

STATEMENT OF  
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U.S. DEPARTMENT OF TRANSPORTATION  
BEFORE THE  
SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION  
SUBCOMMITTEE ON AVIATION  
ON MAY 23, 1985

THANK YOU MADAM CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE. I AM PLEASED TO BE HERE TODAY TO COMMENT ON S.586 ON BEHALF OF THE DEPARTMENT OF TRANSPORTATION.

THIS BILL WOULD NULLIFY ANY TERMINATION DATE WHICH IS CONTAINED IN AN INTERNATIONAL AIR TRANSPORTATION CERTIFICATE. IT WOULD ALSO PROVIDE A "BUMPING" PROCEDURE, WHICH IS DESIGNED TO FACILITATE THE REPLACEMENT OF INCUMBENTS SHOULD THE DEPARTMENT FIND THAT ANOTHER CARRIER CAN PROVIDE SUBSTANTIALLY IMPROVED AIR SERVICE IN THE MARKET. PRESUMABLY THIS BILL WAS DRAFTED IN RESPONSE TO CONCERNS THAT INCUMBENT CARRIERS ARE BURDENED BY THE COSTS OF PROSECUTING AUTOMATIC ROUTE RENEWAL PROCEEDINGS AND THAT THEY ARE UNABLE IN JUST FIVE YEARS TO DEVELOP INTERNATIONAL ROUTES SUFFICIENTLY TO RECOUP THEIR INVESTMENT.

AS THE COMMITTEE IS AWARE, THE CIVIL AERONAUTICS BOARD CONSISTENTLY ISSUED TEMPORARY EXPERIMENTAL CERTIFICATES FOR LIMITED-DESIGNATION ROUTES AFTER THE ENACTMENT OF THE AIRLINE DEREGULATION ACT OF 1978. MANY OF THE OUTSTANDING TEMPORARY EXPERIMENTAL CERTIFICATES WERE SCHEDULED TO EXPIRE DURING 1985.

IN NOVEMBER OF LAST YEAR, IN ANTICIPATION OF ITS IMPENDING SUNSET AND THE TRANSFER OF ITS INTERNATIONAL ROUTE RESPONSIBILITIES TO THE DEPARTMENT OF TRANSPORTATION, THE CIVIL AERONAUTICS BOARD ADOPTED AN ORDER EXTENDING THE DURATION OF MOST OF THOSE TEMPORARY INTERNATIONAL CERTIFICATES FOR A PERIOD OF 12 TO 14 MONTHS. THE PURPOSE OF THIS EXTENSION WAS TO ALLOW THE DEPARTMENT OF TRANSPORTATION TIME TO UNDERTAKE A COMPREHENSIVE REVIEW OF THE ISSUES INVOLVED IN SELECTING CARRIERS FOR LIMITED-DESIGNATION INTERNATIONAL ROUTES, INCLUDING THE QUESTION OF WHETHER CERTIFICATES AWARDED ON THOSE ROUTES SHOULD CONTINUE TO BE OF LIMITED DURATION.

IN KEEPING WITH THAT OBJECTIVE, THE DEPARTMENT EXPECTS, IN A VERY SHORT TIME, TO ISSUE A NOTICE OF PROPOSED RULEMAKING ASKING FOR PUBLIC COMMENTS ON THE ISSUE OF CERTIFICATE DURATION.

BASED UPON THE COMMENTS THAT WE RECEIVE, THE DEPARTMENT MAY ADOPT A POLICY EITHER OF GRANTING FIXED-TERM CERTIFICATES FOR LIMITED-DESIGNATION ROUTES OR, ON THE OTHER HAND, OF AWARDING CERTIFICATES FOR AN INDEFINITE PERIOD, SUBJECT TO REVOCATION UNDER CERTAIN SPECIFIED PROCEDURES.

BECAUSE WE ARE ABOUT TO BEGIN A PROCEEDING THAT WOULD COMPREHENSIVELY CONSIDER THE ISSUE OF CERTIFICATE DURATION, THE DEPARTMENT CANNOT SUPPORT THE ADOPTION OF S.586. THE DEPARTMENT TAKES THE POSITION THAT ANY ACTION ON THE QUESTION OF CERTIFICATE DURATION SHOULD OCCUR THROUGH THE RULEMAKING PROCESS, AFTER THE

FILING OF PUBLIC COMMENTS. INDEED, THIS IS THE APPROACH THAT WE ANNOUNCED LAST YEAR THAT WE WOULD FOLLOW, AND IT IS THE APPROACH THAT THE INDUSTRY AND THE PUBLIC-AT-LARGE ARE NOW FULLY EXPECTING US TO CARRY OUT.

WHILE I CANNOT, OF COURSE, PUBLICLY COMMENT ON THE SPECIFICS OF OUR NOTICE OF PROPOSED RULEMAKING, I WOULD LIKE TO TAKE THIS OPPORTUNITY TO FRAME THE SETTING FOR THIS CENTRAL ISSUE. FOR THOSE ROUTES WHERE THE STATE OF BILATERAL AVIATION RELATIONS PERMITS THE U.S. TO DESIGNATE AN UNLIMITED NUMBER OF AIRLINES, THE PROBLEM OF CERTIFICATE DURATION DOES NOT ARISE. IN THESE SITUATIONS, WHERE THE MARKETPLACE IS ALLOWED TO OPERATE RELATIVELY FREE OF GOVERNMENTAL RESTRICTIONS, THERE IS NO REASON TO LIMIT THE DURATION OF CERTIFICATE AUTHORITY. COMPETITIVE FORCES WILL PROPERLY BE THE DETERMINANT OF WHICH CARRIERS SERVE THAT PARTICULAR MARKET AND FOR HOW LONG. THEREFORE, THE DEPARTMENT WILL CONTINUE TO AWARD PERMANENT OR INDEFINITE AUTHORITY TO CARRIERS DESIRING TO SERVE THESE UNRESTRICTED MARKETS.

