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S. HRG. 105-948

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**REGULATION COMPETITION ENHANCEMENT ACT OF  
1997**

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**HEARING**

BEFORE THE

**COMMITTEE ON COMMERCE,  
SCIENCE, AND TRANSPORTATION  
UNITED STATES SENATE**

**ONE HUNDRED FIFTH CONGRESS**

**FIRST SESSION**

**OCTOBER 28, 1997**

and for the use of the Committee on Commerce, Science, and Transportation



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**SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION**

**ONE HUNDRED FIFTH CONGRESS**

**FIRST SESSION**

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## AVIATION COMPETITION ENHANCEMENT ACT OF 1997

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TUESDAY, OCTOBER 28, 1997

U.S. SENATE,  
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,  
*Washington, DC.*

The committee met, pursuant to notice, at 2:30 p.m. in room SR-253, Russell Senate Office Building, Hon. John McCain (chairman of the committee) presiding.

Staff members assigned to this hearing: Ann Hodges, senior counsel; Michael Reynolds, counsel; and Samuel E. Whitehorn, Democratic senior counsel.

### STATEMENT OF HON. JOHN MCCAIN, U.S. SENATOR FROM ARIZONA

The CHAIRMAN. This hearing will begin. I want to thank everyone for their participation as well as thank you in advance for your patience. This may be a long hearing, given the number of witnesses.

Earlier today on the Senate floor I introduced the Aviation Competition Advancement Act of 1997. This proposal is a modest proposal designed to loosen some of the anticompetitive Federal restrictions on our domestic aviation system. These restrictions—restrictions such as slot controls and perimeter rule at national airport—are barriers to competition in a deregulated environment.

I will touch on the key components of the legislation. It provides a method to free up a limited number of slots at the four high-density airports—Chicago, Kennedy, National, and LaGuardia—for auction among the new entrant and limited incumbent carriers. First, however, the sector is required to develop all possible options to create new slots at these airports, and hence additional capacity in order to meet the demand for new services there.

The bill mandates the Secretary of Transportation to make limited competition-enhancing exemptions to the perimeter rule at National Airport. The legislation establishes a timeframe for the Department of Transportation to meet in response to, and not necessarily resolve, any complaints about predatory behavior that are already being filed with the Department.

Most of you know, perhaps all too well, that I prefer to get rid of the perimeter rule as well as slot restrictions in a manner consistent with aviation safety. My efforts to do so over the past decade have been singularly unsuccessful. This bill contains significantly more limited proposals in an attempt to respect opponents' concerns.

Please remember, as we discuss these issues, I have concerns, too. I dare say that I am not alone. These concerns are legitimate, and they are worthy of a productive debate.

On that point, I would like to mention that I received a letter from the Citizens Association of Georgetown, who in their letter say,

Continuance of the slot system, i.e., the limitation of jet aircraft operations for takeoff and landing is a crucial factor in curbing aircraft-generated noise. Your support of this limitation on National's aircraft operation is very much appreciated.

The introduction of newer, quieter aircraft has already caused a significant reduction of noise at National and neighboring skies. This situation you mention will further improve as older, noisier aircraft are retired. The replacement of shorter-range commuter type aircraft by these new, less noisy aircraft as the perimeter rule is modified will further ease the noise problem.

The reiteration of Georgetown views on National-based aircraft is timely and significant.

The bill before us today has been circulating for several weeks. It was discussed extensively for weeks before that. The bill has been modified slightly compared to the original draft version.

As House Aviation Subcommittee chairma immy Duncan announced yesterday, we have been working together on our proposals. He introduced his bill, as well. Senator Gorton and I have been working together, too. I heartily commend Senator Gorton's interest and, of course, my old friend Senator Ford, who has labored so hard and so long on behalf of all aviation issues. I know we are going to hear from my dear friends and colleagues from Virginia as well as Congresswoman Slaughter.

We have Department of Transportation studies and GAO studies that indicate that the perimeter rule and slot control at airports cost the consumer, cost the average passengers, whether they live in Virginia or whether they live in Arizona. Unless my friends and colleagues can refute the fact that this is a penalty to the airline passengers and consumers of America, then I will be hard-pressed to accept their arguments that nothing should be done at National Airport, Kennedy, and LaGuardia, and O'Hare Airports because it is clear from study after study after study that the perimeter rule and slot control cost the consumer, the traveling American, to the benefit of incumbent airlines which, as we all know, are doing rather well.

So with that I would like to turn to Senator Hollings to ask if he has any opening remarks.

[The prepared statement of Senator McCain follows:]

PREPARED STATEMENT OF HON. JOHN MCCAIN, U.S. SENATOR FROM ARIZONA

First, I want to thank everyone for their participation today, as well as thank you in advance for your patience. This may be a long hearing, given the number of witnesses.

Earlier today on the Senate floor I introduced the Aviation Competition Enhancement Act of 1997. This proposal is a modest proposal, designed to loosen some of the anti-competitive federal restrictions on our domestic aviation system. These restrictions—restrictions such as slot controls, and the perimeter rule at National Airport—are barriers to competition in a deregulated environment.

I will touch on the key components of the legislation.

- The bill provides a method to free up a limited number of slots at the four high density airports—Chicago, Kennedy, National and LaGuardia—for auction among the new entrant and limited incumbent carriers. First, however, the Secretary is required to develop all possible options to create new slots at these airports, and hence additional capacity, in order to meet the demand for new services there.

• The bill mandates that the Secretary of Transportation make limited, competition-enhancing exemptions to the perimeter rule at National Airport.

The legislation establishes a time frame for the Department of Transportation (DOT) to meet in responding to—not necessarily resolving—complaints about predatory behavior that are already being filed with the Department.

Most of you know, perhaps all too well, that I would prefer to get rid of the perimeter rule, as well as slot restrictions, in a manner consistent with aviation safety. My efforts to do so over the past decade have been thrashed. This bill contains significantly more limited proposals, in an attempt to respect opponents' concerns. Please remember, as we discuss these issues today, I have concerns, too. I dare say that I am not alone. These concerns are legitimate, and they are worthy of a productive debate.

On that point, I would like to introduce into the record a letter I recently received from the Citizens Association of Georgetown. I must say, this appears to be the first of the so called noise groups in Washington to acknowledge publicly that my legislation would not increase noise at National, principally due to the independent limitations on the number of takeoffs and landings at the airport.

Furthermore, the letter goes on to state that, and I quote, "the introduction of newer, quieter aircraft has already caused a significant reduction of noise at National and in neighboring skies. This situation, as you mention, will further improve as older, noisier aircraft are retired. The replacement of shorter range commuter-type aircraft by these new, less noisy aircraft, *as the perimeter rule is modified*, will further ease the noise problem (italics added)."

The bill before us today has been circulating for several weeks. It was discussed extensively for weeks before that. The bill that I introduced has been modified slightly compared to the original draft version, to reflect many of the comments and suggestions I received during that time.

As House Aviation Subcommittee Chairman Jimmy Duncan and I announced yesterday, we have been working together on our proposals. He introduced his bill this morning, as well. Senator Gorton and I have been working together, too. I heartily commend his interest and initiative in this area. Many members on the committee have complementary proposals dealing with domestic aviation competition. I look forward to a discussion of all of our ideas today.

THE CITIZENS ASSOCIATION OF GEORGETOWN,  
*Washington, DC, October 9, 1997.*

Hon. JOHN MCCAIN,  
*U.S. Senate,  
Russell Senate Office Building,  
Washington, DC.*

DEAR SENATOR MCCAIN: Continuance of the "slot" system at Washington National Airport, i.e. the limitation of jet aircraft operation to 37 take-offs and landings per hour, is a crucial factor in curbing aircraft-generated noise. Your support for the integrity of this limitation on National's aircraft operations is very much appreciated by the Citizens Association of Georgetown. Efforts to weaken or even to discard the "slot" system have been made in previous years and may even resurface.

The introduction of newer, quieter aircraft has already caused a significant reduction of noise at National and in neighboring skies. This situation, as you mention, will further improve as older, noisier aircraft are retired. The replacement of shorter range commuter-type aircraft by these new, less noisy aircraft, as the perimeter rule is modified, will further ease the noise problem.

A reiteration of Georgetown views on National-based aircraft is timely and significant. This issue is constantly uppermost in the thoughts of Georgetowners.

Sincerely,

RICHARD G. BROWN,  
*Chairman, Airports & Utilities Committee.*

Senator HOLLINGS. I would yield to Senator Ford.  
The CHAIRMAN. Senator Ford.

**STATEMENT OF HON. WENDELL H. FORD, U.S. SENATOR  
FROM KENTUCKY**

Senator FORD. Thank you, Mr. Chairman.

Over the years I have had a good working relationship with the chairman on aviation matters, and we have worked hard on a good

many issues. As he knows, aviation safety and competition issues tend not to be partisan. The debate usually is over legitimate policy concerns or competing constituent interests.

Regrettably, I cannot support the bill before us today. At a minimum, even if this bill does get reported by the committee, I expect that it will be subject to a slow track offered by other Members. Even as a starting point for negotiating a reasonable compromise, the bill leaves little room.

If the goal is to get new entrant carriers into LaGuardia, Kennedy, or O'Hare, we have done that, and we did that with the chairman in 1994. Under this bill, for example, there are 171 slots that would be eligible for withdrawal and auction at LaGuardia. A total of 10 percent, or 17 slots, would be taken in the first lottery.

DOT on Friday gave out 21 slots without taking from anyone under authority we gave them. DOT even gave out slots for a number of small communities to provide service to Chicago.

There also seems to be an assumption under the bill that the carriers at these airports have violated the competition laws. Therefore, under the bill, Congress must force divestiture. I do not like high fares, but divestiture is a harsh and seldom-used remedy.

There is also another misconception about slots that a number of the witnesses will talk about. If an air carrier holds a slot at noon, for example, it gives the carrier the right to take off or land at noon. It is like a parking spot in a garage. I can park the car I want in my slot. The parking slot is not designated for a Toyota made in Kentucky, by the way. It is a slot that I can use for the car I am driving that day. Slots are no different.

However, the bill assumes that each slot is used for a specific flight or market. That is not the case, and I think GAO needs to understand that. Unfortunately, if we take any slots from the incumbent carriers, you will harm service to those most in need of connections—small and medium-sized communities—despite language to the contrary in this bill.

In a perfect world, any carrier could serve the slot-controlled airports, but that is not the case. There are a limited number of slots, and everyone knows that. We all want service to these airports. There exists a process to gain access. DOT has provided the opportunity for new service, however, helping business travelers in Atlanta, Denver, New York, Orlando, and Colorado Springs at the expense of small communities, something I cannot support.

The real concern is service to small communities and access to the entire system. We have communities without access to Cincinnati, Denver, and other essential facilities. We have small communities that are dependent on air service to bring in new business and survive. Right now at LaGuardia and National most of the communities served are considered small communities.

Taking away service from small communities in Maine or West Virginia or Tennessee or Kentucky to give business travelers in Atlanta more access to National or to LaGuardia is not a viable policy of choice.

Efficiency is not always the best thing when scarce resources are at issue, particularly for small communities.



So, Mr. Chairman, I regret that you and I must cross paths on this one, but I am sure that we will be able to work out something that will support medium and small communities.

I thank you, sir.

The CHAIRMAN. Thank you.

Senator Gorton.

**STATEMENT OF HON. SLADE GORTON, U.S. SENATOR  
FROM WASHINGTON**

Senator GORTON. Mr. Chairman, I am convinced the information we are going to receive from our very distinguished witnesses today is going to be helpful and instructive, and will build on the hearing that I chaired in May.

I am totally committed to airline competition. Since deregulation, airline fares have fallen and service options have clearly increased, on average, across the United States. Major airlines deserve credit for responding well to competitive challenges. In addition, many of the benefits of deregulation can be attributed to the low cost and low fare airlines that have increased competition and enabled far more people to fly than ever did before. Air traffic has grown and will continue to grow steadily over the foreseeable future.

As you indicated, Mr. Chairman, this bill would loosen certain of the remaining Federal regulatory restrictions to competition. These restrictions, like slot controls and the perimeter rule at National Airport, have limited the benefits of airline deregulation. I look forward to hearing what our witnesses have to say about them.

I understand fully that changing the status quo by easing existing regulatory barriers is difficult. Airlines and airports, communities and consumers have all grown accustomed to these barriers. Nevertheless, we should not limit our consideration and our imagination about reasonable alternatives that would improve competition.

In fact, if anything, Mr. Chairman, I believe we ought to be examining other areas in which we could increase the opportunity for competition, try to remove monopolies or near monopolies at certain major airports in the United States, and see to it that the people of this country get the benefits of that competition. Any kind of predatory behavior deserves a response from the Department of Transportation.

Again, Senator McCain, thank you for holding the hearing, but the hearing is only a way station on the path of seeing to it that air service is better, less expensive, more available, and more convenient to the people of the United States.

[The prepared statement of Senator Gordon follows:]

**PREPARED STATEMENT OF HON. SLADE GORTON, U.S. SENATOR FROM WASHINGTON**

I would like to thank Senator McCain for holding this hearing to consider the Aviation Competition Enhancement Act of 1997 that he introduced earlier today. I would also thank our distinguished group of witnesses for joining us. The information presented today should prove instructive, and will build upon the information that was provided on this issue at an Aviation Subcommittee hearing that I chaired last May.

The benefits of airline competition are clear. Since deregulation, airline fares have fallen, and service options have increased on average across all communities. The major airlines deserve credit for responding well to competitive challenges. In addition, many of the benefits of deregulation can be attributed to the low fare airlines

that increased competition, and enabled more people to fly than ever before. Air traffic has grown as a result, and will continue to grow steadily over the next several years.

As Senator McCain indicated, the bill would loosen certain remaining federal regulatory restrictions to competition. These restrictions, slot controls and the perimeter rule at National Airport, have limited the benefits of airline deregulation. I look forward to hearing the witnesses' insights on the legislation.

I understand that changing the status quo by easing existing regulatory barriers is difficult. Airlines, airports, communities, and consumers have all grown accustomed to these barriers. We should not, however, let this situation limit our consideration of reasonable alternatives that would improve competition.

Senator McCain's bill would also require the Department of Transportation (DOT) to respond to complaints of predatory behavior within 90 days. Any airline that believes it is being subjected to predatory behavior deserves a timely response from the DOT. Such behavior can severely restrict the ability of an airline to compete, and may even drive an airline out of business.

Again, I would like to thank Senator McCain for holding this hearing. The ability to initiate new airline service is a key component of a deregulated environment that can benefit air travelers. I expect to learn more today about how federal barriers affect airline competition. I look forward to our witnesses' comments, and our discussion on this issue.

The CHAIRMAN. Thank you.  
Senator Hollings.

#### STATEMENT OF HON. ERNEST F. HOLLINGS, U.S. SENATOR FROM SOUTH CAROLINA

Senator HOLLINGS. I apologize for delaying our colleagues, Senators Warner and Robb, and I apologize to the witnesses, but you have given me the chance, and I must express my glee. I have been disciplined over the many years now by our distinguished Chairman about the wonderful success of deregulation. To come to have him introduce a bill to reregulate slots, to reregulate perimeter, and everything else—it is just wonderful to be here this afternoon. [Laughter.]

I just want to say that, at the time, they did have competition. That is the genesis and origin of the so-called slots. I worked as an attorney. In many instances, they used to have the old Civil Aeronautics Board. What happened was, the community had to provide the physical facilities, the runways, the terminals, and everything else; come to the airlines themselves and persuade some competitive airline to give the service; and then come and prove, on the basis of public convenience and necessity, that that route and that service should be approved. So it was a competitive thing in the original instance.

Now, with that deregulation and the statue back in 1985 that you could buy and sell them, the three flights up and three flights back I had from my home town have long since gone from Eastern to Pan Am to Air Florida to the crash out here in the river to—I cannot find them right now. So I am on his side, generally, for reregulating, but not in this instance.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Rockefeller.

Senator ROCKEFELLER. Mr. Chairman, I have a superb statement which I will put in the record.

[The prepared statement of Senator Rockefeller follows:]

PREPARED STATEMENT OF HON. JOHN D. ROCKEFELLER IV, U.S. SENATOR  
FROM WEST VIRGINIA

Mr. Chairman, Senator Hollings, when the Aviation Subcommittee convened a hearing on "Barriers to Entry" in the airline industry in May of this year, I shared with you my frustration about the state of air service in West Virginia and many other small communities across the country. I said then that, as a nation, we are not living up to our obligation to ensure that the benefits of transportation modernization are shared with some degree of fairness—and that we need to focus our efforts beyond the problem of barriers to entry and more on changing the trend in small and rural parts of America that have been totally excluded from the promised rewards of deregulation.

Six months later, I regret to observe that very little progress has been made for small communities. I know the bill that we're discussing today was not premised on the notion of improving small community air service, and that the bill contains a few provisions that try to minimize the harm to small communities. But I don't think those protections will work in the way that they're intended, and, frankly, deregulation has taught me to be skeptical of any airline bill that even has to include provisions to protect small communities from its effects.

So I want to again express my frustration with the decline in small community air service, and to prevail upon my colleagues to do two things: first, we should take no action to effect change in the aviation marketplace unless and until we have determined with certainty that small community air service will not be further harmed; and second, to those whose states are suffering similar problems, let's intensify our efforts to develop a program that will improve air service where we need it most—in small and rural communities across the country.

Based on all of the studies that have been done about deregulation of the airline industry, I think we can probably agree that airline deregulation has benefitted most of the nation—by lowering fares, increasing service, and fueling competition. And we can also agree that those lower fares, increased service, and competition are not distributed equally in all markets.

This Committee has for some time focused on righting that balance, by looking at so called "barriers to entry" in the airline industry and trying to figure out whether we might get even more competitive benefits, in terms of low fares and more service, by forcing a balance among segments of the airline industry.

But while we have spent our collective time and energy reshuffling the deck among segments of the airline industry, a much more troubling and systemic problem has arisen—the creation of an ever-widening gap between air transportation "haves" and "have-nots".

Just as we can agree that two decades of deregulation have benefitted most of the nation, I hope we can also agree that the single most enduring problem in the nation's air system in the same period is the spiraling loss of air service in small communities.

The impact of this gap between communities that have adequate air service and those that do not forms barriers of a different kind is what should compel our Committee to act—without affordable and regular air service, the affected states and communities face serious barriers to economic growth and opportunity.

The focal point of this hearing is a new proposal by Senator McCain for enhancing competition in the airline industry, by withdrawing and auctioning slots at 3 major airports, creating exemptions to the perimeter rule, and speeding up the process for the Department of Transportation's consideration of predatory pricing complaints. The summary and purposes of the bill state that it is intended to improve and protect service to small communities, and several provisions attempt to carry out that promise.

I want to make very clear that I do not doubt the sincerity of that intention. The Chairman cares as much about the state of air service throughout the nation as anyone in this body, and he has worked harder than most to solve some vexing problems in aviation. But I see real problems in the way these provisions work.

If we require the major carriers to divest themselves of slots, I have no doubt that the loss will eventually work its way downstream. Unless we're going to get back into the business of regulating where and when airlines fly, the least lucrative rural and small community routes will suffer from this slot withdrawal plan. And if we exempt long-haul service from the restrictions of the National Airport perimeter rule, without allowing any increase in operations there, we will add insult to injury, because carriers will eventually use those valuable slots to replace service to small communities inside the perimeter with higher-yield service to communities outside the perimeter.

Fundamentally, I am not convinced that if new and seemingly pro-competitive measures were imposed on the larger aviation system, then small communities would eventually get more and better service. West Virginia has heard that argument before and experience has instead shown us that when action is taken to make good air service even better in some areas, our service only gets worse.

I wasn't in the Senate when Congress deregulated the airline industry. I like to think that if I was, I would have had the foresight to fight against it, though I recognize that we didn't know then what we do today about the injury it would do to our small communities. Without a doubt, I believe it's well past time to solve the problems that have developed since and persist in their economic harm.

The CHAIRMAN. Thank you very much.

Let me just read—I was asked to read Senator Frist's statement. He says he regrets he was not able to be here. He says he would like to address the slot exemption announcement made last Friday afternoon.

After months of waiting, my office was finally notified of decisions by the Department of Transportation on several applications to waive the high density rule for service from Tennessee to Chicago and New York.

Unfortunately, the Department took a split-the-baby approach in an attempt to appease as many applicants as possible. The problem created by this approach is that airlines require a level of frequency to make any use of the new opportunity financially viable so, while I consider getting a response out of the Department on this issue a victory, the results are nonetheless disappointing. These results will do little to improve air service to the underserved markets the waivers to the high density rule were designed to foster when Congress originally gave the authority to the Secretary.

I remain engaged on this issue, and hope the Department will continue to work with Congress to improve air service to underserved communities.

I want to thank Senator Burns.

Senator BURNS. What for? [Laughter.]

The CHAIRMAN. Do you have any opening statement?

Senator BURNS. You wanted to thank me. I just wanted to know what for.

I do not have a statement Mr. Chairman, but look forward to hearing from our witnesses.

The CHAIRMAN. Congresswoman Slaughter, the only fair way is to use the early bird rule here. You were here first. We appreciate you being here. We also know that you and Congressman Moran have other duties on the other side. We are grateful you could be here. So if it is agreeable to you, we will go to you Senator Warner, Senator Robb, and then Congressman Moran. Welcome.

#### STATEMENT OF HON. LOUISE SLAUGHTER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Ms. SLAUGHTER. Thank you very much. I was a little concerned, since I am probably on a different subject, that I would interfere with the cradle of democracy in Virginia. I did not want to confuse this issue because, Senator McCain, this has been very important to me, and I thank you very much for holding this hearing. Senators, I am delighted to have the opportunity to appear before you this afternoon because I want to talk about high fares and what I see as their detrimental effect on the mid-sized communities across America.

There is a growing recognition, I think, in Congress that frequent and affordable airline service is crucial for the health and growth of any region's economy. I know it is a critical issue for my region—

Rochester, NY—the largest per capita exporting city in the United States.

Last year 1.2 million people flew out of our airport. Rochester is the proud birthplace of a number of Fortune 500 companies, including Eastman Kodak, Xerox Corporation, and Bausch and Lomb, making it the world's image center. I want to include that so that you do not think we are just some fly by-night county up there. We are serious.

Of equal importance are the hundreds of small and mid-sized high technology firms that have been growing in our region over the past several years, but the continued success of my region is by no means certain. Economic trends show the State of New York developing into two economies, with down-State wages surging forward and up-State wages remaining stagnant.

Many firms and businesses are either moving out, or choosing to expand to other regions of the country because of the exorbitant air fares and infrequent flights. To compete effectively, our region must have access to frequent and affordable air service.

Let me offer you one example. A round-trip flight from Rochester to Chicago can cost \$524. An even longer round-trip flight from Atlanta to Chicago costs half, \$246. The Department of Transportation figures show up-State New York air fares among the highest in the country. Rochester is ranked eighth.

One Rochester businessman paid \$600 to fly to White Plains, NY, in a 20-seat prop plane for a business meeting. A few weeks later, for \$5 more, he flew to Ireland. That additional \$5 got him 5,000 miles further, a jet aircraft, piped-in music, hot meals, free movies, and all the peanuts he could eat.

Now, my region is already feeling the pinch. Recently, the Atlanta Business Chronicle reported that the Eastman Kodak Company plans to move its marketing headquarters of its U.S. and Canadian consumer operations to Atlanta. One reason cited is cheaper and more frequent flights out of Atlanta's airport.

This is chilling because Kodak and Rochester are synonymous, and news like this casts a pall over our entire region. If the major corporations which have been the backbone of our community leave, we are in deep trouble.

The effect on our area's smaller companies is equally pronounced. A relatively young and growing Rochester-based firm recently wrote to me, "Dear Louise: Due to the high cost of air travel here locally we made a decision 4 months ago not to add any high travel positions out of our Rochester-based headquarters. Since that time we have added several positions in our mid-Atlantic-based locales where the air fare costs are much more reasonable."

He went on to say that this arrangement was less than ideal, but he felt he had no choice.

Other, smaller companies are opting not to expand, fearing that in the current climate they can no longer be price-competitive.

The letters keep pouring into my office. The city council, the chamber of commerce, the State assembly, our tourism board—all are crying for relief. Your committee will hear directly from the vice president of Rochester's Chamber of Commerce, Charles Goodwin, during a later panel.

Mr. Goodwin is a top expert in international trade and transportation, and he has also researched extensively the impact that these fares have on the business community. That is not just Government and business who are feeling the squeeze. The most poignant victims of exorbitant prices are the nonbusiness consumers such as the family planning a vacation, the student traveling home for the holidays, or the grandparent trying to visit a grandchild.

Let me offer two examples. One wrote, earlier this year, "My brother and sister-in-law both suffered serious health problems—a second stroke immobilizing my brother and encephalitis seriously affecting my sister-in-law. I felt it imperative to see them before their health deteriorated further. They live in Tulsa. The first airline quoted a round-trip fare of \$1,225 between Rochester and Tulsa, more than we could afford. Thank you for reading this. Just want you to know."

A consultant hired by the Rochester Airport—and this is really chilling to me—estimated that the Rochester Airport every year loses between 400,000 and 600,000 passengers to people who drive somewhere else to get a cheaper air fare. One constituent frantically tried to get a plane ticket from Rochester to help a son and his ailing wife in Texas. Imagine her shock when she was told the round-trip air fare would cost her \$1,300. Quite simply, she could not afford to go.

Fortunately, she was able to get someone to drive her to Cleveland and obtained a round-trip flight for \$260 on Southwest to San Antonio. That is one-fifth of the price for roughly the same distance from Rochester.

This continued fleecing by major carriers is unconscionable. Rochester is one of many mid-sized communities that did not attain the benefits promised by deregulation. To be blunt, deregulation failed us. More than one carrier may service the Rochester area, but these airlines do not compete among themselves on most routes. The result has been the creation of de facto monopolies on individual routes, which are gouging businesspeople and consumers when they fly.

We have to level the playing field for smaller carriers so that they can compete. Small airlines formed after deregulation are the primary source of price competition in other areas of the country. When they enter the market, these small airlines force the big carriers to reduce fares. Without that pressure, the large competitors can charge consumers exorbitant prices, and we are a prime example in Rochester of what happens under that pressure. The situation has to change.

In reviewing your Aviation Competition Enhancement Act, I was pleased to see that you have addressed an issue that I have spent many months calling attention to, and that is the allocation of slots at major airports. A number of our colleagues signed on to a letter to Secretary Slater urging that the Department of Transportation do distribute those slots more evenly. I think we all must remember that when those slots were first distributed, it was made clear that they are the property of the people of the United States, and could be reclaimed to promote fare competition.

DOT's announcement this week of their intention to grant a limited number of slots is an important first step and, I think, an ac-

knowledge that we have not seen before of their real understanding of this problem. But more has to be done to make sure that the promises and benefits of deregulation reach our communities.

Airlines should not be setting the economic policy for my region or your region or anyone else's region by giving one community punishing fares in order to subsidize fares in somebody else's region. I am working on some legislation that we hope will address some of those issues, but I also want to thank you for the part of your bill that mandates the response on predatory carriers and practices.

Large airlines frequently drive a small airline out of business—and we have seen it over and over again, by swamping the route with low fares temporarily. When the small carrier gives up the route, the carrier raises the fare significantly. The Justice Department and DOT have to take a more aggressive stance against these practices. Again, legislation has been crafted in the House that will encourage such action.

The October 1996 GAO report that outlines the effects of airline deregulation pointed to other barriers to entry for other new carriers. For example, the major carriers benefit from long-term exclusive use gate leases that effectively shut out new airlines. In the event that a major carrier agrees to sublet these gates for new carriers, the new carrier is often forced to hire the ground crews of the major carriers. These and other practices deserve close scrutiny as we examine the barriers to competition.

Deregulation was not a winner for us in Rochester. Without effective competition in our market, the business and consumers simply do not get a fair shake. If other airlines are allowed to break into these markets, more competition would follow and, with it, lower and more reasonably priced air fares.

I am confident, given the opportunity, that we will see that happen throughout the United States, and that we will see all of our Nation's mid- and smaller-sized communities being served once again, as Senator Hollings pointed out, in the way they used to be.

Again, I thank you very much, gentlemen, for the opportunity to address you today. I can think of nothing more serious to the economic well-being of the up-State New York region and other regions of the country than addressing this problem.

Thank you very much.

[The prepared statement of Congresswoman Slaughter follows:]

PREPARED STATEMENT OF HON. LOUISE SLAUGHTER, A REPRESENTATIVE IN  
CONGRESS FROM THE STATE OF NEW YORK

I wish to thank the Chairman for addressing the issue of high air fares and their detrimental effect on mid-sized communities across America.

There is a growing recognition in the Congress that frequent and affordable airline service is crucial for the health and growth of any region's economy. This is a critical issue for my district of Rochester, New York. Rochester is the largest per capita exporting city in the U.S. Last year, 1.2 million people flew out of our airport.

Rochester is the proud birthplace of a number of Fortune 500 companies such as Eastman Kodak, Xerox Corp., and Bausch and Lomb—making it the World's Image Center. Of equal importance are the hundreds of small- and mid-sized high technology firms that have been growing in our region over the past several years.

The continued success of my region is by no means certain, however. Economic trends show the state of New York developing into two economies, with downstate wages surging forward and upstate wages remaining stagnant. Many firms and

businesses are either moving out or choosing to expand in other regions of the country, because of exorbitant airfares and infrequent flights. To compete effectively, our region must have access to frequent and affordable air service.

Let me offer you an example: A round trip flight from Rochester to Chicago can cost \$524. An even longer round-trip flight from Atlanta to Chicago costs merely \$246. The Department of Transportation figures show upstate New York air fares among the highest in the country.

One Rochester businessman paid \$600 dollars to fly to White Plains New York in a 20 seat prop plane for a business meeting. A few weeks later—for \$5 dollars more—he flew to Ireland. That additional \$5 dollars got him 5000 miles further, a jet aircraft, piped-in music, meals, three movies, and all the peanuts he could eat.

My region is already feeling the pinch. Recently, the Atlanta Business Chronicle reported that Eastman Kodak Company plans to move its marketing headquarters of its U.S. and Canadian consumer operation to Atlanta. One reason cited is cheaper and more frequent flights out of Atlanta's airport. This is chilling. Kodak and Rochester are synonymous, and news like this casts a pall over the entire region. If the major corporations, which have been the backbone of our community, leave, we're in deep trouble.

The effect on our area's smaller companies is equally pronounced. A relatively young and growing Rochester-based firm recently wrote to me:

Dear Louise: . . . due to the high cost of air travel here locally, we made a decision four months ago not to add any high travel positions out of our Rochester based headquarters.

Since that time, we have added several positions in our mid-Atlantic based locales, where the airfare cost are much more reasonable.

He went on to say that this arrangement was less than ideal, but felt he had no choice. Other smaller companies are opting not to expand, fearing that in the current climate they can no longer be price competitive.

The letters keep pouring into my office. The City Council, the Chamber of Commerce, the State Assembly, our Tourism board—all are crying for relief. Your Committee will hear directly from the Vice President of Rochester's Chamber of Commerce Charles Goodwin during a later panel. Mr. Goodwin is a top expert in international trade and transportation. He also has researched extensively the impact these fares have on our business community.

It is not just government and business who are feeling the squeeze. The most poignant victims of exorbitant fares are the non-business consumers, such as the family planning a vacation, the student traveling home for the holidays, or the grandparent trying to visit a grandchild.

Let me offer two examples:

Dear Louise: . . . earlier this year, my brother and sister-in-law both suffered very serious health problems, a second stroke immobilizing my brother and encephalitis seriously affecting my sister-in-law. I felt it imperative my wife and I see them before their health deteriorated further. They live in Tulsa. The first airline quoted a round-trip fare of \$1225 between Rochester and Tulsa, more than I felt we could afford . . . thanks for reading this. Just want you to know.

A consultant hired by the Rochester International Airport estimated that Rochester Airport is losing 400,000 to 600,000 passengers a year to ground transportation, primarily cars, because of air fare prices.

One constituent frantically tried to get a plane ticket from Rochester to help a son and his ailing wife in San Antonio, Texas. Imagine her shock when she was told the round-trip airfare would cost her \$1300. Quite simply, she could not afford to go. Fortunately, she was able to drive to Cleveland and to obtain a round-trip flight for \$260 on Southwest to San Antonio. That's one fifth the price for roughly the same distance trip from Rochester. This continued fleecing by major carriers is unconscionable.

Rochester is one of many mid-sized communities that did not attain the benefits promised by deregulation. To be blunt, deregulation failed us. More than one carrier may service the Rochester area, but these airlines do not compete among themselves on most routes. The result has been the creation of de-facto monopolies on individual routes, which are gouging business people and consumers when they fly.

We have to level the playing field for smaller carriers so that they can compete with major carriers. Small airlines formed after deregulation are the primary source of price competition in other areas of the country. When they enter the market, these small airlines force big carriers to reduce fares. Without pressure from small bargain airlines, their large competitors can charge consumers exorbitant prices. Rochester is a prime example of what happens without this pressure.

This situation has to change. In reviewing your Aviation Competition Enhancement Act, I was pleased to see that you addressed an issue I have spent months



calling attention to—the allocation of slots at major airports. I helped organize a number of colleagues to sign on to a letter to Secretary Slater urging that the Department of Transportation distribute slots more evenly among airlines to promote fair competition. When these slots were first distributed, it was made clear that they were government property which could be reclaimed to promote fair competition.

DOT's announcement this weekend of its intention to grant a limited number of slots to applicants at New York's LaGuardia and Chicago O'Hare's airports is an important first step and an acknowledgment that the agency understands the problem. More will have to be done to ensure that the benefits promised by deregulation reach all our communities. Airlines should not be setting economic policy by giving one community punishing fares in order to subsidize fares in another region.

I am working on legislation with my colleague Rep. Charles Schumer to address these same issues of slot allocation. We will also call for a limited redistribution of slots to help service our region of the country. Your leadership in the Senate on this issue as well as your legislation is an enormous help to us.

Equally important are your provisions to mandate that DOT respond to complaints of predatory behavior by major carriers. Large airlines frequently drive a small airline out of business by swamping a route with low fares. When the small carrier gives up the route, the large carrier then raises fares significantly. The Justice Department and DOT must take a more aggressive stance against these practices. Again, legislation being crafted in the House would encourage such action.

The October 1996 GAO report outlining the effects of airline deregulation pointed to other barriers to entry for new carriers. For example, major carriers benefit from long-term, exclusive-use gate leases that effectively shut-out newer airlines. In the event that a major carrier agrees to sublet these gates for new carriers, the new carrier is often forced to hire the ground crews of the major carriers. These and other practices deserve close scrutiny as we examine these barriers to competition.

Deregulation was not a winner for us in Rochester. Without effective competition in this market, businesses and consumers don't get a fair shake. If other airlines are allowed to break into these markets, then more competition will follow, and with it, lower and more reasonably priced airfares. I am confident that if small carriers are given the opportunity, they will be eager to serve all of our nation's mid-sized communities.

Thank you for your leadership and the opportunity to testify today.

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CONGRESS OF THE UNITED STATES,  
Washington, DC, August 1, 1997.

Hon. RODNEY SLATER, *Secretary,  
U.S. Department of Transportation,  
Washington, DC.*

Dear SECRETARY SLATER: We are writing to ask that you use your authority to end the monopolistic practices that limit competition for flights to secondary markets. By reorganizing the "slot" system used in this industry, you will greatly reduce airline ticket costs for millions of travelers.

At four airports in the country—LaGuardia and Kennedy Airports in New York, O'Hare Airport in Chicago, and National Airport near Washington, D.C.—airlines must have a reserved slot for every take-off or landing. The dominant airlines use their control of slots to squeeze out smaller carriers, and consumers are getting crushed in the process.

On most routes around the country, small airlines formed after deregulation are the primary source of price competition. When they enter the market, they force big carriers to reduce fares. Without pressure from small bargain airlines, their large competitors can charge sky-high prices, and they do.

A recent report by the independent General Accounting Office showed how a few large carriers have increased their stranglehold on slots, at the expense of smaller carriers formed after deregulation:

- At LaGuardia, American, Delta, and US Airways control 64% of slots, and all the "post-deregulation" airlines combined hold just 2%.
- At Kennedy, American, Delta, and Shawmut Bank (which control slots for bankrupt TWA) hold 75% of the slots, while post-deregulation airlines have 7%.
- At O'Hare, American and United have amassed 87% of the slots, and airlines formed after deregulation cover just 1% of slots.

Moreover, the report specified that in order to mount competitive service in a market, an airline needs about six slots, with at least three slots falling during peak

periods so that the airlines can offer a flight schedule that is attractive to business travelers.

In testimony before the Senate Subcommittee on Aviation, Assistant Secretary Charles Hunnicut acknowledged that the slot system is choking off competition. He told the subcommittee that DOT was "considering" a change in policy to distribute slots more evenly among airlines to enhance competition. He also testified that one option would be a recommendation by GAO that the Department redistribute a number of slots by lottery each year to smaller or post-deregulation airlines.

We urge you to implement this plan. When these slots were first distributed, it was made clear that they were government property that could be reclaimed to promote fair competition. With the growing move by large airlines to consolidate slots, such action is already long overdue.

If consumers are to receive the full benefits promised by deregulation, we must have true competition at our airports.

Thank you for your attention. We look forward to hearing your response.

Sincerely,

LOUISE MACINTOSH SLAUGHTER,  
CHARLES E. SCHUMER,  
JOHN J. LAFALCE,  
SHERRY BICHLIRT,  
MICHAEL R. McNULTY,  
LANE EVANS,  
EDWARD J. MARKEY,  
MAURICE D. HINCHEY,  
TIM HOLDEN,  
JIM MORAN,  
JIM WALACH,  
RONALD V. DELLUMS.

The CHAIRMAN. Thank you very much.

My former and present boss, Senator Warner.

Senator WARNER. Madame Chairman, I am perfectly willing to accord the courtesies to the other House Member so he can return and we can proceed on the Senate side.

The CHAIRMAN. If that is agreeable to you and Senator Robb. We are always pleased to hear from Congressman Moran.

#### STATEMENT OF HON. JAMES P. MORAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Mr. MORAN. Thank you very much, Senator. I will take advantage of the opportunity and say hello to all the members of the panel. And I thank my colleagues from Virginia, the Senators from Virginia, for testifying on this very important issue.

I want to express my appreciation, particularly to the chairman, that this legislation does not change the law that limits the number of flights at Washington National Airport. As the committee chairman may recall from the last session, that slot rule works very well for our region. It limits the amount of noise and pollution generated at a very congested airport that cannot accommodate any new flights and facilitates the development and growth of the region's two other airports—Washington, Dulles, and BWI.

And while I have the utmost respect for the sponsor of this legislation, the chairman of this committee, you will not be surprised, however, to learn that I very much object to this legislation. First, the legislation does not achieve its broad goal of promoting competition within the aviation industry. It focuses almost exclusively on an access issue at four congested airports.

Even the GAO's report, entitled "Airline Deregulation: Barriers to entry continue to limit competition in several key domestic markets"—that is a long title, but it was an important report—it

helped serve as the basis for this legislation, I know, but it cited other barriers to competition, including frequent flier plans, the bonus commissions to travel agents, the airline ownership of computer reservation systems, co-chairing partnerships with community air carriers, and lots of marketing strategies, all of which hinder new entrants and lower air fares.

With regard to the slot rule, one cannot achieve any improvement in access and, hence, competition, without increasing the total number of flights which would be met with fierce opposition. Calling upon the Secretary of Transportation to reallocate some of the existing slots that are presently bought and sold on a free market basis sounds like reregulation of the airline industry. And I thought that was credited by a lot of people with stifling competition.

If the Secretary is to give priority consideration to communities served by small-hub, medium-hub, and other airports that do not have service to the high-density airports, then isn't this legislation creating a situation where the airlines serving the high-density and large-hub airports will be subsidizing the airlines serving the smaller airports?

Should the Government be given the role of picking airlines and routes, rather than awarding the limited slots on a free market basis?

I also have concerns that those airlines that have made substantial investments at Washington National—and obviously, USAir is one such airline—bought their current slots and would not be compensated for forfeiting these slots under this proposal.

My second concern is with the granting of exceptions to the 1,250-mile-perimeter rule at National. Lifting the perimeter rule, even in limited circumstances, will unravel the balanced development plans at all three of our region's airports. A change in the perimeter rule would result in a cutback in locations presently served by National and, over time, short-range service at National would be displaced and the number of transcontinental flights operating out of Dulles thus would decline.

As those transcontinental flights decline, Dulles ceases to become an attractive destination for international service. The growth and development plans overseen by Congress and the substantial investment made at both National and Dulles by the taxpayers of this country, the Federal Aviation Administration, and the aviation community would all become substantially devalued.

As the Member of Congress who represents the region in which National Airport is located, I would also like to point out that exceptions to the perimeter rule will also generate much more noise and congestion at National Airport. There is a direct relationship between the takeoff weight of a particular aircraft and the fuel load it must carry. Aircraft with heavier takeoff weights produce more noise than airplanes with higher loads. A stage 3 aircraft departing National for Los Angeles will generate more noise at takeoff than a stage 3 aircraft departing for Cleveland.

I have FAA advisory circulars that say that. And I think that there is very little argument about that, that can weigh in against the facts and figures that we have available.

Mr. Chairman, airport noise reduces the quality of life in the neighborhoods in Arlington, Alexandria, McLean, and Potomac. And while these communities understand that National Airport is here to stay, they should not be asked to endure additional noise when no compelling public need is served. The balance that has now been struck between the transportation and economic needs of air travellers and the region's environmental concerns was crucial to community acceptance of the redevelopment of National, which is now nearing completion.

So, as the committee looks into the issue of aviation competition and the slot and perimeter rule in effect at National, it needs to look at how the region's being served by all three of its airports. If the committee wants to find ways to promote lower direct service, both Dulles and National appear to be meeting this demand. National boasts excellent direct service to communities within the 1,250-mile perimeter rule.

Eliminate the perimeter rule and some of these communities will be less well served and may lose service altogether. Dulles and BWI provide excellent direct service to communities outside the perimeter rule. BWI has capitalized on discount service, charter, and vacation destinations. In large part, the maintenance of a high level of competitive air service at all three airports is due to the slot and perimeter restrictions at National.

In fact, a 1996 survey of fares on transcontinental flights operating at National show that the transcontinental flights were less expensive at National than flights with the same destination originating from Dulles. I will not bore you with all the numbers, but it shows tremendous differences. San Francisco: \$337 at Dulles; \$222 at National. You can go down the list of major cities. There is enormous difference. It is less expensive at National.

The only difference is that the perimeter rule at National forces passengers to suffer the inconvenience of one extra stop. As a region, competition is alive and well among the airports that serve the Nation's capital. National is only one of 780 commercial airports operating in the United States, and handles less than 1.5 percent of the total number of U.S. passengers.

Recent changes in the aviation excise tax that lowered the tax from 10 to 7.5 percent and making up the difference through a deplanement fee that is collected every time a plane leaves the runway will have a much greater impact on competition and short- and long-haul flights than any reallocation of slots at National. Four years ago, the National Commission to Ensure a Strong, Competitive Airline Industry exempted National Airport from its recommendation, calling upon the FAA to revive the rule that limits operations at high-density airports. There is no reason to change that policy now.

Thank you, Mr. Chairman.

[The prepared statement of Congressman Moran follows:]

PREPARED STATEMENT OF HON. JAMES P. MORAN, A REPRESENTATIVE IN CONGRESS  
FROM THE STATE OF VIRGINIA

Good afternoon and thank you Mr. Chairman. I appreciate the opportunity to comment on the Aviation Competition Enhancement Act of 1997.

I want to express my appreciation that this legislation does not change the law that limits the number of flights at Washington National Airport. As the Committee

Chairman may recall from the last session, the slot rule works well for this region. It limits the amount of noise and pollution generated at a congested airport that cannot accommodate any new flights and facilitates the development and growth of the region's two other airports, Washington Dulles International Airport and Baltimore Washington International Airport (BWI).

You will not be surprised, however, to learn that I object strongly to this legislation. First, this legislation does not achieve its broad goal of promoting competition within the aviation industry. It focuses almost exclusively on access issue at four congested airports. Even the General Accounting Office's report, "Airline Deregulation, Barriers to Entry Continue to Limit Competition in Several Key Domestic Markets," which helped serve as a basis for this legislation, cited other barriers to competition, including frequent flyer plans, bonus commissions to travel agents, airline ownership of computer reservation systems, co-chairing partnerships with commuter air carriers and other marketing strategies, that hinder the new entrants and lower airfares.

With regard to the slot rule, one cannot achieve any improvement in access and hence competition without increasing the total number of flights, which would be met with fierce opposition. Calling upon the Secretary of Transportation to reallocate some of the existing slots that are presently bought and sold on a free market basis sounds like re-regulation of the airline industry, something I thought was credited with stifling competition. If the Secretary is to give priority consideration to communities "served by small hub and medium hub, and other airports that do not have service to the high-density airports," then isn't this legislation creating a situation where the airlines serving the high-density and large hub airports will be subsidizing the airlines serving the smaller airports? Should the government be given the role of picking airlines and routes rather than awarding the limited slots on a free market basis? I also have some concerns that those airlines that have made substantial investments at Washington National and bought their current slots would not be compensated for forfeiting these slots under this proposal.

My second concern is with the granting of exceptions to the 1250 mile perimeter rule at National Airport. Lifting the perimeter rule, even in limited circumstances, will unravel the balanced development plans at all three of our region's airports. A change in the perimeter rule would result in a cut back in locations presently served by National. Over time, short-range service at National would be displaced and the number of transcontinental flights operating out of Dulles would decline. As those transcontinental flights decline, Dulles would cease to become an attractive destination for international service. The growth and development plans overseen by Congress and the substantial investment made at both National and Dulles by the taxpayers, the Federal Aviation Administration (FAA) and the aviation community would become substantially devalued.

As the Member of Congress who represents this region, I would also like to point out that exceptions to the perimeter rule will also generate more noise and congestion at National Airport. There is a direct relationship between the takeoff weight of a particular aircraft and the fuel load it must carry. Aircraft with heavier takeoff weights produce more noise than airplanes with lighter loads. A stage III aircraft departing National for Los Angeles will generate more noise at takeoff than a stage III aircraft departing for Cleveland. FAA Advisory Circular, AC No. 36-3G states that:

"takeoff noise levels are reduced substantially as aircraft takeoff weight is reduced. . . . Conversely, those aircraft normally associated with high weight, long range operation and, therefore, greater productivity, have higher noise levels."

Mr. Chairman, airport noise reduces the quality of life in neighborhoods in Arlington, Alexandria, McLean, and Potomac, While these communities understand that National is here to stay, they should not be asked to endure additional noise when no compelling public need is served. The balance that has now been struck between the transportation and economic needs of air travelers and the region's environmental concerns was crucial to community acceptance of the redevelopment of National, now nearing completion.

As the committee looks into the issue of aviation competition and the slot and perimeter rule in effect at National, it needs to look at how a region is being served by all three of its airports. If the committee wants to find ways to promote lower direct service, both Dulles and National appear to be meeting this demand. National boasts excellent direct service to communities within the 1250 perimeter rule. Eliminate the perimeter rule and some of these communities will be less well served or may lose service all together. Dulles and BWI provide excellent direct service to communities outside the perimeter rule. BWI has capitalized on discount service, charter and vacation destinations. In large part, the maintenance of a high level of

competitive air service at all three airports is due to the slot and perimeter restrictions at National.

In fact, a 1996 survey of fares on transcontinental flights originating at National were actually less expensive than flights with the same destination originating from Dulles:

	Dulles		National	
	Fare	Passengers	Fare	Passengers
San Francisco .....	\$337.90	542,040	\$222.55	187,760
Los Angeles .....	288.24	578,940	206.74	210,780
Denver .....	240.68	380,290	235.81	123,320
Seattle .....	284.69	175,410	235.81	126,310

The only difference is that the perimeter rule at National forces passengers to suffer the inconvenience of an extra stop. As a region, competition is alive and well among the airports that serve the nation's capital.

National is only one of 780 commercial airports operating in the U.S. It handles less than 1.5 percent of the total number of U.S. passengers. I believe recent changes in the aviation excise tax that lowers the tax from 10 percent to 7.5 percent and making up the difference through a "deplanement" fee that is collected every time a plane leaves the runway will have a much greater impact on competition and short and long-haul flights than any reallocation of slots at National.

Four years ago, the National Commission to Ensure a Strong Competitive Airline Industry exempted Washington National Airport from its recommendation calling upon the FAA to revive the rule that limits operations at "high density" airports. There is absolutely no reason to change either rule now.

The CHAIRMAN. Thank you very much, Mr. Moran.

I hope that you will look at the DOT study and the GAO study, of which we have had many over the years, which all indicate that the consumer will pay less. And Steven Morrison, Professor of Economics at Northeastern University, estimates that removing the perimeter rule at Washington National would save passengers in Washington \$90 million a year.

But I understand your position and I appreciate it. And I fully understand your concerns. I appreciate you being here.

Mr. MORAN. Thank you, Mr. Chairman.

Senator FORD. I might say to Mr. Moran, too, there is a limit to the size of airplanes that can come into National, compared to Dulles. And it all goes back to the point you make. I am not sure if you take the slots away from some place out here and they lose it in Cincinnati, they would take one out of Cincinnati and give it to Atlanta so that they could come in here, so I am not served in Cincinnati and small communities out there. So slots have an effect all the way across, a rippling effect. And I happen to agree with you.

Thank you.

Mr. MORAN. Thank you, Senator.

The CHAIRMAN. I know, Congressman Moran and Congresswoman Slaughter, you have other things to do. Obviously, we appreciate very much your being here, and we understand if you have to leave. We are always pleased to have you and your views before this committee. And I want you to understand you are always welcome.

Ms. SLAUGHTER. Thank you very much for that, Mr. Chairman.

Mr. MORAN. Thank you very much, Mr. Chairman. We know the Senators have a lot to do, too, so we very much appreciate them letting us go ahead.

The CHAIRMAN. Senator Warner.

Senator WARNER. Senator Robb can go first.

The CHAIRMAN. Senator Robb.

**STATEMENT OF HON. CHARLES S. ROBB, U.S. SENATOR  
FROM VIRGINIA**

Senator ROBB. Mr. Chairman, first of all, let me ask unanimous consent to have the statement that I was going to give, which includes several points that have been passionately and eloquently addressed by both my friends, Congressman Jim Moran and the distinguished senior Senator from Kentucky, put into the record. It would simply be repetitious, and I would hope that when the statements not actually given are compared, that mine will compare favorably, at least in terms of quality. I do not know what the distinguished junior Senator from West Virginia has in his statement, but I would like to have them judged on an equal basis.

Having said that and having said that I agree completely with these earlier comments, let me just point out that I first worked on these issues when I was Governor back in the early eighties. I worked with my distinguished colleague, Senator Warner, as well as other Members of the Senate and the House, in establishing the Commission, the Metropolitan Washington Airports Authority (MWAA), et cetera. Mr. Chairman, we have worked together over many years. You and I have had many discussions, private and public, about this issue. So we know our respective positions well.

The one point that I am not sure was sufficiently underscored is that to treat any one of the three airports as an individual entity, without considering them as a group, is a mistake. Recently, statistics were published indicating that the Washington metropolitan area is the second most congested area in the country—second only to Los Angeles. The MWAA is a prime example of regional cooperation. For all of the reasons given by the Congressman from the eighth district of Virginia and others, I believe, with all due respect, Mr. Chairman, that your legislation would be a distinct setback.

There has been a significant investment made not only by the airlines, but also by the Washington Metropolitan Airport Authority, to the tune of about \$2 billion, based on the assumption that the perimeter rule would remain extant and that the essential distribution of slots would be treated equitably and would not be increased. Because of those very significant investments, the system works.

Again, I would suggest to you that if we look at any one airport—i.e., National Airport—by itself, we are completely ignoring the entire regional concept that was set up and which has been so ably explained by others on this particular panel.

So I would urge you, Mr. Chairman, as you consider this particular piece of legislation, to look at the three airports as an example of regional cooperation designed to accomplish objectives larger than any single airport considered in isolation would be able to accomplish.

Thank you, Mr. Chairman.

[The prepared statement of Senator Robb follows:]

PREPARED STATEMENT OF HON. CHARLES S. ROBB, U.S. SENATOR FROM VIRGINIA

Mr. Chairman, thank you for providing me with this opportunity to testify about your legislation to improve service at high density airports. I welcome your efforts, but I remain concerned that the legislation before the committee could be harmful to consumers, as well as to the Washington area.

As You know, the capital region, is beset by serious transportation challenges—traffic congestion here is second only to Los Angeles. One way to address this problem is through regional action, and one of the best examples of such regional action is the Metropolitan Washington Airports Authority (MWA), which manages Dulles and National Airports. MWA has brought more than \$2 billion in investment and growth to these airports, and improved airline service to the region.

The airports run by MWA, National and Dulles, in conjunction with BWI, perform a crucial role, in providing air transportation to this area. The legislation before this a Committee threatens this service by threatening the perimeter rule, which shifts long-distance flights from National to Dulles and thereby maintains balance among our regional airports.

It is a mistake to look at any of these airports in isolation. They work in tandem. I believe elimination of the perimeter rule would destroy Dulles. As the 5th Circuit Court of Appeals noted in *City of Dallas v. FAA*, "in the absence of the perimeter rule, National would absorb long-distance flights over and above its already over-crowded capacity, while Dulles would wither on the vine."

Regional investments in Dulles, including more than \$1.6 billion in bonds issued by the Metropolitan Washington Airports Authority, would also suffer if the perimeter rule were changed.

Mr. Chairman, on a second issue, I am pleased that your legislation would not seek to increase the number of flights at National. I am still troubled, however, by the proposed change to the slot rule. First, I believe the change is premature. As you know, this past Friday the FAA granted a several exemptions to the slot rule at O'Hare and LaGuardia. These exemptions were made pursuant to 1994 action by Congress to improve competition, and I believe we should wait and see how this policy improves consumer options.

Second, it seems to me that relocating the slots could do more harm than good. As you know, of the 152 slots that were redistributed in 1985, only 13 remained in the hands of new entrants. So it's not certain that the redistribution would increase competition. There would be great harm, however, to incumbent airlines that have made substantial investments under the assumption that the current slot rule would remain in place.

On a final note, I would like to express my concerns about the impact of this legislation on U.S. Airways, headquartered in Virginia. This company already does business in many under-served communities: of the 43 communities served by U.S. Airways from National, 35 communities board less than 1% of the nation's total enplanements. But while this company serves consumers well, taking away its slots at National would be extremely unfair because of its multimillion dollar investment in National Airport operations. This investment was made with the expectation that the federal government would not take away any more, slots after 1985.

Mr. Chairman, thank you for permitting me to testify today and for your consideration of these important issues.

The CHAIRMAN. Thank you very much, Senator Robb.  
Senator Warner, welcome.

STATEMENT OF HON. JOHN W. WARNER, U.S. SENATOR  
FROM VIRGINIA

Senator WARNER. Thank you, Mr. Chairman, members of the committee.

Nineteen years ago, when I was privileged to come to the Senate, I joined this committee. I sat right where Mr. Bryan is seated. I have often thought where I might be sitting today had I stayed.  
[Laughter.]

The CHAIRMAN. We probably would not be having this hearing.  
[Laughter.]

Senator WARNER. Briefly, though, I speak from some modest base of knowledge on this, because one of the reasons I joined was the problems associated with National Airport. That was in 1979. And



then, of course, in 1981, we had the compact, which really laid the foundation for a peaceful coexistence between the two airports then under Federal ownership and control and the multitude of airlines they were serving.

Thereafter we decided we had to de-federalize these airports. We did it for one basic reason, and that is, that the Congress did not want to vote for the funds that were clearly needed to modernize these two airports. So, therefore, we appointed the Commission to study the problem. I was privileged to be a member of that Commission. Senator Sarbanes was on it, representing Maryland, and the former Governor of Virginia, Governor Holton, was the chairman.

We wrote our report. Our report was received by the then-Secretary of Transportation, and we moved toward the legislation. I was privileged to be one of the coauthors of that legislation. It passed. And it put in place not only the de-federalizing of these two airports, but a legislative structure on which many, many people placed great reliance.

First and foremost were the people who came forward to provide the funds for the modernization of these two airports. And I fear, with no disrespect to my former Naval colleague and dear friend, that if you were to go forward with these proposals, you will begin to destroy the basis on which funding today and funding tomorrow and a decade hence will be available to keep these airports modern. The perimeter rule is the key to it.

As to the slot question, a similar situation. Again, we started in 1981. We solved the problem. We moved ahead. And the airlines have come to rely upon the solidarity of this framework of laws, as it relates to the perimeter and the slots, by which they go to their stockholders and make the necessary investments that they must make in these two airports. This very fine modernization of National, which we are all sharing by virtue of our use, is made possible in part by those investments by the airlines and from the public sector where the funds have come to modernize.

So I do not think there are two airports anywhere in the country, and perhaps in the world, as Senator Robb said—and indeed, with BWI they are one major market, the greater metropolitan area of Washington, DC. Touch one, you touch all three. There is relative peace now, and I fear that if these proposals were ever to be enacted into law, we would have civil war break out and all of us would suffer.

Thank you, Mr. Chairman. I will submit my brief statement.  
[The prepared statement of Senator Warner follows:]

**PREPARED STATEMENT OF HON. JOHN W. WARNER, U.S. SENATOR FROM VIRGINIA**

Mr. Chairman, I am here to testify today on a matter of extreme importance to Virginia and many other states.

The Aviation Competition Enhancement Act of 1997 is an important review of the regulations of the airline industry. While this bill claims that it will enhance competition, the provisions it would impose are actually a first step toward regulation and would also undermine the carefully-built network of air service between National, Dulles and BWI airports established over a period of a decade.

Two areas are of primary concern to Virginia:

- (1) The proposals to weaken the current perimeter; and,

(2) Changes to slot controls agreed upon in 1965. Of particular concern to the Commonwealth of Virginia is how slot changes will impact US Airways headquartered in my state.

Mr. Chairman, kindly allow me to review what happened a decade ago.

I, along with Secretary Elizabeth Dole and former Virginia Governor Linwood Holton, worked to mold both a plan and the consensus to transfer ownership of the two airports, Washington National and Dulles, from federal control to a non-Federal authority.

Following a very tortuous and uncertain course through the legislative process, a bill was finally placed on President Reagan's desk for signature. In 1987, the Metropolitan Washington Airports Authority took control of the two airports.

This authority was chartered under an interstate compact to operate the airports and to raise the money necessary to modernize National Airport and Dulles.

Even prior to the Metropolitan Washington Airports Authority taking control of the two airports, the perimeter and High Density Rules at National Airport were in place. They were part of a compact between Congress and the aviation industry on the one hand, and area residents affected by the airport on the other. This compact was made in 1981 and it has served the National Capital region, the air traveler and the air transport industry very well.

This compact along with the transfer of the airports ended decades of dispute over noise level emanating from National Airport and permitted a \$1 billion capital development program by the Metropolitan Washington Airports Authority at both National Airport and Dulles. We can readily see the results of this capital investment with the opening of the modern National Airport terminal.

Now that the facilities are in place, should we in Congress modify these proposals which are the heart the 1981 compact and the 1987 transfer of the airports to a non-federal authority?

For the air traveler and the air transport industry, the High Density and Perimeter Rules at National Airport provide a balanced use of the region's airport resources. Since that balancing policy went into place, the availability of air service to the Nation's Capital has substantially increased as has competition.

For example, looking just at Dulles and National and leaving aside the substantial gains made by BWI, we find that since the balancing mechanism was put in place:

- The number of non-stop markets with competitive service has increased from 33 to 40—a 21% gain.
- The number of jet markets has increased from 16 to 22—a 27% increase.
- The number of transcontinental and Rocky Mountain markets served has increased from 6 to 10—a 67% improvement.

Mr. Chairman, if the Perimeter Rule unravels, the laws of airline economics will surely drive a change in the roles of both National Airport and Dulles. If that happens, many constituencies inside the current Perimeter Rule will lose their direct access to National Airport as their slots are taken by higher value transcontinental flights.

