

AIRLINE CONSOLIDATION: HAS IT GONE TOO FAR?

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

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CONTENTS

STATEMENTS OF COMMITTEE MEMBERS

	Page
Brownback, Hon. Sam, a U.S. Senator from the State of Kansas	105
DeWine, Hon. Mike, a U.S. Senator from the State of Ohio	1
Durbin, Hon. Richard J., a U.S. Senator from the State of Illinois	116
Feingold, Hon. Russell D., a U.S. Senator from the State of Wisconsin	25
Grassley, Hon. Charles E., a U.S. Senator from the State of Iowa	60
Hatch, Hon. Orrin, a U.S. Senator from the State of Utah	5
Kohl, Hon. Herbert, a U.S. Senator from the State of Wisconsin	19
Leahy, Hon. Patrick J., a U.S. Senator from the State of Vermont	20
Schumer, Hon. Charles E., a U.S. Senator from the State of New York	24
Specter, Hon. Arlen, a U.S. Senator from the State of Pennsylvania	62
Thurmond, Hon. Strom, a U.S. Senator from the State of South Carolina	100

WITNESSES

Bethune, Gordon, Chairman and Chief Executive Officer, Continental Airlines, Houston, TX, statement	27
Bond, Hon. Christopher, a U.S. Senator from the State of Missouri, statement	1
Carty, Don, Chairman and Chief Executive Officer, American Airlines, Fort Worth, TX, statement	77
Compton, William F., President and Chief Executive Officer, Trans World Airlines, St. Louis, MO, statement	87
Franke, William A., President and Chief Executive Officer, America West, Phoenix, AZ, statement	40
Goodwin, James E., Chairman and Chief Executive Officer, United Airlines, Chicago, IL, statement	82
Johnson, Robert L., Chairman and Chief Executive Officer, DC Air, Washington, DC, statement	91
Kahn, Alfred, Emeritus Professor of Political Economy, Cornell University, Ithaca, New York, statement	63
Leonard, Joe, Chairman and Chief Executive Officer, AirTran Airways, Orlando, FL, statement	46
Levine, Michael E., Adjunct Professor of Law, Harvard Law School, Cambridge, MA, statement	50
Meeks, Hon. Gregory W., a Representative in Congress from the State of New York, statement	15
Mullin, Leo F., Chairman and Chief Executive Officer, Delta Air Lines, Atlanta, GA, statement	35
Myrick, Hon. Sue, a Representative in Congress from the State of North Carolina, statement	10
Reid, Hon. Harry, a U.S. Senator from the State of Nevada, statement	7
Warner, Hon. John, a U.S. Senator from the State of Virginia, statement	13
Wolf, Stephen M., Chairman, US Airways Group, Inc., Arlington, VA, statement	96

SUBMISSIONS FOR THE RECORD

American Society of Travel Agents, Richard M. Copeland, President and Chief Executive Officer, Alexandria, VA, letter and attachment	113
Carnahan, Hon. Jean, a U.S. Senator from the State of Missouri, statement ...	8
Davis, Hon. Tom, a Representative in Congress from the State of Virginia, statement	115

IV

	Page
Griggs, Leonard L., Jr., Director of Airports, City of St. Louis, MO, statement	117
LaFalce, Hon. John J., a Representative in Congress from the State of New York, statement	118
Lenosky, Lynn, US Airways Master Executive Council President, Association of Flight Attendants, AFL-CIO, Washington, DC, statement	119
Pilkington, Roberta Quinn, United Airlines Master Executive Council Secretary/Treasurer, Association of Flight Attendants, AFL-CIO, Washington, DC, statement	121
Santorum, Hon. Rick, a U.S. Senator from the State of Pennsylvania, statement	39
Tettelbach, Betsy, Eastern Region Master Executive Council Vice President, Association of Flight Attendants, AFL-CIO, Washington, DC, statement	122

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WEDNESDAY, FEBRUARY 7, 2001

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 9:35 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Mike DeWine presiding.

Present: Senators DeWine, Hatch, Grassley, Leahy, Kohl, and Schumer.

OPENING STATEMENT OF HON. MIKE DEWINE, A U.S. SENATOR FROM THE STATE OF OHIO

Senator DEWINE. Good morning. Let me welcome all of you to the Judiciary Committee hearing on aviation consolidation. A number of the other Senators, including Chairman Hatch, Ranking Member Leahy, and Senator Kohl, the Ranking Member on our subcommittee, will be arriving at 10 a.m. We are going to start, however, with our Member panel. We are going to take their testimony, and then we will begin with the Judiciary Committee opening statements at ten o'clock. So, that is the schedule.

We have a very full schedule. We have several panels, very full panels of testimony, so we anticipate that we are going to be at this for some time. So I think it is important that we go ahead and start, and also because we have several colleagues who are here and we want to accommodate them as well.

Senator Bond, good morning.

Senator BOND. Good morning, Mr. Chairman.

Senator DEWINE. We appreciate you being here and we will start with you.

STATEMENT OF HON. CHRISTOPHER BOND, A U.S. SENATOR FROM THE STATE OF MISSOURI

Senator BOND. Mr. Chairman, I would like to submit my full statement for the record.

I am terribly disappointed I will miss the opening statements of the members of the committee.

Senator DEWINE. We will send them to you, Senator.

