# EXHIBIT A

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

| | | |
|---|---|---|
| CITY OF PHOENIX, ARIZONA,<br><br>Petitioner,<br><br>v.<br><br>MICHAEL HUERTA, Administrator of the Federal Aviation Administration, and<br><br>FEDERAL AVIATION ADMINISTRATION,<br><br>Respondents. | ) | Case No. 15-1158 |

**PETITIONER CITY OF PHOENIX'S OPPOSITION TO RESPONDENTS' MOTION TO DISMISS**

Petitioner City of Phoenix respectfully requests that the Court deny the Motion to Dismiss (Motion) filed by Respondents Michael Huerta, Administrator of the Federal Aviation Administration (FAA), and FAA (collectively, FAA). The City's Petition for Review challenges FAA's initiation of certain flight routes in the Phoenix airspace on September 18, 2014, and FAA's subsequent denial of the City's requests to reconsider, modify, and fully assess the routes. In the Motion, FAA mischaracterizes its implementation of Area Navigation (RNAV) departure routes in the Phoenix airspace and omits critical information showing that FAA's September 18, 2014, RNAV routes and April 14 and June 1, 2015, letters that finalized FAA's process related to them, are reviewable under 49 U.S.C. § 46110.

FAA's motion relies on characterizing the initial implementation of the RNAV procedures in September 2014 as the only FAA order. However, FAA's commencement of new RNAV routes in September 2014 was not the only and not the final "order" under 49 U.S.C. § 46110. It did not conclude any FAA administrative process; nor was any "order" publicly noticed. The only public documentation of the changes came in the form of new flight procedure maps that were dated to be effective September 18, 2014, and intended for use by pilots and air traffic controllers.

Rather, FAA's commencement of new flight procedures in September *began* a process during which FAA modified its RNAV routes and procedures, and

committed to the City (before 60 days had elapsed) to consider further amendment of the routes to address significant noise concerns by the City. FAA undertook much of this process pursuant to FAA Order 7100.41 (attached as Exhibit A), which provides for a five-phase implementation process for RNAV routes that did not finish until June 2015. While FAA conducted an irregular and non-transparent process during this period, the RNAV routes have been affecting tens of thousands of Phoenix residents who have previously not experienced regular jet overflights. For months, FAA provided assurances that it would address the noise issues during its Order 7100.41 process.

In response to FAA's commitments to consider changes to address noise, the City repeatedly requested that FAA move the RNAV routes. In February 2015, as part of the *ad hoc* process that resulted from FAA's lack of procedural structure and transparency, the City formalized its concerns in an extensive set of detailed comments. The City outlined FAA's failure to comply, inter alia, with the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq*. and the National Historic Preservation Act (NHPA), 16 U.S.C. § 470 *et seq*. The City formally requested that FAA cease using or modify the RNAV routes to reduce the noise impacts and complete a legally adequate review of the noise impacts.

In April 2015, FAA made it clear to the City that it would not accommodate the City's requests. In an April 14, 2015, letter and an attached April 2015 Post-

Implementation Assessment Report (collectively, the April Letter), FAA concluded its implementation of the RNAV routes and ruled out the City's requests to return to pre-September 2014 routes. *See* Exhibit B. Also, by concluding FAA's environmental review of the existing RNAV routes, the April Letter denied the City's request to complete adequate environmental review.

After the City provided a letter to FAA that identified multiple deficiencies in the April Letter, FAA responded with a second letter on June 1, 2015 (June Letter), making it clear that the City's requests to move critical RNAV routes to their original paths were denied. *See* Exhibit C. The April Letter and June Letter concluded the FAA's implementation process and denied the City's requests. Therefore, they are a final order reviewable under 49 U.S.C. § 46110. The City timely filed its Petition for Review within 60 days of both letters.

## PROCEDURAL BACKGROUND

**FAA's initiation of the RNAV routes.** On September 18, 2014, FAA began the use of RNAV routes for aircraft in the Phoenix airspace. FAA did not publicly notice the new procedures, provide any formal decision document, or seek any pre-implementation public review of them. *See* Exhibit D (without exhibits) at 9–10. FAA relied upon what FAA called an "initial environmental review" conducted in September 2013. *See* Exhibit E at 1. In the initial environmental review, FAA determined that the routes may qualify for a categorical exclusion, which would

exclude the RNAV routes from further environmental review under NEPA. *Id*. at 20. FAA found that "there are no noise-sensitive land uses which would experience significant noise impact . . . as a result of the implementation of the proposed procedures." *Id*. at 17. The initial environment review and categorical exclusion were not noticed for review and comment. And, FAA did not provide the City the categorical exclusion document until September 17, 2014, the day before FAA began to use the RNAV routes. *See* Exhibit D at 10.