I have reviewed the proposed legislation concerning service to high density airports. While I share your view that competition is good, I must tell you of the great concerns this legislation raises for me, particularly because it would be so damaging to US Airways headquartered in my state of Virginia.

For almost sixty years US Airways has dedicated itself to establishing an East Coast network, investing in airports up and down the Coast. By doing so, it is a major carrier at Washington National Airport and LaGuardia, both slot controlled airports. After suffering many years of loss, and bringing itself out of the threat of bankruptcy, this legislation now threatens the very system US Airways hard to build and maintain, its most difficult years.

This is not the first time its operations have been threatened. In 1965, the Federal government, responding to the communities around the airport, stepped in and set slot controls at Washington National Airport, limiting forever the number of commercial operations at the airport. Carriers at the airport were assured that their investments would be protected, or "grandfathered" and they would be able to keep slots necessary to continue their operations.

In 1985, the government once again intervened, taking away 152 carrier slots at the slot-controlled airports with the promise that this was a one-time event and from that day forward all carriers would be subject to the buy/sell method of obtaining slots.

The proposal set forth in this legislation, not only betrays the assurances that the airlines were given, but possibly undermines the commitments US Airways and others have made in funding this outstanding new terminal. US Airways' intricate system of linking its service to and between communities throughout the eastern half

of the country through National Airport would be decimated. The very benefits and goals set out by Congress when it passed the airline deregulation bill in 1978 will be tossed to the wind.

Mr. Chairman, US Airways serves 43 communities out of National Airport and it is important to note that 35 of these communities board less than 1% of this country's total enplanements. These communities are the very cities you are saying would be helped by this legislation. This is just not true.

By taking away slots from the dedicated carriers at the airport, you threaten the very cities you say you want to help. I cannot sit idly by and watch a halfway attempt to re-regulate, threaten a company, its employees and a system as important to me as that provided by US Airways.

Mr. Chairman, I will vigorously oppose any attempt to pass this legislation, due to the concerns expressed previously in my testimony and also by Secretary Robert E. Martinez of the Virginia Department of Transportation.

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE GOVERNOR,  
Richmond, VA, October 28, 1997.

The Honorable JOHN MCCAIN,  
U.S. Senate,  
Washington, DC.

DEAR SENATOR MCCAIN: I address myself to you to express to you the concerns of the Commonwealth of Virginia regarding your proposal to authorize exemptions to the perimeter rule at Washington National Airport. If successful, I am concerned this could have damaging repercussions for the dynamics of air transportation throughout the metropolitan Washington area. More specifically, it could also damage the carefully developed network of international and domestic air service at Dulles Airport so important to Virginia.

The perimeter rule defines National Airport as a premier local and regional airport. The existence of the rule has spurred development of Dulles International as a vital and vibrant gateway for the entire metropolitan Washington area. This air service growth at Dulles has led to dramatic economic benefits in northern Virginia, including significant investments, by many small firms premised on the continued health of Dulles specifically. This is threatened by the changes being proposed in the perimeter rule.

Separately, beyond the issue of the perimeter rule, I believe the air service ramifications of changes to slots and the impact on existing carriers may not be fully appreciated. Also, the overall tone of the legislation appears re-regulatory. I do not believe this is in the best interests of the industry or the flying public and, knowing your clear statements and positions, I am convinced this was not your intent.

I respectfully urge that you reconsider your position on this legislation and retract it from further action.

Thank you for your attention to our concerns.

Sincerely,

ROBERT E. MARTINEZ,  
Secretary of Transportation.

The CHAIRMAN. Thank you very much, Senator Warner, Senator Robb. Thank you for being here.

I still remain hopeful that sometime we can work out something on this issue because in my view, and more importantly that of the Department of Transportation and the GAO, we continue to cause more expense to the average passenger, including my constituents from the State of Arizona, who fly back and forth from the Nation's capital. And until the time comes when you two can refute the objective findings of organizations such as the Department of Transportation and the General Accounting Office, then it is hard for me to accept your arguments. But I fully understand and appreciate them, and I look forward to continuing the dialog.

I thank you for being here on behalf of your constituents and your interests. I thank you very much.

Senator BRYAN. Mr. Chairman, might I make a very brief statement?

The CHAIRMAN. Sure, Senator Bryan.

**STATEMENT OF HON. RICHARD BRYAN, U.S. SENATOR  
FROM NEVADA**

Senator BRYAN. I thank the Chair. I would ask unanimous consent that the full text of my comments be included and made part of the record.

The CHAIRMAN. Without objection.

Senator BRYAN. I would simply make three points. Coming from a State in which tourism is our lifeblood and which in southern Nevada there are now 100,000 hotel rooms that have to be filled—soon 125,000—expanded airline service is of critical importance to our economy. So let me briefly say, Mr. Chairman, that I support your objective in repealing the perimeter rule, because I think that provides the potential of more service for my constituents at lower cost.

Second, hailing from a State that has had the experience recently of a startup airline, and recognizing their vulnerability to predatory pricing, I am supportive of your objective there as well. It is very, very difficult, notwithstanding the theoretical basis of deregulation, for a startup airline to penetrate the market if they are victimized by predatory pricing.

And, third, let me also say that with respect to the slot issue, gaining access to slots at major airports is absolutely critical for the survival. I am interested in working with you to make sure that those slots that are previously allocated, that may be underutilized or utilized in a manner which is not consistent with effective air service, be allocated to those startup airlines that provide additional service and who currently do not have the slot allocations that enable them to serve critical regional airports.

I thank you, Mr. Chairman.

[The prepared statement of Senator Bryan follows:]

**PREPARED STATEMENT OF HON. RICHARD H. BRYAN, U.S. SENATOR FROM NEVADA**

Mr. Chairman, thank you for calling this hearing today on this important subject. Nevada tourism is, of course, highly dependent on affordable and efficient air service. For the most part, deregulation of the airline industry has served Nevada's major tourism markets well. With over 100,000 rooms to fill in Clark County alone, and with thousands more in the pipeline, Nevada's economy cannot survive without sufficient air service.

In a completely competitive marketplace, Nevada's status as a premier international tourist destination should ensure that we are adequately served by commercial airlines. Too often, however, remaining barriers to competition constrain our ability to provide access to Nevada from numerous important potential markets, and I believe the Chairman's bill goes a long way to removing these impediments.

First, I fully support the Chairman's efforts to eliminate the artificial and outdated "perimeter rule" for Washington National Airport. While the perimeter rule may benefit communities inside its boundaries, it clearly discriminates against those of us outside the perimeter. There is simply no good reason to arbitrarily deny access to Washington National to markets such as Las Vegas, and while I would prefer a complete repeal of the perimeter rule, I support the Chairman's proposal to create a mechanism to provide exemptions to the rule as a reasonable compromise.

Second, the Chairman's legislation addresses an extremely important and troubling issue with his proposal related to predatory pricing. In Nevada, we have had some experience with the predatory pricing problem in relation to our new entrant carrier, Reno Air, who will testify here later today. Back in 1993, Reno Air attempted to begin service between Reno and Minneapolis, Northwest Airlines major hub. At the time, Northwest offered no Reno/Minneapolis service, but Reno Air believed the market had some potential. As soon as Reno Air announced its plans to

enter that market, however, Northwest not only matched Reno Air's planned Reno/Minneapolis schedule and fares, but also announced plans to "overlay" a large portion of Reno Air's route structure. Northwest's actions were clearly predatory, designed to take advantage of its much greater financial strength to punish Reno Air for attempting to enter Minneapolis. Secretary Peña, then Secretary of Transportation, agreed to intervene, and Northwest eventually backed off. Unfortunately, however, the Secretary's actions came too late, and Reno Air, faced with substantial losses, withdrew its Minneapolis service. The Chairman, in his legislation, correctly emphasizes the need for quick, decisive action by the DOT in cases of predatory pricing, and, while I believe the DOT does take allegations of predatory pricing seriously, I think the Chairman's predatory pricing proposal is appropriate.

Third, I am in general agreement with the Chairman's desire to eliminate the anti-competitive impacts in the four slot controlled airports. As many witnesses before this Committee have testified over the years, federal slot controls at these airports create significant barriers to entry to some of the most important markets in the nation, and the result is less service and higher prices. Reno Air has had some experience with this issue as well, and I am very grateful for the Department of Transportation's willingness to grant Reno Air exemptions from the slot rules, as recently as last Friday, to allow the airline to serve O'Hare. Service to O'Hare is an essential ingredient in Reno Air's success, since it provides access to both the important Midwest markets, as well as connecting flights to East Coast markets.

Despite the success for several airlines of the DOT's slot exemption process, the problem still exists, particularly for Washington National. While I am somewhat concerned by the Chairman's proposal to arbitrarily withdraw slots from incumbent carriers, I do believe we should take action to give new entrants greater access to the slot controlled airports. For example, I think we could take a closer look at the utilization of slots by incumbents, and the "use it or lose it" rules. While I am reluctant to take slots away from carriers if they are being fully utilized, I suspect that there is a fair amount of "gaming" of slots to meet the current "use it or lose it" rules. Reallocating under used slots to new entrants would provide new entrants access to these airports, while not necessarily lowering the incumbents total number of operations.

Mr. Chairman, I support the general goals of your legislation, and look forward to continuing to work with you on this important subject.

The CHAIRMAN. Thank you very much, Senator Bryan.

We will have our next panel, which is Mr. Patrick Murphy, Deputy Assistant Secretary for Aviation and International Affairs, Department of Transportation; and Mr. Gerald Dillingham, who is the Assistant Director, Transportation Issues, Resources, Community, and Economic Development Division of the U.S. General Accounting Office.

I am very sad to note that Mr. Anderson, who had been scheduled to testify here, has been taken seriously ill and, obviously, our sincere thoughts go out to him. And, Mr. Dillingham, I hope you will convey our sincere best wishes to Mr. Anderson in this terrible time. I thank you for being here.

Mr. Murphy, we will begin with you. Thank you to both of the witnesses for being here.

**STATEMENT OF PATRICK V. MURPHY, DEPUTY ASSISTANT SECRETARY FOR AVIATION AND INTERNATIONAL AFFAIRS, DEPARTMENT OF TRANSPORTATION**

Mr. PATRICK MURPHY. Thank you, Mr. Chairman, members of the committee. The Department appreciates this opportunity to discuss domestic airline competition today.

At the outset, let me state what we have said this year in testimony in both Houses of Congress—namely, that the Department continues to view that domestic airline deregulation has been a success; it has brought more competition, lower fares, and better service to the vast majority of our citizens. It has made our airlines

the most efficient and innovative in the world. It has served as the model for aviation liberalization that is now spreading rapidly worldwide. And it has seen safety increase and noise levels decline.

Nevertheless, Mr. Chairman, not all cities and regions of the country have shared equally in the full benefits of deregulation. And the Department is sensitive to its obligation to address impediments to competition and service where we can identify them.

The key competitive problem we identified in our multi-volume study of domestic airline competition in 1990 was high fares at hub cities dominated by one carrier. And that problem remains with us today.

The expansion of competition from new entrants has slowed almost to a standstill. Only one low-fare new entrant has started operation over the past 16 months, and no new application has been filed in 1997 to begin low-fare scheduled service. Although, Mr. Chairman, I will have to amend that, since last evening we did receive an application for a new low-fare airline to begin service from Portland, OR.

Of great concern to us over this 16-month period has been an increasing number of allegations of anti-competitive practices aimed at new competition, particularly at major network hubs. In addition to possible anti-competitive behavior, the Department believes that fares higher than appropriate may also be due to airport access restrictions such as slot controls, marketing barriers, and computer reservation systems that favor network carriers.

We also recognize that small- and medium-sized community issues are of concern to Members of Congress. Not unexpectedly, many smaller communities have benefited under deregulation and have seen their service increase. But others have experienced declines in the quality or quantity of service. The Department has been at work over the past year in dealing with small community issues, as well as competition problems.

Last week, we reported to Congress on our progress in addressing competitive issues this past year. The report spelled out four areas of activity. The first involves access to slots at our four high-density airports in New York, Chicago, and Washington. In 1994, Congress gave us the power to grant exemptions to the slot rule. In response to a GAO recommendation that DOT be more proactive in granting slot exemptions, the Department announced its intentions earlier this year to be more active and take competition into account when deciding on exemption requests from new entrants.

As of today, we have received six requests for 109 slot exemptions at Chicago O'Hare and seven requests for 55 slots at New York's LaGuardia Airport. After carefully considering the benefits and costs of adding service, last Friday we ruled on the first eight requests, and granted 10 slot exemptions to two new entrants at O'Hare and 21 slot exemptions to three new entrants at LaGuardia.

We will address the newer slot requests in the future. I must emphasize, however, that the number of new operations we can authorize through exemptions is limited because of the impact they can have on flight delays.

In addition to exemptions from the slot rule, the Department has begun a process of evaluating how effectively slots are currently

being used at each of our four slotted airports. There is reason to believe that air carrier slots are not always being put to their full and best use. The New York Port Authority has testified that slots at LaGuardia are not being effectively used and, as a consequence, some of their facilities are underutilized.

As we undertake this investigation, we will keep in mind the GAO recommendation to reallocate slots to improve competition, as well as the interest in reallocation expressed in draft legislation by you, Mr. Chairman, and by other members of the committee.

A second competitive area has been addressed through rulemakings involving computer reservation systems. We have proposed four new rules for computer reservation systems owners. With respect to anti-competitive practices, we have heard many complaints that large airlines are trying to drive out new competitors by matching or undercutting much lower fares offered by low-cost airlines, and by selling far more seats at these low fares than are being offered by the new entrants.

In those instances where low-fare competition has left the market, average fares generally increase above those charged prior to the new entry, and low-fare bargains virtually disappear. Both DOT and the Department of Justice have statutory authority to address this behavior. We have been working closely with the Department of Justice in developing an analysis of what constitutes predatory conduct in air transportation under both Departments' statutes.

Finally, on the competition front, we have undertaken consumer information activities, including the publication of a quarterly report on average airline fares paid in the top 1,000 city-pair markets. An important purpose of these reports is to provide civic leaders and airport managers who are trying to gage the effect of competition with information about how average fares at their cities compare with fares for other markets and cities. Cities can use this information as an aid in seeking out new competitors, and airlines can use it to see where the opportunities for added competition are greatest.

With regard to small community activities, Congress and the administration have worked together to maintain the effectiveness and efficiency of the Essential Air Service program. In fiscal year 1998, the program is funded at the 50 million level provided for by the Rural Air Service Survival Act. We are planning to fund all statutory Essential Air Service requirements established in 1987. Restoration of service will help communities to regain traffic and promote growth. We are already seeing renewed interest from air carriers to participate in the Essential Air Service program.

In addition to the actions DOT has taken, other ideas to assist domestic competition and small- and medium-sized community air service have been suggested. With regard to domestic competition, a number of proposals have surfaced, including complete elimination of the high-density rule, changes to the perimeter rule at Washington National Airport, and elimination of the Wright amendment which limits operations out of Dallas' Love Field.

These decades-old restrictions have been either legislated or recognized by Congress. They have, to some extent, evolved beyond their original intent to control aircraft operations. Environmental

and regional development concerns emerged each time changes to these restrictions are contemplated. We are of the view that it is up to Congress and local authorities to decide whether to modify these longstanding arrangements, such as just occurred in the case of Love Field.

We take this view while, at the same time, recognizing that airline deregulation is premised on the concept of open competition and the elimination of economic restrictions on the airline industry. Several studies done outside DOT demonstrated that slot restrictions lead to higher fares and less competition.

With regard to air service at smaller cities, we have discussed with congressional staffs the concept of legislative proposals that would set up demonstration projects to provide upgraded air service with some Federal support in the form of loans, loan guarantees, grants, and direct subsidies. The Department has had experience in a number of areas with demonstration projects. We find they can be most useful when conducted on a limited and selective basis.

Thank you, Mr. Chairman, for providing us with an opportunity to comment today.

[The prepared statement of Mr. Patrick Murphy follows:]

PREPARED STATEMENT OF PATRICK V. MURPHY, DEPUTY ASSISTANT SECRETARY FOR AVIATION AND INTERNATIONAL AFFAIRS, DEPARTMENT OF TRANSPORTATION

Thank you Mr. Chairman and Members of the Committee. I appreciate the opportunity to discuss domestic airline competition and service issues.

At the outset, let me state what we have said this year in testimony in both Houses; namely, that the Department continues to view domestic airline deregulation as a success that has brought more competition, lower fares and better service to the vast majority of our citizens, has made our airlines the most efficient and innovative in the world, has served as the model for the aviation liberalization that is rapidly spreading world wide, and has seen safety increase and noise levels decline.

Nevertheless, not all cities and regions of the country have shared equally in the full benefits of deregulation, and the department is sensitive to its obligation to address impediments to competition and service where we can identify them.

The key competitive problem we identified in our multi-volume study of domestic airline competition in 1990—high fares at hub cities dominated by one carrier—remains with us today. For several years we were encouraged that a market response to this problem in the form of new competition from low-fare point-to-point carriers was providing the necessary competitive discipline to eventually solve this problem. Since the beginning of 1993 there had been a steady stream of new entrants, many of which were using the low-fare approach pioneered by southwest airlines. In an April 1996 study we estimated that almost 40% of domestic passengers traveled in markets with low fare competition, saving consumers an estimated \$6.3 billion annually in airline fares.

However, beginning in May of 1996 when one of the most successful new entrant airlines, ValuJet, had a tragic crash, the expansion of competition from new entrants has slowed almost to a standstill. Only one low-fare new entrant has started operations over the past 16 months and no new applications have been filed in 1997 to begin low fare scheduled service. Of great concern to us over this 16-month period has been an increasing number of allegations of anticompetitive practices aimed at new competition, particularly at major network hubs. In addition to possible anti-competitive behavior, the Department believes that fares higher than are appropriate may also be due to airport access restrictions such as slot controls and marketing barriers such as computer reservation systems that favor network carriers.

We also recognize that small and medium sized community issues are a concern to Members of Congress. Not unexpectedly, many smaller communities have benefited under deregulation and have seen their service increase. But others have experienced declines in the quality or quantity of service. In most instances, the degree of change has corresponded to the disparity between service and demand at the time of deregulation: communities with high service levels but low passenger counts have



experienced the largest losses in service while others have fared quite well. It is difficult to attribute service changes after deregulation to any one single factor—fares, carrier replacements, population shifts, overall economy, etc.—because so many elements have changed simultaneously. In general, service at small communities shifted from infrequent, multi-stop service with jet and large turboprop aircraft to more frequent and, typically, nonstop service with smaller commuter aircraft.

The Department has been at work over the past year in dealing with small community issues as well as competition problems. Last week, we reported to Congress on our progress in addressing competitive issues over the past year. The report spelled out four areas of activity.

The first involves access to slots at the four high density airports in New York, Chicago and Washington. In 1994, Congress gave us the power to grant exemptions to the slot rule. In response to a GAO recommendation that DOT be more proactive in granting slot exemptions, the Department announced its intentions early this year to be more active and take competition into account when deciding on exemption requests from new entrants. As of today, we have received 6 requests for 109 slot exemptions at Chicago O'hare and 7 requests for 55 slots at New York's LaGuardia Airport. After carefully considering the benefits and costs of adding service, last Friday we ruled on the first 8 requests and granted 10 slot exemptions to two new entrants at O'Hare and 21 slot exemptions to three new entrants at LaGuardia. We will address the newer slot requests in the future. I must emphasize that the number of new operations we can authorize through exemptions is limited because of the impact they can have on flight delays.

In addition to exemptions from the slot rule, the Department has begun a process of evaluating how effectively slots are currently being used at each of the four slot-ated airports. There is reason to believe that air carrier slots are not always being put to their full and best use. The New York Port Authority has testified that slots at LaGuardia are not being effectively used and, as a consequence, some of their facilities are underutilized. As we undertake this investigation, we will keep in mind the GAO recommendation to reallocate slots to improve competition, as well as the interest in reallocation expressed in draft legislation by you, Mr. Chairman, and by other Members of Congress.

A second competitive activity has been addressed through rulemakings involving computer reservation systems. We have proposed four new rules for computer reservation system owners. One proposed rule involved the online preference used by the CRS owners, which gives connections between major carriers and their code-share partners a better display position. The proposed rule would require each system to offer a display without an online preference.

A second proposed rule involves the use of elapsed time in calculating the order in which to display airline service on a computer screen. Several smaller carriers had complained their flights were being given unfair treatment. The proposed rule would prohibit computer flight listing programs that neither use elapsed time as a significant factor nor give single-plane flights preference over connections.

A third proposed rule would require each system to use display criteria which are rationally related to consumer preference, on the theory that such a requirement would keep systems from offering unreasonable displays.

Finally, we proposed a rule that would prohibit a "parity clause" that forces each airline to buy as high a level of service from a system as it does from any other system, although we also suggested that a system's use of parity clauses against airlines owning or marketing a competing CRS system could promote CRS competition. Several small airlines had complained about this practice.

We have reviewed the public comment on the rulemakings in these four areas and expect to make decisions shortly on any final rules. We have also recently begun a complete examination of all the existing rules regulating computer reservation systems. We published an advance notice of proposed rulemaking last month asking for comments on whether and how computer reservation system rules should be changed. Given the substantial impact of computer reservation systems on competition, we plan to make completion of this re-examination a high priority.

With respect to anticompetitive practices, we have heard many complaints that large airlines are trying to drive out new competitors by matching or undercutting much lower fares offered by low-cost airlines and by selling far more seats at these low fares than are being offered by the new entrants. In those instances where low-fare competition has left a market, average fares generally increase above those charged prior to new entry, and low-fare bargains virtually disappear.

Both DOT and the Department of Justice have statutory authority to address this behavior. Justice enforces the Sherman Act, which prohibits predatory practices and other attempts to monopolize. DOT has the authority to prohibit business practices that constitute unfair methods of competition. DOT's authority is broader than the

Justice Department's, since DOT may prohibit conduct that does not violate the antitrust laws, as long as the conduct is similar to conduct that the antitrust laws do prohibit. We have been working closely with the Department of Justice in developing an analysis of what constitutes predatory conduct in air transportation under both our statutes.

As the result of detailed investigations over the past year, the Department believes it now has the understanding necessary to develop clear policy guidance for the industry, and to pursue individual enforcement action when that guidance is not followed. We are in the process of developing policy guidelines for dissemination. Those guidelines have taken some time to prepare since they must strike the difficult balance of proscribing unfair competition while doing nothing to stifle honest competition that accrues to the benefit of the public.

Finally, on the competition front, we have undertaken consumer information activities including the publication of a quarterly report on average airline fares paid in the top 1000 city-pair markets. An important purpose of the reports is to provide civic leaders and airport managers who are trying to gauge the effect of competition with information about how average fares at their cities compare with fares for other markets and cities. Cities can use this information as an aid in seeking out new competitors and airlines can use it to see where the opportunities for added competition are the greatest. We have also published in the Federal Register a request for comment on a consumer union petition for a rule that would require carriers to disclose to consumers the most recent average fares and lowest fares charged by the carrier for the route and class of service requested.

With regard to small community activities, Congress and the Administration have worked together to maintain the effectiveness and efficiency of the essential air service program. In fiscal year 1998, the program is funded at a \$50 million level provided for by the Rural Air Service Survival Act. We are planning to fund all statutory essential air service requirements established in 1987. Restoration of service will help communities to regain traffic and promote growth. We have nearly completed the process of upgrading service levels. Equally important is the fact that Congress removed the scheduled sunset date of September 30, 1996. We are already seeing renewed interest from air carriers to participate in the program.

The Department has also been active in using slot exemption authority for the benefits of small rural communities. In 1994, the Department granted 28 exemptions to a commuter carrier to serve seven small communities in the midwest to O'Hare. Earlier this year the Department granted an additional 20 exemptions for a carrier to serve five more small communities to O'Hare.

In addition to the actions DOT has been taking, other ideas to assist domestic competition and small and medium sized community air service have been suggested.

With regard to domestic competition, a number of proposals have surfaced including: Complete elimination of the high density rule, changes to the perimeter rule at Washington National Airport, and elimination of the Wright Amendment, which limits operations out of Dallas' Love Field. These decades' old restrictions have been either legislated or recognized by Congress. They have to some extent evolved beyond their original intent to control aircraft operations. Environmental and regional development concerns emerge each time changes to these restrictions are contemplated. We are of the view that it is up to Congress and local authorities to decide whether to modify these long-standing arrangements, such as just occurred in the case of Love Field. We take this view while at the same time recognizing that airline deregulation is premised on the concept of open competition and the elimination of economic restrictions on the airline industry. Several studies done outside dot have demonstrated that slot restrictions lead to higher fares and less competition.

With regard to air service at smaller cities, we have discussed with congressional staffs the concept of legislative proposals that would set up demonstration projects to provide upgraded service, with some Federal support in the form of loans, loan guarantees, grants and direct subsidies. The Department has had experience in a number of areas with demonstration projects. We find they can be most useful when conducted on a limited and selective basis.

In this context, the new generation of 50-seat regional jets will significantly change the air service landscape, especially at small- and medium-sized communities. But it is too early to tell what the smallest market size will be that will attract these aircraft. However, assuming that carriers would typically not enter a market with fewer than three round trips a day, and assuming a breakeven load factor of 50 percent, markets as small as 75 passengers a day in each direction may be able to support and maintain 50-seat jets.

Thank you, Chairman for providing us an opportunity to testify.

The CHAIRMAN. Thank you very much.  
Mr. Dillingham, welcome.

**STATEMENT OF GERALD DILLINGHAM, ASSISTANT DIRECTOR,  
TRANSPORTATION ISSUES, RESOURCES, COMMUNITY, AND  
ECONOMIC DEVELOPMENT DIVISION, U.S. GENERAL AC-  
COUNTING OFFICE; ACCOMPANIED BY DR. MARNIE SHAUL,  
ASSISTANT DIRECTOR, AVIATION COMPETITION WORK, U.S.  
GENERAL ACCOUNTING OFFICE**

Mr. DILLINGHAM. Mr. Chairman, members of the subcommittee—members of the committee. With me this afternoon is Dr. Marnie Shaul. She's GAO's assistant director in charge of aviation competition work.

As has been mentioned several times this afternoon, over the past decade, we've conducted numerous studies related to competition in the airline industry and we appreciate the opportunity to be here today to share the results of some of that work with you.

Overall, our work has consistently shown that airline deregulation has led to lower fares and better services for most air travelers. This is due largely to increased competition spurred by the entry of new airlines into the industry and established airlines into new markets.

It is also the case that some airports, located primarily in the east and upper midwest, have not shared equally in the benefits of deregulation. We found that a combination of factors has limited entry at these airports and adversely affected fares and services for consumers using them.

These factors include slower economic growth in these regions, the dominance of routes to and from these airports by one or two traditional hub and spoke airlines, and operating barriers such as limited takeoff and landing slots and restricted gate leases at key hub airports.

Additionally, marketing strategies such as building consumer loyalty through frequent flyer programs have fortified airline dominance at these airports.

Since a variety of factors have contributed to the problems that these communities experience, it is unlikely that a single action will be able to solve these problems. It will likely require a range of Federal, regional, local, and private sector initiatives.

I would now like briefly to discuss some of these initiatives that are under way at these various levels.

At the Federal level, we have recommended that DOT create a pool of slots by periodically withdrawing some slots that were grandfathered to the major incumbents at the four slot-controlled, high-density airports and redistributing them in a fashion that increases competition. This redistribution should take into account the investment made by the incumbent airlines at these airports.

We also suggested that if DOT chooses not to create a slot pool, the Congress might consider revising the legislative criteria governing DOT's granting of additional slots. This revision would be mindful of balancing the benefits of increased competition with the possible costs from increased congestion and community concerns about aircraft noise.

We have also suggested that the Congress might also wish to consider granting DOT the authority to allow exemptions on a case-by-case basis to the perimeter rule at National Airport when the proposed service will substantially increase competition.

In response to our report, DOT stated that it shares our concerns about the dominant position of some established carriers in some markets and indicated that it planned to be more accommodating to new entrant requests for slots, and I think we just heard some of the results of that.

DOT also said they would place more weight than previously on competition as a factor for granting slot exemptions to new entrants. Additionally, DOT has announced that it has taken other steps to enhance competition including beginning the process of evaluating how effectively slots are being used at the four slot-controlled airports and formulating a policy that will identify anti-competitive behavior that could be used as a basis for enforcement actions.

Although DOT did not act on our recommendation regarding the reallocation of slots, the chairman's draft legislation incorporates such a concept.

The act also seeks to improve competition through modifying the perimeter rule at Washington National Airport and requiring DOT to respond in a more timely manner to complaints of anti-competitive behavior.

The efforts of community leaders in the Southeast and Appalachia are examples of regional and private sector efforts to address air service concerns. They have agreed to periodically convene national air service roundtables to bring together Federal, State, and local officials as well as airline, airport, and business representatives to explore potential solutions to air service problems.

Some businesses located in communities dominated by one or two carriers with high fares or with infrequent service have formed a coalition that has held two conferences this year in Washington to discuss problems and solutions. Attendees at one of these Washington conferences endorsed several initiatives to increase competition similar to those in the proposed legislation.

From the private sector, economic forces appear to be creating opportunities for air carriers to use 50- to 70-seat regional jets. Regional jets can improve the quality of air service on existing routes when carriers substitute them for turbo props and can provide new services for routes that turbo props cannot economically serve.

Mr. Chairman, in the final analysis, deregulation of the airline industry has been a positive development for many but also has resulted in some negative, unanticipated consequences for some. The problem is multi-faceted; it will require a multi-faceted solution.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Anderson follows:]

PREPARED STATEMENT OF JOHN H. ANDERSON, JR., DIRECTOR, TRANSPORTATION ISSUES, RESOURCES, COMMUNITY, AND ECONOMIC DEVELOPMENT DIVISION, U.S. GENERAL ACCOUNTING OFFICE

Mr. Chairman and Members of the Committee: We appreciate the opportunity to testify on the air service problems that some communities have experienced since the deregulation of the airline industry in 1978. Airline deregulation has led to lower airfares and better service for most air travelers, largely because of increased

competition spurred by the entry of new airlines into the industry and established airlines into new markets. As we reported in April 1996, however, some airports—particularly those serving small and medium-sized communities in the East and upper Midwest—have not experienced such entry and thus have experienced higher fares and less convenient service since deregulation.<sup>1</sup> In an October 1996 report and testimonies earlier this year, we reported that certain industry practices, such as restrictive gate-leasing arrangements at a number of key hub airports in these regions, have contributed to these problems.<sup>2</sup> We concluded that the full benefits of deregulation have yet to be realized because of problems with access to certain airports and the cumulative effect of certain marketing strategies employed by established airlines. Our testimony today summarizes findings from our prior work on operating barriers and recent actions taken by the Department of Transportation (DOT) in connection with those findings. We will also discuss how the draft Aviation Competition Enhancement Act of 1997 and other initiatives seek to address those problems.

In summary:

- A combination of factors continues to limit entry at airports serving small- and medium-sized communities in the East and upper Midwest. These factors include the dominance of routes to and from those airports by one or two traditional hub-and-spoke airlines<sup>3</sup> and operating barriers, such as slot controls<sup>4</sup> and long-term exclusive—use gate leases at hub airports. In contrast, the more wide-spread entry of new airlines at airports in the West and Southwest since deregulation—and the resulting geographic differences in fare and service trends—has stemmed largely from the greater economic growth in those regions as well as from the absence of dominant market positions of incumbent airlines and barriers to entry.
- We have found that little progress has been achieved in lowering the barriers to entry since we first reported on them in 1990.<sup>5</sup> Slot controls continue to block entry at key airports in the East and upper Midwest. We recommended that DOT take actions to promote competition in regions that have not experienced lower fares as a result of airline deregulation by creating a pool of available slots by periodically withdrawing some grandfathered slots from the major incumbents and redistributing them in a fashion that increases competition. Moreover, we suggested that, absent action by DOT, the Congress may wish to consider revising the legislative criteria that govern DOT's granting slots to new entrants. We also suggested that the Congress consider granting DOT the authority to allow exemptions on a case-by-case basis to the perimeter rule<sup>6</sup> at National Airport when the proposed service will substantially increase competition.
- In response to our recommendations, DOT indicated that it would revise its restrictive interpretation of the legislative criteria governing the granting of new slots. On October 24, 1997, DOT announced its decision on some of the pending requests for slot exemptions and set forth its new policy on slot exemptions. DOT also is evaluating how effectively slots are being used and it is formalizing a policy that will identify anticompetitive behavior as a precursor for formal enforcement action.
- The proposed Aviation Competition Enhancement Act of 1997 addresses three barriers to competition: slot controls, the perimeter rule, and predatory behavior by air carriers.
- Increasing competition and improving air service at airports serving small- and medium-sized communities that have not benefited from fare reductions and/or improved service since deregulation will likely entail a range of federal, regional, local, and private-sector initiatives. Recent national and regional conferences are examples of efforts to pool available resources to focus on improving the airfares and

<sup>1</sup> Airline Deregulation: Changes in Airfares, Service, and Safety at Small-, Medium-Sized, and Large Communities (GAO/RCEN-96-79, Apr. 19, 1996).

<sup>2</sup> Airline Deregulation: Barriers to Entry Continue to Limit Competition in Several Key Domestic Markets (GAO/RCED-97-4, Oct. 18, 1996); Airline Deregulation: Addressing the Air Service Problems of Some Communities (GAO/T-RCED-97-187, June 25, 1997); and Domestic Aviation: Barriers to Entry Continue to Limit Benefits of Airline Deregulation (GAO/T-RCED-97-120, May 13, 1997). Related GAO products are listed at the end of this statement.

<sup>3</sup> These airlines include the nation's seven largest: American Airlines, Continental Airlines, Delta Air Lines, Northwest Airlines, TWA, United Airlines, and US Airways.

<sup>4</sup> To minimize congestion and reduce flight delays, the Federal Aviation Administration has since 1969 set limits on the number of operations (takeoffs or landings) that can occur during certain periods of the day at four congested airports: Chicago O'Hare, Washington National, and New York Kennedy and LaGuardia. The authority to conduct a single operation during those periods is commonly referred to as a "slot."

<sup>5</sup> Airline Deregulation Barriers to Entry Continue to Limit Competition in Several Key Domestic Markets (GAO/RCED-97-4, Oct. 18, 1996).

<sup>6</sup> Rules governing operations at New York's LaGuardia and Washington's National airports prohibit flights to and from those airports that exceed a certain distance.

quality of air service to such communities. Other steps—such as improving access to gates—may also be needed to further ameliorate current competitive problems.

**AIRLINE BARRIERS TO ENTRY PERSIST AND PREDOMINANTLY AFFECT COMPETITION IN THE EAST AND UPPER MIDWEST**

Our April 1996 report found that since deregulation, fares have fallen and service has improved for most large-community airports. Our report also found that substantial regional differences exist in fare and service trends, particularly among small- and medium-sized community airports. A primary reason for these differences has been the greater degree of economic growth that has occurred over the past two decades in larger communities and in the West and Southwest. In particular, we noted that most low-fare airlines that began interstate air service after deregulation, such as Southwest Airlines<sup>7</sup> and America West, had decided to enter airports serving communities of all sizes in the West and Southwest because of those communities' robust economic growth. By contrast, low-fare carriers had generally avoided serving small- and medium-sized community airports in the East and upper Midwest, in part because of the slower growth, harsher weather, and greater airport congestion in those regions.

Our review of the trends in fares between 1979 and 1994 for a sample of 112 small-, medium-sized, and large-community airports<sup>8</sup> identified 15 airports at which fares, adjusted for inflation, had declined by over 20 percent and 8 airports at which fares had increased by over 20 percent. Each of the 15 airports where fares declined was located in the West or Southwest, and low-fare airlines accounted for at least 10 percent of the passenger boardings at all but one of those airports in 1994.<sup>9</sup> On the other hand, each of the eight airports where fares had increased by over 20 percent since deregulation was located in the Southeast and Appalachia.

Our April 1996 report also revealed similar findings concerning the trends in service quantity and quality at the 112 airports. Large communities in general, and communities of all sizes in the West and Southwest, had experienced a substantial increase in the number of departures and available seats as well as improvements in such service quality indicators as the number of available nonstop destinations and the amount of jet service. However, without the cross-subsidy present under regulation, fares were expected to increase somewhat at airports serving small- and medium-sized communities, and carriers were expected to substitute turboprop service for jet. Over time, smaller and medium-sized communities in the East and upper Midwest had generally experienced a decline in the quantity and quality of air service. In particular, these communities had experienced a sharp decrease in the number of available nonstop destinations and in the amount of jet service relative to turboprop service. This decrease occurred largely because established airlines had reduced jet service from these airports since deregulation and deployed turboprops to link the communities to those airlines' major hubs.

We subsequently reported in October 1996 that operating barriers at key hub airports in the East and upper Midwest, combined with certain marketing strategies of the established carriers, fortified established carriers' dominance of those hub airports and routes linking those hubs with nearby small- and medium-sized community airports. In the upper Midwest, there is limited competition in part because two airlines control nearly 90 percent of the takeoff and landing slots at O'Hare, and one airline controls the vast majority of gates at the airports in Minneapolis and Detroit under long-term, exclusive-use leases. Similarly, in the Southeast and Appalachia, one airline controls the vast majority of gates under exclusive-use leases at Cincinnati, Charlotte, and Pittsburgh. Finally, in the Northeast, a few established airlines control most of the slots at National, LaGuardia, and Kennedy. As a result, the ability of nonincumbents to enter these key airports and serve nearby small- and medium-sized communities is very limited.

Particularly for several key markets in the upper Midwest and East, the relative significance of those operating barriers in limiting competition and contributing to higher airfares has grown over time. As a result, our October 1996 report, which

<sup>7</sup> Before deregulation, Southwest provided intrastate air service within Texas.

<sup>8</sup> Our sample of 112 airports included 49 airports serving small communities, 38 serving medium-sized communities, and 25 serving large communities. In 1994, these airports accounted for about two-thirds of all domestic airline departures and passenger enplanements in the United States. We defined small communities as those with a metropolitan statistical area population of 300,000 or less, medium-sized communities as those with a metropolitan statistical area population of 300,001 to 600,000, and large communities as those with a metropolitan statistical area population of 1.5 million or more.

<sup>9</sup> Of the 15 airports, 5 serve small communities, 5 serve medium-sized communities, and 5 serve large communities.

specifically addressed the effects of slot and perimeter rules, recommended that DOT take action to lower those barriers, and highlighted areas for potential congressional action.

### *Slots*

To reduce congestion, FAA has since 1969 limited the number of takeoffs and landings that can occur at O'Hare, National, LaGuardia, and Kennedy. By allowing new airlines to form and established airlines to enter new markets, deregulation increased the demand for access to these airports. Such increased demand complicated FM's efforts to allocate takeoff and landing slots equitably among the airlines. To minimize the government's role in the allocation of slots, DOT in 1985 began to allow airlines to buy and sell them to one another. Under this "Buy/Sell Rule," DOT "grandfathered" slots to the holders of record as of December 16, 1985. Emphasizing that it still owned the slots, however, DOT randomly assigned each slot a priority number and reserved the right to withdraw slots from the incumbents at any time. In addition, to mitigate the anticompetitive effects of grandfathering, DOT retained about 5 percent of the slots at O'Hare, National, and LaGuardia and in early 1986 distributed them in a random lottery to airlines having few or no slots at those airports.

In August 1990, we reported that a few established carriers had built upon the favorable positions they inherited as a result of grandfathering to such an extent that they could limit access to routes beginning or ending at any of the slot-controlled airports.<sup>10</sup> We also reported that while the lottery was successful in placing slots in the hands of some entrants and smaller incumbents, the effect on entry over the long term was disappointing, in part because many of the lottery winners subsequently went out of business or merged with an established carrier.

Recognizing the need for new entry at the slot-controlled airports, the Congress in 1994 created an exemption provision to allow additional slots for entry at O'Hare, LaGuardia, and Kennedy when DOT "finds it to be in the public interest and the circumstances to be exceptional."<sup>11</sup> In October 1996, we reported that the level of control over slots by a few established airlines had increased even further (see app. 1). We found that the exemption authority, which in effect allows DOT to issue new slots, resulted in little new entry because DOT had interpreted the "exceptional circumstances" criterion very narrowly. DOT had approved applications only to provide service in markets not receiving nonstop service. We found no congressional guidance, however, to support this interpretation. As a result, little new entry occurred at these airports, which is crucial to establishing new service in the heavily traveled eastern and midwestern markets.

In our 1990 report, we outlined the pros and cons of various policy options to promote airline competition. These options included keeping the Buy/Sell Rule but periodically withdrawing a portion of slots that were grandfathered to the major incumbents and reallocating them by lottery. Because the situation had continued to worsen, we recommended in our October 1996 report that DOT redistribute some of the grandfathered slots to increase competition, taking into account the investments made by those airlines at each of the slot-controlled airports. We also said that if DOT did not choose to do so, the Congress may wish to consider revising the legislative criteria that govern DOT's exceptional circumstances provision so that DOT could consider competitive benefits as a key criterion in deciding whether or not to grant slots to new entrants.

### *Perimeter Rules*

At LaGuardia and National airports, perimeter rules prohibit incoming and outgoing flights that exceed 1,500 and 1,250 miles, respectively. The perimeter rules were designed to promote Kennedy and Dulles airports as the long-haul airports for the New York and Washington metropolitan areas. However, the rules limit the ability of airlines based in the West to compete because those airlines are not allowed to serve LaGuardia and National airports from markets where they are strongest. By contrast, because of their proximity to LaGuardia and National, each of the seven largest established carriers is able to serve those airports from its principal hub.

<sup>10</sup> Airline Competition: Industry Operating and Marketing Practices Limit Market Entry (GAO/RCED-90-147, Aug. 29, 1990).

<sup>11</sup> FAA Authorization Act of 1994, P.L. 103-305, section 206. The number of flights at National Airport is further limited by federal law to address local concerns about noise. As a result of these additional limits, the Congress chose not to extend DOT's exemption authority to include National.

While the limit at LaGuardia was established by the Port Authority of New York & New Jersey, National's perimeter rule is federal law.<sup>12</sup> Thus, in our October 1996 report, we suggested that the Congress consider granting DOT the authority to allow exemptions to the perimeter rule at National when proposed service will substantially increase competition. We did not recommend that the rule be abolished because removing it could have unintended negative consequences, such as reducing the amount of service to smaller communities in the Northeast and Southeast. This could happen if mayor slot holders at National were to shift their service from smaller communities to take advantage of more profitable, longer-haul routes. As a result, we concluded that a more prudent course to increasing competition at National would be to examine proposed new services on a case-by-case basis.

#### *Long-Term, Exclusive-Use Gate Leases*

Our reports have also identified restrictive gate leases as another barrier to establishing new or expanded service at some airports. These leases permit an airline to hold exclusive rights to use most of an airport's gates over a long period of time, commonly 20 years. Such long-term, exclusive-use gate leases prevent nonincumbents from securing necessary airport facilities on equal terms with incumbent airlines. To gain access to an airport in which most gates are exclusively leased, a nonincumbent must sublet gates from the incumbent airlines—often at nonpreferred times and at a higher cost than the incumbent pays. Since our 1990 report, some airports, such as Los Angeles International, have attempted to regain more control of their facilities by signing less restrictive, shorter-term leases once the exclusive-use leases expired. Nevertheless, our October 1996 report identified several airports in which entry was limited because most of the gates were under long-term, exclusive-use leases with one airline.

Although the development, maintenance, and expansion of airport facilities is essentially a local responsibility, most airports are operated under federal restrictions that are tied to the receipt of federal grant money from FAA. In our 1990 report, we suggested that one way to alleviate the barrier created by exclusive-use gate leases would be for FAA to add a grant restriction that ensures that some gates at an airport would be available to nonincumbents. Because many airports have taken steps since then to sign less restrictive gate leases, we concluded in our 1996 report that such a broad grant restriction was not necessary. However, to address the remaining problem areas, we recommended that when disbursing airport improvement grant moneys, FAA give priority to those airports that do not lease the vast majority of their gates to one airline under long-term, exclusive-use terms.

#### DOT'S RECENT ANNOUNCEMENTS INDICATE WILLINGNESS TO INCREASE COMPETITION

In response to our October 1996 report, DOT stated in January of this year that it shared our concerns that barriers to entry limit competition in the airline industry. The agency indicated that it would include competitive benefits as a factor when determining whether to grant slots to new entrants under the exceptional circumstances criterion. DOT also committed to giving careful consideration to our recommendation that it create a pool of available slots and periodically reallocate them, but that it might choose to pursue alternative means to enhancing competition. On October 3, 1997, DOT announced that it would soon publicly issue a number of initiatives aimed at enhancing competition. Two of those initiatives related to identified problems: providing access to high-density airports through slot exemptions and investigating allegations of anticompetitive behavior.

As of mid-October, DOT had 174 requests for slot exemptions, most of which were for slots at O'Hare and LaGuardia airports. On Friday, October 24, 1997, DOT issued its decision on some of the requests for slot exemptions and set forth its new policy on slot exemptions, which has been expanded to take into account the need for increased competition at the slot-controlled airports. Because some in government and academia believe that slots at some airports may be underutilized, DOT is also evaluating how effectively slots are being used at these airports.

Finally, DOT has expressed concern about potentially over-aggressive attempts by some established carriers to thwart new entry. According to DOT, over the past 16 months, there has been an increasing number of allegations of anticompetitive practices, such as predatory conduct, aimed at new competition, particularly at major network hubs. DOT is formulating a policy that will more clearly delineate what is acceptable and unacceptable behavior in the area of competition between major carriers at their hubs and smaller, low-cost competitors. This policy is to indicate those factors DOT will consider in pursuing remedies through formal enforcement actions.

<sup>12</sup> The Metropolitan Washington Airports Act of 1986 (P.L. 99-591, sec. 6012).



AVIATION COMPETITION ENHANCEMENT ACT OF 1997 WOULD ADDRESS  
[www.libtool.com.cn](http://www.libtool.com.cn) IDENTIFIED ISSUES

The proposed Aviation Competition Enhancement Act of 1997 has been drafted to promote domestic competition. The legislation targets three of the barriers to competition: slot controls, the perimeter rule, and predatory behavior by air carriers.

The bill would create a mechanism by which DOT would increase access to the slot-controlled airports. Under the draft legislation, where slots are not available from DOT, the Department would be required to periodically withdraw a small portion of the slots that were grandfathered to incumbent airlines and reallocate them among new entrant and limited incumbent air carriers.<sup>13</sup> Slots would not be withdrawn if they were already being used to serve certain small- or medium-sized airports. This provision of the proposed bill is consistent with the spirit of our recommendation on slots and provides a good starting point for the debate about how such a process should be used and its potential impact. Our recommendation recognized the sensitivities with withdrawing and reallocating slots from one airline to another by stating that such a process should take into account the investments made by the established airlines. The proposed bill does not specify details about how DOT should implement this process. Because of the sensitivities in making any reallocations, DOT would need to carefully consider balancing the goals of increasing competition with fair treatment of affected parties.

The bill also addresses the perimeter rule by requiring the Secretary of Transportation to grant exemptions to the existing 1,250 mile limit at Washington National Airport under certain circumstances. There are legitimate concerns about whether or not exemptions to the rule would negatively affect the noise, congestion, and safety at Washington National, as well as air service to and from different communities within the perimeter. The bill addresses these concerns by specifying that only stage 3 aircraft (aircraft that meet FAA's most stringent noise standards) can be used and that exemptions would not be allowed to affect the number of hourly commercial operations at National Airport. The bill further specifies that the Secretary certify that whenever exemptions to the rule are granted, noise, congestion, and safety will not deteriorate relative to their 1997 levels. The Secretary must similarly certify that air service to communities within the existing perimeter will not worsen.

Finally, the bill also contains a provision intended to limit the time that DOT has to respond to complaints of predatory behavior. As we noted previously, because of its concerns in this area, DOT plans to announce a policy that will more clearly delineate the factors it will consider in pursuing remedies through formal enforcement actions.

RANGE OF INITIATIVES WILL LIKELY BE NEEDED TO ADDRESS AIR SERVICE PROBLEMS

Because a variety of factors has contributed to higher fares and poorer service that some small- and medium-sized communities in the East and upper Midwest have experienced since deregulation, a coordinated effort involving federal, regional, local, and private-sector initiatives may be needed. In addition to DOT's planned actions and the proposed legislation, several public and private initiatives that are currently under way, as well as other potential options, are discussed below. If successful, these initiatives would complement, and potentially encourage, the increasing use of small jets by the commuter affiliates of established airlines—a trend that has the potential for increasing competition and improving the quality of service for some communities.

*Regional, State, and Local Initiatives*

Recognizing that federal actions alone would not remedy their regions' air service problems, several airport directors and community chamber of commerce officials in the Southeast and Appalachian regions recently initiated a coordinated effort to improve air service in their regions. As a result of this effort, several members of Congress from the Southeast and Appalachian regions in turn organized a bipartisan caucus named "Special Places of Kindred Economic Situation" (SPOKES). Among other things, SPOKES is designed to ensure sustained consumer education and coordinate federal, state, local, and private efforts to address the air service problems of communities adversely affected since deregulation. Two SPOKES-led initiatives under way include establishing and developing a Website on the Internet and convening periodic "national air service roundtables" to bring together federal, state,

<sup>13</sup> The proposed bill specifies that generally not more than 10 percent of incumbents' grandfathered slots could be withdrawn initially and not more than 5 percent every 2 years thereafter. It generally defines a limited incumbent carrier as one holding no more than 12 slots at an airport.

and local officials and airline, airport, and business representatives to explore potential solutions to air service problems. On February 7, 1997, the first roundtable was held in Chattanooga, Tenn.

A key conclusion of the February 1997 roundtable was that greater regional, state, and local efforts were needed to promote economic growth and attract established and new airlines alike to serve small- and medium-sized markets in the East and upper Midwest. Suggested initiatives included (1) creating regional trade associations composed of state and local officials, airport directors, and business executives; (2) offering local financial incentives to nonincumbents, such as guaranteeing a specified amount of revenue or providing promotional support; and (3) communities' aggressive marketing efforts to airlines to spur economic growth.

#### *Private-Sector Initiatives*

To grow and prosper, businesses need convenient, affordable air service. As a result, businesses located in the affected communities have increasingly attempted to address their communities' air service problems. Perhaps the most visible of these efforts has been the formation of the Business Travel Contractors Corporation (BTCC) by 45 corporations, including Chrysler Motors, Procter & Gamble, and Black & Decker. These corporations formed BTCC because they were concerned about the high fares they were paying in markets dominated by one established airline. BTCC held national conferences in Washington, D.C., in April and October 1997 to examine this problem and explore potential market-based initiatives. At BTCC's October conference, attendees endorsed the concepts of (1) holding periodic slot lotteries to provide new entrant carriers with access to slot controlled airports, (2) allowing new entrants and other small carriers to serve points beyond Washington National's perimeter rule, and (3) requiring DOT to issue a policy addressing anticompetitive practices, and specifying the time frames within which all complaints will be acted upon.

#### *Regional Jets*

In addition to public and private-sector initiatives, the increasing use of 50- to 70-seat regional jets is improving the quality of air service for a growing number of communities. Responding to consumers' preference to fly jets rather than turboprops for greater comfort, convenience, and a perceived higher level of safety, commuter affiliates of established airlines are increasingly using regional jets to (1) replace turboprops on routes between established airlines' hubs and small- and medium-sized communities and (2) initiate nonstop service on routes that are either uneconomical or too great a distance for commuter carriers to serve with slower, higher-cost, and shorter-range turboprops.

Because regional jets can generally fly several hundred miles farther than turboprops, commuter carriers will be able to link more cities to established airlines' hubs. To the extent that this occurs, it could increase competition in many small- and medium-sized communities by providing consumers with more service options.

Mr. Chairman, this concludes our prepared statement. We would be glad to respond to any questions that you or any member of the Subcommittee may have.

## APPENDIX I

Percentage of Domestic Air Carrier Slots Held by Selected Groups

Airport/Holding entity	1986	1991	1996
<b>O'Hare:</b>			
American and United .....	66	83	87
Other established airlines .....	28	13	9
Financial institutions .....	0	3	2
Post-deregulation airlines .....	6	1	1
<b>Kennedy:</b>			
Shawmut Bond, American, and Delta .....	43	60	75
Other established airlines .....	49	18	13
Other financial institutions .....	0	19	6
Post-deregulation airlines .....	9	3	7
<b>LaGuardia:</b>			
American, Delta, and US Airways .....	27	43	64
Other established airlines .....	58	39	14
Financial institutions .....	0	7	20
Post-deregulation airlines .....	15	12	2

Percentage of Domestic Air Carrier Slots Held by  
www.libtool.com.cn Selected Groups—Continued

Airport/Holding entity	1986	1991	1996
<b>National:</b>			
American, Delta, and US Airways .....	25	43	59
Other established airlines .....	58	42	20
Financial institutions .....	0	7	19
Post-deregulation airlines .....	17	8	3

Notes: Numbers may not add to 100 percent due to rounding. Some airlines that held slots have gone bankrupt, and as a result, financial institutions have acquired slots.

Source: GAO's analysis of data from FAA.

The CHAIRMAN. Thank you very much.

Mr. Murphy, in August 1990, the General Accounting Office suggested that several options could open up the slot market and promote new entry. In its October 1996 report, GAO again stated that "little new entry has taken place at the high-density airports."

What actions has DOT taken since 1990 to implement the recommendations made by the GAO that would increase competition.

Mr. PATRICK MURPHY. Mr. Chairman, the activity I would point to are the very few slot exemptions we granted after legislation in 1994, which allowed us to grant exemptions when we found there were extraordinary circumstances. We did that for some essential air service communities and for, I believe, one or two new entry carriers.

But we used that authority very sparingly because of the word "extraordinary" in the legislation. When GAO recommended to us last fall that we be more aggressive, we took them up on that request and I think that our decision on Friday, where we granted 31 slot exemptions, demonstrated that we're serious about that and we intend to deal with the remaining applications in the near future.

The CHAIRMAN. And yet, you refuse to take a position on the perimeter rule?

Mr. PATRICK MURPHY. Our position on the perimeter rule, as it was on the Wright amendment, is that that's a matter, we think, for the Congress and the local community to decide.

The CHAIRMAN. Mr. Dillingham, GAO stated that the perimeter rule is a barrier to competition. How would modifying the perimeter rule enhance competition?

Mr. DILLINGHAM. Mr. Chairman, I think I'd like to say, first, that the perimeter rule is only one barrier to competition and there are others.

But if the perimeter rule was in fact modified, it would provide an opportunity for more service from National—non-stop service. It would also perhaps provide an opportunity for a low-cost service and bring more passengers and more travelers into the system.

The CHAIRMAN. Thank you.

Senator Ford.

Senator FORD. I was just trying to retain a thought here, Mr. Chairman. I'll write it down.

Thank you, Mr. Chairman.

Mr. Murphy, in response to questions following the May 13 hearing, DOT stated that a reallocation had "a number of drawbacks." DOT also stated that, "Taking slots from incumbents will eliminate

service and this would have to be weighted against potential competitive benefits." DOT also said that, "it is not clear that a large withdrawal is called for given the fact that each city involved has an alternative service at airports that are not slotted—slots-controlled."

Do you still agree that taking slots from one group of carriers and giving them to another will eliminate service to a number of markets that could be disruptive?

Mr. PATRICK MURPHY. I do agree with that statement, Mr. Chair—Senator.

Senator FORD. I like that. That's all right, we'll get it back. [Laughter.]

We'll get it back.

Mr. PATRICK MURPHY. We intend, Senator, to conduct in the coming months a full analysis of how slots are being used to determine—if there was some reallocation—where the impacts would fall. But clearly, this—in some ways—would be a zero sum game. That is, slots would come from some markets to be added to others. There would be winners and losers.

Senator FORD. As there are today?

Mr. PATRICK MURPHY. Yes, sir.

Senator FORD. Now, has the Department or GAO, Mr. Dillingham, done a risk analysis to determine which carriers and communities are most likely to lose slots and service to the slot-controlled airports?

Mr. DILLINGHAM. No, sir, we have not done such a risk analysis.

Senator FORD. Mr. Murphy, do you know?

Mr. PATRICK MURPHY. No, Senator, and that's what we intend to do in the coming months.

Senator FORD. So it's important for us to have this information to find out who will be hurt and who will be helped and how it spreads. Does DOT today tell carriers where they can use each of the slots they now hold? Would you need to regulate the use of slots to protect small and medium communities as proposed under this bill?

Mr. PATRICK MURPHY. We do not tell carriers where to use their slots today. Should there be a reallocation, there would have to be some restrictions on the way those slots are distributed or they would end up being bought and sold and back to the original owners.

Senator FORD. So, if you get a slot today, are we going to say to these carriers that now hold them, "We're going to take your 9 a.m., slot, we're going to take your 12 noon slot, and we're going to take your 5 p.m. slot and give it to a new carrier." Is that kind of what we're thinking about here?

Mr. PATRICK MURPHY. Yes, Senator. If we did a reallocation, we would have to take them from different time blocks and the carriers who lose them would then have to rearrange their schedule and determine which markets would lose air service.

Senator FORD. Are you telling me all those that are coming into Cincinnati that I drive 2 hours to get to an airplane to fly to Cincinnati, if they take a slot away that—from—that would come Cincinnati to Nashville, they'd take another slot and maybe put it into Atlanta and come up here and I would be denied the ability to fly

in there as a kind of a feeder system and I would lose out on the flight here? [tool.com.cn](http://www.tool.com.cn)

Mr. PATRICK MURPHY. Yes, sir. That could happen.

Senator FORD. Another reason I should be against this bill. [Laughter.]

There's an economic impact here that bothers me, and I'm not sure I understand all of it, but we went through protracted effort here to try to work out Dulles, National, and BWI. We built the toll road or road out—FAA did—to Dulles, and that was the east-west coast and international and we did everything to put that airport together and improve it.

And then when we went to all the trouble to work out the Metropolitan Washington Airport Authority, they invested a whole lot of money. And when they built or rebuilt National, the major airlines there as I understand it have signed a contract with National to underwrite bond issues and to pay for that.

Now, if we take a slot away, who is still responsible for underwriting that—the major airlines that are there, or this new entrant that we are so anxious to give a slot? Will they now underwrite the bond issue?

Mr. PATRICK MURPHY. I don't know the answer to that question, sir.

Senator FORD. Well, my judgment is that a new airline—a small airline—would not have the financial ability to write it and Metropolitan Washington Airport Authority would be crazy as hell to get them to sign in place of Delta or American or Continental or US Airways. You wouldn't do that, would you?

Oh, never mind. I'll answer it for you. No, you wouldn't. [Laughter.]

Mr. PATRICK MURPHY. Thank you, Senator.

Senator FORD. Yeah. So we've got a real economic problem here that goes well beyond slots because people have invested time and money in the whole area. This is just not one the perimeter rule fits into, and it's all based on we invested \$2 billion in three airports and they're working well.

Southwest is not up here jumping up and down to get slots at National. They're going to BWI. They're not in the high-density airports. They're not in the ones that are going to have to underwrite bonds, you know? And so they're low cost.

But we've got the majors that are here, and now we're trying to drive them out. It just doesn't make sense to me. I've got the caution over there and I know it may mean two things, so—[Laughter.]

Mr. Dillingham, real quick, given DOT's action last Friday, do you still believe that DOT is interpreting its authority as it relates to the ability to issue slots exemptions too narrowly?

Mr. DILLINGHAM. No, sir. I mean, they clearly—

Senator FORD. That's good enough, that's good enough. [Laughter.]

Thank you, Mr. Chairman.

The CHAIRMAN. Would you like to finish your answer, Mr. Murphy?

Mr. DILLINGHAM. I was just—

Senator FORD. That was a good answer, Mr. Chairman! [Laughter.] [www.libtool.com.cn](http://www.libtool.com.cn)

Mr. Dillingham, do I—

Mr. DILLINGHAM. Do I have to get into this, Mr. Chairman?