Senator BOND. I look forward to reading them very carefully.

I want to give you an overview of the importance of the particular transaction, the American Airlines asset acquisition of TWA. TWA began Western Air back in 1925, Western Air Express. Then

Transcontinental Air Transport in 1929, headquartered in Kansas City, started the first coast-to-coast air and rail route.

Since 1930, when the Federal Government decided that airlines ought to be carrying passengers, TWA has been the centerpiece of the economy and the transportation system of the State of Missouri. It has fallen on difficult times. It had a number of owners who ransacked it and pillaged it. Howard Hughes did it and cut it free, and in 1985 and 1986, in the private sector, I was called on by the employees to try to help purchase the airline, to keep it out of the hands of several other people who might not have had the long-term interests of the flying public as their top priority. They were not successful.

Carl Icahn bought the airline, sold off routes, sold off assets, imposed heavy financial burdens on it. And since that time, we see the headlines. In December 1974: "TWA Unveils Plan to Halve Its Debts"; "TWA Bail-out Ten Times Bigger than Announced," March 1995; "For TWA, It's Chapter 11 Again," June 1995; "Auditors Gloomy on TWA Prospects," March 1997; "TWA Juggles Top Executives after Treading in Red Ink for the Tenth Straight Year," March 1999. This shows the difficulties it has been through.

I should mention, in 1992, I made a major effort to get the Pension Benefit Guarantee Corporation to review the charges it would impose on TWA to permit it to come out of bankruptcy. So it has been in and out of bankruptcy.

Let me tell you, I fly the airline all the time. It is J.D. Power's best airline around in terms of on-time performance, great service. The financial burdens imposed on it by its previous owners, combined with the cost of fuel, have literally put TWA out of business. It would have been out of business January 10 had they not been rescued by American Airlines debtor in possession financing.

Now, I confess here in public, I used to be a lawyer doing antitrust, and we all have things like that in our background.

Senator DEWINE. We all have our past, right?

Senator BOND. I am a recovering lawyer now.

Since this is the Judiciary Committee and we are talking about antitrust, I decided to go back and read the failing company doctrine case *International Shoe v. FTC*, 280 U.S. 291. In it, at pages 301 to 303, in relevant part they said, "The evidence states the case of a corporation in failing circumstances, the recovery of which to a normal condition was to say the least in gravest doubt." If that isn't TWA, I don't know what is.

They go on to point out that, "In light of the case, a corporation with resources as depleted and the prospect of rehabilitation so remote that it faced a grave probability of a business failure, we hold that the purchase of its capital stock by a competitor, there being no other prospective purchaser . . . is not, in contemplation of the law, prejudicial to the public and does not substantially lessen competition or restrain commerce." Frankly, that is the failing company doctrine and TWA is there.

TWA shopped around its assets. There are people here who want to buy pieces of it. Sure, they want to pick its bones. There is nothing like a fresh carcass to bring out birds of prey to pick little pieces off of it. What American Airlines proposes to do for TWA, for the 20,000 employees worldwide, the 9,000 in St. Louis and

3,000 in Kansas City, is to buy the assets and keep it operating to provide the service that we need in the State of Missouri for our economic well-being and that I think air transportation needs in this country to make sure there is not a tremendous void left.

I was in Kansas City when first Eastern and then Braniff went bankrupt and folded up, and I will tell you that the disruption to airline travel, the disruption to economy and transportation was significant. We cannot let that happen to TWA.

I would love to see TWA continue. I want to see the Rams bring another Super Bowl trophy back to the TWA Dome. It is not going to be as TWA, but the Rams will be back, and I want to make sure that we have airline service that keeps the jobs, provides the economic benefits, and provides advantages to the traveling public.

This is fundamentally different from other transactions you will be hearing about today which are potential combinations, mergers, acquisitions between competitive, profitable companies. There is nothing wrong with a profit motive. There is nothing wrong with seeking, if it is within the law, to get a better slice of the market.

This one is an estate sale, and I urge and I beg my colleagues not to mess this one up. We are asking for prompt review in the Department of Justice and all other entities so that when the bankruptcy court acts early in March they will be able to conclude this sale. We look forward to continuing that airline service, but it can only go forward if nothing happens to prevent American Airlines from acquiring TWA's assets.

Thank you very much.

Senator DEWINE. Senator, thank you very much for a very compelling and very good statement.

[The prepared statement of Senator Bond follows:]

STATEMENT OF HON. CHRISTOPHER S. BOND, A U.S. SENATOR FROM THE STATE OF MISSOURI

Good morning, Mr. Chairman and fellow colleagues. I thank the Chairman and the subcommittee for holding this hearing, and am pleased to appear before you to discuss the potential acquisition of Trans World Airlines or TWA. For years TWA was associated with the big names, big planes, and great service. It is sad to see those days come to an end.

HISTORY OF TWA

Let me start by providing some brief history of one of the most famous names in aviation and the longest-flying carrier in American commercial aviation, Trans World Airlines or TWA. For years TWA was associated with the big names, big planes, and great service. It is sad to see those days come to an end.

TWA's beginnings go back to 1925 when it was known as Western Air Express. It quickly evolved into Transcontinental Air Trans World Airlines or TWA. For years TWA was associated with the big names, big planes, and great service. It is sad to see those days come to an end.

