

TESTIMONY OF
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U.S. DEPARTMENT OF TRANSPORTATION
BEFORE THE
SENATE COMMERCE, SCIENCE AND TRANSPORTATION COMMITTEE
NOVEMBER 4, 1987

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, I APPRECIATE BEING ASKED TO TESTIFY AT THESE HEARINGS AS YOU STUDY THE EVOLUTION OF OUR AVIATION INDUSTRY SINCE PASSAGE OF THE AIRLINE DEREGULATION ACT.

TODAY, I WOULD LIKE TO CENTER MY TESTIMONY ON TWO DEVELOPMENTS WHICH HAVE EMERGED IN THE WAKE OF DEREGULATION: AIRLINE MERGERS AND HEIGHTENED CONSUMER CONCERNS WITH SERVICE ISSUES ... CONCERNS THAT ARE IN LARGE PART THE SHORT-TERM PRODUCT OF AIRLINE CONSOLIDATIONS.

AS WE LOOK AT THE MERGER QUESTION, I BELIEVE A SERIOUS DISTORTION MUST BE CORRECTED AT THE OUTSET REGARDING THE REASONS FOR, AND RESULTS OF, INDUSTRY CONSOLIDATION. THERE HAS BEEN SOME QUESTION ABOUT THE VITALITY OF COMPETITION TODAY. LET'S NOT BE MISLED ON ONE CENTRAL POINT: COMPETITION IS EXTREMELY DYNAMIC AND DIVERSE IN ITS MANY ELEMENTS. THE CHANGING OPERATING PRACTICES AND MARKETING STRATEGIES WHICH ARE RESHAPING THE STRUCTURE AND BUSINESS APPROACHES OF OUR AIRLINES -- FROM THE DEVELOPMENT OF NEW ROUTE SYSTEMS TO MORE DIRECT INTERNATIONAL SERVICE FROM INTERIOR U.S. POINTS -- ENHANCE COMPETITION.

A NUMBER OF AIRLINES RESPONDED TO THE MANY INDUSTRY CHANGES THAT FOLLOWED DEREGULATION BY SEEKING TO CONSOLIDATE AND CREATE EFFICIENCIES WHICH MIGHT PROVIDE A COMPETITIVE EDGE. THIS LED TO THE WAVE OF AIRLINE MERGERS AND ACQUISITIONS.

AS YOU ARE AWARE, MR. CHAIRMAN, THE DEPARTMENT OF TRANSPORTATION EXERCISES THE PRIMARY RESPONSIBILITY FOR REVIEWING AIRLINE MERGERS AND ACQUISITIONS UNDER SECTION 408 OF THE FEDERAL AVIATION ACT. PRIOR TO PASSAGE OF THE AIRLINE DEREGULATION LEGISLATION, THE CIVIL AERONAUTICS BOARD HAD BROAD DISCRETION TO APPROVE, UNDER A "PUBLIC INTEREST" TEST, PRACTICES IN THE AIRLINE INDUSTRY THAT WOULD HAVE VIOLATED FEDERAL ANTITRUST LAWS. FURTHER, SECTION 414 OF THE FEDERAL AVIATION ACT PROVIDED ANTITRUST IMMUNITY FOR ANY APPROVED TRANSACTION.

THE AIRLINE DEREGULATION ACT ESTABLISHED CONGRESS' INTENT THAT AIRLINE MERGERS, ACQUISITIONS AND INTERCARRIER AGREEMENTS BE TESTED PRIMARILY BY THE ANTITRUST STANDARDS TRADITIONALLY APPLIED BY THE COURTS TO UNREGULATED INDUSTRIES. TRANSACTIONS THAT WOULD BE DEEMED UNLAWFUL UNDER THE SHERMAN AND CLAYTON ACTS COULD NEVERTHELESS BE APPROVED IF THEY MET SIGNIFICANT TRANSPORTATION NEEDS OR SECURED IMPORTANT PUBLIC BENEFITS, AND IF THERE WERE NO MATERIALLY LESS ANTICOMPETITIVE ALTERNATIVES AVAILABLE.

THE DEPARTMENT HAS CONSIDERED A NUMBER OF MERGER AND ACQUISITION CASES DURING THE PAST THREE YEARS. WE HAVE ACTED WITH GREAT CARE AND WITHIN THE GUIDELINES SET BY CONGRESS. OUR APPROVAL OF

