

additional requirement that under the statute complaints must be filed within sixty days of receipt of written notice of the imposition of the rate increase being challenged.

The Joint Complainants request a determination that the increases in the Federal Inspection Space Charge (from \$13.50 to \$14.50 per passenger) and the General Terminal Charge (from \$5.50 to \$6.00 per each arriving/departing passenger) imposed at Newark International Airport since March 1, 2000 by Respondents (collectively, "the Airport") are unreasonable and unlawful under 49 U.S.C. §§47129, 47107 and 40116; they also request certain ancillary relief, including refunds of fees determined to be unreasonable.

Subpart F of the Department's Rules of Practice recognized that in order to avoid duplicativeness parties may rely on filings already submitted by others. See, e.g., 14 C.F.R. §302.603(a). The Joint Complainants herein will rely on, and incorporate by reference, portions of the April 24, 2000 BA/Virgin complaint ("the Initial Complaint"), including exhibits.

Specifically, the Joint Complainants adopt the opening three paragraphs of the Initial Complaint (i.e., the portion prior to Part I). In addition, the Joint Complainants state as follows:

1. Each of the Joint Complainants is a foreign air carrier holding a permit pursuant to 49 U.S.C. §41302. Each provides scheduled passenger service at EWR and each is affected by the challenged fees, having paid them under protest.

2. The challenged rate increases became effective March 1, 2000. However, the notice of such increases that was legally sufficient under §47129 was given by the Airport only on March 8, 2000 (Exhibit A to the Initial Complaint), after their effective date. That notice was received by each Joint Complainant on or shortly after the date of the Airport's March 8, 2000 letter.

3. A letter dated February 17, 2000 from the Airport attached a schedule of eleven revised terminal charges applicable to EWR Terminal B (Exhibit B to the Initial Complaint). On information and belief, after analyzing the Airport's letter and schedule, the scheduled airlines serving Terminal B -- individually or through the Newark International Carriers' Committee (NICC) -- were perplexed. In a letter dated March 2, 2000 to the NICC (Exhibit D to the Initial Complaint), the Airport undertook to answer questions about the fee increases at a meeting with the NICC scheduled for March 7, 2000.

4. According to the NICC minutes of the March 7 meeting (Exhibit F to the Initial Complaint), the Airport said that the schedule to the February 17 letter was incorrect. Of

the eleven terminal charges described in that schedule, only three were applicable to the NICC members. A correct letter and rate sheet were promised, and as a consequence, the Airport's notice of March 8, 2000 was sent.

5. The March 8 letter cleared up the "confusion" by setting forth precisely which charges were increased. The Airport apologized "for not clearly communicating our intentions originally." In these circumstances, the Airport letter dated February 17 cannot be considered adequate notice under §47129.

6. Except as revised or supplemented in paragraphs 1-5, above, the Joint Complainants adopt and incorporate Part I of the Initial Complaint ("Facts").

7. The Joint Complainants adopt and incorporate by reference: Part II of the Initial Complaint ("Legal Framework"), except for the subpart C discussion of US-UK bilateral matters; and Parts III ("Argument") and IV ("Proposed Remedies").

8. Belgium, Switzerland and Portugal have each entered into an open-skies agreement with the United States. Paragraph 3 of Article 10 (User Charges) in each such agreement requires the US, for example, (i) to encourage consultations between "competent charging authorities or bodies in its territory" (the Airport is one such authority) and airlines users, and (ii) to exchange such information as may be necessary to permit an accurate review of the reasonableness of the

charges...." Paragraph 3 goes on to say that each Party "shall encourage the competent charging authorities to provide users with reasonable notice of any proposal for changes in user fees to enable users to express their views before charges are made."

9. There were in fact no consultations prior to the imposition of the challenged fees, there was no exchange of information, there was no effective notice of the increase, and users had no practical ability to express their views beforehand.

10. The reason given by the Airport for the rate increases -- 20% annual growth in traffic during the past three years -- is clearly insufficient to justify the higher rates. As pointed out in the Initial Complaint, an increase in the number of passengers served would usually be associated with a *reduction* in fees because fixed costs are allocated over a greater number of payors.

11. When supporting cost data was requested by the NICC carriers, the Airport refused to provide the information (contrary to the principles expressed in the Department's Policy Regarding Airport Rates and Changes), stating that it considers such information proprietary and inappropriate to share with the NICC carriers (Exhibit J to Initial Complaint). Such a refusal improperly discourages local negotiation and resolution of fee issues (also espoused in the Department's Policy principles) and

forces carriers to file complaints with the Department to assess the reasonableness of fee increases.

12. The Airport's representative, as quoted in the NICC minutes of the March 7, 2000 meeting with the Airport, admitted that he "cannot point to specific projects" as justification for the increases. The Airport's perception was simply that EWR is underpriced. (See Exhibit F to Initial Complaint).

13. Given the compressed nature of §47129 proceedings, the Department should order production of the cost-justification information forthwith to allow the carriers sufficient time to evaluate it. Any failure on the part of the Airport to produce the information should result in a finding that the rate increases are prima facie unreasonable. Cf. *Environmental Defense Fund, Inc. v. EPA*, 548 F.2d 998, 1004 (D.C. Cir. 1976) (burden of going forward with evidence traditionally falls on "the party having knowledge of the facts involved"); *The Central R.R. Co. of New Jersey & The N.Y. & Long Branch R.R. v. Department of Public Utilities*, 81 A.2d 162, 169 (N.J. 1951) (a public utility rate increase unsupported by financial information relating to its rate base, expenses, income and rate of return is unreasonable on its face); MM Docket No. 92-265, 8 FCC Rcd. 3359 (F.C.C. 1993) (First Report and Order) (FCC staff will accept complainant's allegations as true for purposes of its prima facie

determination where complainant shows that vendor refused to provide complainant with comparable rate information).

