

STATEMENT OF WILLIAM A. KUTZKE, ASSISTANT GENERAL COUNSEL
FOR LITIGATION, U. S. DEPARTMENT OF TRANSPORTATION, BEFORE
THE AVIATION SUBCOMMITTEE OF THE HOUSE PUBLIC WORKS AND
TRANSPORTATION COMMITTEE, ON H.R. 10560, MAY 4, 1976

Mr. Chairman and Members of the Subcommittee:

It is a pleasure to appear before your Subcommittee to discuss the Department's views on H.R. 10560. We understand that the purpose of the legislation is to make it possible for a passenger on an intrastate air carrier, who wishes to connect to an interstate carrier, to purchase a through ticket and to obtain through service for his baggage.

This bill would amend Section 401(d) of the Federal Aviation Act of 1958 by adding a new paragraph (4). Within 120 days after the enactment of this bill, any carrier which has been continuously engaged in intrastate air transportation from July 1, 1975 to the date it applies for certification, would be issued a certificate by the Civil Aeronautics Board (CAB) authorizing the applicant to engage in interstate air transportation "between those places in the same state where the applicant was involved in intrastate air transportation and with respect to all classes of traffic for which authorization is sought." Under present law, a passenger cannot purchase a through ticket and obtain through service for his baggage when he uses an intrastate and then an interstate carrier. The reason for this is that the sale of through transportation is "interstate air transportation" as that term is defined in the

Federal Aviation Act, and an intrastate carrier--without a CAB certificate--may not participate in such "interstate" traffic.

The stated purpose of this bill is consistent with the objectives of the Administration's proposed aviation regulatory reform legislation, H.R. 10261. Our proposal, on which the Secretary of Transportation will be testifying before your Subcommittee tomorrow, is designed to remove artificial and unnecessary economic regulatory constraints, increase efficiency in the airline system and provide consumers better air transportation services at a lower cost.

The Department believes that intrastate carriers holding certificates of public convenience and necessity from state public utility commissions should be permitted to carry interstate traffic on intrastate flights. These intrastate carriers are a valuable asset of the national transportation system. Their experience shows just how efficiently a less-regulated system works in providing low-cost air fares and good service. The Secretary will discuss this experience in much greater detail tomorrow. There is simply no justifiable reason to prohibit the intrastate carriers from carrying interstate passengers. However, the enactment of H.R. 10560 as presently drafted could have a number of unintended and undesirable consequences.

First, the bill would subject the newly-certificated interstate carriers to dual fare regulation. How much additional CAB regulation intrastate carriers would be subject to is not clear. In many cases,

CAB certification has been found to increase the costs of carriers. Any increased costs associated with new Federal regulation would, in this case, be passed on to intrastate as well as interstate passengers. In contrast, the thrust of our aviation regulatory reform proposal is toward less, rather than new or more, Federal regulation.

Second, another unintended result would possibly be to make these carriers eligible for the present CAB-administered subsidy program since Federal certification generally brings with it eligibility under that Federal subsidy system. We would oppose an expansion in the present program. Better alternatives are available and tomorrow the Secretary will testify about our proposal for a new and more efficient subsidy program.

Finally, the bill would grant the authority to carry interstate passengers only to those intrastate carriers who were operating on July 1, 1975. This provision would create "grandfather" rights in a limited number of carriers. We favor removing artificial and unnecessary economic regulatory constraints as to all carriers, not just a select few. We therefore oppose restricting the benefits of the bill to a small group.

A possible alternative approach to the problems associated with Federal certification might be as follows. You could provide that any person who engages in intrastate air transportation pursuant to state certification be permitted to engage in interstate air transportation

over those routes authorized by the state without having to obtain a certificate from the CAB. There are several approaches to the problem of deciding the rates of such transportation. One approach would authorize the intrastate carriers to carry interstate passengers at the intrastate rate or to carry them at any applicable interstate through rate, if that interstate rate were lower. In essence, this approach would create a narrow exemption from present CAB authority and avoid the problems of dual regulation and Federal certification of intrastate carriers, while still allowing the intrastate carriers to carry interstate passengers. These are obviously details to be worked out and we would be pleased to work with the Committee Staff on this matter.

This completes my prepared statement, Mr. Chairman. I will be happy to answer any questions you may have.