**Significant noise impacts from the RNAV routes and immediate FAA announcements it was considering modifications.** As soon as commercial jets began using the new RNAV routes on September 18, 2014, the new routes caused severe negative effects on Phoenix residents, historic districts, and City parks.[1] The new routes placed frequent and loud flights over areas of the City that had no or minimal previous aircraft noise. In a series of communications starting in October 2014, including a community meeting on October 16, FAA acknowledged that there were more impacts than it expected and that aircraft were using the procedures differently than the agency had assumed for purposes of its initial

[1] FAA's assertion that the new procedures were "unpopular" is an understatement. *See* Motion at 7. In the first seven months of implementation, the Phoenix Sky Harbor International Airport received 6,342 complaints from residents regarding noise from aircraft using the Airport. Exhibit F at 2. That compares to only 221 complaints from in the entirety of 2013. *Id*.

environmental analysis. *See* Exhibit D at 10. FAA told the City that it was implementing changes and considering other measures to reduce noise. *See id*.

On November 14, 2014, FAA informed the City that it had made unspecified changes to the RNAV procedures to correct the fact that flights were not following the new RNAV procedures. *See* Motion, Exhibit 8. FAA also committed to consider other changes and mitigation measures to address the significant noise impacts. *Id*. FAA did not subject the modifications to any environmental review.

However, FAA's unspecified modifications did not resolve the noise impact of the RNAV routes, especially over historic districts of the City. In December 2014, the State Historic Preservation Officer (SHPO) took the exceptionally rare step of rescinding its concurrence of FAA's finding of no adverse effect on historic properties under NHPA Section 106. *See* Exhibit G. The SHPO requested re-initiation of FAA's consultation based on the availability of new information and asked that "FAA study the effects of the new noise pattern in cooperation with the City of Phoenix . . . ."[2] *Id*.

[2] FAA asserts that the City has failed to provide information that would "trigger a legal obligation to reinitiate consultation" under the NHPA. Motion at 15. While this issue will be addressed in the merits briefing, FAA's assertion is contradicted by the SHPO's rescission of its concurrence the findings of the City Historic Preservation Office. FAA attached the SHPO's original concurrence to its motion, which was withdrawn by the SHPO and has been shown to be procured by FAA based on incorrect information provided to the SHPO. *See* Exhibit D at 25–26.

FAA also publicly acknowledged its deficient analysis of the RNAV route impacts. For instance, in December 2014, FAA Regional Administrator Glen Martin told the City of Phoenix City Council: "I think it's clear that based on what I have heard from your communities, [FAA's pre-implementation procedures were] probably not enough because we didn't anticipate this being as significant an impact as it has been, so I'm certainly not here to tell you that we've done everything right and everything we should have done . . . ." Exhibit D at 12.

On January 22, 2015, FAA Administrator Huerta sent a letter to the City recognizing the City's concerns "about the noise generated by some of the new procedures" and committing to "partnering with the airport and airlines to explore other potential adjustments to the procedures to better manage noise issues." Motion, Exhibit 9. However, FAA did not grant the City's request to revert to pre-September routes using the new RNAV technology and procedures. Motion, Exhibit 9 at 1.[3] Also, FAA did not address the City's requests to evaluate the effects of the RNAV routes and consult on the impacts to historic properties.

Instead, the Administrator informed the City that FAA was reconvening a Performance Based Navigation (PBN) Working Group for the Phoenix routes in

[3] FAA responded that it could not "revert to the *procedures* that were in use before September 18, 2014." *Id*. (emphasis added). However, the City has repeatedly offered the alternative that FAA return *routes* to pre-September 2014 routes using new RNAV technology and procedures. It has not requested that FAA revert to the technology and procedures pre-dating RNAV technology. *See* Exhibit H at 2.

February 2015.[4] *Id*. According to FAA, the City would be "an important player" in the process and a representative on the Working Group. *Id*. Inclusion in the PBN Working Group offered an administrative process under Order 7100.41 to evaluate the impact of and modify RNAV routes.[5] However, as will be discussed in the merits briefing, FAA then excluded the City from the PBN Working Group's evaluation of the RNAV routes and alternatives.

