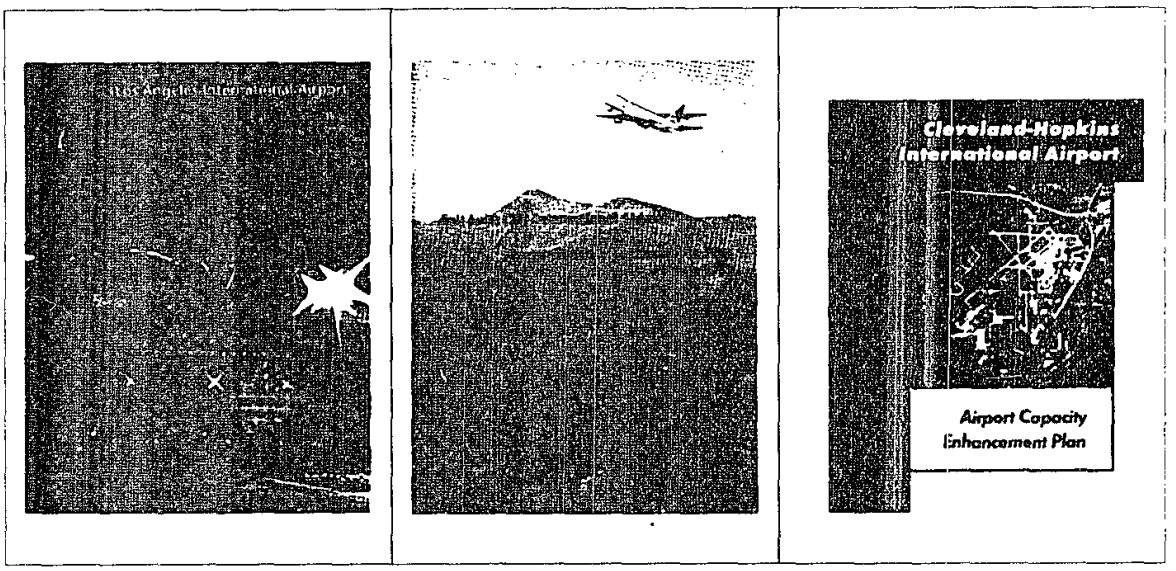
24 The FAA and State of Illinois forecasts provided by FAA assume a growth in the average enplanements per aircraft – an as yet unproven assumption. If that assumption is incorrect, the aircraft operations demand would be even greater.

enhancement" program at dozens of the Nation's existing airports. Rather than building new airports to add to capacity, FAA has focused on stuffing more flights into existing airports through a variety of physical changes *(e.g.,* high speed exits; hold pads; new runways) coupled with changes in air traffic control procedures designed to stuff more planes into the same airspace in any given finite period of time *(e.g.,* 15 minutes, 30 minutes, 60 minutes). This desire to build more capacity is set forth in a number of FAA documents including its annual report entitled *Airport Capacity Enhancement Plan* (ACE).



In addition the FAA has funded and sponsored "airport capacity enhancement" studies at most of the Nation's major commercial airports – including Chicago's O'Hare and Midway.

Because increases in O'Hare's capacity are a politically explosive topic, FAA and Chicago have attempted to disguise the FAA capacity enhancement program for O'Hare and Midway by calling it the "Delay Task Force" Study. Yet every FAA-funded identical study for *every* other major airport in the country (including Houston, Los Angeles, New York, Washington, Seattle, Dallas-Ft. Worth, Atlanta and a host of other airports) candidly acknowledges the program as a "capacity enhancement" program. And Chicago and FAA in their internal documents clearly identify the publicly spun "Delay Task Force Report" as a "capacity enhancement" report.



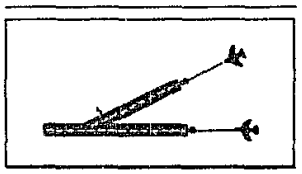
We bring these facts to your attention because – short of building new runways at O'Hare – the only way to allow increases in aircraft operations at the margin (such as has been involved in the more than 100 slot exemptions awarded since 1994 and proposed for the additional 30 slots in the McCain/Moseley-Braun/Durbin "compromise") is to jam more aircraft operations closer together in time and space.

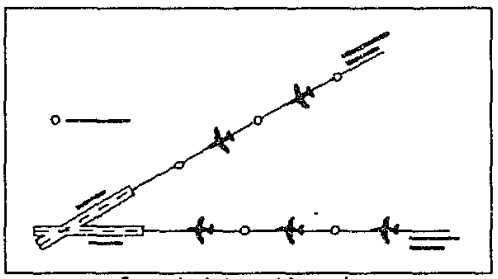
This attempt to compress more aircraft operations in the same time and space to increase the capacity of O'Hare is reflected in a variety of "capacity enhancement" measures that O'Hare and the FAA have employed in recent years as part of their "capacity enhancement" program at O'Hare. These measures, or variants of these measures are set forth in the 1991 O'Hare Capacity Enhancement Report (publicly known as the Delay Task Force Report) and in various editions of the FAA's *Aviation Capacity Enhancement Plan.*

The measures include such techniques as reducing runway occupancy time, reducing the separation distance between arriving aircraft, land-and-hold-short operations in the "wet" (so called "wet stops"), and land-and-hold-short operations at night. Among the current operational changes under consideration by the FAA are such dubious devices as allowing "triple converging runway arrivals" in the dark or in bad weather conditions, nighttime land-and-hold-short operations, and jamming more aircraft into the arrival queue at the so-called arrival "cornerposts". (This last process is the so-called Chicago Terminal Area Project or CTAP).

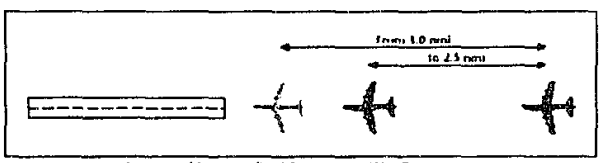
The following are both implemented and proposed FAA devices for placing more aircraft *closer together in time and space — in bad weather and low visibility* — to increase the capacity of O'Hare:

Figure 3 4. Simultaneous Operations on Wet Intersecting Runways





Converging Instrument Approaches



Improved Longitudinal Spacing on Wet Runways

All of these changes have significant risk. If our political leaders continue to support the squeezing of more and more aircraft into the finite airspace and airport facilities at O'Hare, they are risking a major disaster. Many political leaders – including Illinois Secretary of State George Ryan and Congressman Henry Hyde – have emphasized this risk and have called for a stop to this continued piecemeal ratcheting process where more and more flights are squeezed into O'Hare.

Nor is this mere political rhetoric. Most pilots normally don't broadcast their concerns about safety hazards. And the airline public relations machine quickly stifles bad news about near misses and potential catastrophes[25].

But we know of at least two major incidents in the last 18 months where daylight use of the land-and-hold-short procedure at O'Hare has resulted in near catastrophe. Land and hold short is a process where one of two aircraft using intersecting runways is directed to land and "hold

25 Witness the euphemism of the incident last fall with a 727 landing on runway 32 R at O'Hare. American and Chicago aviation officials referred to the incident as a "hard landing" where the 727 skidded off the runway and gouged out its belly. Mimicking the penchant for airline public relations to play down safety hazards with euphemisms, others have referred to the incident as a "soft crash".

short" of the intersection with the other active runway. It is used increasingly at O'Hare in order to process more aircraft operations.

The problem with land-and-hold-short is again related to Murphy's law – if something can go wrong, it will. Land-and-hold-short presumes that the aircraft that must hold short can and will stop short of the intersection with the other active runway, where another aircraft is moving at high speed toward the intersection.

In May 1997 in broad daylight at O'Hare a departing British Airways 747 was departing on 32R to the Southeast. Arriving at O'Hare on an intersecting runway (27L) was a United 737. For reasons as yet unknown, the United 737 was unable to stop prior to the intersection. Because the incident occurred in broad daylight, an alert controller happened to look up and see the impending collision between the 747 and the 737 and ordered the 747 to make a panic stop. The 747 lost several tires in the panic stop, was disabled, and had to be towed off the field.

There has been at least one similar incident in the last 18 months where two arriving flights on intersecting runways under land and hold short almost collided. Again, alert action – this time by one of the pilots – averted a disaster. As stated by the pilot:

> "We were assigned Rwy 32L full length and a B727 was assigned Rwy 27L LASSO [Land-And-Hold-Short] Rwy 32L. He accepted and TWO properly informed us of his location. He had just 6500 ft of available rwy and with his deceleration rate it was hard to tell if he could stop before our intxn. There was *a definite collision potential* here. Further considering the potential of failed brakes or just bad judgment on the LASSO I believed at the time a GAR [Go Around] was a distinct possibility. I partially leveled off at 100 ft expecting such when he started clring Rwy 27L. I wound up lndg long and still managed to stop well before the end of the rwy. *I'm now a firm believer in the union pos that LASSO ops are inherently unsafe. especially where 2 converging lndgs are occurring.* Next time I will make an immediate decision to just GAR."
>
> FAA Aviation Safety Reporting System Report of an incident in October 1997 between an MD-80 and a B-727 both landing at O'Hare on intersecting runways. (emphasis added)

The point of describing these real world near-collisions is to set the framework for the procedures either now in effect or proposed to jam more aircraft operations into O'Hare. The triple converging approach and the nighttime land-and-hold-short procedures being advocated by the airlines and Chicago are illustrative of the hazards of these techniques. They are designed to be employed in low visibility conditions – exactly the conditions that create the greatest safety risk when aircraft are placed in closer proximity to one another in time and space. Had the land-and-hold-short incident between the British Airways 747 and the United 737 taken place at night – a procedure now urged by Chicago – the likelihood of a controller seeing and preventing a catastrophe would have been far less.