Senator FORD. Oh, no you don't, either, no! [Laughter.]

Mr. DILLINGHAM. I'm fine. [Laughter.]

The CHAIRMAN. Senator Gorton.

Senator GORTON. Mr. Murphy, a recent Salomon Brothers report stated that market share analysis shows that at the 50 largest U.S. airports there is "an unprecedented degree of concentration in the airline industry." Do you agree with that?

Mr. PATRICK MURPHY. I don't disagree with that. We tend to look at competition in terms of city pairs and not airports, but I don't disagree with that, Senator, no.

Senator GORTON. But there are a number of those 50 largest airports into which market entry is still relatively free, are there not?

If you started a new airline, at many of those airports, you could find slots, landing times, and so on.

Mr. PATRICK MURPHY. Most of those airports. But for four airports, they are all open, Senator.

Senator GORTON. Now let's take a comparison. You know, right here, we have one slot-controlled airport and two that are not. Are prices for passengers distinctly more competitive for flights out of Dulles and BWI than they are out of National?

Mr. PATRICK MURPHY. It's my understanding that prices are distinctly more competitive out of BWI, where a number of low-fare carriers have chosen to operate.

Senator GORTON. But not out of Dulles?

Mr. PATRICK MURPHY. National has the highest fares in the region, so Dulles would fall in the middle.

Senator GORTON. Now, how about—in New York, you have two with controls and one without. Is there any price distinction between Newark and the two slot-controlled airports?

Mr. PATRICK MURPHY. Yes, there is, Senator. LaGuardia is the highest-fared airport in the New York region, Newark would be the lowest-fared airport, and JFK would fall in the middle.

Senator GORTON. So I guess it would be fair to say that however much competition we want with respect to airlines, it's going to be hard to create that competition when a new entrant can't get into a particular airport or it can only get into it at a particularly expensive level. Is that not correct?

Mr. PATRICK MURPHY. Yes, it is. Our preference would be, Senator, of course, that all of the airports in a perfect world would be wide open to all of the airlines.

Senator GORTON. But we're never going to have that, are we?

Mr. PATRICK MURPHY. No, we're not, sir.

Senator GORTON. And so what we're attempting to do is to see if we can bring at least a degree more competition into those crowded airports. Is that right?

Mr. PATRICK MURPHY. We would like to see that, yes, sir.

Senator GORTON. And isn't the control of any airport, the control of the landing slots at any airport that's, say, in excess of 50 percent by a single airline, automatically non-competitive?

Mr. PATRICK MURPHY. We have many hub airports around the country where one carrier has more than a 50 percent market share whether or not there are slots involved. We find that where that happens, the fares are higher. We would like to set some guidelines in the future for what is the appropriate form of competition at those hub airports, because some of the new low-fare carriers tell us it is very difficult to go in and compete at those airports because of business practices of the dominant hubbing carriers.

Senator GORTON. That brings me to my next question. I assume that you're familiar with the situation in Mobile, that as soon as ValuJet announced that it was pulling out, Delta jacked its rates up very substantially?

Mr. PATRICK MURPHY. I'm very familiar with that, Senator, yes.

Senator GORTON. You doing anything about that?

Mr. PATRICK MURPHY. We have not done anything about that except that we have used that as one of the examples that we and the Justice Department have analyzed as we are attempting to develop these written guidelines for what is the appropriate kinds of competition.

That involves service from a dominated hub—Atlanta—to a spoke point and a low-fare airline and is the kind of behavior that we are concerned about.

The CHAIRMAN. And haven't—excuse me to interrupt. Haven't you seen a number of other practices the exact same way, like out of Chicago?

Mr. PATRICK MURPHY. We have seen quite a few other examples of that.

Senator GORTON. Well, now, has DOT ever actually taken action against that kind of practice?

Mr. PATRICK MURPHY. We have never taken a formal action. No formal action has been taken since airline deregulation in 1978 against that kind of behavior.

We have jawboned informally with carriers on a number of occasions. I was tallying up last night—we have had 14 visits from low-fare carriers in the last 2 or 3 years complaining about behavior of the major carriers.

In about half of those instances, we have either done a formal investigation or jawboned the major carrier. But we have never taken a formal action or set down a formal investigation. We have also referred several of these to the Justice Department, and they have looked at them informally.

Senator GORTON. And how long on average does it take—does it require you to take even informal action?

Mr. PATRICK MURPHY. A full, informal look at these has taken close to a year. In one instance, we collected 13 boxes of material and computer tapes to analyze the pricing practice of the major carrier. We are using that information in developing these guidelines that we've talked about.

Senator GORTON. Well, now, let's take those particular 13 boxes. As a result, did you take any informal action that had any positive impact on passenger fares and flight availability?

Mr. PATRICK MURPHY. We took no formal action. I think the major carriers are aware of our and the Justice Department's inter-

est in this. Whether our interest has had any effect on their behavior, I do not know, but we intend to use all of that information to set down these guidelines. Then, with those guidelines, should we see behavior that we think is inappropriate, we would set the matter down for a formal investigation before an administrative law judge.

Senator GORTON. One more question. I understand that at the Business Travel Contractors Corporation's airline competition summit, you were reported to have said that the Department, working in conjunction with the Justice Department, is nearly ready to discipline at least one major airline for predatory practices directed at a smaller competitor. Has either department followed through yet on your prediction and if not, why not, and when?

Mr. PATRICK MURPHY. I think that prediction is not precisely what I had said, Senator. We used the information we gathered in that full investigation and what I was trying to suggest or predict is based on that. We would soon be issuing our guidelines, and in the future, should we see such similar behavior with those guidelines in place, we would go against a major carrier.

Senator GORTON. So discipline against at least one major airline is not imminent?

Mr. PATRICK MURPHY. No, it is not imminent.

Senator GORTON. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Rockefeller.

Senator ROCKEFELLER. Thank you, Mr. Chairman. It strikes me, I would just say to our witnesses, that this really is an absolutely hugely important debate and that some may look upon it as arcane—perimeter rules, preemptory pricing, predatory pricing, etc.

But it's really about the future and the nature of our country.

Mr. Dillingham, the GAO did a study in 1996 and you indicated that medium and large airports—well, you basically said that the West and the Southwest have benefited from deregulation. Communities in the Southeast and along the Appalachian corridor have suffered most.

What I get—the point I guess I want to make is that this isn't just sort of about putting legislation together. This is really about the future of States. I can remember up until deregulation that American and Eastern and United regularly serviced the airports of West Virginia. And, you know, West Virginia isn't as big as a lot of other States, but those of us who represent it feel pretty strongly about it.

It's fighting desperately now, and successfully for the first time, to kind of re-establish itself. Its unemployment rate is the lowest it's been in 25 years or more.

But what has not changed and what's not improved—in fact, what's gotten worse—is the service into that State. And it's come to the point now where—other than the announcement of a couple of weeks ago of American Eagle on direct jet involving Chicago and Charleston, which is just one city—there is only one jet that flies in and out of West Virginia, period, during the course of a day, and that comes from Pittsburgh.

I'm all embarrassed to have to say that, just as I was embarrassed and shocked when United, Eastern, and American were all gone from West Virginia within a month of deregulation. So one is



led a little bit, and my capitalist credentials are at least reasonable, to think so. [Laughter.]

To think that what we're really talking about here—although US Airways has stayed with us. I mean, thank God for them. They've stayed with us. They are the only jet service in and out. They are the only people that give us commuter service—that airlines are going to go where they can make the most money. And airlines—you know, that's what most people would do, whether they're selling bread, O'Henry candy bars, or air service.

And that places like West Virginia, which are the majority of this country, I think—you know, the rural. Even New York State's—half New York City and the rest of it's all rural and all suffering. New York City isn't.

There has to be an equity—I mean, the position of the Congress, it seems to me, should be that we have to try and create some kind of a uniform transportation system.

The interstate highway system, interestingly, doesn't sort of go around West Virginia because it's small and doesn't have enormous resources—well, actually, we have Bob Byrd, which is a very large resource. [Laughter.]

This started back in the fifties, and in a sense, philosophically do you not think there ought to be in the airline industry some sense of national, if not parity—at least areas of the country being able to shout at each other from the haves to the have-nots? I mean, is that not a desirable goal for public policy in transportation?

Mr. DILLINGHAM. I think, philosophically, I could not disagree with that, and I am counting on DOT, as they start to evaluate how slots are given out and how service is provided to the whole country, that there is a sort of balancing of the need for competition as well as the need for a national airways system.

Senator ROCKEFELLER. You know, the National Science Foundation traditionally gave most of their money to the major universities to do studies and research, and some of us prevailed upon them to start something called EPSCOR, which is designed to put a section of their money into good second-level universities that are not up there with Stanford and Harvard, but where there is good work that is going on.

That was a specific statement in terms of research and development, which is also a form of informational transportation, to level the playing field at least into a rolling hills situation.

I guess I just really fear, Mr. Chairman, that—I work very, very hard in economic development in West Virginia. I spend a lot of my time on it. I spend probably more time on it than I do on some issues around here. I have to, and I like to—that all of it means nothing.

It all comes to naught when Dupont, for example, says to us they have to get 1,000 people down to Houston every month for training, this, that, and the other thing, and we cannot get them down there, or that a Japanese company looking at us say we have to be able to this and this vis-à-vis Chicago and Los Angeles, whatever, and we cannot do it.

In other words, the whole effort of trying to get States like West Virginia and other rural States going will fail, will be smashed down, unless we level out this policy in some form, which means

we cannot do certain things some people want us to do, and we have to do certain things that are not being done.

That is all I want to say for the moment, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Rockefeller.

Senator Burns.

Senator BURNS. I have just a couple of questions.

Mr. Murphy, in the DOT 1990 Competition Task Force report, the Department pointed out that after 5 years only 10 percent of the slots that were allocated to a competitive carrier were held by that carrier—the rest of them had been sold or traded or put into mergers or some way or another. Given this experience, what is different today about that situation?

Mr. MURPHY. The slots today still operate under the buy-sell rule, where the carriers are free to move them around. As that study suggested, they are not moving around very much at this time. That is, the situation has come close to equilibrium. At most of these airports the carriers who own the slots are holding onto them. They lease them out for a short time period if they have some surplus, but the slots have tended to stabilize.

Senator BURNS. But what we are talking about in this piece of legislation—you are talking about mandatory release of 10 percent of your slots. Has anything changed in the airline industry now from 1990 that would save those people who would have access to those slots? Would they be any more susceptible for success than they were in 1990?

Mr. MURPHY. I think the bill reflects the concern that new entrants, the newer airlines who bring the price competition to the industry, are having no success in getting into these airports, that the buy-sell rule is not working because the slots are not sold to those carriers at any price, and, therefore, this is an attempt to bring some of those very competitive, low-cost airlines into these airports.

Senator BURNS. In dealing with when one airline pulls out and you have only a single carrier—and you said in the dialog that you had with Senator Gorton—did you look at Billings, MT to Denver?

Mr. MURPHY. Denver, not being a slotted airport, we did not look at it in the context of slots. We did look at all of the city pairs in the country in terms of competition when we did that study.

Senator BURNS. You know, when you represent a constituency sort of like Senator Rockefeller's, we are at the end of the line. Nothing starts until the next morning. They just get there and sit there all night and go back, and that is the last we see of them until that night again.

I have some serious reservations whether that serves—even though Senator Rockefeller is coming at it from a different point of view. I have a question as to, would that serve my State in the reallocation of 10 percent of the slots, especially in the West, where we have very few slotted airports?

I was really surprised, and you might enlighten me on this—of the 50 top airports, only four do not have slots available now for a competitive airline. Is that a correct statement?

Mr. MURPHY. If I understand that, of the top 50 airports only four do not have the opportunity to have service into the slotted airports. That sounds accurate, and the fact that—it is the perim-

eter rule, I presume, would be the reason why all 50 do not have operations into slotted airports.

Senator BURNS. Well, I will have to let that soak through this thick head. That is all the questions I had. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Burns.

Senator Bryan.

Senator BRYAN. Thank you very much, Mr. Chairman.

Mr. Murphy, let me ask you a question. I thought I understood Senator Warner—after reciting the history of how we got here from where we were in 1978—one of his arguments was, if this legislation passes or we change the perimeter rule, that somehow it will undermine the basis for financing improvements in airports.

I must say, I do not understand that. Let me ask you if you can help me on that, or do you agree with that part of his argument?

Mr. MURPHY. I am not sure I fully understand the Senator's point, either, although Senator Ford did make the point that carriers at the airport now own many of the instruments. The Senator may be referring to the fact that as we bring in other airlines outside the perimeter they would not have been involved in the original investment planning for the airport. That would be speculating.

Senator BRYAN. Would it be true—and I realize you are not taking a position on the perimeter, but if the perimeter rule were provided additional flexibility, the exemption as Senator McCain is proposing, does that in any way threaten any of the airport improvements that are currently underway?

Mr. MURPHY. In my opinion, I find it hard to see how a limited exemption from the perimeter rule would undermine the viability of these airports.

Senator BRYAN. Mr. Murphy, let me thank you. You have been helpful to Reno Air in terms of providing the exemption for the slots at Chicago. That has been critical. You folks have also been helpful—I wish you had been a little bit more timely in terms of responding to a predatory practice that was visited upon Reno Air several years ago.

Let me ask you, with respect to predatory practices you have the ability to take formal action. You have not, over the years, done so. What is the formal action that you could take if you chose to do so?

Mr. MURPHY. Senator, under the statute—the Federal Aviation Act—the Department of Transportation has broader authority than the Justice Department. Whenever we find there are unfair practices or deceptive practices we can move against a carrier in order to cease whatever behavior it is.

Senator BRYAN. So cease and desist authority is available?

Mr. MURPHY. Yes, it is.

Senator BRYAN. I do not know all the circumstances, and my time does not allow, but what has been the rationale for not taking more aggressive action to cease and desist? You have been helpful, as I indicated. I want to thank you.

Unfortunately, the help came a little bit late, as you know, and indeed, the overlay that was done made it impossible for Reno Air to continue the service that they were providing from Minneapolis to Reno, service that previously had not been provided by North-

west, and they ultimately did not have the staying power. But what is the rationale for not being more aggressive and simply saying, "Look, cease and desist," if you find there is indeed such a predatory practice?

Mr. MURPHY. Senator, until about 2 years ago we found that our informal jaw-boning behavior was normally sufficient to modify the behavior of some large carriers. In the last 2 years or so we have not been as successful with jaw-boning, and that is why we are looking now at a more formal approach to some of this behavior.

Senator BRYAN. You know this well, but when you look at the slots held by airlines that entered the market after deregulation in these four markets, in 1986 at O'Hare you had six by post deregulation airlines; in 1996, one. Now, that may be prior to the action you took this past Friday. At Kennedy it was 9 in 1986, now it is 7 in 1996; at National 17, today it is 3.

That is a trend line that I am sure you would agree is very troubling.

Now, let me ask you, with respect to the slots, there is the ability to provide additional slots, is there not, and if not, which airports do you not have the ability to provide additional slots?

Mr. MURPHY. When Congress gave us the exemption authority to authorize service above the slot rule, we received that power for three airports—O'Hare, LaGuardia, and Kennedy. We did not receive that authority for National Airport, so we are able to do these exemptions as we did on Friday, only for those three, not on National.

Senator BRYAN. And as you examine National, are you satisfied that there is no potential capacity to expand the slots? I recognize that you did not get the authority, but when you look at the traffic pattern and compare it vis-à-vis Kennedy, LaGuardia, and O'Hare, is there the ability, if Congress chose to do so, without impairing safety, to provide additional slots?

Mr. MURPHY. We believe there is. We did a study on the slot rule in May 1995. We studied all four airports, and we projected that if the slot rule were eliminated at all four airports, National would receive the largest increase in service. We projected a 20-percent increase in operations at National Airport with no impact on safety.

Senator BRYAN. With no impact on safety.

And finally—the light is about to go on—with respect to these slot allocations, some of the carriers paid nothing for these slots initially. Some have later paid something. In looking at the slot utilization, is there a pattern that you can ascertain that some carriers who have slots are really underutilizing them, so that, in effect, they are trying to protect the slot but not provide the full range of service that slot would provide?

Mr. MURPHY. That is a concern that was brought to our attention by the Port Authority of New York, which claimed that more and more slots are being flown with commuter aircraft and that now approximately, I believe, one-third of all the slots at LaGuardia are flown by commuter aircraft. Enplanement levels at LaGuardia are down several million passengers per year, and there is a concern that carriers are holding onto these slots and putting commuter

flights in their place. That is why I said that we want to do a study of how the slots are being used today.

Senator BRYAN. And do you have the authority—if you, in fact, can validate that practice, which you suspect—under existing law to say to such carrier we are taking that slot away, that this is obviously a subterfuge and you are not fully utilizing that, and assign it to another carrier?

Mr. MURPHY. I do not believe we could do that. We do have some authority to do some redistribution, but if we found there was a wholesale—babysitting is the term used—a babysitting of these slots, I think we would report back to Congress on what we found.

Senator BRYAN. You are saying to us, just so I am clear for the record, you do not believe that even if you found the practice to exist, that you would have the authority to take corrective action by, in effect, reallocating that slot to, say, a startup carrier?

Mr. MURPHY. I think that if we were going to do a wholesale reallocation, Senator, we would want to come back to this committee and let you know what we have found, because this would be a very serious move on our part.

Senator BRYAN. Mr. Chairman, I do not want to abuse the time, but I want to be clear that when I was talking about a wholesale, I did not use the word wholesale revision. My question is, if you found under the current system that some slots, not all, were subject to this practice of babysitting, as you have characterized it, and only with respect to those slots, do you currently have the authority to divest those slots to the allocated carrier and reassign them, or would you require legislative authority from us to do so?

Mr. MURPHY. I think if we found the problem was limited enough we could amend the rules without legislation, but if we found the problem is systemic we would come back and, as I said, talk to the committee about legislation. But we can, through the rulemaking process, do some reallocating of slots.

Senator BRYAN. Mr. Chairman, thank you.

The CHAIRMAN. Thank you, Senator Bryan. Senator Wyden.

Senator WYDEN. Thank you, Mr. Chairman.

My friend from Nevada was talking about wholesale reallocation, and I really wanted to start by saying, if we did not have this jerry-built system on the books right now and we were starting over, and you were asked how to promote competition in rural areas, what would you recommend, Mr. Dillingham?

Mr. DILLINGHAM. That is a very broad question, Senator Wyden.

I think that basically all airlines at the fundamental level should be given an opportunity to compete, that there should not be any artificial barriers to competition, and where there are operating barriers, or sort of management practices that act as barriers, they need to be addressed. We need to, as someone said earlier, start with a level playing field.

Senator WYDEN. Mr. Murphy, do you want to add anything to that?

Mr. MURPHY. No. I think I am satisfied with that answer, Senator.

Senator WYDEN. I will tell you—and it is a broad question, but, frankly, I think we are at the point where we do need some sys-

temic answers. I think all of these proposals, frankly, bump up against the laws of the market.

I mean, the laws of the market are inexorable, and that is that there are not going to be, under this kind of a system, a lot of folks tripping over themselves to go into areas where they cannot make a lot of money. So I am still evaluating, for purposes of the chairman's bill, my position, but I will tell you that I think it is time to look at whether more comprehensive changes are needed.

Now, for purposes of today and helping me as it relates to our area, Mr. Dillingham, what is your sense about what will happen to rural communities and service around rural communities around the hub if you auction off slots at a high density airport? Have you all looked at that?

Mr. DILLINGHAM. We have not looked at that, but there is sort of a general notion that is associated with that. I think, again, it was mentioned earlier that when we make changes as are being suggested, there will be winners and losers, and as far as some of the smaller, middle-sized communities, it is going to be a combination of what the Congress can do as well as what the community itself can do in terms of generating interest in serving that community.

Senator WYDEN. Part of this also looks like something of an intramural battle between the big interests, Chicago to New York and the Eastern Seaboard, and the question that I asked you that I gather the GAO has looked at specifically is more likely to be what our constituents approach us on.

So I would hope that you all would, as we go forward with consideration of this legislation, take a look at it, because I very much want to know what is going to happen to services to rural areas around the hub if you auction off these slots, and I think we need that information to tackle this issue.

A last question for purposes of this round, my State does not have that many direct flights to high density airports. We have a lot of rural communities. What do you recommend for a State like Oregon to get more service?

Mr. DILLINGHAM. The DOT witness talked about the essential air service for rural areas, and we mentioned in our statement, again, that there has to be an incentive for airlines to serve these communities as well. So the combination of essential air services as well as what the business community and the local area can put together with the local authorities is going to be at least part of the answer to receiving services.

Senator WYDEN. I guess my sense is, that on that end of the telescope the question of a Government program is going to be pretty limited, and as we look at this system we have to come up with something that is going to design more market incentives along the line of systemic reform to get this done.

Suffice it to say, we have done a lot of work with you all and we will want to continue that, and look forward to working with you on some of these questions.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Wyden.

I just want to mention, when we reauthorized the aviation bill last year that Senator Ford and I and many others worked on, in-

cluding you, that we did double funding for essential air service up to \$50 million. And if that is not enough, then I think a lot of us would be agreeable to more, but at the same time, I think that people are going to go where there is the money.

How much obligation do we have to provide rural services, which Senator Rockefeller describes in such articulate fashion, and how much are we going to take out of that? I think \$50 million was a significant increase.

Senator FORD. We found a way to pay for it, Mr. Chairman, with the overflight fees that we are not now charging, and I think we have reallocated those a little bit.

Mr. Dillingham said—just 60 seconds—Louisville is a medium-sized airport, and they do not have the kind of flights that we would like to have there, so they went out and encouraged the business community to buy advance tickets in the tens of thousands of blocks, if you come in here and fly to so-and-so, which was an incentive to get an airline in and to move, and one of them worked and another one did not. They still did not make it.

But the second one is doing well now and increasing the flights, and having a little business background, Mr. Chairman, one thing bothers me considerably. We have these major airlines at National, for instance—and we excluded National because of noise and environmental problems and all that, at the insistence of the cooperation of the three airports, and so the major airlines when they went into the new National facility underwrote by long-term contracts bond issues, et cetera, and fees, pay all the increased fees and all that sort of thing.

If we go in and take slots away from them, or eliminate their ability to make money, are we not, in fact, vitiating that contract?

You all look at each other and you know, I have looked at us doing that, too, and they have made their judgment and predicated their future based upon what we have done. And now we are turning around to take the slots away at 10 and noon or 3 or 5, whatever might be the good ones, and they make less money, yet they have still signed a contract. Are we not vitiating the contract with National?

Mr. DILLINGHAM. Senator Ford, I think that what we are recommending involves very few slots. We are talking about a situation where we do not envision the kind of percentage we are talking about and the modifications we are talking about as being something that would, in fact, eviscerate the contracts that have been let.

Senator FORD. It just seems to me, though, that you are taking away the possibility of making funding which their contracts signed with National was predicated on, that type of future, and then something that they have no control over, and that is us, and then we make this judgment to cause them to give up slots, which are maybe good slots, reasonably good slots, whatever, and their possibility of income declines, and yet they are still required under the contract to pay National.

As we would say down in West Kentucky, something about that ain't right.

Mr. MURPHY. The only thing I would add, Senator, is that the carriers who hold these slots know that they are not a property,

that there is the potential even in our rules for some taking of those back, so that there is some risk that they bore.

The CHAIRMAN. They belong to the taxpayers, and they are used by the airlines.

Senator FORD. But we are requiring them in your bill, Mr. Chairman, to bid on it, and they are going to pay for them, and then that goes into the trust fund.

The CHAIRMAN. Most of them have not been paid for that they have now.

Senator FORD. But many of the airlines have used those slots as assets. We have been letting them buy and sell back and forth for a long time, and a lot of airlines have invested a great deal of money. They have used that as assets to increase their ability to borrow because it is an asset. They have paid for it, and then when you lose that asset under this, on the basis that they knew it was coming, well, that is something that disturbs me. I do not know how to get around that, but it bothers me that you have made a judgment.

The CHAIRMAN. This legislation does not withdraw the ones that were paid for.

Senator FORD. I understand that, but you are going to withdraw some that are now being used.

The CHAIRMAN. Part of the problem was described by the witness about the babysitting of these slots as well.

Senator FORD. I understand that, and they are giving them to commuters that are going out into the smaller communities, and they are not generating the type of customers that the Port of New York thinks they ought to have.

The CHAIRMAN. So something ought to be done about it.

Senator FORD. Absolutely, but are you going to eliminate the commuters? Hell, that is what I live on, are commuters. I do not have the big airlines to fly with out of my community. We are lucky to get a 19-passenger sometimes. It is a Baron.

The CHAIRMAN. Let me just say—well, Senator Rockefeller.

Senator ROCKEFELLER. I will be very, very brief. First of all, let me just say very sincerely I think you both have been wonderful witnesses. Both of you have been very, very good. You are obviously fair and obviously trying to come at this with a balanced point of view, and I respect that. To be a little bit maudlin about it—I mean, you're really good examples of really good public servants, and I congratulate you for that.

Nevertheless, you have both in your testimony talked about winners and losers. I am looking, as I indicated, at only U.S. Airways, and that is a very good plus for West Virginia, but only of those that used to be there, they remain.

If they lose—some of their slots are withdrawn for one reason or another, or if anybody's slots are withdrawn for one reason or another, is it not likely that on the food chain that it will be the smaller communities that will be the first to lose and suffer?

Mr. MURPHY. Senator, as one who has toured the airports in your State and discussed air service problems with most of your communities, yes, one would have to make the judgment that the smallest routes, the thinnest routes, would be the first ones the carriers



would give up if they were to lose slots, and West Virginia certainly has some thin air routes operating into the Washington area.

Senator ROCKEFELLER. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much. I would like to thank the witnesses.

Our next panel is Mr. David Ralston, chairman of the board of directors, Metropolitan Washington Airports Authority; Mr. Charles Goodwin, vice president, International Trade and Transportation, Rochester Chamber of Commerce; and Mr. Thomas Tait, executive director, Nevada Commission on Tourism.

All three of you are welcome here. I would like to tell the next panel, we will probably not be able to do the next panel because the hour is going to grow too late. I guess we will have to reconvene the hearing within the next couple of days, or early next week.

Senator FORD. Excuse me, Mr. Chairman, but the other witnesses, are they local and would not have to travel back, or travel here?

The CHAIRMAN. Let us see, it is U.S. Air, Arlington—well, one is from Chicago and another one from Reno. We will do the best we can. I do not see how we can get through all the opening statements and all the questions, but we will try it.

Mr. Ralston, before we begin, you still have reserved parking for Congress and judges and diplomats at Washington National Airport?

Mr. RALSTON. That is correct, Mr. Chairman.

The CHAIRMAN. You very cleverly changed the signs to just say reserved, is that right?

Mr. RALSTON. Without agreeing with your characterization, Mr. Chairman, we still have it, and it does indicate reserved.

The CHAIRMAN. Please begin with your statement.

**STATEMENT OF DAVID RALSTON, JR., CHAIRMAN OF THE BOARD OF DIRECTORS, METROPOLITAN WASHINGTON AIRPORTS AUTHORITY; ACCOMPANIED BY JAMES A. WILDING, GENERAL MANAGER AND CEO**

Mr. RALSTON. Thank you, Mr. Chairman. My name is David Ralston. I am chairman of the board of directors of the Airports Authority, and we appreciate, Mr. Chairman and members of the committee, the opportunity to appear here today and testify on these important matters.

I note that with me is Mr. James A. Wilding, our general manager and CEO, certainly known to the committee. We commend the Chair for your commitment to maintaining the limit on the number of operations at National Airport at its present number of 62 per hour overall and 37 air carrier operations per hour.

It is a critical goal, recognized by the General Accounting Office in the 1996 report previously mentioned, and is a core element of the position of the Airports Authority on the proposal that has been submitted by you to the Congress.

We have submitted written comments, and my remarks will be limited to the major points in the written testimony.

I begin by noting that the Airports Authority, in conjunction with Baltimore-Washington International Airport, well serves the needs

of the Washington Metropolitan Region. I emphasize the regional market for the Washington Metropolitan Area because, with respect to aviation competition in our area, we submit that that is the correct competitive focus in light of the service from three proximate airports offering a wide variety of service options and fares.

I note that low fare services are growing nicely at Dulles, are very strong at BWI, and do provide some price discipline in the overall market. For example, Delta Express, recently introduced in the last several months, has been thriving with respect to service to limited points in Florida, and prior to the unfortunate tragedy in Florida, ValuJet—now AirTran—was serving the market very well at over 100,000 passengers a month at Dulles.

I think it is significant to observe that in the wake of that tragedy we did not lose that traffic, as it was picked up by low carrier options of other airlines. And with ValuJet/AirTran return to the market, they have returned to approximately a 50,000 passenger per month level at Dulles.

I note that Atlantic Coast Airlines will be introducing regional jet service in the near future. I cannot assure Senator Rockefeller that it will be to Charleston, but we will be having regional jet service, which is a major improvement in our service to the market.

I also note that our market is changing and developing. Twenty years ago, National carried the majority of air traffic in the region. Today, it is rather evenly balanced between National, Dulles, and BWI, and Dulles is now well-located with respect to a major segment of our market. Indeed, it is more proximate to the major work centers of Tysons Corner, Reston, Herndon, and the Route 28 corridor in Virginia than is National Airport.

Significantly, in 1996 only 34 percent of the passengers originating at National Airport were from the District of Columbia, and only 15 percent were from the District of Columbia originating at Dulles.

The current slot and perimeter rules are the product of long and difficult negotiations spanning the course of 20 years, involving the Congress, the airlines, the Department of Transportation, and the Washington community designed to avoid overuse of National Airport.

We submit that within the framework established by these operational rules we, in conjunction with BWI, provide the Washington market with a wide menu of service and fare choices, relatively few flight delays, and balanced groundside transportation that works well and has resulted in a relatively favorable community environment for our airports.

Are improvements possible? Of course, but in the main the service and fare choices appear to be responsive to market demand.

As indicated in our written comments, the Airports Authority does have concerns about the proposed legislation. We are concerned that the current language on the slot rule should accomplish the chairman's expressed intent of maintaining the existing limit on operations, and we will offer language to clarify that issue.

I point out, Mr. Chairman, we are not questioning the intent of the legislation as you have most recently expressed it. We want to assure that the bill's language accomplishes the goal of maintaining the current limit.

As to the proposed slot rule changes, while we believe that the issue of reallocation of slots is a matter of national aviation policy and thus properly reserved to the Congress and to the Department of Transportation, we are concerned that the reallocation will result in strong pressures from communities and airlines to expand the number of slots to prevent the reallocation from causing a net loss in overall service to their communities. We consider that a very real risk, and if that were to be a proposal, we would have to vigorously oppose it with respect to National Airport.

I again recognize that the current bill would maintain the limit on National Airport.

It should be clearly recognized by the committee that reallocation of air carrier slots, while simultaneously continuing the current number of total air carrier operations at 37 and commuter operations at 13 per hour, will result in a decreased number of operations from National to some communities with existing service and thus may result in a decline in the overall level of service to those communities from National and possibly from the region.

We are concerned that a likely response to that outcome will be a demand for increased operations at National, as I mentioned, and we would have to oppose such a proposal.

As to the perimeter rule, the key advantage of the present rule is its uniformity, and we believe, therefore, its fairness. All cities the same distance from Washington are treated the same, and it is a distance virtually all carriers can serve with existing equipment. It is a standard that is well-known, applies equally to all, and can be relied upon within the industry.

We do not favor exemptions to the perimeter rule at National because we believe that one or two flights to the west coast from National will not have a material impact on competition in the overall Washington market. To the contrary, it could create a protected nonstop market for the favored carrier in the exempted market. More important, such exemptions will inevitably lead to competitive demands for further exemptions.

Mr. Chairman, I see my time is up, and would end my remarks, but I am certainly available for questions.

[The prepared statement of Mr. Ralston follows:]

PREPARED STATEMENT OF DAVID RALSTON, JR., CHAIRMAN OF THE BOARD OF DIRECTORS, METROPOLITAN WASHINGTON AIRPORTS AUTHORITY

Good afternoon, Mr. Chairman and Members of the Committee, I am David Ralston, Chairman of the Metropolitan Washington Airports Authority. I am pleased to have the opportunity to participate in this hearing, and commend the Chairman for his efforts to facilitate more economical and efficient air travel for citizens all across the country. The Airports Authority believes, with you, that domestic airline competition is an important contributor to better service and lower fares for the majority of consumers in communities of all sizes.

As most Committee Members are aware, until 1987 Washington National and Washington Dulles International Airports were operated by the Federal Aviation Administration (FAA). They were then the only two commercial airports operated by the Federal government. In 1987 the two Airports were leased to the Authority under a 50 year lease.

Budget constraints had, for many years prior to 1987, prevented the Department of Transportation (Department or DOT) and the FAA from improving the facilities at the Airports, which were sorely in need of modernization and expansion to meet the region's increasing demand for air transportation services. Since 1987, the Metropolitan Washington Airports Authority has worked diligently on a \$2 billion capital improvements program that has already made major improvements to both Dul-

les and National Airports. The metropolitan Washington area is fortunate to have two air carrier airports to serve it. Both are needed and both are being well used. Dulles Airport has grown into a major international airport, and is currently the third largest East Coast gateway to Europe, as well as one of the East Coast's leading air cargo centers. Meanwhile, National is fulfilling its role as a short and medium haul airport. These facilities now serve more than 28 million passengers per year, and are a critical link in the air transportation system of this country. Notably, in August 1997 monthly passenger traffic at Dulles exceeded traffic at National for the first time.

From a business perspective, our performance has been very solid. Our Capital Development Program, initiated in 1988, remains within budget, even as construction continues. Our financial management has been conservative and realistic, and the market has recognized the strength of our management. Our revenue bond issues, which now total over \$1.6 billion, have been sold at very competitive interest rates. Moreover, our bond rating is as high as any stand-alone airport in the country—Moody's rates us Aa3, and Standard & Poor's and Fitch rate us AA-. Only six stand-alone airports in the Nation have credit ratings equal to ours.

The Airports Authority recognizes that our airports provide the two primary aviation gateways to the Nation's capital for passengers from across the country and around the world. To us, there is no division between the national interest and the local interest. In fact, we serve more passengers from outside the region and from with it Authority decisions are made with regard to the best interests of airport users, and therefore serve the national interest as much as local concerns.

Let me now address the issues underlying the proposed legislation, namely the "High Density Rule" and the "Perimeter Rule." The High Density Rule limits by hour the number of scheduled aircraft arrivals and departures at National Airport. The Perimeter Rule limits the length of nonstop flights by air carriers at National to 1,250 miles. Much debate has occurred over many years concerning whether the Federal government should continue to apply these two rules at National Airport when most other airports are not similarly restricted.

The Authority believes that the nature of, and the demand for, service at National Airport and the presence of Dulles Airport as an integral part of the region's airport system, makes continued application of both rules consistent with Congressional efforts to protect the national interest. In fact, both rules have been in place at National Airport for over three decades, where they are a critical part of the operating environment. The two rules have helped to achieve a balanced air service pattern at National and Dulles airports, as well as Baltimore Washington International Airport (BWI), a balance that we believe would not have been achieved had they not been in place. The High Density Rule limit of 37 scheduled air carrier operations (take-offs and landings) per hour at National assures a level of demand that the air traffic control system can handle. The Perimeter Rule allows stable and reasonable service patterns to develop at both airports.

Additionally, the rules have helped us to plan for and build the major facility improvements at National and Dulles Airports with the confidence that our framework for projecting air traffic and passenger demand is sound. As you know, we dedicated the new terminal at National Airport last July. We are proud of it and hope it will serve the Nation's capital for many years. The size of the new terminal was influenced by the regulations we are discussing today. In our planning, we assumed the continuation of the High Density Rule, and to some extent the Perimeter Rule, for the foreseeable future. Both rules also influence the use and expansion at Dulles Airport, including the recently expanded the Dulles Terminal and the nearly completed midfield terminal.

Both the High Density Rule and the Perimeter Rule played a significant role in the enactment of the legislation transferring the Airports from the federal government to the Authority. The legislation, which fixed the number of slots for air carriers at National, and set the nonstop perimeter at 1,250 miles, represents an agreed-upon balance of Federal, state and community interests, which has served us well.

#### *High Density Rule*

With regard to the Aviation Competition Enhancement Act of 1997, we applaud and strongly commend the Chairman's position in support of maintaining the current High Density Rule at Washington National Airport, and we agree wholeheartedly that the cap of 37 hourly operations should not be changed. With the extraordinary convenience of National Airport, virtually every carrier is anxious to serve it with as many flights as possible. Despite the benefits of the new terminal, however, we have to recognize National's limits. Without the High Density Rule, our operations at National could become chaotic, subject to chronic delays not present

at National today, and we would probably experience higher levels of aircraft noise in the region.

Therefore, we agree with what we understand to be the Chairman's intent—that there be no increase in slots at National Airport. To underscore that point we are proposing language, that if added to the bill, would remove any ambiguity about the applicability of provisions that would allow the Secretary of Transportation to increase slots. Those provisions should clearly state that they do not apply to National Airport. We feel strongly about this. Indeed, if the legislation could be interpreted as allowing an increase in slots at Washington National, we would have to be in opposition to these new provisions on slots at National Airport.

Historically, at National the High Density Rule has been much more than an air traffic control metering device. For nearly 30 years, DOT Secretaries, FAA Administrators, and Congress itself have relied upon the High Density Rule to influence traffic flow at National Airport, not only because of air traffic congestion and concerns about en route flow control, but also because of: (1) the need to allocate the air traffic among the region's airports; (2) the need to limit the exposure of the heavily populated community around National to aircraft noise; and (3) the need to bring stability to National so that much-needed capital improvements could be brought to fruition.

In 1981, the comprehensive Metropolitan Washington Airports Policy was issued by DOT after a decade of debate, which included, among other things, the High Density Rule, the nighttime noise level regulation, the Perimeter Rule and the limitation on aircraft size.

The High Density Rule limits on National have been successful in shifting air traffic to Dulles and BWI, both of which have grown dramatically since the Department of Transportation reduced the number of air carrier slots at National to 37 in 1981. At that time National served approximately 15 million annual passengers while Dulles served fewer than 3 million and BWI fewer than 4 million. It was recognized then that National, given its limitations and environmental problems, could not continue to be the growth airport for this region, particularly since ample, but unused, capacity existed at Dulles and BWI. The slot limits at National were adjusted to encourage the use of these airports, and we believe that policy has been successful.

Today, National serves 15.5 to 16 million annual passengers while Dulles and BWI have each grown to serve approximately 13 million passengers and both are continuing to grow. Both have the airfield and terminal capacity to handle the growth and neither has the close in, noise sensitive land uses that are associated with National. At the same time, as we have said, the stability produced by the slot limits have allowed the Airports Authority to plan intelligently to use National's limited space by building a new terminal, parking facilities and roadways that are designed to meet the traffic demand. Again, the results have been successful; the new facilities have provided an efficient relatively uncongested airport in a very small area, which could easily be congested or even face gridlock from significant increases in air traffic.

We commend the Chairman for recognizing the importance of the High Density Rule in providing effective control over ground congestion as well as flight delays, again recommending the clarification of language to carry out the intent that there be no increases in slots at National Airport. The number of airplanes operating per hour affects not only the airfield, but other facilities, such as terminal curbside access, parking and roadway requirements. The Airports Authority has designed the airport facilities to minimize congestion and to provide a high level of service to travelers. A substantial increase in flight activity at National could diminish the benefits to travelers that our new terminal, roads and parking facilities are designed to provide. A substantial increase in flight activity at National could also cause flight delays, which is not a common problem at National today, but was a problem before adoption of the High Density Rule.

From an environmental standpoint, the limit on air carrier slots in the Metropolitan Washington Airports Act of 1986 represents a carefully crafted compromise among governmental, airline, safety, and community interests, and provides those in the communities affected by aircraft noise with an assurance that the level of aircraft activity will remain stable, and noise levels will decrease as quieter aircraft begin service.

Mr. Chairman, we are pleased that you recognize the importance of the High Density Rule at National, and that you have crafted your legislation with an aim towards leaving the overall number of slots at National Airport unaffected. The Airports Authority has supported FAA efforts to impose strict "use or lose" requirements to prevent incumbent airlines from merely holding slots. That approach is

consistent with our belief that there should not be any increase in the overall number of slots.

The proposed legislation would reallocate some slots in favor of new entrant and limited incumbent air carriers. The Airports Authority has taken no position on the reallocation of slots, as opposed to an exemption to create new slots. The Authority does urge caution, however, with regard to the proposed reallocation of slots. Our concern is that the debate over the reallocation of slots and availability of service within the context of the slot rule will inevitably lead to a debate over the number of slots, and in turn to a debate over the very existence of slots. The Airports Authority has urged DOT to consider the stability achieved at National Airport by the Department's 1981 Metropolitan Washington Airports Policy and the transfer of the airports when it has periodically considered carrier requests for reallocation of slots under the High Density Rule.

#### *Perimeter Rule*

As for the Perimeter Rule, some history may also be helpful in describing the Authority's position. As you know, the Perimeter Rule is enacted by federal statute, section 6012 of the Metropolitan Washington Airports Act of 1986. The rule prohibits nonstop flights between National Airport and cities more than 1,250 miles distant.

The Perimeter Rule was originally devised by the airlines in the 1960s, agreed to under a grant of antitrust immunity, as one of several measures to limit increasing congestion at National. It first limited nonstop flights to points within 650 miles, plus seven more distant "grandfather" cities that were already receiving service. The federal government, as operator of National and Dulles, always supported the rule as an essential division of traffic between the two airports.

In the early 1980s, the restriction was adopted as an FAA rule. The nonstop flight limit of 650 miles was changed to 1,000 miles without any "grandfather" exceptions. The 1,000 mile limit included all of the previously grandfathered cities. Ultimately, Congress incorporated a 1,250 mile Perimeter Rule into the Metropolitan Washington Airports Act of 1986.

Many important markets lie beyond the 1,250 perimeter: Denver, Phoenix, Salt Lake City, Phoenix Los Angeles, San Francisco, and Seattle, to name a few. These are all served by one-stop flights from National, typically through hubs, or by direct, nonstop flights from Dulles.

Many of these markets could be served nonstop from National with newer types of aircraft, and most would generate enough traffic to support flights from National. This is where the Perimeter Rule intersects with the High Density Rule. Any nonstop flight from National to a new point means an existing flight from National must be canceled, with the resulting decline in service to the existing markets. Thus, under existing law, new flights to western points from National cannot simply be added.

Therefore, a change in the Perimeter Rule would mean a degradation in service patterns for the markets currently served at National. Also, if one carrier provides long haul, nonstop service from National, other carriers, for obvious competitive reasons, will likely conclude that they need to match that service, with the result that operations currently at Dulles would shift to National.

We recognize the legislation calls only for a limited modification of the Perimeter Rule. As responsible airport operators, however, we always remain vigilant that any exception to the rule could, in fact, lead to additional modifications, and possibly to eventual repeal. It is difficult, in our experience, to tamper with a measure such as this, and not have one change lead to another, and then another.

Even more important is the way in which the Perimeter Rule is so intrinsically related to the High Density Rule. An expansion of the perimeter at National Airport would undoubtedly generate concomitant pressure to ease the High Density Rule to provide more slots to serve the new markets. There will inevitably be strong demands that slots be increased to accommodate the new, long-range flights, rather than ending existing service to closer points.

We understand that there are concerns about competitiveness among the airlines serving Washington. There are not, however, any restrictions at Washington Dulles, where we are pleased to provide very ample capacity to serve the Washington market. Several low-fare airlines are, in fact, effectively serving the Washington market via Dulles, and we welcome more. The Nation's capital, unlike most cities, has several choices for air travel, with a full service airport covering nearly 11,000 acres in Washington Dulles, which remains completely unrestricted and is linked to the city's inner core by a dedicated access highway, and a small, approximately 900 acre specialized short-haul facility in National, which offers the convenience of a downtown location but which has its limitations that must be acknowledged.

We urge the Members of this Committee to consider the importance of both the High Density Rule and the Perimeter Rule, and the way in which they work in tandem at National and Dulles Airports, when considering the proposed legislation.

Again, we appreciate the Chairman's hard work and attention to airline competition issues, and commend the Committee's diligence and contribution in this regard as well. Mr. Chairman, that concludes my prepared statement. I will be pleased to answer any questions you might have.

The CHAIRMAN. Thank you very much, Mr. Ralston. Thank you for being here today.

**STATEMENT OF CHARLES GOODWIN, VICE PRESIDENT, INTERNATIONAL TRADE AND TRANSPORTATION, ROCHESTER CHAMBER OF COMMERCE**

Mr. GOODWIN. Mr. Chairman, thank you for giving us the opportunity to present the position for Rochester, NY. Congresswoman Slaughter, who was here earlier, has mentioned that Rochester is a major international business center. Last year we hit \$14 billion that generated from the Rochester nine-county area. That is more than the totals of 40 of the 50 States in America.

We have had a lot of success in Rochester, but we are confronted with a very serious problem, and that is high air fares. The Rochester community, although it is served by six major airlines, has very little competition on key routes that go from the Rochester area, and as a result our city pays the eighth highest per-mile cost for air service in the country.

In an article in the Buffalo News, which I enclosed with my comments, Buffalo is rated sixth highest, and we are saying that the entire up-State New York region is not being served well because of the high cost of air fare into our community.

I have several quotes here on costs that were paid for air service from Rochester last week by businessmen. Round trip to Chicago, over \$1,000. To Atlanta, GA, \$915. Pittsburgh, \$600, Cleveland, \$648. Because of time, I will limit it, but I am saying that many of those costs exceed \$1.30 per mile.

We have consultants that tell us that airlines can maintain profitable operations for 10 to 12 cents a mile. Whether it is 20 or 30 cents, I think you can see that the rate being paid by Rochester area travelers is significantly higher than it might otherwise be.

As a result, we have many Rochester-area firms who have completely capped their travel expenses or reduced it drastically. We have others who are holding meetings outside of the Rochester area. We have many Rochester travelers who now drive to Toronto and to Cleveland to take advantage of lower air costs. We have some Rochester firms that have moved divisions outside of our city into other cities where air fares are more competitive.

We are basically saying that the Rochester community is served well by the airlines that do serve, but they are paying a very dear price for these services. There are many factors but, again, in the interests of time, the yield per flight profits on flights originating in Rochester are much higher than the yield per flight profits ratio of flights originating from most other cities our size.

It is our feeling that the Rochester community understands that the airlines are entitled to reasonable profits, but what we are basically saying is, we have gone to the airlines and we have asked

them if they could reduce their fares, and we have been met with silence.[ibtool.com.cn](http://ibtool.com.cn)

There is not enough competition on these routes where we really have any alternatives, so we are proposing to the committee that you look very carefully at possibly limiting the amount of profits that these airlines can make, particularly in areas where the economic and tourism business is being negatively impacted.

They are entitled to cover their expenses and make a fair profit, but the outrageous profits that are being made out of the Rochester market by some carriers I think you should take a very careful look at.

In conclusion, we also feel that the airline slot situation is certainly a controversial point. We feel that if this would help to bring other low cost carriers into the Rochester, NY market, it is something that this committee should look very carefully at.

We feel that anything that will allow competition to be more keen in our area may help us to reduce cost, because if you go out to the airlines, they are going to take whatever they can from this market, and with limited competition we pay a very dear price for their service.

We greatly appreciate the opportunity to speak to you, sir, Mr. Chairman, and to the other members of the committee. Thank you for your time.

[The prepared statement of Mr. Goodwin follows:]

PREPARED STATEMENT OF CHARLES GOODWIN, VICE PRESIDENT, INTERNATIONAL TRADE AND TRANSPORTATION, ROCHESTER CHAMBER OF COMMERCE

I wish to thank Committee Chairman John McCain and the other members of the Commerce, Science and Transportation Committee for allowing me to make this presentation.

I would like to preface my comments today by telling you a little about Rochester, New York and the upstate New York region, which I represent.

Rochester is the home of Eastman Kodak Company, Bausch & Lomb and many other major multinational corporations. We are a "world-class" center for optics and imaging and one of the leading international business centers in the United States.

With over \$14 billion worth of exports generated by our region in 1996, Rochester is the leading, per capita, exporting city in America.

With all of these successes, our community is still confronted by a major problem; the high cost of flying into and out of our city.

Rochester, New York is served by six major airlines . . . US Airways, United, American, Northwest, Continental and Delta. Due to the limited number of flights which originate in Rochester, passengers flying out of our city pay some of the highest airfares in the country. According to a recent article in the Buffalo News, our sister city of Buffalo is rated #6 in overall airline ticket costs and, using the same criteria, Rochester would come in in 8th place.

Some examples of the high Rochester airfares we pay include:

	Roundtrip Costs	Cost Per Mile *
Rochester, NY to:		
Chicago, IL .....	\$1,052	\$1.00
Atlanta, GA .....	915	.61
Cleveland, OH .....	648	1.31
Pittsburgh, PA .....	600	1.34
Albany, NY .....	453	1.48
Boston, MA .....	453	.72
Washington, DC .....	561	1.02
Philadelphia, PA .....	563	1.09

\* (Our consultants tell us that airlines can make a profit of .10-.12 cents, per mile.)



Due to the limited competition in our market, business executives are forced to pay these exorbitant airfares, and these costs, in turn, are passed along to their company's customers.

As a result of these airfares, we have many Rochester area travelers who are now driving to either Toronto or Cleveland to take advantage of lower fares available in these cities.

We have Rochester area businesses who are not holding their sales meetings in other cities because airfares into and out of these other locations are at much lower rates.

We have Rochester area companies who have either drastically reduced or "capped" their business travel. We have others who have relocated certain operations to other cities . . . such as the Eastman Kodak Company which recently moved its U.S. and Canadian customer operations center to Atlanta, Georgia. Additionally, I am aware of several other Rochester area firms which are now considering the relocation of some of their travel-sensitive departments to other cities.

We have spoken to the major airlines which serve our community and have pointed out the excessive airfares being paid by Rochester travelers. Our requests for rate reductions have been met with silence and these airlines have continued to charge these high fares which exploit the upstate market.

One month ago, we circulated a petition to attract additional airlines to our community and, in two days, several hundred Rochester businessmen signed these documents in hopes of attracting Southwest Airlines, America West and Air Ontario to the greater Rochester market.

There are other pricing factors which Rochester area customers simply do not understand.

- Why are 80% of the revenues of United Airlines generated by only 7% of their travelers . . . the corporate community?
- Why are major discounts offered to people staying over on Saturday nights when most corporate travel is done during the week?
- Why do airlines force executives, flying in the same plane, to sometimes pay five times as much as tourists who happened to make their reservations three weeks earlier?
- If carriers such as United and American, who serve the Rochester-Chicago routes, have load factors exceeding 70%, why are the fares to this destination so high?
- Many flights between Rochester and destinations such as Albany and Newark, New Jersey are served by commuter planes. Even with lower equipment costs, lower fuel costs, lower loading fees, lower pilot salaries, etc., there are no discounts for seats sold on these flights. Why?
- Mileage flown has little bearing on airline ticket charges. The airlines know what a hotel room costs, a dinner, a breakfast, and they add these factors into their pricing for all direct flights to key cities.
- The yield per flight profits ratio on flights originating from Rochester is much higher than the yield per flight profits ratio of flights originating from other cities where costs of flying are actually much higher.

Airline profits, for all U.S. airlines during the year 1997 are projected to come in at over \$4 billion.

We feel that airlines serving the Rochester community are entitled to an honest profit for the services which they provide, but they should be reasonable.

If airlines cannot develop fair pricing policies which allow them to make reasonable profits over and above their costs, then maybe the U.S. government should step in and limit the maximum profits penetrated by an airline serving a selected market.

We know that Rochester area travelers are paying exorbitant airfares to help subsidize less profitable routes flown by the same airlines in more competitive markets. Why should we shoulder these costs?

When this pricing adversely affects the economy of a region . . . both business interests and tourism . . . it is time for someone to step in and "level the playing field," and we hope that you will.

We encourage the Commerce, Science and Transportation Committee to look into these practices and see if air service—particularly in the Rochester, New York area—is being used for these purposes. If we are, indeed, being used to subsidize other less profitable routes operated by the same airlines, then limits should be placed on what they are allowed to charge—over and above their actual costs.

On a related issue, if opening the airline slots at high density airports in the Northeast and Midwest would help cities such as Rochester bring in more competitive airline services, then the Rochester Chamber of Commerce and its 4,000 mem-

bers are strongly in favor of the provision of the Airline Competition Enhancement Act of 1997.

We hope that this Committee will look into these issues and act responsively so that business and tourism industries here in the greater Rochester area as well as those ill our neighboring upstate cities of Buffalo, Syracuse and Albany will no longer be forced to pay more than their fair share for airline services.

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GREATER ROCHESTER INTERNATIONAL AIRPORT

MEMORANDUM

TO: Charles M. Goodwin, Vice President Greater Rochester Metro Chamber of Commerce

FROM: Terrence O. Slaybaugh, Director of Aviation

DATE: October 24, 1997

RE: Air Fares at G.R.I.A.

As you know GRIA has analyzed the air fare market in Rochester and determined that air fares are excessively high in a number of markets including the number one market, the New York metro area. Our consultants estimate that GRIA is losing 400 to 600,000 passengers a year to ground transportation, primarily cars, because of air fare prices. This has a very negative impact on all businesses associated with the air passenger business, particularly the tourist industry which depends heavily on air travel business.

A recent article in the Buffalo-News cited Buffalo as the 6th highest air fare market in the nation based on a federal report issued by the Department of Transportation. Using the same methodology as cited in the article Rochester would have the 8th highest fares in the nation. Like Buffalo, Rochester is the only market in the top ten highest markets that is not a hub or an airport that carriers must obtain a slot to serve. Both factors normally account for higher ticket cost.

The study understates the high air fare impact on the business traveler by averaging fares between the major hubs, high fare markets, and tourist destinations, generally moderate fare markets. Business travelers tend to patronize the short haul destinations for business, with two thirds or more of our travelers in Rochester business travelers, companies are shouldering most of the cost of the higher fares. A recent story shared with me by two Kodak consultants based in Atlanta required them to fly to Detroit and then drive seven hours to Rochester for a meeting on short notice. The fare from Atlanta to Rochester was \$620 while from Atlanta to Detroit was \$200. One only has to wonder when a company will relocate out of Rochester to a city that has more favorable air service.

I've attached the article from the Buffalo-News, I hope the information is useful.

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GREATER ROCHESTER VISITORS ASSOCIATION, INC.

*Rochester, NY, October 23, 1997.*

Mr. CHARLES GOODWIN, *Vice President,*  
*International Trade and Transportation,*  
*Greater Rochester Metro Chamber of Commerce,*  
*Rochester, NY.*

DEAR CHARLIE: Competitive airfares and service are fundamental to this community's effort to attract meeting, conventions and leisure tourists. The current airfare structure puts our efforts at a extreme disadvantage to other cities seeking to attract the same business as Rochester. Additionally, high airfares also diminish the attendance at conventions and meetings which are already booked into the community.

I have enclosed a copy of our testimony at the Joint Public Hearing on High Costs of Airfare held in Albany this past June. It outlines and provides details of how this issue affects our industry.

Please let me know how we can further support your efforts regarding this issue.

Very truly yours,

IRWIN J. METZGER,  
*President.*

PREPARED STATEMENT OF GREGORY P. MARSHALL, GREATER ROCHESTER VISITORS  
ASSOCIATION, INC.

[www.libtoqi.com.cn](http://www.libtoqi.com.cn)  
Good morning. My name is Greg Marshall. I'm Vice President and Director of Marketing for the Greater Rochester Visitors Association, the organization responsible for attracting visitors to Rochester and Monroe County and taking care of their needs once they've made a decision to visit.

Visitor business is a big part of Rochester's economy and an area of economic development potential that holds great promise for our community's future as well as many other communities across New York State.

In 1996, nearly one-half million individuals traveled to Rochester for the purpose of attending a meeting, convention or tradeshow. This does not include the 720,000 corporate visitors who came on business, or the 240,000 leisure visitors who came to sightsee and enjoy the area's great attractions. In all, 1,450,000 visitors came to Monroe County in 1996 and left behind \$202 million dollars in direct, first tier spending. In addition, they paid \$15.4 million in sales tax.

It's good money—but money that can easily be on its way to some other city, region or state if we are not competitive in the travel marketplace.

For today, I would like to limit my comments to the meetings and conventions segment of the travel industry. It's an area we can most easily measure and one that our organization's sales staff has day to day personal contact with leading to first hand, top of the mind awareness of how important a factor affordable and convenient air service is to our competitive position.

Rochester's meeting and convention product—our hotels and convention facilities, our appeal and our services, are competitive on a national level—our air service and affordability are not.

Accessibility, defined in our business as the ease and related costs of getting to and from a site, is one of the top four factors affecting our ability to compete for meeting and convention business. The others are accommodations (including meeting facilities), overall affordability, and the affinity or logic of meeting in Rochester versus one of our one-hundred and fourteen (114) competitive cities across the United States and Canada.

The meeting and convention industry is distinctive. The selection process dictates that decisions made about convention sites today by national organizations are for meetings 4-7 years in advance.

In other words, the status (capacity and costs) and reputation of today's air service to New York's cities is affecting the visitor business we are able to attract in the years 2000-2005. Conversely, meetings and conventions that were booked five to seven years ago, but meeting this year are experiencing incredible "fare and service shock."

Yesterday, I asked our senior convention sales manager for her thoughts. She cited a recent example, the Military Chaplains Conference, a national meeting in Rochester this past April. In follow-up discussions, they stated that their convention was excellent, but nearly 25% below what they expected in attendance and that hardly any of the sidouses who traditionally travel to the conference (and spend more than the delegates) were able to attend—all because of air costs.

All of this is further compounded by the challenges of the marketplace and the extraordinary competition for meeting and convention business. Seat capacity, convenient flight times, and air fares are determined by demand patterns. So, if capacity appears to warrant smaller equipment based on past years' history, we are in big trouble when we book the American Optical Society and have 3,000 people who all want to arrive on a Wednesday, afternoon in mid-October. Since there may not have been a major national convention in the historical data period of the previous few years, air lift capability is limited. Not only do those who make their reservations early still pay high fares and likely ride in small equipment, but they displace corporate travelers who's frustration shows as they arrive for that important business engagement.

As you proceed with your evaluation and hearings, I urge you to consider the benefits of the meeting and convention business to all of New York State. It brings money as well as individuals who may start or expand businesses here, or once they see our beautiful state, be more willing to relocate. At the same time, the challenges are unique. It's unlikely to be pattern predictable, and the changes that come as a result of your work will affect site selection decisions and visitor business well into the next millennium. I urge you to make sure that the health of the meeting and convention segment of New York State's economic future is a significant part of your final determination.

I am available for questions now, or for reference at a later date.

Thank you.

The CHAIRMAN. Thank you.

Mr. Tait, welcome.

**STATEMENT OF THOMAS TAIT, EXECUTIVE DIRECTOR, NEVADA COMMISSION ON TOURISM, ON BEHALF OF THE WESTERN STATES TOURISM POLICY COUNCIL**

Mr. TAIT. Thank you, Mr. Chairman. I am Thomas Tait, executive director of the Nevada Commission on Tourism, chairman of the Western States Tourism Policy Council. I am appearing today on behalf of the States of Nevada, California, and Arizona, all of whom strongly support the tenets of the proposed legislation.

I do not know how I could put more convincingly the argument that was echoed by yourself, Mr. Chairman, Senator Bryan, and Senator Gorton, so in the interest of time I will not try to reiterate the comments that were made by the three of you.

Suffice it to say the Western States Tourism Policy Council came into being because western tourism issues have not been given the attention they deserved. Tourism is a major contributor to the quality of life and social, cultural, economic, and environmental fabric of the western United States. Within our region, nearly 2 million people earn their livings from travel and tourism, and over \$120 billion is contributed to the region's economy each year.