MERGERS AND ACQUISITIONS HAS BEEN BASED ON EVIDENTIARY RECORDS THAT SHOW NO LIKELIHOOD OF A SUBSTANTIAL REDUCTION OF COMPETITION IN ANY RELEVANT MARKETS. THUS, THE PRIMARY FOCUS OF OUR INQUIRY IN EACH MERGER CASE IS, AS CONGRESS INTENDED, ON THE COMPETITIVE CONSEQUENCES OF THE TRANSACTION. THIS APPROACH RECOGNIZES THE IMPORTANT ROLE THAT COMPETITION PLAYS IN DISCIPLINING CARRIERS' PRICING AND SERVICE DECISIONS, AND FOCUSES ON THOSE CONSIDERATIONS THAT AFFECT COMPETITIVE PERFORMANCE. FOR THIS REASON THE DEPARTMENT'S MERGER ANALYSIS CAREFULLY EXAMINES THE STRUCTURAL CHARACTERISTICS OF THE MARKETS AT ISSUE -- CHARACTERISTICS THAT ARE MOST LIKELY TO DETERMINE THE ABILITY OF COMPETITORS TO CHECK THE EXERCISE OF MARKET POWER BY THE MERGED CARRIERS. IN THIS CONTEXT, THE CRUCIAL QUESTION IN EACH CASE IS WHETHER THE MERGED CARRIERS WOULD BE ABLE TO RAISE PRICES ABOVE, OR REDUCE SERVICE BELOW, COMPETITIVE LEVELS. FOR MOST CASES, THE STRUCTURAL ANALYSIS FOCUSES ON ENTRY CONDITIONS AT THE POINTS MOST AFFECTED BY THE CONSOLIDATION. FOR EXAMPLE, THE DEPARTMENT CLOSELY EXAMINES AIRPORT SPACE AVAILABILITY AND RELATED FACTORS TO MAKE SURE THAT AIRLINES CAN EASILY ENTER ROUTES TO AND FROM A FACILITY TO BE AFFECTED BY A MERGER.

IN EXERCISING ITS ANTITRUST AUTHORITY, THE DEPARTMENT HAS BEEN MINDFUL OF THE PROCOMPETITIVE POLICY ORIENTATION OF THE AIRLINE DEREGULATION ACT. WE WHOLEHEARTEDLY SUPPORT CONGRESS' APPROACH AND HAVE FOLLOWED ITS DIRECTION. FOR THIS REASON, THE DEPARTMENT USUALLY HAS NOT BECOME INVOLVED IN THE DETAILS OF THE PROPOSED TRANSACTION BEYOND THAT INVOLVEMENT NECESSARY FOR A SOUND

COMPETITIVE REVIEW. WE STRONGLY BELIEVE THAT THE MARKETPLACE SHOULD BE THE PRINCIPAL DISCIPLINE FOR THE CARRIERS' BUSINESS DECISIONS AND THAT DOT'S ROLE IN A DEREGULATED ENVIRONMENT IS TO PROTECT THE COMPETITIVE PROCESS, NOT INDIVIDUAL COMPETITORS. WE HAVE BEEN GUIDED IN THIS DIRECTION BY CONGRESSIONAL INTENT AS LAID OUT CLEARLY IN THE CONFERENCE REPORT ON THE DEREGULATION ACT WHICH STATES, "THE FOUNDATION OF THE NEW AIRLINE LEGISLATION IS THAT IT IS IN THE PUBLIC INTEREST TO ALLOW THE AIRLINE INDUSTRY TO BE GOVERNED BY THE FORCES OF THE MARKETPLACE."

THE DEPARTMENT HAS ALSO CONCLUDED THAT IT SHOULD NOT INTERFERE WITH CONSOLIDATION DECISIONS REACHED BY AIRLINE MANAGERS AND OTHER PRIVATE PARTIES, EXCEPT TO THE EXTENT NECESSARY TO BLOCK AIRLINE MERGERS AND ACQUISITIONS THAT VIOLATE THE STANDARDS OF SECTION 7 OF THE CLAYTON ACT. WE HAVE, THEREFORE, EXEMPTED TRANSACTIONS FROM SECTION 408 REVIEW PROCEDURES WHEN THEY APPEARED TO PRESENT NO SIGNIFICANT COMPETITIVE ISSUES. SIMILARLY, WE HAVE APPROVED VOTING TRUST ARRANGEMENTS WHICH ALLOW AN ACQUIRING CARRIER TO PURSUE A BID FOR ANOTHER CARRIER, WITHOUT AWAITING FINAL APPROVAL, AS LONG AS THE VOTING TRUST PREVENTS THE ACQUIRING CARRIER FROM EXERCISING CONTROL OVER THE TARGET AIRLINE WHILE THE DEPARTMENT REVIEWS THE ACQUISITION.

THE DEPARTMENT HAS NOT APPROVED ANY SECTION 408 TRANSACTION ON THE GROUND THAT, ALTHOUGH ANTICOMPETITIVE, IT MEETS IMPORTANT TRANSPORTATION NEEDS AND SECURES PUBLIC BENEFITS THAT CANNOT OTHERWISE BE OBTAINED. NOR HAVE WE GRANTED ANTITRUST IMMUNITY TO

ANY APPROVED TRANSACTION. TWENTY-ONE APPLICATIONS FOR SECTION 408 APPROVAL OF SUBSTANTIAL TRANSACTIONS HAVE BEEN FILED SINCE JANUARY 1, 1985. THE DEPARTMENT HAS ISSUED FINAL DECISIONS IN EACH OF THESE CASES.