A year later, in 1930, the federal government decided that airlines could and should carry more people than mail and the transcontinental lines emerged with what would become United, American, TWA, and Eastern. TWA had the central route through St. Louis, Missouri and TWA has had a major airline presence in St. Louis, Missouri ever since.

Another interesting airline fact, and one that I like, is that St. Louis is the birthplace of one of today's leading airlines. It is not TWA, but American Airlines, whose earliest predecessor company—Robertson Aircraft Corporation—launched its first airmail flight from St. Louis to Chicago on April 15, 1926.

TWA HAS BEEN A SURVIVOR

Throughout the history of TWA, the airline has had its major ups and downs. A TWA plane crash in Kirksville, Missouri in 1935 killed U.S. Senator Bronson Cutting of New Mexico which served as the catalyst for the creation of the Civil Aeronautics Board. Howard Hughes was brought in the late thirties to help address the growing financial needs. By 1940, Hughes owned the company which lasted until 1965. Even though Hughes increased the name recognition of TWA, throughout his years of ownership he created a fair amount of difficulties that led to a financial drain on TWA. TWA was able to weather that storm and storm often led the airline industry in profits in the 1960s.

In the 1970s, along came deregulation and TWA was not prepared. The good 'ole days of TWA disappeared. The Constant struggle of survival began.

Mr. Chairman, I have been through the struggles of Twa for many years now. As a Governor, a lawyer, and here in the United States Senate, I have answered TWA's calls for assistance, I was involved during the Which left TWA gasping for breath. I have been through two previous bankruptcies questioning day to day whether or not TWA would be in the air. We all listened in horror about the TWA flight 800 crash.

The newspaper headlines over the years give an example of the tense situation TWA was under.

- "TWA Unveils Plan to Halve Its Debt"—December, 1994
- "TWA Bailout 10 Times Bigger Than Announced"—March 1995
- "For Trans World Airlines, It's Chapter 11 Again"—June, 1995
- "Auditors Gloomy on TWA's Prospects"—March, 1997
- "TWA Juggles Top Executives After Treading in Red Ink for a 10th Straight Year"—March 1999

Time after time, TWA pulled it through. Time after time, TWA was a survivor.

Those days are no longer. Unfortunately, despite the heroic efforts of TWA's employees and current management team, it is now clear that the airline can no longer survive.

TWA'S IMPORTANCE TO MISSOURI

Mr. Chairman, IF I could have my way, TWA would continue to be a survivor and once again be on top leading the way for other airlines to follow. Unfortunately, as is the case to often, I am not getting my way. The loss of the TWA name in the airline industry is disappointing, but more specifically, the loss of TWA and its operations to my home state of Missouri, would be huge.

TWA has approximately 20,000 employees today. Approximately 9,000 of those employees live and work in the St. Louis, Missouri metropolitan area making TWA and seventh largest employer in the St. Louis area. At St. Louis Lambert International Airport, TWA operates almost 1000 flights (departures and arrivals) per day.

In Kansas City, Missouri, TWA offers 10 daily flights to St. Louis. TWA employees 3,500 people in Kansas City, including 2,500 at the Kansas City overhaul base.

TWA's headquarters are in St. Louis, Missouri. TWA's support in the community has been apparent by the financial assistance provided locally. Having TWA's St. Louis hub has proven to be a tremendous economic benefit for the St. Louis metropolitan area and the entire State of Missouri.

AMERICAN AIRLINES ACQUISITION

I am not going to deny it. Almost everyone involved with TWA looks at the acquisition of TWA by American Airlines as the knight in shining armor riding in on his white horse rescuing the damsel in distress. For TWA, for TWA employees, for St. Louis for Kansas City, for the entire State of Missouri, and for the traveling public—this is the only option for us.

American Airlines is offering TWA, the TWA employees, Missouri, and the traveling public a "global" solution. American Airlines has an acquisition plan that will keep TWA flying in the short-term, protect almost all of the 20,000 jobs, maintains the St. Louis hub, maintains the Kansas City overhaul base, and maintains a competitive airline presence in St. Louis into the future. Obviously, this is good news for us—the State of Missouri simply has too much at stake to lose those economic engines.

American Airlines, in my view, has presented the best possible option. In fact, had American not provided immediate financing to TWA in early January, the carrier would have had to shut down, precipitating an economic crisis in Missouri. Likewise, air service from St. Louis to small and mid-sized cities throughout the Mid-

west would have been disrupted. Indeed, the loss of the St. Louis hub would in the long run, I believe, do significant harm to the airline industry and the hundreds of thousands of air travelers who depend on St. Louis Lambert as their connecting airport.

American Airlines wants the whole pie, not just a slice. That is imperative for TWA, TWA employees, Missouri, and the traveling public.

THE FINAL CHAPTER

Let's be honest. There are some other airlines who are not happy with this American acquisition of TWA. Almost all of those airlines have considered at one time or another, the purchase of TWA, including US Airways, Northwest, Continental, and Delta. They all passed the opportunity by. At one time, acquiring TWA would have only been a liability. This is not the case today. Captain Bill Campton and his team, including the 20,000 employees, have led the turnaround of TWA, from an airline that nobody wanted to one that they now want to squabble over.

In the past four years the employees of TWA have built their airline into an industry-leading operator—going from last in on-time performance to first, winning numerous customer service awards. In addition, TWA undertook an ambitious program of fleet renewal leaving behind one of the newest fleets in the industry.