In that regard, the comments that were made by the last panel with respect to a western misconception about the top 50 airports having access to all—excuse me, all but four of the top 50 airports having access to high density slot-controlled airports in the western United States, the airports of Seattle, Portland, San Francisco, Las Vegas, Los Angeles, Phoenix, Denver, Salt Lake, San Diego, Sacramento, Reno, and San Jose, none have access to Washington airport without making a stop before getting into the perimeter barrier.

The barrier has set up a restriction that inhibits business travelers from planning their meetings in the western United States as easily as they could plan them in the cities of Cincinnati, Chicago, and other areas within the perimeter beltway, if you will, and we feel very strongly that the increased competition that would be brought by the easing of the perimeter rule or dropping of it altogether would be healthy for the western United States.

We believe very strongly that the competition engendered by low carrier air fares or air carriers coming in from the West and emanating from the East would be of benefit to all of the tourist leisure travelers and business travelers that would be going into all of the major cities in the western United States, and we give our unqualified support for this legislation.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Tait follows:]

**PREPARED STATEMENT OF THOMAS TAIT, EXECUTIVE DIRECTOR, NEVADA COMMISSION ON TOURISM, ON BEHALF OF THE WESTERN STATES TOURISM POLICY COUNCIL**

Good afternoon, Mr. Chairman and members of the committee. My name is Thomas Tait, and I am the Executive Director of the Nevada Commission on Tourism. Today, I am not only appearing on behalf of Governor Bob Miller and the nine member commission, but also on behalf of the tourism interests in the states of California and Arizona, in my capacity as chairman of the Western States Tourism Policy Council, the organization of state tourism directors for nine western states. I have served as the chairman of that organization for the past two years.

The Western States Tourism Policy Council came into being because western tourism issues had not been given the attention they deserve. Tourism is a major contributor to the quality of life and social, cultural, economic and environmental fabric of the western states. Within our region, nearly two million people earn their livings from travel and tourism, and over \$120 billion is contributed to the region's economy. We believed that by focusing attention on areas of crucial need in a unified voice, more interest would be extended to understanding and resolving the challenges we confront. Public land's access, fee implementation, protection of the environment, marketing of underutilized parks and recreation areas, and development of infrastructure are just a few of the issue areas we have undertaken. We have also developed comprehensive advocacy positions in support of modifications to the Visa Waiver Pilot Program and the Passenger Services Act.

Today, I offer our observations on the Aviation Competition Enhancement Act of 1997. Mr. Chairman, allow me to compliment you and the committee staff for the great care you gave to the preparation of this proposed legislation. It very concisely puts forth the substance and practicality of amending the slot allocation and perimeter rule practices in place at Washington's National Airport since 1969 and 1986 respectively.

The beneficiaries of this action are the consumers from areas that are beyond the 1,250 mile range not currently allowed non-stop service from National Airport. This, Mr. Chairman and members of the committee, applies to both western and Washington-based consumers—those that must now make a minimum of one, and likely two stops to reach their destination.

Washington is a viable market for business and leisure travelers into Las Vegas, Phoenix, San Diego, San Jose, Seattle and other western cities. Customers from those cities would make appreciable use of non-stop service into National. Western-based air carriers would unquestionably rise to the opportunity to service this market if restrictions were eased, thereby engendering increased competition—competition resulting in arrival/departure times that are market generated and fare reductions. The beneficiaries of these timely changes again, would be consumers, who for too long have been burdened with unfair regulations solely based on the geography of their residence.

The District of Columbia is the headquarters for a majority of US business and professional associations, organizations which schedule meetings of their membership throughout the United States. Often, we in the convention supply business are frustrated because these organizations choose cities for their smaller meetings or conferences that are within the "hub barrier" created by the perimeter rule. This, we are told, is the direct result of staff convenience—the association's meeting and support staff who need to travel to selected venues for site selection and pre-convention meeting support. Non-stop service to convention cities in the West would virtually eliminate any travel inconveniences.

Leisure travelers based in the West and in the Washington area would also benefit from the easing of restrictions called for in the amendment. Not only would price conscious travelers have more opportunity to make use of National as an out-bound resource, but non-stop in-bound service would also be highly marketable in major western cities.

In short, Mr. Chairman, we strongly advocate this amendment, and will offer whatever support we can to see it enacted. Thank you very much for the opportunity to appear before you this afternoon.

Senator FORD [presiding]. I thank you for the compliment, since the chairman is gone. He trusts me, and I would never let him worry about that trust, so I will be very careful in trying to chair the rest of this hearing until he has an opportunity to come back.

Mr. Goodwin, you reminded me of the time I was Governor. We had a fellow named Nixon that was President, and he had wage and price controls, and hell, I could not even raise my law enforcement people's salary in Kentucky to try to have more crime control and put more people, so we had wage and price controls.

I do not imagine Xerox, Kodak, and others up there would like for you to have wage and price controls. Am I correct?

Mr. GOODWIN. It depends upon what you are speaking about, Senator.

Senator FORD. Sure. It is just like, if it fits you, that is fine, but if it hurts me, that is all right.

Mr. GOODWIN. I think they might be interested in price controls on certain areas where people are making inordinately high profit.

Senator FORD. Well, you know, my friend, I have never been around anybody that objected to you making any money. They just wanted to make as much as you do.

And so the very fact to come here and say that you wanted to limit the individual or company's ability to make money is kind of an affront, in my opinion, to the good old American way, the capitalist way, you know. You come from a business community, and I am not sure they would do that, or would understand that.

By saying you are going to limit their profit, what is fair for the goose is fair for the gander, so you do not like what one is doing, so you want to curtail them, but this other is all right to make a profit. I just do not understand that statement, but that is all right. There are a lot of things I do not understand coming from that part of the country. [Laughter.]

Would you be willing to take corporate slots? Would you be willing to take corporate slots away from National so that you could get some more service in Rochester?

Mr. GOODWIN. I really wouldn't want to comment on that because I'm not sure. I'm not sure. I don't know the answer.

Senator FORD. Well, you knew the answer to limiting the profit on airlines. That was pretty damn quick. But—how about limiting corporate slots at National—corporate slots—and we have a good many corporate slots at National. Would you be willing to take some of those away in order to get more airline service into Rochester?

Mr. GOODWIN. I don't know, sir. I don't know, Senator.

Senator FORD. Well, would you support the bill if you found out that they can take slots away, Rochester would lose some service?

Mr. GOODWIN. I think that what we would like to see is—

Senator FORD. No, I asked you a question. I am not a lawyer. I am on the jury.

Mr. GOODWIN. I would hope that Rochester would not lose any service.

Senator FORD. Yeah, but you wouldn't be for the bill if Rochester found out that taking some slots away would reduce some of the service you now have.

Mr. GOODWIN. No.

Senator FORD. OK, that is fine. I just do not believe the Rochester Chamber of Commerce would support the mayor if he decided to shut down 10 percent of the businesses in the city in favor of new companies coming in. So that is kind of what we are getting here as I see it.

But, nevertheless, we all have our opinions and then we use Henry Clay and we compromise.

Mr. Ralston, if the Metropolitan Washington Airports Authority knew that the perimeter rule and the number of slots would be changed, would you have planned the new airport the way you have planned it?

Mr. RALSTON. Senator, certainly the perimeter rule and the slot rule as it exists were key elements of our entire development plan, I would have to say, both at National and at Dulles because we

have developed an airport, both a terminal as well as a groundside program, reflecting the existence of those rules.

And at Dulles, it has been essentially our growth airport. It is our growth airport plan by virtue of the continued existence of the perimeter rule. Whether there'd be precise and small change as a result of this, I can't say. Clearly, without the perimeter rule, the assumption would have to be that there would be a change in service patterns—certainly with an increase in slots, a significant change in service patterns with the result of a required substantial growth in National Airport.

Senator FORD. Would you have any concern, then, if we changed the pattern as it relates to slots and to the perimeter rule as it relates to those who have signed contracts as I talked earlier, which disturbs me? Maybe I am the only one, but it appears that might—we in some way would be vitiating that contract or at least putting an additional burden on those who have signed a contract to help you underwrite the new bill—the new airport, the growth of your airports, the future new airline landing fees which they'd be required to pay, etc.

You have any concern about that?

Mr. RALSTON. I think, certainly, the carriers would have exactly that concern, and we would to a greater or lesser degree share that concern. I would—Senator, I'd point out really it's a different, slightly different approach for slots versus perimeter.

As I've indicated in my testimony on slots, if it's a reallocation issue, while we have concerns, we view that as being a matter for the Congress, provided that the total slots do not increase at National. On perimeter, certainly that has been an element of our planning. It has been disclosed, both rules, in our offering statement to our bondholders. There's no question about that. We have to assume that some of our bondholders have purchased based on information in those offering statements.

The carriers, under the agreement that most have signed with us, are ultimately underwriters of our bonds. If they refused to sign that agreement, they pay higher rates and charges. So there's no question that they are essentially guarantors, ultimately, of our financial ability to pay the debt service.

The ultimate financial impact of a change in those rules is hard for me to be able to tell you without expert study, but it clearly is an element of everything that we have developed in terms of those contracts and our bond offerings.

Senator FORD. Stability is a great thing, and it is more important now than ever before, I suspect, because of the investment and the cost and so forth. So I am very concerned about where we're going, and I thought that we had worked awfully hard to kind of put things together and things were working very well.

Let me ask you another question. When we talk about the perimeter rule, is not there a limit to the size of an airplane that would land at National?

I thought a 757 was the largest that you would allow to land at National, where you would have larger airplanes land at Dulles. Is that correct?

Mr. RALSTON. Technically, Senator, we don't control that; that, obviously, is an FAA issue. I don't believe that anything larger than a 757 currently lands at National Airport.

Senator FORD. Well, hey, I learned from my son-in-law "never ask a question unless you know the answer." And the answer is that 757s are as large as can land at National. And so, therefore—under present rules.

Mr. RALSTON. Under present rules, that would be correct.

Senator FORD. Yes, sir.

Mr. RALSTON. That would be correct.

Senator FORD. So, the rules would have to be—we are trying to change rules everywhere. We are trying to lower companies' profits, trying to take slots away from you, we are—you know, it is just a topsy-turvy world.

And I do not want to be a part of it. I think we are doing the wrong, wrong thing.

Mr. RALSTON. Senator, let me touch on your stability point. That certainly has been a key element for us. Our bond rating, as we mentioned in our written comments, is as good as any stand-alone airport in the country, of which we are very proud.

And stability is an important element of our ability to be able to maintain that bond rating and get the low interest rates we do as a result.

Senator FORD. And, of course, Mr. Ralston, you said that the slot rule is a prerogative of Congress. Well, perimeter rule is, too, when you get right down to it. We could change that.

Mr. RALSTON. Yes, sir, that's true.

Senator FORD. And so, then, we become the culprit if we change and upset the apple cart and cause you to have problems and maybe a lowering of your bond issue, and that sort of thing. I think we have to be very, very careful in where we are going.

Mr. Tait, I'd have loved to have gotten to you. I've never won much money and very little, particularly in your State. I've found Reno has been more—I've been luckier in Reno than I have in Las Vegas, so I'd be more apt to help Reno than I would Las Vegas. [Laughter.]

So I do not know whether that helps you or hurts you, anyway, but nevertheless, I will turn it over to my good friend, Senator Rockefeller.

Senator ROCKEFELLER. For the purpose of further making the point that I was making before, I want to ask Mr. Tait a question. You would agree, would you not, that the air traffic control system essentially establishes airlines as being within the context of public policy.

Mr. TAIT. Yes.

Senator ROCKEFELLER. It is not like selling film or something—you're within the context of public policy. You do not have an existence, or airlines do not, without the infrastructure publicly paid for of the air traffic control system.

Mr. TAIT. Agreed.

Senator ROCKEFELLER. You have come here to testify that you like the chairman's bill and that you think it is going in the right direction, as Senator Bryan did.



I have said that West Virginia is at the—not having grown in population, but only in the last 4 years we have grown in population. That has been about a thousand people a year—we are very proud of that.

You are growing at about 1,000 people every—

Mr. TAIT. Day.

Senator ROCKEFELLER [continuing]. Or hour.

Mr. TAIT. Two weeks.

Senator ROCKEFELLER. Two weeks. And, so, I can understand if—when you come here, geographically, as the fastest growing State in the Nation and say that you want to be able to have more and better service because you have more and more people.

Does that necessarily mean, however, that the people—that the more people that you have there now and the more people who— which the gaming industry attracts to Nevada are, in fact, any more important than a like number of people of aggregated Appalachian States from rural areas that have been—showing a tremendous decline in service but who still need to do the same kinds of things in terms of getting from place to place in this country that your people do?

Your people are not more important than our people, are they?

Mr. TAIT. No, they're not, Senator, and they made, I think, a fairly careful point of stating early on that I was here on behalf of a large number of States, all of whom have given their support of this and all of whom have the same common interest in seeing competition improved and seeing the perimeter barriers reduced and seeing the slots eliminated.

Senator ROCKEFELLER. And did not we establish earlier that it was primarily, with some exceptions I am sure—the Western States that were benefiting more by deregulation?

Mr. TAIT. The Western States have seen increases in the pricing—or not increases but—

Senator ROCKEFELLER. Decreases.

Mr. TAIT [continuing]. Increased savings in the pricing that other States have not. However, there has been substantive inconveniences that have come along with those minor cost reductions.

The time that it takes to get into high-density airports from the West is enormous by standards of communities that are based on the far side of the Mississippi.

Senator ROCKEFELLER. Well, I understand that, and in the case of the Appalachian areas that I might be speaking for, we have suffered not only the price increases but the service decreases at the same time. You have suffered the first but not the second.

So my question to you is should public policy being made by the Congress—should there be an effort to reach out to try to make the playing field level as a first requirement before we go on to more sophisticated fine tuning of the system?

Mr. TAIT. I think it's incumbent upon Congress to understand the growth and development of the communities that make up the different industry sections in the United States. Tourism is clearly the No. 1, No. 2, or No. 3 industry in the 13 Western States.

Senator ROCKEFELLER. As it is, incidentally, in all Appalachian States that I know of. It is No. 1 in West Virginia and has been for 25 years.

Mr. TAIT. No. 1 in a State of smaller population and smaller attraction levels and smaller infrastructure may not be the same as No. 1 in a State like California, Arizona, or Nevada.

Senator ROCKEFELLER. Which is why I, in turn, expanded beyond my base of West Virginia to talk about similar Appalachian. I was trying to make a population similarity so as to be able to ask you this public policy point.

Mr. TAIT. I believe that it's clear that if a State or a region has a high propensity toward development of an industry as the States of the Western United States have clearly shown, then it's incumbent upon Congress to take a look at that and begin the process of prioritizing a higher level of standard and a higher level of service to those areas which clearly demonstrate a need.

Senator ROCKEFELLER. And when you say "clearly demonstrate," what does that mean to you? I mean—have you lived in Nevada all of your life?

Mr. TAIT. No. I was born and raised in San Francisco, but the last 28 years in Nevada.

Senator ROCKEFELLER. Ever been east, other than today? [Laughter.]

Mr. TAIT. No, I've—I was vice president of marketing of the National District Attorneys Association in Alexandria.

Senator ROCKEFELLER. OK. Well—

I think I'll just go back to my original statement—[Laughter.]

That public—you are too well traveled for me to argue with.

But that public policy in this question has to be—this is not like, you know, trade policy with Japan or China. This is a question of the American people, through the public policy of air traffic control, saying that we're looking for a fair standard.

And I think, frankly, that the comparison I made earlier to the interstate highway system is a very, very good one—

Mr. TAIT. Mm-hmm.

Senator ROCKEFELLER [continuing]. And one that the air industry ought to look at, or the public policy aspect of the air industry ought to look at also.

And that is that the interstate highway system makes no distinction between populous and unpopulous States because it assumes that—like the telephone, universal service, and hence the Universal Service Fund—in order for people in New York to be able to do business with people in Billings, MT and vice versa, there has to be an equity which is at the base of the public policy philosophy. And I think that is simply the point I would make to you.

I don't begrudge you your growth. I like that very much. I am happy that it's coming to Nevada. I wish we had the same. Some of us are working very, very hard to try to get it to be, if not at the Nevada level, at least something which is entirely different from our history.

All I'm saying is that, without a public policy rationale of fairness, we will never be able to do that.

Mr. TAIT. One final point on that, then, Senator. I would hope that you'd take a look at the investment level of the private sector and the commitment of the public sector in creating public policy in those regions as one of the bases by which you base your standards.

Senator ROCKEFELLER. I think that is fair, and it is one of the reasons that the Republican Governor and the junior Senator from West Virginia, who is a Democrat, are going to be holding, actually, a series of air summits as we consider doing things which will be very difficult for West Virginia to do; that is, what we call transparks—building dual 11,000-foot runways with enormous areas around them for manufacturing, distribution, and the rest of it, things which you never have to worry about in Nevada because you are mostly flat. We are only 4 percent flat—everything else is a mountain.

So, we are doing our best, Mr. Tait.

Mr. TAIT. Thank you, sir.

Senator ROCKEFELLER. We just wanted you to think about us.

Senator GORTON (PRESIDING). I thank this panel very much for what it had to say here, and I guess we are finished with questions for you.

Our last panel is Mr. Nagin, Mr. Babbitt, Mr. Faberman, Mr. Murphy, and Mr. Rowen.

Mr. Murphy and Mr. Rowen, you're the two from far away. Do you have aircraft to catch to go home this evening? Are you on close deadlines or does it not matter to you?

Mr. MURPHY. I am not on a close deadline.

Senator GORTON. OK. Who else—is another one of you from far off, from Chicago, I think?

Mr. ROWEN. No, sir.

Senator GORTON. OK. Then, under those circumstances, we'll take your testimony in the order that your names appear and start with Mr. Nagin.

**STATEMENT OF LAWRENCE M. NAGIN, EXECUTIVE VICE PRESIDENT FOR CORPORATE AFFAIRS AND GENERAL COUNSEL, US AIRWAYS**

Mr. NAGIN. Thank you, Mr. Chairman and members of the Commerce Committee. Good afternoon. My name is Larry Nagin. I am the executive vice president for corporate affairs and general counsel of US Airways. On behalf of US Airways, I appreciate the opportunity to testify before you today.

A primary goal of the proposed bill is to increase nonstop service from small- and medium-sized communities to high-density airports. If nothing else, the purpose of my statement today is to convey to you that this bill will have precisely the opposite effect.

Redistributing slots to new entrants will not produce the increase in service to small- and medium-sized markets that its proponents intend. Even worse than failing to achieve its goal, this bill would inflict significant harm on incumbents such as US Airways, our employees, and the communities we serve.

This bill, in fact, will reduce service to smaller communities. It will cost jobs as a result of that loss of service, and it will jeopardize the hundreds of millions of dollars in investments that US Airways and airlines just like us have committed to the many communities we serve with our networks.

Redistributing slots from US Airways to new entrants means that we will have to reduce our current service to slot-controlled

airports. Let me show you the markets that the system—US Airways' system already serves from National and LaGuardia airports.

Here is an example of US Airways' Washington, DC, nonstop service. All of the lines in red are service to small- and medium-sized markets. Over 80 percent of our service into Washington National is from smaller communities. And I submit, Senators, that you have heard today a vast array of testimony of what would happen if there is a forced withdrawal of slots. Choices will have to be made.

Unlike our more profitable routes from big cities or our hubs, many of these smaller communities simply do not have enough people flying to New York or to Washington alone to justify nonstop service. Therefore, service to the smaller communities on our network and the networks of other airlines is only possible because of the ability to attract additional passengers connecting to other cities.

Without the benefit of a network beyond LaGuardia and National, new entrants will be unable to serve small- and medium-sized communities and survive over the long run. However, thanks to US Airways' system, passengers from dozens of smaller communities have nonstop service to both LaGuardia and Washington, DC.

If Congress confiscates and redistributes some of US Airways' slots, we will be forced to eliminate some of that service to smaller communities. It's an economic reality that you've spent some considerable amount of time discussing here today. Indeed, that is the very type of service that the proposed bill seeks not only to protect, but also to increase.

We present several reasons in our written testimony why slot redistribution is unwise and will be counterproductive. In particular, the Department of Transportation's previous attempt to redistribute slots from incumbents to new entrants did not achieve its goal.

GAO found that of the 152 slots withdrawn in 1986, just 3 short years later, only 13 slots were still being used by new entrants. Some lawyers would say we rest our case at that point.

Rather than redistributing our slots to new entrants, we believe Congress should evaluate the alternatives. And you've also heard a lot of good reasons why alternatives should be examined.

For example, just look. Last week, the Department of Transportation created 31 new slots at high-density airports for new entrants. Before confiscating US Airways' slots or any other air carrier similarly situated, Congress should evaluate whether DOT's recent slot action will achieve its desired effect. It is common sense to make that determination.

Alternatively, in light of the artificial limit on the number of slots at National Airport—and I think we should keep in mind that the slot allocation at National, as we've heard from other witnesses today, is an artificially constrained number—we ask, does it really make sense to dedicate 12 slots an hour, 12 slots an hour, or almost 20 percent of the slots at National, and 6 slots an hour, or an average of 5 percent of the slots at LaGuardia, for general aviation? And indeed, Senator Ford, that was the question you were asking from the gentleman from Rochester about corporate activity.

Finally, new entrants and low-cost, low-fare carriers are free to start service to Washington, DC or New York City right now, at Dulles, Baltimore-Washington International Airport, or Newark. There are alternative airports available to serve each city without any slot constraints.

Let me make it very clear, Mr. Chairman and members of the Committee—US Airways is not afraid of competition. We are not trying to keep competition out of slot-controlled airports. We are simply saying that our slots—US Airways' slots if you will—should not be confiscated. Our communities that we're serving today with this vast network here into Washington National and the same type of network with medium and small cities into LaGuardia should not be penalized, and that indeed is what will happen if slots are confiscated.

US Airways already provides convenient, nonstop service to dozens of small communities and connecting service to over 100 small communities across the country. We're not an upstart airline. We've been doing this for over 50 years. We and our employees have maintained our commitment to small communities, and we appreciate, Senator Rockefeller, your statement about US Airways providing that service to West Virginia. We're still there and we want to stay there. But it would be unfair to penalize us now with a policy that we believe simply will not work. It will cost jobs. It will cost service to communities. And, indeed, it will deter investment.

Thank you.

[The prepared statement of Mr. Nagin follows:]

PREPARED STATEMENT OF LAWRENCE M. NAGIN, EXECUTIVE VICE PRESIDENT  
CORPORATE AFFAIRS AND GENERAL COUNSEL, US AIRWAYS

Mr. Chairman, Members of the Commerce Committee, on behalf of US Airways, I appreciate the opportunity to offer this testimony to present its views on issues that are critical to the future of US Airways.

I. US AIRWAYS AT A CROSSROADS

The heart of US Airways' route structure is along the East Coast, in the Northeast and Mid-Atlantic regions. This area is densely populated and characterized predominantly by short-haul trips. The skies over the Northeast are very congested and the costs of weather-related and other delays can be very high. In addition, the region has some of the highest landing fees in the country. For example, New York's LaGuardia Airport charges the highest landing fee in the country. US Airways has struggled for years under the burden of these high costs and it has endured years of staggering losses and downsizing.

Stephen Wolf and our current management team came to US Airways with a vision of reinvigorating the airline by growing rather than shrinking, and we sought to preserve as much of US Airways' "platform" as possible from which to build an international network. Recently, this approach has resulted in several profitable quarters for US Airways. Our goal is to see US Airways grow into a major international airline, even though we will be starting behind the other major airlines that are already several years ahead of us on the path toward international growth. We have no choice, however, because if the competition is growing then we must grow to compete and that means becoming a global carrier with more modern aircraft, secure jobs, and competitive and cost-effective service for our customers and the many communities we serve.

The key to unlocking the growth potential of this airline has been to put in place a competitive cost structure that will enable US Airways to compete both with the other major carriers and with the low-cost, low-fare carriers that have now spread their service throughout the East Coast and the Mid-Atlantic. Over the last 18 months, our management team has been engaged in a candid dialogue with US Air-

ways' employees over the choice facing our company—whether to grow into a global airline or to continue shrinking into a regional carrier. We have just reached a tentative agreement with our pilots' union—ALPA—to put in place a competitive cost structure and in exchange to guarantee growth and job security, among other things, for our pilots. We are hopeful that the membership will ratify that agreement, and that we can reach similar agreements with our other employee unions, negotiations for which are now taking place or are contemplated for the near future.

One key component of our tentative agreement will be the creation of a separate, lower cost airline within US Airways to compete with our low-cost, low-fare rivals, including those that are independent, such as Southwest, and those that operate as part of other major carriers, such as Delta Express. We believe that this tentative agreement will allow US Airways to compete vigorously with our rivals in all markets and to expand both domestically and internationally from our extensive route network along the East Coast. Only when US Airways can compete successfully both against other major airlines and against the low-cost, low-fare carriers can this airline succeed and grow into a major global competitor.

Even in the face of years of losses, US Airways made substantial commitments to its route structure and to its airports. Specifically, because LaGuardia and National Airport in Washington, D.C., are so integral to US Airways' route system, we have spent millions to buy 265 take-off and landing slots at those two airports since the Buy-Sell Rule was instituted. In addition to purchasing slots, US Airways has invested hundreds of millions of dollars to develop facilities at those airports that will support our network of flights using those slots. For example, at LaGuardia, US Airways is responsible for paying full debt service on \$202 million in bonds to build its terminal, which opened in September 1992. At National, the airport authority has funded approximately \$1 billion in improvements primarily through bond financing, and consequently US Airways' costs have doubled to pay for the new terminal, which opened this year.<sup>1</sup> Nonetheless, we have been a strong supporter of the new terminal and investments to modernize the airport, and we have invested heavily to market our routes to National. This huge investment in airports and facilities creates value and convenience for consumers by maximizing the use of slots in slot-controlled airports. US Airways' investment in National and LaGuardia also fulfills congressional objectives by sustaining service to small- and medium-sized communities that would not otherwise have non-stop service to high density airports and providing single carrier connecting service between numerous other small communities where non-stop service is not feasible.

But all that we have been trying to build at US Airways, including our long-standing commitment to providing non-stop service to smaller communities, will be put in jeopardy if we do not have the slots to maintain and ultimately to expand our network. For that reason, we believe the proposal to take slots away from US Airways and from other incumbents to be poor policy.

## II. REDISTRIBUTING INCUMBENTS' SLOTS TO NEW ENTRANTS WILL REDUCE SERVICE TO COMMUNITIES, HARM CONSUMERS AND COST JOBS

As Congress considers this legislation, it is critical that this Committee not underestimate the far-reaching consequences of confiscating slots or, if you will, opportunities from carriers such as US Airways. The networks built by incumbent carriers yield huge consumer benefits—including service to small communities—which will be put at real risk if slots are confiscated. One goal of the proposed bill is to increase non-stop service from small- and medium-sized communities to high density airports such as National and LaGuardia. The single most important point of my testimony is to explain that this bill will have precisely the opposite effect. Redistributing slots to new entrants will not produce the increase in service to small- and medium-sized markets that its proponents intend. Even worse than failing to achieve its goal, this bill would inflict significant harm on incumbents such as US Airways, our employees and the communities we serve. This bill will reduce service to smaller communities, it will cost jobs as a result of that loss of service and it will jeopardize the hundreds of millions of dollars in investments that US Airways and other airlines have committed to building their service and their network. The proposed bill would undermine one dynamic of the airline industry that already works very well—our networks serving the high density airports—in what will be a futile attempt to guarantee competition that only the market can provide in the long run.

<sup>1</sup>Other carriers at slot-controlled airports holding numerous slots have all invested heavily in those operations. For example, Business Express Airlines, Inc., a carrier which recently emerged from Chapter 11 bankruptcy protection, "has made substantial investment in its 24 LaGuardia slots." See Answer of Business Express Airlines, Inc. opposing Spirit Airlines' application for an exemption under 49 U.S.C. § 41714.

This perverse effect would be particularly ironic because US Airways itself embodies the very commitment to serving small- and medium-sized markets that the proposed bill seeks to encourage. Instead of undertaking such a short-sighted proposal, Congress should consider a variety of less drastic and less dangerous alternatives that have a far greater likelihood of achieving an effective solution.

#### *The Economics of Airline Networks*

Filling planes and flying passengers safely is what the airline business is all about. The so-called "load factor"—the percentage of seats on an airplane filled by paying passengers—is an immutable fact of airline economics. To survive, an airline must fly planes with enough passengers to defray the costs of each flight—the plane, the fuel, the employees, the gates, landing fees, ground facilities, slots, etc.

On densely traveled routes, such as between big cities like New York and Washington, D.C., there are always enough passengers to justify point-to-point service. But obviously, that is not true for every city or small community. As an alternative, airlines can fill their planes at collecting points (known as hubs) to collect enough passengers—and to generate a sufficiently high load factor—to fly non-stop to high density airports such as LaGuardia or National. This has become known as the "hub and spoke" system. US Airways has hubs at Pittsburgh and Charlotte, where we collect passengers traveling from cities without enough traffic to fly to National or LaGuardia non-stop. Other major airlines, such as United, provide service to LaGuardia and National primarily from their hubs, such as O'Hare for United.

There is another alternative that allows US Airways to serve many smaller communities non-stop to National and LaGuardia and have that service be economically viable. US Airways has invested hundreds of millions of dollars to build much of its service pattern—its network—around National and LaGuardia. Our significant presence at these two airports allows us to offer passengers convenient connections through National or LaGuardia to over one hundred other destinations in the U.S. Therefore, for a small community that might not otherwise have enough passengers traveling to National or LaGuardia to warrant non-stop service, US Airways can attract other passengers that will connect through National or LaGuardia to the many other cities on our network, making non-stop service to that small community economically viable.

The composition of passengers traveling from Manchester, New Hampshire to National provides a good illustration. Just over half of the passengers from Manchester are flying to National as their ultimate destination. Forty six percent (46%) northbound and fifty percent (50%) southbound, however, are connecting through National to other destinations. As this example demonstrates, the ability to attract passengers by offering many such connections through National or LaGuardia airports to the rest of our network permits us to offer non-stop service to these airports from many smaller cities. The key to the network I have described is having sufficient slots to offer the benefits of non-stop and connecting service to dozens of smaller communities. Taking away slots threatens the entire structure, disrupts our service pattern and eliminates service to the smaller communities that are most dependent on the network.

#### *US Airways Already Serves More Small Communities Than Any Other Airline at National or LaGuardia*

US Airways already provides non-stop jet service to more small- and medium-sized communities from those two airports than all other airlines combined. This is precisely the goal behind the proposed bill. The attached charts illustrate the dozens of smaller markets US Airways currently serves non-stop from National and LaGuardia. US Airways is unique in its commitment to serving these smaller communities. US Airways' system offers non-stop service to 34 small- and medium-sized communities from National—this represents over 80% of the markets we serve non-stop from National. At LaGuardia the picture is similar—nearly 80% of the markets US Airways serves non-stop are small- or medium-sized communities. Contrast US Airways' commitment to serving smaller markets with other airlines' service to National and LaGuardia and you will see that the percentages are flipped—71% of other carriers' jet service from National and 66% from LaGuardia serve large markets.

US Airways has already made a significant financial commitment to providing service from the smaller communities within our network non-stop to National and LaGuardia. If Congress confiscates some of US Airways' slots at those airports, we will be forced to eliminate some of our service to smaller communities—the very type of service that the proposed bill seeks to increase. The loss of each slot affects the viability of other points on the network. For example, if peak period morning service to a small city is canceled, afternoon and midday service may no longer be

viable, and the loss of connecting passengers from that city will diminish the viability of service to other small cities that depend on that connecting traffic to break even. The withdrawal of slots erodes the viability of the network that makes service to small communities viable. In short, the proposed bill will have precisely the opposite of its intended effect.

*Withdrawing Slots Will Force Airlines to Reduce Service to Small Communities*

The proposed bill contemplates withdrawing a significant number of slots from incumbents—up to 10% in the first year and 5% every two years thereafter. Proponents will counter that the bill would only take slots that are not used to serve small- or medium-sized communities. The reality is that slots are fungible—no matter which slots are taken, US Airways and other airlines would have to eliminate service to smaller communities. Slots represent the right for an aircraft to take off or to land at a particular time of day—they are not dedicated to provide service to any specific destination point. As has already been described, airline economics dictate that taking National or LaGuardia slots away from incumbents like US Airways inevitably would penalize smaller communities that currently have non-stop service to National and LaGuardia on our network. In other words, service to small- and medium-sized communities will be jeopardized by any slot confiscation because incumbent airlines will need to use their shrinking supply of slots for their more profitable and efficient routes—for example, those to and from their hubs—thereby leaving smaller communities that have less traffic in jeopardy of losing service. As DOT has clearly and correctly anticipated, slot withdrawals from incumbents would result in the disruption of service: “Service to small- and mid-sized cities would probably be most affected by such disruption. . . . Further, many of these [incumbent] carriers have created markets and service patterns at these airports which could be eliminated if they are to lose a large numbers of slots.” (51 Fed. Reg. 8632, 8633–34 (March 12, 1986).) Thus, the proposed bill would take the lifeblood of our network—the slots at National and LaGuardia—that enable us to provide non-stop service to the dozens of small communities on our network.

*Redistributing Incumbents’ Slots Will Cost Jobs*

To rewrite the slot rules and jeopardize our investments in National and LaGuardia and in the dozens of smaller community airports on our network threatens our viability and the thousands of jobs that depend on this airline. Ironically, it also threatens our commitments to the smaller communities on our network that benefit from US Airways’ non-stop service to National and LaGuardia. This threat also undermines the foundation of the promise we are making to our employees to build and expand US Airways into a global airline through the purchase of billions of dollars in new aircraft and the growth of our service network.

*Taking Slots Now Would be Grossly Unfair to Incumbents that Have Invested Millions in Airport Facilities in Reliance on the Buy-Sell Rule*

US Airways’ investments in infrastructure at LaGuardia and National, as well as in the other airports and local communities on our route network, have been expended in good faith reliance on DOT’s assertion that the 5% withdrawal and redistribution of slots to new entrants in 1986 was a one-time event. DOT expressly announced that, thereafter, the “primary method for obtaining slots in the future is to buy or lease them, and future new entrant carriers can utilize that method along with other operators.” (See 51 Fed. Reg. 8632, 8634 (March 12, 1986).) The proposal to redistribute slots from incumbents to new entrants will jeopardize the hundreds of millions of dollars of airlines’ investment and would be a breach of faith with the airlines and the cities they serve.

Even worse, by jeopardizing airlines’ past investments, the bill will discourage airlines from making similar investments in slot-controlled airports in the future. The Antitrust Division of the Department of Justice (DOJ) has taken the position that unjustified slot withdrawals would be unwise, reasoning that the expectation of long-term possession of slots would give airlines the incentive to “invest” in the slots they hold to maximize their value. If the airlines have certainty that they will be able to realize a return on their investment over time, then airlines will make investments such as building and improving terminal and ground-handling facilities (e.g., gates, lounges, etc.), purchasing appropriate equipment (e.g., Stage 3 aircraft), advertising and integrating routes from a slot-constrained airport into a network and the like. Changing the rules now will discourage airlines from making those investments in the future.



### III. SLOT REDISTRIBUTION TO NEW ENTRANTS CANNOT GUARANTEE LOW FARES

As has already been discussed, confiscating incumbents' slots will have the opposite of its intended effect—it will reduce existing service to smaller communities. It is also critical to understand that redistributing incumbents' slots to new entrants will not ultimately guarantee the long-term, competitive presence of new entrants—only the market can generate successful competitors.

#### *Government Intervention Into the Slot Market Has Failed in the Past*

The FAA's previous attempt to benefit new entrants by withdrawing slots from incumbents and redistributing them to new entrants by lottery was a complete failure. In 1986, when the FAA first implemented the Buy-Sell Rule, it withdrew 5% of the air carrier slots at slot-controlled airports to create a pool of 152 slots that were reallocated to new entrants through a lottery. By 1990, only 13 of these 152 slots were still being operated by the airlines that received them from the lottery. Rather than making a long-term commitment to serving these airports, new entrants turned around and sold 54 of the slots they had obtained from the lottery. (Notably, over two-thirds of the slots at National were sold.) Thirty-six of the 152 slots awarded to new entrants were returned because the new entrant failed to use them. The inability or unwillingness of new entrants to operate the slots they received in the 1986 lottery made the redistribution scheme a complete failure.

Indeed, this failure is all the more astonishing inasmuch as the new entrants and limited incumbents understood that the 1986 withdraw-and-redistribute scheme was a one-time event. DOT rejected proposals to make the 1986 withdrawal-based lotteries "periodic." Instead, DOT stated that going forward, "the primary method for obtaining slots in the future is to buy or lease them, and future new entrant carriers can utilize that method along with other operators." (See 51 Fed. Reg. 8632, 8634 (March 12, 1986).) Accordingly, new entrants that sold or returned the redistributed slots understood that the marketplace was to be their primary source of slots in the future. Nonetheless, they did not operate most of the slots they were given, but instead, they sold or returned a large majority of the withdrawn slots. Another attempt to confiscate incumbents' slots and redistribute them to new entrants will only fail again.

One of the reasons for this failure lies in the economic realities of the industry I described earlier. It is simply not realistic to expect a new entrant to maintain service to smaller cities without a hub at these cities or a network. Let me be blunt. It is unrealistic to think that smaller cities with limited passenger traffic can enjoy lower fares by having the government take slots from US Airways or from any other carriers and give these slots to new entrants. For the same economic reasons that US Airways depends upon a network to provide viable service to smaller communities, and as experience so amply demonstrates, a new entrant without such a network would likely soon abandon such service as well—leaving that city not with two airlines offering competing service but possibly with no service at all. For this reason, the proposed bill would have the opposite of its intended effect.

For example, according to one consultant, new entrant and smaller airlines lost almost \$200 million in 1996. (See "Endangered Species," The MBA Aviation Oracle (July 1997).) Efforts by the government to intervene in the marketplace on behalf of new entrants or limited incumbents to give them a competitive advantage or otherwise to promote their operations have had a very poor record. Moreover, inasmuch as there are only four slot-controlled airports in the United States, it is illogical to claim that the cost of obtaining slots at such airports is a reason why many new entrants have failed, despite the efforts at government assistance through prior lotteries or community subsidization of aircraft or routes. Instead, Congress should recognize that other factors—such as flawed business plans, insufficient financing and poor management structure—explain the discouraging track record for start-up airlines.

#### *Slots Alone Cannot Guarantee Low Fares for New Entrants*

Obviously, the financial status of many new entrants calls into serious doubt whether another slot redistribution from incumbents will guarantee that new entrants can succeed over the long term. Even for financially sound and stable new entrants, however, the basic economic dynamics of the airline industry and other factors at slot-controlled airports will seriously undermine new entrants' ability to charge rock-bottom fares. New entrants will face higher landing fees, gate lease charges and other costs that will prevent them from offering the same low fares they can from other less expensive airports. Indeed, low-cost, low-fare carriers, such as Southwest, have succeeded in large part by avoiding the more congested, higher cost airports such as National and LaGuardia. For example, by using Baltimore-Washington International Airport (BWI), not only does Southwest avoid the cost of

slots and higher landing fees and facility rentals at National, but in addition it is able to pursue its strategy of minimizing "turn-times" (i.e., the time a plane stays on the ground), thus maximizing the efficient use of equipment and crews at less congested airports.

*Slot Redistribution Will Require Substantial Government Re-Regulation*

For the current proposal to work in the face of the facts described above will take massive government intervention and regulation of the new entrants' use of the redistributed slots. In fact, it will substitute governmental decision-making for marketplace allocation. In essence, this proposal seeks to roll back deregulation and change the rules upon which carriers have relied in good faith and invested hundreds of millions of dollars to provide service to smaller communities. The Buy-Sell Rule was created, consistent with the implementation of airline deregulation as mandated by Congress, to allow the efficiencies of market forces to allocate slots—a scarce resource—to their highest valued use. Government attempts to override and interfere with the market not only destroy airlines' reliance on the market, but also create incentives for new entrants that will undermine Congress' original goals as discussed below.

What is even worse about this proposal, government intervention will not and cannot be limited to the simple but draconian measure of taking slots from incumbents and redistributing them to new entrants. Rather, because redistribution destroys the normal market incentives that allocate slots to their most valuable use, DOT will be forced to supervise and to micromanage the use of redistributed slots to ensure that new entrants use them as promised. For example, a start-up carrier that receives peak-period slots at National for service to a very small city would be using those slots for a use that is not the most profitable or the highest valued by the market. Thus, there will be a strong financial incentive for the new entrant to switch its service from that route to a more profitable one—one with greater passenger demand. Similarly, and for the same reason, there will likely be other airlines willing to buy those slots from new entrants and put them to a more profitable, higher valued use. To ensure that redistributed slots are actually used for their intended purpose—rather than succumbing to market forces—the government will have to continue to monitor and regulate the use of redistributed slots over time.

Therefore, unless DOT engages in a substantial level of re-regulation, new entrants that receive slots would be permitted to use—would even be rewarded for using—gamesmanship to obtain them. But, of course, such government micromanagement would necessarily involve regulating route selections—the very artificial mechanisms abolished with deregulation and the elimination of the old Civil Aeronautics Board ("CAB")—and would directly conflict with the goals and directives of the Airline Deregulation Act. Moreover, even if the government were successful in establishing a regulatory framework to ensure that new entrants used their slots for the intended purpose over time, that in itself is no guarantee that consumers will enjoy the benefits of lower fares on those routes.

#### IV. A MORE FAIR APPROACH

Confiscating an incumbent carrier's slots for redistribution to new entrants will have far-reaching consequences that will undermine the very goals that the proposed bill seeks to achieve. Before instituting such a draconian policy, Congress should take note that the number of slots are artificially constrained—the very existence of slot-controlled airports reflects a policy decision by Congress to restrict access to these high-demand airports. Congress could change that policy. To the extent that the policy is perceived as outdated, Congress can always reconsider the benefits of the decision to limit access to these airports. However, even if Congress recognizes that the benefits of the high density rule outweigh the costs, then Congress still can pursue less draconian alternatives to increase access for new entrants without taking the extreme step of confiscating incumbents' slots.

First, Congress should allow DOT to continue to exercise its authority to grant slots for new entrants and limited incumbents. (49 U.S.C.A. §41714.) Indeed, Congress has encouraged DOT to use this authority recently and, just last week, DOT exercised that authority to grant 31 slot exemptions to new entrant carriers. Frontier received 6 slot exemptions at LaGuardia for Denver-LaGuardia service; VahJet received 11 slot exemptions at LaGuardia for Atlanta-LaGuardia policy; AirTran received 4 slot exemptions at LaGuardia for Knoxville, TN-LaGuardia service; Reno Air received 2 slot exemptions at O'Hare for Reno-O'Hare service; and Trans States Airlines received 8 slot exemptions to provide service between Asheville, Chattanooga, Roanoke and Tri-Cities and O'Hare. This last exemption was granted despite DOT's recognition that Trans State did not meet all of the criteria DOT set

forth to qualify for exceptional circumstances. Nonetheless, DOT granted the exemptions to "advance an important Congressional goal, using slot exemptions to promote service to medium-sized communities." (See DOT Order 97-10-16 at 9 (Oct. 24, 1997).)

This extensive grant of 31 slot exemptions reflects a strong willingness by DOT to use its authority to address the very concerns that now motivate Congress' interest in the pending legislation. In fact, in its orders last week, DOT was quite explicit that it has decided to "define "exceptional circumstances" more broadly by recognizing the need for competitive service in a market, especially low-fare competitive service." (See DOT Order 97-10-17 at 3. (Oct. 24, 1997).) In deciding future slot exemption requests, DOT indicated it will place "a premium upon the introduction of (a) new nonstop services where none exist and (b) new competitive services." (See DOT Order 97-10-17 at 4.) Particularly given DOT's recognition of Congress' concern and DOT's action to meet that concern,<sup>2</sup> it would be premature and an unnecessary gamble to confiscate slots from existing service without knowing whether DOT's action was successful.

Second, Congress should evaluate whether slots allocated for general aviation (GA) use—for small, private aircraft, charter and military use—are the most efficient use of the limited resources available at slot-controlled airports. The FAA conducted an extensive evaluation of GA slots in its May, 1995 Report to Congress: A Study of the High Density Rule. The FAA concluded that GA operations at National "contribute to delays" while "providing benefits to a relatively small share of airport users." (See Report to Congress at 104.) On average, general aviation and "other" users at National perform 171 operations per day, equaling 18% of total airport operations. At LaGuardia, these users perform, on average, 48 operations per day and they account for 5% of total airport operations. Given that the slot limits are already artificially constrained, it would be difficult to justify taking slots away from airlines' existing service to dozens of small communities while preserving so many slots for corporate and personal use. Congress should weigh heavily the benefits to thousands of passengers in small communities throughout the U.S. seeking access to our nation's capital against the possible inconvenience for—using FAA's words—"a narrow portion of the population." (See Report to Congress at 109.) Instead, reallocating some of these slots for airline use—including new entrants—allows greater public benefit from a scarce resource.

Third, Congress should take note that open and unrestricted access to other airports near slot-controlled airports offers viable alternatives for many travelers. While airports such as LaGuardia and National may be more convenient for some passengers, competitors have had great success at nearby airports, such as Dulles, BWI and Newark. Several new entrants have built very successful business plans around exploiting these airports. For example, Southwest has found BWI to be an excellent and efficient alternative airport. BWI is less congested, permitting much faster and, therefore, cheaper turnaround times, and overall it has significantly lower costs than can be found at National. Efforts to promote the use of alternative airports through innovative thinking, such as better mass transit plans, could provide beneficial and workable alternatives to disrupting existing airlines' service to small communities through confiscation of slots.

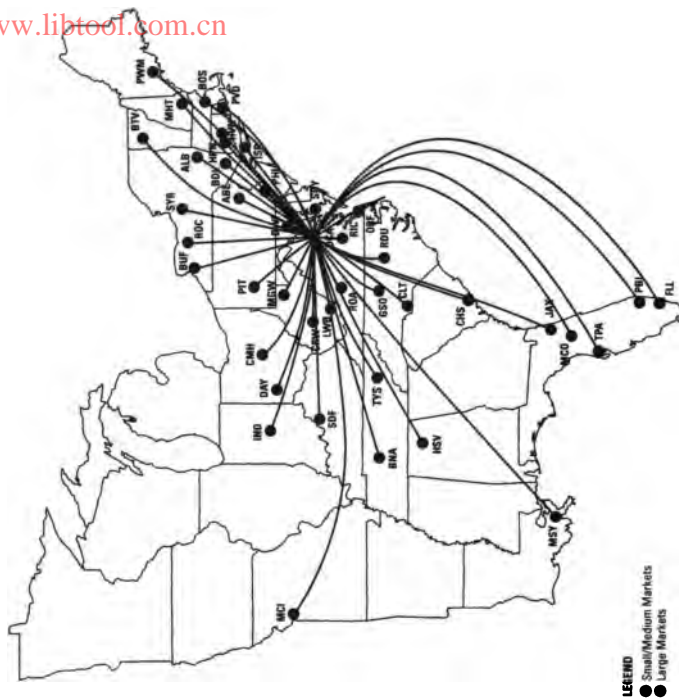
#### V. CONCLUSION

In sum, US Airways believes that the policy of confiscating slots to encourage service to small- and medium-sized communities will not work and, even worse, will eliminate non-stop service that US Airways already provides to many smaller communities today. We believe there is no evidence that redistributing slots will result in long-term service to new communities—in fact, all the evidence is to the contrary. And, as we have set forth above, there are strong reasons to believe that this policy will hurt small- and medium-sized cities already served by US Airways, jeopardizing the jobs and investments in these communities that depend on air service to National and LaGuardia. It seems particularly short-sighted to push such a risky policy when there are significant and less harmful alternatives that remain unexplored.

<sup>2</sup>In its order, DOT announced that we are concurring with the concerns that have been raised by members of Congress, numerous community groups, new entrant airlines, the General Accounting Office and within the Department about the state of competition in the airline industry." DOT Order 97-10-17 at 3-4 (Oct. 24, 1997).

# US Airways Washington, D.C. (DCA) Non-Stop Service October 1997

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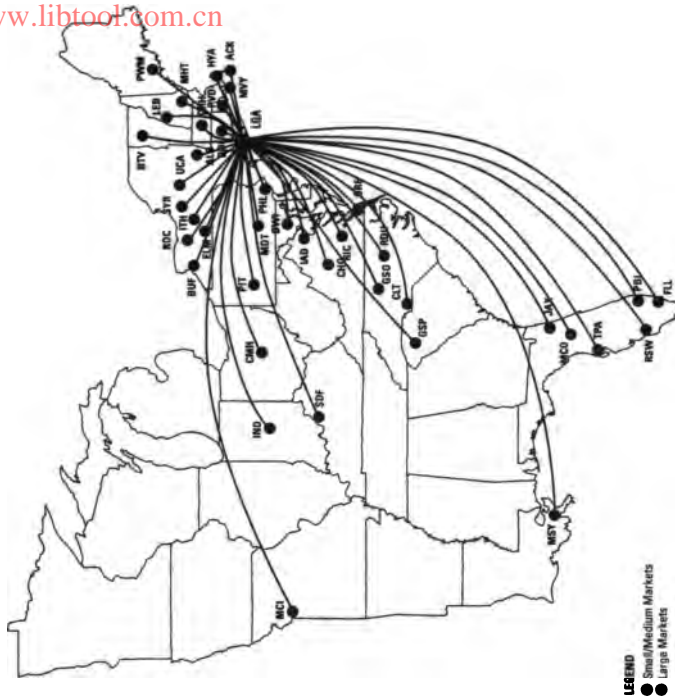


**42 Cities Served**

CITY	CODE
Albany, NY	ALB
Allentown, PA	ABE
Baltimore, MD	BWI
Boston, MA	BOS
Buffalo, NY	BUF
Burlington, VT	BTV
Chattanooga, TN	CAE
Charlotte, NC	CLT
Chickasha, OK	CHS
Columbus, OH	CMH
Dayton, OH	DAY
Fort Lauderdale, FL	FTL
Greensboro/Winston Salem, NC	GSO
Hartford, CT	BDL
Huntington/Dunbar, WV	HTS
Indianapolis, IN	IND
Jacksonville, FL	JAX
Kansas City, MO	MCI
Knoxville, TN	TYS
Louisville, KY	LWB
Long Island/MacArthur, NY	ISP
Louisville, KY	SDF
Manassas, VA	MHT
Manassas, VA	MGW
Nashville, TN	BNA
New Haven, CT	HVN
New York, NY	LGA
Norfolk/Virginia Beach, VA	ORF
Orlando, FL	MCO
Philadelphia, PA	PHL
Pittsburgh, PA	PTT
Portland, ME	PWM
Providence, RI	PDV
Raleigh/Durham, NC	RAO
Reno, NV	RNO
Richmond, VA	RIC
Salt Lake City, UT	SLC
Salisbury, MD	SBY
Syracuse, NY	SYR
Tampa/St. Petersburg, FL	TPA
West Palm Beach, FL	PBI
White Plains, NY	HPN

# US Airways New York (LGA) Non-Stop Service October 1997

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**40 Cities Served**

CITY	CODE
Albany, NY	ALB
Baltimore, MD	BWI
Buffalo, NY	BUF
Burlington, VT	BTV
Charlotte, NC	CLT
Charlottesville, VA	CHO
Columbus, OH	CAH
Elmira/Corning, NY	ELM
Fort Lauderdale, FL	LL
Fort Myers, FL	RSW
Greensboro/Winston Salem, NC	GSO
Greenville/Spartanburg, SC	GSP
Harrisburg, PA	MDT
Herndon, CT	BDL
Hyannis, MA	HYA
Indianapolis, IN	IND
Itasca, NY	ITL
Jacksonville, FL	JAX
Kansas City, MO	MCI
Lebanon, NH	LEB
Louisville, KY	SDF
Manchester, NH	MHT
Martha's Vineyard, MA	MVY
Nantucket, MA	ACK
New Orleans, LA	MSY
Norfolk/Virginia Beach, VA	ORF
Olando, FL	MCO
Philadelphia, PA	PHL
Pittsburgh, PA	PIT
Portland, ME	PWM
Providence, RI	PVD
Raleigh/Durham, NC	RDU
Richmond, VA	RIC
Rochester, NY	ROC
Syracuse, NY	SYR
Tampa, FL	TPA
Tempe, AZ	UCA
Washington-Dulles, DC	IAD
West Palm Beach, FL	PBI
Worcester, MA	ORH

**LEGEND**  
 ● Small/Medium Markets  
 ● Large Markets

Senator GORTON. Thank you.

Mr. Babbitt.

**STATEMENT OF J. RANDOLPH BABBITT, PRESIDENT, AIR LINE PILOTS ASSOCIATION**

Mr. BABBITT. Yes, sir. Thank you. I am president of the Airline Pilots Association and I very much appreciate the opportunity to come before this committee today and give you our views.

In the interest of time and in the interest of your patience, I'm going to somewhat abbreviate my remarks.

Senator GORTON. Your whole testimony will be included in the record.

Mr. BABBITT. Thank you, sir. I did want to share our concerns. The proposal that we're discussing today is designed to enhance competition in the domestic aviation for the benefit of air travelers and communities. And I think that's a very worthwhile goal and a worthwhile Government objective.

ALPA, however, believes that some of the bill's provisions would actually undermine, rather than advance, that objective.

These provisions would have the Government, rather than the marketplace, determine the outcome of competition. Indeed, some of the measures proposed would require substantial Government invention—intervention into the marketplace, or to put it more pointedly, we're talking about re-regulation.

The net result of that—a reduction in benefits to the traveling public and, one of our prime and foremost concerns for the people I represent, this appears to have the possibility of a very adverse effect on existing airline jobs.

The Act proposes to establish a program that would allocate takeoff and landing slots at high-density airports to new entrant and limited incumbent air carriers. The Secretary of Transportation, under this proposal, is to create new slots where possible, but if not, the Secretary is directed to withdraw a substantial number of slots from major air carriers. The withdrawal of these slots would then be auctioned off to the new entrant or limited incumbent carriers, and ALPA strongly believes that the slot withdrawal proposal should absolutely not be adopted.

Withdrawing slots from the network carrier and then allocating them to a new entrant or a limited incumbent would, in all likelihood, be providing non-hub, point-to-point service that would most likely reduce rather than actually enhance the net economic benefit generated by these slots.

And because, under the slot allocation procedures of the proposed legislation the Department of Transportation is supposed to give priority to applicants who propose new service to small or medium hub airports that do not have service to the high-density airport at issue, the result of this proposed auction process would simply be to move slots from high-volume to low-volume markets, a result that is flatly at odds with the free market forces and the advancement of public interest.

The proposed slot reallocation process would also have a very negative net effect on the consequence of airline employees as well. There are hundreds, literally, of slots that would be subject here for withdrawal and the number of jobs—pilot jobs, flight attendant

jobs, mechanics' jobs, gate agents among them—that all depend on the services based on those slots—it would be very difficult to measure the overall effect precisely. But it obviously could be quite large. And the current holders of those slots are air carriers where employee wages and working conditions have been established through collective bargaining.

I might add that the transition, the very difficult transition, from the regulated environment of 1978 to where we are today in 1997 included a great deal of re-evaluating those collectively bargained agreements in order to keep these carriers in business.

These employees have made concessions of wages, of working conditions, of pension plans. They've suffered innumerable mergers and a decade and a half of difficulty to make this transition. The employees sacrificed a great deal to keep their carriers going.

Now that we're finally beginning to get back on our feet, employees finally beginning to see a glimmer of sunshine, finally beginning to see a very modest return on this decade and a half of sacrifices, now we're hearing a proposal that would suggest that the company and employees are going to give up what they worked so hard to build.

New entrant carriers, where the wages and working conditions of these employees are likely to be set simply unilaterally by a new management—and I would also note for the record that these wages that are set appear—it's somewhat of a mirage that these are lower wages because for the most part, they're brand new employees.

So if I were to compare the wages of a new entrant employee to a brand new employee of Delta airlines, American airlines, or anyone else, they would be the same. So it's somewhat mythical that we are somehow going to enjoy a lower wage condition.

It's fair to say that the airline employees not only suffered the consequences of but, in the most part, bore the brunt of this transition to deregulation. The Government did not step in to assist them in that period of time—quite the contrary. In 1985, the DOT decided to no longer afford the protective provisions that would be provided in airline mergers and refused to carry out the employee protection program that Congress had included in the Airline Deregulation Act to cushion the effect, the anticipated effect, that we knew deregulation would have on employees.

However, we have adapted to deregulation and finally, after almost 20 years now, we have achieved some reasonable degree of stability in labor relations. And thus we are very skeptical of re-regulation proposals in general, and re-regulation proposals that are likely to have negative consequences for airline workers, in particular.

In concluding, there are two additional points that I'd like to make. First, if any slots are to be withdrawn, they should be those that are currently allocated to general aviation operations. Those operations carry, quite bluntly, a nominal number of passengers, they produce the least economic value of any given slot, and they should be the first to be reallocated if we go forward with this theory.

Second, at least one major carrier that I'm aware of uses many of the slots that are allocated to them as actual collateral for loans

in order to keep that airline's balance sheet up. Withdrawal of these slots could have a very adverse effect on the finances of that carrier, its balance sheet, and in turn, the broad benefits that that carrier provides to cities and the traveling public.

Again, I thank you for the opportunity to express our views here. [The prepared statement of Mr. Babbitt follows:]

PREPARED STATEMENT OF J. RANDOLPH BABBITT, PRESIDENT, AIR LINE  
PILOTS ASSOCIATION

Good afternoon. I am Randy Babbitt, President of the Air Line Pilots Association, International (ALPA).

ALPA represents over 47,000 pilots at 35 U.S. and 10 Canadian carriers. I appreciate the opportunity to appear before the Committee today to present ALPA's views on the proposed Aviation Competition Enhancement Act of 1997.

According to the letter I received inviting ALPA to testify today, this proposal is designed "to enhance competition in domestic aviation for the benefit of air travelers and communities." That is a worthy government policy objective. ALPA believes, however, that some of the bill's provisions would undermine, rather than advance, that objective. These provisions would have the government, rather than the marketplace, define the nature and outcome of "competition." Indeed, some of the measures proposed would require substantial government intervention in the marketplace, or to put it more pointedly, reregulation. In particular, ALPA believes that the proposed slot withdrawal provisions of the bill would result in a marked reduction of benefits to the traveling public and have an adverse effect on existing airline jobs. In addition, ALPA believes that no legislation is warranted that would provide favorable treatment to so-called low cost carriers to the extent that those low costs are based on low wages that have been set outside of a collective bargaining process.

The Aviation Competition Enhancement Act proposes to establish a program that would allocate take off and landing slots at high density airports to "new entrant" and "limited incumbent" air carriers. The Secretary of the Department of Transportation is to create new slots where possible but if it is not possible to create new slots the Secretary is directed to withdraw a substantial number of slots from major carriers. Those withdrawn slots would be auctioned off to "new entrant" or "limited incumbent" carriers.

ALPA strongly believes that the slot withdrawal proposal should not be adopted. The airlines that hold the slots that would be withdrawn have made substantial investments—in the hundreds of millions of dollars in the case of large slot holders—to develop the network infrastructures of which those slots are integral components. Given the competitive imperatives of a deregulated environment, those slots are put to their maximum economic use by those carriers. Withdrawing slots from a network carrier and allocating them to a new entrant or limited incumbent carrier that in all likelihood will be providing non-hub point to point service would most likely reduce, rather than enhance, the net economic benefit generated by those slots. This is particularly true as slots used by current slot holders provide service to small or medium hub airports would not be subject to withdrawal under the bill. Rather, the slots subject to withdrawal would be those that support service to larger cities. Because under the slot allocation procedures of the proposed legislation, the Department of Transportation is to give priority to applicants who propose new service to small or medium hub airports or to airports that do not have service to the high-density airport at issue (which is also likely to be a lower traffic airport) the logical, or more accurately, illogical result of the proposed priority/auction process would be to move slots from high volume to low volume markets—a result flatly at odds with free market forces and with the advancement of the public interest.

