



**JOHN WAYNE  
AIRPORT**

Orange County, California

**Alan L. Murphy**  
Airport Director

September 21, 2010

To: Distribution List (Attached)

Subject: *ALLOCATION OF REGULATED CLASS A ADDS AT JOHN WAYNE AIRPORT, ORANGE COUNTY THAT WILL EXPIRE ON MARCH 31, 2011*

Ladies and Gentlemen:

In December 2005, the *Orange County Board of Supervisors*<sup>1</sup> (“*Board*”) authorized *John Wayne Airport, Orange County (SNA) (“JWA”)* to reallocate the “original” *Commercial Air Carrier Regulated Class A Average Daily Departures (“ADDs”)* to incumbent *Commercial Air Carriers* on a “grandfathered” basis for the term from April 1, 2006, through March 31, 2011.<sup>2</sup> In order to ensure that the *Air Carriers* and the *Airport* have adequate time to consider the important and sensitive issues related to the reallocation of the “original” *ADDs* prior to their expiration on March 31, 2011, I am initiating a *County* process to solicit comments on the issue of reallocation of the “original” *ADDs* at the *Airport*, which would be effective on April 1, 2011.

“Original” *ADDs* consists of those seventy-three (73) *Class A ADDs* originally allocated to the *Commercial Air Carriers* on November 20, 1989. These *ADDs* are referred to as the “original” *ADDs* because they were allocated prior to the February 25, 2003 Settlement Stipulation in the case of *County of Orange vs. Air California, et al.*, which authorized an increase in the number of *Class A ADDs* that were available for allocation from seventy-three (73) to eighty-five (85) beginning on January 1, 2003 through December 31, 2015. The additional or “new” twelve (12) *Class A ADDs* authorized by the Settlement Stipulation were allocated on June 24, 2003. In addition, the June 25, 2002, allocations included the allocation of two (2) *Class A ADDs* each to two (2) new entrants, Frontier and Midwest. These four (4) *Class A ADDs* were “*County controlled*” *ADDs* which were allocated to the new entrants through December 31, 2015. Therefore, unlike the other “original capacity,” these four (4) *Class A ADDs* will not be subject to reallocation on April 1, 2011. Therefore, only sixty-nine (69) of the “original” *ADDs* are subject to reallocation, effective April 1, 2011.

The *Board* authorization in December 2005 to maintain or essentially “grandfather” the “original” *ADDs* meant that the reallocation of the sixty-nine (69) *ADDs* would result in the *Commercial Air Carriers* maintaining their existing allocation of “original” *Class A ADDs* for a period through March 31, 2011. *JWA* received almost unanimous support from the *Commercial Air Carriers* for the *County’s* recommendation to the *Board* to maintain, or essentially “grandfather,” the “original” *ADDs*.

<sup>1</sup> The terms shown in *italics* are defined terms in Section 2 of the PHASE 2 ACCESS PLAN.

<sup>2</sup> The previous allocation of the “original” *Class A ADDs* to *Commercial Air Carriers* was set to expire on March 31, 2006. The reallocation was made only if the *Air Carriers* executed new leases with the *County* in a form, and for a term, acceptable to the *Airport Director* and approved by official action of the *Board*. A similar requirement will be placed on the reallocation of the “original *Class A ADDs* to *Commercial Air Carriers*, effective April 1, 2011.

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The *County* has consistently taken the position that it is within the full discretion of the *Airport* to “zero-base” all *ADD* and other allocations contemplated by the *Phase 2 Commercial Airline Access Plan and Regulation (“Phase 2 Access Plan”)*. The *County’s* existing operating agreements and leases with all scheduled operators at *JWA* will also expire on March 31, 2011, coinciding with the expiration of the allocation of the “original” *ADDs*. In every regulatory and contractual sense, then, it is within the full discretion of the *Airport* to reallocate the “original” *ADDs* that will expire on March 31, 2011, on a clean slate. However, it is also within the full discretion of the *Airport* to reallocate the “original” *ADDs* on a grandfathered basis, effective April 1, 2011, through December 31, 2015 or to reallocate the “original” *ADDs* by lottery or in some other specified manner. As discussed in more detail below and in the Attachment to this letter, the specific allocation scenario for the reallocation of the sixty-nine (69) *ADDs*, effective April 1, 2011, is an issue on which the staff is soliciting *Air Carrier* input.

The *County* intends to proceed to consider this issue in the following manner:

1. Attached to this letter is a summary listing potentially relevant issues for your comment, input and suggestions.
2. The *County* is requesting that written comments be submitted and received by the *County* not later than **October 22, 2010**. Comments may be submitted by e-mail. Comments should be submitted to:

Mr. Eric Freed, Manager, Access and Noise  
John Wayne Airport  
3160 Airway Avenue  
Costa Mesa, California 92626  
[efreed@ocair.com](mailto:efreed@ocair.com)

3. After careful review of the comments received, the *Airport* will prepare a report to the *Board* providing staff’s recommendations regarding the reallocation of the “original” *Class A ADDs* that will expire on March 31, 2011, summarizing the comments and input received during the comment process and highlighting the issues which must be considered by the *Board*. In an attempt to complete this process in sufficient time to permit a reallocation of the capacity that will expire on March 31, 2011, the *Airport* will put the matter on the agendas of the *Airport Commission* and *Board of Supervisors* as soon as possible after receiving comments and input from the *Air Carriers*. The staff report to the *Board* will be circulated to the *Air Carriers* prior to meetings with the *Airport Commission* and *Board*.