Unfortunately, despite the sterling success of the operational turnaround, continuing financial problems have overwhelmed TWA. Let me be clear. TWA is not crying wolf! Because of the inability to overcome the financial woes which were further burdened by high fuel costs, TWA would have ceased operations mid-January. This is where the knight on the white horse came in.

ANTITRUST AND COMPETITION IMPLICATIONS

Mr. Chairman, I understand and share many of the concerns of my colleagues with regard to increased consolidation in the airline industry. The proposed deals between United, US Airways, American, and DC Air raise significant questions in the regard and should be very carefully scrutinized. However, I urge my colleagues not to mix those larger, more complex deals with the American transaction with TWA. To do so will only cause delay and put thousands of jobs at risk in the State of Missouri.

One point I should make about the proposed arrangement between American Airlines and TWA is its effect on competition, or more particularly the antitrust laws. I confess to having been an antitrust lawyer in my private life; it was the practice of the law that drove me into politics. I do recall, however, some of the main principles of antitrust law, and I am particularly drawn in this situation to the failing company doctrine. This is not an instance where competition is going to be decreased by the transaction between American Airlines and TWA; it is one which will enable the service provided by TWA to continue. Mr. Chairman, this is a glorified estate sale. It is my view that this estate-sale of assets of a failing company is absolutely essential to maintaining airline service, competition, economic opportunities, and the jobs provided by TWA.

Indeed, the on-going bankruptcy proceeding as well as TWA's relatively small size (only 3.9 percent market share) make the American/TWA transaction fundamentally different from the larger deals. It must be resolved swiftly through the bankruptcy court and cleared by the Justice Department to ensure the continued, long-term employment of the thousands of TWA employees in my State of Missouri and those elsewhere in the country.

I hope and trust that the reviewing authorities will not inhibit this transaction from going forward, and I would strongly urge my colleagues not to take any steps that might interfere with this effort to save the service and the jobs of TWA.

Thank you for the opportunity to be here today. I look forward to working with you on this and many other issues.

Senator DEWINE. Let me at this point turn it over to the Chairman of the full Judiciary Committee, Senator Hatch.

STATEMENT OF HON. ORRIN HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

Chairman HATCH. Well, I will be very short. I have other conflicts, but we welcome all of you here and are very interested in your comments about these matters.

I am pleased that the Senate Judiciary Committee is holding these hearings on the present state of airline mergers and consolidation of the consumer aviation market. I commend the past and likely future Chairman and the Ranking Member of the Antitrust Subcommittee for their leadership and efforts in organizing and holding these hearings.

This is an issue that affects all of us and our constituents. A robust airline industry helps get us from point to point across the country and around the world cheaper and faster. However, recent reports have indicated that increasingly accessible airline travel creates problems such as overbooked or delayed flights. Therefore, I think it is important at every stage of the antitrust inquiry to question the nature of the total effect of the competitive market on consumers.

As many scholars have pointed out, including Robert Bork and Frank Easterbrook, consumer welfare is the touchstone of proper antitrust inquiry and enforcement. Because airline travel is an integral part of people's lives, we should be particularly mindful of the effect mergers and consolidation in the market could have on consumers.

So I believe that it is wholly appropriate for us as representatives of consumers to ask probing questions when mergers of this magnitude are contemplated and when a chain reaction of other mergers may follow, magnifying consolidation in the market.

I think it is fair to ask how mergers of this magnitude impact the parity in the marketplace with respect to other market participants. Will other carriers feel compelled to seek out partners in order to compete or even survive? Will such a domino effect create anticompetitive consolidation? These are issues that are important for antitrust enforcers to consider and for us as policymakers to examine.

We should be mindful of the full effect of these actions on consumers, notably whether this is the first in a series of new mergers and whether the market will be one of robust competition that will get airline passengers to their destinations more quickly, cheaper, and more safely.

We need to ask the questions now, how much real competition will there be in large hubs after these mergers and how much real choice in airline service will be available to smaller cities. As I have said many times before, effective antitrust enforcement today will prevent the need for stifling regulations tomorrow.

I believe these hearings are a helpful step in working toward an equitable marketplace for the aviation industry and better service to consumers as a whole. Again, I want to thank Senators DeWine and Kohl for their leadership in examining these issues within the Judiciary Committee, and I look forward to reading the testimony today and being on top of what these leaders in the field have to say about this matter. I have an open mind and I am certainly interested in what happens in this hearing today. I really appreciate your leadership in this hearing.

Senator DEWINE. Mr. Chairman, thank you very much.

Senator Reid, it is my understanding you need to open the Senate at ten. Is that correct?

Senator REID. I would like to, yes.

Senator DEWINE. If the other panel members don't mind, we will proceed with Senator Reid.

STATEMENT OF HON. HARRY REID, A U.S. SENATOR FROM THE STATE OF NEVADA

Senator REID. Thank you very much, Mr. Chairman. I appreciate very much Senator Hatch's statement, and I appreciate the work that you have done on this and other issues, Senator DeWine. I have introduced two pieces of legislation that deal specifically with the American air traveller.

I would ask unanimous consent, Mr. Chairman, that my statement as prepared be made part of the record.

Senator DEWINE. Without objection, it will be made part of the record.

