

FINAL

STATEMENT OF  
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POLICY AND INTERNATIONAL AFFAIRS  
U.S. DEPARTMENT OF TRANSPORTATION  
BEFORE THE  
COMMITTEE ON HOUSE PUBLIC WORKS  
SUBCOMMITTEE ON AVIATION  
ON MAY 31, 1984

THANK YOU, MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE. THE DEPARTMENT OF TRANSPORTATION APPRECIATES THIS OPPORTUNITY TO TESTIFY ON THE PROPOSED AMENDMENT TO H. R. 1580.

WITH ME TODAY IS VANCE FORT, DIRECTOR OF SPECIAL PROGRAMS IN THE OFFICE OF THE ASSISTANT SECRETARY FOR POLICY AND INTERNATIONAL AFFAIRS, AND SUSAN McDERMOTT, AN ATTORNEY WITH OUR GENERAL COUNSEL'S OFFICE.

MR. CHAIRMAN, THE PROPOSED AMENDMENT TO H. R. 1580 RAISES AN IMPORTANT QUESTION: HOW SHOULD THE U. S. GOVERNMENT DISTRIBUTE VALUABLE AND LIMITED INTERNATIONAL AVIATION ROUTE RIGHTS IN AN EFFICIENT AND EQUITABLE MANNER? SPECIFICALLY, THE ISSUE BEFORE THE COMMITTEE IS WHETHER THE PUBLIC INTEREST IS BETTER SERVED BY LIMITING THE INTERNATIONAL ROUTE AUTHORITY GRANTED TO U. S. AIRLINES TO A SHORT TERM OF TWO TO FIVE YEARS OR, ALTERNATIVELY, WHETHER CERTIFICATES OF THIS NATURE SHOULD BE GRANTED ON A PERMANENT OR INDEFINITE BASIS.

NO QUESTION ARISES WHEN A BILATERAL AVIATION AGREEMENT PERMITS AN UNLIMITED NUMBER OF U. S. AIRLINES TO SERVE A PARTICULAR

FOREIGN MARKET. WHERE A BILATERAL AGREEMENT ALLOWS WHAT WE CALL "MULTIPLE PERMISSIVE ENTRY" OF U. S. AIRLINES, THE ROUTE AUTHORITY GRANTED CLEARLY SHOULD BE PERMANENT OR INDEFINITE. IT IS ONLY IN THOSE CIRCUMSTANCES WHERE A FOREIGN TRADING PARTNER HAS LIMITED THE NUMBER OF U. S. AIRLINES THAT MAY SERVE A GIVEN MARKET THAT THE DURATION OF THE ROUTE CERTIFICATE BECOMES AN ISSUE.

THE ISSUE IS AN IMPORTANT ONE. MOST VALUABLE INTERNATIONAL ROUTES RIGHTS—THAT IS, THE ROUTES WHICH CARRY WITH THEM THE GREATEST VOLUME OF PASSENGER AND FREIGHT TRAFFIC—TEND TO BE THOSE WHERE THE NUMBER OF U. S. AIRLINES THAT MAY PROVIDE SERVICE IS LIMITED. NOTABLY, I WOULD MENTION THE ROUTES BETWEEN VARIOUS U. S. CITIES AND GATEWAY CITIES IN CANADA, FRANCE, THE UNITED KINGDOM, ITALY, JAPAN, MEXICO, AND AUSTRALIA. NEEDLESS TO SAY, BECAUSE RIGHTS TO SERVE THESE ROUTES ARE SO VALUABLE IN TERMS OF AIR TRAFFIC AND REVENUES, THEY HAVE BEEN THE MOST HOTLY CONTESTED IN CARRIER SELECTION CASES.

I WISH IT WERE POSSIBLE, MR. CHAIRMAN, TO PREDICT THAT THE U. S. GOVERNMENT WILL SOON BE ABLE TO CONVINCED THE GOVERNMENTS OF COUNTRIES WHICH CURRENTLY LIMIT CARRIER ENTRY TO CHANGE THEIR CIVIL AVIATION POLICIES AND ACCEPT AN UNLIMITED NUMBER OF U. S. AIRLINES IN THOSE MARKETS. UNFORTUNATELY, IT IS UNREALISTIC TO THINK THAT THERE WILL BE ANY WHOLESAL CHANGE IN THE NEAR TERM. THE FACT IS THAT MOST OF OUR MAJOR TRADING PARTNERS ARE LIKELY

TO CONTINUE CAPPING THE NUMBER OF U. S. AIRLINES HAVING ACCESS TO THEIR COUNTRIES. FOR THAT REASON, THE ISSUE POSED BY THE PROPOSED AMENDMENT IS LIKELY TO BE WITH US FOR SOME TIME TO COME.