The *County* looks forward to receiving your input. Please do not hesitate to contact Mr. Eric Freed, Manager, Access and Noise, at (949) 252-5043 at your convenience if you would like to discuss these issues further.

Sincerely,



Alan L. Murphy  
Airport Director

Attachments

cc: Assistant Airport Director  
Deputy Director, Public Affairs  
Deputy Director, Operations  
Deputy Director, Finance and Administration  
Deputy Director, Facilities  
Deputy Director, Business Development  
Manager, Access and Noise  
Access and Noise Office  
County Counsel  
Airport Special Counsel

## ATTACHMENT

**REALLOCATION OF “ORIGINAL” REGULATED ADDs,  
EFFECTIVE APRIL 1, 2011**

As noted in the accompanying letter, the *Airport* has identified a number of issues related to the reallocation of the “original” *Regulated Class A Average Daily Departures* (“ADDs”) at the *Airport*. This capacity has been allocated to the incumbent *Air Carriers* through March 31, 2011. The County’s existing leases with all scheduled operators at *JWA* will also expire on March 31, 2011, coinciding with the end of the allocation period for the “original” ADDs. Any reallocation of capacity will not be effective until April 1, 2011, and will be made only if the *Air Carriers* execute new leases with the *County* in a form, and for a term, acceptable to the *Airport Director* and approved by official action of the *Board*. Given the relatively short time period remaining to complete this important process, this *County* process will require the cooperation of the incumbent and potential new entrant *Air Carriers*.

The purpose of this Attachment is to identify and structure issues relating to the reallocation of “original” capacity in an effort to facilitate the opportunities for *Air Carrier* input. It is not the intent for the *County* to present this list as exhaustive, and the *County* solicits suggestions regarding other possible allocation procedures that could be followed in connection with the reallocation of the “original” *Regulated Class A ADDs* at the *Airport*, even if it involves an option not identified in this Attachment. Further, the *Airport* has not identified a preferred allocation scenario for the reallocation of the “original” capacity; rather, the specific reallocation scenario for the “original” capacity is an issue on which the *Airport* is soliciting *Air Carrier* input at this time.

In addition to outlining the issues on which the *County* would like to receive input and comment from the *Air Carriers* and interested parties, the *County* would like to frame the principle issues that have been, and will continue to be, of concern to the *County* and that will be taken into account when determining the appropriate staff recommendation to the *Board* concerning the reallocation of the ADDs that will expire on March 31, 2011, as follows:

- (i) It is important that the public process that the *County* has initiated with regard to the reallocation of the ADDs that will expire on March 31, 2011, be a credible process in which the interested parties know that the *County* will consider their views in an objective and fair manner.
- (ii) The *County* will continue to focus on providing air service to the traveling public consistent with the provisions of the *Phase 2 Commercial Airline Access Plan and Regulation* (“*Phase 2 Access Plan*”) while ensuring that the basic fairness of the capacity reallocation process of the *Phase 2 Access Plan* and any amendments is met.

(iii) *Regulated ADDs* are not, and must not be permitted to become, property rights or property interests of the commercial operators at *JWA*. The *ADDs* (and all other capacity allocations) are not transferable by the *Air Carriers*, and no reallocation process should alter this long-standing basic premise of commercial operations at *JWA* in any respect.

When the *Airport* recommends to the *Board* at the end of this process the reallocation of the “original” *ADDs* in a particular manner, it will be because the *Airport* has concluded that these interests can continue to be protected and implemented at a regulatory level within the specific structure of any policy modifications that the *Airport* might recommend to the *Board*.

#### **1. Existing Allocations of the “Original” *Regulated Class A ADDs***

To provide a baseline for purposes of considering the possible ramifications of alternative reallocation scenarios for the “original” *ADDs*, Table 1 provides the present allocation of the “original” sixty-nine (69) *Class A ADDs* among the *Air Carriers* currently operating at *JWA*, the allocation of which will expire on March 31, 2011. As indicated in the transmittal letter, the June 25, 2002, allocations included the allocation of two (2) *Class A ADDs* each to two (2) new entrants, Frontier and Midwest. These four (4) *Class A ADDs* were “County” controlled *ADDs* which were allocated to the new entrants through December 31, 2015. Therefore, unlike the other “original” capacity, these four (4) *Class A ADDs* will not be subject to reallocation on April 1, 2011.

In addition, and in order to provide a baseline for purposes of considering the possible ramifications of alternative reallocation scenarios for the “original” *ADDs* on potential new entrants at the *Airport*, Table 2 provides the current waiting list for new entrant *Commercial Air Carriers* at *JWA*.