* * *

TIMELINESS

Given the fact that the first correct written notice of the charges was given no earlier than March 8, 2000, as well as the Airport's gracious apology of that date "for not clearly communicating our intentions originally," the Joint Complainants trust and expect that the Airport will not claim that the schedule attached to its February 17, 2000 letter constituted adequate written notice. The short timeframes established by §47129 require clear communication of precisely what charges are being increased. Precious days were lost due to the confusion caused by the incorrect February 17 schedule in which the challenged fees were buried in an array of inapplicable terminal-fee increases.

In these circumstances, this Joint Complaint is timely, being made less than sixty days from the March 8 notice. However, in the event the Department for some reason does not agree, the Joint Complainants request that this pleading be considered and accepted as their joint answer in support of the Initial Complaint.

CERTIFICATION

Complainants hereby certify, pursuant to Rule 605(c) of the Department's Rules of Practice (302 C.F.R. §605(c)), that --

(1) They have served the complaint, brief, and all supporting testimony and exhibits, by electronic facsimile transmission, on the airport owner or operator and all other air carriers and foreign air carriers serving the airport. Facsimile transmission sent today to carriers were addressed to carrier station managers at EWR, each of whom is "the person responsible for communicating with the airport on behalf of the carrier about airport fees" within the meaning of Rule 605(c)(1)(14 C.F.R. §605(c)(1)).

(2) The parties served have received the complaint, brief, and all supporting testimony and exhibits not later than the date the Complaint was filed.

(3) Complainants have previously attempted to resolve the dispute directly with the airport owner or operator.

(4) Information on which Complainants intend to rely is not included with the brief, exhibits, or testimony because the airport owner or operator has expressly refused to make that information available.

(5) Any submission on computer diskette is a true copy of the date file used to prepare the printed versions of the exhibits or briefs.

Respectfully submitted,

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Attorneys for Joint Complainants

May 1, 2000

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing Joint Complaint on each party listed in the attached service list by means of electronic facsimile transmission.

William Karas

May 1, 2000

International

Name	Company	Title	Phone	Fax
Hector Eleftherion	Aer Lingus	Station Manager	973-504-9400	973-504-9860
Lou Lopez	Air Aruba	Station Manager	973-824-3415	973-824-3346
Al Zeller	Air Canada	Manager Customer Services	973-961-1702	973-961-1717
Sonya Dinyari	Air France	Station Manager	973-681-0320	973-621-3638
Joseph Fernandez	Air Jamaica	Station Manager	973-961-4322	973-624-1122
Paolo Tortaro	Alitalia	Station Manager	973-681-0170	973-681-0174
Nick Yiantselis	American Airlines	General Manager	973-961-4123	973-961-4065
Mike Wallach	British Airways	Station Manager	973-961-4584	973-733-9534
Job Kunkel	Continental	Manager Term A & B	973-961-3869	973-624-3821
Vaclav Kralik	Czech Airlines	Station Manager	973-648-8591	973-648-8592
Susanna Dikker	El Al Airlines	Station Manager	973-943-3042	973-643-3762
Aberrah Beyene	Ethiopian Airlines	Station Manager	212-867-0095	212-692-9589
Tony Yeh	EVA Airlines	Station Manager	973-623-2561	973-623-1670
Seung Bok Kim	Korean Airlines	Station Manager	973-733-9666	973-733-9689
Tadeusz Krawczonek	LOT Polish	Station Manager	973-733-9617	973-733-9622
Dens Dietrich	Lufthansa Airlines	Station Manager	973-961-7435	973-961-7429
Zamri Muslimin	Malaysian Airlines	Station Manager	973-961-2589	973-642-1272
Henri Lopez	Mexicana Airlines	Station Manager	973-961-4295	973-824-9288
Stacey McCarthy	Northwest Airlines	Station Manager	973-961-4629	973-961-4635
Flemming Alsing	Scandinavian Airlines	Station Manager	973-622-4736	973-622-4956
Bob Koh	Singapore Airlines	Station Manager	973-961-2592	973-297-1799
Terry Rizzuto	United Airlines	Station Manager	973-961-5085	973-961-5014
Phil Cain	Virgin Atlantic	Station Manager	973-961-3280	973-624-0725
Jeffrey N. Shane	Wilmer, Cutler & Pickering	Counsel for Virgin Atlantic Airways Limited	202-663-6909	202-663-6363
Don H. Hainbach	Boros & Garofolo, P.C.	Counsel for British Airways PLC	202-822-9070	202-822-9075

Domestic

Patricia Nistorenko	American West	Station Manager	973-681-1510	973-681-1513
Joseph Bonnema	Delta Airlines	Station Manager	973-430-3906	973-430-3980
Jane Griffin	Midway Airlines	Station Manager	973-961-3845	973-961-3846
Joyce Callaghan	Midwest Express	Station Manager	973-961-2543	973-642-4365
Jim Henry	Proair	Station Manager	973-648-8437	973-648-8439
Bill Harris	Spirit Airlines	Station Manager	973-961-2818	973-961-1728
Rudy Barthlemy	TWA	Station Manager	973-961-3050	973-961-3114
Rikki Mullen	United Express	Station Manager	973-643-3303	973-643-2701
Bob Hughes	US Airways	Station Manager	973-642-5500	973-642-5505
Lewis M. Eisenberg	Port Authority of NY & NJ		212-435-7000	212-435-3639
Susan Baer	Newark Intl. Airport		201-961-6000	201-961-6259