**The City's formal requests and identification of deficiencies.** In February 2015, the City submitted a letter to FAA formalizing the City's requests that FAA fully evaluate the RNAV routes and re-initiate consultation. The letter was 45-pages long and included 35 exhibits with over 10,000 pages of new information about RNAV impacts to Phoenix communities, parks, historic properties, and other resources. The City also discussed the legal requirements with which FAA had not complied—including initiating formal consultation with the City under Section 106 of the NHPA. *See* Exhibit D at 22. The City requested that FAA cease or modify use of the RNAV routes, and adequately conduct an environmental review of the new routes to comply with NHPA and NEPA. It also formally requested FAA to

[4] Order 7100.41 creates PBN Working Groups to implement new RNAV procedures, including analyzing and modifying new routes. *See* Exhibit A at 2-2. The Order calls for airport proprietors to participate and identify environmental concerns with RNAV routes. *See id*. at A-5.

[5] As the City states in its Statement of Issues filed on July 8, 2015, FAA violated the Federal Advisory Committee Act, 5 U.S.C. app. § 2, *et seq.*, because it failed to allow the City access to PBN Working Group meetings convened by FAA to evaluate the RNAV routes.

re-initiate NHPA consultation on the basis of new information pursuant to 36 C.F.R. § 800.13(b). On April 7, 2015, the City submitted to FAA a supplement providing additional information on the noise impacts of RNAV routes based on new noise monitoring. Exhibit F.

**FAA's final order: April and June Letters.** To mark the end of the work of the PBN Working Group, on April 14, 2015, FAA submitted the April Letter to the City which included the Post-Implementation Assessment Report (Final Report) dated April 2015. Under Order 7100.41, the Final Report documented the conclusion of FAA's implementation of RNAV routes and made it clear that FAA would not grant the City's request that FAA return to pre-September 2014 routes to reduce noise. *See* Exhibit B, Final Report at 11, 22. FAA accused the City of failing to offer measures to mitigate noise and instructed the City to "consider alternatives other than just returning to or overlaying procedures that were in place before Sept. 18, 2014." *Id.*, Letter at 1.

In the Final Report, FAA states that "[d]uring this final phase, the operation and procedures and/or routes is assessed to ensure they perform as expected . . . ." Exhibit B, Final Report at 1. FAA also identified no need to change its initial environmental review. *E.g. id.* at 1, 28. FAA's conclusion that its initial environmental review was sufficient finalized its environmental review. *See id.* FAA made this conclusion without addressing its adjustments to the RNAV

procedures, the fact that aircraft were not flying them as it has originally assumed or intended, and the new information on impacts that the City had provided.

The City responded to the April Letter on April 24, 2015, pointing out many shortcomings of FAA's PBN Work Group analysis and Final Report, and repeating its request that FAA return the RNAV routes to pre-September 18, 2014, flight paths. *See* Exhibit H at 1. Contrary to FAA's assertion that the City had not offered alternatives (and contrary to Administrator Huerta's assurances that the City could participate), the City reminded FAA that it had been excluded from the PBN Working Group meetings in which alternatives were developed and evaluated. *Id*. at 1. And, the City identified reasons to use the original flight paths that FAA had not addressed. Again, the City requested that FAA "commit to a fair, thorough and transparent consideration of the City's alternatives" and a thorough review of the "noise, historic, park and other effects of the September 18 routes and possible alternatives." *Id*. at 4. The City also submitted a detailed, technical response to FAA's April Letter.

On June 1, 2015, FAA responded by letter to the City. Exhibit C. FAA made it clear that it would not agree to return to pre-September 2014 routes, stating only that it would agree to minor adjustments to the RNAV routes that would not move the routes away from the affected neighborhoods. *Id*. FAA again ignored the City's request to conduct an environmental assessment and NHPA consultation.

For the reasons discussed below, the September 18, 2014, RNAV implementation, the April Letter, and June Letter constitute an order subject to review under 49 U.S.C. § 46110.