The other possible result of the proposed DOT auction process is illogical as well. There would undoubtedly be applicants who request slots in order to provide service from airports in large traffic markets as ValuJet (now AirTran) has done in the Atlanta-LaGuardia market under the current slot exemption program. Because the use of the slots in those high traffic markets would provide the greatest return on investment, it is probable that higher prices would be bid for them in the competitive auction process contemplated by the bill. The result would be that slots used to serve major markets would merely be transferred from incumbents to non-incumbents. Smaller communities would not be benefited, contrary to the apparent intent of this legislation. Indeed, even if a carrier did propose service to a smaller airport in order to get priority from the DOT in the selection process, there would be a powerful economic incentive to switch service to a larger market after the mandatory 180-day service period proposed by the bill.



The proposed slot reallocation process would have net negative consequences for airline employees as well. There are several hundred slots that are subject to withdrawal. The number of jobs—pilot, flight attendant, mechanic, ticket and gate agent among them—that depend on the services based on the slots that could be withdrawn are difficult to estimate precisely, but obviously could be quite large. The current holders of these slots are air carriers where employee wages and working conditions have been established through collective bargaining between carriers and their employees. On the other hand, if the recent applicants under the current statutory slot exemption program are any indication, the new entrant or limited incumbent applicants under the slot reallocation program are likely to be relatively new airlines whose employees have not had the opportunity to select bargaining representatives or to complete the process of bargaining for a first collective bargaining agreement. The wages and working conditions of those employees are likely to be set unilaterally by the carrier and thus markedly inferior to those of the employees of the current slot holders. This result is contrary to the congressionally-established labor policy enunciated in a number of basic labor laws, including the Norris-LaGuardia Act, the National Labor Relations Act, and the Railway Labor Act (which governs labor relations in the airline industry), favoring the establishment of wages and working conditions through collective bargaining.

It is worth recalling that the enactment of the Air Line Deregulation Act was followed by a decade and a half of airline bankruptcies, mergers, route sales and wage and pay concessions. It is fair to say that airline employees not only suffered the consequences of, but bore the brunt of deregulation. The government did not step in to assist them. To the contrary, DOT decided to no longer afford labor protective provisions in airline mergers, and refused to carry out the employee protection program that Congress had included in the ADA to cushion the effects of deregulation on employees. However, we adapted to deregulation and finally, almost twenty years after deregulation, have achieved a reasonable degree of stability in our labor relations. Thus, we are skeptical of reregulation proposals in general, and reregulation proposals that are likely to have negative consequences for airline workers, in particular.

In concluding, there are two additional points I would like to make. First, if any slots are to be withdrawn they should be those that are currently allocated to general aviation operations. Those operations (which carry a nominal number of passengers) produce the least economic value per slot and thus should the first to be reallocated. Second, at least one major carrier uses many of the slots that would be subject to withdrawal as collateral for loans. Withdrawal of those slots could have a serious adverse effect on the finances of that carrier and, in turn, on the broad benefits that carrier provides to cities and the traveling public.

Again, ALPA appreciates the opportunity to participate in this hearing today. I will be glad to answer any questions.

The CHAIRMAN [presiding]. Mr. Faberman.

#### STATEMENT OF EDWARD FABERMAN, AIR CARRIER ASSOCIATION

Mr. FABERMAN. Good afternoon, Mr. Chairman and members of the committee. I'm delighted to be here on behalf of new entrant carriers and small and medium communities throughout this country that would like to be a part of the national air transportation system and would like to get access to the high-density airports.

The closure of four major airports in this country to new entrants is a result of Federal regulation. It's not as Mr. Babbitt suggests a question of re-regulation. We're trying to change a regulation that precludes new service to these airports.

The Aviation Competition Enhancement Act of 1997 will go a long way in making it possible for new entrants to obtain much-needed service and much-needed access to these airports.

Imagine trying to compete in a deregulated airline industry when you can't fly to four of the most important business airports in the world.

Last Friday, DOT issued two orders awarding slots at O'Hare and LaGuardia. In that, they said that these slots will provide sub-

stantial public benefits. They then went on to say, however, that the number of available slot exemptions is very limited and they may not be able to award any additional operations at LaGuardia even though applications may meet their standard.

We applaud the efforts of Charlie Hunnicut and Pat Murphy for processing these orders. We know there was an enormous amount of pressure applied by some large carriers and their surrogates not to approve these slot requests. Monopolists do not readily allow others into their markets.

The true winners from these orders will be the residents of Reno, Knoxville, and the other airports that obtained service. It's a small step in securing the future of competitive airline service but more must be done.

I don't think we would tolerate—in any other business—businesses being told they can't open up facilities in major parts of this country.

Let's look at some of the high-density facts—Mr. Nagin mentioned some, and Mr. Nagin's correct in that USAir does serve a number of small markets out of National Airport.

However, we would suggest that he—that that may be the only airline that serves those small markets. Most of the other airlines at National Airlines serve their hubs. There's nothing wrong with this. We applaud it, and we think that they should be allowed to put as many flights into their hubs as possible.

However, if we're talking about approximately 70 slots a day being used to serve Chicago, we believe if that number was reduced by 10 percent and opportunities were made for new entrants to serve small markets and other hubs, that we—everyone in the system would benefit.

Since the buy/sell rules went into effect in 1985, the four major carriers that dominate the high-density airports have increased their slots significantly. American has gone from 523 to 756, United from 689 to 851, Delta from 185 to 336, and US Airways from 203 to 395.

In 1980 when there were not enough available slots to accommodate New York Air, then Secretary Goldschmidt took away slots from incumbents and allocated them to New York Air at National Airport, enabling New York Air to enter the shuttle market. That's why we have two shuttles today. The world didn't come apart, the large carriers didn't go out of business, financing at National Airport did not crumble, the terminal did not close.

In that preamble, the Secretary made it very clear that a primary objective of DOT is to promote competition.

In December 1985 when the buy/sell rules were issued, the Secretary emphasized that slots were not the property of the carriers and they may be withdrawn. And slots are assigned withdrawal numbers to facilitate being taken away. Everyone who's been involved in National Airport in slots has known that they could lose slots if the Government found it necessary to increase competition.

As you mentioned, Mr. Chairman, we urge everyone, everyone, to read the 1996 GAO report. We urge everyone to look at the National Air Service Roundtable Report that came out in Chattanooga, TN, where small communities got together and complained about access to high-density airports.

We also, as Senator Gorton mentioned, ask—suggest that everyone look at the Salomon Brothers study, “Airline Competition at the 50 Largest U.S. Airports,” because concentration is at the highest level ever.

Many of the large carriers argue that new entrants should be forced to purchase slots or serve other area airports. Why should a carrier that was given slots free of charge, has been able to use those slots in some cases for 25 years, have the right to demand money to allow another carrier to use Government property?

We also suggest that some of these same carriers do not believe they should have to purchase slots to serve foreign airports. As to serving other airports in the area, all carriers should have the opportunity to serve Washington National, O’Hare, LaGuardia, and Kennedy. Considering slots limitations, new entrants have few options at New York, where two airports are slot-controlled and a third, Newark, is congested.

As DOT stated in last week’s order, “There’s evidence that Atlanta/LaGuardia is a distinct market from Atlanta/Newark and Atlanta/JFK.”

We also suggest if they are comparable airports, then the large carriers, if they have to give up slots, could easily move to those other airports and resume service.

It is time for DOT to take action. We agree with the first two panelists that exemption slots should be the first way to go. If, however, exemption slots are not available, it’s essential that slots be taken away from incumbents and redistributed. If not, the dream of deregulation may be something that we will not be talking about into the next century. Thank you, Mr. Chairman.

[The prepared statement of Mr. Faberman follows:]

#### PREPARED STATEMENT OF EDWARD FABERMAN, AIR CARRIER ASSOCIATION

Good afternoon, Mr. Chairman and members of the committee.

I am delighted to be here to discuss an issue of critical importance to the survival of airline competition in the U.S.—the closure of four major airports in this country to new entrants and affordable fare carriers. This blockage of competition is imposed by Federal regulation—the FAA’s high density rule that allows the Nation’s largest carriers to control access to LaGuardia, O’Hare, Kennedy and Washington National Airports. Senator McCain’s Aviation Competition Enhancement Act of 1997 will go a long way in making it possible for new entrants to obtain access to these airports. Having said, however, we believe that the bill must go further to address the future of airline competition. It should be modified to allow new entrant slot holders to have the same slot use rights as the incumbent carriers. At some point—two years—new entrant carriers should be able to trade or sell high density slots just as the large carriers are entitled to do. Moreover, new entrant carriers should not be required to purchase slots that will be used to compete against an incumbent carrier that was given the slots without charge. That payment by a new entrant carrier, places it at another disadvantage in competing against the dominant incumbent carrier in its market that obtained its slots without charge. The bill also has to be more explicit in addressing anticompetitive behavior.

Imagine trying to compete in the airline industry when you are told that although it is a deregulated industry, you cannot fly to certain airports including O’Hare, Washington National, LaGuardia and Kennedy. Furthermore, imagine trying to compete against carriers that have multiple flights to those airports from the same cities that you serve. The high density rule has created exclusive market shares that would not be tolerated in any other businesses.

On Friday, October 24, DOT issued two orders awarding slots at O’Hare and LaGuardia Airports to affordable fare carriers. In approving the requests, DOT stated that:

We have determined to define “exceptional circumstances” more broadly by recognizing the need for competitive service in a market, especially low-fare

competitive service. Airlines operating as low-fare carriers provide substantial public benefits by making low fares available to many more travelers and thereby greatly increasing the size of the market. In expanding the range of exceptional circumstances, we are concurring with the concerns that have been raised by Members of Congress, numerous community groups, new entrant airlines, the General Accounting Office and within the Department about the state of competition in the airline industry.

As to the approval of additional requests, DOT stated:

We would favor proposals that are based on aircraft that meet stage 3 noise requirements; second, there should be a reasonable expectation that the proposed service would be operationally and financially viable; third, we will place a premium upon the introduction of (a) new nonstop services where none exists and (b) new competitive services, especially by applicants that have the demonstrated potential to offer low-fare competition, where there is single carrier service and the market could support entry or where existing services do not produce meaningful price competition.

Although DOT clearly stated that there were substantial public benefits from allowing low-fare competitors into the HDR airports, they then warned that, "The number of available slot exemptions is very limited, and we may have to apply our guidelines on an increasingly more restrictive basis or even deny applications that otherwise meet the standards set forth in the order."

We applaud the efforts of Charlie Hunnicutt, Pat Murphy and their staffs for processing these orders. There was an enormous amount of pressure applied by some large carriers and their surrogates not to approve these slot requests. Monopolists do not readily allow others into their markets.

The true winners from these orders are the residents of Denver, Atlanta, Reno, and Knoxville. It is a small step in securing the future of competitive airline service. However, more must be done at LaGuardia and opportunities must be created at Washington National if large areas of this country are to obtain access to these airports and if competition is going to exist at major hubs throughout this country.

To best describe the enormous competitive disadvantage created by the blockage of competition at high density airports, let me ask the following:

1. Would we tolerate an auto-manufacturer, hotel chain, or any other business being told that it couldn't sell its products or open a facility in D.C., New York or Chicago?

2. What is the economic impact on a small or medium-size community, if it doesn't have competitive airline services, or any service to D.C., New York, or Chicago?

3. Would DOT sign an open skies agreement with the British or Japanese if new U.S. carriers were not able to obtain entry to Heathrow or Narita.

Do we tell residents of Chattanooga, Birmingham, Mobile, Jackson, Melbourne, Myrtle Beach, Akron, Bloomington, Wichita that they will never get access to LaGuardia or National? Do we tell residents of Atlanta, Pittsburgh, Dallas, and Detroit that they will never have low-fare service to Washington National. Was that the intent of the Deregulation Act.

Let's look at some of the high density facts:

Washington National:	
New Entrants .....	0% operations
America West .....	3 departures
Foreign Carriers	
Air Canada .....	8 departures
LaGuardia:	
New entrants .....	1.0%
Foreign carriers .....	6.5% share
Air Canada .....	36 slots
Canadian Airlines .....	10 slots

See attached chart.

According to GAO's 1996 report, 3 carriers (American, Delta and US Airways) control 64% of the slots at LaGuardia and 59% at National. The large carriers control about 80% at each airport—financial institutions 20% at each airport and post-deregulation less than 3%.

Since the buy sell rules went into effect in 1985, American Airlines has increased slot holdings from 523 to 756, United from 689 to 851, Delta from 185 to 336, and US Airways from 203 to 395.

These carriers dominate these lucrative markets. Despite record breaking profits again this past quarter and year, some argue that if these carriers were to lose a few slots, their systems would fall apart.

The only thing that will fall apart if slots are not provided for new entry, is the future of competition. If for shortsighted reasons, these barriers to entry are not broken down, fares will continue to increase, consumers and businesses will have no options and small and medium communities throughout this country will remain outside of the Nation's air transportation system.

#### BACKGROUND

The HDR was issued in 1969 and carriers were given the slots they needed. In 1980, when there were not enough available slots to accommodate New York Air, Secretary Goldschmidt issued a special Federal aviation regulation ("SFAR") to allocate 18 slots to New York Air at National Airport, enabling New York Air to enter the shuttle market [45 FR 72637, Nov. 3, 1980]. The promotion of new entry was deemed so important that the slots provided to New York Air were withdrawn from all carriers including smaller carriers such as Air Florida.

The preamble to SFAR made it clear that a primary objective of the Secretary of Transportation was to promote competition, even in routes that were already served.

. . . additional low fare service in the market will increase competition and would thus be consistent with the Airline Deregulation Act.<sup>1</sup>

The preamble also made it clear that the Department had a significant amount of authority to withdraw and allocate slots and that slots were not property belonging to the carriers.

There is no property right in access to a public facility . . . plainly the Department has the power to allocate them on any basis that is not arbitrary and capricious, or otherwise contrary to law.

The Secretary's quick action to allocate slots under his general statutory authority was vigorously contested by the large carriers—who hoped to avoid increased competition. Ultimately, the Secretary's decision was upheld by the United States Court of Appeals in *Northwest v. Goldschmidt*, 645 F.2d 1309 (1981).

In December 1985 (Amendment 93-49, 50 FR 52195), the DOT issued the buy-sell slot rules. Under these rules, carriers were grandfathered their existing slot holdings and allowed to buy or lease slots. At the time that this rule was issued, a limited number of slots were distributed to new entrants. Since that time, however, the large carriers have gradually re-acquired all of the slots intended for new entrants, thus increasing their stranglehold on the high density airports.

The buy-sell rules contain several provisions which set forth the authority of the Secretary to withdraw and distribute slots. These key provisions emphasize that:

1. Slots are not the property of the carriers. Section 93.223 (a) states:

Slots do not constitute a property right but represent an operating privilege subject to absolute FAA control. Slots may be withdrawn at any time . . .

The preamble to the regulation adds, "this amendment does not create proprietary rights in slots."

2. Slots may be withdrawn.<sup>2</sup> Section 93.223(c) states:

Whenever slots must be withdrawn they will be withdrawn in accordance with the priority list established under paragraph (b).

3. Slots are assigned a withdrawal number to facilitate slot withdrawal. Section 93.223(b) states:

The FAA shall assign, by random lottery, withdrawal priority numbers for the recall priority of slots at each airport.

In the orders issued last week, DOT made it clear that the decisions to award slots to low fare competitors was consistent with numerous reports issued over the past several years by DOT, GAO and others.

In its 1996 report, GAO found that "control of slots by a few airlines greatly deters entry" at the high density airports resulting in higher fares for those traveling to those airports. [A summary of the 1996 report is attached.] That was not the first time that GAO had commented on high density airport restrictions. In its August, 1990 report (Airline Competition: Industry Operating and Marketing Practices Limit Market Entry), GAO stated that the high density rules "prevent potential entrants from starting service" at those four airports and that "since access to these airports is important in developing a competitive route network, slot controls discourage entry into a wide range of markets in addition to those starting or ending at one of the four airports."

<sup>1</sup>The slots given to New York Air were for service between New York and Washington—a route already served by the Eastern Shuttle.

<sup>2</sup>Carriers have always known that slots could be withdrawn. To avoid possible loss of slots, carriers have traded or sold slots with high withdrawal numbers.

In February of this year, State, local and Federal officials met at the National Air Service Roundtable, held in Chattanooga, Tennessee, to discuss market-based solutions to local air service problems. The genesis for the meeting was the need to finish "the unfinished business of the Airline Deregulation Act of 1978 by bringing a competitive mix of service to all communities," particularly those that, like Chattanooga, lack adequate airline competition or service quality.

These communities are experiencing higher fares and reduced service quality. While conferees identified marketing steps that can be taken by communities and carriers, participants agreed that "if local efforts to enhance competition are to succeed," the Federal Government must address "anti-competitive practices of larger airlines," as well as barriers to entry including "exclusive use" gate leases and the availability of slots. At the end of the conference a number of issues including slot availability were highlighted in "The National Air Service Roundtable: A Consensus Report" written by Joseph P. Schwieterman, Ph.D. As the report noted, communities throughout the country are experiencing "higher fares and reduced service quality." While the conference identified a number of marketing steps that can be taken by communities and carriers, the participants agreed that "if local efforts to enhance competition are to succeed," the Federal Government must address "anti-competitive practices of larger airlines," as well as barriers to entry including "exclusive use" gate leases and the availability of slots. The National Air Service Roundtable consensus report also stated that:

The control of airline "slots" is also deleterious to competition. This problem is pervasive at the "big four" airports, Chicago's O'Hare, New York's Kennedy and LaGuardia, and Washington's National Airports. It can put the expansion of air service in mid-size cities into the hands of a few major carriers, which own the slots, precluding mid-size cities from working effectively with new entrants to establish service to major airports.

One of the recommendations from the conference was:

New slot allocations. Departure slots at congested airports should be provided to carriers seeking to serve communities beset with air-service problems. High fares and poor service are so contrary to the public interest that they occasionally justify direct Federal intervention as allowed under current law. Appropriate steps might include a more liberal interpretation of the "exceptional circumstances" criterion, which gives dot the authority to reallocate slots in the public interest.

The purpose of deregulation was not to freeze certain communities and carriers out of the Nation's largest markets. A deregulated environment cannot exist when service to Chicago, New York and Washington is blocked by federally imposed regulations. True deregulation can only exist when all markets are opened.

#### BENEFITS OF NEW ENTRY

If we are going to have airline competition into the next century, barriers to entry must be opened. Not only will it promote competition and the survivability of new entry, but it will result in:

- Lower prices and more choices for the traveling public
- Provide business travelers throughout the country with affordable fare options for travel to New York, Chicago and Washington; and
- Provide leisure travelers with affordable fares that will allow them to visit families and friends, to take family vacations and explore business opportunities; and
- Stimulate enormous business and economic opportunities in cities such as Akron, Bloomington, Moline, Fort Wayne, Chattanooga, Myrtle Beach, Birmingham, Mobile, Jackson, Fargo and others that do not have non-stop service to New York, Washington, and Chicago; and
- Allow carriers serving small cities to add important business markets to their network allowing them to strengthen small market service.

A recent study by Julius Maldutis of Salomon Brothers, "Airline Competition at the 50 Largest U.S. Airports—Update" stated that:

The Herfindahl-Hirschman Index (HHI), based on national air travel market share data, is flawed. We have developed a better measure of concentration based on a weighted average of airline market shares at each of the 50 largest airports in the United States, demonstrating that the concentration for the industry is at an excessive level—3,877 HHI.

The report added:

Therefore, measures of concentration, based on nationwide industry data, do not clearly depict the increase in industry concentration. However, market share analysis and, therefore, measures of concentration at the 50 largest airports show an unprecedented degree of concentration in the airline industry.

Is this what the Deregulation Act was all about? Only certain large cities will obtain non-stop service to the high density markets and to those large cities concentration will grow so that no competitor can enter? Should smaller cities be told to go elsewhere?

Many of the large carriers argue that new entrants should be forced to purchase slots or serve other area airports. Why should a carrier that was given slots free of charge have the right to demand money to allow another carrier to use Government property. Moreover, few slots are available for purchase; they are only available for short term leases. Most of the slots that have been purchased since the buy-sell rules were put into place, have been part of major facility transactions or the outright purchase of an airline. In each case slots were part of the transaction. Compare the position of those carriers arguing that HDR slots should be purchased with their views on international access.

The same carriers that insist that new entrants purchase slots at high density airports, recoil from that concept as it applies to them:

The slots U.S. carriers need must also be made available at no charge. The U.S. provides free slots to foreign carriers, including BA, operating at U.S. slot controlled airports.—Stephen Wolf, US Airways

Moreover, to require entrants to purchase slots when incumbents were given them for free creates a barrier to entry in itself. Obviously, BA and AA would be in a position to control any such slot market if it were authorized, and would likely exercise their market dominance to immunize the alliance from competition.—Barry P. Simon—senior vice president, International Continental Airlines, Inc. before the Senate Antitrust, Business Rights and Competition Subcommittee, April 22, 1997.

True open skies also requires that new entrants be provided Heathrow slots free of charge. The U.S. Government ensures that foreign carriers, including British Airways, are able to obtain the necessary slots to provide international service from slot-constrained airports in the U.S. indeed, DOT has even taken away slots from U.S. carriers to make them available to a foreign carrier at no charge. Comity demands that U.S. carriers be provided free access to Heathrow slots. Nor is there a justification for allowing British Airways and American to charge outrageously high, artificial "market prices" for the slots they relinquish, as the mega-alliance partners have suggested. Neither British Airways nor American paid the British Government for the slots they currently use at Heathrow.—Larry Nagin, US Airways

As to serving other airports, all carriers should have the opportunity to serve Washington National, O'Hare, LaGuardia and Kennedy. Considering the slot rules, new entrants have few options in New York where two airports are slot controlled and a third—Newark—is significantly congested. A report in the September 26 Aviation Daily stated that Continental Express dropped five markets from Newark "because of airspace congestion that is wreaking havoc on our operational integrity." As DOT stated in Order OST-97-2442, "there is evidence that Atlanta-LaGuardia is a distinct market from Atlanta-Newark and Atlanta-JFK."

We do not believe that BA and AA would seriously contend that consumers, particularly business travelers, would pursue alternatives to non-stop service. All applicable precedents have concluded that one-stop and connecting service are not reasonable alternatives to non-stop service.—Barry Simon

American Airlines three years ago testified that "although Gatwick and Stansted are available for expansion, as things stand today, consumer preferences and connecting service opportunities make Heathrow the only truly viable London airport."—Barry Simon

Gatwick is not a competitive substitute for Heathrow, particularly for business travelers.—Scott Yohe, Delta

Although some of the large carriers have protested that access to international markets and domestic markets is not the same, those protestations do not change the obvious. The issues presented concerning access at Heathrow Airport and high density airports are the same—access, competition and fares and the impact of those issues on all of those traveling in domestic markets. The large carriers emphasized that competition between the U.S. and London cannot exist without access to Heathrow. In the United States, competition cannot exist at the Nation's most important markets without access to high density airports. The hypocrisy of those pretending that international access is a different issue, was best summarized by Bob Crandall, chairman and CEO of American Airlines, Inc., before the Senate Aviation Subcommittee on June 4, 1997 when he stated:

For an added dose of irony, consider these facts: United holds the greatest number of slots at Chicago's O'Hare airport and a higher percentage of O'Hare slots than British Airways and American combined will hold at Heathrow.

Moreover, United holds slots at Heathrow it does not use, having loaned them to its partner, Lufthansa. Yet United continues to demand that we and British Airways divest several hundred slots at Heathrow—while at the same time taking the position that in the United States, new entrants do not need slots at constrained airports! (Emphasis added).

While we have not seen action from this Administration on predatory behavior issues, other business transactions have caught the eye of Federal regulators. The Federal Trade Commission has rejected a proposed merger between Staples and Office Depot on the grounds that competition would be severely handicapped and recently the FTC expressed concern with actions of Toys-R-Us. The FTC recently announced it will consider a key merger proposal of U.K.-based liquor giants Guinness and Grand Metropolitan. If regulators decide alcoholic beverage consumers are steadfastly loyal to their gin or vodka or scotch—and that a merger would create a monopoly in certain categories—the FTC might block the \$22.3 billion deal.

The FTC's investigation of the proposed merger is highly unusual given the fact that the companies aren't based in the USA. The combined companies would control 47% of scotch, 39% of vodka and 36% of gin sales here. Also, the Justice Department recently launched an investigation of Anheuser-Busch's market practices (pushing its distributors to only carry its products).

Apparently, the Administration believes that it is more important to have reasonably priced alcohol and toys available than it is to ensure that affordable air transportation exists.

It is time for the DOT to take those actions necessary to ensure that competition exists. It is critical that DOT move quickly. If not, some of these cities may never have service and some of these carriers may be hurt.

The DOT has a number of options to provide slots:

1. Allocate exemption slots;<sup>3</sup> or
2. Withdraw slots from incumbent carriers and re-allocate them to the affordable fare carriers; or
3. Require the U.S. partners of the foreign carriers holding exemption slots at LaGuardia and O'Hare to provide those slots to the foreign carriers and withdraw the exemption slots held by the foreign carriers and then allocate them to affordable fare carriers.

The large carriers have enjoyed record profits and growth, particularly at the high density airports. We congratulate those carriers on their successes and hope that the entire airline industry and all of those who rely on it continue to prosper. Our preference would be that all carriers would be given the opportunity to enter the high density markets and grow to meet market demand. Unfortunately, that result is prohibited by statute at Washington National and the DOT has stated that only limited additional operations will be permitted at LaGuardia. With those limitations and if we are truly to operate in a deregulated environment, we believe that the Department is obligated to withdraw slots from incumbents for redistribution to new entrants.

The legislation introduced by Senator McCain is an important step.

The dream of those who created the Airline Deregulation Act of 1978 was that airlines would be able to compete against each other in open markets in which each carrier and community would be able to determine its own future. Whether the American public will benefit from a deregulated environment in the 21st century depends upon whether the Department is prepared to insure that markets remain open to all and that competitors can compete equally but fairly. If not, we will see the end of the deregulation dream.

Thank you!

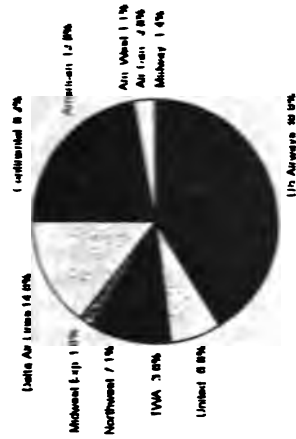
<sup>3</sup>The Secretary has found "exemption" slots to be available to meet international requests at LaGuardia in larger numbers than those requested by affordable fare carriers.



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## Washington National



Airline	Weekly Departures
Air Canada	8
American West Airlines	1
American Airlines	28
Continental Airlines	31
Delta Air Lines	41
Midway Airlines	4
Northwest Airlines	5
Trans World	41
United Airlines	117
<b>U.S. Airways</b>	<b>117</b>

## New York LaGuardia



Airline	Weekly Departures
Air Canada	18
American West Airlines	2
American Airlines	24
Continental Airlines	24
Delta Air Lines	41
Midway Airlines	4
Northwest Airlines	5
Trans World	41
United Airlines	117
<b>U.S. Airways</b>	<b>117</b>

Source: "Office of Airline Service and Airport Administration" Reports

The CHAIRMAN. Mr. Rowen.  
Thank you, Mr. Faberman.

**STATEMENT OF ROBERT ROWEN, VICE PRESIDENT AND  
GENERAL COUNSEL, RENO AIR**

Mr. ROWEN. Thank you, Mr. Chairman and members of the committee. It is a pleasure to be here today. I am Bob Rowen, vice president and general counsel of Reno Air.

We support the Aviation Competition Enhancement Act of 1997 in all respects. However, we are concerned that this bill in itself will not cure the predatory tactics that are destroying competition in the airline industry.

Reno Air is a low-fare airline based in Reno, NV, with operations up and down the west coast, from San Diego, CA to Fairbanks, AK, and extending east to Colorado, Chicago, Detroit, Mississippi, and Florida. Chicago service was made possible by the grant of exceptional purpose slots under legislation adopted in 1994.

We received an additional pair of slots on Friday, and look forward to adding capacity in this market with brand new, state-of-the-art MD90 jets. We appreciate the ability to serve Chicago.

Reno Air commenced operations on July 1, 1992, and passed its fifth anniversary earlier this year. Reno Air has always operated an all-stage three fleet. I also note that our pilots are represented by the Air Line Pilots Association, and that every pilot I have spoken to has supported Reno Air's applications for new entrant slots.

Reno Air earned a profit in 1995 and 1996. This is notable, not only because Reno Air is one of the few profitable new entrant airlines, but also because Reno Air operates in the highly competitive west coast markets. Fares prevailing on the west coast, when adjusted for length of haul, length of flight, average one-half to one-third of fares prevailing in east coast markets.

For example, the average fare in the San Jose/Los Angeles market was under 20 cents a mile in the first quarter of this year, as compared to 40 cents a mile in many east coast markets, and over 55 cents a mile in the LaGuardia/National market.

The state of airline competition today is a paradox, with vigorous competition in certain markets, such as intra-California, and a lack of competition enforced by strong anti-competitive practices in other markets.

The paradox of airline competition is illustrated by Reno Air's experience. On the west coast, where competition is vigorous, Reno Air has prospered while competing against strong airlines such as Southwest. On the other hand, Reno Air has been unable to profitably serve two Midwest markets that have had much higher fare levels and much less competition.

These markets are Minneapolis and Detroit, where Northwest dominates. Reno Air was driven out of Minneapolis in 1994, and is currently hanging in in Detroit with one red-eye flight a day.

These failures we believe are each due to Northwest's predatory actions against Reno Air, which were designed to keep Reno Air and other low-fare airlines out of Northwest's hub cities.

In each case, Reno Air initiated nonstop service in markets that did not have nonstop service, and Northwest immediately overlaid

Reno Air's service, using the power of its hub network and predatory pricing to drive Reno Air out.

For instance, Reno Air initiated Reno/Detroit service with one flight a day in January of this year. Northwest immediately initiated competing service and increased such service to three flights a day despite the low yields and low traffic on the route.

The Department of Justice earlier this year has said that such activity appears to look like an anti-trust violation. In making those remarks, the Department of Justice was commenting on the same tactics that Northwest used against Reno Air in 1994 when Reno Air sought to enter the Reno/Minneapolis market. The Department has aptly noted that if Northwest was not serving a market before Reno Air entered, it seems odd that the market would become more appealing after Reno Air entered.

We and other airlines in the Air Carrier Association have brought these problems to the attention of the Department of Transportation and the Department of Justice and they say they are studying the problem.

However, while they are studying the problem, this predatory activity is fast spreading to other airlines and other parts of the country like a disease. Other airlines have seen the lack of Government enforcement action against predatory pricing tactics and predatory scheduling tactics, and they've asked themselves, "If Northwest can do this, why can't I?"

As a result, predatory pricing and scheduling tactics are more prevalent than they were 5 years ago, are more blatant and focused, and are literally driving new entrant airlines out of business.

The airline pricing scheduling and yield management practices are indeed complex. But the public should not be fooled by what is happening in the industry. As I've documented in the written materials submitted to this committee, major airlines tailor their competitive response based on the strength of their competition.

It's easy for a major airline to destroy any market entered by a low-fare carrier with low prices and excess capacity. If they believe the competition can be forced out of the market, they willingly cut their own revenues and profits and even operate at a loss to drive a competitor out. And after they succeed, they jack the fares back up again to their monopoly levels.

The anti-trust laws and the DOT's authority clearly extend to prohibit these predatory tactics. The Department of Transportation and the Department of Justice need only to apply these laws to the complexity of airline pricing and yield management.

The anti-competitive practices of predatory pricing and predatory scheduling inflict their greatest damage on local communities that are seeking competitive air service. And yet these communities and their State governments are powerless to apply State fair trade laws of general application to the airline industry.

If the Department of Justice and the Department of Transportation will not act to stop the abuses that have been documented, then perhaps Congress should allow the States to apply their own fair trade laws in this area.

We appreciate the attention of this committee to the absence of Government enforcement action to enforce fair trade laws, and we

support the Aviation Competition Enhancement Act of 1997. Thank you very much.

[The prepared statement of Mr. Rowen follows:]

PREPARED STATEMENT OF ROBERT ROWEN, VICE PRESIDENT AND GENERAL COUNSEL,  
RENO AIR

Thank you, and it is a pleasure to be here before this Committee today.

Reno Air is a new entrant airline based in Reno, Nevada, with operations up and down the West Coast, from San Diego, California to Fairbanks, Alaska, and extending east to Colorado, Chicago, Detroit, Oklahoma City, Gulfport (Mississippi) and Florida.

Reno Air commenced operations on July 1, 1992 and passed its fifth anniversary earlier this year. Reno Air has always operated an all-Stage-III fleet which consists entirely of quiet MD-80 jets and ultra-quiet MD-90 jets. The MD-90 jet is the newest line of jets produced by the McDonnell Douglas division of The Boeing Company.

There are several anticompetitive practices prevalent in the airline industry today. These practices are made possible, and are anticompetitive, largely on account of the domination of airline hubs by individual airlines. My testimony briefly focuses on two of these practices: predatory pricing, and what I am calling predatory market flooding.

1. *The Airline Industry is Becoming Increasingly Concentrated.* Instances of predatory pricing and predatory market flooding are increasingly frequent and increasingly blatant. Moreover, the conditions which facilitate predatory activity—including the monopolization of an airline hub by a single carrier—are more prevalent. This industry concentration is increasing. Predatory activity will intensify unless it is stopped.

Post deregulation, the dozen or so established airlines competed intensely for market share, through growth and through acquisitions. The industry rapidly evolved to hub and spoke systems, and airlines competed fiercely to stake out territories they could control. Today, most airline hubs are dominated by a single airline who has a market share—at that hub—ranging from 70% to 95% of all activity at that hub. Attachment 1.

As Julius Maldutis of Salomon Brothers has recently pointed out, this concentration of airline power in hub cities is highly unusual and is far more concentrated than was previously believed. In his July 21, 1997 report, entitled "Airline Competition at the 50 Largest U.S. Airports—Update," Salomon Brothers states "market share analysis and . . . measures of concentration at the 50 largest airports show an unprecedented degree of concentration in the airline industry."

And this concentration is increasing.

In 1984, Northwest Airlines had an approximately 10% market share in Detroit. In 1986, when it acquired Republic, Northwest's market share jumped to approximately 60%. In the last ten years, following this anti-competitive merger, Northwest has increased its market share to approximately 80%. Attachment 2.

In 1984, USAir's market share in Philadelphia was approximately 20%. USAir's market share has since increased to approximately 60%. Attachment 3.

At Pittsburgh, USAir's market share has increased during the same period from approximately 72% to over 80%. Attachment 4.

Similar increases have occurred at other hub cities.

2. *Fair and Unfair Competition Distinguished.* Airlines have used a number of techniques to establish—and to maintain—their hub dominance. Lawful and aggressive competition has certainly played a part in this process. However, several airlines have also engaged in a number of unfair, anticompetitive and illegal techniques to eliminate competition.

Not all airlines engage in this activity. And, aggressive pricing and scheduling activity is usually legal. However, as is well-recognized by the antitrust laws, certain otherwise-legitimate activity is anticompetitive and illegal when engaged in by a monopolist. The activity described herein is anticompetitive when engaged in by an airline with a concentrated market share—such as by Northwest Airlines at Minneapolis or Detroit, where Northwest has an approximately 80% market share.

The predatory activity described herein is a subset of the larger universe of anticompetitive activity. It is particular anticompetitive activity that makes economic sense only if it harms one's competitor thereby driving the competitor from the market. It is short-term profit sacrifice in order to obtain later monopoly profits.

The predatory basis of certain pricing and scheduling activity is best illustrated by comparing instances of such activity to more normal competition. The example of "normal competition" I use is Southwest's entry into the St-Louis-Detroit market.

Attachment 5 shows the number of trips operated in the St-Louis-Detroit market by Northwest, TWA and Southwest after Southwest entered the market in 1993. The chart shows the monthly trips operated by each carrier from January 1991 to March 1997. (The number of trips fluctuates slightly month-to-month due to the number of days in each month and also due to holidays and some extra sections.)

Southwest Airlines is used as the base case because Southwest offers low fares but is not a vulnerable new entrant. Southwest offers the same low fare competition that a new entrant can offer, but, unlike most new entrants, Southwest has tremendous financial resources. This is a significant difference because predatory activity is successful only if it drives the competitor from the market. Southwest has shown it cannot be driven out of a market by aggressive price cuts. Hence, we assume that any response to Southwest's entry is "competition" and not "predation".

Attachment 6 documents fare activity in the St. Louis-Detroit market over the same period as Attachment 5. Fare data is shown quarterly, not monthly, as monthly data is not available. Because air fares change seasonally in response to high and low traffic, I have included a vertical line on each fare chart to facilitate a comparison of year to year changes. In this chart, the vertical lines mark the third quarter of the year.

Southwest enters the market with lower fares than the competition. Its average fare in the third quarter of 1993 is about \$45 as compared to about \$68 for Northwest and about \$73 for TWA. Northwest and TWA maintain a much higher fare structure after Southwest's entry. Indeed, as has happened in many markets entered by Southwest, the average fare realized by the other airlines increases in response to Southwest's entry. This indicates the sophisticated yield management systems of the major airlines working to maximize the profit to such airlines, given the new competitive environment.

There is also no increase in capacity in response to Southwest's entry.

This is a baseline case, which sets the foundation for the following examples of predatory activity.

#### *A. Predatory Market Flooding*

Predatory market flooding happens when an established, dominant airline floods a market with capacity in response to the entry of a low fare new entrant airline. The purpose is to make the market unprofitable for everyone, thereby driving out the new entrant.

The Department of Justice has recognized that market flooding violates the anti-trust laws. In his remarks before the American Bar Association in June of this year, the Chief of the Transportation Section of the Antitrust Division of the Department of Justice stated that it would "seldom be a normal competitive response" where an incumbent follows a new entrant into a new route.

Claims of predation are more credible when they involve not only price cuts, but also significant capacity increases or other changes in network operations by Incumbent. Entry by Incumbent into a route it was not currently serving would seldom be a normal competitive response to a rival. If the route were not profitable for Incumbent before Upstart entered, why would it be profitable afterwards? On the other hand, expansion of capacity by Incumbent on a route it already serves might be a normal response if the new entrant forced prices down enough to greatly increase demand—Roger W. Fones, Chief, Transportation, Energy, and Agricultural Section, Antitrust Division, U.S. Department of Justice. Remarks before the American Bar Association Forum on Air and Space Law, Seattle, Washington—June 12, 1997.

Yet this is precisely what happened when Reno Air tried to serve the Reno-Detroit market early this year.

Northwest's response was reported by the Reno Gazette-Journal on Tuesday December 17, 1996: "Just 1½ weeks after Reno Air announced it will begin nonstop service to Detroit on Jan. 30, Northwest Airlines said on Monday it will begin daily nonstop flights between the cities on Jan. 31." And about the same time Reno Air increased its service to two flights a day, Northwest increased its service to three flights a day.

Northwest also used larger planes for its service, with the result that a market that Reno Air entered with less than 4,000 seats a month soon had over 24,000 seats per month. Attachment 7.

You will also note that when Northwest entered the market with nonstop flights, its fares were less than when it was serving the market with onestop flights. That is an odd reason to institute nonstop flights in a new market. See Attachment 8.

Northwest also undercut Reno Air's fares, initiating a \$99 fare to Reno and \$119 fares to the West Coast—substantially below the levels prevailing before Reno Air's

entry. This was predatory pricing. Due to the time required to obtain pricing data from the Department of Transportation, we are continuing to analyze this data.

### B. Predatory Pricing

My second example of anticompetitive conduct is a case of predatory pricing.

Spirit Airlines, a very small airline based in Detroit, decided in early 1996 to enter the Detroit-Boston market.

At the time, Northwest was serving the market with as many as 11 flights per day, offering over 1500 daily weekday seats. Spirit entered with a small aircraft seating only 87 passengers, even when completely full. As is evident from Attachment 9, Spirit's capacity in the market was insignificant compared to Northwest. Northwest accelerated its usual summer expansion in the market, with the result that Northwest's capacity increased in May—as opposed to July or August—and reached an all-time high shortly after Spirit's entry. This was predatory market flooding.

But the real story here is in the fares Northwest charged, as indicated on Attachment 10.

In response to Spirit's 87 seats, Northwest dropped its fares by over 50%. Northwest's average yield in the Detroit-Boston market dropped precipitously from 43 cents to 16 cents—a 62% decrease. Why? Northwest could have realized higher revenues had it simply let Spirit completely fill up its planes and left its own fare structure intact. In every other second quarter—1991, 1992, 1993, 1994 and 1995—Northwest's revenues on the route increased in the second quarter. However, Northwest's revenues dropped in the second quarter of 1996. Attachment 11 charts the drop in Northwest's total revenues on the Detroit-Boston route as a result of Northwest's predatory response. When adjusted for number of seats, the drop in revenue is even more significant. Attachment 12.

3. *Summary and Conclusion.* Airline competition today is a paradox. Although Reno Air has been successful competing in the most competitive markets in the country, Reno Air has been unable to profitably enter two of the least competitive markets in the country: Minneapolis and Detroit.

On the west coast, Reno Air has competed successfully with some of the strongest competitors, including Southwest and United. On the other hand, Reno Air has simply been unable to compete in two monopoly markets served by Northwest Airlines: the Minneapolis-Reno market, which Reno Air sought to enter in 1993, and the Detroit-Reno market, which Reno Air entered early this year. Reno Air continues to operate the Detroit-Reno route, but has recently reduced its operation to only one flight a day.

In these markets, Reno Air received similar, blatantly anticompetitive responses. Northwest entered with excess capacity and reduced its fares. Industry experts agree that Northwest's purpose in doing so was to destroy the market, to push Reno Air out and to deter other low fare airlines from entering Northwest's hubs.

The prevailing air fares tell you why Northwest acts so urgently to keep Reno Air out of its hubs. Airfares between San Jose and Los Angeles—a market that enjoys stiff competition—averaged 19 cents a mile in the first quarter of this year. Air fares between Minneapolis and Detroit averaged 46 cents a mile. Airfares between Washington National and each of Boston and LaGuardia averaged in excess of 47 cents a mile. Airfares on the east coast, which is dominated by airline fortress hubs, are in the range of 30 to 40 cents per mile. Airfares on the west coast are below 20 cents a mile, and often below 10 cents a mile.

Earlier this month a group of concerned airlines, industry professionals, communities and business consumers met in a forum arranged by the Business Travel Contractors Corporation to call upon Congress to fix the competitive problems in our industry. The most significant of these competitive problems is predatory pricing and scheduling activity. This is the barrier that has prevented Reno Air from successfully entering the Minneapolis and Detroit markets. This is the problem that must be cured if we are to have a competitive airline industry. It is simply too easy for an established hub airline to cause any market served by a new entrant to be unprofitable. Because Northwest has been able to avoid government enforcement action with its predatory tactics against Reno Air, other major airlines have begun to act in similar, blatantly predatory ways.

The anticompetitive practices of predatory pricing and scheduling inflict their greatest damage on local communities that are seeking competitive air service. And yet these communities—and their state governments—are powerless to apply state fair trade laws of general application to the airline industry. In fact, despite the political cries of certain major carriers, the airline industry today is characterized by a remarkable absence of regulation when compared to most any other industry, because of the federal preemption of state fair trade laws. If the Department of Jus-

tice, the Department of Transportation and Congress will not act to stop the abuses that have been documented, then Congress should at least allow the states to apply their own fair trade laws in this area.

We recognize that predatory pricing and predatory market flooding are complex problems due to the complex nature of airline pricing and scheduling at hub markets. And yet the fact that these are difficult issues does not justify the failure of government to act to stop the abusive practices.

The future of airline competition, and the future of low fares, is at stake.

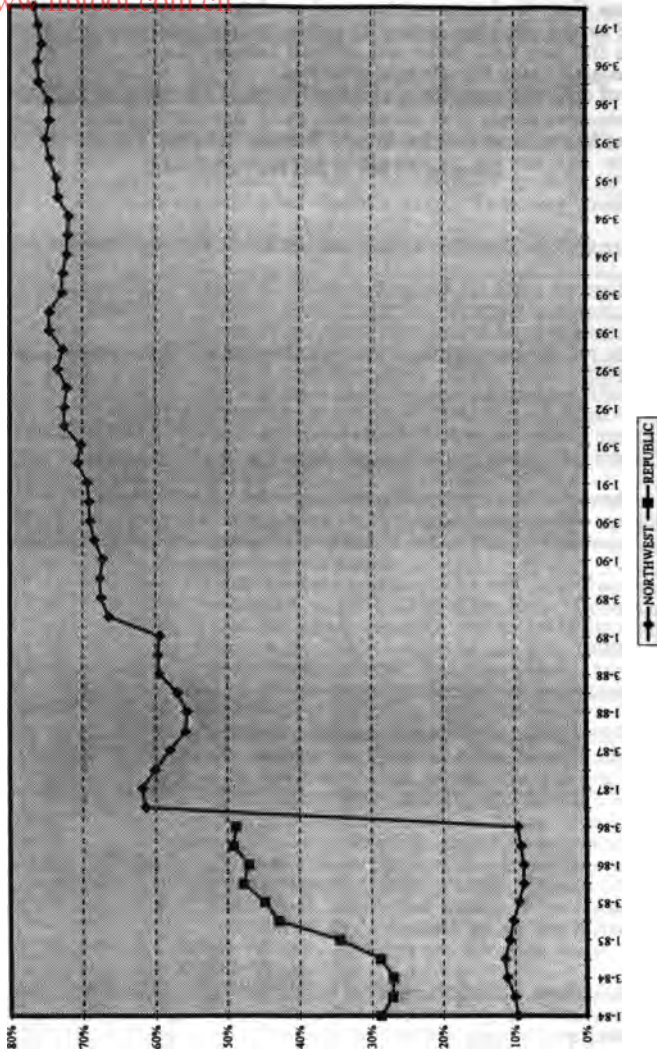
**Dominant Airline Market Share Selected Airports Domestic Passenger Enplanements, March 1997**

[Source: US DOT from 41, Data Base Products, Inc.]

Delta .....	Cincinnati	94%
USAir .....	Charlotte	93%
USAir .....	Pittsburgh	89%
Northwest .....	Minneapolis	83%
Delta .....	Atlanta	79%
Northwest .....	Memphis	79%
Northwest .....	Detroit	78%
Attachment 1		

**DETROIT ENPLANEMENTS MARKET SHARE  
NORTHWEST**

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SOURCE: DOT FORM 41  
(DATABASE PRODUCTS, INC.)

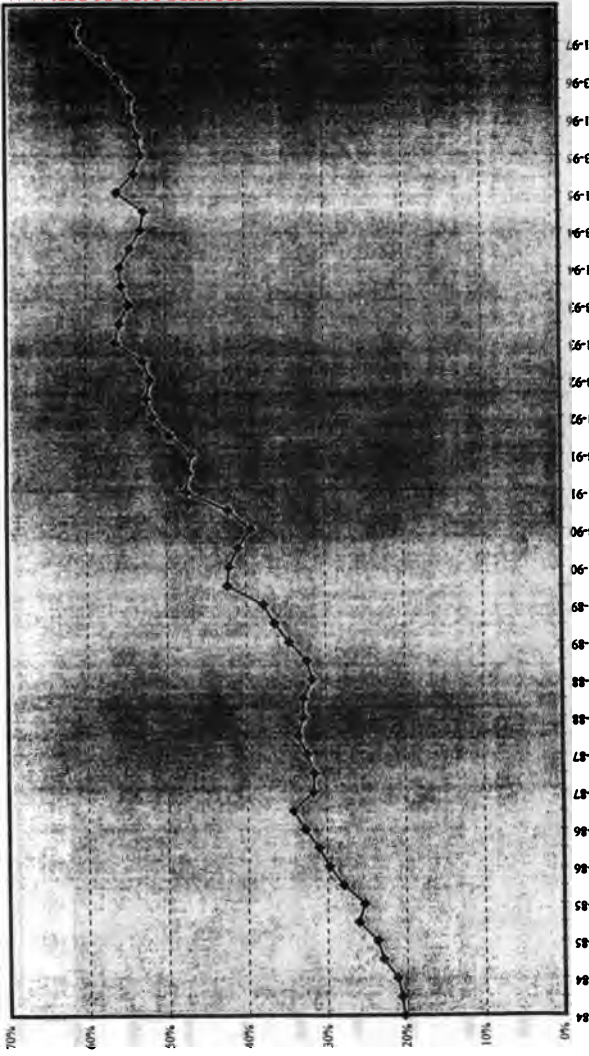


Attachment 2



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PHILADELPHIA ENPLANEMENTS MARKET SHARE  
USAIR

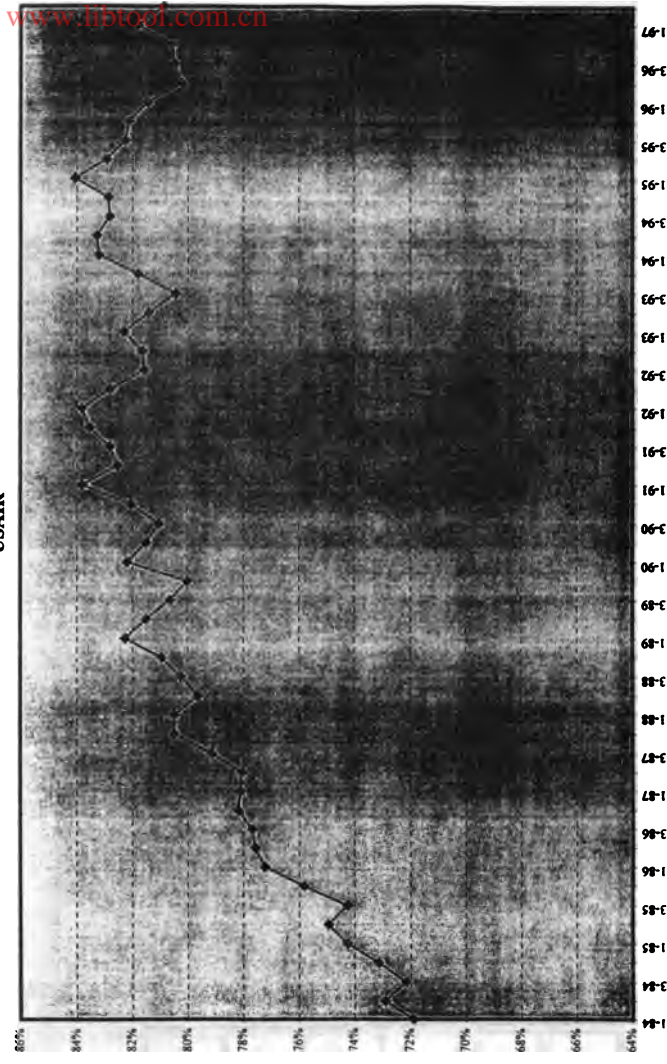


SOURCE: DOT FORM 41  
(DATABASE PRODUCTS, INC.)



Attachment 3

PITTSBURGH ENPLANEMENTS MARKET SHARE  
USAIR



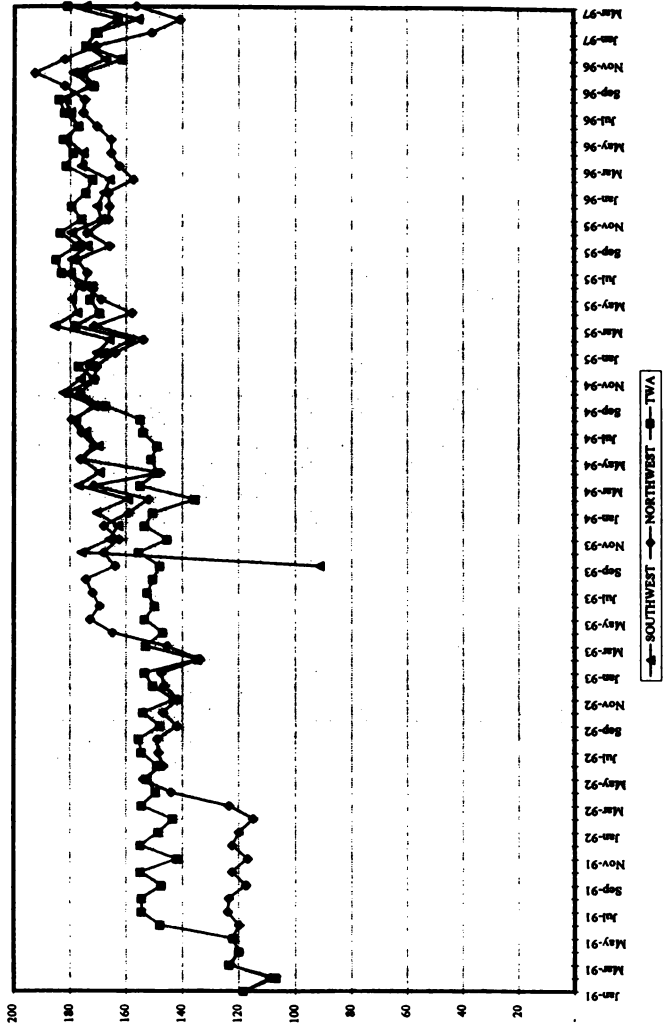
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Attachment 4

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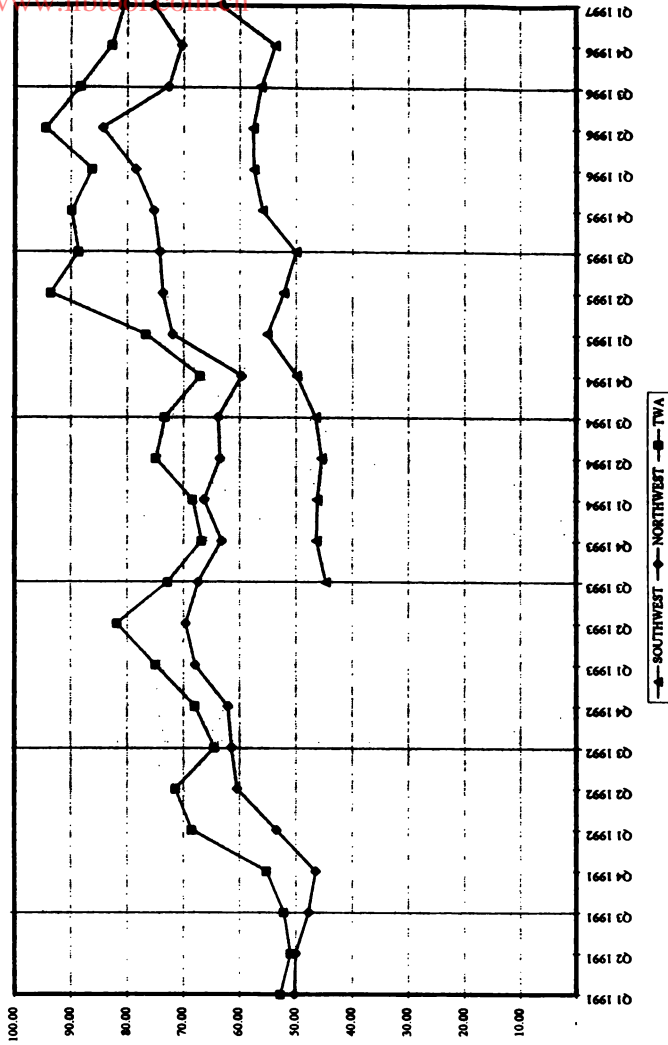
MONTHLY ROUND TRIPS  
DETROIT - ST. LOUIS



SOURCE: DOT FORM 41  
(DATABASE PRODUCTS, INC.)

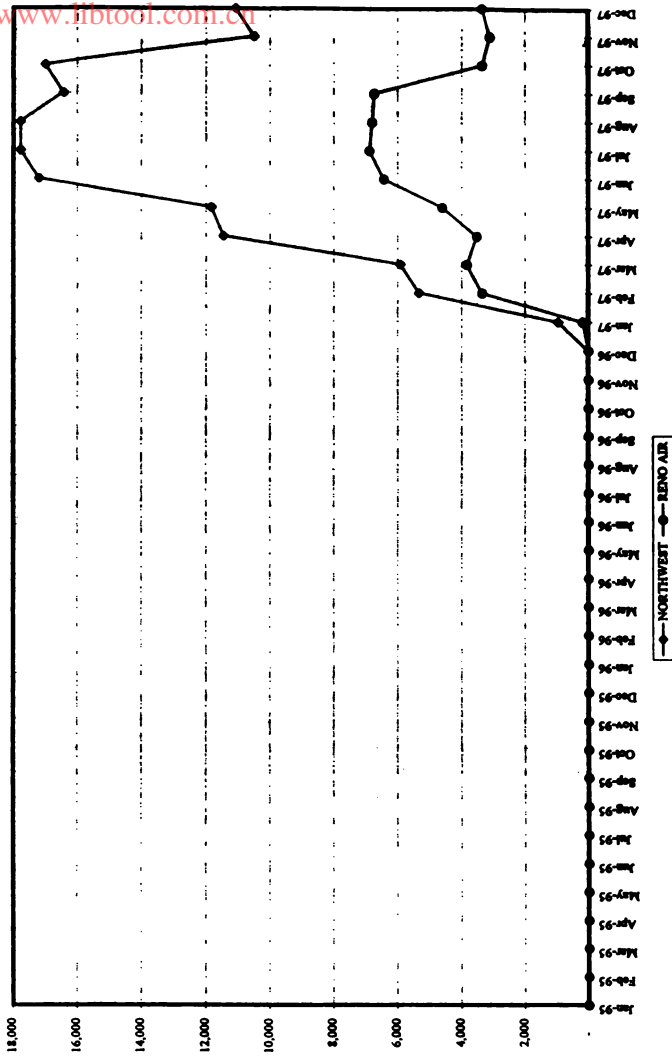
Attachment 5

AVERAGE FARES  
DETROIT - ST. LOUIS



SOURCE: DOT FORM  
DATABASE PRODUCTS

MONTHLY NONSTOP SEATS  
DETROIT - RENO



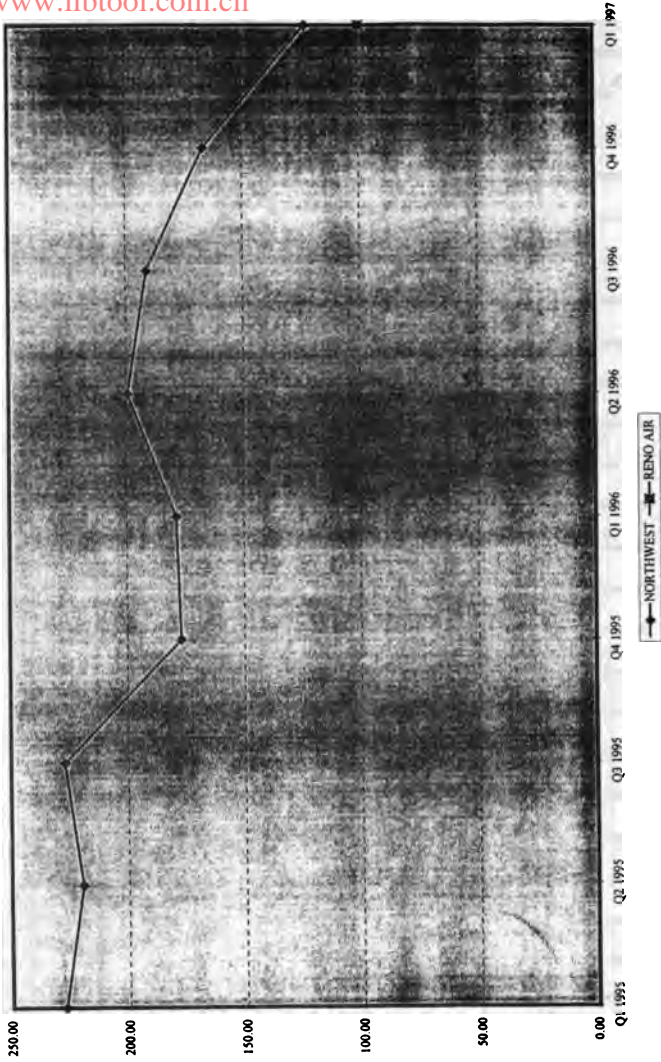
SOURCE: DOT FORM 41  
(DATABASE PRODUCTS, INC)

NORTHWEST APR-DEC AND RENO AIR SEP-DEC ARE ESTIMATES

Attachment 7

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DETROIT - RENO AVERAGE FARE

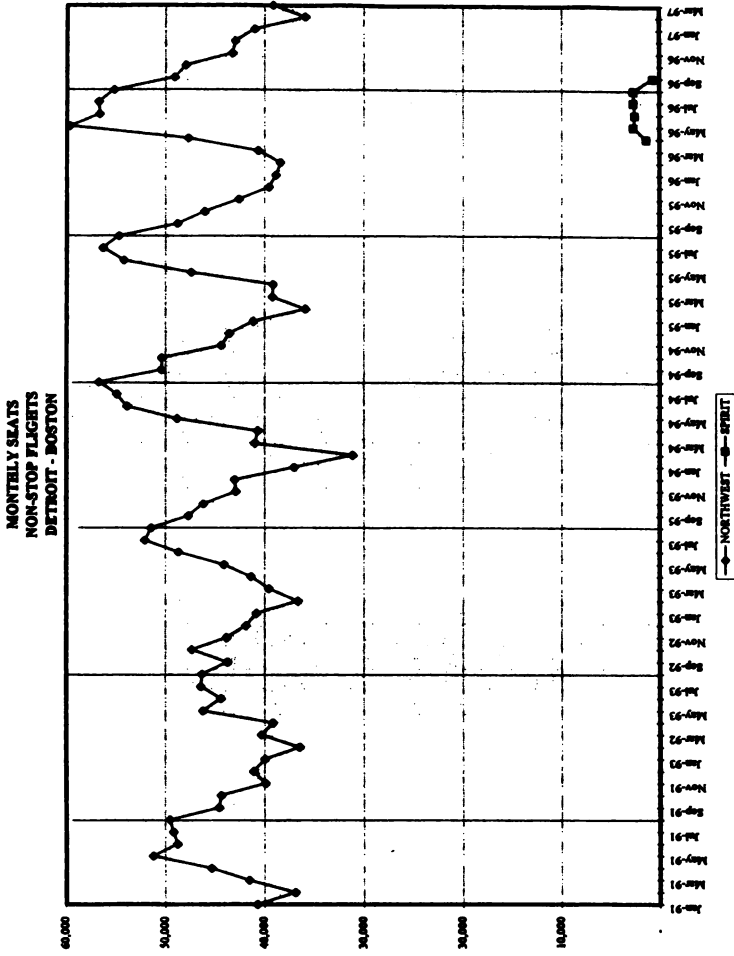


SOURCE: DOT FORM 41  
(DATABASE PRODUCTS, INC.)