MR. CHAIRMAN, NINE YEARS AGO APPROXIMATELY 39 CERTIFICATED CARRIERS WERE OPERATING. A RECENT COUNT ESTIMATES THAT ABOUT 131 ARE NOW IN SERVICE. I AM SURE YOU ARE FAMILIAR WITH THE STUDY CONDUCTED BY THE BROOKINGS INSTITUTION WHICH ESTIMATES THAT TODAY AIRLINE TRAVELERS IN THE UNITED STATES ARE ENJOYING ABOUT \$11 BILLION PER YEAR IN LOWER FARES AND MORE FREQUENT FLIGHTS. FARES HAVE REMAINED BELOW PRE-DEREGULATION LEVELS. AND, OVER 90 PERCENT OF ALL PASSENGERS ARE TRAVELING ON DISCOUNT FARES, SUBSTANTIALLY ABOVE THE 47.9 PERCENT FIGURE PRIOR TO DEREGULATION. IN FACT, DISCOUNT FARES, BY AND LARGE, HAVE PREVENTED AVERAGE YIELDS FROM RISING AS RAPIDLY AS THE RATE OF INFLATION. SINCE 1978, THE NUMBER OF PASSENGER ENPLANEMENTS HAS GROWN BY OVER 140 MILLION -- A 55 PERCENT INCREASE.

THIS PERSPECTIVE REVEALS A VERY DYNAMIC, HIGHLY COMPETITIVE INDUSTRY ... NOT ONE TIGHTLY CONTROLLED AND HELD BY A LIMITED NUMBER OF PARTIES INTENT ON GOUGING THE PUBLIC AND MONOPOLIZING A VITAL SOCIAL AND COMMERCIAL TRANSPORTATION RESOURCE. THE INSTITUTION OF A HUB-AND-SPOKE NETWORK HAS EXPANDED THE SYSTEM GREATLY TO ENSURE WIDER SERVICE; THE DEVELOPMENT OF FREQUENT FLYER PROGRAMS HAS REWARDED PASSENGER LOYALTY. THESE COMPETITIVE INNOVATIONS -- AND MANY, MANY OTHERS -- BENEFIT THE FLYING PUBLIC TODAY.

THE AIRLINE INDUSTRY HAS ALSO BENEFITED FROM THE REFORMS FOSTERED BY THE AIRLINE DEREGULATION ACT. OPERATING REVENUES HAVE MORE THAN DOUBLED, FROM \$22.9 BILLION IN 1978 TO OVER \$51 BILLION TODAY; BETWEEN OCTOBER 1978 AND MAY 1987, SCHEDULED REVENUE PASSENGER MILES INCREASED 73 PERCENT, FROM 222 BILLION TO 384 BILLION; SCHEDULED AVAILABLE SEAT MILES HAVE ALSO INCREASED 73 PERCENT SINCE 1978, FROM 362 BILLION TO 626 BILLION; AND THE INDUSTRY WORKFORCE HAS INCREASED FROM 341,315 FULL AND PART-TIME EMPLOYEES TO 466,634, A 37 PERCENT RISE.

WE ARE ALL WELL AWARE, OF COURSE, THAT OUR AVIATION SYSTEM HAS EXPERIENCED A NUMBER OF PROBLEMS IN THE TRANSITION FROM A STAGNANT, REGULATED INDUSTRY TO A BOOMING COMPETITIVE ONE. OBVIOUSLY, THESE HEARINGS WOULDN'T BE NECESSARY IF THE SYSTEM WAS EXPERIENCING A TRANQUIL TRANSITION. QUITE FRANKLY, MANY OF THE PROBLEMS THE SYSTEM IS FIGHTING THROUGH HAVE RESULTED FROM AIRLINE MERGERS AND RESTRUCTURING. A NUMBER OF THE AFFECTED CARRIERS DIDN'T PREPARE ADEQUATELY FOR THE NEW ROLES AND RESPONSIBILITIES THAT CAME WITH CONSOLIDATION. THEY WILL OWN UP TO THAT ... THEY KNOW THE CONSUMER HAS SUFFERED AND AMENDS MUST BE MADE.

ONE OF THE BIGGEST AND MOST TROUBLESOME DIFFICULTIES THE AIRLINES HAVE BEEN WRESTLING WITH IS THE GROWTH OF FLIGHT DELAYS. UNDER THE BEST OF CIRCUMSTANCES DELAYS ARE SOMETIMES AN UNFORTUNATE FACT OF TRAVEL GIVEN THE PHYSICAL, ECONOMIC AND ENVIRONMENTAL CONSIDERATIONS THAT LIMIT THE AIRPORT AND AIRWAYS SYSTEMS ... ALONG WITH THE WEATHER-RELATED PROBLEMS THAT ACCOUNT FOR A LARGE

