STATEMENT OF LINDA HELLER KAMM, ACTING DEPUTY SECRETARY AND GENERAL COUNSEL OF THE DEPARTMENT OF TRANSPORTATION, BEFORE THE AVIATION SUBCOMMITTEE OF THE SENATE COMMERCE COMMITTEE, CONCERNING S. 1300, THE "INTERNATIONAL AIR TRANSPORTATION COMPETITION ACT OF 1979," LAS VEGAS, NEVADA, AUGUST 21, 1979

Mr. Chairman and Members of the Subcommittee:

I am Linda Kamm, Acting Deputy Secretary and General Counsel of the Department of Transportation. I am very pleased to be here today to present the Department of Transportation's views on S. 1300, the International Air Transportation Competition Act of 1979. I would like to compliment you, Mr. Chairman, for having developed comprehensive and thought provoking legislation in this vitally important area. I am well aware of your long standing interest in international aviation, and I am glad to know that you will be bringing to this subject the same depth of concern, knowledge, and leadership which were so important to the success of our efforts to reform and revitalize domestic air transportation.

Just a year ago, Mr. Chairman, you held initial hearings on U.S. international aviation policies. Since that time we have witnessed the beginnings of a fundamental change in international aviation. I was most pleased, Mr. Chairman, to note that your remarks in introducing S. 1300 expressed approval of the Administration's actions in the last year in seeking competitively oriented bilateral aviation agreements. The Department of Transportation has devoted considerable resources to this effort. We take very seriously our responsibility for leadership in the development of long term international aviation policies. The institutional arrangements that have been worked out between DOT, the Department of State, and the CAB for the conduct of individual bilateral negotiations are working well. We believe that the success of our recent negotiations is ample demonstration that the talents, resources, and perspectives of these three agencies can be melded effectively.

It was just over two years ago that the U.S. Government, in an unprecedented move, supported Laker's competitive low-fare offerings across the Atlantic. Shortly thereafter, in the fall of 1977, the President overturned the CAB's rejection of British Airways', Pan Americans', and TWA's competitive responses to Laker's new low fares. As a result, low and innovative fares were off and running in the international marketplace.

A primary objective of those decisions early in this Administration was to create a more competitive environment in international markets wherever it was feasible. With the continued development of this competitive environment, we have seen a dramatic increase in the variety of fare and service options available to the traveling public.

In DOT's testimony at your hearings last year, we noted that we had recently concluded a new bilateral agreement with the United Kingdom, "Bermuda II." While that agreement is in fact less liberal than we might wish, its impact on air service in the U.S.-U.K. market has been dramatic. Nine U.S. and British airlines now serve this market, four of which have begun service only within the last year. Standby, budget, and APEX fares as low as 60 percent less than standard economic fares have been regularly offered over the past 18 months. Average summer fares between the U.S. and the U.K. have declined 14 percent at a time when carrier costs have risen significantly. Scheduled traffic has shot up 41 percent.

Since the signing of Bermuda II, the U.S. has entered into new or significantly modified agreements with some of our other major aviation partners. As a result, we have witnessed a further proliferation of new services, low fares, and strong traffic growth throughout Europe. Ten U.S. cities enjoyed new direct service to Brussels, Amsterdam, or Frankfurt this summer, while transatlantic fares have been slashed, and a variety of price and service options have been made available.

For example, the passenger traveling one-way, non-peak, from New York to Brussels -- a major gateway to all of Europe -- has the following options:

1. A reservation on a charter configured narrow-body aircraft, Wednesday through Sunday, can be purchased for $125.
2. A reservation on a wide-body aircraft, where the airline picks the departure day, can be purchased for $143.
3. An economy-class seat, with no restrictions, can be purchased for $339.

By contrast, the lowest reserved seat fare available in this market in July 1978 was $477. The $339 fare being offered today thus represents a reduction of almost one-third below the standard economy fare in effect a year ago. These examples do not by any means reflect the full range of innovative price and service options currently available. Others would include standby, super APEX, and "no-frill" fares.

This Administration has consistently sought bilateral agreements which provide for flexibility in pricing, routing and capacity, multiple carrier competition, and liberal charter rules. The Statement of Policy for the Conduct of International Air Transportation Negotiations, issued in August of 1978, embodies these pro-competitive principles. Since the issuance of that Statement we have continued to move forward by concluding new or significantly modified agreements with Germany, the Netherlands, Korea, Jamaica, Belgium, Thailand, and Singapore. The benefits of these agreements are being realized in the form of lower fares, a variety of new service options, and greater convenience for the travelling public.