UNFORTUNATELY, MANY OF THE INTERNATIONAL ROUTES THAT INVOLVE HEAVY PASSENGER AND FREIGHT TRAFFIC ARE RESTRICTED TO A LIMITED NUMBER OF U.S. CARRIERS. PARTICULARLY, I WOULD MENTION THE ROUTES BETWEEN VARIOUS U.S. CITIES AND GATEWAY CITIES IN CANADA, THE UNITED KINGDOM, JAPAN AND MEXICO. BECAUSE THESE MARKETS ARE OF SUCH VALUE IN TERMS OF AIR TRAFFIC AND REVENUES, THEY HAVE BEEN AMONG THE MOST HOTLY CONTESTED IN CARRIER SELECTION CASES.

THE U.S. GOVERNMENT HAS PRESSED FOREIGN GOVERNMENTS, AND WILL CONTINUE TO PRESS THEM, TO PERMIT THE DESIGNATION OF AN UNLIMITED NUMBER OF U.S. CARRIERS. NEVERTHELESS, IT WOULD BE UNREALISTIC TO PREDICT THAT MOST OF THOSE GOVERNMENTS WHICH IMPOSE A LIMITATION ON ENTRY ARE LIKELY TO CHANGE THEIR POLICIES IN THE NEAR FUTURE. THEREFORE, WE MUST BE PREPARED TO DEAL WITH THE COMPETITIVE IMPLICATIONS OF AN ARTIFICIALLY CONSTRAINED MARKET WHEN MAKING LIMITED DESIGNATION ROUTE AWARDS.

OUR PREDECESSOR, THE CIVIL AERONAUTICS BOARD, UTILIZED TEMPORARY EXPERIMENTAL CERTIFICATES WITH A SET TERMINATION DATE IN AN ATTEMPT TO SIMULATE SOME OF THE COMPETITIVE FORCES THAT WOULD OPERATE NATURALLY WERE UNRESTRICTED ENTRY PERMITTED IN PARTICULAR MARKETS. BY LIMITING THE CERTIFICATE AUTHORITY TO A FIXED NUMBER OF YEARS AND DEFINING IT AS EXPERIMENTAL, THE BOARD SOUGHT TO CREATE AN ONGOING INCENTIVE TO THE INCUMBENT TO OFFER THE BEST SERVICE POSSIBLE IN ANTICIPATION OF POTENTIAL CHALLENGES TO ITS ROUTE AUTHORITY AND TO FOLLOW ITS PROPOSAL AS CLOSELY AS CIRCUMSTANCES PERMIT. AT THE SAME TIME, THIS POLICY ENSURED THAT OTHER CARRIERS COULD APPLY FOR THE ROUTE AT SOME POINT IN THE FUTURE.

THE DEPARTMENT CANNOT SAY WITH ASSURANCE THAT THE USE OF LIMITED DURATION CERTIFICATES HAS -- OR HAS NOT -- ACCOMPLISHED THESE OBJECTIVES. THIS IS PRECISELY WHY WE ARE DETERMINED TO SEEK PUBLIC COMMENT ON THAT QUESTION. THERE MAY BE OTHER APPROACHES, SUCH AS THAT CONTAINED IN S.586, WHICH CAN ACCOMPLISH THE SAME

GOALS WITH LESS BURDEN ON CERTAIN INCUMBENT CARRIERS. HOWEVER, IT ALSO MAY WELL PROVE TO BE THE CASE THAT THERE IS NO EFFECTIVE SUBSTITUTE FOR THE COMPETITIVE INCENTIVES CREATED BY AN AUTOMATIC REVIEW PROCESS. AT THIS POINT WE SIMPLY DO NOT HAVE A SUFFICIENT BASIS FOR DRAWING FINAL CONCLUSIONS ABOUT THE EFFICACY OF THE LIMITED DURATION CERTIFICATE. THE RULEMAKING WILL PROVIDE THAT BASIS.

WE ARE HOPEFUL THAT THOSE INTERESTED PARTIES WHO RESPOND TO OUR REQUEST FOR COMMENTS WILL HELP US REACH A MORE COMPLETE UNDERSTANDING OF BOTH THE ADVANTAGES THAT THE LIMITED DURATION CERTIFICATE PROVIDES AND THE PARTICULAR BURDENS THAT IT IMPOSES ON INCUMBENTS BY PROVIDING SPECIFIC DATA TO SUPPORT THEIR CLAIMS. ALSO, SHOULD A "BUMPING" PROVISION BE DEEMED NECESSARY, THE COMMENTS WILL ALSO HELP US ASSESS THE RELATIVE MERITS OF DIFFERENT OPTIONS.

WE BELIEVE THAT THE COMMENTS WE RECEIVE WILL BE VALUABLE NOT ONLY TO THE DEPARTMENT, BUT ALSO TO THIS SUBCOMMITTEE IN ITS ENDEAVOR TO ASSESS THE PERSISTENT QUESTION OF CERTIFICATE DURATION. THE DEPARTMENT THEREFORE STRONGLY RECOMMENDS THAT THE SUBCOMMITTEE POSTPONE CONSIDERATION OF S.586 FOR A SHORT PERIOD OF TIME WHILE THE INDUSTRY AND THE TRAVELING PUBLIC ARE GIVEN THE OPPORTUNITY TO COMMENT, AND THE DEPARTMENT TO RESPOND, ON THIS IMPORTANT ISSUE.

THANK YOU, AND I'LL BE HAPPY TO ANSWER ANY QUESTIONS YOU MIGHT HAVE.