NUMBER OF THE DELAYS AND THE NATURAL PEAKING TENDENCY FOUND IN EVERY TRAVEL MARKET. ALSO, THE CARRIERS' USE OF ELAPSED FLIGHT TIMES AS A COMPETITIVE DEVICE AIMED AT ACHIEVING A HIGHER POSITION ON CRS DISPLAYS MAY HAVE CONTRIBUTED TO THE PROBLEM. EVEN ACCOUNTING FOR THESE COMPLICATIONS, THE SITUATION HAS DETERIORATED ALARMINGLY. AT THE 22 BUSIEST AIRPORTS THE FEDERAL AVIATION ADMINISTRATION RECORDED 367,000 DELAYS LAST YEAR COMPARED TO 295,000 DURING 1985 ... A 25 PERCENT INCREASE. THAT'S SIMPLY TOO DRASTIC AN ESCALATION TO CHALK OFF AS NORMAL. MOREOVER, THE FAA DELAY SYSTEM COUNTS ONLY A FRACTION OF THE TOTAL DELAYS. DOT LAUNCHED ITS OWN INVESTIGATION TO LOOK INTO THE SERIOUSNESS OF THE PROBLEM AND DISCOVERED THAT NOT ONLY WAS THE PROBLEM WIDESPREAD BUT SOME FLIGHTS WERE LATE 70, 80, 90 OR EVEN 100 PERCENT OF THE TIME. THAT IS ABSOLUTELY UNACCEPTABLE.

AIRPORT AND AIRSPACE CAPACITY IS AT A PREMIUM AND THESE ELEMENTS MUST BE EXPANDED TO HELP ALLEVIATE THE DELAY PROBLEMS. PROJECTS LIKE THE NATIONAL AIRSPACE SYSTEM PLAN BEING ADMINISTERED BY THE FEDERAL AVIATION ADMINISTRATION WILL DO JUST THAT. THE NAS PLAN WILL INCREASE CAPACITY THROUGH THE COMPLETE MODERNIZATION OF OUR AIRSPACE NETWORK. EVERY SIGNIFICANT PIECE OF HARDWARE AND SOFTWARE IN THE AIR TRAFFIC SYSTEM IS BEING REPLACED. THIS PROGRAM IS SLIGHTLY MORE THAN HALFWAY THROUGH A 10-YEAR IMPLEMENTATION PERIOD AND MORE THAN 90 PERCENT OF THE NAS PLAN PROJECTS WERE COMPLETED OR UNDERWAY BY THE LAST FISCAL YEAR. IN FACT, BY NEXT SPRING, ALL "EN ROUTE" TRAFFIC CONTROL CENTERS WILL HAVE NEW COMPUTERS IN OPERATION ... COMPUTERS THAT ARE 10 TIMES

FASTER AND HAVE FOUR TIMES THE CAPACITY OF THOSE BEING REPLACED. WE ARE ALSO WORKING TO INCREASE AIRSPACE CAPACITY RIGHT NOW BY STUDYING AIR TRAFFIC PROCEDURES WITH AN EYE ON IDENTIFYING EFFICIENCIES THAT CAN BE APPLIED TO REDUCE DELAYS. IN THIS REGARD, THE FAA REVISED FLIGHT PATTERNS IN THE BUSY EASTERN CORRIDOR TO PROVIDE 10 ADDITIONAL DEPARTURE PATHS AND THREE MORE LANDING ROUTES FOR THE THREE MAJOR NEW YORK AREA AIRPORTS, INCLUDING NEWARK, A FACILITY WHICH ACCOUNTED FOR 25 PERCENT OF THE NATION'S DELAYS IN 1986. THESE REVISIONS HAVE PROVED HIGHLY SUCCESSFUL; DELAYS ARE DOWN AT THESE AIRPORTS SINCE IMPLEMENTATION OF THE PROGRAM LAST FEBRUARY.

IN THE AREA OF AIRPORT CAPACITY, WE HAVE PROPOSED AND SUPPORT EFFORTS TO FOCUS AIRPORT GRANT FUNDING ON PROJECTS WHICH HAVE THE MOST POTENTIAL FOR ENHANCING OVERALL SYSTEM CAPACITY. THERE ARE PRACTICAL LIMITATIONS, HOWEVER, TO AIRPORT AND RUNWAY EXPANSION. OVERBURDENED FACILITIES ARE GENERALLY LOCATED IN LARGE METROPOLITAN AREAS WHERE SURROUNDING DEVELOPMENT AND ENVIRONMENTAL CONSTRAINTS MAKE EXPANSION VERY DIFFICULT OR IMPOSSIBLE. IN ADDITION, AIRPORTS AND RUNWAYS ARE NOT BUILT OVERNIGHT.

