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THE AVIATION SUBCOMMITTEE OF THE SENATE COMMERCE COMMITTEE ON S. 455

May 14, 1973

Mr. Chairman and Members of the Committee:

I appreciate this opportunity to appear before you today to discuss, in general, the problems of the air charter industry, and more particularly, S. 455.

S. 455 amends the definition section of the Federal Aviation Act of 1958 to include a definition of an inclusive tour charter trip in a way different from existing CAB regulations, to allow supplemental air carriers to expand their operations to include the carriage of mail, and to remove prohibitions against their selling an inclusive tour trip by selling individual tickets directly to members of the public, or through the control of a person authorized by the CAB to make such sales. The bill also amends the Act to allow the CAB to suspend permits of foreign air carriers whenever it finds that the aeronautical authorities of the foreign country from which they operate have refused to permit, or have imposed unreasonable restrictions on, the performance of foreign air transportation by a U.S. air carrier.

Our position with respect to S. 455 is as follows: We support the amendment that the bill makes to section 101 of the Federal Aviation Act which defines an inclusive tour charter trip, except for the common control proviso in the bill. We do not support the balance of S. 455,

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except as the bill would authorize the Board to award a mail certificate to a supplemental carrier.

I note that S. 455 is identical to S. 3513, a bill we testified on last year. My remarks today are consistent with the testimony I gave last year on S. 3513.

Before I discuss the specifics of this bill, I would like to make some general remarks about the air charter industry. Charter service, of course, is provided both by supplemental air carriers and foreign charter specialists and by scheduled air carriers. Briefly, the ground rules for the provision of charter service by scheduled air carriers are as follows: There are no restrictions on charters between points to which the carrier is certificated to provide scheduled service. Scheduled carriers currently are not authorized to perform inclusive tour charters, but they do have complete flexibility to sell inclusive tours on their scheduled services. These GIT fares, as now sold on an individually ticketed basis, are clearly competitive with existing supplemental ITC authority. Off-route charters of scheduled carriers, on the other hand, are restricted by CAB regulations.

Supplemental carriers are certificated to operate charters in broad geographical areas. As shown in Table 1, 12 U.S. supplemental carriers are currently certificated for U.S. domestic service, 7 for service in Canada, 4 for Mexico, 8 for Caribbean, 2 for Central and South America, 6 for transatlantic and 3 for transpacific. As an aside, let me say that

when I testified on this subject last year at this time there were 13 supplemental carriers, with two carriers in a status of suspended operations. Today there are 12 supplemental carriers, two of which have suspended operations and two more of which are in bankruptcy. Supplemental carriers may carry more than one group on each flight, however each group must be composed of a minimum of 40 persons.

The amendments of the Federal Aviation Act in 1962 which authorized the Board to grant certificates to engage in supplemental air transportation were adopted to assure the availability to the traveling public of low-cost transportation in the form of charter services and to develop charter service to provide an effective prod to keep scheduled fares as low as possible. But there are many restrictions on charter operations, some by our CAB (such as the affinity, ITC and off-route charter rules), and some by foreign governments.

For example, CAB regulations governing off-route charters provide that these charters may not exceed two percent of the total revenue plane-miles the carrier flew during the preceding fiscal year. Secondly, off-route charters between any two points are limited to eight flights in the same direction during any four-week period and cannot be performed on the same day of the week for two successive weeks. CAB rules preclude any arrangement of off-route charters which will result in a uniform pattern of normal consistency of operations. For carriers with many route points, their on-route charter opportunities between those points are many, and the off-route restrictions are not a significant constraint

in those markets. For carriers without route points in certain areas, the off-route restrictions do hinder the development of charter services.

Restrictions on charter operations by foreign governments range from the prior approval of each supplemental or scheduled carrier charter, through the ban on ITC's between the U.S. and Denmark, Italy, Norway, Sweden, Finland, Japan or Bermuda to the total ban on charters between the United States and Israel. These varying foreign restrictions on charters are detailed further in Attachment 1.

For some time, a number of restrictions on the charter services that IATA members can offer were contained in an IATA resolution numbered 045. On June 21, 1972, the Civil Aeronautics Board disapproved IATA resolution 045 as applied to transportation to and from the United States. The Department of Transportation took the position that 045 impeded the development of the bulk air transportation market and was inconsistent with the President's Policy Statement. The Board disapproved the resolution based, among other reasons, on the fact that the restrictions in 045 have impeded air carriers from providing charter transportation in accordance with the public demand. However, the disapproval of 045 has not ended the restrictions. A number of European countries continue to impose restrictions on the size and the number of groups permitted on affinity charters as was defined in IATA resolution 045.