M. The Forgotten Public Health and Environmental Issues

Some politicians seek to hide behind the cover of an environmental impact statement process to duck the hard issues presented by the slot exemption proposals and the related issues of piecemeal expansion of O'Hare. The citizens who live around O'Hare are all to familiar with the games played by FAA and Chicago in addressing the environmental and public health issues presented by the airport and its expansion. Two egregious tactics used by the FAA and Chicago stand out.

Ignoring the toxic chemical cloud from O'Hare. Anyone who lives in many of the communities around O'Hare can tell you of the persistent smell of "kerosene" in the air from partially burned and unburned jet aircraft exhaust fumes permeating the residential neighborhoods around O'Hare. These same residents can show you the toxic scum from jet aircraft exhaust that coats their yards, their outdoor furniture, their cars, and their homes. We know that these toxic fumes contain Benzene, Formaldehyde, and a host of other carcinogenic chemicals. O'Hare has these problems because – unlike a new regional airport with many square miles of land buffer – O'Hare abuts many residential communities.

Yet state and federal public health officials ignore these communities. At no time have FAA, USEPA, or the State of Illinois come into our communities and sampled for the baseline amount of toxic air pollution coming into our communities from O'Hare. At no time have FAA, USEPA, or the State of Illinois measured how much is coming from O'Hare and what the concentrations and health hazards are for the toxic chemicals in the air of our residential neighborhoods.

Any Environmental Impact Statement that does not include a detailed measurement of what is called the "base case" – *i.e.,* the amount, concentration and health risks of these toxic pollutants created by the current levels of traffic at O'Hare – cannot be credible in assessing the impacts of an increase in the traffic. Indeed, given the intensity of current toxic air pollution in some O'Hare communities, it is likely that <u>current</u> levels of traffic create unacceptable public health risks from this toxic pollution.

Playing the game of averages with noise. Just as FAA and other responsible agencies ignore the severe toxic air pollution caused by O'Hare operations, the FAA also stacks the deck in defining the degree of noise impact created by the airport. For example FAA defines adverse noise impact as a 24-hour *average* noise level greater than 65 decibels.

Accepting for the sake of discussion FAA's failure to include individual instantaneous noise events in that impact, FAA compounds its error by refusing to identify those areas impacted by 24-hour noise levels greater than 65 decibels. Instead, FAA uses an "average of averages". FAA says that there is no adverse noise impact unless the 24-hour average noise level of 65 decibels is exceeded on a *365 day average*. This game of averages makes any FAA analysis of noise impact beyond common sense and public credibility.

Our communities already know that more aircraft operations mean more noise and more toxic air pollution. We don't need gamesmanship by federal agencies – operating with Congressional blessing – to try to persuade us that we don't have a problem that we can smell, taste, and hear.

N. Why Chicago Lacks Capacity to Meet Demand for Access to the Chicago Market

The above analysis – and the statements of the airlines and DOT – make clear what most of us have long known. Current demand at O'Hare exceeds the capacity of O'Hare to handle that demand. This debate is not about demand decades in the future; it is about demand now and the inability of our metropolitan Chicago airport system to handle current demand.

Moreover, a system that cannot handle current demand cannot be expected to handle future demand growth. Indeed the FAA HDR Study shows that attempts to handle several hundred thousand additional flights at O'Hare – a demand growth that FAA itself say will occur – would result in incredible delays and a likely breakdown of our system.

The answer, of course, to handle both current capacity shortfall and long term capacity needs lies in the new regional airport. And much of the reason for the lack of capacity can be found in the adamant opposition of the City of Chicago, the dominant airlines at Fortress O'Hare (United and American) and the Clinton Administration to the construction of a new regional airport for metropolitan Chicago. Instead of joining with regional leaders to build a new airport to serve in partnership with O'Hare and Midway to provide plenty of regional capacity, these opponents have – for more than a decade – adamantly opposed construction of a new airport.

The reasons for this opposition are clear and are described in detail in the report by Congressmen Henry Hyde and Jesse Jackson, Jr. entitled *Chicago's Airport Future: A Call For Regional Leadership* (1997). United and American do not want significant new competition entering into the Chicago market and reducing the monopoly profit premium these airlines now extract from business travelers to and from Chicago. They would rather have a constrained capacity situation in Chicago – where United and American dominate and squeeze out competition – than have a regional airport system with plenty of capacity to allow significant new competition to enter the Chicago market.

There are several ways to handle the demand that cannot be accommodated at O'Hare:

1. **Build new capacity at a new metropolitan Chicago regional airport.** The new airport would operate with O'Hare and Midway as part of a regional airport system. This is the solution supported by Illinois' governors for the last decade, by much of the region, and for a short time by Chicago Mayor Richard M. Daley.

2. **Build new capacity at O'Hare.** Growth in air traffic at O'Hare – and the associated construction and implementation of increased O'Hare airport capacity necessary to accommodate that growth – is adamantly opposed by hundreds of thousands of residents around O'Hare and has been the official position of Illinois state political leadership for more than a decade.

3. **Shift "Transfer Traffic" to other Regions.** More than half of O'Hare's passenger traffic is what is called "transfer" or "connecting" traffic. In their attempts to maintain their grip on Fortress O'Hare and to prevent a new airport from allowing in

significant new competition, United and American have argued that the transfer traffic – and the jobs and economic benefits associated with that traffic – should be moved to other regions where United and American have hubs (*i.e.*, Denver and Dallas-Ft. Worth.) Indeed, recent news articles indicate that United is shifting some of its growth in transfer traffic to Denver – costing metropolitan Chicago jobs and economic benefits.

Common sense says that the new capacity needs to be major and it needs to be placed at a new regional airport. Indeed, even the wildest schemes of expanding O'Hare could not likely handle all the traffic forecast by the FAA and the State of Illinois.

CONCLUSIONS

1. The Congress should not create any additional slots or any additional categories for slot exemption at O'Hare. The more than 100 slot exemptions under the 1994 legislation – most of which have been illegal and improper – have exhausted the minimal excess four slot per hour incremental capacity found by USDOT in the 1995 Report on the High Density Rule.

2. Most of the 100 slot exemptions granted since 1994 have been to American and United affiliates in a flurry of activity where United and American fought each other to grab up the incremental slot capacity. Not only did these slot exemptions not stimulate new competition – they actually strengthened the monopoly position of United and American at Fortress O'Hare. These United and American affiliates were clearly not new entrants for which the slot exemption was designed. The "musical slots/shell game" played by DOT and the airlines to disguise the fact that these slots were being given to dominant carriers fooled no one.

3. Nor did these slot exemptions for domestic service by the dominant carriers for non-EAS communities serve a genuine transportation need for Midwestern communities. As pointed out by Delta's affiliate, Comair, the communities for which slots were awarded were for the most part distant, non-stop communities located outside the Midwest for which other hubs (Cincinnati, Atlanta, Pittsburgh) were available. Even where slots were awarded for Midwestern cities, the dominant airlines and DOT played musical chairs to pull existing slots and operations from those Midwestern communities.

4. Under the "Zero Sum" position correctly taken by United, the grant of these almost 100 non-essential domestic flights outside the terms of §41714 has precluded the DOT from using those slots more productively – *i.e.*, for international slots and for Midwestern cities that need the service.

5. Because of this profligate and improper grant of slot exemptions, additional slot exemptions cannot be granted without further exacerbating the delays for *all* O'Hare passengers and – in a self perpetuating cycle – create pressure for more capacity increases followed by more delays followed by more capacity increases at O'Hare.

6. Short of building new concrete at O'Hare – e.g., *new* runways – the only way to bring more traffic into O'Hare is to put the planes closer together – both physically and in the time it takes to complete an operation. These so-called "delay reduction" devices (typically Air Traffic Control Procedure (ATC) changes) are in reality "capacity enhancement" devices to create more capacity and process more aircraft into the airport. The 1991 Capacity Enhancement Report for O'Hare – which has been publicly sold by FAA and Chicago as a "Delay Task Force Report" – has a number of measures in it which are attempts to bring more and more aircraft into the airport by putting more aircraft closer together in time and space. Related and additional measures to put more

Exhibit 4

BEFORE THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

Proposed Issuance of a Clean Air Act Permit Program (CAAPP) Permit to United Airlines - O'Hare Maintenance Facility, O'Hare International Airport, in Chicago, Illinois	)	Illinois EPA File #106-99

COMMENTS OF THE SUBURBAN O'HARE COMMISSION OPPOSING THE PROPOSED ISSUANCE OF A CLEAN AIR ACT PERMIT PROGRAM (CAAPP) PERMIT TO UNITED AIRLINES - O'HARE MAINTENANCE FACILITY

The following public comments are submitted on behalf of the Suburban O'Hare Commission (SOC)[1] to the Illinois Environmental Protection Agency (IEPA), and provide the bases for SOC's opposition to IEPA's proposed issuance of a Clean Air Act Permit Program (CAAPP) permit to United Airlines for its O'Hare Maintenance facility. On behalf of the communities immediately surrounding O'Hare International Airport, the communities most directly affected by emissions from operations -- permitted and unpermitted -- by airlines including United Airlines whose operations at O'Hare are under the direction and control of the City of Chicago, the Suburban O'Hare Commission opposes the proposed CAAPP permit for United Airlines for the following reasons:

[1] The Suburban O'Hare Commission is comprised of communities surrounding O'Hare International Airport that are directly affected by the emissions generated by the operations of the airlines and the City of Chicago, and includes Addison, Bensenville, Des Plaines, DuPage County, Elk Grove Township, Elmhurst, Harwood Heights, Itasca, Lisle, Park Ridge, Roselle, Schiller Park and Wood Dale.