WHEN ALL IS SAID AND DONE ON THE ISSUE OF INCREASING SYSTEM CAPACITY, MANAGEMENT MUST BE RECOGNIZED AS AN IMPORTANT FACET OF OUR SHORT-AND-LONG-TERM EFFORTS. IT IS NOT UNLIKE A SITUATION MANY OF US TACKLE EVERY MORNING. MOST ARRIVE AT WORK BETWEEN 8:00 AND 9:00 A.M. THAT LEADS TO ROAD CONGESTION AND THE NEED TO MANAGE AUTOMOBILE TRAFFIC. OFTEN IT SIMPLY ISN'T POSSIBLE OR WISE

TO BUILD NEW HIGHWAYS, BRIDGES AND ROADS TO HANDLE THE PEAK LOADS OF A FEW HOURS. IT IS PREFERABLE IN THE SHORT RUN TO TRY AND SMOOTH OUT THE PEAKS BY SHIFTING SOME OF THE DISCRETIONARY TRAFFIC ONTO OFF-PEAK HOURS.

IN FACT, THE DEPARTMENT OF TRANSPORTATION HAS INITIATED A WIDE PROGRAM TO BETTER MANAGE AIRPORT CAPACITY AND HELP REDUCE DELAYS AT THE NATIONAL LEVEL. THIS EFFORT INCLUDES ONGOING AND RECENTLY EXPANDED AIRPORT SCHEDULING INVESTIGATIONS TO DETERMINE THE EXTENT TO WHICH AIRLINES ARE OVERSCHEDULING DURING PEAK HOURS. INITIAL STUDIES FOUND A SERIOUS PROBLEM WITH OVERSCHEDULING. AT ATLANTA HARTSFIELD AIRPORT WE DISCOVERED THAT AIRLINES WERE SCHEDULING 50 LANDINGS AND DEPARTURES BETWEEN 3:45 AND 4:00 P.M., FOR EXAMPLE, ALTHOUGH THE AIRPORT CAN EFFICIENTLY HANDLE FEWER THAN 40 OPERATIONS ON A ROUTINE BASIS DURING A 15 MINUTE INTERVAL. THIS SITUATION IS NOT UNIQUE TO ATLANTA, AND -- AS A FIRST STEP TOWARD ADDRESSING THE PROBLEM -- LAST SPRING THE DEPARTMENT ENCOURAGED THE CARRIERS TO MEET AND ADJUST SUMMER SCHEDULES. THROUGH THE COOPERATION OF THE PARTICIPANTS, THE TALKS BROUGHT A SHIFT OF ABOUT 1,000 FLIGHTS TO LESS CONGESTED TIME SLOTS AT A NUMBER OF THE NATION'S BUSIEST AIRPORTS.

AT THE END OF THE SUMMER THE DEPARTMENT MOVED TO CURB DELAYS AGAIN. FIRST, AT OUR URGING, THE CRS VENDORS CARRIERS AGREED TO ELIMINATE ELAPSED TIME AS A CRS RANKING FACTOR ON NONSTOP FLIGHTS. THEN, ON AUGUST 28TH THE DEPARTMENT ANNOUNCED THAT SIX MAJOR CARRIERS HAD SIGNED AGREEMENTS TO IMPROVE THEIR ON-TIME

PERFORMANCE FOR FLIGHTS TO AND FROM CHICAGO O'HARE, BOSTON LOGAN, DALLAS/FT. WORTH AND ATLANTA HARTSFIELD AIRPORTS. LESS THAN A WEEK AFTER THESE AGREEMENTS WERE SIGNED, DOT ISSUED A RULE REQUIRING ALL MAJOR AIRLINES TO PUBLICLY DISCLOSE ON-TIME PERFORMANCE AND FLIGHT CANCELLATION RECORDS. THIS RULE REQUIRES THAT ON-TIME PERFORMANCE DATA BE REPORTED BY THE 14 LARGEST U.S. CARRIERS FOR SERVICE TO AND FROM 27 MAJOR AIRPORTS ACCOUNTING FOR APPROXIMATELY 1,500 AIRPORT PAIRS COVERING 66 PERCENT OF ALL DOMESTIC SCHEDULED ENPLANEMENTS. HOWEVER, THE 14 CARRIERS HAVE CHOSEN TO REPORT ON THEIR ENTIRE DOMESTIC SYSTEMS, SO THE PUBLIC WILL HAVE PERFORMANCE DATA ON APPROXIMATELY 90 PERCENT OF THE DOMESTIC SCHEDULED ENPLANEMENTS AND SOME 3300 CITY-PAIR MARKETS, LARGE AND SMALL. I BELIEVE THIS INFORMATION, WHICH WILL BE ISSUED IN REPORT FORM BY DOT ON A MONTHLY BASIS, WILL PROVE AN IMPORTANT NEW ELEMENT ALLOWING CONSUMERS TO MAKE EDUCATED CHOICES ON THEIR TRAVEL ARRANGEMENTS. WE EXPECT THE FIRST REPORT TO BE AVAILABLE IN A MATTER OF DAYS.

THIS RULE ALSO REQUIRES THE AFFECTED CARRIERS TO PROVIDE MONTHLY DATA ON THEIR TOTAL NUMBER OF DOMESTIC SCHEDULED-SERVICE PASSENGERS AND THE NUMBER OF MISHANDLED BAGGAGE REPORTS FILED BY THESE PASSENGERS. THE DEPARTMENT WILL PUBLISH A SUMMARY OF THE DATA AS PART OF OUR MONTHLY CONSUMER REPORT.