DOT OPPOSES ENACTMENT OF THE PROPOSED AMENDMENT TO H. R. 1580. AS THE AGENCY THAT, AT THE END OF THIS YEAR, WILL INHERIT THE CAB'S RESPONSIBILITY FOR DISTRIBUTING INTERNATIONAL ROUTE AUTHORITY, WE BELIEVE THAT IT WOULD BE IRRESPONSIBLE TO SUPPORT, AT THIS TIME, A CONGRESSIONAL DETERMINATION THAT TEMPORARY, EXPERIMENTAL CERTIFICATES ARE ACCEPTABLE ONLY IN THE CASE OF NEW ENTRANTS. BECAUSE THE ISSUE IS SO IMPORTANT, AND PARTICULARLY BECAUSE THE CAB BELIEVES THAT TEMPORARY CERTIFICATES ARE A VALUABLE MEANS OF ENSURING OPTIMAL AIR SERVICE IN LIMITED ENTRY MARKETS, WE WOULD LIKE TO HAVE AN OPPORTUNITY, AFTER SUNSET, TO CONSIDER THE ISSUE FULLY AND DELIBERATELY.

WE THINK THAT THE QUESTION CLEARLY WARRANTS THIS KIND OF SCRUTINY. WE SHARE, OF COURSE, THE BOARD'S CONCERN ABOUT THE POTENTIAL, IN LIMITED ENTRY MARKETS, FOR AIRLINE PRICING AND SERVICE PATTERNS THAT ARE LESS FULLY RESPONSIVE TO CONSUMER PREFERENCES THAN THOSE LIKELY TO BE FOUND IN MORE COMPETITIVE CIRCUMSTANCES.

BUT WHETHER THE ROUTINE GRANT OF TEMPORARY CERTIFICATES IN SUCH MARKETS--THE SOLUTION ADOPTED BY THE BOARD--IS THE BEST WAY TO ENSURE CONSUMER-RESPONSIVE PERFORMANCE IS NOT CLEAR TO US.

FIRST, A POLICY OF THAT KIND SEEMS HIGHLY REGULATORY. IT AUTO-  
MATICALLY REQUIRES SUBSEQUENT REGULATORY INVOLVEMENT BY  
GOVERNMENT—EVEN WHERE AIRLINE PERFORMANCE SEEMS  
SATISFACTORY. THE PREMISE THAT ONLY AN AIRLINE FACING A  
THREATENED OR UNCERTAIN FUTURE WILL OFFER ATTRACTIVE,  
ECONOMIC AIR SERVICE DOES NOT SEEM TO US TO BE SELF-EVIDENT.

INDEED, AN ARTIFICIALLY-IMPOSED THREAT TO AN AIRLINE'S CONTINUED  
PRESENCE IN A GIVEN MARKET—THE AUTOMATIC RENEWAL PROCEEDING  
MANDATED BY THE CARRIER'S TEMPORARY CERTIFICATE—MAY DO  
NOTHING MORE THAN INDUCE EQUALLY ARTIFICIAL BEHAVIOR ON THE  
PART OF THE INCUMBENT. IT MAY FEEL COMPELLED TO RESPOND TO AN  
ASPIRING COMPETITOR'S APPLICATION WITH WHAT AMOUNT TO COUNTER-  
FEIT PRICING AND SERVICE PROPOSALS WHICH IT, AND U. S. GOVERNMENT  
AUTHORITIES, KNOW MAY NEVER BE IMPLEMENTED IN PRACTICE. THAT IS,  
THE RESTRICTIVE POLICIES OF THE FOREIGN GOVERNMENT—THE SAME  
POLICIES WHICH CAUSED THE LIMITED-ENTRY PROBLEM IN THE FIRST  
PLACE—MAY WELL EXTEND TO OTHER ASPECTS OF THE AIR SERVICE  
WHICH U. S. CARRIERS ARE PERMITTED TO OFFER, INCLUDING PRICING  
AND THE FREQUENCY OF FLIGHTS.