EXHIBIT 4

- Issuing the proposed CAAPP permit would contravene Section 9 of the Illinois Environmental Protection Act (Act), 415 ILCS 5/9, which prohibits causing or allowing air pollution either alone or in combination with contaminants from other sources. United Airlines and IEPA have failed to include or consider the other sources of air contaminants from operations at O'Hare International Airport in the application or in reviewing the application for the proposed permit. As such, the application and proposed issuance fail to conform to the minimal requirements of the Act.
- O'Hare International Airport is a single "source" of air contaminants, as defined by Section 39.5(1) of the Act, 415 ILCS 5/39.5(1). United Airlines and the IEPA are proposing to issue a permit for only a fraction of the source, an *ultra vires* action for which the IEPA has no authority.
- The application fails to list and identify the hazardous air pollutants which are being and will be released into the atmosphere from the facility. Based on known information, these releases include but are not limited to, benzene, toluene, xylene and other toxic hydrocarbon compounds. The current CAAPP permit application avoids disclosing the fact that these toxic air pollutants will be released by hiding them in the category of volatile organic material ("VOM"). The application makes no attempt to list the individual HAPs included in the broad category labeled "VOM". Even where the application mentions HAPs, it fails to specify the individual HAPs that will be emitted. This does not provide sufficient information for the public or the regulators to determine the emissions of HAPs from this facility.
- The communities surrounding O'Hare already suffer from unacceptable levels of hazardous air pollutants. The IEPA has failed to address: 1) the total emissions of hazardous air pollutants from O'Hare International Airport; 2) the resultant concentrations of these hazardous air pollutants in the air breathed by our residents -- especially the children, elderly and other sensitive residents; and 3) the restrictions and abatement measures necessary to reduce these concentrations to acceptable levels that are protective of health and property in our communities.

By Failing to Take Into Account the Combination of Air Contaminant Sources at O'Hare, the IEPA Violates Section 9 of the Act

Section 9(a) of the Illinois Environmental Protection Act (Act), 415 ILCS 5/9(a), prohibits "the emission of any air contaminant into the environment in any State so as to cause air pollution in Illinois, either alone or in combination

with contaminants from other sources." (Emphasis added.) The clear mandate of Section 9 precludes the IEPA from issuing the proposed permit for United Airlines where the emissions, in combination with other air contaminants being emitted from O'Hare, cause air pollution.

"Air pollution" is defined as

> the presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property.
>
> 415 ILCS § 5/3.02.

As residents living under the cloud of toxic air contaminants emitted from O'Hare, there is no doubt to us that the combination of air contaminants being emitted from O'Hare in their massive unchecked quantities have caused, and will continue to cause, a serious health threat to our communities. Emissions from O'Hare interfere with our health and our enjoyment of life on a daily, monthly and yearly basis. There is no doubt, and can be no argument, that these emissions are "air pollution" as defined by the Act.

In fact, O'Hare is one of the largest sources of poisonous air pollutants such as benzene, xylene and formaldehyde. Estimates rank O'Hare as one of the top three sources of VOM in the State. Health risk assessments conducted at airports a fraction of the size of O'Hare demonstrate unacceptable cancer risks at orders of magnitude higher than risk levels determined by U.S. EPA.[2]

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[2] E.g., Presentation Handout, Clean Airport Summit Concurrent Session on Air Toxics, April 13, 1999, presented by Bill Piazza, Los Angeles Unified School District: "[R]esults of the assessment revealed that cancer risks for the maximum exposed individuals who live in proximity of the [Santa Monica Municipal Airport] were eleven, twenty two and twenty nine in

SOC has repeatedly requested that the IEPA disclose the identity and quantities of air contaminants being emitted from O'Hare. Each time these requests have been made, IEPA has responded with inadequate piecemeal data. To date, the IEPA has not publicly disclosed, to our knowledge, the complete catalog of the air contaminants *emitted from O'Hare* and imposed upon our communities daily.

Moreover, to date, the agencies have effectively refused to determine the nature and quantities of these emissions, emissions in quantities so high that they leave a residue coating homes and plants throughout our communities. Neither the IEPA nor the U.S. EPA has taken adequate steps to even monitor the levels of toxic emissions from O'Hare. Common sense dictates that if the IEPA cannot inform the public about the levels of toxic air contaminants currently being emitted from O'Hare, it cannot have considered the emissions under the proposed CAAPP permit in combination with other air contaminants.

Until the IEPA does identify and disclose the nature and quantity of air contaminants emitted from all operations taking place at O'Hare in combination, including emissions subject to United Airlines' proposed CAAPP permit, the IEPA cannot claim that it has considered the emissions from United Airlines in combination with other sources at O'Hare, as required under the Act. The IEPA must meet this threshold burden to comply with Section 9(a) of the Act. Until

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one million, respectively." U.S. EPA has defined the margin of safety as a lifetime cancer risk of *no greater than one in one million.* (Exhibit A, attached hereto.)

aircraft closer together in time and space are contained in the FAA's *Aviation Capacity Enhancement Plan.*

But by squeezing more aircraft into an already congested airport – especially in bad weather and low visibility conditions – with such devices as reducing separation distance, nighttime land-and-hold-short operations, and "wet stops", the FAA (with Congress' apparent assent and encouragement) is reducing the margin of safety for airline passengers using O'Hare.

7. The answer to the problems of demand exceeding supply in the Chicago market is to build new regional capacity. Such new capacity could be used to absorb the excess domestic demand that wants to use the O'Hare – freeing up some O'Hare capacity for international growth. Alternatively the new capacity could be used to serve the growth in international demand freeing up O'Hare to provide more service to Midwestern towns and other communities. With an excess of supply (capacity) over demand, our region would not have to ration scarce resources and would not have to squeeze out key elements of our region's air transportation economy.

8. In the short term – while the new airport is being built – FAA and DOT should be directed to revoke the spurious and illegal slot exemptions already given. Further, to insure that the purposes of the 1994 statute are fully met, Congress should direct the DOT to reallocate other existing slots held by the existing dominant airlines at O'Hare in a way that best meets the goals of competition, service to Midwestern communities, and international traffic expressed in the 1994 statute.

the IEPA meets its obligations under the Act, the IEPA should not issue the proposed CAAPP permit.

O'Hare International Airport is One "Source" Under the Act

The owner of the facility known as O'Hare International Airport is the City of Chicago, not United Airlines. United Airlines has proposed an erroneous description of the relationship between United and the City of Chicago relative to the operation of the maintenance facility that is the purported subject of the current CAAPP permit application. United has proposed that: "Since the City of Chicago or any state or federal institution does not control the operations of United Airlines, it has been deemed that the stationary sources of air pollution operated by the City of Chicago (Department of Aviation) or other airlines are not part of the same Part 70 site as the stationary sources of air pollution operated by United Airlines." (Final Draft CAAPP Permit, Sec. 1.4.) This characterization conflicts with the facts, the Act and U.S. EPA initiatives aimed at addressing continuing pollution problems from sectors such as airports.

The City of Chicago controls O'Hare International Airport and oversees the development of the facility and its operations. The proposed CAAPP permit application is being submitted under 415 ILCS 5/39.5, Illinois' version of the Clean Air Act Title V permit program, a federal mandate that all states, including Illinois, implement. "Source" is defined therein as:

> any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common

control of the same person or persons under common control) belonging to a single major industrial grouping. For the purposes of defining "source," a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent property belonging to the same Major Group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual.

O'Hare International Airport is a single property under the ownership and control of the City of Chicago. Hazardous air pollutants are emitted into the ambient air from various activities at the airport under the control of the City of Chicago. These are activities over which the City of Chicago has decision-making authority, a fact it disingenuously downplays during any process -- such as the air permitting process at issue here -- whenever it appears the process would result in the City being held accountable for the full degree of its responsibilities for toxic and hazardous air emissions from O'Hare. Operations at O'Hare are emitting activities belonging to the same Major Group, on a single or contiguous property owned and operated by the City of Chicago. O'Hare is a single "source" of air contaminants, as defined by the Act.

The IEPA is well aware of the relationship between the City of Chicago and the airlines to whom the City leases space at O'Hare and the extensive degree of control City of Chicago exercises over the airline lessees. In fact, the City of Chicago currently has pending at the IEPA the City's own CAAPP permit application for operations that emit hazardous and toxic air contaminants from O'Hare. By artificially dividing into fractions the operations at O'Hare, Chicago and the airlines, including United, are avoiding quantifying, controlling and

reporting to the public the full extent of toxic air emissions from O'Hare. This is inconsistent with the Act and U.S. EPA policy initiatives.

Underscoring this point, U.S. EPA has adopted a "whole facility" policy that specifically seeks to address the failures of piecemeal environmental controls. The whole facility approach is a comprehensive strategy to address the full range of environmental concerns that exist at a single facility. The U.S. EPA's Notebook Project, as it is called, recognizes that discrete releases affect each other and must be addressed comprehensively. This approach includes airports.[3] There is no reason why this common sense approach should not direct IEPA to consider all releases at O'Hare in combination and treat the whole property as the single source that it is.

Taken together, it is clear that O'Hare is a single source air contaminants under the Act and requires a single permit providing comprehensive control of toxic air contaminants. No other source in the State is treated like O'Hare. If the other largest emitting facilities of VOM in the Chicago ozone nonattainment area were to submit applications for fractions of their overall facilities based on the proposition that the units were being individually leased, the IEPA would not accept the proposition that the whole facility was no longer a single "source". There is no rational justification that the exception should be made in the case of O'Hare.

O'Hare is an Emission Reductions Market System Participating Source, and United Airlines' Contributions Cannot be Treated as Exempt

As a single source of air contaminant emissions located within the Chicago ozone nonattainment area,[4] O'Hare International Airport is estimated to be approximately the third largest emissions source for VOM in the State. Yet under the proposed CAAPP permit, United Airlines' maintenance operations are purportedly not subject to the *Illinois Emission Reductions Market Systems* (ERMS) program[5] on the basis that, when examined individually, VOM emissions do not exceed 10 tons per season (tps).