MR. CHAIRMAN, WE ARE MAKING HEADWAY WITH CORRECTING THE DELAY PROBLEM. DELAYS AS MEASURED BY THE FAA DROPPED 41 PERCENT IN SEPTEMBER COMPARED TO FIGURES A YEAR AGO. AND DELAYS HAVE DECLINED

IN EACH OF THE LAST THREE MONTHS. FOR THE JULY TO SEPTEMBER PERIOD, THEY WERE DOWN 24 PERCENT. THE MORE COMPLETE DATA IN THE DEPARTMENT'S INVESTIGATION SHOW THAT SOME CARRIERS HAVE BEGUN TO MAKE MAJOR IMPROVEMENTS IN THEIR ON-TIME PERFORMANCE FOR FLIGHTS TO AND FROM THE COVERED AIRPORTS.

NOW I WOULD LIKE TO TURN MY ATTENTION TO CONSUMER PROBLEMS IN OTHER AREAS AND EXPLAIN HOW DOT HAS RESPONDED.

MR. CHAIRMAN, THE DEPARTMENT HAS SEVERAL MECHANISMS TO PROTECT CONSUMERS. SPECIFICALLY, THERE ARE A NUMBER OF RULES SUCH AS THOSE ON OVERBOOKINGS, REFUNDS AND BAGGAGE LIABILITY THAT DOT ENFORCES. ALSO, SECTION 411 OF THE FEDERAL AVIATION ACT PROVIDES FOR THE INVESTIGATION OF DOMESTIC AND FOREIGN AIR CARRIERS, OR TICKET AGENTS, IF THERE IS A REASONABLE SUSPICION OF UNFAIR OR DECEPTIVE PRACTICES, OR UNFAIR METHODS OF COMPETITION IN THE PROMOTION AND/OR SALE OF AIR TRANSPORTATION. WHERE VIOLATIONS ARE FOUND, THE DEPARTMENT CAN ISSUE A CEASE AND DESIST ORDER, ASSESS CIVIL PENALTIES IN APPROPRIATE CASES AND PROPOSE OTHER REMEDIAL ACTIONS.

IT IS THE RESPONSIBILITY OF SEVERAL UNITS WITHIN THE DEPARTMENT TO ENSURE COMPLIANCE WITH SECTION 411.

THE DOT AVIATION CONSUMER AFFAIRS OFFICE FIELDS COMPLAINTS IN MANY AREAS INCLUDING THOSE RELATING TO AIR FARES. IT ADDRESSES A VARIETY OF ISSUES INCLUDING: AVAILABILITY, CONDITIONS AND

RESTRICTIONS, AND FAILURE TO PROVIDE ADEQUATE INFORMATION. CONSUMER ANALYSTS RESPOND TO BOTH WRITTEN AND TELEPHONE COMPLAINTS, DISCUSSING THE DETAILS OF THE PROBLEM AND PROVIDING ADVICE WHEN APPROPRIATE.

THIS OFFICE ALSO HANDLES COMPLAINTS ABOUT ADVERTISING. IN PROCESSING THESE CASES, THE ANALYST MAY REQUEST THAT THE COMPLAINANT SUBMIT A COPY OF THE AD FOR REVIEW BY THE INVESTIGATION DIVISION OF THE CONSUMER OFFICE. THE ANALYST WILL CONTACT THE AIR CARRIER ON BEHALF OF THE COMPLAINANT IF THE AD RAISES A QUESTION ON FARES, AND AN EXPLANATION OR JUSTIFICATION WILL BE SOUGHT FROM THE CARRIER. WHERE THE CONSUMER HAS MADE A GOOD FAITH EFFORT TO OBTAIN THE DESIRED FARE, AND THE CARRIER HAS NOT ADEQUATELY REPRESENTED NECESSARY FACTS RELATING TO THE SALE, THE ANALYST WILL SUGGEST THAT THE CARRIER RESOLVE THE PROBLEM BY MAKING THE REQUESTED FARE AVAILABLE. IT WILL BE FURTHER SUGGESTED THAT THE CARRIER ALTER ITS APPROACH TO THE PROMOTION AND REPORT BACK TO DOT ON PLANS TO RESOLVE THE MATTER. ALMOST WITHOUT EXCEPTION, CARRIERS MAKE THE DISPUTED FARE AVAILABLE AND ARE GENERALLY VERY RECEPTIVE TO ALTERING PROMOTIONS. THIS IS ALL DONE ON AN INFORMAL BASIS. OUR COMPLAINT HANDLING PROCEDURES ARE VERY EFFICIENT. CASES ARE OFTEN RESOLVED WITHIN A MATTER OF DAYS OF THEIR ASSIGNMENT. OF THOSE OPENED DURING CALENDAR YEAR 1986, 98.8% WERE CLOSED BY JANUARY 6, 1987.