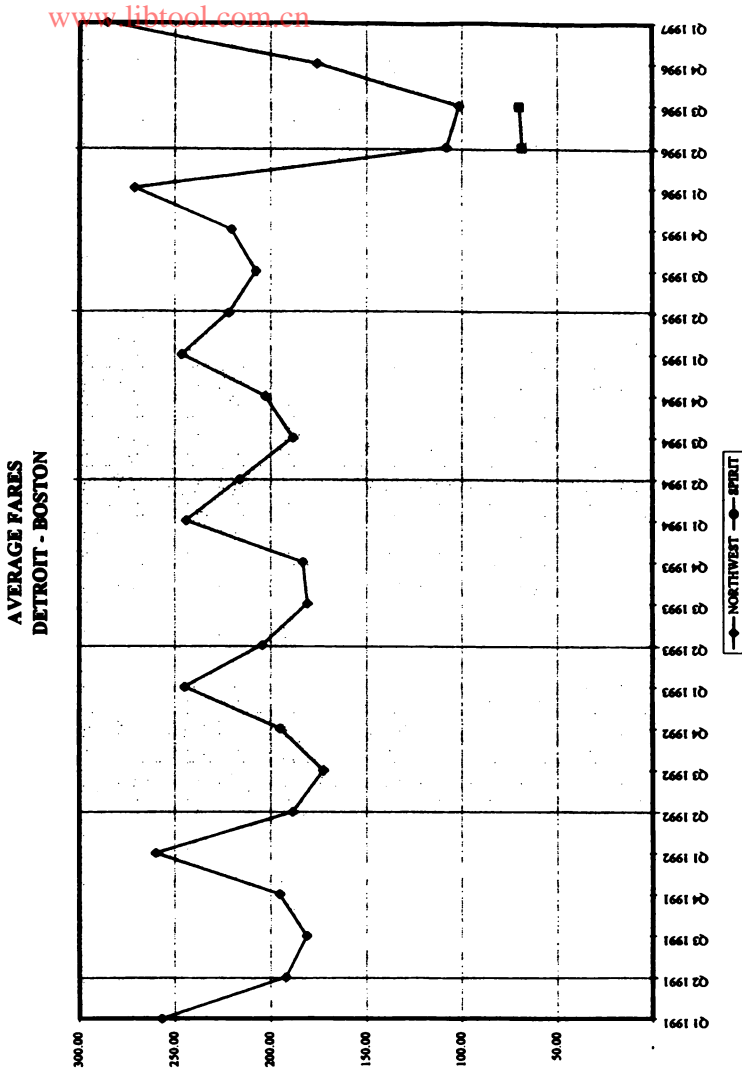
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SOURCE: DOT FORM 41  
(DATABASE PRODUCTS, INC.)

At' hment 9



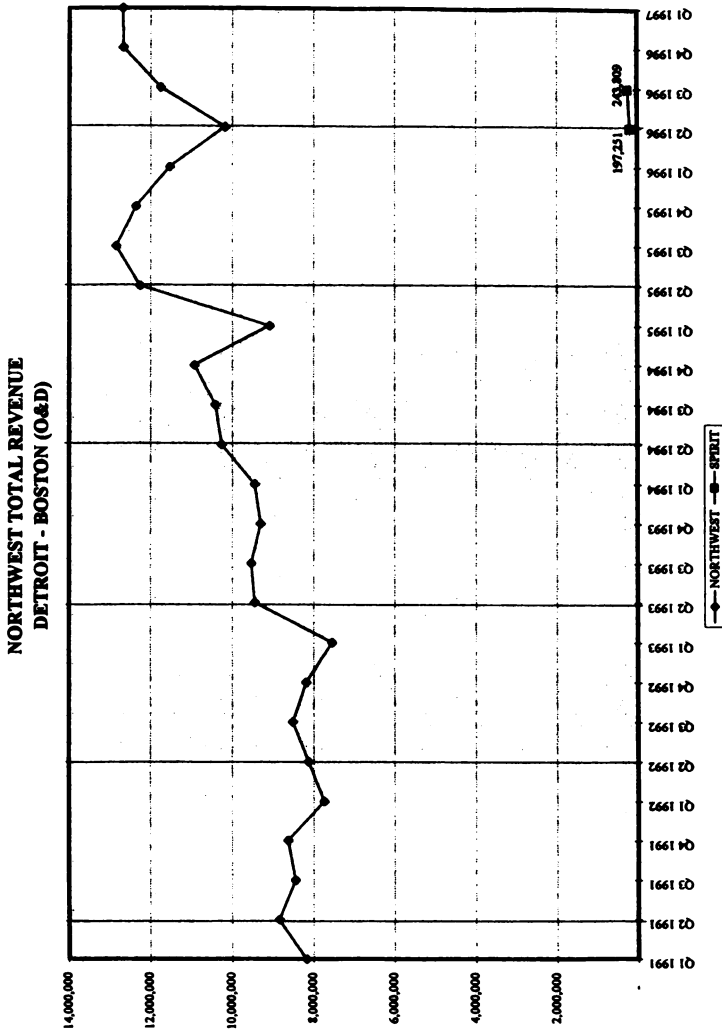
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Attachment 10



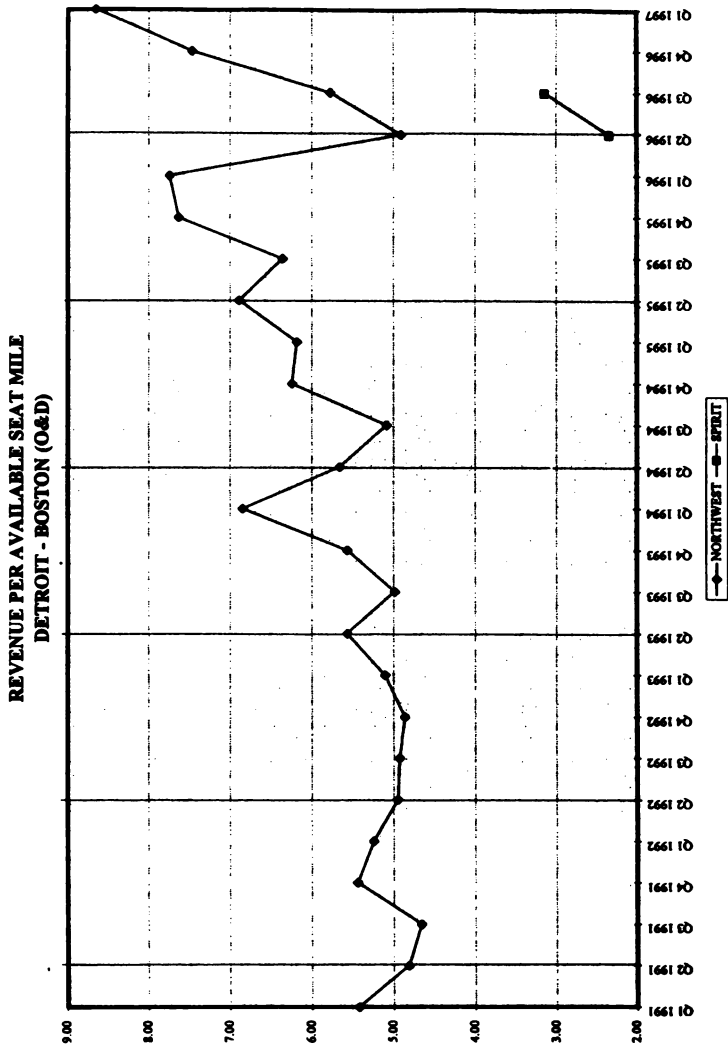
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SOURCE: DOT FORM 41  
(DATABASE PRODUCTS, INC.)

Attachment 11

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SOURCE: DOT FORM 41  
(DATABASE PRODUCTS, INC.)

Attachment 12

The CHAIRMAN. Mr. Murphy.

**STATEMENT OF CYRIL MURPHY, VICE PRESIDENT FOR  
INTERNATIONAL AFFAIRS, UNITED AIRLINES**

Mr. CYRIL MURPHY. Thank you, Mr. Chairman. I'm Cyril Murphy, vice president of international and regulatory affairs for United Airlines. Thank you for allowing me this opportunity to appear today on behalf of United Airlines.

A few months ago, United conducted a detailed survey of its customers. What we learned was that we knew far less than we thought about our customers' views and opinions.

This hearing is evidence that we also misjudged the degree to which a segment of the American public harbored apprehensions about the benefits of deregulation. We didn't listen well enough.

As a result, we find ourselves faced with a variety of congressional and administration initiatives. All are well-intentioned, but some would re-regulate our businesses in ways that would put in jeopardy much of which has been achieved for the public and for small- and medium-sized communities over the last 20 years.

Let me address three of those areas.

First, a proposal to withdraw slots from network carriers at high density airports in order to assign them to new, point-to-point carriers, for example, would have unintended but extremely adverse consequences for many communities. United has done a preliminary analysis of what a 10 percent drawdown of its slots at O'Hare would mean in terms of corresponding service cuts. Our analysis shows that initially, we would be forced to eliminate, entirely, non-stop service to O'Hare from 11 cities.

In addition, 20 more cities would receive significant cutbacks in service. These 31 cities are geographically dispersed throughout 22 States. Most of these cities are precisely the type of small- and mid-sized communities to which Congress seeks to expand service, not reduce it. Few are the type of community that a point-to-point carrier would even consider serving. The result, at least for these communities, would be to undermine years of developmental efforts to provide their citizens with direct access to a global air transportation network.

This analysis, moreover, is limited to the effects on United at O'Hare. It does not include drawdowns by United from LaGuardia or National or drawdowns by other network carriers such as American or, as we heard, US Airways. If their service reductions are factored into the equation, the case against slot withdrawals, from the standpoint of the public interest, becomes even more one-sided.

Second, the domestic air transportation industry, like other major industries, is subject to the anti-trust laws. However, recent statements by senior DOT officials indicate that the agency is moving to saddle the air transportation industry with more restrictive limitations than other U.S. industries. DOT would, we are told, delineate guidelines above and beyond the anti-trust laws for what constitutes unfair competition in areas of airline pricing, scheduling, and service. The world's most infamous proponent of such guidelines for their air carriers is, of course, Japan's Ministry of Transport. Their guidance, which carriers are free to ignore at their peril, has created an airline industry that is a model of ineffi-

ciency and a lack of innovation. It is a model that should not be emulated.

The chief of the Transportation Section of the U.S. Department of Justice recently warned that the failure of a new carrier, following a competitive response from an incumbent, does not prove that the incumbent acted improperly. He cautioned against intention that might chill rather than promote competition. He went on to note that fair discounting by an incumbent in response to a new competitor is usually the essence of the competitive process.

Efforts by DOT or Congress to intervene in the competitive nature of this industry by regulating pricing, scheduling, or service decisions, through either vague guidelines or other criteria that would reduce competition, would reduce the likelihood that carriers would risk the type of novel competitive responses that have to date made the U.S. airline industry the most dynamic in the world.

Finally, some proposed legislative initiatives would reinject Congress into local communities' determination of how best to employ their local airports. This approach of Washington interfering in the regional affairs seems to run counter to the congressional policy of granting more deference to local authorities in most other areas.

Congress would not take seriously a proposal that it should tell a community where it should route its local bus network or where their stops should be located. It recognizes that those types of decisions are best left to the people most immediately affected by them.

Why, then, should Congress feel qualified to overrule the careful determinations of communities such as New York and the Washington metropolitan area on how best to employ their airports? Like so many of these other efforts to re-regulate competition, changing the perimeter rule would be a counter purpose to what many in Congress are seeking to achieve.

Lifting the perimeter rule at National Airport to include Phoenix, for example, would result in the elimination of nonstop service to Washington Dulles from Arizona. For the Phoenix passenger seeking access to international flights, Dulles and its array of flights to Europe, the Middle East, and South America would no longer be an available competitive alternative.

Congressional efforts to overrule local decisions would mean that the passenger in Phoenix or other Western cities would actually have far fewer transportation choices, not more. United hopes, of course, that this committee will opt for the role of constructive leadership in cooperation with the Administration, the communities, and the air carrier industry. And, indeed, there are a number of legislative proposals now being put forward that would be quite beneficial to competition and not have the countervailing negative implications to which I have referred.

We stand ready to assist in any way possible in seeing that those positive proposals are implemented. With strong congressional leadership, the enormous potential of the U.S. air transportation industry can continue to be realized for the benefit of all. Thank you.

[The prepared statement of Mr. Cyril Murphy follows:]

PREPARED STATEMENT OF CYRIL MURPHY, VICE PRESIDENT FOR INTERNATIONAL AFFAIRS, UNITED AIRLINES

Mr. Chairman, Senators, thank you for allowing me to appear before your Committee today on behalf of United Airlines.

As many of you may know, a few months ago United conducted an in-depth survey of our passengers to determine what they thought about our services and how they believed it could be improved. We were fairly confident that we knew our customers and that the survey would largely confirm our long-standing perceptions. It did not. We were surprised and a little chagrined about what we did not know about our own passengers.

Let me say that today's hearing is evidence that we also misjudged the impressions of a significant segment of the American public on the issue of airline deregulation. We presumed that the public was aware of and satisfied with the ever increasing range of benefits that we knew deregulation is producing. As an industry, therefore, we did not devote sufficient attention to explaining to the American consumer the fundamentals of our business and the relationship of those fundamentals to the concerns being expressed by the public. In short, we did not listen well enough to appreciate the depth of their dissatisfaction. If we had, we would have reacted earlier to them. As a consequence, we now find ourselves trying to fend off criticism of elements of our business that are, in fact, enormously beneficial to the public as a whole. Equally disturbing, we find ourselves faced with proposals that would "reregulate" our business and in so doing put in jeopardy much that has been achieved for the public over the past 20 years.

We see a U.S. aviation industry that is driven by market forces and intense competition. These dynamics are studied by governments and air carriers around the world. They view our industry as the yardstick against which they must gauge their own competitiveness.

Since deregulation our carriers have generated one innovation after another as each of us seek to gain a competitive advantage over the rest. It is—we have always believed—precisely this environment that Congress had hoped would develop when it voted to remove the dead hand of regulation from our industry.

The evolving innovations under the free market include extensive, and highly competitive hub and spoke systems in every region of the country. These systems provide far more extensive coverage and far more frequent service between thousands of pairs of U.S. cities than was ever possible under regulation. Moreover, they allow carriers to provide that expanded coverage on an efficient, cost effective basis. As an example of what it has produced, a passenger interested in flying between Washington, D.C. and Albuquerque, New Mexico—a relatively small market in terms of daily passengers—today has a choice of flights by TWA, American, Delta, Continental and United operating over their respective hubs at St. Louis, Dallas, Atlanta, Houston and Chicago, offering several dozen departures ranging from 6:12 AM to 7:03 PM.

The Department of Transportation properly characterized the benefit and competitive nature of hub networks and, in particular, their importance to being able to provide air service to smaller cities:<sup>1</sup>

Being the service center of a network results in far more service for the hub city than it would otherwise enjoy. Comparing service at a city that is a hub network, before and after the network was developed, or with non hub cities of comparable populations shows that the differences are dramatic. Hub networks not only serve many more destinations nonstop, but also provide more frequency to virtually any destination. Indeed, in many instances high prices stemming from the exercise of market power are in markets that would not have had service at all but for the development of the hub. This is because flow traffic created by the existence of the network is necessary to economically sustain service to smaller cities. In other words, smaller markets with limited local traffic potential need traffic flows to and from a large number of connecting destinations to develop adequate traffic to support the service.

A hub dominant carrier generally does not have market power over connecting passengers because the availability of service over its hub is just "another" service alternative, and is, therefore, procompetitive for most passengers that use it. Indeed, given the large number of connecting hubs in the U.S., most markets of intermediate- and longer-haul distances can be served over a number of connecting hub alternatives, and thus, are very competitive.

In short, hub-centered networks have had, and continue to have, enormous beneficial effects not otherwise attainable.

<sup>1</sup>The Low Costs Airline Service Revolution, April 1966, U.S. DOT, pp 26-27.

Yield management systems—sophisticated computerized marketing tools—have evolved under deregulation to allow the carriers to sell their seats more effectively and efficiently. Using these techniques allows us to offer both low fares for the vacation traveler who is able to plan well in advance or utilize off-peak days and departure times and yet still be able to provide capacity for the last minute service demands of business travelers at a price commensurate to the value and cost of the product.

Market driven initiatives under deregulation have also been responsible for the growth of short-haul, high-volume, low-fare services by carriers specializing in that niche. Given the size of the U.S. market, that niche can be quite large. The foremost of these carrier, Southwest, is now the 6th largest airline in the world in terms of passengers enplaned. Southwest's innovative product has spurred competitive responses from United and Delta, both of whom have created airlines within airlines to compete effectively in this area of the business. The passenger is the beneficiary.

Code-sharing, the ability to combine the routes of several carriers into an expansive integrated, user-friendly network, is generating far reaching benefits for U.S. and foreign travelers. The business person in Des Moines can go to one carrier and receive the equivalent of single-airline service and responsibility from his local airport to, for example, Tashkent. Connecting between airlines at some foreign airport has long been a recurring nightmare for the international passenger. Code-share alliances effectively eliminate that dread. They are increasingly sought out by international travelers.

Finally, the competitive demands of this deregulated industry have resulted in the production and acquisition of regional jet aircraft. These aircraft will allow many smaller U.S. communities the obvious speed and comfort advantage of jet service links to the competing hubs of various carriers. It is an innovation that will revolutionize air service in these communities over the next few years.

All of these innovations would either not have evolved or would have evolved much more slowly and in a greatly truncated form were it not for deregulation. They are also innovations which to one degree or another would be placed at risk by proposals for reregulation.

As I mentioned, we in the industry had assumed that these benefits and the interlocking relationships of these innovations were essentially self-evident. Therefore, we tended to ignore critics who portrayed the hub and spoke systems as reflecting not expanded competition but rather increased concentration. By focusing on the hub and not on the systems, they misinterpreted the intensity of competition. But we were remiss in not educating the public of these facts.

Where we saw the benefits of yield management pricing, critics focused on the disparity of prices paid by passengers on the same flight and called it discrimination. They, of course, failed to differentiate between the value of the services actually being provided. Keeping seats available for last minute use increases the likelihood that they will go unsold. That risk is reflected in the price charged. Moreover, if all seats were sold at the special fares aimed at vacation travelers the flight would be unprofitable and dropped from the system. Those realities, however, tended to get lost in the argument. Again, we should not have let that happen.

Where our industry recognized the viability of short-haul, high-density point-to-point services in certain larger markets, critics decried the fact that they were not available everywhere. Again they ignored what we thought was obvious; these services are simply not viable in most markets. Indeed, the network efficiency of hubs allow services to many communities that could never support service on a point to point basis. But once we failed to satisfactorily explain those facts to the American public.

Critics attack code sharing as deceptive, as if it was some sort of bait and switch tactic. In so doing, they ignore reality—consumer complaints related to this alleged problem are virtually non-existent and customer praise is widespread. Again, we believed that the facts were self-evident but it appears we were mistaken.

Even Regional Jets are now being criticized as "too little too late," as if deregulation some how hampered rather than stimulated technological advancement.

The fact is that both our industry and the Department of Transportation were so convinced of the benefits of deregulation and so aware of the integrated nature of the innovations that produced those benefits that we did too little to correct misperceptions and misplaced criticisms. Their simple repetition, over time, has therefore tended to give these mischaracterizations a patina of legitimacy. Sensing that, certain special interests have sought to capitalize on the situation by embracing these criticisms as their own. They hope to use them to achieve by regulation what they have failed to achieve in the marketplace. Their clamor for protection from the forces of competition, which they, of course, must characterize as abuses,

has resulted in numerous regulatory proposals, some of which would tend to arrest the very dynamics of competition that have made deregulation such a success.

Congress is at a cross roads. It can choose a course of working with the industry and the Administration to ensure that the tools of a competitive, innovative airline industry remain available and that opportunities to use those tools are expanded. This is the path Congress has taken in the past, for example, by encouraging the expansion of liberal international aviation agreements and by making certain that the Administration maintained its leadership role in promoting such agreements. It is a path that Congress can continue to follow by working with carriers, communities and manufacturers to accelerate the introduction of new technology, such as regional jets, that promise substantial public benefits.

Or, Congress can take a negative approach. Rather than lead, it can opt to react with initiatives aimed at reducing carriers' abilities to respond to the market with competitive innovations. It can damage the service efficiencies and effectiveness of carefully developed hub networks and produce resulting harm for small- and medium-sized communities by confiscating slots from the hub carrier. It can, for example, intrude into the carriers' pricing policies resulting in higher fares both for the price-sensitive vacationer and the service-sensitive business traveler. It can also take steps that would inhibit code-sharing and thereby deprive hundreds of thousands of passengers of the service enhancements and stress reduction that such alliances can provide. It can tell local communities that they cannot manage their own airports. It can make the future so uncertain as to undermine the ability of carriers to conduct the type of long-range planning needed, for example, to integrate regional jet aircraft into their systems. It almost goes without saying that if we are subjected to new legislation with essentially standardless criteria, we will be presented with risks that cannot be anticipated. Such an environment must necessarily dampen carrier enthusiasm to explore new, innovative methods of competition. It would run contrary to the goals of Congress in enacting deregulation twenty years ago.

A proposal to withdraw slots from network carriers at high-density airports in order to assign them to new, point-to-point carriers, for example, would have unintended but extremely adverse consequences for many communities. United has done a preliminary analysis of what a 10% draw down of its slots at O'Hare would mean in terms of corresponding service cuts. Our analysis shows that initially we would be forced to eliminate entirely non-stop service to O'Hare from 11 cities. Twenty more cities would receive significant cuts in United non-stop service to our system hub. These 31 cities are geographically dispersed throughout 22 states.

Most of these cities are precisely the type of small to mid-size communities to which Congress seeks to expand service not reduce it. Few are the type of community that a point-to-point carrier would even consider serving. The result, at least for these communities, would be to undermine years of developmental efforts to provide their citizens with direct access to a global air transportation network.

This analysis moreover, is limited to the effects on United at O'Hare. It does not include drawdowns by United from LaGuardia or National, or drawdowns by other network carriers such as American and USAir. If their service reductions are factored into the equation, the case against slot withdrawals from the standpoint of the public interest becomes even more one-sided.

The domestic air transportation industry, like any other major industry, is subject to the antitrust laws. However, recent statements by senior DOT officials indicate that the agency is moving to saddle the air transportation industry with more restrictive limitations than other U.S. industries. DOT would, we are told, delineate "guidelines," above and beyond the antitrust laws for what constitutes unfair competition in areas of airline pricing, scheduling and service.

The world's most infamous proponent of such "guidelines" for their air carriers is, of course, Japan's Ministry of Transportation. Their "guidance" which carriers are free to ignore—at their peril—has created an airline industry that is a model of inefficiency and lack of innovation. It is a model that should not be emulated.

The Chief of the Transportation Section of the U.S. Department of Justice recently warned that the failure of a new carrier following a competitive response from an incumbent does not prove that the incumbent acted improperly. He cautioned against intervening where that might chill rather than promote competition.<sup>2</sup> He went on to note that fare discounting by an incumbent in response to a new competitor is usually "the essence of the competitive process."<sup>3</sup> Efforts by DOT or Congress to intervene in the competitive nature of this industry by regulating pricing, scheduling or service decisions through either vague "guidelines" or other criteria would reduce competition by reducing the likelihood that carriers would risk the

<sup>2</sup> *Airline Business*, October 1997.

<sup>3</sup> *Id.*

type of novel competitive responses that have to date made the U.S. airline industry the most dynamic in the world.

Finally, some proposed legislative initiatives would reinject Congress into the local communities' determination of how best to employ their local airports. This approach of Washington interfering in regional affairs seems to run counter to Congressional policy of granting more deference to local authorities in most other areas.

Congress would not take seriously a proposal that it should tell a community where it should route its local bus network or where the stops should be located. It recognizes that those types of decisions are best left to the people directly affected by them. Why then should Congress feel qualified to overrule the careful determinations of communities such as New York and the Washington Metropolitan area on how best to employ their airports?

Like so many of these other efforts to reregulate competition, expanding the perimeter rule would be at a counterpurpose to what many in Congress seek to achieve. Opening the perimeter rule at National Airport to include Phoenix, for example, would result in the elimination of non-stop service to Washington Dulles from Arizona. For the Phoenix passengers seeking access to international flights, Dulles and its array of flights to Europe, the Middle East and South America would no longer be an available competitive alternative. Congressional efforts to overrule local decisions would mean that the Phoenix passenger would actually have far fewer transportation choices, not more.

United hopes, of course, that this Committee will opt for the role of constructive leadership in cooperation with the Administration, the communities and the air carrier industry. And, indeed, there are a number of legislative proposals now being put forward that would be quite beneficial to competition and that do not have the countervailing negative implications to which I have referred. We stand ready to assist in any way possible in seeing that those positive proposals are implemented. With strong Congressional leadership, the enormous potential of the U.S. air transportation industry can continue to be realized for the benefit of all.

Thank you for allowing me to present these views.

The CHAIRMAN. Mr. Murphy, in your closing comments, you said there were some proposals that would work.

Mr. CYRIL MURPHY. We have seen a number of proposals that are in the process of being introduced, or have been introduced, which we think would help facilitate the innovations that are taking place in this industry. And they are spread throughout the United States.

The CHAIRMAN. Could you tell us one of those proposals?

Mr. CYRIL MURPHY. Well, one of the proposals that we know is being introduced is the introduction and facilitation of regional jets. And we believe, as we heard earlier today, there are many smaller communities that could benefit from the introduction of these regional jets.

The CHAIRMAN. Would United be willing to provide that service?

Mr. CYRIL MURPHY. Oh, yes. Yes, indeed, Senator. Well, I have to qualify that. We are in the process of undergoing a vote with our own pilots, in terms of getting approval to acquire regional jets. But we intend, once that approval is forthcoming, as we are confident it would be, that we, as American Airlines has already done, would propose a vast increase in service from Chicago's O'Hare Airport to a number of communities that do not today receive jet service.

The CHAIRMAN. If it is slot controlled, how do you do that?

Mr. CYRIL MURPHY. Well, sir, we do have slots that are being served with turboprop aircraft. So, in effect, we could replace those with regional jets.

The CHAIRMAN. But you still have the same number of flights whether they are turbo driven or whether they are jet driven, right?



Mr. CYRIL MURPHY. But I think we have heard from a number of communities that for those communities that are only getting turboprop service and not jet service, that is a great enhancement of service.

The CHAIRMAN. You just said it would serve more markets, Mr. Murphy.

Mr. CYRIL MURPHY. We also intend, Senator, to expand to a number of communities that we cannot serve today because a turboprop does not have adequate range to serve those communities. Let me give you the example of Chattanooga, for instance. Chattanooga is a market which has just been approved for additional slots with turboprops. We expect that once we acquire regional jets or, more accurately, when our United Express carrier acquires them, they would be in a position to replace the Chattanooga service with jet service.

The CHAIRMAN. Mr. Murphy, I am not going to take time to argue with you, but if you have only a certain number of slots, then you can only take off and land so many times. Now you know that, and I know that. And to compare what we are trying to do with what the Japanese do is one of the most remarkable statements that I have heard in my 11 years as a member of this committee.

Mr. Rowen, is Reno Air a union carrier?

Mr. ROWEN. I think we like to think of ourselves as unique, but I would not say that we are a unique carrier.

The CHAIRMAN. Union.

Mr. ROWEN. Union. I am sorry. Our pilots are represented by the Air Line Pilots Association, and our flight attendants are also represented.

The CHAIRMAN. Do your pilots support this proposal?

Mr. ROWEN. We have not run it by our pilots.

The CHAIRMAN. Pardon me?

Mr. ROWEN. We have not polled our pilots as to whether they support the proposal. Informally, when I fly, I talk with our pilots, and they have all been very supportive.

The CHAIRMAN. Captain Babbitt, do you speak for your entire membership when you present?

Mr. BABBITT. Yes, sir.

The CHAIRMAN. Including America West?

Mr. BABBITT. Yes, sir.

The CHAIRMAN. I think you are wrong. I think that America West pilots do not support your objections to it. And I think I will be able to provide you with that information. Because I have talked to too many of them myself.

Mr. BABBITT. In reviewing my remarks both in the light of America West and Reno, our objection is focused on the confiscation, the confiscation. How the slots are awarded. The increase in competition, I am all in favor of. I have not objected to that. What we are objecting to is the confiscation.

The CHAIRMAN. Captain Babbitt, what I said was my proposals. Not confiscation, not non-confiscation. My proposals, Captain Babbitt, is what I said. If you object to part of it, fine. But if you object to the entire proposal—my question was: Does your membership support these proposals? I did not ask you whether you supported the confiscation or not.

Mr. **BABBITT**. I misunderstood the question.

The **CHAIRMAN**. You know, we seem to have some trouble here lately with witnesses. And I am not sure exactly why.

Mr. **Murphy** and Mr. **Nagin**, did you oppose the extension of the perimeter rule when it went to 1,000 miles?

[Pause.]

The **CHAIRMAN**. It is a simple question and requires a yes or no answer.

Mr. **CYRIL MURPHY**. I do not know, Senator.

Mr. **NAGIN**. Senator, I cannot tell you that we took a position.

The **CHAIRMAN**. Do you know?

Mr. **NAGIN**. I do not know, Senator.

The **CHAIRMAN**. How about when it went to 1,250 miles?

Mr. **NAGIN**. I do not know. And we are not taking a position here. I have heard a lot of discussion here.

The **CHAIRMAN**. Would you oppose it if it went to 1,500 miles?

Mr. **NAGIN**. Senator, US Airways' position today is the only one I can address. And I can tell you our position on this. We have heard a lot of interesting arguments on this matter with respect to increase in service. We are interested in that. And our only position that we are here discussing—that we were discussing—was the taking away of slots.

The **CHAIRMAN**. Can you answer the question either yes or no? Would you support an extension of the perimeter rule to 1,500 miles? Or do you not know?

Mr. **NAGIN**. I do not know at this time.

The **CHAIRMAN**. Mr. **Murphy**, would you not support an extension to 1,500 miles?

Mr. **CYRIL MURPHY**. That is correct, Senator.

The **CHAIRMAN**. Thank you. Would you provide an answer for the record?

Mr. **NAGIN**. I would be delighted to provide one.

[The information referred to follows:]

US Airways does not object to the provisions in the proposed legislation that would authorize exemptions from the perimeter rule for specific purposes. We would note, however, that because of environmental and other concerns of the local community, as expressed in the testimony of Senators Warner and Robb before your committee, Congress may want to consult further with the Metropolitan Washington Airports Authority and representatives of the local community before passing such legislative.

The **CHAIRMAN**. Senator **Ford**.

Senator **FORD**. I am kind of confused here. I got lost somewhere along the way. We have a term here, "auctionable slots." It states that an auctionable slot is one now held and originally given in 1985. And, "any slot" other than a slot used to provide service to a small or medium hub or acquired for value.

Now, something about that bothers me a little bit when you say we are going to take this slot, but you have to continue serving certain communities. We have gone to re-regulating the industry and saying that we want to give these slots, but you have to continue to serve certain communities. Now, I am not sure that we get back to the one that worries me about vitiating contracts, the underwriting of the bonds. I can understand where Reno would probably underwrite bonds at Reno, and America West would underwrite

bonds at Phoenix. But when they get out of that territory, are they going to underwrite bonds at National, at LaGuardia, at O'Hare?

Can all of the new entrants do that? I am not sure that they can.

But it certainly was somewhat disconcerting to me when I believe it was Mr. Rowen who said that they have an excellent bond rating now, under the circumstances, because of the strength, and he would be concerned about the change in the contracts and the ability to continue to grow and to fund. So I have some real problems with where we are going.

So let me just ask this question to anybody. Would DOT need to tell you where you can use each of your slots for this provision to protect service to small- and medium-sized communities, Mr. Nagin?

Mr. NAGIN. Absolutely. And today slots are not assigned to cities, Senator. Slots are assigned to an hour of the day on the clock.

Senator FORD. That is correct.

Mr. NAGIN. Slots for any airline, US Airways, United Airlines, America West, whomever it might be, let us say at Washington National, in common parlance, are fungible. And, thus, if there is legislation enacted that comes in and, for instance, says, "US Airways, you must give up 18 slots at Washington National Airport," as rational business people, we are going to make a decision that the slots should come from the markets where we have the most marginal return. Somebody will lose service.

And, indeed, that was the purpose of putting this map up here. If you look at this map, all those red points on this map, and on the map over to my right for LaGuardia, are services that we fly—US Airways flies—today, each and every day, to small- or medium-sized airports, not the Washington National to Pittsburgh, not the Washington National to Charlotte, not the Washington National to Boston. These are smaller communities. And, I dare say, some number of them are in the States of members on this very committee.

Now, we are going to have to make a decision—not a threat, but a very painful process: Where do you cut?

I do not think Mr. Murphy at the Department of Transportation or the Secretary of Transportation or the chairman of this committee is going to be able to tell us, under current law, nor should they, where we pull down service, but service indeed will be pulled down. And that goes directly, Senator Ford, to your question as to the bonds and the facilities at airports.

US Airways has doubled its cost of doing business at Washington National Airport with the new facility. We are very proud of that facility. It is beautiful. It works well for us. It works well for our employees. It works very well for our customers. We are very proud of it. We wear it on our sleeve. But it is very costly.

And the decision to sign agreements that would provide for the building of that facility and to agree to have our business plan and our revenue stream help fund those bonds was based upon a plan that was put in place that would have some certainty, that we would know we would be flying to smaller communities and bringing customers from those smaller communities to National, with some number of them coming here to Washington and a good num-

ber of them going on to other points. That is what a system is all about.

And this legislation—and I know the chairman would like to talk about the perimeter rule. We are not here to talk about the perimeter rule—our problem is with the confiscation of slots. It interferes with the business. It is inconsistent with the commitment we believe was put forth by the Government, with the buy/sell rule, and certainly is inconsistent with our obligation to serve smaller communities. Somebody is going to get hurt in the process.

And it is all the more important to focus on the fact that there are alternatives. It is not a zero-sum game. There are 12 general aviation slots an hour at National. Now, I ask, what is the highest and best use of those slots? Is it for one person to come in for a corporate event here in Washington or perhaps to go to visit the Smithsonian? Wonderful events. But, I dare say, I do not think that is the highest and best use.

Maybe it is to give Mr. Faberman's clients, one of the airlines that is seeking access to this facility, the opportunity to fly. I think Mr. Faberman, in his testimony today, said, "Why don't we give some of those slots to the new entrants?" US Airways is not opposed to it. We do not think it should be taken from our slot holdings.

Senator FORD. Thank you, sir.

Mr. Babbitt, I listened. You are a former airline pilot, as I understand it.

Mr. BABBITT. Yes, sir.

Senator FORD. What effect—I think we want to get into costs other than not being able to fly in and out of my community—do you see the withdrawal mechanism would have on existing jobs in the industry?

Mr. BABBITT. Yes, sir. We see it as having a very negative effect. And it has, unfortunately, a certain multiplier effect in it, in our view. And that would come about—and let us use a live example—if an existing carrier was forced to withdraw a slot, and that slot had been utilized to take service into Washington National, for example—use United Airlines as a good example—they might have regional feed from that. If that flight does not come in, that regional feed will not go out. So it is not just one flight that is going to be affected; every one of those regional pilots—and I represent many of them—will all be affected.

Conversely, the other way out. If the flight goes to a major hub or another city, again, the distribution mechanism and the impact beyond the economics to the people that I directly represent are even further multiplied. Because if that one flight does not get to the hub, then the distribution to the 6 or 8 or 10 other cities will not occur. And that is where the negative effect multiplies.

Senator FORD. Well, Mr. Babbitt, I use that system all the time. I fly into a hub and then into Washington. I fly from Washington back to that hub, and then down. And I have to disagree in some respects about the jets and the turbos. A jet is much nicer and I feel more comfortable—I do not know why—but there are 50-some-odd seats on the commuter jet and roughly 30-some-odd maybe on the largest turbo. Some of them are only 19 seats. So if you can take this airline and get jet service, that is a plus. And you can

put 50 passengers on instead of 19—the airline has got an opportunity to bring jets in and create activity.

We have a jet out here now. Some of these cities, they have big jets, you know, 57's, 67's, 77's, whatever 7 they are. Reno would like that—7's. [Laughter.]

But, anyhow, there is just something about that that attracts. And I think that Mr. Murphy was right. I think jets will help, the commuter jets. I think you ought to get into it.

And I want to say to you that when your pilots vote, then you will understand whether they are for or against something, will you not?

Mr. BABBITT. Yes, sir.

Senator FORD. All right. And you are here representing them, as of now, in the position they have taken?

Mr. BABBITT. Yes, sir. And I again want to emphasize that my remarks were directed to, and I believe I spoke specifically to, the points of the proposal that we object to.

Senator FORD. Yes.

Mr. BABBITT. And confiscation is the key piece.

Senator FORD. So I just wanted to help a little bit here.

Mr. BABBITT. Yes, sir.

Senator FORD. Mr. Faberman, you have been around for a while, the FAA and so forth, and you were kind of the godfather of some of this. Now you are trying to unravel it. I can understand working for Government starting something, and then your expertise is available out there. And I am sure that you are doing very well.

So in your testimony you talk about how unfair it would be for a hotel chain not to be able to sell its product in Chicago, New York, and Washington. I believe that is correct, is it not?

Mr. FABERMAN. That is correct.

Senator FORD. Is it your view that a hotel that is not in downtown Washington, Chicago, or New York should not advertise that it serves those cities?

Mr. FABERMAN. I think some hotel chains are perfectly happy serving outside of the city environment. Other hotel chains feel, for their own business purposes, to compete they have to be downtown.

Senator FORD. Well, I do not know that they have to be. They can still advertise that they are serving Chicago and Washington and New York. So they are in the city limits or suburban area. I did not quite understand that.

But would it be false advertising to suggest that you serve, for example, New York if you do not serve LaGuardia?

Mr. FABERMAN. No. If you serve Kennedy Airport, obviously, you could advertise that you were serving New York.

Senator FORD. OK, that is fine. So that helps a little bit.

Can you tell me if Southwest advertises that it serves Washington through BWI?

Mr. FABERMAN. I am not an expert on Southwest advertising, but I think they do say that they serve the Washington-Baltimore area.

Senator FORD. I think that is true, yes. I think that is true.

Do you think it would be unfair—let us go—you know, we have heard a lot about 125,000 hotel rooms. That is bigger than my State. But do you think it would be unfair for me to say to the

other hotel in downtown Washington to throw out 10 percent of your customers because I want to move in?

Mr. FABERMAN. I think, Senator, if the reason that those hotels were there were because of a Government regulation that gave them that space for free, then I do not think it would be unfair to say we are going to take away some of your property.

Senator FORD. Yes, but have not you been signing contracts based on the construction of that property and that long-term financial effort is all based on what the Government proposed at the time, and then you turn around and say, "Hell, it is the Government's and we want to tear down the hotel or we want to give part of that to somebody else;" it just does not seem reasonable. And we are talking about taking 10 percent of 183 slots at National and saying that we are going to give those to somebody else, but you have to continue serving small communities.

So you are supporting a bill that Government—you are trying to get Government involved again, and saying that you have to get in, one; and, two, we will serve wherever you tell us to serve.

Mr. FABERMAN. Senator, I read the bill as saying that—

Senator FORD. That is the reason we have discussion; I read it different.

Mr. FABERMAN. I understand—that you would not lose slots that were being used to serve small communities. And, therefore, to a carrier like USAir, that it might not lose as many slots, perhaps, as a carrier that was not serving small communities.

Senator FORD. But the purpose here is to serve small communities, and there are not many of them that cannot say that they serve small communities.

Mr. FABERMAN. I understand that.

Senator FORD. OK. And there is one thing: If you take a slot away from some airline and that jeopardizes a hub or something, they are going to move slots around. Because, as US Airways said just a moment ago, the slots are time. They did not tell you whether to fly a Ford, a Chevrolet, or a Plymouth in there. They just said that its time is mine and we fly that there, and that is it.

So they have to look at the business bottom line. It worries me where we are going here. And I cannot help it. And I am frustrated. And when my dad brought me up, when in doubt, don't. And I doubt this bill, so I don't. [Laughter.]

Senator GORTON [presiding]. Mr. Nagin, I take it from your several answers that if we found additional slots at Washington National, either by creating them or by taking them from general aviation, you would have no objection to limiting their availability to new entrants or to airlines that only had a minor presence here at Washington National at the present time?

Mr. NAGIN. We have no problem about competition, and whatever is deemed appropriate. Now, some may say US Airways' voice rings hollow if we say take it from general aviation, but do not take it from us. But you have to ask yourself about the system of airports we have in this area. It is a system. Two of them are operated by the Metropolitan Washington Airports Authority and the other one in Baltimore by the State of Maryland. I mean, there is a process that the local politicians, if you will, have made a decision, more or less, how operations would occur.

Senator GORTON. No, no. I understand that fully. But the point is, if new slots are found that are not taken from any existing airline, you have no objection to them being limited to new entrants or to existing airlines that have only a minor presence here?

Mr. NAGIN. None whatsoever.

Senator GORTON. But you have said, at the same time, that if you lost any of your present slots, it would cause you to have to give up some of those lines that are red lines there.

Mr. NAGIN. That is correct.

Senator GORTON. Does that mean that it is your view that US Airways has the absolutely ideal number of slots at the present time? It would seem to me that that logic would cause you to say that you ought to be able to get any new slots at Washington National because you could then provide service to more cities or better service to the red cities that you are serving now.

Mr. NAGIN. We believe we can do an even better job with more slots. Of course, we would like more slots. We think we would provide an excellent level of service. US Airways is a company that has struggled over the years. We are now in a position, we believe, to grow and be a real competitor.

Senator GORTON. So it is simply politics to say that it would be OK to give these to others; you really think in your heart of hearts that you would probably do better with them than new entrants would?

Mr. NAGIN. Well, I think that is probably a decision for somebody else to make. I mean, that is certainly the policy that you should be talking about here. The last thing we want to do is be painted as being anti-competitive. We are not.

Senator GORTON. I note, just taking one red line that is about the same length as one black line, and the red line I have picked goes to the city in which the former chairman of this committee lives—Charleston—and the black line of about the same length I am looking at goes to Boston. Am I more likely to be able to get a good, low, discounted rate flying on your airline to Boston or to Charleston?

Mr. NAGIN. It is in the eyes of the beholder as to what that good rate is. If you look at the pricing schedule—and if you allow me, Senator—we have a certain number of seats that we do reserve for a walk-up fare for business people, who are non-discretionary travelers, who do not want to plan a Saturday night stay, who want to have the flexibility of changing their schedule, and a whole host of other things—those fares are going to be higher. But on that same plane, we will have several seats that will be allocated for people who have a more flexible schedule and who are budget-conscious.

Senator GORTON. And I have as good a chance of getting one of those to Charleston as I do to Boston?

Mr. NAGIN. Hopefully you would. It depends on the size of the aircraft and the demand and the time of day—a whole host of factors. And that is why companies like US Airways are now promoting E-Savers, where people with their own computer setups can search the Internet and find some great bargains that are available.

Senator GORTON. Do you have any competition to Charleston?

Mr. NAGIN. No. Not through Washington.

Senator GORTON. I mean from here.

Mr. NAGIN. No.

On the other hand, I thought it was interesting, if you will allow me, that we have the congressperson from the Rochester area, who talked about the inability of competition. And I thought it was interesting—if we look at all the applications that are being made for service to a community like Rochester, and we look at all of the slot applications requests that were made—that the DOT just acted and issued 31 slots last Friday, a good number of them to LaGuardia, and no one filed for Rochester.

Additionally, Southwest—we have heard discussion about Baltimore, how they advertise that as Washington. Southwest has a major presence in Chicago at Midway Airport. They certainly could fly Chicago to Rochester and, I presume, do a very effective job, most likely at prices lower than the fares that are being charged either by American or United, who currently fly that route into O'Hare. They choose not to do so. And I think that is instructive in terms of the economics of our business. Airlines choose to do things for a whole host of reasons.

And, certainly, any of the airlines could have gone in and asked for a slot. If our fares and American's fares and United's fares and Delta's fares are so high in Rochester, that must be a ripe market for picking off.

Senator GORTON. I would like to give this a good filibuster right now, but I just want to know whether it is your position that prices on US Airways—that I am just as likely to be able to get a promotional fare at, say, the 20 cents per mile Mr. Rowen was talking about, on US Airways between pairs of cities which you serve alone as I am on pairs of cities in which you face very hot competition.

Mr. NAGIN. Hopefully those seats would be available and we could respond to consumers like you with pricing that is appropriate. But if you are a walk-up business person—it is going to be higher.

Senator GORTON. I guess the answer to my question is yes, that the per-mile charges on US Airways are approximately the same to cities that it serves alone as they are to cities in which it has competition.

Mr. NAGIN. Yes. And if you look at the fare studies that the DOT is doing, they are saying that fares probably are higher at Pittsburgh and places like that. But what their study does not show is that there are also plenty of seats that are available at lower fares, that you are asking about, Senator.

Senator GORTON. One question for you, Mr. Murphy. What small markets does United serve from Washington National?

Mr. CYRIL MURPHY. From Washington National, I think the only cities we serve are Chicago and Miami. There might be one more.

Senator GORTON. You do not serve any small cities?

Mr. CYRIL MURPHY. Not from National. We have a very limited number of slots at National.

Senator GORTON. I will turn this over to Senator Rockefeller. I cannot avoid the comment, Mr. Rowen, with respect to antitrust actions. With an attorney general, who could not find her shoes unless she was told where they were in the Washington Post, you are



not likely to find someone finding noncompetitive activity in airlines. [www.libtool.com.cn](http://www.libtool.com.cn)

Senator ROCKEFELLER. I thought that was pretty good.

Thank you, Mr. Chairman.

Just two questions I have. We talked earlier about what would happen if, from the point of view of US Airways—which has been through very, very tough times and has shaped up remarkably in the last several years and, I agree with you, is poised to really take off now and to compete anywhere it wants—if this bill were—no, let me put it this way. There would be some who would say that this bill would threaten to withdraw exemptions from perimeter rules and also that they would withdraw slots.

Now, I discussed with an earlier panel the almost inevitable conclusion that if that were to happen—and it is the judgment of this Senator that it would—that US Airways would simply have to take some of those red lines out of West Virginia and put them into areas which would do better financially for the airline. Is that not correct?

Mr. NAGIN. Senator, I could not say it would be West Virginia, but certainly it would be cities or communities like those found in your State and other States similarly situated. It would all depend. If it is a lottery they are pulling out, maybe we get lucky. But that is a big risk to take.

Senator ROCKEFELLER. I understand that. And it was not just West Virginia. It was places like West Virginia, which, in a sense, I am trying to speak on behalf of.

And I want to reinforce that, Mr. Chairman. I think it is an inevitable conclusion. And you have to understand—I mean, the State of Washington—Seattle, Boeing and all the rest; it is in a very, very different situation. And I do not need to give you a lecture about West Virginia; you do not need a lecture at all. But we are really up against it on this. And I honestly do believe—and in fact, we are different from Kentucky that way. We are different from Virginia that way, even though southwestern Virginia and eastern Kentucky are very much like we are. Southeastern Ohio is very much like we are, but Ohio as a whole is not.

I really do believe that there are a lot of areas in the Appalachian and the rural parts of this country that face a future which is going to be radically different if we somehow do not make this air transportation business fair. And one of the things that was mentioned is this question of regional jets. Regional jets are, I think, potentially a marvelous answer. I think you mentioned it, Mr. Faberman.

Although it was interesting to me that in all of the discussion by the four gentlemen to my left—to the left of the gentlemen from US Airways—that when you were discussing places that you might fly or places that you do fly other than Reno—if that stands for the city—everything was Atlanta, Boston, Washington, Chicago, San Francisco. There was never a mention of anything except somebody who let fly with the word “Chattanooga.” And I think that was to prove another point entirely. But that is my worry.

Now, let us suppose that direct jets really get going: 50 to 75, 50 to 70, 50 to 60. It does not make any difference. They are a terrific alternative for States like my own and areas like my own. I can

see US Airways getting into that. I can see, through the recent effort of American Airlines, through American Eagle, to send direct jets from Charleston to Chicago. I mean, if they can do it—this was big news in West Virginia, this was historic—that portends quite a different type of future.

Now, what I want to ask you is, is there anything in this bill—I am asking each of you—that would preclude the development of regional jets as you understand it?

Mr. NAGIN. None that we have seen, Senator, other than the slots associated with activities. If slots are removed, those would be slots for regional jets or jets. It would not discriminate between the two. The slots would be gone and service would be impacted. But there is nothing that precludes the utilization of regional jets.

Senator ROCKEFELLER. But if there is the withdrawal of slots, then you are saying that that could have an effect?

Mr. NAGIN. Well, let us say that US Airways had a regional jet operation through one of our express carriers from point A to point B, and point B was Washington National, and that service was the low person on the totem pole in terms of the food chain that has been discussed. I mean, that flight, conceivably—if the slot was lost—would be canceled and service to that community, notwithstanding the fact that a regional jet, which is a very efficient aircraft and very popular with passengers, was being utilized.

I might add, our agreement with our ALPA unit at US Airways has specific language with respect to regional jets, which not only protects the pilots' interests on our property that belong to ALPA, but also the company in the communities we want to serve. So it is a very exciting prospect, indeed.

Senator ROCKEFELLER. Mr. Babbitt.

Mr. BABBITT. No, sir, we do not see anything that would conflict. As a matter of fact, you might even open the possibility or the opportunity of additional, different types of slots, where you would limit the number of slots that you currently have to existing carriers, and provide, because these regional jets offer—

Senator ROCKEFELLER. Upgrade?

Mr. BABBITT. Yes, sir.

Senator ROCKEFELLER. That is interesting. That is very interesting. In other words, you think that there could be made a category of slots which would only be made available if it was an upgrade for a specific purpose?

Mr. BABBITT. That is certainly an alternative. But what I was focusing on was the operational capability. Some of these regional jets are capable of using other runways. For example, at National Airport, there is a shorter runway that—oftentimes, the larger aircraft, the 727's, the 737's, the 757's, can only use a limited number of runways. But a regional jet, under certain operational conditions, could use a runway otherwise not capable of being used, and thus provide additional service without impacting the other flow to the airport.

Senator ROCKEFELLER. Thank you, Captain.

Mr. Faberman.

Mr. FABERMAN. Senator, the bill would not preclude use of regional jets. The only question would be who would use them. And

without the bill, the only people, the only airlines that could use those jets would be the incumbent carriers.

Senator ROCKEFELLER. Yes. What I actually wanted to ask you was in your startup—new airlines and their service areas—did you ever come close to making a decision to have somebody go to West Virginia or to eastern Tennessee or southwestern Virginia, or something of that sort? Because nobody does come.

Mr. FABERMAN. Well, one of the slot requests that was granted was for Knoxville. There are a number of other slots requests on the table for small cities, including Myrtle Beach; Melbourne, FL. I mean, there are a lot of small cities where applications are in. I think the answer—I mean, basically, if these carriers can start some service on the east coast, they will be able to multiply that service, and they will look at other, smaller markets.

Most of the requests are from smaller and medium-sized cities.

Senator ROCKEFELLER. Let me ask a wrap-up question, since I have the red light already.

Do the five of you think that there is a public policy question of service to all areas of the country within the same philosophical basis as universal service in the telephone system? And that is, some pay more, some pay less, but it is deemed in the public interest that everybody be able to connect with everybody else. Now, without trying to force that comparison too much, do you think that it ought to be a matter of public policy that rural areas, underserved rural areas, or entirely unserved rural areas with airports ought to be included in the thoughtful consideration of public policy?

Mr. NAGIN. Well, on behalf of US Airways, Senator, if you would allow me, there is no reason to deny the benefit of air transportation to anybody. And hopefully, our national conscience, through the Congress, could see fit to reexamine Essential Air Service on that issue.

Senator ROCKEFELLER. But do not you agree that it probably would have to be public policy that would make that intervention?

Mr. NAGIN. Indeed.

Mr. CYRIL MURPHY. Senator, I would not agree with that. And I would also disagree with some of the other comments on the impact of this bill. I think the impact of this bill could be very negative with respect to the deployment of regional jets, because the regional jets that are in the process of being acquired, are largely being acquired by the same carriers you are proposing to take slots away from.

Senator ROCKEFELLER. Yes.

Mr. CYRIL MURPHY. Those regional jets are designed for smaller communities. And if you take the slots away, we are going to continue to operate our airplanes to the larger communities and the smaller communities are the ones that are going to take the hit.

As far as the public policy proposal that you are talking about, I think this conversation today has been severely limited by the concept that we are talking about a zero-sum game. This is not a zero-sum game. There is the opportunity, through deregulation, for us to have our cake and eat it, too. In fact, for most of the last 20 years, we have been having our cake and eating it, too. We have seen new entrants. We have seen a Southwest growing and ex-

panding rapidly throughout this country, at the same time that the major carriers have been developing and growing rapidly their own network of services.

There is nothing that automatically precludes a network operation and a point-to-point operator operating from the same cities. In fact, I will give you the example that is——

Senator ROCKEFELLER. Actually, I do not want to hear it. [Laughter.]

Because your thing of having your cake and eating it, too, when I consider the condition of West Virginia, makes me so mad that I am just willing to stop the questioning right now, since I am already over my time.

Thank you, Mr. Chairman.

Senator GORTON. Thank you all very, very much for your attendance.

Senator FORD. Mr. Chairman, were you talking about the Attorney General of the United States a few moments ago?

Senator GORTON. Yes, sir.

Senator FORD. I think the gentleman made a mistake. And I think the rule of 16 ought to apply here in the committee.

Senator GORTON. Thank you all very much for your participation. It is greatly appreciated and helpful to the committee.

[Whereupon, at 6 p.m., the hearing was adjourned.]

## A P P E N D I X

### PREPARED STATEMENT OF HON. SAM BROWNBACK, U.S. SENATOR FROM KANSAS

Mr. Chairman, I want to thank you for convening this hearing today to discuss competition in some of the nation's busiest airports. I want to make a few, very brief comments on this subject.

Clearly, it is imperative that an anti-competitive environment is not allowed to exist in precisely the airports that are among the most heavily traveled. The GAO has documented that the availability of slots is an impediment to new entrants into these markets, and I applaud Senator McCain's willingness to take on this difficult issue. I also applaud the Department of Transportation's decision last week to make more slots available to carriers as an immediate measure to improve access to slot-controlled airports.

I want to state, however, that I am concerned about any unintended consequences of this legislation. First of all, I want to ensure that service is not adversely impacted in smaller airports through the hubs that subsequently connect to the slot controlled airports. Moreover, while this bill addresses only the allocation of slots among commercial airlines, I want to ensure that any proposal to reallocate slots among them does not have an unintended negative impact on general aviation.

I consider these points paramount, and before I can support this legislation I need assurances that these negative repercussions will not occur. I look forward to working with the Chairman to ensure that my concerns are addressed as the legislation moves forward.

I hope the testimony of the witnesses today will be able to address some of my concerns and that their expertise will guide us to a solution that better ensure that competitive flourishes in the airline industry. I look forward to hearing their testimony.

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### RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN MCCAIN TO PATRICK V. MURPHY

*Question 1.* In your October 1997 report to Congress on anti-competitive practices, the DOT references the GAO's October 1996 report, and specifically its conclusions that barriers such as limited takeoff and landing slots at the four high density airports as well as lack of gate availability at other airports were limiting competition in key domestic markets. The third principal conclusion of the GAO report was that the perimeter rule at National Airport constitutes a federally imposed barrier to competition. You have told me time and again over the years that you are unwilling to take a position on the perimeter rule issue, obviously an issue of enduring importance to me. Today I ask, why would your October 1997 report not even mention the perimeter rule in the section where you simply reiterate the GAO conclusions? You reference gate availability, yet your report does not go on to discuss that issue.

*Answer.* Congress directed the Department to report on actions it had taken during the year to address anticompetitive practices. As you note, the Department has remained neutral on the perimeter rule and it therefore was not an area where the Department took action and was outside the scope of that report. Even the October 1996 GAO report recognized that changes to the perimeter rule were in the purview of Congress and it did not recommend that DOT act, but rather that Congress consider changing the rule. With regard to gate availability, in its formal response to the October 1996 GAO report, DOT did not concur with the GAO recommendation to tie FAA airport grants to gate availability for nonincumbents. Instead, the Department said that the gate access issue would be better addressed on a case-by-case basis when problems are brought to our attention. No allegation of gate availability problems arose during FY 1997, so no discussion was included on this topic in our report to Congress.

**Question 2a.** We had a hearing earlier in the year on domestic aviation competition, at which the Department testified. This hearing was intended to follow up on that hearing, specifically to discuss legislation that has been drafted on the subject.

Were you consulted on the legislation that I drafted?

**Answer.** Yes. We had received a draft of the proposed legislation several days before the hearing.

**Question 2b.** In consultations, have you not suggested that my efforts were complementary to those the Department is undertaking, or at least talking about undertaking, on its own?