[The prepared statement of Senator Reid follows:]

STATEMENT OF HON. HARRY REID, A U.S. SENATOR FROM THE STATE OF NEVADA

Thank you Chairman DeWine and Ranking Member Kohl for allowing me to speak today on an issue that is very important to me. As you may know, I have introduced two pieces of legislation specifically to protect the American air traveler. I look forward to work with the committee so that we may give the consumers a choice of an airline and decent airfares.

I am here today because I deeply concerned with the increase in airline merger proposals. Many have predicted that if the mergers continue, we will soon have an industry dominated by three, two and essentially one carrier.

Since deregulation, more than fifty airlines have been acquired or merged. For instance, in my own state of Nevada, the Reno-Tahoe International Airport lost flights when Reno Air was purchased by another airline. Flights were then reduced significantly and now it is harder for people to fly in and out of the Reno and Lake Tahoe areas.

If this merger frenzy continues, we could end up with only three airlines in America. That could drive prices "sky high" and cut the number of available flights, to the detriment of the American consumer. The purpose of deregulation was to ENCOURAGE competition. Evidence seems to suggest a reduction in competition.

On January 29th I introduced the "Airline Competition Preservation Act" (S. 199) to address airline consolidation and the "Air Travelers Fair Treatment Act" (S. 200) to address the common problems of air travel such as flight delays, right to exit aircraft, right to in-flight medical care. We must protect the American air traveler by safeguarding a competitive airline industry. We should take our time and look into these airline deals thoroughly, and determine their long term impact. We must maintain as much competition as possible in the airline industry.

Mr. Chairman, my bill will take effect and give the transportation secretary authority to step in if a consolidation or merger occurs between two or more of the top seven airline carriers, or if three or fewer of those air carriers control more than 70% of domestic revenue passenger miles.

Highlights of my Airline Competition Preservation bill are as follows:

- Protects against unreasonably high airfares.
- Prevents unfair practices against new entrants.
- Encourages increased competition at hubs.

We are at a critical juncture for the future of a competitive airline industry. The inescapable lesson of 22 years of deregulation is that mergers and a reduction in competition often lead to higher fares for the American traveling public. We cannot stand idly by and allow the benefits of deregulation to be derailed by a wave of mergers.

No one wants the federal government to micro manage private industry. But our airways are not just a private industry—they are a public trust. People need to be able to fly across our vast nation—to do business, to see family members, and to enjoy their lives. If these mergers proceed without the competitive protections I am proposing, then the ultimate irony of deregulation will be that we will have traded government concern for the public interest, for private monopoly control in the interests of the industry.

Senator DEWINE. We also have a statement submitted by Senator Carnahan which will be made part of the record as well.
[The prepared statement of Senator Carnahan follows:]

STATEMENT OF HON. JEAN CARNAHAN, A U.S. SENATOR FROM THE STATE OF MISSOURI

Mr. Chairman, thank you for convening these hearings today.

Like many of you, I have very serious concerns about the potentially adverse impact that consolidation in the airline industry, may have on consumers. Reduced competition may lead to fewer travel options, higher fares and lower levels of service. As such, I think that the recently proposed mergers warrant careful examination for potential antitrust implications.

I also believe, however, while we may be initially inclined to view all of the current airline mergers in the same light, we must recognize a fundamental difference between the American/TWA transaction and the other airline mergers that are currently under consideration. The primary difference with the American/TWA deal is that TWA is a financially distressed firm and cannot be saved or revived without intervention like that proposed by American Airlines.

American Airlines' acquisition of TWA ought to be considered independently of the other proposed mergers. Absent an offer to purchase substantially all of TWA's assets—as American has proposed—the airline would be forced to enter into a piecemeal sale of its assets. Such a scenario would almost certainly result in the loss of more than 20,000 jobs—over 12,000 of them in Missouri.

And let me be clear: to me, this is about saving the jobs of over 12,000 Missourians.

I have met with officials of American Airlines and they have assured me that their proposal would mean continued employment opportunities for virtually all of TWA's employees—including those employed at TWA's Kansas City based maintenance facility. American has also committed to continuing to provide retirement benefits to currently retired TWA employees—including travel benefits. Moreover, American has said that they plan to continue operating a hub in St. Louis—that hub is critical to maintaining the economic vitality of the region.

TWA remains in a precarious economic situation, in fact, were it not for the \$200 million of debtor-in-possession financing that American provided, TWA would not even be operating today. The potentially adverse impact that the loss of jobs and hub service would have on the region underscores the immediacy of the situation. IT is critical that this transaction be dealt with swiftly.

Mr. Chairman, as I have said, American Airlines' proposed acquisition of TWA is wholly separate and unique from the other mergers that are pending. The difference lies in the impact on real people. Many TWA employees are extremely concerned they will lose their jobs if this deal is ultimately disapproved. I will continue to work to promote a solution to TWA's financial difficulties that will protect the 20,000 employees and their families. At this time, American's proposal represents the best way to achieve this goal.

I urge the members of this committee to consider these circumstances when evaluating the more general problem of airline consolidation.

Senator REID. Mr. Chairman, I am not here to pre-judge what should happen with American/TWA. I don't know. The situation has certainly been outlined very well by my colleague who represents that State. I do want to say, however, that I think there couldn't be a matter of commerce more important than that this Congress is involved in than what is happening with American Airlines generally.