THE DEPARTMENT ALSO MONITORS AIR TRANSPORTATION INDUSTRY ADVERTISING INDEPENDENT OF THE CONSUMER COMPLAINT PROCESS. THE INVESTIGATION DIVISION MONITORS ADS FROM A WIDE VARIETY OF

PUBLICATIONS ON A DAILY BASIS. WHEN A SPECIFIC AD IS IDENTIFIED AS MISLEADING OR DECEPTIVE, INVESTIGATORS CONTACT THE PARTY BY TELEPHONE OR LETTER, OR BOTH, TO ALERT THE COMPANY TO THE PROBLEM AND ATTEMPT TO SECURE A MODIFICATION OF THE AD.

AT OUR REQUEST, THE MAJOR AIRLINES HAVE ASSIGNED "EXPEDITORS" TO GIVE SPECIAL ATTENTION TO COMPLAINTS THAT WE REFER. OUR CONSUMER STAFFERS HAVE FREQUENTLY BEEN ABLE TO BRING ABOUT SETTLEMENTS ON BAGGAGE, REFUND AND OVERSALE COMPLAINTS (AMONG OTHER THINGS) BY POINTING OUT A RELEVANT REGULATION OR STANDARD INDUSTRY PRACTICE TO THESE AIRLINE CONTACTS.

THE ASSISTANT GENERAL COUNSEL FOR AVIATION ENFORCEMENT AND PROCEEDINGS AT THE DEPARTMENT ALSO HAS A ROLE IN THE CONSUMER PROTECTION PROCESS. THE GENERAL COUNSEL'S ENFORCEMENT STAFF ENSURES COMPLIANCE WITH THE LAW AND HAS A NUMBER OF AVENUES THAT MAY BE PURSUED TO OBTAIN COMPLIANCE. CASES ARE REFERRED BY EITHER THE CONSUMER AFFAIRS OFFICE OR THE INVESTIGATION DIVISION, OR FORMAL COMPLAINTS MAY COME DIRECTLY FROM THE GENERAL PUBLIC. TO THE EXTENT ISSUES CAN BE RESOLVED INFORMALLY, THE STAFF ATTORNEYS WILL HANDLE MATTERS BY PHONE OR LETTER. FORMAL ENFORCEMENT ACTIONS, WHILE NOT OFTEN NECESSARY, WOULD NORMALLY BE PURSUED THROUGH LEGAL ACTION ON AN ADMINISTRATIVE LEVEL. THE RESULT OF SUCCESSFUL ENFORCEMENT ACTION WOULD BE THE ISSUANCE OF A CEASE AND DESIST ORDER, CIVIL PENALTIES IN SOME CASES, AND OTHER REMEDIAL ACTION. FOR YOUR INFORMATION, DURING FY 1987 THE DEPARTMENT ASSESSED NEARLY \$550,000 IN CIVIL PENALTIES FOR VIOLATIONS OF OUR

AVIATION ECONOMIC REGULATIONS. THE BULK OF THESE FINES WERE FOR VIOLATIONS OF OUR CONSUMER PROTECTION RULES. THIS AMOUNT WAS MORE THAN TWICE THE PRIOR YEAR'S TOTAL.

MR. CHAIRMAN, AS NOTED EARLIER, CONSUMER PROBLEMS, WHETHER DELAY-CAUSED OR CENTERING ON SOME OTHER AREA, APPEAR TO BE PRIMARILY RELATED TO A "SHAKING OUT" OF THE INDUSTRY IN THE WAKE OF AIRLINE MERGERS AND ACQUISITIONS. DURING THE PAST FEW YEARS, ALMOST 70% OF THE INDUSTRY HAS BEEN INVOLVED IN CONSOLIDATION ACTIVITIES. WE THINK IT IS LIKELY THAT PROBLEMS WILL BE CORRECTED AS THE AFFECTED AIRLINES COMPLETE THE OPERATIONAL SIDE OF THEIR MERGERS. BUT WE HAVE NOT LEFT THAT TO CHANCE. IN ADDITION TO THOSE ACTIVITIES I'VE DESCRIBED, THE DEPARTMENT HAS TAKEN THE FOLLOWING STEPS TO ALLEVIATE THE DIFFICULTIES:

*INDUSTRY LETTER: WE SENT AN "INDUSTRY LETTER" TO CARRIERS REMINDING THEM OF THE DEPARTMENT'S CONSUMER RULES AND POLICIES, WARNING THAT, WHERE NECESSARY, WE WILL USE OUR ENFORCEMENT CAPABILITIES TO ENSURE COMPLIANCE.

*ENFORCEMENT: OUR INVESTIGATIONS AND AVIATION ENFORCEMENT OFFICES ARE INVESTIGATING THE CONSUMER SERVICE PRACTICES OF SEVERAL MAJOR AIRLINES AND NECESSARY ENFORCEMENT ACTION WILL BE INSTITUTED AGAINST AIRLINES WHICH SHOW A PATTERN OF VIOLATING OUR RULES.