**Answer.** Yes. But such views are informal and not necessarily those of the administration.

**Question 2c.** Have any of your suggestions been incorporated into the draft? (For example, Pat Murphy suggested that we incorporate a date (7/1/97) beyond which the buying and selling of slots would not make them ineligible for withdrawal—carriers were indicating to him that a flurry of buying and selling activity was a way to game the legislation to protect their slots.)

**Answer.** Yes, I believe some of our technical drafting suggestions have been incorporated.

**Question 2d.** Were you not asked specifically to address my legislative proposal in your testimony?

**Answer.** Yes. But, the proposal was only a draft. The Department, after coordinating with other interested units of the administration, can take a formal position on legislation that has been introduced. As a general matter it is not possible to take such a position on draft legislation, especially on short notice.

**Question 2e.** Why, then, were you not prepared to address this legislation today?

**Answer.** As explained above, it is not possible to develop an administration position on draft legislation on short notice.

**Question 3.** In your testimony, you stated in part that it is up to Congress to decide whether to modify long-standing arrangements, such as the perimeter rule at National. This Congressperson has spoken on that issue. What are your comments on my proposal?

**Answer.** The Department has chosen not to comment on changes to the perimeter rule because the rule now represents a balancing of various interests that has been developed by Congress over an extended period. While the Administration is not precluded from commenting on legislative proposals at any point, we believe that the predominant concerns in this case lie with Congress, and that we do not have a substantial policy basis for commenting on your proposal. It is for this reason that Congress should decide if any changes to the perimeter rule are appropriate.

**Question 4.** Carriers were grandfathered slots at LaGuardia, National, O'Hare, and Kennedy at no cost. As a result, those carriers may use the slots forever, and can sell them or lease them and keep the funds they receive for those transactions. Is that accurate? The GAO has stated that slots are not readily available for purchase in small numbers. Do you agree? Haven't most slot transactions been part of larger deals?

**Answer.** Carriers were initially awarded the slots they held on December 16, 1985, subject to the proviso that slots could be withdrawn based on a lottery number assigned to each slot for use in essential air service and international service. Also, there was a one-time withdrawal of slots for new entrants. The original slot holders were free to buy, sell, trade, or lease the remaining numbered slots to others. It is our understanding that today there are very few carriers willing to sell slots, although leases are fairly common, particularly at LaGuardia, and many are for terms of several years. It is also true as you note that the majority of slot transactions in the past have been part of larger deals.

**Question 5.** In 1980, Secretary Goldschmidt withdrew slots from incumbent carriers and provided them to New York Air to start a shuttle operation. Since that date, has any Secretary taken similar steps to provide slots to new entrants? Would you agree that the Secretary has the authority to withdraw slots from incumbents and to reallocate them to new entrants?

**Answer.** Secretary Goldschmidt's action took place in the era of scheduling committees, before the buy/sell rules were established. During that time there were no use or lose rules and carriers typically held some slots that they were not using. Secretary Goldschmidt directed the committees to provide slots to New York Air. When the buy/sell rule was established in 1985, there was an initial, one-time withdrawal of slots for distribution to new entrants through a lottery. Other than that one-time withdrawal, provided for in the rule, there have been no other redistributions strictly for domestic new entrants. Slots have been taken for essential air service and international service as provided for in the buy/sell rule. We agree that the Secretary has the ultimate authority to redistribute slots, but under the existing

rules he cannot do so, and a revision of the existing rules through the public rule-making process would be necessary.

**Question 6.** In the international arena, doesn't the Department take the position that "Open Skies" must include access to the foreign country's major airports? Aren't the large U.S. carriers demanding slots at foreign airports? Would you sign an "Open Skies" agreement with the U.K. if they didn't provide slots at Heathrow?

**Answer.** The U.S. does require that our airlines have access to slots in countries with open skies agreements, and we have been successful in getting the slots our carriers require. Certainly, access to Heathrow is an issue in our current negotiation with the United Kingdom.

**Question 7.** Has the Department made it clear that slots are not property rights and that they may be withdrawn?

**Answer.** The FAA buy/sell rule (14 C.F.R. Part 93, Subpart S) makes it clear the slots are not property rights, and may be withdrawn for certain purposes.

**Question 8.** Have the large carriers in international route cases stated that they will serve certain markets if awarded the route and then after the route is awarded change plans? Have the large carriers stated that if slots rules were changed, they would serve certain markets and then either never serve those markets or dropped the markets after a short period of time?

**Answer.** Yes. We have had instances where carriers have not gone through on stated plans in international route cases. Likewise, slot rules have been changed to give carriers more flexibility, but projected services made possible by those changes were not provided as proposed.

**Question 9.** How important is competition and new entry to holding down fares?

**Answer.** The Department's studies show that competition from low-fare airlines and new entry is the most important discipline on fares in today's U.S. domestic airline industry, especially in short- to medium-haul markets. For example, in a 1996 study of low fare airline service, we estimated that consumers save \$6.3 billion per year due to competition from these low-fare airlines and that virtually all the domestic traffic growth in recent years is attributable to the spread of low-fare service competition. The study also found that, at network hub cities where low-cost carriers do not compete, fare premiums are quite high and are increasing.

**Question 10a.** Are slots ever withdrawn from carriers? Have these limited withdrawals, some of which are far more substantial than what is laid out in this legislation, resulted in the dire consequences that the carriers predict in their testimony today and in the arguments that I know that you have heard them cite against this legislation?

**Answer.** Slots needed for international services have been withdrawn. There is no reason to believe that these withdrawals have had dire consequences for the carriers. On the other hand, we also do not know what services were eliminated to meet these withdrawal requirements and what the consequences were for passengers or communities.

**Question 10b.** Is it fair to say that the carriers do not like withdrawals, that they have a limited effect on their current service arrangements, but that these limited withdrawals have never completely undermined a carrier's network?

**Answer.** Limited withdrawals in the past have not completely undermined a carrier's network.

**Question 11.** Congresswoman Slaughter and Rochester officials have stated that airlines tell us that we are a high-tech area, that we have to travel. Consequently, we are supporting low fares in other parts of the country. Do you have any comments on these statements?

**Answer.** We have visited Rochester and have heard first hand of the local situation. Rochester has service from six major carriers, but Rochester is primarily a spoke for each airline to its own hub. With the exception of one low fare airline to Orlando there is no competition to discipline price in the predominantly business markets in the upper midwest and the east. The city fathers of Rochester recognize that attracting new competition is their best hope to get lower fares.

**Question 12a.** I have heard that Mr. Murphy has spoken, at least informally, about transitioning slots to a lease system, whereby the government would reclaim at intervals the more than three thousand slots at the four high density airports, and lease them back to the carriers. The proceeds would remain with the government, rather than with the carriers who currently lease slots that they do not use to other carriers and then keep the proceeds.

What do you think about this or a similar proposal?

**Answer.** There is merit to the concept of placing a price on slots so that the decision to hold a slot that is not needed has a cost attached to it. The Congressional Budget Office has proposed on several occasions an even more extensive leasing requirement as a source of revenue for the federal government.

*Question 12b.* Wouldn't you say that the slot proposals outlined in the Aviation Competition Enhancement Act of 1997 are relatively more modest and limited in the carriers' eyes?

*Answer.* It is hard to know how the carriers would view the two alternatives. A definite loss of slots may be less appealing than an opportunity to keep them at a cost, particularly if the carriers believe that cost could be passed on to passengers.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. SLADE GORTON TO  
PATRICK V. MURPHY

*Question 1.* My staff asked yours to provide all pending predatory actions under 49 U.S.C. Sec. 41712, and was told that all pending actions were informal and were being handled as such. What about the actions related to your CRS rulemaking, which I am told that the DOT issued under the statutory authority cited above? I know that Alaska Airlines, for instance, has a number of significant concerns, and that it has been waiting for over a year for some type of resolution.

*Answer.* As you note, our authority to regulate CRSs comes from Sec. 41712. We have recently published in the Federal Register final rules that deal with the issues of concern to Alaska Airlines and others. Three final rules were issued and a fourth proposed rule was deferred to be dealt with in a major review of CRS rules which is underway. On November 5, 1997, we issued a final rule that will prohibit each CRS from adopting or enforcing contract clauses that bar a carrier from choosing a level of participation in that system that would be lower than the carrier's level of participation in any other system. Alaska Airlines and other small airlines had sought this change. On December 5, 1997, two final rules were issued. One rule requires each CRS to offer one display that lists flights without giving all on-line connections a preference over interline connections. Frontier Airlines had argued that this online preference injured its ability to compete. The other rule bars systems from creating displays that neither use elapsed time as a significant factor in selecting flights from the data base nor give single-plane flights a preference over connecting service in ranking flights. This rule addresses complaints by Alaska Airlines, Midwest Express Airlines, and the American Society of Travel Agents.

*Question 2a.* In your October 1997 report to Congress on anti-competitive practices, the DOT acknowledges that a slot redistribution could result in a more efficient and competitive pattern of service. The report indicated that the Department is evaluating how effectively slots are being used at each airport.

Would you recommend that competition legislation that provides for changes in the existing slot rules require such a study before the changes are implemented?

*Answer.* We believe that legislation on slot redistribution would benefit from an analysis of how effectively slots are currently being used.

*Question 2b.* What is your time frame for conducting this study?

*Answer.* The study is just getting underway and is likely to be complex. We anticipate it will take 4 to 6 months to complete.

*Question 3a.* If I understand what the Department says in its October 1997 report on airline competition with regard to the competitive implications of computer reservation systems (CRS), the Department has issued two NPRMs, proposed four new rules, and has received and evaluated comments and reply comments. A final disposition of proposals dealing with on-line preferences, elapsed time, and consumer preferences has been drafted and is in the last stages of the Department's clearance process.

Is my assessment accurate? If so, how long have these rules been in the Department's clearance process, and when do you expect to issue them?

*Answer.* The clearance process within the administration took several months. Final rules have been issued on three and the final disposition of addressing consumer preferences has been deferred and will be covered in a larger review of CRS rules.

*Question 3b.* What is the rationale for the Department to have just instituted a large proceeding to examine whether all of the existing rules have been effective or should be strengthened to further promote airline competition, and to published an advanced notice of proposed rulemaking on September 10, 1997, asking for comments on whether and how the rules should be changed?

*Answer.* The CRS rules have been designed to sunset after five years. This provides the discipline to do a complete top to bottom review periodically. Such thorough reviews are a necessity in this technologically dynamic area. An advance notice of proposed rulemaking is the method we have used in the past to begin this review.

*Question 4a.* I have seen media reports that the DOT believes that if Congress imposed deadlines for it to act on specific complaints of predatory behavior in the



airline industry, that would make things difficult for the Department because "the amount of data to be gathered is enormous." Is this true?

Wouldn't your concerns be taken care of by the specific provision in this legislation that allows the Department to extend the 90-day deadline, in essence, if the Department requires additional information?

Answer. That should allow time for adequate review.

Question 4b. The bill also gives the DOT the option to issue a response to the complaint indicating that the Department was unable to make a determination regarding the complaint before it.

Answer. The Department would prefer to make a yes-or-no determination and not have to find we are unable to make a determination because of lack of time.

Question 5. In your testimony, you "assume" that among other things carriers would typically not enter a market with fewer than three round trips a day. Why, then, didn't all of the slot exemptions you issued on Friday not provide for at least three round trips a day for each applicant that was awarded slots to serve a particular market?

Answer. A three round trip a day pattern is normally a minimum pattern of service in the domestic airline market. In the slot controlled airports other considerations enter our decisionmaking. In some cases the exemptions add competitive service to an existing pattern of service and total service will be above a minimum pattern. Also there are a limited number of slot exemptions that we will be able to assign to add needed service or spur competition. Using three round trips as a minimum pattern during slot hours would mean six slots for every market to be served. Such a policy would limit the number of markets and carriers that could be benefited from slot exemptions. Furthermore, it is possible to have early morning and late night flights outside of slot controlled hours, allowing additional round trips by carriers receiving slot exemptions.

Question 6. In its 1996 report, GAO stated that although deregulation has spurred new entry and intense competition in many domestic markets, the full benefits of deregulation have yet to be realized because of problems with access to certain airports and the cumulative effect of certain marketing strategies employed by established airlines. Do you agree with that statement?

Answer. The GAO report recognized that some marketing strategies, such as frequent flyer programs and code sharing, have beneficial effects for the traveler as well as negative effects for competing carriers that cannot use these strategies effectively. On balance, we are not sure that all marketing strategies are problematic. Given this qualification, we generally agree with the GAO statement. In addition, the Department believes that more direct unfair competitive activities may be impeding the spread of deregulation's benefits, particularly in the local markets involving hub airports dominated by a major network carrier.

Question 7. What actions has DOT taken to address these marketing strategies? When Mr. Hunnicutt testified before the Commence Committee, he stated that he has seen evidence of predatory behavior on the part of the large carriers. He went on to state that the Department would continue its review. What is the status of the review?

Answer. As described earlier, we have addressed some marketing strategies through CRS rule changes that limit practices that tend to favor the large network carriers. We continue to view certain actions we have seen by some major airlines as crossing the line from vigorous to unfair competition, but until recently have not felt we had an analytical framework to adequately define illegal behavior. After a very thorough review of this behavior, we now believe we have developed such a framework and we are preparing a policy statement that will describe the behavior that we believe clearly crosses the line. We have analyzed instances where we now believe unfair competitive behavior has taken place including one instance where detailed company records were analyzed to gain a fuller understanding of how and why such behavior occurs. We have been receiving informal complaints for several years, but have used informal methods to try to deal with the problem. With our policy statement we hope to move to a more formal approach. We plan to apply any new policy on a prospective basis.

Question 8. What parts of the country have been hit the hardest by deregulation?

Answer. We believe most regions of the country have received some benefits from deregulation, if not from lower average fares, then from more frequent, better-timed service. Some have benefited much more than others. The benefits from deregulation are greatest where competition has flourished. In general, markets in the west and across the south have done the best, particularly from the point of view of lower average fares. That leaves Appalachia, the northeast and upper midwest as having the least fare benefits.

**Question 9.** You have made a number of speeches in which you have stated that there are few new carriers and none in the pipeline. Is that accurate? Why?

**Answer.** As of the date of this hearing we had only one recently filed application pending for new domestic scheduled passenger jet service. We believe there are several reasons that new entry applications have nearly stopped. One probably has to do with the improved prosperity of existing carriers which has tended to reduce the availability of used aircraft and led to a tighter labor market. A second reason has to do with the tragic Valujet crash in May of 1996. The publicity surrounding that event made it difficult for other new entrants to attract passengers for a time and reduced the willingness of the capital markets and venture capitalists to finance new entry. Finally, we believe that the major airlines have increased their competitive efforts to keep new entrants from getting a bigger foothold in their domestic markets, thereby dissuading some who might have wished to compete from trying.

**Question 10.** Do you agree that airfares have increased significantly this year? Do you agree that those hit hardest by those increases are those living in small and medium communities?

**Answer.** The data do not show that air fares have on average increased this year. For example, the average domestic fare per mile for the major U.S. airlines was down 0.6 percent for the 12 months ended September 1997 compared to the same period a year earlier. If adjusted for inflation, the decline would be even greater. While fares on average are going down, there are other trends behind those averages that are moving in different directions. We have read a great deal in the press about business fares going up, which we assume is accurate. Going in the opposite direction, we know in markets where low fare new entry occurs, fares go down dramatically. However, the data needed to assess fares by city size beyond the first quarter of 1997 will not be available for some time, so we cannot confirm that small and medium communities have experienced a different trend in average fares this year than larger cities.

**Question 11.** Is the Administration reviewing the steps taken by the large carriers to increase fares and reduce travel agency commissions? Are you looking at whether carriers signaled to each other before these actions were taken?

**Answer.** No such review is underway at the Department of Transportation. We have received no formal complaints that the industry has colluded in violation of the antitrust laws.

**Question 12.** What percentage of slots do new entrants hold at high density airports? Since 1988, how many new entrants have obtained high density slots? Is it true that foreign carriers hold approximately 2-3 times more slots than new entrants?

**Answer.** Since 1986, the start of the buy/sell rule, the following U.S. new entrant carriers obtained slots or limited incumbent carriers increased slots at the following airports:

Air Wisconsin .....	National
AirCal .....	O'Hare
America West .....	National, Kennedy, LaGuardia
Braniff Airways .....	National, LaGuardia, O'Hare
Carnival .....	Kennedy, LaGuardia
Frontier Airlines (old) .....	LaGuardia, O'Hare
Jet America .....	National
McClain Airlines .....	O'Hare
MGM Grand Air .....	Kennedy
Midway/Jet Express .....	National, LaGuardia
Midwest Express .....	National, LaGuardia, O'Hare
Pan American (new) .....	Kennedy
Presidential Airways .....	National, Kennedy, LaGuardia
Private Jet/National Air .....	LaGuardia
Sun Country .....	O'Hare
Sunbird Airways .....	LaGuardia
Tower .....	Kennedy
Trump Shuttle .....	National, LaGuardia
UltraAir .....	LaGuardia
USAir Shuttle .....	National, LaGuardia
Valujet .....	LaGuardia
Western Airlines .....	National, LaGuardia
World Airways .....	LaGuardia
Atlantic Coast .....	National, Kennedy, LaGuardia
Colgan .....	LaGuardia
Comair .....	LaGuardia

Trans World Express .....	National, Kennedy, LaGuardia
Trans States Airlines .....	National, Kennedy, O'Hare

Data on the markets that were served by these carriers using these slots are not readily available. Certain transactions involving commuter carriers, complex slot arrangements, or situations where there was a doubt about a carrier's inclusion in the new entrant or limited incumbent category have been omitted.

Based on the above list of carriers, new entrants and limited incumbents are estimated to have operated six to eight percent of the total domestic slots at high density airports in early 1997. These estimates are generally consistent with the percentage of slots held by the post-deregulation airlines in June 1996 (one percent at O'Hare, seven percent at Kennedy, two percent at LaGuardia, and three percent at National) as stated the GAO Report, *Airline Deregulation, Barriers to Entry Continue to Limit Competition in Several Key Domestic Markets*, October 1996.

A comparison of new entrant slots with foreign carrier slots is somewhat misleading since foreign carriers generally hold slots in a different manner than U.S. airlines. Some foreign carriers may have an arrival and a departure slot on Monday, Wednesday and Friday only while a U.S. carrier would have one arrival and one departure slot which would be effective for all seven days of the week. Moreover, there are virtually no foreign operations at LaGuardia or National.

**Question 13.** When slots were grandfathered, did carriers pay for them? Have large carriers sold slots to other large carriers?

**Answer.** Grandfathered slots were not paid for, unless one considers the large investments made by incumbents in developing the relevant markets and airport facilities. Large carriers have actively bought and sold slots to each other since the buy/sell rule was adopted in 1985.

**Question 14.** For a carrier proposing to serve a high density airport from a small/medium market, what options does that carrier have to obtain slots?

**Answer.** There are many small and medium sized communities getting service to high density airports, but the service is invariably provided by a code sharing affiliate of a large incumbent airline at the high density airport. Currently, unaffiliated carriers have virtually no realistic opportunity to purchase slots.

**Question 15.** Doesn't a deregulated environment envision open markets? Can you have true deregulation when some of the nation's most important business markets are closed?

**Answer.** It would be far better for open competition if we did not have slot controlled airports. They exist because in the past the demand for service to important cities exceeded the capacity of specific airports to accommodate that demand without significant delays. Congress has recognized that these restrictions have evolved beyond their original intent to limit delays and any attempts to change these restrictions today invariably raise environmental and regional development issues.

**Question 16a.** I have seen reports that the four so-called second-tier major airlines—Continental, Northwest, US Airways and TAW—are headed into a consolidation phase. The predictions are that either they will acquire one another, or they will be acquired by American, United and/or Delta.

Do you agree with this scenario?

**Answer.** Consolidation rumors have persisted for years. We have learned that it is not possible to know which rumors, if any, are true. Recent press reports, however, have made it clear that Continental and Northwest are discussing some consolidation.

**Question 16b.** Have you thought about its competitive implications for domestic aviation?

**Answer.** Any major consolidation could very well reduce competition. A wave of consolidation could be inconsistent with the objectives of deregulation and the anti-trust laws. The Department of Justice would review any major consolidation regarding its competitive implications.

#### RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN MCCAIN TO GAO

**Question 1.** Are slots ever withdrawn from carriers?

(a) Have those limited withdrawals, some of which are far more substantial than what is laid out in this legislation, resulted in the dire consequences that the carriers predict in their testimony today and in the arguments that I know that you have heard them cite against this legislation?

(b) Is it fair to say that the carriers do not like withdrawals, that they have a limited effect on their current service arrangements, but that these limited withdrawals have never completely undermined a carrier's network?

Answer. To mitigate some of the anticompetitive effects of "grandfathering" incumbent airlines' slot allocations following the deregulation of the industry in 1978, FAA withdrew about 10 percent of the air carrier slots at LaGuardia, O'Hare, and Washington National, and distributed them to new entrant and limited incumbent air carriers in random lottery drawings in March and December 1986. (Certain slots—such as those serving international flights, Essential Air Service, and those at Kennedy International Airport—were not included in this lottery.) The withdrawal created a pool of 152 slots (out of a total of approximately 3,800 domestic air carrier and commuter slots that were available then) to be reallocated, including slots from each controlled hour at each of the three airports.

It would be difficult to characterize the results of that first lottery as being detrimental to the incumbent air carriers. Of the 152 slots made available to new entrant and limited incumbent air carriers, only 13 were still controlled by those carriers in 1990. The major airlines actually increased their slot holdings later after purchasing slots that had been distributed in the lottery and after mergers with airlines receiving such slots.

We have not analyzed changes in the air carriers' networks following the slot lottery. Although a few individual communities' service may have changed for the worse in the short run, it seems very unlikely that the carriers' networks were undermined or damaged in some way because the number of slots held by those carriers increased over time, as noted above.

*Question 2.* Congresswoman Slaughter and Rochester officials have stated that airlines tell us that we are a high-tech area, that we have to travel. Consequently, we are supporting low fares in other parts of the country. De you have any comments on these statements?

Answer. Clearly, not all communities have benefitted from deregulation's promises of improved service at lower costs. As we have often reported, many cities—especially some small and medium-sized communities in the East and Upper Midwest, along with some large communities where one or two carriers dominate service at a hub airport—have experienced higher average airfares since deregulation.

Not all routes produce the same yield. At the same time, however, not all routes impose the same costs on a carrier. Determining the extent to which certain higher-yielding routes 'subsidize' routes with lower yields would be impossible without complete information on the costs associated with those routes. Unfortunately, we do not have access to the airline price and cost data that would be needed for such an assessment.

*Question 3.* I have heard that Mr. Murphy has spoken, at least informally, about transitioning slots to a lease system, whereby the government would reclaim at intervals the more than three thousand slots at the four high density airports, and lease them back to the carriers. The proceeds would remain with the government, rather than with the carriers who currently lease slots that they do not use to other carriers and then keep the proceeds.

(a) What do you think about this or a similar proposals?

(b) Wouldn't you say that the slot proposals outlined in the Aviation Competition Enhancement Act of 1997 are relatively more modest and limited in the carriers' eyes?

Answer. In our view, the buy/sell rule for airport slots has been ineffective at encouraging entry into slot-controlled markets. Our analysis of FAA's data indicates that no new entrants have been able to establish service by buying slots; that the number of slots sold has steadily declined; and that the slot market is increasingly becoming a short-term leasing market, in which major carriers that have accumulated excess slots lease out rather than sell the ones they do not need.

By allowing a public right—the right to use the nation's airspace—to be treated in some respects as a private asset that is not generally available on the open market, the present operation of the buy/sell rule not only restricts competition at the four slot-controlled airports, but can impede competition throughout the northeastern and midwestern United States.

Leasing slots to the airlines rather than allowing them to retain control of slots that they were allowed to use for nothing is one of several options available to the government as a means for opening up the slot market so that permanent entry becomes easier, and competition greater, at the slot-controlled airports. We believe that leasing would have the advantage both of generating revenue for the federal government and of opening up the slot market to new entrants. However, this option could involve a major change in individual carrier's balance sheets because carriers may have bought some of their slots and carriers may have made substantial investments at these airports. Therefore, we believe that the idea would require further study.

By comparison, the proposals put forth in the proposed Aviation Competition Enhancement Act of 1997 would seem to be much more moderate in scope and impact than the leasing concept noted above, since the number of slots involved would presumably be smaller.

**Question 4.** At least since 1990, GAO has discussed various approaches to the problems associated with airline deregulation. Last year, in a report on barriers to competition, GAO recommended that slots be withdrawn and subsequently reallocated. Why did GAO make a recommendation focused on slots?

**Answer.** GAO's October 1996 report *Airline Deregulation: Barriers to Entry Continue to Limit Competition in Several Key Domestic Markets (GAO/RCED-97-4)* analyzed the effect of several different barriers that hinder competition. We generally divided those barriers into either operating barriers that effectively inhibit new competition from serving particular airports (slot controls; long-term, exclusive-use gate leases, and perimeter rules) and marketing strategies (booking incentives for travel agents and frequent flyer programs) that reinforce a carrier's market dominance.

To promote competition, the report made recommendations that attacked the problems presented by the operating barriers, focusing on those problems where the federal government could have a direct and immediate impact. Specifically, we recommended that the Secretary of Transportation (1) create a pool of available slots by periodically withdrawing some slots that were grandfathered to the major incumbents, taking into account the investments made by those airlines at each of the slot-controlled airports, and hold a lottery to distribute them in a fashion that increases competition, and (2) direct the Administrator of the FAA to make an airport's efforts to have gates available to nonincumbents a factor in FAA's decisions on federal grants to airports. Also, the report noted that Congress may wish to grant the Secretary of Transportation the authority to allow exemptions to the perimeter rule at National Airport when the proposed service will substantially increase competition. Because the effect of the airlines' various marketing strategies are more ambiguous (e.g., consumers benefit with free trips from frequent flyer programs), we did not make any recommendations related to them.

**Question 5.** Recognizing that some small- and medium-sized communities face difficulties with acquiring and maintaining quality air service, what does GAO view as options for addressing these communities' problems?

**Answer.** Increasing competition and improving air service at airports serving small and medium-sized communities that have not benefited from fare reductions and/or improved service since deregulation will likely entail a range of federal, regional, local, and private sector initiatives. Since our October 1996 report noted above, several conferences have also been held to examine various options. The conferences have spurred several initiatives, including (1) outreach efforts by communities to better inform airlines of local actions to generate economic growth, and (2) commitments by corporations to support nonincumbents in markets where one or two established carriers dominate. In combination with such initiatives, commuter airlines' growing use of new regional jets instead of turboprops has the potential to improve the quality of air service in many of the adversely affected small- and medium-sized communities.

At the same time, we believe that there are no panaceas for the problems faced by small- and medium-sized communities, and that what works for one community may not be suitable for another. This is partly because each community's problems are somewhat unique. Market forces may alleviate one area's air service problems but not work as well in another, at least not without additional publicly provided incentives. Such incentives could take any number of forms (e.g., state tax incentives, guaranteed ticket sales, or modifications to or an expansion of the Essential Air Service program), and come from various levels of government. We believe that the air service problems of underserved communities deserve additional examination.

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#### RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. SLADE GORTON TO GAO

**Question 1.** I have seen reports that the four so-called second-tier major airlines—Continental, Northwest, US Airways, and TWA—are headed into a consolidation phase. The predictions are that either they will acquire one another, or they will be acquired by American, United and/or Delta.

(a) Do you agree with this scenario?

(b) Have you thought about its competitive implications for domestic aviation?

**Answer.** Since the Committee hearing in late October, the press has circulated stories relating to a deal between two of the so-called 'second-tier' major airlines in

which Northwest would purchase a 14 percent stake in Continental and form an alliance that would enable the carriers to feed passengers into each others' systems. GAO has not examined the competitive implications of such an arrangement for domestic aviation.

*Question 2.* In the October 1996 report in which GAO recommended that slots be withdrawn and the perimeter rule modified, it identified various other barriers to competition. What are some of those other issues that GAO has identified?

*Answer.* GAO's October 1996 report *Airline Deregulation: Barriers to Entry Continue to Limit Competition in Several Key Domestic Markets (GAO/RCED-97-4)* analyzed the effect of several different barriers that hinder competition. We generally divided those barriers into either operating barriers that effectively inhibit new competition from serving particular airports (slot controls; long-term, exclusive-use gate leases, and perimeter rules) and marketing strategies (booking incentives for travel agents and frequent flyer programs) that reinforce a carrier's market dominance.

We also noted that code-sharing agreements between airlines and commuter carriers work to eliminate potential competitors by foreclosing connecting traffic from new airlines that do not have such agreements. As a result, code-sharing allows an incumbent to strengthen its position at a hub even further. In August 1990, we also reported that the airlines' ownership of the four computer reservation systems (CRSs) raises the costs for potential entrants. Travel agents tend to prefer the airline whose CRS they use, which limits the available market for the new entrant. We noted in our 1996 report that airlines cited these factors less often as a barrier to entry than overrides and frequent flyer plans. In part, these factors have become less important because DOT has sought to eliminate any bias in the listing of flights on CRS screens that would favor code-sharing flights or a particular airline.

Because the effect of the airlines' various marketing strategies are more ambiguous (e.g., consumers benefit with free trips from frequent flyer programs), we did not make any recommendations related to them.

We also believe that the air service problems of underserved communities deserve additional examination. Some small- and medium-sized communities, particularly in the East and upper Midwest, have experienced higher air fares and worse service since deregulation. Because each community's problems are somewhat unique, we believe that there are no panaceas for the problems faced by such communities, and that what works for one may not be suitable for another. Market forces may alleviate one area's air service problems but not work as well in another, at least not without additional publicly provided incentives.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN MCCAIN TO  
DAVID T. RALSTON, JR.

*Question 1.* In your testimony, you tout the benefits of marketforces? Do you support eliminating the high density rule and the perimeter rule at National, consistent with safety?

*Answer.* I would first look to the effects of eliminating either the High Density Rule or the Perimeter Rule at Washington National Airport on air service to the entire Washington/Baltimore region. If you consider at all three airports together, a full range of services, including low-fare options, are available to the greater Washington community. National Airport has a limited capacity that cannot be substantially expanded to meet market demand; allowing substantially more service there would most likely degrade services through increasing delays, without providing much fare competition.

The Perimeter Rule presents a slightly different situation. Shifting trans-continental services from BWI and Dulles to National would reduce the long-haul services at those two airports, with uncertain impact on fares. With National's limited capacity, adding more markets means that capacity in other markets would be reduced. That is likely an invitation for higher, not lower, fares.

Notably, Stephen Morrison, an economist who claims that eliminating the slot and perimeter rules would result in substantial consumer savings, concedes that airside and groundside congestion may well result in overall consumer costs that outweigh the projected savings. Such equivocal conclusions do not lend confidence that elimination of the rules would have a net beneficial impact.

*Question 2a.* Are slots ever withdrawn from carriers?

Have those limited withdrawals, some of which are far more substantial than what is laid out in this legislation, resulted in the dire consequences that the carriers predict in their testimony today and in the arguments that I know that you have heard them cite against this legislation?

**Answer.** We are unaware of any slot withdrawals at National Airport, and the FAA has been able to confirm that there have not been any since 1989, possibly none ever. This makes sense given the value of the slots to the air carriers. Under the existing High Density Rule, slots can only be withdrawn for nonuse. By definition, any flight canceled because of slot withdrawals would be a flight the carrier itself did not consider important and in an hour for which there were no buyers. The major issues for any withdrawal proposal are which carriers' slots are withdrawn and in what hours, not necessarily the total number.

**Question 2b.** Is it fair to say that the carriers do not like withdrawals, that they have a limited effect on their current service arrangements, but that these limited withdrawals have never completely undermined a carrier's network?

**Answer.** It is certainly fair to say carriers do not like withdrawals, particularly when they cannot be sure which slots will be taken and how a withdrawal will affect their service patterns. It would depend on which slots are withdrawn to say whether the effect on their current service arrangements would be limited. I believe the point the carriers were making was that withdrawal of even a few slots could cause them to withdraw entirely from a market that did not have much service to National. In any event, I don't believe the appropriate test for withdrawing slots is whether the withdrawal would "completely undermine a carrier's network."

**Question 3.** Congresswoman Slaughter and Rochester officials have stated that airlines tell us that we are a high-tech area, that we have to travel. Consequently, we are supporting low fares in other parts of the country. Do you have any comments on these statements?

**Answer.** Every city in America would love to have low-fare, frequent service to Washington or New York, and every city—high tech or low tech—believes it needs and deserves that service. Rochester is of course no exception. In a deregulated market, air carriers provide services where they can carry enough passengers at fare levels that produce an adequate yield. This holds true for low-fare carriers as well; they will not enter a market unless they believe they can stimulate enough traffic to make the route pay.

I have also enclosed a recent Washington Post article concerning United Airlines marketing. The article demonstrates the very real diversity of demand for air transit, and that a substantial segment of the market is service, not price, driven.

I do not know enough about the Rochester situation to comment further. I would note, however, that there are no restrictions on air service between Rochester and Washington Dulles, Baltimore/Washington International, or Newark International, all three of which provide good access to the markets they serve.

[From The Washington Post, Sunday, December 7, 1997]

### UNITED STEERS ITS APPROACH TO LAND HIGH-PAYING, HIGH-MILEAGE ROAD WARRIORS'

(By Don Phillips)

United Airlines calls them 'road warriors,' and they're the most sought-after passengers in the air. Road warriors aren't just business travelers; they're at the top of the air-travel food chain. Sometimes chief executives, sometimes other top corporate officers, perhaps high-end salespeople, road warriors generally, set their own travel budgets and often approve the resulting expense account comfort and recognition are crucial to these high-mileage travelers. Ticket price is definitely a secondary consideration.

All this makes them incredibly valuable to airlines, this elite 6 percent of passengers who produce a whopping 37 percent of airline revenue. A mere 1 percent increase in United's share of the road warriors' business would produce a revenue gain of \$200 million.

Road warriors are the pampered class in the air. They almost never have to stand in line. They get top priority for upgrades and usually end up in business class or first class. They can call special telephone numbers when they have complaints or suggestions, and their views are attended to promptly.

But more important they get respect. Computers immediately tell agents someone special has arrived at the gate. They are usually recognized on sight at the airports they visit most frequently. Often they'll be met by an airline official who wants to make sure they are happy.

Every airline courts these high-yield travelers. But almost a year ago, United launched a new marketing strategy aimed at making United the airline of choice for road warriors and other business travelers. These up-market fliers usually pay higher fares—issues either because they want the extra comfort of higher-class travel or can't plan far enough ahead to buy low-fare advance-purchase tickets.

An unusually hefty 53 percent of United's domestic revenue already came from business-type fares, compared with 37 percent for the industry as a whole. Now, UAL Corp. Chairman Gerald Greenwald and his troops want to push that number even higher. They're embracing a methodical, wide-ranging program that includes enhanced frequent-flier benefits, better food, better employee training, new aircraft seats, enhanced in-flight entertainment, and more pampering in the air and on the ground.

#### *Farewell to 'Friendly Skies'*

United's campaign to win the warriors and other high-end travelers is visible in a series of ads now running in national media. The new theme, replacing the old "friendly skies" slogan, is "rising."

United officials say the message of the camp is: We feel your pain. We know we haven't done a good enough job at making air travel pleasant. But we're trying.

The company knew it needed to take action to repair its reputation among passengers. Its customer satisfaction ranking among domestic airlines—measured by number of complaints to the Department of Transportation—had sunk to a miserable No. 7 in 1995, from a not-much-better No. 5 the year before.

Earlier this year, United assembled focus groups in eight countries, in an effort to determine what customers, employees, distributors and suppliers thought of the airline industry in general and United in particular.

The result was an eye-opening shock. Passengers disliked almost everything about flying—personnel, food, attitude and even employee order. To put it bluntly, customers believed they were being lied to on a regular basis by all airlines. Airline advertising was viewed as totally divorced from reality.

"It was a terrible indictment of the industry," said David A. Coltman, United's senior vice president for marketing.

"People don't believe us. And the depth of cynicism is much worse here than in the rest of the world." The worst news for United was that customers didn't view the airline as different from any other.

"United has no clear position in the market," Coltman said. He was so taken with one executive's comment that he turned it into a slide for presentations he gives to analysts and reporters: "Friendly skies' is a nice advertising line. That's just the point. It's just advertising."

United set about to change its way of doing business and its image. But first, it needed to know who its customers were and what they wanted.

The findings were not all that surprising. Business travelers wanted less hassle. At the other end of the spectrum, vacation travelers focused on price. Everyone wanted better food and a feeling that someone would pay attention if they complained.

United's "customer segmentation study" identified five types of business travelers and three types of leisure travelers, each with somewhat different needs. (Those eight categories are displayed in the illustration on the front page of this section.)

As United surveyed the "business-drive" category, it concluded that road warriors and "global travelers" are not sensitive to price and demand service and comfort from their airline. "Eager corporate soldiers" and "reluctant corporate soldiers" have less choice about travel plans and choices, while "do-it yourself price shoppers" are generally small-business owners and others who must keep a close eye on the bottom line.

Among "personal-driven" customers, the three categories are self-explanatory: "personal service seekers," "mile-collecting vacationers" and "price-driven occasionalists." Oddly, the statistics for the price-driven occasionalists are almost the reverse of the road warriors: they constitute a sizable 32 percent of all airline passengers but contribute just 9 percent of revenue.

Using this knowledge, United set about to squeeze as much revenue as possible from each market, concentrating on the high-end business market.

"In learning there are eight distinct customer segments, we set about to be certain we had eight different customer strategies," said Scott Praven, United director of brands and product development.

United found that the "pillars" of customer satisfaction are safety, dependability and competitive pricing. No amount of marketing or advertising could make up for deficiencies here.

Beyond that, better food was a strategic requirement for all categories, particularly coach travelers. A new spirit of honesty and candor was another. United responded with better employee and greater honesty in advertising, including listing excursion fares as "round trip," not the lower "one-way based on round-trip purchase." And a nonsmoker policy was adopted worldwide on July 1.



Big changes are coming inside United's aircraft. A model Boeing 767 is now shuttling back and forth from New York to Los Angeles with new seats, individual entertainment centers and power outlets for personal computers in first and business class—called Connoisseur Class on United. These will soon become standard on all United aircraft. The first newly equipped Boeing 747 emerged from a hangar in Alabama last week.

One segment of United's business-traveler program broke into the news last month when the company announced a pilot plan in Des Moines to allow high-fare travelers to bring aboard two pieces of carry on luggage, while leisure-fare travelers were limited to one. The plan sparked indignant reaction. A peeved Sen. John McCain (R-Ariz.), chairman of the Senate Committee on Commerce, Science and Transportation, said United believes that a businessperson is more important than a vacationing parent with a child, belongings and a diaper bag in tow.

Coltman said critics are "jumping the gun." Des Moines, he said, is merely an experiment aimed at trying to please all levels of customers by easing the loading process and helping planes run on time. If customers don't like the result he said, the experiment will be abandoned.

United's "rising" ad campaign also has taken some flak.

"When that advertisement first came out, we had several clients ridicule it," said Dorothy Kucera of Jan Whistler Travel in Mount Prospect, Ill. "To this day, I giggle when I hear it."

But a series of focus groups and surveys have told United that the ad campaign resonated with the "target group"—business travelers.

It's too early to tell whether United's campaign is having an effect, but anecdotal evidence and survey results are positive. The assessment of travel agents, often the first contact between passenger and airline, is that economy-minded passengers are interested only in price—and won't much care about "rising" service. But there are initial signs that business travelers may be responding to the United campaign.

"Unless they have United frequent-flier miles, there's absolutely no loyalty to United or any other airline," said Kucera, whose agency caters to bargain-minded travelers. Price is the only object, she said: "They don't mind if it's a cattle car anymore."

Kelly Kuhn, a vice president with Arrington Travel in Chicago, whose business is 85 percent corporate travel, said that for her firm's customers the United campaign "is absolutely working."

Kuhn said that most of the agency's business is with United—and that business is, well, rising. She said her customers are pleased with enhancements to United's Mileage Plus frequent-flier program that offer more generous awards to business travelers. For instance, frequent business travelers can move to the head of the line for upgrades to first class—sometimes getting confirmed first-class seats when they make their reservations. Normally, travelers can't confirm upgrades until 24 hours before the flight.

United is "really quite pleased" with the program so far, Praven said. Surveys and focus groups have shown some movement in the "preference indexes," he said. In the key category—"definite intent to repurchase"—United has seen a slight rise over the past year, Praven said.

#### *Yield and Load Factor*

In assessing the United program, the magic words are "yield"—basically the amount of revenue produced by each airline seat—and "load factor"—the average number of seats filled with passengers.

High-paying passengers produce high yields. And a high load factor means that more seats are producing revenue. The trick is to fill as many seats as possible at the highest fare possible.

Both statistics are up for United. For the 12 months that ended March 31, its load factor was 71.9 percent, second only to Northwest's 73.5 percent.

Yield, a more important indicator for business travel, rose 1.3 percent during the 12 months that ended Oct. 31, while the rest of the airline industry's yield declined 1 percent. This continued an upward trend for United that stretches back at least to 1993. From 1993 to 1996, United's yield rose 4.6 percent while the rest of the industry dropped 0.9 percent.

Darryl Jenkins, a professor at George Washington University who tracks the airline industry, said United is making all the right moves in terms of revenue, but he cautioned that it's impossible to determine how much of the airline's success can be attributed to marketing.

"There are so many things going on right now," he said.

These rising statistics came about even though business fares have risen about 20 percent in the past year.

"The only thing that seems to have been 'rising' is business fares," said Steve Loucks, director of communications for the American Society of Travel Agents.

Loucks said airlines should treat business travelers well because "the business traveler is being held hostage to what the airline wants."

Jenkins acknowledged that business fares have never been higher. "But it doesn't matter," he said. "People are voting with their money."

**Question 4a.** I have heard that Mr. Murphy has spoken, at least informally, about transitioning slots to a lease system, whereby the government would reclaim at intervals the more than three thousand slots at the four high density airports, and lease them back to the carriers. The proceeds would remain with the government, rather than with the carriers who currently lease slots that they do not use to other carriers and then keep the proceeds.

What do you think about this or a similar proposal?

**Answer.** It is difficult to say what would happen under Mr. Murphy's scheme outlined in the question; there are many different ways of implementing it. The Authority does not have a position on who should own the slots, or under what financial terms they are assigned. We would not, however, support an approach that would increase costs to passengers or disrupt existing service patterns.

**Question 4b.** Wouldn't you say that the slot proposals outlined in the Aviation Competition Enhancement Act of 1997 are relatively more modest and limited in the carriers' eyes?

**Answer.** The answer would depend on how the rights to lease slots were assigned.

**Question 5.** What is the competitive benefit of allowing new entrant and limited incumbent carriers to serve frequently served markets from the high density airports? In other words, why is the proposal to allow them to serve in frequently served markets from the slot-controlled markets just not enough?

**Answer.** The perceived benefit of allowing new entrant and limited incumbent carriers to serve frequently served markets from high density airports cannot be realized unless they can offer enough frequencies to provide a truly competitive service, which is not likely given the slot restrictions, or, in the absence of slots, the overall limited physical capacity of Washington National Airport. Absent truly competitive service, all we would be doing is providing another carrier in the market with a protected niche. The point is this—for a new entrant to have a material competitive effect, it must take, or threaten to take, sufficient traffic from an incumbent to necessitate fare reductions by the incumbent to preserve its market share. That outcome is unlikely when the new entrant has only a few frequencies. Indeed, the more likely outcome is that, in due course, the new entrants' fares will come closer to the incumbents', rather than vice versa.

**Question 6.** I have seen media reports that the DOT believes that if Congress imposed deadlines for it to act on specific complaints of predatory behavior in the airline industry, that would make things difficult for the Department because "the amount of data to be gathered is enormous." Is this true?

**Answer.** The Department currently has an expedited proceeding for considering airport rate cases. Although a very demanding process on the participants, the process has worked. I believe the same process could be made to work in predatory pricing cases.

**Question 7a.** I have seen reports that the four so-called second-tier major airlines—Continental, Northwest, US Airways and TWA—are headed into a consolidation phase. The predictions are that either they will acquire one another, or they will be acquired by American, United and/or Delta.

Do you agree with this scenario?

**Answer.** I have of course heard of such reports, and recognize that large combinations are a real possibility. It is well recognized that there are substantial pressures resulting from spreading "open skies" and the globalization of aviation to establish international mega-carriers, or at least substantial international alliances. Any consolidations must be closely watched to assure competition is maintained.

**Question 7b.** Have you thought about its competitive implications for domestic aviation?

**Answer.** As long as low-fare carriers exist and new entrants can be organized, however, I believe the deregulated U.S. aviation market will provide price discipline, even in the face of giants. Moreover, as US Airways is now demonstrating, when a second-tier major airline is competently managed it can succeed quite nicely in appropriate market niches.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. SLADE GORTON TO  
DAVID T. RALSTON, JR.

*Question 1.* What is the competitive benefit of allowing new entrant and limited incumbent carriers to serve frequently served markets from the high density airports? In other words, why is the proposal to allow them to serve infrequently served markets from the slot-controlled markets just not enough?

*Answer.* The perceived benefit of allowing new entrant and limited incumbent carriers to serve frequently served markets from high density airports cannot be realized unless they can offer enough frequencies to provide a truly competitive service, which is not likely given the slot restrictions, or, in the absence of slots, the overall limited physical capacity of Washington National Airport. Absent truly competitive service, all we would be doing is providing another carrier in the market with a protected niche. The point is this—for a new entrant to have a material competitive effect, it must take, or threaten to take, sufficient traffic from an incumbent to necessitate fare reductions by the incumbent to preserve its market share. That outcome is unlikely when the new entrant has only a few frequencies. Indeed, the more likely outcome is that, in due course, the new entrants' fares will come closer to the incumbents', rather than vice versa.

*Question 2.* I have seen media reports that the DOT believes that if Congress imposed deadlines for it to act on specific complaints of predatory behavior in the airline industry, that would make things difficult for the Department because "the amount of data to be gathered is enormous." Is this true?

*Answer.* The Department currently has an expedited proceeding for considering airport rate cases. Although a very demanding process on the participants, the process has worked. I believe the same process could be made to work in predatory pricing cases.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN MCCAIN TO  
CHARLES M. GOODWIN

*Question 1.* In your testimony, you tout the benefits of market forces? Do you support eliminating the high density rule and the perimeter rule at National, consistent with safety?

*Answer.* In my testimony, I did not state the benefits of market forces here in the Rochester market because they simply do not apply.

Airlines serving the greater Rochester, New York community operate in a quasi-monopoly with almost no competition to key destination cities.

As a result, airfares to cities such as Chicago; Atlanta; New York City; Cleveland; Newark, NJ; Pittsburgh, PA; Detroit, MI; and Washington, DC, among others, are more than twice what other consumers are paying for flights serving these same destinations, but originating from more competitive markets.

Airlines serving the Rochester community are exploiting upstate New York passengers and charging outrageous fares because they can do it. We have no recourse. If you want to fly to these cities, you pay these outrageously high airfares, or you don't travel.

These high airfares have negatively impacted upon our business community and our tourism industry.

If, by eliminating the high density rule and perimeter rule at Washington National Airport could encourage more competition in our market . . . and more competitive airfares . . . then we are in favor of this.

If eliminating these rules and opening these slots for some of our lower cost carriers does not lower airfares into and out of Rochester, then we think that the McCain Committee should consider re-regulating airlines and limiting their profits as they relate to costs . . . especially if these high airfares are hurting the economy of a region . . . such as upstate New York.

*Question 2a.* Are slots ever withdrawn from carriers?

*Answer.* Redistributing slots at key airports may reduce the profits of some dominant carriers, but should only help to foster more competition on key routes.

*Question 2b.* Is it fair to say that the carriers do not like withdrawals, that they have a limited effect on their current service arrangements, but that these limited withdrawals have never completely undermined a carrier's network?

*Answer.* Certainly, the redistribution of these slots will have no dire effect on the profitability of the airlines involved.

Since some airlines serving our community make more money by leasing their gates than they do by providing air passenger services, the redistribution of slots in Chicago, Washington, LaGuardia and Kennedy would only help to bring more competition, and lower fares, to these key destination

**Question 3.** Congresswoman Slaughter and Rochester officials have stated that airlines tell us that we are a high-tech area, that we have to travel. Consequently we are supporting low fares in other parts of the country. Do you have any comments on these statements?

**Answer.** Rochester-based air travelers are currently paying exorbitant airfares which allow major carriers to charge lower rates in more competitive markets.

As a result of these high airfares, Rochester-based travelers are now driving to Toronto, Ontario and Cleveland, Ohio, where more competitive fares are readily available.

We lose the passenger traffic here in Rochester, but the Rochester-based traveler can save \$800 by driving 3½-4 hours, and that is just what they are doing. (Southwest Airlines serves Cleveland and a roundtrip ticket, from Rochester to Nashville, TN, is in the \$1,000 range, where the same destination, from Cleveland, can be had for just over \$200.)

**Question 4.** I have heard that Mr. Murphy has spoken, at least informally, about transitioning slots to a lease system, whereby the government would reclaim at intervals the more than three thousand slots at the four high density airports, and lease them back to the carriers. The proceeds would remain with the government, rather than with the carriers who currently lease slots that they do not use to other carriers and then keep the proceeds.

What do you think about this or a similar proposal?

Wouldn't you say that the slot proposals outlined in the Aviation Competition Enhancement Act of 1997 are relatively more modest and limited in the carriers' eyes?

**Answer.** We would be in favor of the government controlling the slot allocations at the four major airports.

**Question 5.** What is the competitive benefit of allowing new entrant and limited incumbent carriers to serve frequently served markets from the high density airports? In other words, why is the proposal to allow them to serve in frequently served markets from the slot-controlled markets just not enough?

**Answer.** No comment.

**Question 6.** I have seen media reports that the DOT believes that if Congress imposed deadlines for it to act on specific complaints of predatory behavior in the airline industry, that would make things difficult for the Department because "the amount of data to be gathered is enormous." Is this true?

**Answer.** Predatory behavior exists in the airline industry.

We suggest that you simply look back to review where low cost carriers began serving key cities. You will notice that major carriers immediately dropped their prices in an effort to retain market share and often scheduled additional flights around the times when the lower cost airlines offered services.

The major carriers would continue to offer these lower prices and "saturation flight times" until the lower cost carrier was forced out of the market.

This type of behavior should not be condoned by the McCain Committee.

**Question 7.** I have seen reports that the four so-called second-tier major airlines—Continental, Northwest, US Airways and TWA—are headed into a consolidation phase. The predictions are that either they will acquire one another, or they will be acquired by American, United and/or Delta.

Do you agree with this scenario?

Have you thought about its competitive implications for domestic aviation?

**Answer.** Regarding consolidation, we have no idea of what will happen to the four airlines mentioned.

We do see, however, that projections call for at least a \$4 billion profit by U.S. airlines during the year 1997.

If airlines serving a certain region have a monopolistic hold on a market, it is our strong belief that they should be regulated . . . and their profits limited according to their expenses, just as a public utility firm or cable television company is regulated.

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PRESS CONFERENCE WITH CONGRESSWOMAN LOUISE SLAUGHTER AND PATRICK MURPHY, DEPUTY ASSISTANT SECRETARY FOR AVIATION & INTERNATIONAL AFFAIRS, U.S. DEPARTMENT OF TRANSPORTATION, FRIDAY, NOVEMBER 21, 1997

Undersecretary Murphy, Congresswoman Slaughter, and Other Distinguished Guests: Rochester, New York is served by six major airlines . . . US Airways, United, American, Northwest, Continental and Delta. Due to the limited number of flights which originate in Rochester, passengers flying out of our city pay some of the highest airfares in the country. According to a recent article in the Buffalo

Jews, our sister city of Buffalo is rated #6 in overall airline ticket costs and, using the same criteria, Rochester would come in in 8th place.

Some examples of the high Rochester airfares we pay, as of this week, (November 7-21, 1997), include:

Roundtrip costs—Rochester, NY to:	Short Notice Air fares	Roundtrip Air Miles	Approximate Cost Per Mile
Chicago, IL .....	\$1,052	1,060	\$1.00
Atlanta, GA .....	915 & 917	1,240	.74
New York City:			
(LaGuardia) .....	399	510	.78
(Kennedy) .....	399	510	.78
Cleveland, OH .....	648	480	1.35
Newark, NJ .....	483	510	1.35
Pittsburgh, PA .....	600	440	1.36
Phoenix, AZ .....	1,641	3,928	.42
Albany, NY .....	453	488	.93
Boston, MA .....	401	680	.59
Detroit, MI .....	687	572	1.13
Washington, DC:			
(National) .....	601	586	1.03
(Dulles) .....	601	586	1.03
Philadelphia, PA .....	563	612	.92
Dallas, TX .....	1,425	2,524	.56
Los Angeles .....	1,839	4,534	.41

Our consultants tell us that airlines can make a profit at 10 cents—12 cents, per mile on longer flights, and at 20 cents—25 cents, per mile, on shorter flights.

Due to the limited competition in our market, business executives are forced to pay these exorbitant airfares, and these costs, in turn, are passed along to their company's customers. As a result of these airfares, we have many Rochester area travelers who are now driving to either Toronto or Cleveland to take advantage of lower fares available in these cities.

We have Rochester area businesses who are now holding their sales meetings in other cities because airfares into and out of these other locations are at much lower rates.

We have Rochester area companies who have either drastically reduced or "capped" their business travel. We have others who have even resorted to relocating certain operations to other cities. Additionally, I am aware of several other Rochester area firms who are currently considering the relocation of their travel-sensitive departments to other cities.

We have spoken to several of the major airlines which serve our community and have pointed out our concerns regarding the excessive airfares being paid by Rochester travelers. Our requests for fare revisions or rate reductions have been met with silence and these airlines have continued to charge the outrageously high fares which exploit the upstate market.

One month ago, we circulated petitions to attract additional airlines to our community and, in two days, several hundred Rochester businessmen signed these documents in hopes of attracting Southwest Airlines, America West and Air Ontario to the greater Rochester market. Subsequently, we have spoken with Kiwi Airlines and Air Trans . . . but all of these market evaluations take time—from several months to even years.

In the meantime, Rochester area passengers are forced to pay the eighth highest airfares in the nation.

There are several other pricing policies utilized by the airline industry which Rochester area customers simply do not understand.

- Why are 80% of the revenues of some major airlines generated by only 7% of their travelers . . . the corporate community?
- Why are major discounts only offered to people staying over on Saturday nights when most corporate travel is done during the week?
- Why do airlines force executives, flying the same plane, to sometimes pay five times as much as tourists who happened to make their reservations a few weeks earlier?
- If carriers such as United and American, who serve the Rochester-Chicago routes, have load factors exceeding 70%, why are the fares to this destination so high? . . . and why do they both charge exactly the same fares . . . 1,052?

• Many flights between Rochester and destinations such as Albany and Newark, New Jersey are served by commuter planes. With lower equipment costs, lower fuel costs, lower landing fees, lower pilot salaries, etc., why are there no lower fares for seats sold on these flights?

• It's a sad fact, but mileage flown has little bearing on airline ticket charges. The airlines know what hotel rooms, dinners and breakfasts cost, and they factor in these costs when pricing all direct flights to key business destinations. If you want to take a "one-day business trip," one which allows you to return home that same night . . . you pay about twice as much as for a flight, with connections, in Pittsburgh or Philadelphia on the way to Chicago.

• Why are the yield per flight profits ratio on flights originating from Rochester much higher than the yield per flight profits ratio of flights originating from other cities . . . where costs of flying are actually much higher?

Airline profits, for all U.S. airlines during the year 1997 are projected to come in at over 4 billion.

We feel that airlines serving the Rochester community are entitled to honest profits for the services, but these profits should be reasonable. Current airfares "gouge" the upstate New York community and help to depress our struggling regional economy.

When airfares begin to adversely impact upon the economy of a region . . . both business interests and tourism . . . it is time for our community to step back and take a second look at this situation.

We know that airline passengers with their trips originating in Rochester are paying much higher airfares when compared to passengers originating their trips in New York City, Denver, San Francisco, etc. Our high fares help to subsidize these less profitable routes . . . flown by these same airlines . . . in more competitive markets.

Is this acceptable to Rochester area air travelers? Is there anything that our community can do to improve this situation?

Obviously, attracting additional (and lower cost air carriers) to the Rochester market would force airlines currently serving our community to re-evaluate their fares. Attracting these new airlines to our community, however, can take many months, and sometimes, even years. During this period, our community is further damaged by the high airfares which area passengers are being forced to pay.

Another possible solution is that the airlines, themselves, realize the ill will that they are generating with their inflated airfares.

In the interest of maintaining good community relations, maybe some of these airlines currently serving the Rochester community will reconsider their pricing policies; hopefully, they will then set their fares for our region at more reasonable and more acceptable levels.

Since there are really no other alternatives . . . other than asking the Federal Government to limit the amount of profits an airline can generate from a certain region . . . we have no place else to turn.

1. We must tell the airlines currently serving our community what we think of their high fares and encourage them to reduce their charges to more reasonable levels;

2. We must continue in our efforts to attract more competitive air carriers to our community . . . and the Chamber and the County of Monroe will continue in these efforts; and

3. We must hope that the airlines now serving our community will become more aware of their civic responsibilities and what their high airfares are doing to the economy and tourism business in our region.

By publicizing these high airfares, we may be able to force these airlines into reconsidering their pricing policies and, hopefully, lowering their airfares in the near future.

Airlines serving the greater Rochester community operate very similarly to public utilities. There is really very little competition on key air routes and, therefore, the potential for inflated fares is strong.

• Are major airlines serving key business destinations charging near-monopoly airfares because there is no real competition?

• Are major carriers serving the same destination cities charging the same airfares because they are working in collusion?

• Are these airlines so insulated from the communities which they serve that they don't care what the public thinks as long as their yield per flight profits are well above the national average?

We don't know the answers to these questions, but the Rochester Chamber of Commerce will continue its efforts to reduce airfares here in the Rochester market.

As every traveler who has flown out of the Greater Rochester International Airport in the past six months knows, we're simply paying too much for these airline services. [www.libtool.com.cn](http://www.libtool.com.cn)

Until these fares are reduced to reasonable levels, we will continue our efforts to attract more competitive airlines to our region. We will continue to work with airlines currently serving our community to see if any fare reductions can be realized, and we will continue to work with our federally-elected officials to make sure that they are fully aware of the negative economic impact which these high airfares are having on our community.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN MCCAIN TO  
LAWRENCE NAGIN

*Question 1a.* Does your carrier retain any slots that it does not currently use, or any slots that it leases to other carriers?

Answer. In accordance with the use or lose requirements of FAA regulations, US Airways is obligated to utilize the slots that it holds at high density airports at least 80 percent of the time over a two-month period. US Airways is in compliance with this requirement and files bimonthly reports with the FAA on the use of its slots.

US Airways does not lease any of its slots to other air carriers. All of US Airways' slots are used by it and its commuter (US Airways Express) partners to provide network service. To enhance the efficiency of its network at LaGuardia and National, US Airways is compelled to lease slots from other airlines.

US Airways is committed to a strategy of domestic and international growth. We have reached agreement with our pilots and are making substantial progress in reaching agreements with other employee groups to hold down costs while at the same time committing to a strategy of growth. As the carrier grows, and as the low-cost division within the carrier takes shape, US Airways will seek ways to further enhance the networks at DCA and LaGuardia and to respond efficiently and effectively to market demand.

*Question 1b.* If so, wouldn't it be fair to say that your network of services would not be disrupted by the return of these slots to the FAA?

Answer. Since US Airways does not lease any slots to other air carriers, it would not have any such slots to return; however, if US Airways were to lose the slots that it leases from other carriers, it would be disruptive, causing the cancellation of service to smaller and mid-sized cities that are a part of the US Airways' network at DCA and LaGuardia.

*Question 1c.* If you claim that you would like to hold on to these slots for the prospect of future expansion on the part of your airline, wouldn't it be more efficient for the FAA to reallocate those slots to carriers that demonstrate current demand for those slots? Presumably, if your carrier contemplates future service that would provide relatively more benefits for consumers, at the appropriate time you would value the slot enough to buy it from the carrier currently using it (under the current Buy/Sell rule).