Based upon the reported actual VOM emissions from only a few of the many discreet operations that report emissions to the IEPA, O'Hare International Airport exceeds the threshold for a participating source under the ERMS program.[6] As such, O'Hare must be treated as an ERMS source. The IEPA, by approving United Airlines characterization of emissions from some of its

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[3] See, EPA Office of Compliance Sector Notebook Project, *Air Transportation Industry*, October 1998. EPA/310-R-97-001.

[4] The Chicago nonattainment area for ozone is comprised of Cook, DuPage, Kane, Lake, McHenry and Will counties, and Aux Sable, Goose Lake and Oswego townships. The Chicago nonattianment area is designated as "severe" for ozone.

[5] The ERMS program is a market-based VOM emissions trading program specific to the Chicago nonattainment area. 415 ILCS § 9.8; 35 Ill.Adm. Code, Part 205. While commonly described by the IEPA as a flexible, market-based alternative to command and control regulation, the ERMS does not relieve a source of any requirements under the Clean Air Act or the Illinois Environmental Protection Act. Rather, the ERMS is an additional layer of regulation that major sources of VOM in the Chicago nonattainment area must meet to comply with the Act.

[6] "Participating source" is defined as "a source operating prior to May 1, 1999, located in the Chicago ozone nonattianment area, that is required to obtain a CAAPP permit and has a baseline emissions of at least 10 tons, as specified in Section 205.320(a) . . ." 35 Ill.Adm. Code § 205.130.

operations as exempt from the ERMS program, ultimately undermines the ERM's and the State's rate of progress goals that were the basis for implementing the ERMS.

Additionally, as explained earlier in these comments, if IEPA allows O'Hare to fractionalize its operations and label them individually as "sources," there is no justifiable basis to prohibit any other large source of VOM in the Chicago nonattainment area to escape the ERMS regulatory burden by similarly labeling its individual units or stages as discreet "sources" as well. Such artificial mechanisms contrived to avoid the requirements environmental laws undermine the intent of such laws and propagate the harms sought to be prevented. The IEPA should not support the piecemeal approach to permitting at O'Hare that results in the third largest VOM source escaping the ERMS program altogether.

In addition to these concerns relative to the proposed issuance of a CAAPP permit for United Airlines' maintenance operations at O'Hare International Airport, we have the following concerns with United Airlines' Final Draft CAAPP Permit Application:

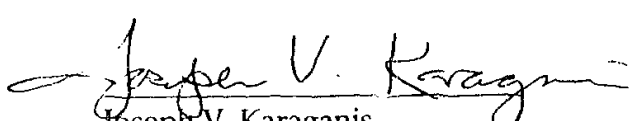
- The application fails to list and identify the hazardous air pollutants which are being and will be released into the atmosphere from the facility. Based on known information, these releases include but are not limited to, benzene, toluene, xylene and other toxic hydrocarbon compounds. The current CAAPP permit application avoids disclosing the fact that these toxic air pollutants will be released by hiding them in the category of volatile organic material ("VOM"). The application makes no attempt to list the individual HAPs included in the broad category labeled "VOM". Even where the application mentions HAPs, it fails to specify the individual HAPs that will be emitted. This does not provide sufficient information for the public or the

regulators to determine the emissions of HAPs from these operations and consider them in combination with all other operations at O'Hare.

- Despite that toxic and hazardous pollutants are and will be released from the units identified in United Airlines' CAAPP permit application, the draft permit application fails to require <u>any</u> monitoring for any of these units for HAPs or VOM. (See, e.g., no monitoring requirements for unit 1, (sec. 7.1.8); none for unit 2 (sec. 7.2.8); none for unit 3 (sec. 7.3.8); none for unit 4 (sec. 7.4.8); none for unit 5 (sec. 7.5.8); none for unit 6 (sec. 7.6.8); none for unit 7 (sec. 7.7.8). Yet there is a section purporting to require semiannual monitoring reports to be submitted to the IEPA (sec. 8.6.1).) As drafted, the CAAPP permit fails to provide adequate control and protection from the listed emissions units or sufficient information to inform the IEPA and the public about the actual levels of emissions from these units. As described above, there is already a dearth of data relative to emissions at O'Hare, and the proposed CAAPP permit, as drafted, simply propagate ignorance.

Thank you for your consideration of our concerns and objections in this matter which is of vital importance to the health and welfare of our citizens.

Respectfully submitted on behalf of
the Suburban O'Hare Commission,



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cc: Congressman Henry J. Hyde
Senate President James "Pate" Philip
Speaker Lee A. Daniels
IEPA Director Thomas Skinner

cnsoc11

Exhibit A

CLEAN AIRPORT SUMMIT
CONCURRENT SESSION ON AIR TOXICS

CHICAGO, ILLINOIS
APRIL 13, 1999

PRESENTATION HANDOUTS

PRESENTED BY:

BILL PIAZZA
LOS ANGELES UNIFIED SCHOOL DISTRICT

Assessment Summary

In August 1995, the Los Angeles Unified School District (LAUSD) approved a resolution requesting the Federal Aviation Administration (FAA) to determine the potential health and safety impacts of airport operations on the students and staff who attend local schools in proximity of the Santa Monica Municipal Airport. It was LAUSD's contention that proposed navigational and related changes planned for the airport would not receive a thorough evaluation to assess the potential adverse effects on our local schools prior to implementation.

In addition to concern over FAA accountability regarding a full environmental evaluation of operational changes made at the airport, the LAUSD along with three Los Angeles City Council Districts which adjoin the airport, as well as representatives from the local community requested that a permanent safety committee be formed to evaluate local airport operations affecting the health and safety of the surrounding community.

In December 1995, the Santa Monica Airport Commission initiated several meetings to discuss the creation of the committee. During the ensuing months, the Airport Commission heard relevant testimony from community representatives regarding the committee's proposed composition, purpose and goals. At issue were concerns associated with aircraft noise, safety and the environment.

In October 1996, the safety committee was formed and included representatives from the LAUSD, FAA, Santa Monica Airport, local pilots, fixed based operators and members of several Los Angeles homeowners associations representing the Fifth, Sixth and Eleventh Council Districts. The safety committee, now referred to as the Santa Monica Airport Working Group (AWG), was limited to an eight month tenure and charged with the task of assessing relevant noise, safety and environmental issues associated with existing and future airport operations. Recommendations were encouraged by the Airport Commission to mitigate negative impacts in a "realistic fashion." The goal of the AWG was to bring these recommendations to the Airport Commission for their consideration and, if deemed appropriate, forwarded to the Santa Monica City Council for their deliberation.

In response to the concerns of the community and in consideration of the tasks charged to the AWG, the LAUSD offered its expertise and resources to prepare a health risk assessment to determine the impact of toxic and associated pollutants generated from the Santa Monica Airport.

The assessment was designed to identify aircraft and ground support operations utilized at the Santa Monica Airport facility that might reasonably be anticipated to emit hazardous air

Santa Monica Airport and Vicinity

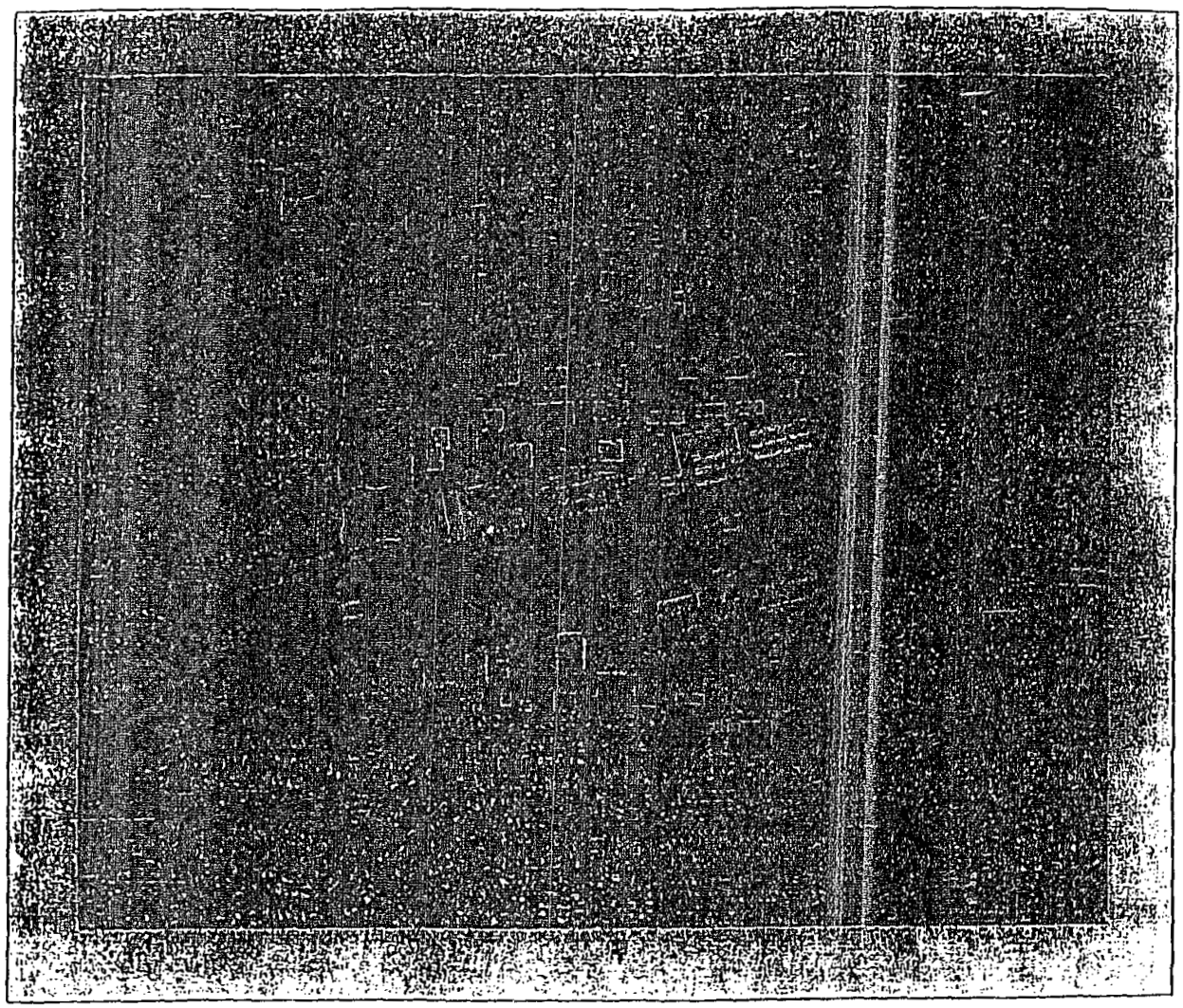


Table 1
Aircraft Operational Scenarios

Operational Profile	Aircraft Type		Total Operations/Year
	Fixed Wing	Rotocraft	
Baseline and Piston	195,000	5,000	200,000
Increased Turbojet	200,000	5,000	205,000