Despite the restrictions placed on charter operations, there has been a significant growth of international charter operations. In some years, these operations have grown at a faster rate than scheduled operations. For example, the growth of transatlantic international passenger charter operations in 1971 over 1970 amounted to 33 percent. The growth of international scheduled operations over the same period, on the other hand, was 4 percent. However, charter traffic in 1972 over 1971 showed a decrease of 4 percent while traffic on scheduled service increased 21 percent. Data for 1972 indicates that approximately 10.6 million passengers flew across the North Atlantic of which 2.4 million (or 23 percent) used charter services provided by either supplemental or scheduled carriers.

These figures do not reflect the bulk traffic carried by scheduled carriers on scheduled flights, that is, those passengers moving on GIT, affinity and incentive group fares. Travel of this kind is akin to charter travel. For example, Pan American and TWA carried approximately 558,000 passengers at these group fares in 1971 which amounted to approximately 19 percent of their total scheduled traffic. Such bulk traffic could also be carried on charter services.

The Statement of International Air Transportation Policy approved by the President in 1970 set forth the policy of the Administration vis-a-vis international air charter operations and the role of supplemental carriers in relation to scheduled services as follows:

"Scheduled services are of vital importance to air transportation and offer services to the public which are not provided by charter services....Accordingly, in any instances where a substantial impairment of scheduled services appears likely, it would be appropriate, where necessary to avoid prejudice to the public interest, to take steps to prevent such impairment.

"Charter services by scheduled and supplemental carriers have been useful in holding down fare and rate levels and expanding passenger and cargo markets. ...Charter services are a most valuable component of the international air transportation system, and they should be encouraged. If it appears that there is likely to be a substantial impairment of charter services, it would be appropriate, where necessary to avoid prejudice to the public interest, to take steps to prevent such impairment."

It is our view that this policy is appropriate for the domestic area. And this includes that part of the policy statement which observed that "regulatory and promotional policies should give greater recognition to the dimensions, characteristics and needs of the bulk transportation market, as such, and less emphasis to the type of carrier that is serving that market." This is particularly appropriate today. We should be trying to improve our balance of payment deficits by creating more attractive air transport packages to domestic places of interest.

With this introduction, let me take up and comment upon the issues raised by this bill before the Committee.

For reasons explained below, we support the amendment S. 455 makes to section 101 of the Federal Aviation Act which defines "inclusive tour charter trip" except for the common control proviso. We do not support the balance of S. 455 except as the bill would authorize the

Board to award a mail certificate to a supplemental carrier.

The definition of inclusive tour charter trip contained in the bill would define the extent of the Board's authority in this area. The proponents of the bill apparently view this bill as a means of effecting an immediate liberalization in the rules governing the operation of inclusive tour charters. That is not our view of the bill. It is our understanding that under existing legislation the Board may now act by regulation to effect changes similar to those proposed in the Bill. But Board adoption of such changes could result in protracted litigation questioning the Board's authority in this area.

The bill before the Committee would clarify the Board's statutory authority with respect to inclusive tour charters and make clear that the Board has discretion to allow one-stop ITC's, for example. But the bill would not require that relaxation of the existing, restrictive ITC regulations. The extent of the relaxation could be a matter of the Board's economic discretion. As the Bill reads, the Board could impose "such other requirements not inconsistent herewith as the Board shall by regulation prescribe". We do not think that enactment of the Bill should be a mandate to, for example, authorize one-stop ITC's, and this should be made clear either in the legislation or in the legislative history. Adoption of the definition contained in the Bill would, as we view it, resolve the legal issue of whether the Board has the legal authority to grant one-stop inclusive tours. It would remain up to the Board to judge whether, for commercial reasons, it should grant such authority.

The Department's position with respect to the liberalization of inclusive tour charter rules stems in large part from the views long held by the Department concerning the implementation of the President's Statement on International Air transportation Policy.

Since our testimony on S. 3513 the Department participated in discussions with representatives of Canada and the European Civil Aviation Conference (ECAC) and achieved a measure of agreement on the ground rules governing the new travel group charters. This understanding is contained in a document entitled "Declaration of Agreed Principles for North Atlantic Charter Flights". This effort was designed to implement a non-discriminatory charter rule for all classes of carriers, scheduled as well as supplemental, and should be of substantial aid in developing the advance booking segment of the charter market.