Answer. Each of US Airways' slots is used today to maximize the benefits of US Airways' networks at DCA and LGA. Since deregulation, airlines have been able to expand single-carrier service to hundreds of city pairs through the development of hubs and route networks. Building on a 50-year commitment of service to DCA and LGA, US Airways has developed networks at these airports that provide nonstop service to dozens of smaller and mid-sized cities. Through these networks, US Airways and its commuter partners are able to serve more small and medium-sized cities at both DCA and LGA than all the other airlines combined.

*Question 2a.* You claim that this bill would take the lifeblood of your network—the slots at National and LaGuardia. I hope you realize that the potential for slots withdrawals under this legislation is very limited. Is there any level of withdrawal that would not jeopardize your network?

Answer. The withdrawal of any slots at DCA and LGA would diminish US Airways' network. Not only would local service to small and medium-sized communities be placed at risk, US Airways' ability to maintain effective connecting service could also be threatened. Obviously, the more slots that are withdrawn, the more harm that would be done to the network.

*Question 2b.* Does US Airways lease any of its slots?

Answer. No, US Airways does not lease any slots to other air carriers. All of US Airways' slots are used by it and its commuter partners to provide a comprehensive network of services at LGA and DCA.

*Question 2c.* Does US Airways use all of its slots at all times?

Answer. US Airways complies with FAA regulations requiring that slots be utilized at least 80 percent of the time. This is a far higher degree of utilization than would be the case at an unrestricted airport. The 80 percent use or lose requirement is very stringent. The FAA initially adopted a 65 percent utilization requirement in conjunction with the buy-sell rule in 1985. In 1992, FAA raised the requirement to 80 percent. Given weather and mechanical cancellations and certain thin routes where weekend service is not viable, the scheduling of flights to meet the use or lose requirement can be very challenging.

*Question 3.* In your testimony, you tout the benefits of market forces? Does US Airways support eliminating the high density rule, consistent with safety?

Answer. It is clear from the regulatory history that the buy-sell rule was promulgated in 1985 in order to apply the principles of deregulation and marketplace allocation to capacity-restricted airports. There are only four such capacity-restricted airports in the U.S., and the buy-sell rule has done a better job in allocating scarce resources efficiently than bureaucratic intervention in picking and choosing among air carriers. However, the high density rule does constrain the ability of air carriers to grow and to adjust their schedules to consumer demand, especially carriers like US Airways that operate route networks at HDR airports.

If the high density rule were eliminated at DCA and LGA, US Airways would be able to maximize the efficiency of its route networks at each of these two airports and to compete with other air carriers that have networks at unrestricted airports. In this regard US Airways believes that the views of the local community and airport authority are critical and should be considered in any plans to eliminate the high density rule.

US Airways understands that the FAA has stated that the high density rule is not required for reasons of safety; however, elimination of the high density rule could result in substantial congestion and inconvenience to passengers, which should be taken into consideration. It also may affect the impact of aircraft noise on the surrounding community. US Airways supports careful consideration of the costs and benefits of eliminating or modifying the high density rule and would be prepared to support changes that are in the public interest so long as the communities' concerns are taken into account. It is critical, however, that any modifications to the high density rule or to the allocation of slots under the high density rule be fair to air carriers that have invested billions of dollars in developing routes, serving smaller communities, and improving airport facilities in reliance on the existing regulations.

*Question 4.* How many slots were you grandfathered in 1986 when the buy-sell rule was issued? Did you pay for grandfathered slots?

Answer. There is no commonly accepted definition of grandfathered slots. The number of US Airways grandfathered slots would depend on how the term is defined. We would assume that the term grandfathered slots is intended to mean the slots that were actually held by the then-USAir at the time the buy-sell rule was issued and which remain with US Airways today. Under this definition US Airways holds the following grandfathered slots: LGA (36), DCA (72), ORD (10), and JFK (2). US Airways has purchased the vast majority of the slots it holds at HDR airports.

Importantly, the slots which the then-USAir held at the time the buy-sell rule was promulgated were not without cost. They reflected substantial investment in airport facilities, routes and route networks that were in existence at that time. When promulgating the buy-sell rule, the FAA addressed this issue, concluding that "[m]ost air carriers and commuters have expended large amounts of resources to establish existing services and facilities," and that the so-called grandfathering of slots "recognizes that investment." 50 Fed. Reg. 52180, 52184 (1985).

US Airways is still making investments in facilities to support flights operated with grandfathered slots. Since 1985, US Airways has made capital investments totalling more than \$200 million at LGA and DCA, and has invested over \$2 billion in aircraft to operate its networks at these facilities.

*Question 5.* Are you familiar with the high density and buy-sell rules, including the sections that clearly state the slots are not property rights and that they may be withdrawn? Do you keep track of withdraw numbers?

Answer. Yes. We are very familiar with the HDR regulations, including provisions for the withdrawal of slots. We further recognize that the FAA regulations state that slots do not "represent a property right" and that they "may be" withdrawn "to fulfill the Department's operational needs, such as providing slots for international or essential air service operations or eliminating slots." There is, however, no reference in the regulations to withdrawing slots from some airlines to transfer them to their competitors, even to new entrants. Furthermore, in promulgating the buy-sell rule in 1986, the FAA provided for a one-time withdrawal of five percent of the slots from the incumbent carriers and redistributed these slots to "new en-



trants." Within three years, only 13 of the 152 slots that were withdrawn remained with the new entrant carriers. The others had either been sold or returned to the FAA unused.

Importantly, when the DOT and the FAA announced this one-time withdrawal, it made clear to the new entrants that in the future, they would have to obtain slots in the marketplace pursuant to the buy-sell regime. DOT expressly rejected requests for larger or periodic slot withdrawals as "highly disruptive of existing airline service, with the strong possibility that the service dropped will be that used to serve small and mid-sized communities," noting that "in the future" new entrant carriers should "buy or lease" slots in the market. 50 Fed. Reg. 8632, 8634 (1986).

It is further worth noting that several federal courts have rejected the FAA's claim that slots do not represent property interests, finding that the airlines do "possess property rights in slots," *In re McClain Airlines, Inc.*, 80 B.R. 175 (Bankr. D. Ariz. 1987), that slots are a "property interest," *Alaska Airlines, Inc. v. City of Long Beach*, 951 F.2d 977, 986 (9th Cir. 1989) and that airlines have a "possessory interest in slots." *In re Gull Air, Inc.*, 890 F.2d 1255, 1260 (1st Cir. 1989).

US Airways does keep track of withdrawal numbers since under the FAA rules slots may be withdrawn for essential air services, international service, or for reasons of safety.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. SLADE GORTON TO  
LAWRENCE NAGIN

**Question 1.** You state in your testimony that this proposal rewrites the slot rules. Don't the current slot rules specifically state that slots are not airline property, and that they are subject to withdrawal?

**Answer.** Yes. However, the current slot rules state that slots may be withdrawn for international service or essential air service. There is no general regulatory authority to withdraw slots from one airline and transfer them to another airline, even a new entrant. The conditions of withdrawal were made quite explicit in the FAA regulations at the time the buy-sell rule was promulgated. DOT did provide for a one-time withdrawal of five percent of the slots in 1986 in order to give new entrants an opportunity to get in on the ground floor of the new buy-sell regime. The new entrants were notified at that time that there would be no further withdrawals for this purpose and that, thereafter, they would be required to acquire slots in the market like every other carrier. DOT expressly rejected requests for larger or periodic withdrawals because they would be "highly disruptive of exiting airline service, with the strong possibility that the service dropped will be that used to serve small and mid-sized communities." Unfortunately, the one-time five percent withdrawal was a complete failure. Within three years only 13 of the 152 slots withdrawn remained with the new entrant carriers.

Although the FAA regulations state that slots are not airline property, several courts have held that airlines have a property interest in slots. See, e.g., *In re McClain Airlines, Inc.*, 80 B.R. 175 (Bankr. D. Ariz. 1987) (airlines "possess property rights in slots"); *Alaska Airlines, Inc. v. City of Long Beach*, 951 F.2d 977, 986 (9th Cir. 1989) ("property interest"); *In re Gull Air, Inc.*, 890 F.2d 1255, 1260 (1st Cir. 1989) ("possessory interest").

**Question 2.** How did you obtain the slots that you have picked up since 1986?

**Answer.** US Airways has purchased slots since 1986 for cash, as part of a broader transaction including gates and other airport facilities, and as part of the acquisition of other air carriers. In each case, US Airways has recognized the value and paid substantial compensation for the slots, without which it could not provide service.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN MCCAIN TO  
CYRIL MURPHY

**Question 1.** Does your carrier retain any slots that it does not currently use, or any slots that it leases to other air carriers?

**Answer.** United and United Express carriers are utilizing all jet and commuter slots held by United at Chicago O'Hare, Washington National and New York JFK airports. At LaGuardia, four United slots are leased to our Star Alliance partner, Air Canada. In fact, United's demand for slots to support its growing operations is so great that, since 1986, we have invested over \$300 million to acquire additional slots on the free market for O'Hare service alone. Incidentally, United is the only major U.S. carrier that must acquire slots on the open market to enable it to grow at its principal hub. We have no slots that can be withdrawn without having a sig-

nificant adverse impact on our operations and the customers and communities we serve.

*Question 1a.* If so wouldn't it be fair to say that your network of services would not be disrupted by the return of these slots to the FAA?

*Answer.* As stated in the response to question 1, United currently has no excess capacity in slot holdings. Accordingly, any withdrawal of slots would result in a significant adverse impact on our operations and the customers and communities we serve.

With respect to the general principle of a wholesale withdrawal of slots, United has numerous concerns. We believe such a policy would have severe adverse consequences for the U.S. airline industry and consumers of air services.

First, as the Chairman has recognized on numerous occasions in other trade sectors, U.S. industries compete in a global economy. The U.S. airline industry is no exception. In fact, U.S. carriers are leaders in the air service globalization movement. In the case of United and most other major U.S. carriers, our domestic and international networks are interdependent upon one another. Along with our foreign airline alliance partners, the integration of our domestic and international networks has created a single global network. To the extent a change in U.S. law adversely affects our domestic operations, it necessarily harms our global network. When a hub is involved, that impact is even more significant. For instance, withdrawing slots from United at O'Hare, our principal hub and a key international gateway, would choke off passenger feed that is needed to support our international operations. The adverse consequences would ripple throughout our global network.

Air service transportation policy should focus on increasing the competitiveness of U.S. airlines in global markets, not undermining it. To achieve this result, the policy should seek to strengthen the domestic hubs of U.S. carriers to ensure they are anchors for global networks. Fortunately for our economy, U.S. airlines are playing a leading role in the globalization of air services. This competitive success continues to produce significant air service trade benefits for the U.S. as well as create jobs. To the extent U.S. carriers are weakened at their domestic hubs by a slot withdrawal policy, it necessarily follows that the competitiveness of the U.S. air industry in global markets will be undermined.

Second, a wholesale withdrawal of slots would be detrimental to the types of services United offers to its domestic customers. If United is required to surrender slots, we would be forced to reallocate our remaining slots to their highest economic use. Unfortunately, as a result, less profitable routes such as those serving medium- and small-sized markets would be placed at great risk. Thus, such a policy would prevent us from fully and freely responding to air service demand in small community air service markets. It is a mistake to assume that the recipients of these slots would fill that air service void. Instead, the recipients of these slots can be expected to use them to offer additional service in large markets already served by numerous carriers. Thus, the result would be to concentrate air service in the largest markets and to exacerbate the existing air service challenges of many smaller communities.

*Question 1b.* If you claim that you would like to hold on to these slots for the prospect of the future expansion on the part of your airline, wouldn't it be more efficient for the FAA to reallocate those slots to carriers that demonstrate current demand for those slots? Presumably, if your carrier contemplates future services that would provide relatively more benefits for consumers, at the appropriate time you would value the slot enough to buy it from the carrier currently using it (under current Buy/Sell rule.)

*Answer.* As stated in response to question 1, United currently has no excess capacity in slot holdings. Thus, the question is moot as it applies to United.

United generally agrees with the proposition that carriers contemplating future services at slot-controlled airports should look to the free market to acquire slots from current slot holders to support those operations. The free market in slots created by the Buy/Sell rule has worked effectively in allocating slots to their highest economic use and as a result it has maximized the benefit of those slots for the traveling public. In fact, since 1986, United has relied on the Buy/Sell rule to acquire in the free market over \$300 million in additional slots to support our operations at O'Hare.

While the Buy/Sell rule has proven to allocate slots in an economically efficient manner, the method of allocating slots proposed in the question would have the exact opposite effect. The underlying value of slots is attributable to the billions of dollars in investments which carriers make in slot-controlled airport facilities and the operations supported by the slots. To simply take slots away without compensation and then force airlines to repurchase them would be tantamount to making airlines pay twice for the same slot. This makes no economic sense. In contrast, if a carrier is seeking opportunities at a slot-controlled airport, it should look to the free

market the Buy/Sell rule created to acquire such slots. United believes the marketplace, not FAA, can and does allocate slots most efficiently.

**Question 2a.** The invitation to participate in this hearing specifically asked you to address the legislative draft that was put before you several weeks ago. Why doesn't your testimony even attempt to address the specific provisions of the bill as asked? It seems to me that we heard this same or similar testimony from John Edwardson at one of our hearings earlier in the year.

**Question 2b.** What are your specific concerns with specific provisions of the bill, and what are your specific suggestions for modifications that would address these concerns?

**Answer.** In response to both questions 2(a) and 2(b), United testimony at this hearing closely resembled our testimony on these same issues at previous hearings since we have consistently expressed our concerns regarding both the perimeter rule at Washington National and confiscation of slots. In that regard, I am pleased my testimony was fully consistent with that of Mr. Edwardson on these points.

With respect to that portion of the legislation that would create broad exemptions to the perimeter rule, United believes that the current rule works very well for the Washington area and that any change will on-balance cause more economic harm than benefits. As Senators Warner and Robb as well as other testified at the hearing, the perimeter rule is in the nature of a compact between carriers and the Washington community which carefully and thoughtfully allocates air service opportunities pursuant to a regional transportation plan. We believe that any change to the perimeter rule, including that proposed in the legislation, will topple this air service balance which was carefully crafted by local officials. Since airports are important transportation facilities whose management is best left to local communities, United believes the Federal government should respect the community's decisions incorporated in the Washington Metropolitan region's transportation plan by not changing the current perimeter rule.

With regard to slots, United believes a wholesale withdrawal of slots and a slot auction will not have the desired effect of benefiting consumers and improving our domestic air service system. To the contrary, we believe that proposal would harm the competitiveness of U.S. carriers in global markets by weakening their hubs which anchor their global networks. Similarly, the proposal would have severe adverse economic consequences for air service to medium- and small-sized air service markets. As a result of the proposed slot withdrawal, airlines would be forced to reallocate remaining slots to their highest economic use and air service in smaller markets would be the first casualty of such a redistribution of service. In stark contrast to the proposal, a free market for slots which currently assures that slots are put to their highest economic use is a far better approach for maximizing air service benefits to consumers.

To the extent Congress wishes to play a role in addressing air service challenges in small communities which has driven the domestic air service debate for several years, United believes a targeted, market-based approach is needed. We stand ready to work with you and other Members of the Committee to develop proposals along that line.

**Question 3.** I understand that you have objected to the perimeter rule exemptions based on the "uncertainty" regarding the number of exemptions that would be granted under this provision. Would you have the certainty you need to accept changes to the perimeter rule if we capped the total number of exemptions that could be granted under these provisions?

**Answer.** I would like to make clear that United believes the current perimeter rule at National Airport is in the nature of a compact between the carriers and the community upon which both sides have relied significantly in investment decisions, long-range planning, developing infrastructure, and the like. Moreover, it reflects a careful balance which the local community has struck for distribution of various types of air services offered throughout the Washington area.

Any Congressionally mandated change in that compact would, in our judgment, produce on balance more negative than positive results. Moreover, it would ignore the balance of air service opportunities the local community has carefully crafted. While capping the number of exemptions might address the issue of certainty, it clearly fails to eliminate the issue of damages to the local community. At best, capping the number of exemptions would only limit the degree of damage that would be done by changing the rule. A capped exemption as suggested in the question also raises very important and fundamental questions regarding whether the rule can be administered in a manner that is neither arbitrary or discriminatory. In contrast to the current rule which places all airlines on the same competitive footing with respect to long-haul service from National, granting exemptions to only a handful

of airlines would result in claims of unfair treatment by those airlines not given similar opportunities.

United's consistently stated preference, and we believe the clear consensus in the Washington area, is that no damage be done whatsoever.

**Question 4.** I have seen statements filed with the Department of Transportation in which United claims that, and I quote, the "High Density Rule is a direct governmental limitation on the opportunity for carriers to grow at O'Hare, particularly impacting United's ability to expand and develop its integrated route network." From this statement, can I assume that United supports repealing the high density rule?

**Answer.** The High Density Rule was put in place in 1968 to address serious congestion problems at several airports. Over time, that rule has evolved in response to changes in the airline industry as well as changes in each airport's local conditions and air service patterns. Repeal of the High Density Rule is a very complex matter raising several very important issues.

First, United's paramount concern is the safety of its passengers. It is not clear that the High Density Rule could be repealed without compromising the safety of the traveling public.

Second, from an operational standpoint, repealing the High Density Rule could exacerbate air traffic control delays which already plague our national transportation system. Since airports are now operating at or near capacity, and there is no plan I am aware of for allocating that capacity in the absence of the High Density Rule, the result of repeal could be gridlock in the skies. In fact, since we have an integrated air service system where delays at one airport ripple throughout the system, the National Civil Aviation Review Commission recently reported that adding just seven minutes of delay to each airline flight in the United States would create such a gridlock situation.

Finally, carriers have invested billions of dollars in slot-controlled airports in reliance that the High Density Rule would remain in place. Repealing the rule raises fundamental questions of fairness with regard to those substantial investments in slots and the facilities and operations which support them.

The general problem is that the infrastructure of airports is not sufficiently developed to ensure that no constraints are necessary on providing services to communities consistent with demonstrated needs. One of the consequences is that United and other carriers therefore must operate within such limitations which burden the efficiency of a carrier's operations and requires substantial investments in such things as slots that few other communities or carriers must bear. United favors the elimination of such limitations when the underlying cause is remedied. Otherwise, some other form of constraint such as flow control will simply be substituted for the slot controls.

**Question 5.** I have seen statements filed with the Department of Transportation in which United claims that, and I quote, the "advantage of marketplace as a mechanism for allocating goods and services is the basis for the fundamental success for the deregulated domestic transportation market." This is exacting the statement characterizes my efforts to repeal the perimeter rule at National. Don't you agree?

**Answer.** No. When a region makes major economic investments in multiple airport facilities, it has the right to do so pursuant to a regional transportation plan. The same is true for a city or any locality which makes decisions affecting its transportation needs. Indeed, it is doubtful that Congress would want the community to act in any other fashion. The Washington Metropolitan region has done precisely that, and is allowing market forces to allocate goods and services within its transportation plan. Specifically, the Washington Metropolitan region has a carefully balanced transportation plan which allocates long-, medium- and short-haul air service among its several airports.

It makes no sense to allow the integrity of that carefully developed plan to be undermined to satisfy the commercial drive of one or two carriers. Moreover, it is inconsistent with the majority view of this Congress that local governments, not the Federal governments, are in the best position to understand and weigh community needs.

Simply put, no one would seriously suggest that the Federal government should decide where a city's bus stops are placed. It has neither the expertise nor the community's interest in controlling its local transportation. Yet, the location of the bus stop can have important economic consequences and affect the convenience of residents and visitors to the city. Airports are important transportation facilities whose management is best left to local communities as they are under our current from the national transportation system. The Federal government should respect the decisions incorporated in the Washington Metropolitan region's transportation plan.

**Question 6.** Your testimony refers to Congress' success in removing the dead hand of regulation from our industry. The perimeter rule at National and the slots rules

at the four high density airports are clearly federal regulations. I take it, then that United would endorse the limitation of these examples of the dead hand of government **regulation of market forces?**

**Answer.** Slot rules and perimeter rules are separate issues with different schemes of management under our national transportation system. Airport access rules have traditionally and widely been matters for local control and United would support the non-interference of the Federal government in these issues.

Air traffic control, on the other hand, is run by the Federal government to maximize the efficiency and safety of the national system. The Federal government must take action when situations develop that would disrupt the efficiency or safety of the smooth flow of airplanes to and from airports in federally controlled air space. The alternative is FAA flow control which involves the exercise of Federal power but at considerable cost and expense to the system and particularly to medium- and small-sized communities whose interests often suffer under such an ad hoc system of intervention.

**Question 7.** United in its testimony states that it hopes Congress "will opt for the rule of constructive leadership." However, when in turn I ask the carrier for constructive leadership to address problems that everybody but the carriers agrees exist, all I have heard is responses like "we haven't explained ourselves well enough." Like it or not, the concept of constructive leadership applies to us all.

**Answer.** Although no question has been asked, United agrees entirely with your statement that the concept of constructive leadership applies to us all.

**Question 8.** How many slots were you grandfathered in 1986 when the buy-sell rule was issued? Did you pay for grandfathered slots?

**Answer.** In 1986, United received 582 slots at O'Hare to cover the services that it had been operating at that airport at the time the rule was introduced. Neither United nor any carrier that received grandfathered slots in 1985 was required to directly pay for them. However, United indirectly paid for these slots by investing billions of dollars in flight operations at O'Hare prior to 1985 including aircraft, ground facilities, equipment and the like.

In fact, United is the only major U.S. carrier that cannot freely grow at its principal hub. While other carriers whose principal hub is not slot controlled have the commercial flexibility to grow and offer additional opportunities without special investments, since 1986 United has invested more than \$300 million in market acquisitions of slots to accommodate growth. United has paid more for slots than any other carrier in this country or in the world for that matter.

**Question 9.** Are you familiar with the high density and buy-sell rules, including the sections that clearly state the slots are not property rights and that they may be withdrawn? Do you keep track of withdraw numbers?

**Answer.** Yes, we are aware of those sections. In fact, on August 25, 1997, United filed a petition with the FAA urging it to cease its practice of withdrawing slots at O'Hare to subsidize international operations by foreign airlines. Yes, United does keep track of slot withdrawals.

**Question 10.** Did you oppose the extension of the perimeter rule when it went to 1,000 miles and then it went to 1,250 miles?

**Answer.** No. The FAA imposed the 1,000 mile perimeter rule at Washington National in November 1981 as part of a plan to administer the local airport system. Prior to that time, carriers had by agreement limited flights to a 650 mile perimeter in all but a few cases. Fixing the perimeter at 1,000 miles reflected National's continuing role as a medium- and short-haul domestic facility within the national system.

After the rule was extended to 1,250 miles in April 1986, United determined to expand its presence at Dulles and developed a major East Coast hub at that airport. To make this possible, United expended billions of dollars to build-up its operations at Dulles to make it an important international gateway airport. As a result of United's investment, international service to the Washington area has grown significantly and thousands of jobs have been created. With respect to consumers, United's decision has spurred increased competition for international air services from points off the East coast and Dulles also serves as a major transit point for communities in the West.

**Question 11.** When it went to 1,250 miles, what happened? Did Dulles cease to grow? Did all of the carriers start service to Texas?

**Answer.** As a result of the Washington Airports Transfer Act of 1986 which expanded the perimeter rule to 1,250 miles, American Airlines offers non-stop service from National to Dallas-Fort Worth and Continental serves Houston on a non-stop basis. Relaxation of the perimeter rule also resulted in non-stop service from National to both Omaha and Wichita. The impact of the 1986 law was limited in this

respect since only a narrow band of major air service markets were affected by this relaxation of the perimeter rule.

Growth of non-stop service between National and Dallas compared to similar service from Dulles illustrates that changing the perimeter rule disrupts the balance of opportunities between the two airports. While Dulles continues to offer some non-stop Dallas service, the bulk of that service, and the most significant growth in the Washington-Dallas market since 1986 has occurred at National. Absent the 1986 law, Dulles would have enjoyed this traffic growth. Moreover, cities within the 1,000 perimeter would have benefitted from new air service opportunities to and from National which have otherwise been allocated to Dallas service.

In terms of overall growth, while Dulles has grown since 1986, its growth has lagged behind other Washington area airports despite significant investments United has made in its Dulles operations in reliance on the 1,250 mile perimeter rule.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. SLADE GORTON TO  
CYRIL MURPHY

*Question 1.* How did you obtain the slots that you have picked up since 1986?

*Answer.* Since 1986, United has invested over \$300 million in the purchase of slots on the free market to improve and enhance operations and efficiency at our principal hub at Chicago O'Hare. These open market acquisitions of slots were necessitated by the fact that United is the only carrier in the country required to make such investments to grow at its principal hub. The unique burden of being the only competitor in this industry required to pay for slots to grow at its principal place of business is ironically sometimes perceived as a competitive advantage.

*Question 2.* One of the arguments made against modifying the perimeter rule is that carriers will stop serving smaller markets to serve the new markets beyond the existing perimeter.

What is the LaGuardia perimeter rule? Doesn't United have an exemption to serve Denver?

*Answer.* The LaGuardia perimeter rule was instituted by the Port Authority of New York and New Jersey, which operates LaGuardia, Newark International and JFK International airports, to reduce ground congestion and maintain LaGuardia as a short and medium haul facility. It was a decision made at the local level which balanced the air service needs and concerns of the New York and New Jersey areas. Prior to 1984, the rule was an informal limitation on flights farther than 2,000 miles from the airport. In 1984, the Port Authority formalized the rule and reduced the permissible distance of flights from the airport to 1,500 miles. Although Denver is more than 1,600 miles from LaGuardia, at that time, local authorities decided to grandfather pre-existing operations by three carriers from LaGuardia to Denver because they constituted an important portion of LaGuardia's operations. United was one of the three carriers that benefitted from this decision by local authorities who carefully weighed the interests of the New York and New Jersey air service communities in permitting such flights to continue operating.

Proposals to eliminate or relax the perimeter rule at Washington's National Airport differ markedly from the decision by the Port Authority to grandfather flights between LaGuardia and Denver. First, the decision affecting LaGuardia was made at the local level and was fully consistent with the air service balance for the New York and New Jersey areas that the Port Authority had carefully crafted. Second, no such grandfathering circumstances exist with respect to Washington National or Washington Dulles airports so that all carriers operating beyond or within the perimeter have equal access to the respective airports. Thus, changing the rule would create an incentive for carriers at National to substitute long-haul service at the expense of current service to medium- and small-sized communities within the perimeter. While the decision affecting LaGuardia's perimeter rule was made at the local level by officials representing those communities affected by it, proposed changes to National's perimeter rule mandated at the federal level would undermine the air service balance in the Washington area that local officials have spent years and hundreds of millions of dollars to achieve.

AMERICA WEST MEC,  
AIR LINE PILOTS ASSOCIATION,  
Phoenix, AZ, November 10, 1997.

[www.libtool.com.cn](http://www.libtool.com.cn)  
Hon. JOHN McCAIN,  
U.S. Senate,  
Washington, DC.

DEAR SENATOR McCAIN: As Chairman of the Air Line Pilots Association (ALPA) at America West Airlines, and on behalf of all pilots at America West, I would like to express support for the Aviation Competition Enhancement Act (S. 1331). The proposed legislation would help eliminate barriers to competition at several major airports, yielding significant benefits to the industry and the traveling public.

America West's mission of providing full-service, low-fare transportation would be enhanced by S. 1331, resulting in a net lowering of fares in key markets. Importantly, passage of S. 1331 would help achieve the open markets and increased competition anticipated by the Airline Deregulation Act.

ALPA's President, J. Randolph Babbitt, testified last week before the Committee on Commerce, Science and Transportation. Although we understand Captain Babbitt's concerns about slot confiscation, America West's pilots are in full support of other aspects of the bill. We fully support lifting slot restrictions at the affected airports and easing perimeter rules at Washington National.

Broad access to slot controlled airports by limited incumbent and new entrant carriers will help establish new and competitive air service in the heavily traveled east and upper midwest, and improve service throughout the country.

Thank you for your consideration.

Sincerely,

CAPTAIN DONALD W. STEINMAN,  
Chairman, Master Executive Council.

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#### PREPARED STATEMENT OF MARYLAND DEPARTMENT OF TRANSPORTATION

The Maryland Department of Transportation appreciates the opportunity to provide its views regarding this legislation. Based on recent assessments made by the General Accounting Office and others, concluding that barriers to entry continue to limit competition in several key domestic aviation markets, the State of Maryland understands and appreciates the interest of the Committee in drafting remedial legislation to ensure the fullest possible realization of the public benefits anticipated by the 1978 Airline Deregulation Act. The State of Maryland, owner-operator of one of the three Washington-area airports, Baltimore/Washington International (BWI), an early proponent of domestic airline deregulation, continues to believe the broad public interest is best served through development of a national air transportation system placing maximum reliance on competitive market forces.

For reasons briefly set forth below, Section 4 of the committee draft, authorizing exemptions from the nonstop perimeter rule governing Washington National Airport commercial flight operations, strikes Maryland as an inapposite public policy expression for inclusion in an omnibus bill seeking to enhance aviation competition. In an effort to introduce new nonstop long-haul services to National, Section 4 unfortunately and needlessly contradicts (1) longstanding federal policy; (2) regional airport plans and programs; and (3) the declaration of congressional policy set forth at Sec. 102(a)(6) of the 1978 Airline Deregulation Act. As an airport proprietor and on behalf of Maryland citizens affected by National Airport Flight operations, the State of Maryland has appropriately relied on these earlier and longstanding federal policy determinations. As a consequence, Maryland views as a matter of "settled law" the application of the perimeter rule to Washington National flight operations, and concludes current law continues to represent sound public policy.

#### SECTION 4 CONTRAVENES LONGSTANDING FEDERAL POLICY MEMORIALIZE IN THE 1986 AIRPORTS TRANSFER ACT

When operational responsibilities for the two federally-owned airports, National and Dulles, were transferred to a locally constituted regional airports authority in 1986, Maryland citizens, who, residing along the Potomac River are subject to Washington National overflight, were presented with a firm and clear legislative policy: "(a)n air carrier may not operate an aircraft nonstop in air transportation between Washington National Airport and another airport that is more than 1,250 statute miles away from Washington National Airport" (Sec. 6012, P.L. 99-591, "Metropolitan Washington Airports Act of 1986"; 49 U.S.C. App. 2461). This policy should not be dismissed as a non-germane artifact in a deregulated air transpor-

tation system. Rather, this perimeter rule represents part and parcel of a long-standing effort to achieve a balance between the commercial interests of air carriers, the demands of the travelling and shipping public, and the concerns of residents living under National's flight paths.

Through the 1970's and early 1980's, a succession of federal transportation secretaries, then exercising their dual responsibilities as regulator of the nation's air space and owner of local airports, struggled to frame a policy having a series of specific operational provisions, capable of guiding the future development of the three Washington area airports, federally owned National and Dulles, as well as Maryland's BWI. One of these operational provisions, the perimeter rule limiting the non-stop service pattern at National, traces its origins to the very circumstances of the Airport's initial development, and attendant considerations leading to the decision to build Dulles.

When first opened to commercial traffic on June 16, 1941, National was a state-of-the-art airport, being specifically designed to handle the then-operational fleet of piston powered commercial aircraft, defined by the workhorse DC-3. Although Pan Am chose National Airport as the venue to begin the first U.S. commercial jet aircraft in 1958, the Civil Aeronautics Commission was compelled to ban jet operators at National the following year, in proper recognition of the inadequate length of the airport's primary north-south runway.

Meanwhile, President Eisenhower, concerned that the nation's capital was being reduced to second-tier status in the air transportation system, reviewed the recommendations of his earlier appointed study commission examining the need for a "Washington jet port." In 1958, the President selected a commission-recommended 10,000 acre site near Chantilly, Virginia, amending the 1950 Act first authorizing ". . . the construction, protection, operation, and maintenance of a public airport in or in the vicinity of the District of Columbia," and set into motion a sequence of events culminating in the commencement of commercial operations at then-named Dulles International Airport in 1962. Prior to Dulles' construction and opening, the first generation of four-engine U.S. jet airframes (the Boeing 707 and Douglas DC-8) serving Washington operated exclusively at then-named "Friendship International Airport" (now BWI), consistent with the Civil Aeronautics Board's earlier announcement in 1958 that airlines ". . . desiring to provide jet service to Washington" were to use "Friendship until the new airport at Chantilly is completed."

From this brief historical overview, one can glean the following conclusions relevant to today's operation and policy direction guiding the three Washington-area airports:

- (1) when designed, constructed, and opened, commercial jets were never contemplated to make use of National;
- (2) Dulles, conversely, was specifically designed and constructed to handle jet traffic generally, and by virtue of its runway length and other design features, was contemplated as serving as a long-haul domestic and international gateway airport; and
- (3) BWI, opened in 1950, and like Dulles having the capacity and capability to handle jet aircraft, was viewed as being part of a regional, three-airport system.

As outlined below, the decision to establish a perimeter rule at National flows logically and directly from these earlier operational and policy determinations.

The perimeter rule, set at 1,250 statute miles as a result of House action on the 1986 Airports transfer legislation, was initially established in 1966 by voluntary agreement among the carriers serving National. This voluntary agreement reflected the shared interest of carriers, the federal government as owner and operator of National and Dulles, and local citizens both as airport users and environmentally impacted residents, to make a more balanced and efficient use of the two federally owned airports, as well as BWI. Recognizing this shared interest, the carriers agreed to a 650-mile nonstop perimeter in 1966 with the exception of seven "grandfather cities" (Minneapolis, St. Louis, Memphis, Miami, Orlando, Tampa, and West Palm Beach), those cities receiving nonstop turboprop service as of December 1, 1965.

This agreement was approved by the Civil Aeronautics Board (CAB Order E-23743, 1966) and although set to expire January 1, 1966, the air carriers continued to voluntarily abide by its term until May 5, 1981, when American Airlines announced its intent to begin National service to its Dallas/Ft. Worth (DPW) hub, located beyond the perimeter and not being one of the seven "grandfather" cities. At the same time, the U.S. Department of Transportation was promulgating a series of operational policies and procedures seeking to better balance utilization of National and Dulles, including, for National, certain nighttime noise level limits, an



annual passenger ceiling with slot reduction mechanism, and a uniform 1,000 mile nonstop perimeter. Collectively, these and other policy elements, known as the "Metropolitan Washington Airports Policy," were adopted by the Department as a Final Rule on November 27, 1981, but not before Congress failed to block implementation of the entire Airports Policy, and extensive litigation in the courts, eventually upholding the constitutional and policy basis supporting the Department's establishment of a uniform 1,000 mile nonstop perimeter rule for National Airport.

Section 4 of the committee draft, therefore, is seen as needlessly overturning long established policies seeking to make efficient and effective use of regional air transportation facilities. If the region were served by two other airports, Dulles and BWI, specifically designed to handle the kind of long-haul commercial jet operations never intended to use National, then the implicit assumption embraced by Section 4, that is, the perimeter is inherently "anti-competitive," might be appropriate. Ironically, the perimeter rule and other related operational features now in place have had precisely the pro-competitive impact the framers intended. Far from frustrating competition, the Washington-Baltimore market today is one of the more competitive and contestable in the nation. To cite but one example, the decision by Southwest to bring its innovative service and fare structure to this region, making BWI its first East Coast airport in 1993, has stimulated the market in an unprecedented fashion, and the more recent decision by Frontier to connect BWI and Denver will introduce a similar dynamic in both the local Denver and beyond markets, thereby bringing a new competitive level of service vis-à-vis United's East-West hub at Dulles, and the multiplicity of one-stop services at National.

#### SECTION 4 UNDERMINES REGIONAL AIRPORT PLAN AND PROGRAMS

Beginning in the early 1970's, the two local airport operators, governmental units and agencies, and local citizens, collectively working through the region's metropolitan planning organization, the Metropolitan Washington Council of Governments, formally pursued development of plans, programs and policy recommendations to better balance the efficient and effective use of the region's three air carrier airports, National, Dulles, and BWI. These initial coordinated system planning activities culminated with the Council of Governments' release of its 1975 report, "The Future of Washington's Airports," including recommended policies, plans, and programs guiding the future development of regional airport facilities generally, with direction as how to best position Dulles and BWI to accommodate projected growth in air traffic. As suggested earlier in this statement, these local plans and programs have been decidedly pro-competitive in their effect, and all parties, including airport users and the air carriers, have benefitted as a consequence.

In 1978, the year the Airline Deregulation Act was enacted by Congress, the three regional airports handled a total of 20.5 million passengers, with National holding a 68% share, followed by BWI at 17% and Dulles accounting for 15% of total regional traffic. For comparative purposes only, and calculating the sum-of-squares number using the Herfindahl-Hirschman Index, an analytical methodology employed by the Department of Justice Antitrust Division and the Department of Transportation in assessing conditions of industry competitiveness, the Index number in 1978 for the three Washington-area airports was 5,962 (by way of reference, if one airport had 100% of the regional traffic, this would yield the maximum concentration index number of 10,000). Last year, calendar 1996, total regional passenger traffic using the three area airports had more than doubled, to 41.4 million, with the following airport shares: National, 37% (15 million passengers); BWI, 32% (13.4 million), and Dulles, 31% (13 million), yielding a sum-of-squares of 3,359, or nearly a 44% decrease in total traffic concentration since 1978, notwithstanding the fact congested National still managed to register an absolute increase in 1996 passenger traffic of over 1 million annual passengers, compared with its 1978 traffic level.

While admittedly a thumbnail sketch, these airport market share numbers clearly point to a dynamic, growing regional passenger market, where consumers are responding to more choices in fares and carrier service products. Even going the next step and calculating the Herfindahl-Hirschman Index based on airline market shares at each regional airport, and comparing these results to the weighted national average, as recently done by Saloman Brothers' Julius Maldutis, each of the 1996 Index numbers for the three regional airports (Dulles—3,616; BWI—2,414; National—1,718) falls below the weighted average for the 50 largest U.S. airports of 3,877. Absent efforts to balance regional airport utilization patterns, it is fairly debatable if Dulles and BWI would have been positioned with the necessary facilities, marketing resources, and advertising support to respond to air carrier interest in

servicing the Washington-Baltimore markets, thereby yielding the pro-competitive environment suggested by this market shares analysis.

Having invested over a quarter of a billion dollars in airport facilities since acquiring BWI in 1972, Maryland is very proud of the recent strides made in positioning BWI as an airport of service and convenience to Washington. It is obvious carriers such as Southwest, and new entrants such as ProAir and Frontier, share our enthusiasm, and the travelling public has benefitted directly as a consequence. To highlight BWI's growing importance as an airport of service to Washington, a recent license plate survey indicates nearly 40% of the vehicles using the Airport's parking facilities originate in the Washington end of the Washington-Baltimore region "barbell," a 24% increase in vehicles from Washington compared to a similar survey conducted at BWI in the Spring of 1995. In addition, what the U.S. Department of Transportation has analytically characterized as the stimulative market impacts of the "Southwest Effect" has expanded BWI's market reach deeper into areas of south central Pennsylvania, greater Philadelphia, Delaware, and New Jersey.

Legislative efforts to change basic operating policies at National will only serve to frustrate these on-going market development efforts at BWI, which are supporting and advancing pro-competitive U.S. Civil aviation policies, as declared by Congress in passing the 1978 Airline Deregulation Act. Maryland has placed proper reliance on provisions set forth in the "Metropolitan Washington Airports Policy" of 1981, with its stated goal to encourage future growth at Dulles and BWI, and subsequent provisions memorialized by the 1986 Airports Transfer Act, including the specific congressional finding that BWI ". . . provides service to the greater Metropolitan Washington region together with the two federally owned airports . . ."

In summation, as viewed from the multiple vantage points of Maryland communities adversely impacted by Washington National flight operations, the traveling public who increasingly look to Dulles and BWI to meet their air travel needs, local airport operators who seek to provide environmentally prudent facilities in meeting these travel demands, and the air carriers providing the flight schedules, the operational policies now in effect, to include the perimeter rule, represent a conspicuous public policy success.

#### SECTION 4 CONFLICTS WITH PRO-COMPETITIVE U.S. CIVIL AVIATION POLICY

This bill, which seeks to perfect the pro-competitive policy declarations made by Congress in 1978 when enacting the Airline Deregulation Act, in fact features a provision, Section 4, which abrogates, at least for the Washington-Baltimore region, one of the 1978 vintage policy determinations. Sec. 102(a)(6) of the 1978 Act provides, in pertinent part, a public interest declaration seeking "(t)he encouragement of air service at major urban areas through secondary or satellite airports, where consistent with regional airport plans of regional and local authorities, and when such encouragement is endorsed by appropriate State entities encouraging such service by air carriers whose sole responsibility in any specific market is to provide service exclusively at the secondary or satellite airport, and fostering an environment which reasonably enables such carriers to establish themselves and to develop their secondary or satellite airport services."

The legislative history of this policy declaration encouraging use of so-called "secondary airports" at major metropolitan areas, as well as contemporary assessments of this provision and its possible effects, typically cite, among the prime examples of airports Congress sought to use as pro-competitive touches carrying the light of deregulation to major markets, BWI, Chicago-Midway, Oakland and Newark. In the case of BWI, there is well-established policy, including the 1981 Metropolitan Washington Airports Policy, and the 1986 Airports Transfer Act, making clear the intent to encourage at BWI precisely the kind of air service identified by Sec. 102(a)(6) of the 1978 Airline Deregulation Act. To say these develop airport development plans and programs have been "endorsed and encouraged" by the State of Maryland within the meaning of Sec. 102(a)(6), would represent a profound understatement, as this congressional policy declaration defines the guiding philosophy of BWI's on-going and comprehensive air service development program, which not only seeks to encourage incumbent BWI air carriers to augment their pattern of service, but targets carriers such as Southwest, and new entrants such as ProAir and Frontier, in furtherance of Sec. 102(a)(6).

Faced with the prospect of Sec. 4 of the committee draft and viewed against a backdrop of longstanding federal policy, well-established regional airport plans and programs, and the declaration of congressional policy seeking to encourage precisely the kind of service development now on-going at BWI, Maryland can only conclude it is the existing policy now guiding local operation and development of this region's three air carrier airports, which represents the best path to continued public policy

success. Enactment of Sec. 4 would take us in a different direction and Maryland would not support change to policies which are working, and working very well indeed. [www.libtool.com.cn](http://www.libtool.com.cn)

In his 1980 Recommended Decision concluding BWI should be established as a U.S.-London gateway, CAB Administrative Law Judge Elias C. Rodriguez cogently stated BWI's ". . . geographic location and its current and potential domestic traffic network made it a very desirable point [that] . . . would exert competitive pressure on existing East Coast gateways, thus serving the purpose of a more competitive transatlantic market sought by the Act and the Board. . . . Located between the nation's capital and major port of entry of Baltimore, BWI's site is a transportation engineer's dream." BWI is well on its way, both domestically and internationally, to realize its potential and fulfill its dream.

October 28, 1997.

Hon. JOHN MCCAIN,  
Chairman,  
U.S. Senate.

DEAR MR. CHAIRMAN: The City of Alexandria and Arlington County wish to make our views known regarding the proposal before this Committee that would alter how slots are administered under the High Density Rule and grant exemptions to the Perimeter Rule at National Airport.

Our experience with National Airport has taught us there will always be excess demand due to its central location at the seat of the national government. The High Density Rule and Perimeter Rule are traffic management tools that support a complementary use pattern among the three commercial airports that serve this region. National Airport, with its compact size and cross-runway configuration, fills a specialized role within the regional airport system, providing convenient, domestic short-haul service. The two other commercial airports in this metropolitan area, Dulles International and Baltimore Washington International, offer excellent air service to a broad and growing array of domestic and international destinations. Taken together, these airports provide extensive air service to the Washington Metropolitan area and offer ample opportunities for air carriers, both established and new, to compete on price, service frequency and routes.

Stability in flight activity at National Airport was a central tenet in the agreement that transferred control of National Airport and Dulles Airports to the Metropolitan Washington Airports Authority. The slot limits embodied in the High Density Rule are viewed as a contract between the federal government, the Metropolitan Washington Airports Authority, and the local jurisdictions in the vicinity of National Airport. The Perimeter Rule also reinforces National Airport's specialized role within the regional airport system.

The Part 150 Noise Compatibility Plan for National Airport, which was recently approved by the FAA, contains noise contours which are based on the mandated conversion to an all Stage III fleet by the end of 1999 and the continuation of the High Density Rule as it is currently administered. Any increase in aircraft operations through the granting of exemptions or changing the way slots are administered will work to counter the benefits resulting from the greater use of quieter, Stage III aircraft.

To protect the complementary use pattern among the region's three airports and maintain an operating environment at National Airport that will offer meaningful noise relief to our residents, it is imperative that the integrity of the High Density Rule be preserved. No changes to current policy should be made that would expand the total number of slots or hourly use limits and stimulate increased flight activity in the early evening and nighttime hours.

In closing, with the excellent air service we enjoy in this region, there is no compelling reason to focus additional demand on the airport with the least capacity at the expense of the airports with the most capacity. As we have said in the past, neither the federal nor local interests would be well served by this outcome.

Respectfully yours,

KERRY DONLEY,  
Mayor, City of Alexandria.  
ELLEN M. BOZMAN,  
Chairman, Arlington County Board.

THE CHAMBER,  
Rochester, NY, October 29, 1997.

www.libtool.com.cn  
Hon. JOHN MCCAIN,  
U.S. Senate,  
Washington, DC.

DEAR SENATOR MCCAIN: It was a pleasure for me to testify before your committee, yesterday, regarding airline competition and airline pricing policies.

Unfortunately, you were out of the room when Senator Ford attacked points that I had made, so I'm sending you a copy of my letter to Congresswoman Slaughter which more clearly explains what I was not allowed to say.

The fact that your committee is even holding these hearings and looking at competitive practices of these airlines is very encouraging to many people in our part of the country.

Contrary to Senator Ford's opinion, the vast majority of our Chamber members would welcome limits on the profits generated by airlines serving the greater Rochester community. Since our customers are paying the eighth highest airline fares in America, we are obviously subsidizing many other routes flown by the same airlines into more competitive markets.

When these pricing policies begin to adversely affect a region's economy, it is time for someone to look into these practices and we hope that your committee will do just that.

Thank you for allowing us to state our position. We commend you and your fellow committee members on what you are doing to look into this very serious problem.

Sincerely,

CHARLES M. GOODWIN,  
Vice President, International Trade & Transportation.

THE CHAMBER,  
Rochester, NY, October 29, 1997.

Hon. LOUISE M. SLAUGHTER,  
U.S. Congressional District,  
Washington, DC.

DEAR CONGRESSWOMAN SLAUGHTER: I'd like to thank you for arranging to have the position of the Rochester Chamber of Commerce regarding high airfares heard before the McCain Committee.

The television spot went quite well and I think that my brief testimony before the Committee certainly got the attention of those in attendance. Senator Ford, of Kentucky, had a little fun with me, but he knew what we were saying . . . it's just that it conflicted with his position on this issue.

Senator Ford asked me if Rochester area corporations were in favor of these "price controls" that I was suggesting.

I began my answer by stating, "Rochester area companies are interested in paying fair airfares . . ." at which point he cut me off and demanded that I, "Answer the question!"

Had I been allowed to finish my response, I would have continued my statement by saying that Rochester area companies charge fair prices for their goods and services . . . and that this is obvious from our \$14 billion in exports which we generate.

Senator Ford went on to answer his own question by stating that Rochester area companies would obviously not favor price controls and concluded his comments by saying, "Sometimes I just don't understand people from that region . . . but we'll probably work out some type of compromise."

As Senator Rockefeller stated, his state of West Virginia was included in the interstate highway system because even people living in rural Appalachia have to go places to get their work done. We, in Rochester, have to get to places, too, and the airfares that we're being forced to pay are simply outrageous.

Senator Rockefeller and I were essentially stating the same position . . . he was coming from the "limited service" angle, and I was coming from the "too high a cost" angle. Everyone present knew what we were both saying, but it was good to have the opportunity to get our positions on the record.

As I mentioned to Stuart Spencer, of your staff, even if this legislation is not passed, we've publicly stated our position and I think that US Airways may be forced to take another look at their fares charged in upstate New York.

The more publicity we give to these fares, the more pressure there will be on US Airways to lower them.

If we are able to gain any fare concessions from airlines currently serving our community, or if we are able to attract any additional carriers to the Rochester area, then we will look back on this testimony with great satisfaction.

Thank you for your support on this very important issue and let's hope that we get some results in the months ahead.

Sincerely,

CHARLES M. GOODWIN,  
*Vice President, International Trade & Transportation.*

[From Democrat and Chronical, Wednesday, October 29, 1997]

### SENATORS HEAR AIR-FARE PITCH

(By John Machacek)

#### OFFICIALS FROM ROCHESTER, OTHER HIGH-FARE CITIES TESTIFY FOR BILL THAT WOULD SPUR AIRLINE COMPETITION

WASHINGTON—Congress yesterday launched a new debate over whether to bolster airline competition by giving low-fare carriers more landing and takeoff "slots" at some of the nation's biggest airports.

Officials from Rochester, a high-fare town, and Reno, NV, home to Reno Air, a growing low-fare airline, were on Capitol Hill applauding a new bill by Senate Committee, Chairman, John McCain, R-Ariz. It would really locate slots at "slot-controlled" airports in New York, Chicago and Washington.

But the legislation drew fire from major, full-fare carriers which warned that the loss of slots would force them to abandon service on the routes to dozens of small and midsize communities.

The bill, introduced yesterday, would require the Secretary of Transportation to withdraw many slots from established airlines and auction them off to fledgling low-fare airlines and new carriers.

Major airlines control most of the slots at high-density airports. Slot controls were developed years ago to reduce noise and reduce the chances for accidents at congested airports.

The bill also:

- Loosens other airport rules blamed for suppressing competition at Washington and New York airports.

- Sets a 90-day deadline for the Department of Transportation to address complaints of predatory pricing by major carriers. Those pushing for more airline competition say large carriers frequently drive smaller ones out of business by swamping a competitive route with low fares. The large carriers then raise fares significantly.

"This legislation attempts to address barriers to competition that remain in a deregulation industry," McCain said in opening a hearing on airline competition.

Similar legislation is being drafted in the House by New York Democrats Louise Slaughter of Fairport and Charles Schumer of Brooklyn.

Slaughter told McCain's committee that Rochester businesses and travelers are being "gouged" by the eighth-highest fares in the country. "More than one carrier may service the Rochester area, but these airlines do not compete among themselves on most routes," she said.

Slaughter said her bill will "encourage" the Justice Department and the Department of Transportation to move aggressively against predatory practices.

Charles Goodwin, vice president of international trade and transportation at the Greater Rochester Chamber of Commerce, urged the committee to "take a careful look" at limiting the "outrageous profits being made" by major carriers serving Rochester and similar cities.

"If airlines cannot develop fair pricing policies which allow them to make reasonable profits, then maybe the U.S. government should step in and limit the maximum profits generated by an airline serving a selected market," Goodwin said.

His comments drew a rebuke from Sen. Wendell Ford, D-Ky.

To come here and say you want to limit a company's ability to make money is an affront," Ford said. "You come from a business community. I don't think Kodak and Xerox would like wage and price controls."

Thomas Tait, executive director of the Nevada Commission on Tourism, said McCain's bill had "unqualified support" in Western states, where low-fare carriers like Southwest Airlines and Reno Air have had trouble establishing routes to airports in the East.

Reno Air was one of five low-fare airlines winning some of the 31 new slots the Department of Transportation has just created at Washington National, New York's LaGuardia and O'Hare in Chicago.

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EMPIRE STATE DEVELOPMENT,  
Rochester, NY, October 27, 1997.

Mr. CHARLES M. GOODWIN, *Vice President,*  
*The Greater Rochester Metro Chamber of Commerce,*  
Rochester, NY, October 27, 1997.

DEAR MR. GOODWIN: On behalf of the Empire State Development—Finger Lakes Regional Office, this is to express our support for The Chamber's efforts to seek lower air fares for flights into and out of the Rochester area.

It has been my experience that companies seeking to expand or relocate operations in Rochester have identified exorbitant air fares as a serious impediment to their plans. Rochester's position as one of the leading export markets in the United States has been achieved in spite of air transportation costs that are disproportionately higher than other regions. If this situation could be addressed in a positive way for Rochester, it is my opinion that companies such as Eastman Kodak, Xerox, and Bausch & Lomb—already significant players in the Rochester business community—would be much more likely to continue and expand operations in Rochester and the Finger Lakes Region.

Please continue your fine efforts on behalf of businesses in our region and know that we welcome any opportunity to achieve a more balanced cost structure for air travel in all Western New York communities.

With every good wish for continued success.

Sincerely,

MARK C. SCHEUERMAN.

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CONGRESS OF THE UNITED STATES,  
HOUSE OF REPRESENTATIVES,  
Washington, DC, October 28, 1997.

Hon. JOHN MCCAIN, *Chairman,*  
*Senate Committee on Commerce, Science, and Transportation,*  
Washington, DC.

DEAR JOHN: I regret I could not return to Washington, D.C. in time to testify before your committee on the subject of improving airline competition. This issue is vital to my constituents in Las Vegas and to all Nevadans. Accordingly, please place this letter in the hearing record.

As a fellow Westerner, you appreciate the unique interests of our region. Unlike the East Coast, our primary mode of inter-city mass transit is the airliner. This makes a healthy and vibrant commercial airline industry a key component to my district and my state's economic well-being. I believe it is critical for the government to facilitate competition in the industry. One of the best ways is to encourage the growth of so-called "new entrants" in the airline industry. New entry will keep the industry in a highly innovative and competitive posture which will bring the greatest benefits to the airline consumer and the communities they serve. I believe your legislation, which is the subject of today's hearing, will contribute to this goal.

Please allow me to address the three components of your proposal in reverse order. First, the proposal to put time limits on predatory pricing complaints is a very modest attempt to deal with a very significant problem. Experience indicates the largest airlines in our country often attempt to meet the competition offered by new entrant airlines by squashing the competitor. While we should encourage competition, we must ensure it is healthy competition which leaves the consumer better off in the long run. Your proposal certainly will do that.

Second, with regard to the perimeter rule governing access to Washington National Airport, I find it hard to believe such a provision exists in law today. It should be repealed immediately in favor of allowing the market to determine access to Washington's regional airports. However, that is not the proposal before us. Your proposal simply gives the Secretary of Transportation the authority to grant exemptions to the law when doing so will result in substantial consumer benefits. It seems hardly debatable to grant the Secretary some reasonable flexibility in determining how a federally funded facility is used. More than adequate protections are retained for the residents living near the airport. As evidenced by their phenomenal growth since 1986, the days of concern about under-utilization of Washington Dulles and

Baltimore Washington airports are over. Each airport is bustling as suburban growth in the Washington area has increased in the last ten years.

Finally, I wish to address the issue of landing rights—or slots—at Chicago O'Hare, New York LaGuardia, and Washington National. In a supposedly deregulated environment, it is difficult for me to believe we have laws which deny access to the marketplace to those wishing to compete. To the extent it can be justified at all, the policy is partially justified on the basis of noise. At Las Vegas' McCarran International Airport, as the case is in other cities with busy airports, we have noise problems but we are able to address noise without excluding competitors. As a result, we have the lowest airfares in the nation. Surely, there can be adequate attention to noise concerns at these airports and consumer benefits for all Americans.

Thank you for your interest in this crucial issue. It is greatly appreciated.

Sincerely,

JOHN E. ENSIGN,  
*Member of Congress.*

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MICHAEL K. METCALF, PH.D.,  
*Washington, DC.*

Hon. JOHN MCCAIN, *Chairman,*  
*U.S. Senate, Washington, DC.*

DEAR SENATOR MCCAIN AND COMMITTEE MEMBERS, I am giving you this report as a resident of the SW DC residential area.\* As residents of SW DC, we were horrified to learn that you are considering loosening of the Noise Abatement Procedures at National Airport.

Your Committee should be aware of the cronic noise problem caused by National Airport that we in SW endure. The record of Decibel readings included with this report will give the Committee some idea of the actual noise problem National already produces.

#### READINGS AND METHODOLOGY

I have taken these readings over the past several months using a professional noise meter. The records include: date and time, peak intensity readings taken outside my house in SW, the ambient noise level at the time of the readings, and the difference between peak intensity and ambient.

My research has lead me to learn that a constant Difference reading of 25–30 db in a residential area constitutes a serious noise problem. You will see that my readings show a constant Difference of 25–55 db. While the noise level is influenced by temperature, humidity, wind direction, and flight pattern, the consistently and shockingly high readings should lead the Members to conclude that, if anything, policies to reduce the noise problem should be the focus of your attention rather than policies that will only increase the noise problem. In fact, the MWAA report clearly demonstrates that our noise problem has actually increased over the last two years.

We fear that the policy being considered will not only immediately increase our cronic noise problem, but also that it will serve as a Trojan Horse or Foot-in-the-Door for the eventual complete repeal of Noise Abatement Procedures at National Airport; and with this coming just as we are on the verge of some relief as the time approaches at which Stage II aircraft “theoretically” are to be replaced by quieter Stage III aircraft. How bitter it would be for the Committee to use this prospect of some much needed and anticipated relief to justify a course of action that will inevitably make the situation worse than it is today.

We also do not understand why some are so Hell bent on making things worse at National when there is a larger, quieter, and unfertilized airport just 20 some miles down the road that already has nonstop flights to the West Coast. If Dulles Airport is less convenient than National, then why not build a rail line from the outer reaches of the Metro to Dulles? Why be intent on making National traffic more dense, noisy, and dangerous than it already is?

Thank you for hearing our position.

MICHAEL K. METCALF.

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\* [The information referred to has been retained in the committee files.]

METROPOLITAN WASHINGTON AIRPORTS AUTHORITY,  
Alexandria, VA, September 24, 1997.

www.libtopd.com.cn  
Mr. MICHAEL K. METCALF,  
1243 4th Street, S.W.,  
Washington, DC.

Dear Mr. METCALF: Thank you for your letter requesting monthly LDN data, or DNL as the Federal Aviation Administration prefers, for the noise monitoring site located at Ft. McNair. Below are three tables which present the data you requested for March 1995–July 1997. The “DNL Total” table shows the monthly DNL values for all noise monitored at the site during that month. The “DNL Aircraft” table shows the DNL values based determined by the noise monitoring site likely to have been created by an aircraft. The last table, “DNL Community,” presents the DNL data for other noise sources in the vicinity of the monitoring site.

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	
<b>DNL Total:</b>													
1995 .....	ND	ND	66.0	65.4	65.6	64.4	65.7	63.7	65.1	68.0	68.3	67.9	66.01
1996 .....	68.6	67.9	67.4	68.3	67.1	66.7	66.3	65.9	66.5	67.5	67.4	68.1	67.3
1997 .....	68.6	67.9	68.2	67.0	67.3	66.0	65.2	.....	.....	.....	.....	.....	67.2
<b>DNL Event:</b>													
1995 .....	ND	ND	62.5	61.1	61.0	59.1	62.0	57.6	58.8	64.2	64.4	64.0	61.5
1996 .....	65.3	64.0	62.7	63.9	62.6	61.9	60.5	60.9	61.2	63.6	63.6	64.7	62.3
1997 .....	65.1	63.6	63.7	62.1	62.4	60.6	59.6	.....	.....	.....	.....	.....	62.3
<b>DNL Community:</b>													
1995 .....	ND	ND	63.5	63.5	63.8	62.9	63.3	62.6	64.0	65.7	66.2	65.7	64.0
1996 .....	66.0	65.8	65.6	66.5	65.2	65.1	65.0	64.2	65.1	65.3	65.1	65.6	65.4
1997 .....	66.1	66.0	66.4	65.4	65.7	64.6	64.2	.....	.....	.....	.....	.....	65.5

Please give me call if you have any questions.

Sincerely,

NEAL PHILLIPS,  
Manager, Environmental Staff.





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