We have seen over the last 15 years airline after airline go out of business. I believe in the free enterprise system, I believe in competition. But if we carry competition and the free enterprise system to its end, we wind up with one of everything, and I think the time has come where this Subcommittee and this full Committee must look at what is happening in the airline industry.

We have situations; there are many of them, but take, for example, what happened recently in Nevada. An acquisition took place. Promises were made that with the purchase of Reno Air the routes

would be maintained and the schedule would be maintained. They are gone, and Reno is really suffering as a result of that.

If this merger frenzy continues, we could end up with three, two, maybe only one airline. I think we have a tremendous obligation to the American public to make travel more pleasant. I am convinced that one of the things that is happening in commerce generally is deregulation has come to a point where it is not working very well.

I have worked on a lot of legislation in my years in Congress. The Chairman of this Committee and I came to Congress together, but there is nothing that I have worked on that wherever you go people say do something about it. This legislation that I have introduced, while it may not be perfect—and I met with a number of Senators yesterday saying rather than going off in a number of different directions, let us work together, let us come up with something that we can join together on.

I think we have had enough press releases, enough press conferences. We need some work to be done by this Congress. I say, Mr. Chairman, that the issue is one where everyone who travels a lot like we do, you almost become depressed thinking you have to take another airplane ride. It is not a question whether something is going to go wrong; it is just a question of what is going to go wrong. Are you going to be stuck at the gate after you get on the airplane?

You come and you look up and you see your flight is on time. You get there and the ticket agents say, well, it is going to be a little bit late. What is wrong? Well, we can't tell you. Then you finally get on the airplane and you don't go anyplace. Then you are so relieved. The plane pulls away from the gate and then you go out and wait on the tarmac. Then you land on a connecting flight. Mr. Chairman, I waited more than 3 hours one night after landing in Dallas for a gate. This was after we flew from Washington to Dallas.

We are at a critical juncture for the future of a competitive airline industry. An escapable lesson of 22 years of deregulation is that mergers and a reduction of competition often lead to higher fares for the American traveling public. We cannot stand idly by and allow the benefits of deregulation to be derailed by a wave of mergers.

Again, Mr. Chairman, I say I understand the plight of TWA, and we all have great admiration for TWA and I hope that something can work out there. I am not directing my comments to botch up this deal. No one wants the Federal Government to micromanage private industry, but our airways are not just a private industry; they are a public trust. People need to be able to fly across our vast Nation to do business, see family members, and enjoy their lives generally.

If these mergers proceed without competitive protections that I am proposing and others are proposing, then the ultimate irony of deregulation will be that we will have traded Government concern for the public interest for private monopoly control and the interests of the industry.

Thank you very much, Mr. Chairman.

Senator DEWINE. Senator Reid, thank you very much.

Senator REID. Could I be excused? Senator Warner has agreed to answer all my questions.

Senator DEWINE. You certainly can hand your proxy off to Senator Warner.

Representative Myrick, you have been very patient. Thank you very much for joining us. We appreciate it, if you would like to proceed.

**STATEMENT OF HON. SUE MYRICK, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF NORTH CAROLINA**

Representative MYRICK. Well, thank you for this opportunity to testify today. I do appreciate it.

I have watched closely in recent weeks as the public debate has focused on the American and TWA merger, and I have listened to the Senator this morning as he has explained some of the difficulties that have come from that. Others have spoken of the white knight role of American as it swoops in late in the eleventh hour to save a failing TWA, their hub in St. Louis, the jobs, the 20,000 employees, and serviced over 100 communities. All of this is to be commended.

However, the fact that American wants to acquire the remaining pieces of TWA through the bankruptcy court does not turn back the clock on the pain and anguish that has been faced by the entire TWA family over these years. All who are associated with TWA have confronted cuts in service and reductions in employment, a future that was very uncertain from day to day.

In evaluating the proposed merger of United Airlines and US Airways, experts have focused on the structural weaknesses of US Airways. They have pondered whether the future is the same as TWA and Eastern and Pan Am and Braniff. We know those stories. You know other mid-sized pre-deregulation airlines that were confronted by a cost structure and a competitive environment which eventually, and I must say inevitably drove them from the competitive playing field.

Today, the Senator made the case on behalf of TWA, and it would be unacceptable if in the near future the Members of Congress like myself who represent US Airways communities throughout the country had to come before you and plead the same case for our local airlines.

US Airways is vital to our community. It is a huge hub for us. It is also an airline that faces, in my opinion, a desperate future without this proposed merger with United. I think we have got to be sure that we don't lose sight of that crucial fact in everything we are looking at here today.

TWA's situation is very sad, but it is very illustrative of what happens to jobs and service and competition. If the US Airways merger is not approved, we see the same thing. I know they have gone through a lot of financial uncertainty throughout Missouri, and the communities and the employees. They have been in and out of bankruptcy, and we just cannot allow that to happen to another carrier because there is too much at stake for the American public.

Make no mistake about it, US Airways is already on the perilous path that has already been taken by TWA, Eastern, Pan Am and

Braniff before it. As a stand-alone carrier, it has suffered devastating financial losses, a staggering \$269 million this last year. It is trying to cope with unworkable costs and a limited route network, which is a big problem. It puts it at a severe disadvantage against low-fare competition.