Mr. Chairman, I believe it is quite clear that our pro-competitive policies, where they have been implemented, are succeeding. More people are traveling by air than ever before, and they are paying significantly less for the service. This is especially true in the U.S. domestic market, where deregulation -- thanks in large part to the efforts of this Committee -- is now a matter of law.

However, we all recognize that our policy cannot be implemented unilaterally in foreign markets. International aviation is based on partnership. Many countries remain reluctant to replace a long tradition of close government regulation with the dynamics of the marketplace.

It is the Administration's hope that the demonstrated success of increased competition in our domestic markets and in those international markets where U.S. policy has been implemented will persuade the more cautious governments to consider our proposals more favorably. We are continuing to work, along with the other interested Federal agencies, to achieve a wider acceptance of U.S. international aviation policy through the process of bilateral negotiation.

It is against this background that I would like to comment on S. 1300. The Department enthusiastically supports most of the bill, and particularly those provisions which would abolish outmoded differences between the CAB's treatment of foreign and domestic air transportation.

In addition, the bill would expand the U.S. Government's range of responses to unfair treatment of U.S. carriers abroad; would enable U.S. carriers to expand fleet capacity more readily in times of need; and would relax excessively rigid restrictions on air travel paid for with U.S. Government funds. We feel, in general, that the bill will promote the implementation of U.S. international air transportation policy and thus enhance the quality and variety of the service available.

I would like now to discuss several specific provisions of the bill about which we have some particular concerns.

Carrier Substitution

Section 6 would allow the Board to remove an incumbent U.S. carrier and substitute another in a foreign air transportation market governed by a bilateral which restricts the entry of additional U.S. airlines. The new carrier would have to demonstrate in advance "that it can and will provide substantially improved service, substantially lower fares or rates," or both. The Board would also have to find that the substitution is otherwise consistent with the public convenience and necessity.

The underlying objective of this proposal is one which the Department of Transportation shares: to promote lower fares and/or better service, even in markets where competition is limited. Undoubtedly, in some restricted markets, incumbent carriers are immune from normal competitive pressures to improve fare and service offerings. Although the CAB has authority in existing Section 401(g) to revoke an operating certificate, a lengthy procedure is involved and the applicable standard --public convenience and necessity -- is vague and invites legal challenge.

By authorizing substitution on the basis of a relatively objective finding, and by authorizing the use of simplified procedures under Section 401(p), the bill would make the prospect of such substitution far more real, thus creating competitive pressures even in presently monopolistic markets. For these reasons, we believe that this provision is worthy of serious consideration.

On the other hand, it should be recognized that the "substantial improvements" contemplated by this section can be realized most readily on the high traffic routes between major U.S. gateways and major foreign destinations. Because it is possible that a displaced incumbent may not be able to continue providing service on all of the remaining marginal routes in its system, there is a potential danger that this provision could have an adverse impact on the integrity of the overall U.S. foreign air transportation system, including less lucrative but nevertheless essential feeder routes. We also have some concern that the U.S. air carrier industry might suffer overall if, as a result of frequent carrier substitution under this provision, U.S. carrier identity in particular markets were destroyed. In general, we feel that a provision of this sort must be implemented with sensitivity to the need for order and stability in international air transportation, even in a more competitive environment.

<u>Intercarrier Agreements</u>

One of the bill's most important innovations is set forth in Section 11. That section would amend Section 412 of the Federal Aviation Act to bring under a single regulatory regime intercarrier agreements affecting domestic air transportation, on the one hand, and agreements affecting foreign air transportation, on the other.

Under the amendment set forth in Section 11, the filing of agreements affecting foreign air transportation would become permissive rather than mandatory as under present law. The Board would be permitted to approve an agreement which "reduces or eliminates competition" whenever it finds that the agreement is not otherwise adverse to the public interest and that it is necessary to meet a serious transportation need or to secure important public benefits which cannot be achieved in a materially less anticompetitive manner. Because these changes would permit greater flexibility in the Board's regulatory surveillance of intercarrier agreements affecting foreign air transportation, the Department supports them.

The prohibition currently found in Section 412 against Board approval of any agreement affecting domestic transportation which limits capacity, or which fixes rates, fares, or charges between air carriers, would continue to apply only to agreements in domestic air transportation, and not to agreements affecting foreign air transportation. By leaving this provision unaltered, the bill recognizes that our bilateral aviation partners often insist upon capacity and frequency restrictions. These practical realities of the aviation world cannot be ignored and the Department, therefore, supports this aspect of Section 11.

