

FINAL

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FOR AVIATION AND INTERNATIONAL AFFAIRS  
BEFORE THE  
SUBCOMMITTEE ON PROCUREMENT, TAXATION AND TOURISM  
HOUSE COMMITTEE ON SMALL BUSINESS  
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The Secretary of Transportation, Federico Peña, welcomes the interest of the Subcommittee in the international aviation negotiating process. Because this program is within my immediate area of responsibility, he has asked me to provide this testimony. We are pleased to have this opportunity to tell you how more communities throughout the United States can contribute their views to this important activity. Already, many municipal leaders, business groups and airport officials have given us valuable input, and we look forward to expanding our sources of this information.

It is important to keep in mind, as we go through the various aspects of this program, that this Administration seeks to maximize opportunities for new international air service. We recognize the important contribution that tourism and business travel make to our national economy. Foreign visitors bring with them a substantial contribution to our international balance of payments as well.

There are two ways that new international passenger and cargo services can be brought about. As your chairman noted in his request, rights to perform international air service have traditionally been negotiated by the governments of the countries involved. The negotiations are nearly always bilateral. Each country's delegation seeks rights for its flag carriers to serve desired routes between the two countries (and, in some cases, to serve third-country points between and beyond those countries). Charter service rights also are negotiated bilaterally; these usually are broad rights to serve between any point in one country to any point in the other.

Customarily, negotiations produce a written agreement which sets out the rights and responsibilities of the parties. An agreement usually continues in effect until the parties agree to amend it, or until one country exercises its right to terminate the agreement. Some of our bilateral agreements have been in effect since soon after World War II, with only occasional amendments.

It is not always necessary, however, to have an agreement in order to have air service, and in smaller aviation markets, the United States and its partners work harmoniously under comity and reciprocity. We currently have air service relationships with about 100 countries and have formal agreements ("bilaterals")

with three-fourths of them. And where we do have agreements, it still is possible in some cases to authorize air services beyond those provided for in the agreements, either on an ad hoc agreed basis or under procedures established at DOT that I will come to in a moment.

#### How Agreements Are Negotiated

The Congress has always been sensitive to the impact of aviation negotiations on interests of many groups. The Federal Aviation Act sets out many of the negotiating goals that should be before us in our dealings with our aviation partners. These include increasing the number of U.S. gateways and other objectives aimed at promoting competition and expanding international air service (section 1102(b) of the Act).

The Act also expressly provides that we and our colleagues in the Department of State, with whom we prepare and conduct U.S. bilateral negotiations, shall consult with affected groups (section 1102(c)). Before every negotiation (there are more than 50 bilateral meetings each year), we gather all the proposals and requests we have received that pertain to our relations with that country. To be sure we are up-to-date, we inform the airline industry, airports, labor, and others that have expressed interest, of upcoming talks. We ask them to tell us their current views, in letters and in pre-negotiation meetings. Many communities and airports advise us through organizations such as the Airports Council International-North America (ACI-NA) and U.S. Airports for Better International Air Service (USA-BIAS). We also receive input directly from state aviation departments, municipal governments, chambers of commerce and other organizations.

We distill all of this input into a negotiating position, drafted by the Department's International Aviation staff and coordinated with the Department of State. This distillation is important, because not all commenters view the negotiation from the same perspective, and every negotiating objective must be evaluated in light of all relevant comments. For example, the prospect of service at a proposed new gateway might seem extremely desirable to negotiators, but if no airline indicates it would serve that point, its inclusion in the approved routes would be questionable in light of more valuable negotiating objectives.

In recent years, recognizing the dynamic nature of the air transportation industry, negotiators have sometimes agreed on a certain number of cities to be served by carriers of one country in the territory of the other; the choice of cities in each country is left for later selection by the government of the other, without the need for further talks.

That is an overview of the negotiating process. Not all negotiations are about new services, of course. Some meetings concentrate on issues such as the amount of service on a given, established route; on pricing issues; on services to third countries; or on problems experienced by one country's airlines doing business in the territory of the other. Some negotiations are completed only after several rounds of talks. Some (e.g., with Japan) can be thought of as continuing for decades without nearing completion. In some ways, air transportation is much like other forms of international trade.

The most successful negotiations are those where both countries seek new service opportunities and encourage competition. These almost always produce expanded agreements that benefit airlines, communities and consumers. Unfortunately, many recent negotiations have been brought about by our foreign partners' desire to shield their flag carriers from stronger U.S. competition during the recessionary period that persists in many markets outside the United States. We resist such pressures to the maximum possible extent, and sometimes a foreign government will renounce its agreement with the United States rather than accept expanded services. France terminated its air transport agreement with the U.S. effective last year.

Increasingly, both users and providers of air services have complained that negotiating aviation agreements on a country-by-country basis is no longer responsive to their needs and is not in keeping with the global evolution of the air transport industry. Secretary Peña has been seeking to broaden the scope of negotiations with the objective of achieving world-wide liberalization of international aviation markets. We will look for appropriate multilateral partners, such as the European Union, with which we can attempt to negotiate a more liberal, competitive regime. The Department will continue to follow the open, public comment system that we have now.

#### An Alternate Approach to New Service

As you can see from this description, the aviation negotiating process can be complicated and time consuming, and for communities looking for new service, frustrating. Several years ago, a number of U.S. cities began to press for an alternative way of authorizing new air services. They were aware of cases where foreign carriers aspired to serve U.S. communities, which desired such service, but because of a general equilibrium in the bilateral relationship and U.S.-carrier satisfaction with the *status quo*, there was little basis for opening a negotiation. These communities argued persuasively that such circumstances should not be permitted to stand in the way of new service, so

long as an otherwise positive aviation relationship was established with the homeland of the foreign carrier that required new authority.

To respond to these service needs, while preserving the United States' ability to achieve and maintain its policy objectives, the Department of Transportation established criteria for awarding extra-bilateral, foreign-carrier authority for new passenger services to otherwise underserved U.S. communities. These criteria, determined after requesting and considering comments from all interested parties, can be briefly summarized as follows:

First, the proposed city pair market must lack existing nonstop or single-plane, one-stop service. If the proposal is for new nonstop service, the market must lack existing nonstop service.

Second, there must be a liberal, procompetitive aviation regime in place with the applicant carrier's homeland. Without going into great detail, let me just say that this essentially means an absence of limitations on U.S. air carriers' ability to compete in the foreign market. Obviously, a foreign government that interferes with our airlines' business decisions on market entry, frequency of service, pricing and so forth, should not expect to have extra-bilateral access to the U.S. market under these criteria.

In addition, the services authorized in this way are subject to several public-interest conditions: The authority should not be used to promote direct service between the United States and third countries; the service should be instituted within 90 days after it is authorized (--not "banked" so as to deter other potential entrants); the authority is issued in the form of a one-year, renewable, exemption authority, to provide a periodic opportunity for the Department to confirm that the bases for the original award remain valid.

There have been eight grants of extrabilateral authority under these criteria since they were adopted.

While we are pleased with the successes we have achieved, both in negotiations and through the extra-bilateral services we have authorized, we are by no means complacent. The Department of Transportation will welcome suggestions and proposals for new international air service, and will be pleased to explore new ideas with you and with your constituents. Because of the wide range of bilateral circumstances that exist in the aviation world today, I would encourage those with such proposals to make their first contact with the experts in our Office of International Aviation. We will look forward to having opportunities to work with you in this important area. Thank you.