Table 2
Hourly Average Aircraft Operations

Operational Scenario	Time													
Fixed Wing / Baseline and Piston	10.8	20.6	30.6	36.9	46.0	46.8	50.4	52.9	51.5	55.2	45.8	36.7	28.8	21.3
Fixed Wing / Increased Turbojet	11.1	21.1	31.3	37.8	47.2	48.0	51.7	54.3	52.8	56.6	47.0	37.6	29.6	21.8
Rotocraft	0.50	0.92	0.84	0.79	1.06	1.76	1.37	1.23	1.06	0.94	0.74	0.96	0.86	0.68

Table 3
Fixed Wing Fleet Mix

Fleet Mix Percentage (Scenario)			Aircraft Class	Aircraft Type	Representative Engine Type	Engine Number	Percentage in Class
Baseline	Increased Turbojet						
94.8	92.4	100.0	Piston	*Cessna 172*	O-320	1	35.0
				Piper PA-34	TSIO-360C	2	35.0
				Piper PA-46	TIO-540	1	20.0
				Cessna 150	O-200	1	10.0
2.6	2.5	0	Turboprop	Beechcraft King Air	PT6A-41	2	49.0
				deHavilland DHC6/300	PT6A-27	2	49.0
				Fairchild Pilatus PC6	PT6A-27	1	2.0
2.6	5.1	0	Turbojet	Cessna Citation *	JT15D-4	2	34.0
				Learjet	TFE731-2-2B	2	19.0
				IAI Westwind *	*TFE731-3*	2	*18.0*
				Gulfstream	SPEYMK511-8	2	11.0
				Raytheon Hawker	TFE731-3	2	11.0
				Dassault Falcon	*TFE731-2*	2	3.0
				BAE HS125 *	TFE731-3	2	3.0
				Lockheed Jetstar	TFE731-3	2	1.0

Note: (*) Denotes aircraft with auxiliary power units (APU's). All APU's assumed a standard Allied-Signal GTCP 36 Series engine with a nominal 80 shaft horsepower rating.

Table 4
Rotocraft Fleet Mix

Fleet Mix Percentage	Aircraft Class	Aircraft Type	Representative Engine Type	Engine Number	Percentage in Class
11.0	Piston	Robinson R22	Lycoming O-320	1	58.0
		Robinson R44	Lycoming O-540	1	42.0
87.8	Turboprop	Aerospatiale AS 355	Lycoming LTS Series	2	52.0
		Bell 206	Allison 250 Series	1	45.0
		Agusta A109	Allison 250 Series	2	2.0
		MD 500	Allison 250 Series	1	1.0
1.2	Military	Sikorsky CH-53	T64-GE-6	2	60.0
		Sikorsky CH-3	T58-GE-5	2	40.0

Table 5
Aircraft Emission Correction Factors

Correction Factor	Aircraft Class		
	Piston	Turbine	Military
Total Hydrocarbon (THC) to Volatile Organic Compound (VOC)	0.9649	1.0631	1.1046
Volatile Organic Compound (VOC) to Total Organic Gas (TOG)	1.1347	1.0738	1.1147

Table 6
Aircraft TOG Toxic Fractions

Toxic Species	Aircraft Class		
	Piston	Turbine	Military
Benzene	0.0405	0.0179	0.0202
Formaldehyde	0.0269	0.1414	0.1548
1,3-Butadiene	0.0098	0.0157	0.0189
Acetaldehyde	0.0062	0.0432	0.0483

Note: Acetaldehyde values were derived from the following reference sources: Piston- *Motor Vehicle-Related Air Toxics Study* (U.S. EPA 1993), Turbine and Military- *VOC/PM Speciation Data System, Profiles #1099 and #1097* (U.S. EPA 1992).

Table 7
Aircraft Particulate Fractions

Aircraft Class	Wing Configuration	Representative Engine Type	PM Fraction	PM_{10} Fraction
Piston	Fixed	Engine specific with THC/TOG conversion.	0.05	0.9940
Turbine	Fixed	TPE 331-3	N/A	0.9760
Piston	Rotary	O-320	0.05	0.9940
		O-540	0.05	0.9940
Turbine	Rotary	Allison 250 Series	N/A	0.9760
		Lycoming LTS Series	N/A	0.9760
Military	Rotary	T58-GE-5	N/A	0.9760

Note: PM_{10} fractional values were derived from the State of California Air Resources Board document: *Method Used to Develop a Size-Segregated Particulate Matter Inventory* (CARB 1988).

Table 8
Comparison of Vehicle Classifications

U.S. Environmental Protection Agency Vehicle Class Designation	Vehicle Class Abbrev.	California Vehicle Class Designation	Technology Group	Vehicle Class Abbrev.
Light Duty Gasoline Vehicle	LDGV	Light Duty Auto/Light Duty Truck	Catalyst/Non-Catalyst	LDA/LDT
Light Duty Diesel Vehicle	LDDV	Light Duty Auto/Light Duty Truck	Diesel	LDA/LDT
Light Duty Gasoline Truck	LDGT1	See Note	N/A	N/A
Light Duty Gasoline Truck	LDGT2	Medium Duty Truck	Catalyst/Non-Catalyst	MDT
Light Duty Diesel Truck	LDDT	See Note	N/A	N/A
Heavy Duty Gasoline Vehicle	HDGV	Heavy Duty Truck	Catalyst/Non-Catalyst	HDG
Heavy Duty Diesel Vehicle	HDDV	Heavy Duty Truck	Diesel	HDD
Motorcycle	MC	Motorcycle	N/A	MCY

Note: Assume LDGV and LDGT classes are similar in contaminant generation. Combine LDGT1 vehicle class into LDA/LDT catalyst and non-catalyst technology groups. Merge LDDT category with LDA/LDT diesel technology group.

Table 9
Adjusted On-Road Mobile Fleet Mix

Vehicle Class	Abbrev.	Technology Group	Percentage
Light Duty Auto/Light Duty Truck	LDA/LDT	Catalyst	84.3
Light Duty Auto/Light Duty Truck	LDA/LDT	Non-Catalyst	3.3
Light Duty Auto/Light Duty Truck	LDA/LDT	Diesel	0.8
Medium Duty Truck	MDT	Catalyst	6.0
Medium Duty Truck	MDT	Non-Catalyst	0.4
Heavy Duty Truck	HDG	Catalyst	0.7
Heavy Duty Truck	HDG	Non-Catalyst	0.5
Heavy Duty Truck	HDD	Diesel	3.6

Table 10
Hourly Traffic Volumes
Airport Avenue

Time Period													
7-8	8-9	9-10	10-11	11-12	12-1	1-2	2-3	3-4	4-5	5-6	6-7	7-8	8-9
498	613	710	454	615	585	767	603	732	633	613	720	442	257

Table 11
Hourly Traffic Volumes
Parking Facilities

Source/Location	Time Period													
	7-8 (in)	7-8 (out)	8-9 (in)	8-9 (out)	9-10 (in)	9-10 (out)	10-11 (in)	10-11 (out)	11-12 (in)	11-12 (out)	12-1 (in)	12-1 (out)	1-2 (in)	1-2 (out)
Lear A1	129	3	40	16	16	24	12	12	16	3	145	3	6	5
SMC Shuttle B	50	6	186	31	124	31	24	23	78	31	155	78	108	107
SMC Applied Design Center C1	6	1	23	4	15	4	3	3	10	4	19	10	13	13
SMC Applied Design Center C2	29	4	108	18	72	18	14	13	45	18	90	45	63	61
Administration Building D	67	2	21	8	8	13	7	6	8	2	76	2	3	3
Runway Building E	47	1	15	6	6	9	5	4	6	1	53	1	2	2
SMAC F1	32	1	16	5	5	7	4	3	5	1	42	1	1	1
SMAC F2	19	1	9	3	3	4	2	2	3	1	24	1	1	1
Spitfire Building G	55	20	30	30	7	10	15	15	30	25	55	40	21	21
3100 Building H	62	2	20	8	8	12	6	6	8	2	70	2	3	3
Tenant I	24	1	12	3	3	5	3	2	3	1	30	1	1	3
Tenant J	41	1	20	6	6	9	5	4	6	1	53	1	2	1
Tenant K	24	1	12	3	3	5	3	2	3	1	31	1	1	2
Supermarine Main	44	2	16	3	13	26	26	25	46	19	25	3	22	22
Supermarine/DC3/ Museum Hangers	15	3	10	3	65	22	21	20	71	25	23	45	50	49
Thomasson	8	0	3	0	3	2	3	3	10	0	6	0	1	1
Gunnell Aviation	27	2	21	2	6	4	5	5	13	3	23	0	12	11
Airfield	13	1	5	2	10	12	13	13	23	15	11	0	9	9