On August 31, 1972, the National Air Carrier Association (NACA) on behalf of its supplemental carrier members, filed with the CAB a petition for rulemaking to amend, among others, Part 378 of the Board's Special Regulations governing the ITC rules. In its application NACA sought a rulemaking proceeding which would bring to the Board's attention the facts by which the Board could then judge whether the existing ITC restrictions could be relaxed. The Department of Transportation supported this application for rulemaking. We stated that since 1966, ITC operations have contributed little to the financial health of the supplemental industry and the restrictive ITC rule has not met the need of the public for low

cost group transportation. Many of the restrictive requirements incorporated into the original ITC rules such as the three-stop requirement, the minimum stay requirement and the requirement that the package price be based on scheduled air fares, were designed to prevent undue diversion from scheduled services, but we think the record suggests that the achievement of this objective has been a bit of overkill: the restrictions have also prevented the development of a viable ITC market. In contrast to the restrictions on ITC's imposed on the supplemental carriers, the scheduled carriers have been permitted and are free to provide a broad range of group inclusive tour (GIT) fares which are not subject to the three-stop, minimum fare or minimum stay rules.

To date, the Board has not acted on the NACA petition for rulemaking. The Board has also not acted on a TWA petition for rulemaking to permit certificated scheduled carriers to operate inclusive tour charters. This petition was filed September 5, 1972 and we supported it.

Pending the outcome of its application for rulemaking, NACA also filed an application for an exemption from the current ITC rule to apply in two limited circumstances: 1) where such ITC flights originate in a foreign country and are operated to the United States in accordance with the ITC rules of the country of origin, and 2) where the charters originate in the United States and are performed to a point in a foreign country not served by a scheduled carrier. The Department filed in support of this application and also suggested that the experiment cover selected domestic markets. We believe that such operations would provide

excellent experiments with more liberal ITC rules. However, this application for an exemption was denied by the Board on December 27, 1972.

I believe that a major reason why the Board has resisted these proposals for ITC relaxation and experimentation is the legal concern that they do not have the discretionary authority to do so. We believe the Board should have that discretionary authority now. It is not premature--rather, it would let the Board focus freely on the economic issues. I have summarized and reviewed our views and actions with respect to these efforts because they lead me to make the following comments with respect to a liberalization of ITC rules as they would apply to domestic and international travel. These are views that we would address to the CAB concerning the exercise of the discretions which S. 455 would give them.

Historically, the use of inclusive tour charters by U.S. carriers has been subject to certain regulatory restrictions, most important of which are the seven-day minimum, the three-stop rule, and a minimum price not less than 110 percent of any fare charged by a scheduled carrier. That has been the pattern in the United States, and as a result of such regulatory restrictions, the growth of inclusive tour charter travel within the United States has been minimal. As for international ITC's, the program has been limited by the CAB restrictions as well as severe restrictions by most receiving foreign country landing and quota rules. As a result only an estimated 90,000 persons used the ITC program

to foreign countries in 1971. In marked contrast to the American experience, European countries have for some years permitted inclusive tour travel to take place free from most of the regulatory restrictions imposed in America and against transatlantic trips. For example, intra-European ITC's can go to a single destination and are governed by realistic pricing regulations which relate the price of the air trip and the ground arrangements to the cost of providing the service. As a result intra-European ITC traffic has increased nearly fourfold since mid-1960, to an estimated 8.5 million people taking such trips in 1972.

The comparison of the American and European experiences would suggest that a liberalization of the American regulatory restrictions is in order if the U.S. domestic traveling public and the tourist industry are to attain the benefits of the increased tourism that would flow from such relaxation. Since large numbers of potential domestic travelers are now being attracted to lower cost European vacations on scheduled and charter services, there is no question that a more competitive domestic tour package would accrue favorably to the United States' balance of trade. To the extent that S. 455 would lead to such a liberalization, we favor it in principle.

However, we would not favor a sudden termination of the existing restrictions on inclusive tour charter travel in this country, because we cannot be certain that undesirable impacts will not be felt on our scheduled transportation system. We have, of course, reviewed studies that have been made of the potential impact of such a relaxation. From

the standpoint of charter operators, the work recently done by the Transportation Analysis International Company suggests that the growth of inclusive tour charter travel in the market can take place without discouraging the growth of scheduled travel, and cites particularly the experience in the intra-European German-Spanish markets for support.

On the other hand, we are also fully aware of the studies completed for the scheduled industry by Trendex, Oxtoby-Smith and the two National Economic Research Association reports. They generally conclude that the diversion of scheduled traffic would be so great as to reduce the profitability of the present vacation air markets which currently subsidize less dense traffic areas. They further conclude that the elimination of cross-subsidy will bring about increased payment by passengers on less profitable routes, and lead to either elimination of service or direct government subsidy.