OTHER CONCERNS WE HAVE ARE THAT TIME-LIMITED CERTIFICATES MAY  
COMPEL AIRLINES TO RESPOND PERIODICALLY TO REGULATORY POLICIES  
PREVALENT AT THE TIME RENEWAL PROCEEDINGS ARE INSTITUTED,  
RATHER THAN TO LONG-TERM PUBLIC NEEDS; AND THAT A CARRIER THAT  
HAS BEEN GRANTED ROUTE AUTHORITY IN SUCH A PROCEEDING MAY FEEL  
THAT ITS MARKETING FLEXIBILITY IS CONSTRAINED BY THE STATIC  
CRITERIA UPON WHICH SUCH AGENCY DECISIONS ARE OFTEN BASED.

AT THE SAME TIME, WHILE THERE MAY BE GOOD REASONS TO QUESTION WHETHER THE WHOLESALE USE OF TEMPORARY CERTIFICATES IS APPROPRIATE, WE WOULD HAVE NO BASIS FOR SUPPORTING LEGISLATION CIRCUMSCRIBING THE USE OF TEMPORARY CERTIFICATES. THAT IS, WE ARE NOT PREPARED TO SAY THAT RENEWAL OF CERTIFICATES ON A TEMPORARY BASIS IS NEVER IN THE PUBLIC INTEREST AS THIS AMENDMENT SUGGESTS. IN GENERAL, THERE MAY WELL BE CIRCUMSTANCES WHERE THE USE OF TEMPORARY CERTIFICATES IS CLEARLY ADVISABLE WHETHER THE CERTIFICATE IS BEING RENEWED OR AWARDED FOR THE FIRST TIME.

MY POINT IS ONLY THAT WE HAVE NOT REACHED ANY FINAL CONCLUSIONS REGARDING THIS ISSUE, AND WE WOULD ASK THAT CONGRESS--WHOSE DELEGATION OF REGULATORY AUTHORITY THROUGH THE FEDERAL AVIATION ACT HAS WORKED SO WELL OVER MORE THAN FOUR DECADES--NOT REACH ANY FINAL CONCLUSIONS EITHER.

WE ARE AWARE THAT A NUMBER OF TEMPORARY CERTIFICATES ARE SCHEDULED TO EXPIRE PRIOR TO THE END OF THE YEAR, AND THAT THERE HAS BEEN SPECULATION ABOUT WHETHER THE BOARD INTENDS TO COMMENCE A SERIES OF RENEWAL PROCEEDINGS IN THE LAST HALF-YEAR OF ITS EXISTENCE.

IN DOT'S VIEW, OF COURSE, IT WOULD BE ENTIRELY INAPPROPRIATE FOR THE BOARD TO DO SO. TO REQUIRE AIRLINES TO ENGAGE IN POTENTIALLY EXPENSIVE LITIGATION, TO CREATE UNWARRANTED EXPECTATIONS, TO ESTABLISH DECISIONAL CRITERIA IN CASES IT COULD NOT COMPLETE, AND

TO CREATE A BURDENSOME LEGACY OF PENDING CARRIER SELECTION PROCEEDINGS WOULD BE UNFAIR BOTH TO THE INDUSTRY AND TO DOT. I HAVE DISCUSSED THIS ISSUE WITH CHAIRMAN DAN McKINNON, HOWEVER, AND HE ASSURES ME THAT THE BOARD IS SENSITIVE TO THESE DIFFICULTIES, AND THAT IT WILL TAKE ADMINISTRATIVE ACTION TO AVOID THEM.

SUCH ACTION WILL ENABLE DOT TO ASSUME RESPONSIBILITY IN THIS AREA IN AN ORDERLY MANNER, AND TO DETERMINE, DELIBERATELY AND WITH PRUDENCE, THE BEST COURSE.

THANK YOU, MR. CHAIRMAN. I WOULD BE PLEASED TO ANSWER ANY QUESTIONS.