Table 12
On-Road Vehicular Toxic Fractions

Vehicle Class	Technology Group	Compound/Emission Source						
		Benzene				Formaldehyde	1,3-Butadiene	Acetaldehyde
		Exhaust	Running	Resting	Hot Soak	Exhaust	Exhaust	Exhaust
LDA/LDT	Catalyst	0.04220	0.01000	0.01000	0.00730	0.01300	0.00560	0.00500
LDA/LDT	Non-Catalyst	0.02740	0.01000	0.01000	0.00730	0.03740	0.01150	0.00820
LDA/LDT	Diesel	0.02290	0.00000	0.00000	0.00000	0.03910	0.01030	0.01250
MDT	Catalyst	0.04220	0.01000	0.01000	0.00730	0.01300	0.00560	0.00500
MDT	Non-Catalyst	0.02740	0.01000	0.01000	0.00730	0.03740	0.01150	0.00820
HDG	Catalyst	0.04220	0.01000	0.01000	0.00730	0.01500	0.00560	0.00500
HDG	Non-Catalyst	0.02740	0.01000	0.01000	0.00730	0.04310	0.01150	0.00830
HDD	Diesel	0.01060	0.00000	0.00000	0.00000	0.02800	0.01580	0.00750
MCY	N/A	0.04220	0.01000	0.01000	0.00730	0.01300	0.00560	0.00500

Note: Exhaust and hot soak values were derived from the *Vehicle-Related Air Toxics Study* (U.S. EPA 1993). Running and resting losses were obtained from *Inputs and Methodology for Calculating Motor Vehicle Emission Factors for the Southwest Chicago Study Work Assignment* (U.S. EPA 1992).

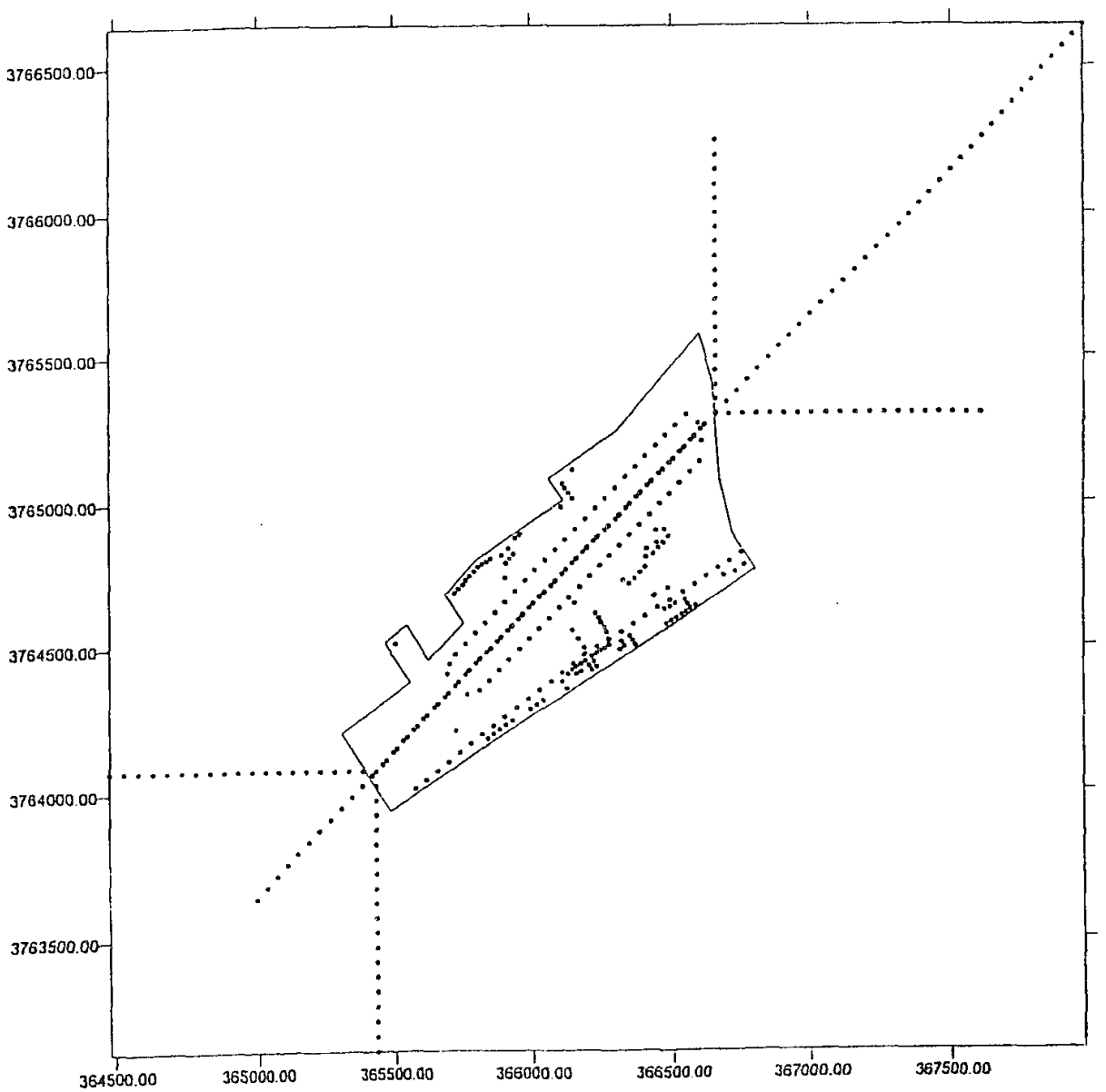
Table 13
Identification of Fixed Based Sources

Facility	Operation
Supermarine	Aircraft Refueling Underground Tank Filling
Cloverfield Aviation	Aircraft Refueling Underground Tank Filling
Santa Monica Fire Department Engine Company No. 5	Gasoline Dispensing
DC3 Restaurant	Charbroiling
Typhoon Restaurant	Charbroiling
General Administration Building (1st floor)	Natural Gas Combustion
General Administration Building (2nd floor)	Natural Gas Combustion
Runway Building	Natural Gas Combustion

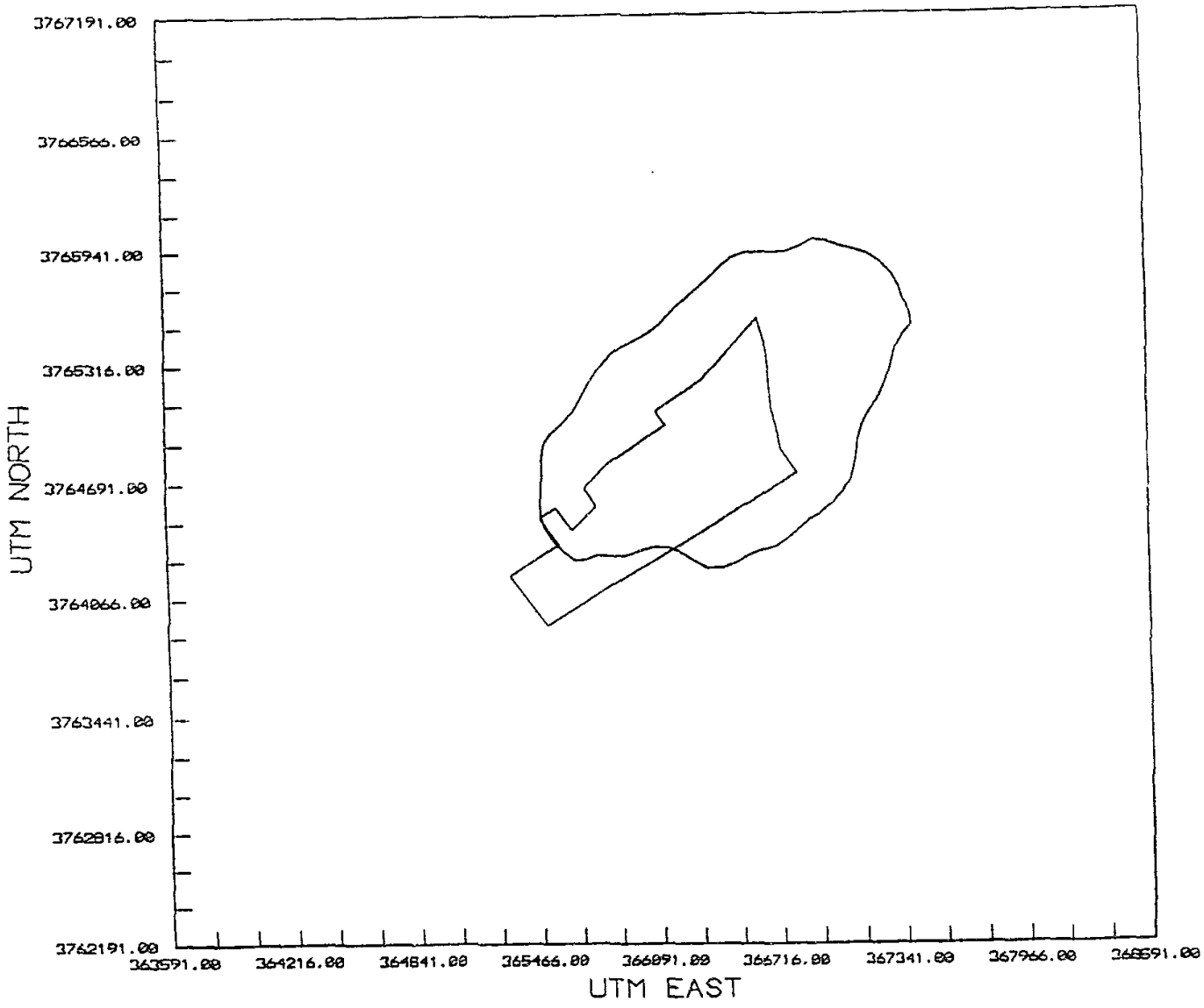
Table 14
Fixed Based Source Emissions

Facility	Contaminant
Supermarine	Benzene
Cloverfield Aviation	Benzene
Santa Monica Fire Department Engine Company No. 5	Benzene
DC3 Restaurant	Particulates (PM_{10})
Typhoon Restaurant	Particulates (PM_{10})
General Administration Building (1st floor)	Benzene Formaldehyde
General Administration Building (2nd floor)	Benzene Formaldehyde
Runway Building	Benzene Formaldehyde