*EVIDENCE REQUEST FOR MERGERS: IN THE ORDER INSTITUTING THE USAIR-PIEDMONT MERGER PROCEEDING, WE ASKED FOR EVIDENCE THAT THE CARRIERS WOULD BE ABLE TO INTEGRATE OPERATIONS SMOOTHLY, SO AS TO AVOID CONSUMER PROBLEMS.

I AM PLEASED TO REPORT TODAY THAT CONSUMER COMPLAINTS AGAINST THE AIRLINE INDUSTRY DECLINED DRAMATICALLY DURING SEPTEMBER. COMPLAINTS FOR THE MONTH DROPPED 23 PERCENT FROM AUGUST. THIS WAS THE FIRST TIME SINCE JANUARY OF 1987 THAT COMPLAINTS RECEIVED BY

DOT DECLINED. I BELIEVE THIS PROGRESS CAN BE CREDITED TO INCREASED INDUSTRY-WIDE ATTENTION TO CONSUMER MATTERS AS WELL AS TO THE NUMBER OF INITIATIVES UNDERTAKEN BY THE DEPARTMENT IN THE LAST SEVERAL MONTHS. I ANTICIPATE THAT THIS DOWNWARD TREND WILL CONTINUE.

MR. CHAIRMAN, THERE IS NO DENYING THAT WE HAVE A NUMBER OF HURDLES TO JUMP AS THE U.S. SYSTEM ADJUSTS IN THE NEW AVIATION ENVIRONMENT. THE EXPANSION ENCOURAGED BY DEREGULATION HAS THROWN US A FEW CURVES. IT SHOULD BE NOTED AT THIS POINT THAT WHILE DEREGULATION HAS BEEN WITH US FOR NINE YEARS, THE EXPLOSIVE GROWTH HAS COME TO THE SYSTEM THESE PAST FOUR YEARS. THE ECONOMIC DOWNTURN OF THE EARLY 1980'S, AMONG OTHER THINGS, HELD UP GROWTH. THE DIFFICULTIES WE ARE EXPERIENCING ARE A RELATIVELY RECENT PHENOMENA. THE ABILITY OF INDUSTRY AND, WHERE APPROPRIATE, GOVERNMENT TO "POLISH AND ROUND OFF" THE ROUGHER EDGES OF THE RESTRUCTURED AVIATION SYSTEM WILL SURELY DETERMINE THE FUTURE OF OUR INDUSTRY.

WITH ALL THIS SAID, I FIND IT PARTICULARLY INTERESTING THAT THE NUMBER OF AVIATION CONSUMER COMPLAINTS PER 100,000 PASSENGERS HAS ACTUALLY BEEN LOWER IN THE "POST-DEREGULATION" PERIOD THAN IT WAS BEFORE 1977. FROM 1971 TO 1977, THE NUMBER OF COMPLAINTS PER 100,000 PASSENGERS WAS 6.62; FOR 1983-86 THAT NUMBER STOOD AT 2.92. WHILE IT IS TRUE THAT THE COMPLAINT NUMBERS ARE HIGHER FOR 1987, WE MUST BE CAREFUL NOT TO DISMISS THE WHOLE PERIOD OF DEREGULATION AS A CONSUMER'S NIGHTMARE. THAT SIMPLY ISN'T THE

CASE. IT IS ALSO INTERESTING THAT COMPLAINTS ABOUT DELAYED OR CANCELED FLIGHTS LED ALL OTHER CATEGORIES IN THE PRE-DEREGULATION PERIOD JUST AS THEY HAVE SINCE THEN.

I THINK IT IS EXTREME TO TAKE THE POSITION THAT DEREGULATION HAS BEEN A FAILURE AND WE MUST RETURN TO THE "GOOD OLD DAYS" OF REGULATION. I BELIEVE A STUDIED, REASONED REVIEW OF THE AVIATION SECTOR WILL REVEAL THAT THESE ARE THE "GOOD OLD DAYS" AND TO DENY THE ADVANCES WE HAVE MADE UNDER REGULATORY REFORM WOULD BE TO DENY THE CONSUMER THE SOCIAL AND ECONOMIC PROGRESS HE OR SHE ENJOYS TODAY.

MR. CHAIRMAN, THE VERY FACT THAT THERE ARE MORE PEOPLE USING AN EXPANDING -- IF IMPERFECT -- SYSTEM INDICATES THAT REFORM HAS HAD ONE DESIRED EFFECT ... MAKING AIR TRAVEL AVAILABLE TO MORE PEOPLE. THE PROBLEMS THAT HAVE RESULTED MUST BE SOLVED TO MAXIMIZE THE POTENTIAL OF THE PRODUCT. BUT THE FACT REMAINS, MORE PEOPLE FLYING MORE MILES ON MORE AIRLINES IS A POSITIVE RESULT OF DEREGULATION.

THAT CONCLUDES MY FORMAL STATEMENT. AGAIN, THANK YOU FOR ASKING ME TO TESTIFY.