We believe, however, that the bill might go further in accommodating Section 412 to the current realities of international air transportation. For example, we note that, while the filing of agreements affecting foreign air transportation would be discretionary under the proposed amendment, the rewritten section would continue to authorize such filing only by U.S. carriers. We believe that foreign air carriers also should have the clear right to file intercarrier agreements with the Board for approval and that the Act should be amended to permit this.

Also, under the present statutory scheme of the Federal Aviation Act, the President is not authorized to review CAB actions regarding intercarrier agreements affecting foreign air transportation. We believe that the President should have such authority whenever the Secretary of State certifies that an intercarrier agreement has significant foreign policy implications.

We believe that the Presidential review provision of Section 801 should be amended in one additional respect. Right now, although any Board decision affecting the terms of an operating certificate is subject to Presidential review, the grant of "exemption authority" -- allowing a carrier to serve a new market without first obtaining such a certificate -- is not reviewable. We believe that Presidential review of such awards should be required whenever the Secretary of State certifies that significant foreign policy issues are at stake.

Cabotage

Although S. 1300 does not specifically address "cabotage," the statutory principle which prohibits foreign air carriers from carrying domestic traffic, you have asked all parties, Mr. Chairman, to give their views on this controversial subject. The Administration has not established a position on this subject. The following comments reflect the views of the Department of Transportation.

The cabotage question has been the subject of extensive debate in recent months. Particularly, the debate has focused upon whether foreign air carriers should be permitted to engage in cabotage during a period of emergency, such as that which occurred for a short period during the United Airlines strike in the Hawaii-Mainland markets. A second issue is whether permanent cabotage rights should be exchanged on a reciprocal basis in bilateral or multilateral negotiations.

The cabotage provisions found in the Federal Aviation Act are not unique to the United States but have been long recognized in the aviation and maritime laws of the world's major commercial nations. Section 7 of the Chicago Convention specifically recognizes the concept, moreover, and provides that no contracting state shall enter into arrangements which specifically grant cabotage rights on an exclusive basis to any other state or its airlines.

The Department of Transportation recognizes, of course, that there may be periods of genuine emergency in which travelers holding reservations are stranded without means of alternative transportation. Under such conditions, we would favor the establishment of a mechanism for permitting foreign air carriers to alleviate any capacity shortage that may exist. However, such a mechanism should provide for a formal determination that an emergency does in fact exist based on specific criteria set forth in the statute. In any event, any cabotage rights should be granted only when no other U.S. carrier capacity is available and should be specifically limited to the emergency period. We would be pleased to work with the committee staff in drafting an appropriate amendment.

The Department of Transportation does not believe, however, that there is any compelling reason to modify our current law on cabotage in any more fundamental way. It has been argued that trading cabotage rights to foreign governments in exchange for economic rights will further the implementation of U.S. international aviation policy. We disagree. First, we believe that the U.S. is uniquely endowed with attractive markets, and that we normally come to our bilateral negotiations with an ample supply of bargaining chips.

More important, however, we believe a softening of our cabotage policy would actually inhibit the implementation of U.S. policy. As a practical matter, a repeal of the present prohibition would mean that most countries would insist on a grant of cabotage rights virtually as a condition for serious negotiations on the more controversial elements in our current "model agreement." Cabotage would not be one extra chip; it would become the pivotal issue. It might well distort the dynamics of our current bilateral negotiations, and might even prompt some foreign governments to request the renegotiation of existing agreements -- even those which are fully in keeping with our pro-competitive policy.

Even if it were possible to treat cabotage rights as one additional bargaining chip, the value of those rights is such that U.S. carriers would rarely obtain any comparable benefit in a reciprocal exchange. Nor would the admission to U.S. markets of foreign competitors provide important consumer benefits. We doubt seriously that the vigorous competition which already characterizes U.S. domestic air transportation would be enhanced in any significant respect by the entry of foreign carriers.

I know that the Subcommittee's time this morning is limited and I have therefore kept my remarks brief. Appended to my statement is a full discussion of the Department's views on all of the provisions of S. 1300. I look forward to working with the Subcommittee and its staff in the weeks ahead on the specifics of this legislation.

That completes my prepared statement, Mr. Chairman. I would be pleased to answer any questions you may have.

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