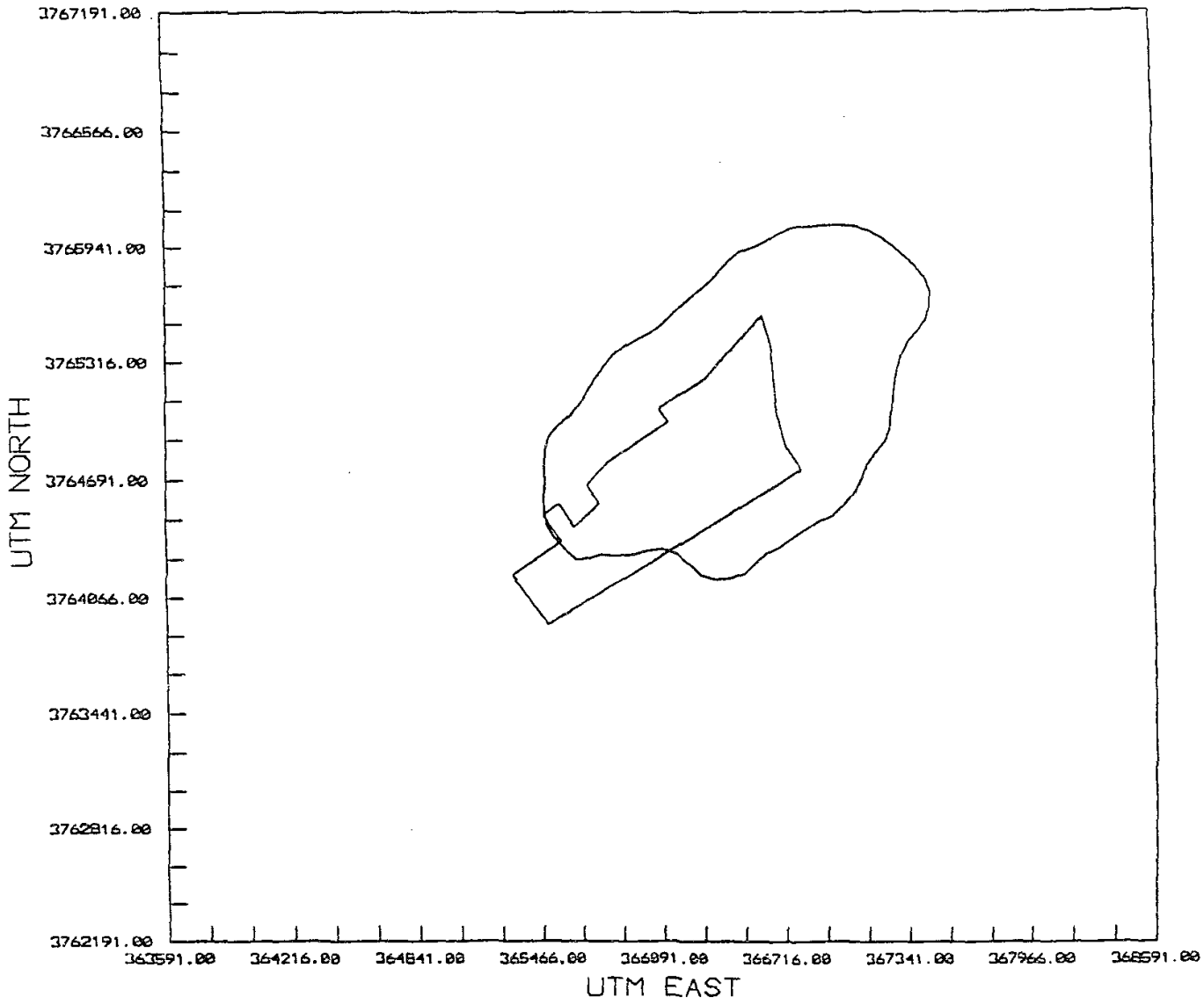
Santa Monica Airport
Source Configuration
(All)



Downwind Extent of Contaminant Emissions
Baseline Operational Scenario
1 x 10^{-6} Cancer Risk Isopleth



Downwind Extent of Contaminant Emissions
Increased Jet Operations
1 x 10^{-6} Cancer Risk Isopleth



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Downwind Extent of Contaminant Emissions
Piston Scenario
1 x 10^{-6} Cancer Risk Isopleth