## ARGUMENT

### I. THE APRIL AND JUNE LETTERS COMPRISE AN ORDER REVIEWABLE BY THIS COURT UNDER 49 U.S.C. § 46110.

Jurisdiction arises under 49 U.S.C. § 46110(a), which states that "a person disclosing a substantial interest in an order issued by the . . . Administrator of the Federal Aviation Administration . . . may apply for review of the order by filing a petition for review in the United States Court of Appeals for the District of Columbia . . . ." *Id*. This Court has stated that to be "deemed final an order must mark the consummation of the agency's decisionmaking process, and must determine rights or obligations or give rise to legal consequences." *City of Dania Beach. v. FAA*, 485 F.3d 1181, 1187 (D.C. Cir. 2007) (quotations and citation omitted). The term "order" in Section 46110 "should be read 'expansively.'" *Id*. As the Third Circuit has stated, under Section 46110, "an 'order' must be final, but need not be a formal order, the product of a formal decision-making process, or be issued personally by the Administrator." *Aerosource, Inc. v. Slater*, 142 F.3d 572, 578 (3d Cir. 1998); *see also Aviators for Safe and Fairer Regulation, Inc. v. FAA*, 221 F.3d 222, 225 (1st Cir. 2000) ("The term 'order' is read expansively in review statutes generally . . . and this statute specifically.").

Review of the FAA's actions is made complicated in this matter by the irregular approach FAA has taken to decision-making. FAA initiated the RNAV routes in September 2014 based on a deficient impact analysis and no public input. Then, after acknowledging significant noise concerns, FAA pledged a process by which it would receive input from the City and others and committed to evaluate changes to the RNAV routes. This "act then involve and analyze" approach differs from a typical administrative process.

Nevertheless, the process by which FAA implemented the RNAV routes does not have to be a "formal decision-making process" to trigger Section 46110 jurisdiction. *Aerosource,* 142 F.3d at 578. The "core question is whether the agency has completed its decisionmaking process, and whether the result of that process is one that will directly affect the parties." *Franklin v. Massachusetts*, 505 U.S. 788, 797 (1992).

The April 14 and June 1 Letters are a final order because they marked the consummation of FAA's RNAV route implementation. FAA made it clear it would neither move the RNAV routes in the manner, nor conduct the environmental review and consultation, requested by the City. FAA should not be able to use its flawed decision-making process and repeated assurances that it was modifying its action, to avoid review in this case.

### A. The April and June Letters Mark the Conclusion of FAA's RNAV Implementation Process.

Since September 2014, FAA had made assurances to the City that it would address the significant noise problems and conduct its process under Order 7100.41. FAA received numerous requests from the City—specifically in the City's February 2015 protest letter—to cease use of the RNAV routes and conduct adequate assessment and consultation on the routes' impacts. In the April Letter, including the Final Report, FAA made it clear that the RNAV flight paths would not change; the Final Report did not change or reopen the environmental review of the RNAV routes despite FAA's acknowledging its it inadequacy and new information. *See* Exhibit B.

As FAA states in its Motion, the implementation of the RNAV flights was conducted under FAA's Order 7100.41. *See* Motion at 8. Order 7100.41 applies to RNAV routes like the one in Phoenix and provides for a standardized five-phase implementation process for the RNAV routes. *See* Exhibit A at 2-1. The September 18, 2014, initial start of the RNAV routes that FAA characterizes as an "order" precedes the "final phase" of the process under Order 7100.41, referred to as the "post implementation analysis" phase. *See id.* at 2-1. FAA completed this final phase in April 2015 and the Final Report is incorporated into the April Letter identified in the Petition for Review. The Final Report states that "during this final phase, the operation of the procedures and/or routes is assessed to ensure they

perform as expected and meet goals finalized during the development phase." Exhibit B, Final Report at 1.

Both under Order 7100.41 and FAA's repeated assurances to the City, the routes were subject to change and the City sought such changes. The Final Report did not change FAA's initial assessment of the noise impacts that the City had repeatedly informed FAA was incorrect and inadequate. Thus, the Final Report concluded FAA's environmental analysis of the existing RNAV procedures. This conclusion by necessity rejected the City's request to conduct adequate environmental review of the RNAV routes, ignored new information regarding impacts, and denied the City's request to re-initiate the NHPA process based on new information, as required by 36 C.F.R. § 800.13(b).

The Motion incorrectly asserts that the April and June Letters are not final because they are not part of "any particular administrative process." Motion at 12–13. Here, however, FAA expressly made the letters part of the administrative process by conducting its review under Order 7100.41 and by committing to the City to consider changes to the RNAV routes.