I believe we should be cautious in using the European experience as the bases for predicting the likely outcome of liberalized ITC authority in the United States. Proponents of the European system refer to the fact that intra-European scheduled traffic has continued to grow at a 10 percent annual rate despite the phenomenal growth of ITC's. But it should be recalled that the U.S. and European scheduled carriers operate under different regulatory environments -- one very liberal and the other quite restrictive. As a result, the U.S. scheduled domestic network is the most advanced in the world with its frequent and modern services, variety and number of competitive carriers. With its overall relatively low fare structure, it already carries large numbers of tourists on their

scheduled flights.

It is not clear, therefore, that the European experience can be applied across the board to the American scene. We do not have an adequate basis to justify an immediate wholesale dismantling of the existing restrictions on inclusive tour charter travel in America.

What we do propose is an affirmative action program of liberalizing inclusive tour charter travel, and I would suggest the following guidelines for such a program:

1. The Congress should endorse the concept of inclusive tour charter travel as free from regulatory restrictions as is consistent with the maintenance of an essential scheduled transportation system. Section 1 of S. 455 (apart from the proviso) would constitute such an endorsement.
2. The CAB should have regulatory authority to impose restrictions on such inclusive tour charter travel. The Board has such authority now, and S. 455 would not appear to change it.
3. The Board should be urged to permit inclusive tour charter travel to grow so long as damage to the essential level of scheduled operations is not threatened.
4. The Board should be encouraged to reach its conclusions as to the regulatory framework promptly, and we recall that the Board completed the fare level phase of the Domestic Passenger Fare Investigation in about one year.

5. In certain select markets where the risk of substantial impairment of scheduled service would be minimal, the Board should institute immediate relaxation of inclusive tour charter rules so as to measure the market impact of these regulations and provide the economic benefits of such a relaxation to both the traveling public and tour industries in these particular markets.

6. The Board should be asked to consider some immediate across-the-board easing of restrictions on ITC's, for example by reducing the requirement from three to two overnight stops, or by reducing the price restrictions from 110 percent of the lowest scheduled fare to a lower percentage. If such easing is made, the Board should very carefully monitor the effects of these changes, particularly the effect on scheduled services.

This program of liberalizing inclusive tour charter travel in a controlled way with immediate experimental application, should provide the necessary factual basis and experience upon which the further development of U.S. domestic charter travel can be undertaken at minimum risk of impairing vital scheduled services.

Additional features of S. 455 require further comment. The Department does not believe supplemental carriers should be granted greater authority than the scheduled carriers have to control persons

authorized by the CAB to sell inclusive tours. Control of tour agents by carriers would tend to reduce competition but if it serves the public interest it should fall within the provisions of section 408 of the Act which governs consolidations, mergers and acquisitions of control.

S. 455 proposes to redefine the definition of "supplemental air transportation." The new definition would permit the supplemental carriers to carry mail and would delete language which states that supplemental air transportation is to supplement the scheduled services authorized by the Board pursuant to section 401(d)(1). The existing law presently precludes the CAB from granting mail rights to supplemental carriers. We see no valid reason why the Board should be precluded from hearing this issue, and determining on the merits, after a hearing, that mail rights for supplemental carriers either are or are not required by the public convenience and necessity. Historically, mail carriage has been awarded to scheduled passenger services as a matter of routine. The scheduled all-cargo specialists (like Seaboard), however, were initially certificated without mail rights, but were subsequently granted mail rights after a 401 proceeding which weighed the economic impact on competitive carriers as well as the public benefits accruing from the new certifications. The Department favors the use of this administrative procedure and believes that the CAB should have authority to grant mail rights to supplemental carriers if such authority is found to be in the public interest.

As for deleting the language regarding supplemental carriers supplementing scheduled services, the Congress may wish to consider the implications of the existing statutory language, since supplemental carriers, in their charter operations, do not "supplement" the charter services of scheduled carriers, nor were they intended to occupy a subsidiary role vis-a-vis the charter operations of scheduled carriers. They perform a distinct role as pointed out in the President's Policy Statement. We favor the distinction between scheduled and charter services made in that Statement.

The amendment in S. 455 to section 402 of the Act is intended to provide the Board retaliatory power when foreign governments impose arbitrary restrictions on U.S. carriers. We are opposed to this amendment. We believe the Board has sufficient powers now to take actions of this kind without amending the Act. We note that the Board has amended Parts 212 and 213 of its Economic Regulations in order to place itself in a position to retaliate by limiting foreign carriers' scheduled services and their charter services. In addition, the thrust of the amendment may be inconsistent with our bilateral air service agreements, and contrary to the Policy Statement which says that charter agreements should be distinct from scheduled agreements, and, "generally" there should be no trade-off between scheduled and charter rights.