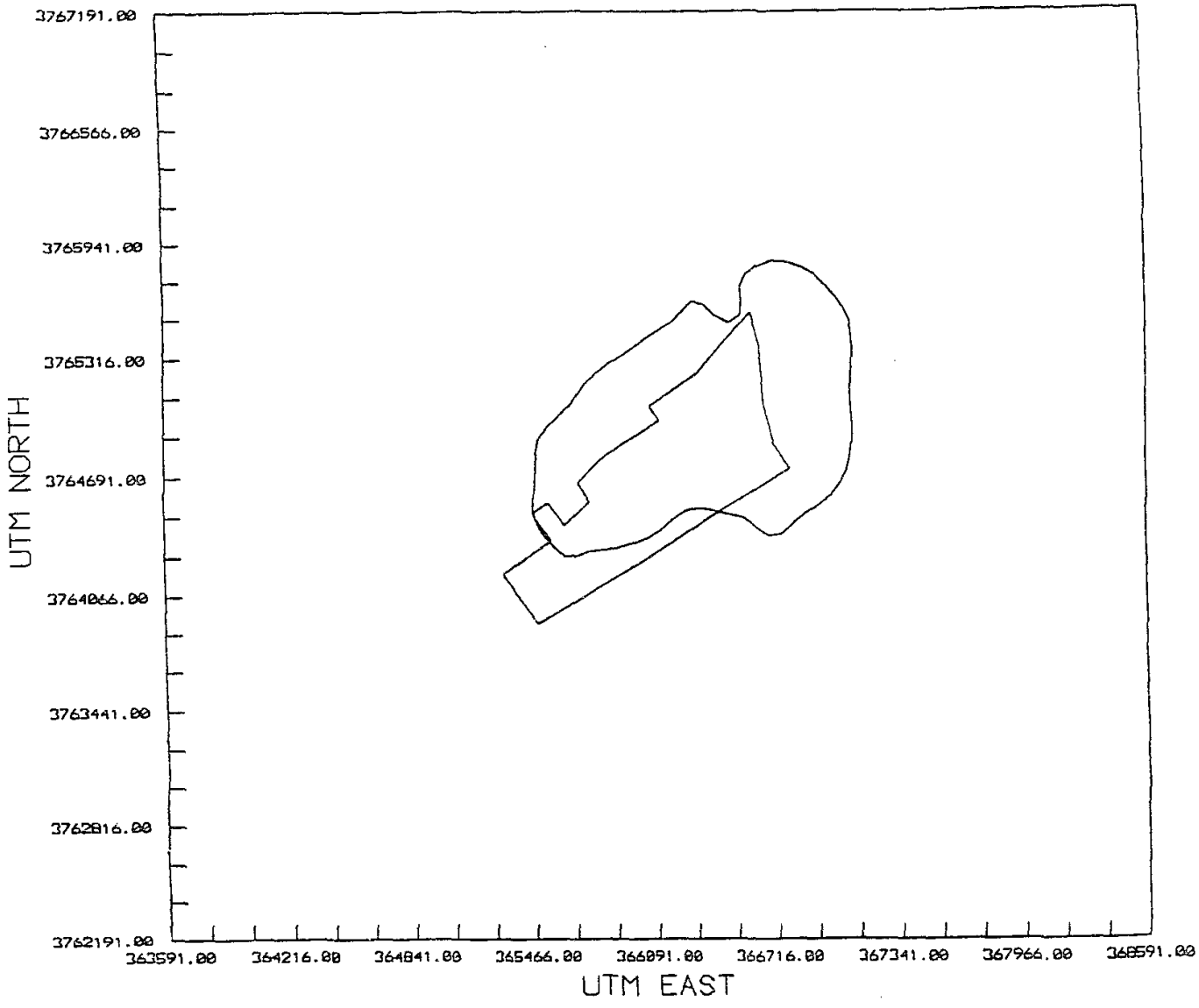

Table 11

Maximum Individual Cancer Risk

Baseline Operational Scenario

Source (a)	Operation (b)	Mass Conc. (ug/m3) (c)	Weight Fraction (d)	Contaminant (e)	Carcinogenic Risk	
					URF (f)	RISK (g)
Fixed Wing	Take Off	0.02280	0.455	Benzene	8.3E-06	8.6E-08
			0.347	Formaldehyde	1.3E-05	1.0E-07
			0.114	1,3-Butadiene	2.8E-04	7.3E-07
			0.084	Acetaldehyde	2.2E-06	4.2E-09
	Approach	0.0133	0.309	Benzene	8.3E-06	3.4E-08
			0.465	Formaldehyde	1.3E-05	8.0E-08
			0.098	1,3-Butadiene	2.8E-04	3.6E-07
			0.129	Acetaldehyde	2.2E-06	3.8E-09
	Taxi/Idle (A) & (B)	*0.56374*	0.251	Benzene	8.3E-06	1.2E-06
			0.512	Formaldehyde	1.3E-05	3.8E-06
			0.091	1,3-Butadiene	2.8E-04	1.4E-05
			0.146	Acetaldehyde	2.2E-06	1.8E-07
Rotocraft	*Take Off*	*0.00021*	0.332	*Benzene*	8.3E-06	5.8E-10
			0.445	Formaldehyde	1.3E-05	1.2E-09
			0.101	1,3-Butadiene	2.8E-04	5.9E-09
			0.122	Acetaldehyde	2.2E-06	5.6E-11
	Approach	*0.00021*	0.149	*Benzene*	8.3E-06	2.6E-10
			0.593	Formaldehyde	1.3E-05	1.6E-09
			0.080	1,3-Butadiene	2.8E-04	4.7E-09
			0.178	Acetaldehyde	2.2E-06	8.2E-11
	Idle	*0.00174*	0.088	*Benzene*	8.3E-06	1.3E-09
			0.642	Formaldehyde	1.3E-05	1.5E-08
			0.073	1,3-Butadiene	2.8E-04	3.6E-08
			0.196	Acetaldehyde	2.2E-06	7.5E-10
Mobile	*Airport Avenue*	*0.01869*	0.654	*Benzene*	8.3E-06	1.0E-07
			0.194	Formaldehyde	1.3E-05	4.7E-08
			0.082	1,3-Butadiene	2.8E-04	4.3E-07
			0.069	Acetaldehyde	2.2E-06	2.8E-09
	Other*	*0.02841*	0.667	*Benzene*	8.3E-06	1.6E-07
			0.194	Formaldehyde	1.3E-05	7.2E-08
			0.082	1,3-Butadiene	2.8E-04	6.5E-07
			0.069	Acetaldehyde	2.2E-06	4.3E-09
FBO's	ACR - Low Lead	0.17844	0.010	Benzene	8.3E-06	1.5E-08
	ACR - Jet Kerosine	0.00312	0.004	Benzene	8.3E-06	9.3E-11
	SMFD	0.00066	0.016	Benzene	8.3E-06	8.7E-11
	NGC	*0.00249*	0.040	*Benzene*	8.3E-06	8.3E-10
			0.080	Formaldehyde	1.3E-05	2.6E-09
Total						2.2E-05

Table 15

Maximum Individual Cancer Risk

Increased Jet Operations

Source (a)	Operation (b)	Mass GLC (ug/m3) (c)	Weight Fraction (d)	Contaminant (e)	Carcinogenic Risk (Q>1) URF (f)	RISK (g)
Fixed Wing	Take Off	0.02281	0.455	Benzene	8.3E-06	8.6E-08
			0.347	Formaldehyde	1.3E-05	1.0E-07
			0.114	1,3-Butadiene	2.8E-04	7.3E-07
			0.084	Acetaldehyde	2.2E-06	4.2E-09
	Approach	0.01636	0.309	Benzene	8.3E-06	4.2E-08
			0.465	Formaldehyde	1.3E-05	9.9E-08
			0.098	1,3-Butadiene	2.8E-04	4.5E-07
			0.129	Acetaldehyde	2.2E-06	4.6E-09
	Taxi/Idle (A) & (B)	0.75894	0.251	Benzene	8.3E-06	1.6E-06
			0.512	Formaldehyde	1.3E-05	5.1E-06
			0.091	1,3-Butadiene	2.8E-04	1.9E-05
			0.146	Acetaldehyde	2.2E-06	2.4E-07
Rotocraft	Take Off	0.00021	0.332	Benzene	8.3E-06	5.8E-10
			0.445	Formaldehyde	1.3E-05	1.2E-09
			0.101	1,3-Butadiene	2.8E-04	5.9E-09
			0.122	Acetaldehyde	2.2E-06	5.6E-11
	Approach	0.00021	0.149	Benzene	8.3E-06	2.6E-10
			0.593	Formaldehyde	1.3E-05	1.6E-09
			0.080	1,3-Butadiene	2.8E-04	4.7E-09
			0.178	Acetaldehyde	2.2E-06	8.2E-11
	Idle	0.00174	0.088	Benzene	8.3E-06	1.3E-09
			0.642	Formaldehyde	1.3E-05	1.5E-08
			0.073	1,3-Butadiene	2.8E-04	3.6E-08
			0.196	Acetaldehyde	2.2E-06	7.5E-10
Mobile	Airport Avenue	0.01869	0.654	Benzene	8.3E-06	1.0E-07
			0.194	Formaldehyde	1.3E-05	4.7E-08
			0.082	1,3-Butadiene	2.8E-04	4.3E-07
			0.069	Acetaldehyde	2.2E-06	2.8E-09
	Other*	0.02841	0.667	Benzene	8.3E-06	1.6E-07
			0.194	Formaldehyde	1.3E-05	7.2E-08
			0.082	1,3-Butadiene	2.8E-04	6.5E-07
			0.069	Acetaldehyde	2.2E-06	4.3E-09
FBO's	ACR - Low Lead	0.17844	0.010	Benzene	8.3E-06	1.5E-08
	ACR - Jet Kerosine	0.00312	0.004	Benzene	8.3E-06	9.3E-11
	SMFD	0.00066	0.016	Benzene	8.3E-06	8.7E-11
	NGC	0.00249	0.040	Benzene	8.3E-06	8.3E-10
			0.080	Formaldehyde	1.3E-05	2.6E-09
Total						2.9E-05

Table 16

Maximum Individual Cancer Risk

Piston Scenario

Source (a)	Operation (b)	Mass GLC (ug/m3) (c)	Weight Fraction (d)	Contaminant (e)	Carcinogenic Risk URE (f)	Carcinogenic Risk RISK (g)
Fixed Wing	Take Off	0.02280	0.455	Benzene	8.3E-06	8.6E-08
			0.347	Formaldehyde	1.3E-05	1.0E-07
			0.114	1,3-Butadiene	2.8E-04	7.3E-07
			0.084	Acetaldehyde	2.2E-06	4.2E-09
	Approach	0.00808	0.309	Benzene	8.3E-06	2.1E-08
			0.465	Formaldehyde	1.3E-05	4.9E-08
			0.098	1,3-Butadiene	2.8E-04	2.2E-07
			0.129	Acetaldehyde	2.2E-06	2.3E-09
	Taxi/Idle (A) & (B)	0.24951	0.251	Benzene	8.3E-06	5.2E-07
			0.512	Formaldehyde	1.3E-05	1.7E-06
			0.091	1,3-Butadiene	2.8E-04	6.4E-06
			0.146	Acetaldehyde	2.2E-06	8.0E-08
Rotocraft	Take Off	0.00021	0.332	Benzene	8.3E-06	5.8E-10
			0.445	Formaldehyde	1.3E-05	1.2E-09
			0.101	1,3-Butadiene	2.8E-04	5.9E-09
			0.122	Acetaldehyde	2.2E-06	5.6E-11
	Approach	0.00021	0.149	Benzene	8.3E-06	2.6E-10
			0.593	Formaldehyde	1.3E-05	1.6E-09
			0.080	1,3-Butadiene	2.8E-04	4.7E-09
			0.178	Acetaldehyde	2.2E-06	8.2E-11
	Idle	0.00174	0.088	Benzene	8.3E-06	1.3E-09
			0.642	Formaldehyde	1.3E-05	1.5E-08
			0.073	1,3-Butadiene	2.8E-04	3.6E-08
			0.196	Acetaldehyde	2.2E-06	7.5E-10
Mobile	Airport Avenue	0.01869	0.654	Benzene	8.3E-06	1.0E-07
			0.194	Formaldehyde	1.3E-05	4.7E-08
			0.082	1,3-Butadiene	2.8E-04	4.3E-07
			0.069	Acetaldehyde	2.2E-06	2.8E-09
	Other*	0.02841	0.667	Benzene	8.3E-06	1.6E-07
			0.194	Formaldehyde	1.3E-05	7.2E-08
			0.082	1,3-Butadiene	2.8E-04	6.5E-07
			0.069	Acetaldehyde	2.2E-06	4.3E-09
FBO's	ACR - Low Lead	0.17844	0.010	Benzene	8.3E-06	1.5E-08
	SMFD	0.00066	0.016	Benzene	8.3E-06	8.7E-11
	NGC	0.00249	0.040	Benzene	8.3E-06	8.3E-10
			0.080	Formaldehyde	1.3E-05	2.6E-09
Total						1.1E-05

Exhibit 5

BEFORE THE FEDERAL ELECTION COMMISSION
UNITED STATES OF AMERICA

BRENT CHRISTENSEN, Complainant,	)	
vs.	)	MUR 4922
SUBURBAN O'HARE COMMISSION, an unincorporated association of Illinois municipal corporations, Respondent.	)	

AFFIDAVIT OF JOHN C. GEILS

John C. Geils, being duly sworn on oath swears and deposes:

1. I am the Chairman of the Suburban O'Hare Commission, a legal entity authorized and organized under the laws of the State of Illinois.

2. I am familiar with the newsletter which is the subject of the "Complaint" by Brent M. Christensen, Esq. in the above-captioned cause.

3. I am familiar with the identity of the entity or person who paid for the advertisement.

4. The Suburban O'Hare Commission is the person or entity that paid for the advertisement.

5. Neither the newsletter which is the subject of the Complaint in this proceeding — nor any other newsletter published by the Commission — has ever been authorized, directed, or requested by any candidate, political committee, or agent of a candidate.

6. Joseph V. Karaganis is authorized to represent the Suburban O'Hare Commission in this matter.

John C. Geils, Chairman
President of Bensenville

SUBSCRIBED AND SWORN TO before me
this 21st day of September, 1999

"OFFICIAL SEAL"
LINDA M. LINDENBERG
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 7/1/2000

Linda M. Lindenberg
Notary Public

EXHIBIT 5