An order under Section 46110 also does not have to be a single, discrete agency action. As this Court stated in *Ciba-Geigy Corp. v. EPA*, the finality requirement should be applied in a "flexible and pragmatic way." 801 F.2d 430, 435–36 (D.C. Cir. 1986). A "final agency action may result 'from a series of

agency pronouncements rather than a single edict.'" *Barrick Goldstrike Mines, Inc. v. Browner*, 215 F.3d 45, 48–49 (D.C. Cir. 2000) (quoting *Ciba-Geigy*, 801 F.2d at 437 n.7). Before starting use of the RNAV routes, FAA failed to provide any administrative process for the public's involvement. Instead, it took an "act then involve and analyze" approach under which it committed to process *after* starting use of the RNAV routes, through its repeated commitments to consider changes to the routes to address community noise impacts, and through the Order 7100.41 process.

The fact that FAA rejected the City's request for moving the routes and for an environmental assessment and consultation in the form of the April Letter, a Final Report, and the June Letter, does not lessen their legal effect of "complet[ing] its decisionmaking process." *Franklin*, 505 U.S. at 797. Regardless of the level of formality in FAA's process, the April Letter and June Letter marked the consummation of FAA's RNAV route location decision making.

### B. The April and June Letters Denied the City's Right to Participate in the Consultation under NHPA Section 106 and Finalized the RNAV Routes in Violation of Federal Law.

The April and June Letters satisfy the second requirement for a final order, because they have "determine[d] rights or obligations" and have "give[n] rise to legal consequences." *City of Dania Beach*, 485 F.3d at 1187. The Letters, including the Final Report, denied the City's request to move the RNAV flight

paths away from dense residential and historic areas and to re-evaluate the environmental and historic impacts in light of the new information.

By not granting the City's request for historic resource consultation during its final review of the RNAV procedures, the April and June Letters denied the City the right to participate in consultation with FAA as a certified local government on the adverse effects to historic resources. Under 36 C.F.R. § 800.2(c)(3), FAA is required to engage in consultation with "representatives of local governments" when determining the likelihood of adverse effects on historic properties. *Id*.; *see also* FAA Order 1050.1E at A45. Also, the April and June Letters finalized RNAV routes without reinitiating consultation with the SHPO following the SHPO's rescission of its NHPA Section 106 concurrence and light of new information—a new violation of the NHPA. *See* 36 C.F.R. § 800.13(b).

Further, the April and June Letters have substantial legal consequences, because they affirmed the deficient categorical exclusion from September 2013 (and updated in March 2014). In affirming the categorical exclusion without comment and without considering or addressing any of the voluminous information and FAA's own admissions showing that impacts were greater than FAA assumed, and that FAA admitted, FAA violated NEPA. *See* Exhibit D at 12. FAA's conclusion of the implementation process allows use of the RNAV routes to continue without adequately assessing their impact to the environment and

historic properties and in violation of federal law. Accordingly, the April and June Letters have denied the rights of the City and have legal consequences. Therefore, they are an order under 49 U.S.C § 46110.

### C. The Proposed Modifications to the RNAV Routes Referenced By FAA in the April Letter and June Letter Do Not Affect the Ripeness of this Case.

The April and June Letters made it clear that FAA denied the City's requests to move RNAV routes or re-initiate the required environmental and historic review of those routes. But, FAA contends that the April and June Letters "did not alter the [RNAV] procedures" and that the June Letter "identified several possibilities for the future 'that could potentially address community concerns about the noise.'" Motion at 15–16. Any disagreement that the City may have with future "possibilities" that could "potentially" address noise impacts, according to FAA, is not ripe for judicial review. FAA's argument is without merit and reflects an attempt to characterize any challenges to its actions as simultaneously too late and too early. To accept it would allow FAA to evade judicial review indefinitely by continuing to say it may do something helpful in the future, even as it uses the RNAV routes.

As the City detailed in its response to FAA's April Letter, the options proposed by FAA would not address the noise problems created by the RNAV

flight paths. Exhibit H at 3. The small adjustments of routes proposed by FAA would "simply [] shift noise from one residential area to another . . . ." *Id*.

Further, FAA's January 22, 2015, letter had already committed to consider and address noise concerns through the PBN Working Group under Order 7100.41. After making that commitment, FAA's PBN Working Group established its operating guidelines to exclude noise from its ambit and rule out changes that would make significant effects on noise. *See id*. at 1. FAA's subsequent "possibilities" and process are unspecified, and the April and June Letters clearly foreclosed any possibility that it would accommodate the City's requests to shift the RNAV routes or re-initiate the environmental and historic review. Where FAA has finalized its process by denying the City's requests, after months of back and forth, it should not be able to avoid review through vague statements that it might consider other changes that would not move routes away from sensitive neighborhoods with no specified process or time frame.

