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February 4, 2008

The Honorable Robert A. Sturgell
Deputy and Acting Administrator
Federal Aviation Administration
8000 Independence Ave., SW
Washington, DC 20591

Dear Administrator Sturgell:

Thank you for your written response to the questions I had raised during our meeting on December 19th, and in letters from last December, November, and August. I am pleased to have finally received this response, and to read that you intend to cap hourly operations at Newark Liberty International Airport. However, I have otherwise found your response incomplete. Over the past seven years I have been consistently disappointed with the FAA's performance on managing delays, in maintaining safety, managing its employee relations, and even in responding to inquiries. After reading your latest correspondence I remain disappointed.

To begin with, your lack of information regarding minimum fuel declarations at Newark is simply unacceptable. On November 30th of last year, you said that you would provide this information within 60 days. The deadline has passed, and I have yet to receive it. Instead I am told that you are "still researching" and "working to develop a means of tracking this information." Either you have the data on minimum fuel landings and are unwilling to divulge it or your system for tracking these landings is so flawed that it will take you months to compile. It is difficult to judge which of these possibilities is more disturbing, but both are unacceptable. Recent reports suggest that hundreds of planes at Newark issue minimum fuel declarations every year and perhaps 20 planes per year need to land immediately because of emergency low fuel conditions. Planes running out of fuel over a densely populated urban area is a recipe for disaster, and I therefore require a detailed response with data immediately.

The FAA seems complacent in its attitude towards low fuel landings, but it is acting with extraordinary speed to implement its Airspace Redesign. It appears that some aspects of the redesign, such as the dispersal headings, could be a *fait accompli* by the time the Government Accountability Office's (GAO) comprehensive study on the subject is released later this year. Furthermore, in discussions with Newark-based air traffic controllers, my staff has learned that problems with the implementation of the dispersal headings indicate that the initial planning of these procedures may have been flawed.

During the first week of dispersal heading usage, both the initial altitudes and routing instructions were changed, creating confusion among pilots and controllers. Although the FAA had promised that noise from the new headings would be mitigated by a rapid climb to 5,000 feet, such a course would conflict with LaGuardia arrival traffic passing at 4,000 feet. As a result, the FAA immediately issued an order changing the dispersal heading altitude to 2,500 feet, wiping out the promised noise mitigation. New Jersey communities are experiencing higher noise, and the confusion associated with the new headers may be compromising safety and could actually be leading to increased delays. This situation raises several questions:

- Does the FAA have preliminary information suggesting that dispersal headings are actually reducing delays?
- Why wasn't a new Standard Instrument Departure (SID) published with new heading procedures before dispersal headings went into effect? The current practice of verbally amending the old departure procedures creates confusion. More importantly, published procedures safely segregate air traffic in the event of lost communications.
- The overflow arrivals to Runway 29 are being used daily without an underlying published procedure, and on January 16th the Newark tower lost communications with an arriving aircraft. The result was a near collision. When will fallback procedures for Runway 29 be published?
- Why can't the FAA wait to implement the airspace redesign until after the GAO completes its comprehensive and independent review of the airspace redesign?
- Why is it that the FAA has no plans to monitor the air noise effects of the redesign as actually implemented?

These apparent problems with the implementation of the redesign are all the more troublesome when I consider the staffing levels at Newark and other airports in New Jersey. Newark is one of the busiest, most complex airports in the country, and its controllers have one of the most stressful jobs in the Federal Government. In your letter, you fail to respond explicitly to my question: Is Newark sufficiently staffed?

You instead assured me that "we monitor controller staffing daily" and that a "majority of our facilities currently fall within the authorized staffing range." The numbers you furnished along with your letter seem to indicate that Newark does not have an adequate number of fully trained and experienced controllers.

If controllers work a 40 hour week, you need 28-31 controllers on staff --- assuming nobody gets sick or goes on vacation. Your own range recommends 30-36 controllers, and until recently, 38 controllers were required. You now have only 28 fully certified controllers at Newark, one of whom will shortly be promoted, and 3 of whom are eligible for retirement. You instead rely on partially certified controllers to adequately staff one of the busiest airports in

the country, and two of these ten developmental controllers have failed training, with a third temporarily assigned to Oklahoma City.

This low staffing level is not surprising given the fact that the FAA has forced its controllers to work in such a hostile environment. The controllers are not being paid a competitive wage in an area with a high cost of living, and they are substantially worse off than they were a number of years ago.

In addition, it appears that an adversarial management style at Newark and other airports is contributing to inadequate staff levels. For instance, reports from Teterboro airport raise questions about whether workplace conditions have been modified for safety reasons or simply retaliation. You claim that forcing controllers to stand for hours on end "improves safety, and ... is used at facilities across the country." However, not all airports are required to operate under the same conditions as Teterboro. If it truly is a safety problem, wouldn't it be a safety problem system-wide? What scientific data did you base the Teterboro decision on?

Finally, I have read reports that the FAA is considering moving the engineers who oversee regional airport maintenance and safety upgrades from New York to Atlanta. Spokesman Jim Peters has claimed that no decision has been made. Why is the FAA considering moving these engineers?

I look forward to a more detailed, full response to my questions. We cannot cut corners or overtax inexperienced workers as we implement new procedures. I urge you to reconsider your plans to move forward in advance of the GAO report, to vigorously monitor the efficacy and impacts of the currently implemented dispersal headings, and investigate the disturbing number of low fuel landings at Newark. I have been exceedingly patient in waiting for a full response to these important matters, but rest assured that I am ready and willing to use all tools at my disposal to make New Jersey airports as safe and efficient as they can possibly be.

Sincerely Yours,

A handwritten signature in blue ink that reads "Robert Menendez". The signature is fluid and cursive, with a period at the end.

ROBERT MENENDEZ
United States Senator