In my considered judgment, it is not a question just of financial instability. US Airways is now in serious trouble. This would be devastating for our constituents, our communities, the dedicated US Air employees, their families, their dependents, and the economic well-being of all the communities that US Airways serves. It is in this context today in which I hope the Committee will review the United/US Airways merger.

Some scholars have theorized that the solution to US Airways' unique and untenable position in the industry is to restructure its labor contracts by demanding huge wage and benefit concessions. They have already done that before over and over again. In other words, again ask the US Airways employees to sacrifice pay cuts, lose their benefits, shrink the company's service, just like TWA has done over the past decade. It doesn't work. For evidence, look at what the years of self-sacrifice has done for TWA employees and their families.

I cannot and I will not allow this to happen to US Airways employees and to the greater Charlotte community, which has become one of the country's leading economic and banking centers over these last few years. And that is a direct result of US Airways' hub and their commitment to provide extensive service throughout the region.

There is an alternative to job losses, service reductions and hardship. The merger of US Airways with United provides a bright future for its employees, the communities it serves, and the economy of North Carolina. The terms of the agreement will guarantee not only the 10,500 US Airways jobs in North Carolina, but those of all of the 45,000 employees. Further, there will be no communities cut from the service network. Indeed, service is going to be added, and particularly in Charlotte we benefit from that.

So you contrast that with the uncertainty and the distress experienced by TWA employees, their passengers, and the communities over the last decade as all those cuts took place. The merger with United will avoid that same painful scenario for US Airways, its employees and the communities, and it will guarantee air service and employment for those who have come to depend on US Airways.

That is the end of my oral remarks, but I hope you will be kind enough to allow me to submit some further remarks on the competitive nature of it for the record.

Senator DEWINE. We would be more than happy to receive those and they will be made part of the record.

Representative MYRICK. Thank you.

Senator DEWINE. Thank you very much.

[The prepared statement of Representative Myrick follows:]

STATEMENT OF HON. SUE MYRICK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

Good morning. Chairman Hatch, Senator Leahy, and Members of the Committee, I want to thank you for the opportunity to testify before this distinguished Committee today regarding the proposed mergers within the airline industry.

The Judiciary Committee has a long-standing, solid track record of taking steps to protect and enhance the competitive marketplace. By holding these hearings, and closely reviewing these agreements, this Committee is living up to its tradition of protecting the American consumer and fostering innovation and economic growth.

I have watched closely in recent weeks as the public debate has focused on the proposed acquisition of TWA by American Airlines. I have listened intently this morning as members from the Missouri delegation have spoken of the difficult times faced by the employees of TWA and the communities served by the company. Many have spoken of the "white knight" role of American as it swoops in, late in the eleventh hour, to save a failing TWA—their hub in St. Louis, the jobs of its 20,000 employees and service to over a hundred communities. All of this is to be commended.

However, the fact that American wants to acquire the remaining pieces of TWA through the bankruptcy court does not turn back the clock on the pain and anguish that has been faced by the entire TWA family over recent years. All who are associated with TWA have confronted cuts in service, reductions in employment and a future that was virtually uncertain from day to day.

In evaluating the proposed merger of United Airlines and US Airways, experts have focused on the structural weakness of US Airways. They have pondered whether its future is the same as TWA, as well as Eastern, Pan Am and Braniff—other mid-sized, pre-deregulation airlines which were confronted by a cost structure and competitive environment which eventually—and inevitably—drove them from the competitive playing field.

Today, the Missouri delegation made the case on behalf of a desperate TWA. It would be unacceptable if, in the near future, members of Congress who represent US Airways' communities and its 45,000 employees needed to return to this Committee to plead this same case for our local carrier. US Airways is vital to the community I represent—it is also an airline that in my judgment faces a desperate future without this proposed merger with United. It would be unconscionable to lose sight of this crucial fact.

TWA's situation is a sad but illustrative example of what will happen to jobs, service, and competition if the US Airways' merger is not approved. TWA's employees, the people of St. Louis and communities throughout Missouri have faced financial uncertainty for more than a decade as TWA has been in and out of bankruptcy. We cannot allow this to happen to another carrier. There is too much at stake!

Make no mistake about it, US Airways is now on the perilous path already taken by TWA, Eastern, Pan AM and Braniff before it. As a stand-alone carrier, it has suffered devastating financial losses—a staggering \$269 million last year—and is trying to cope with unworkable costs and a limited route network that puts it at a severe disadvantage against low-fare competition. In my considered judgment, this is not just a question of financial instability. US Airways is now in serious trouble.

This devastating for my constituents, thousands of dedicated US Airways employees, their families and dependents, and the economic well being of the communities they serve. This is the context in which this Committee must review the United/US Airways merger.

Some scholars have theorized that the solution to US Airways' unique and untenable position in this industry is to restructure its labor contracts by demanding huge and benefit concessions. In other words, ask U.S. Airways' employees to sacrifice pay cuts, lose their benefits and shrink the company's service—just like TWA has done over the past decade. This does not work! For evidence, just look what years of such sacrifices have done the TWA's employees and their families.

I cannot—and will not—allow this to happen to US Airways' employees and to the greater Charlotte community, which has become one of the country's leading economic and banking centers as a direct result of US Airways' commitment to provide extensive air service to the region.