## II. EVEN IF THE COURT FINDS THAT FAA's SEPTEMBER 18, 2014, LETTER IS THE ONLY ORDER, THE 60-DAY PERIOD FOR FILING A PETITION FOR REVIEW OF THAT ORDER WAS TOLLED BY FAA's REPRESENTATIONS TO THE CITY THAT IT WOULD ADDRESS THE SIGNIFICANT NOISE PROBLEMS.

The City's petition for review remains reviewable under 49 U.S.C. § 46110(a), even if the Court accepts FAA's argument that the September 18, 2014, implementation is the only final order issued by FAA. A petition for review

may be filed outside of the 60 days if "there are reasonable grounds for not filing by the 60th day." 49 U.S.C. § 46110(a). The City was reasonable in relying on FAA's repeated representations that it would address the City's requests to resolve the noise issues, which tolled the 60-day period.

This Court has found "reasonable grounds" where a petitioner has waited more than 60 days to file a legal challenge because of agency representations that it would address the petitioner's concerns. In *Paralyzed Veterans of America v. Civil Aeronautics Board*, the Court stated that an organization had "reasonable grounds" for waiting more than 60 days when it was "[a]ware that the rule might be undergoing modification, and unable to predict how extensive any modification would be . . . ." 752 F.2d 694, 705 n.82 (D.C. Cir. 1985), *rev'd on other grounds*. The petitioners were reasonable in "elect[ing] to wait until the regulation was in final form before seeking review." *Id.*

Similarly, in *Safe Extensions, Inc. v. FAA*, this Court found that a manufacturer of navigation aids, Safe Extensions, had reasonable grounds to delay its petition for review of FAA's advisory circular establishing requirements on its light products. 503 F.3d 593 (D.C. Cir. 2007). Evidence before the Court showed that, in response to "significant uproar in the industry" over the advisory circular, FAA represented that it would revise the circular. *Id.* at 603. Safe Extensions allowed the 60-day petition filing period to expire "[b]ased on [FAA's]

representation, and hoping to avoid litigation, the company decided to 'wait and see if the FAA [would] address[] the issues . . . .' *Id*. Safe Extensions had reasonable grounds for filing after 60 days. *Id*. at 604. The "delay simply served properly to exhaust the petitioners' administrative remedies, and to conserve the resources of both the litigants and this court." *Id*. (quoting *Paralyzed Veterans*, 752 F.2d at 705 n.82).

Here, as in *Safe Extensions*, the City reasonably expected that FAA would follow through with its commitments to consider modifications to the RNAV routes and respond to the City's requests to modify the routes. This reliance was substantiated by FAA's unspecified modification(s) to RNAV procedures. *See* Motion, Exhibit 8; *see also* Exhibit D at 10. On November 14, 2014, within the 60-day period, the FAA informed the City that it had modified the procedures and committed to review and consider additional measures to address the significant noise impacts. Motion, Exhibit 8. FAA stated it was "teaming with the airport staff and industry experts to determine what actions or changes are possible and whether those steps could potentially mitigate the noise issues." *Id*.

The City could also reasonably rely on the fact that FAA's Order 7100.41, which formed the basis for the PBN Working Group announced by Administrator Huerta in January 2015, explicitly calls out the primary role and responsibility of the airport in a working group as "[p]roviding input on procedure and route design,

including any potential operational or environmental impacts to the airport and surrounding communities." Exhibit A at A-5. FAA provides no reasons in its Motion why the City should have disregarded and distrusted FAA's own operative order and the express direction of the FAA Administrator that FAA was going to evaluate changes to address noise.

Thus, even if the September 2014 implementation is the only final order, the City's timing of its petition was reasonable, because it was attempting to work with FAA to address the noise problems with the RNAV routes. FAA's subsequent decision not to follow through with its commitments does not render the City's reliance on FAA's representations unreasonable.

## CONCLUSION

For the foregoing reasons, the Court should deny FAA's Motion to Dismiss.

Respectfully submitted on July 30, 2015.

Attorneys for Petitioner:

/s/ *John E. Putnam*
John E. Putnam
jputnam@kaplankirsch.com
Peter J. Kirsch
pkirsch@kaplankirsch.com
KAPLAN, KIRSCH & ROCKWELL, LLP
1001 Connecticut Avenue, NW, Suite 800
Washington, DC 20036
(202) 955-5600
(202) 955-5616 (fax)