**TABLE 1: “ORIGINAL” REGULATED CLASS A ADD ALLOCATIONS**

Air Carriers	Class A ADDs through March 31, 2011
Alaska Air Group	7
American Airlines	14
Continental Airlines	8
Delta Air Lines	11
Frontier Airlines, Inc.	0
Air Canada	0
Mesa Airlines	2
Southwest Airlines	2
United Airlines	10
US Airways	8
County Control	7
<b>Total Regular Class A ADDs</b>	<b>69</b>

**TABLE 2: WAITING LIST FOR NEW ENTRANT COMMERCIAL AIR CARRIERS**

AirTran Airways
WestJet Airlines
Horizon Air

**2. Reallocation of the “Original” Regulated Class A ADDs – Effective April 1, 2011**

The *County* is interested in receiving input on what system and allocation preferences should be used in reallocation of the “original” *Regulated Class A ADDs*, effective April 1, 2011.

Two obvious options are to: (1) give complete “grandfathering” treatment to the existing allocations through December 31, 2015 or (2) completely reallocate the “original” *Class A ADDs* in single *ADD* increments to all eligible *Air Carriers* using the current *Phase 2 Access Plan* Incumbent Air Carrier Reallocation Priority List (Appendix B), a lottery or some other allocation structure. There are, of course, a wide range of intermediate options.

Under the first option, “existing” *ADD* allocations would be maintained or essentially “grandfathered” as a base and reallocated through December 31, 2015, or some shorter defined period of time. Obviously, no new entrant *Air Carriers* would be

immediately provided an allocation from the reallocated capacity under this scenario and no restructuring of the *ADD* allocations among the incumbent *Air Carriers* would occur.

Under the second option, all operating privileges at *JWA* associated with the “original” *Regulated Class A ADDs* would be eliminated, the “original” *ADDs* would return to County control, and the reallocation of all the “original” *Regulated Class A ADDs* would occur either using the current *Air Carrier Reallocation Priority List* or by some other means. Under this option, there would be the potential for some restructuring of the *ADD* allocations among the incumbent *Air Carriers* at the *Airport*.

### **3. “Associated Operating Group” and “Affiliate” Provisions**

The *Phase 2 Access Plan* presently allows incumbent *Air Carriers* operating at the *Airport* to declare annually the formation of an “*Associated Operating Group*” (“*AOG*”) for purposes of conducting operations at the *Airport*. If an incumbent operator wishes to form an *AOG* with an *Air Carrier* which is not an incumbent operator at *JWA*, the *Access Plan* allows the sponsoring incumbent operator at *JWA* to request a reallocation by the *County* of *Regular Class A ADDs* and associated *Seat Capacity* from the incumbent *Air Carrier* to the new entrant airline. This reallocation is not conditioned or limited by the sponsoring *Air Carrier*. If the new entrant airline subsequently ceases to operate at the *Airport*, the capacity would not go back to the sponsoring incumbent operator; rather, the reallocated capacity would come back to the *County* for reallocation. Essentially then, the reallocation is considered for all purposes as a reallocation from the *County* to the new entrant of a *Regular ADD* allocation.

The *Phase 2 Access Plan AOG* provisions that are at issue with respect to the reallocation of the “original” *Class A ADDs* at the *Airport* are those provisions relating to the allocation of available *ADDs*. The *Phase 2 Access Plan* currently indicates that in the event any *ADDs* become available for reallocation, all *Air Carriers* in an *AOG* will be treated as a single entity for purposes of determining eligibility and priority. If the reallocation is of a *Regular ADD*, or an *ADD* allocated for longer than the current *Plan Year*, the allocation to an *AOG* will be deemed to be made to the member carrier with the fewest *ADDs*.

These provisions of the *Phase 2 Access plan* related to *AOGs* present a legitimate “fairness” issue on which the *County* would invite additional comments from the airlines. The historical purpose for the affiliate provision is to avoid the unfairness of allowing a group of affiliated carriers multiple “bites” at the allocation “apple,” thereby, gaining an advantage over competitors solely because of the way in which they have chosen to organize themselves for business purposes. Some other incumbent carriers have formed alliances to coordinate the operations of two or three carriers. As a result, the *County* is interested in receiving input on a number of *AOG* and affiliate issues that could potentially be implicated, depending upon the system

that is followed in connection with the reallocation of the “original” *Regulated Class A ADDs*, effective April 1, 2011. For example, should an individual *Air Carrier* outside an *AOG* have only one opportunity to receive a reallocation of an “original” *ADD* for every two or three opportunities afforded to the two or three *Air Carriers* within an *AOG*? In other words, should the *County* continue to treat all *Air Carriers* in an *AOG* as a single entity for purposes of determining eligibility and priority for any reallocation of the “original” *ADDs* at the *Airport*? If so, should the member of the *AOG* with the fewest number of *Regular ADDs* continue to receive the allocation?

As indicated in the transmittal letter for this Attachment, the *County* is requesting that written comments be submitted and received by the *County* not later than October 22, 2010 as specified in the transmittal letter.



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## Commuter Carrier Distribution List

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