There is an alternative to job losses, service reductions, and hardship. US Airways' merger with United provides a bright future for its employees, the communities it serves, and the economy of North Carolina. The terms of the agreement will guarantee not only the 10,500 US Airways jobs in North Carolina, but those of all its 45,000 employees. Further, there will be no communities cut from the service network—indeed, several will be added.

Contrast this with the uncertainly an distress experienced by the TWA employees and passengers over the past decade as the company cut—and cut—and cut some

more. This merger with United will avoid that same painful scenario for US Airways, its employees and the communities it serves. Instead, it will guarantee air service and employment for those who have come to depend on US Airways.

On a positive note, let me focus on the competitive benefits of this proposed merger and the real effect this merger will have on the people most directly affected by it—something few commentators have addressed. I am convinced that this merger is essential for Charlotte, essential for the Carolinas and essential for the nation.

For you to fully understand my conclusion, let me begin by describing in further detail the current role of US Airways in my community. This company is literally part of the economic and cultural fabric of the Carolinas. US Airways is the fourth largest private employer in Charlotte with about 8500 employees. In my state, US Airways pays annual salaries of over \$700 million and has annual overall expenditures of nearly double that amount.

As you are all aware, US Airways is the most important carrier out of Charlotte and in the last year alone, the Company has launched its new service from Charlotte to London, Charlotte to Paris and Charlotte to Frankfurt. In addition, US Airways recently opened a new airport club and invested \$12.7 million to expand and crew training facility.

And yet, with all of this wonderful news, there are real and practical limits to the growth and expansion of US Airways in Charlotte. US Airways has basically a domestic north-south route structure with less reach to the Midwest, the Rockies and the west coast. And, while the efforts by US Airways to expand to Europe through Charlotte are greatly appreciated, this is about as far as the Company is in a position to expand for the foreseeable future. And yet, we are all aware that in this global economy, the demands to remain competitive go past Europe, to Asia, South America and beyond.

This is one of the reasons that a merger of US Airways with United has so excited many constituents. Fundamentally, the impending marriage of US Airways north-south network with United's complementary east-west routes and its substantial global network, will be a tremendous boon to the citizens of my state. By connecting Charlotte to a larger national and international network, the United-US Airways combination will mean more commerce, more jobs and more economic development. The result: substantial growth for the entire region.

MR. Chairman, as a result of this merger, US Airways' hubs are going to have new opportunities to compete as alternatives to other existing hubs and gateways. Just think about what this means to competition up and down the east coast. The union of United with US Airways, as well as the emergence of start up DC Air teaming with American Airlines dramatically enhances the competitive environment on the entire east coast where Delta and Continental are already significant players. Overlay this with the growth and success of low cost carriers Southwest, Jet Blue and Airtran and it is hard to imagine a more beneficial picture emerging for consumers.

I'm sure we can all agree that consumers are the beneficiaries of increased competition in the airline industry. Inasmuch as the proposed merger between United and US Airways enhances the competitive aviation marketplace, I am encouraged about the future of the airline industry. Thank you.

Senator DEWINE. Senator Warner, thank you very much for joining us.

**STATEMENT OF HON. JOHN WARNER, A U.S. SENATOR FROM
THE STATE OF VIRGINIA**

Senator WARNER. Thank you, Mr. Chairman. I listened with interest to my colleagues talk about their situations. I am here this morning to assure you, Mr. Chairman, and other members of this committee, and indeed the Senate as a whole that I am going to work very diligently, as I have over almost 2 years now, on behalf of the United and US Air merger.

Mr. Chairman, I have been in the Senate 23 years and it is rare that I get into these antitrust situations. There are so many diverse parties and the clarity of these issues is not always right on the surface. But I have spent enough time on this one, particularly in private consultations jointly with the two CEOs and singularly with the two CEOs, and with representatives of communities

throughout Virginia, representatives of the employees of these two airlines, and I am absolutely convinced that there is really no alternative but to let this go through. And I am going to diligently watch it as the role of Congress with regard to this merger to see that that happens.

Behind me are the chiefs of these organizations, particularly Chairman Wolf, and I urge the Committee to listen carefully as he shows you some charts which were the final convincing bit of evidence to induce me to enter this fray and to represent these two airlines to see that it is done.

When I say represent the airlines, we have a large constituency of customers in the area that I represent, Virginia, and in the District of Columbia that are very dependent on the services now provided by US Air. I am concerned about their employees, and these CEOs have given me certain assurances about the job situation, the price of the tickets in and out of my State, and the service to some of the small communities.

So after a lot of careful consideration, Mr. Chairman, I appear before this Committee today solidly in favor of this merger. I hope the Committee will call on me if, in the weeks and months to come, the Committee desires to get into this further and there is any question. Also, this particular merger will allow a new airline to evolve, hopefully, named DC Air, and that has a future to serve this community.

So all factors being considered, I decided to come in here today and to indicate my strong approval and commit to this Committee and to all the constituents involved here—the customers, the employees, the stockholders and others—that I will work hard to see this is done.

I will submit for the record a more complete statement.

Senator DEWINE. That certainly will be made a part of the record, and we appreciate your very strong testimony, Senator, very much.

[The prepared statement of Senator Warner follows:]

STATEMENT OF HON. JOHN WARNER, A U.S. SENATOR FROM THE STATE OF VIRGINIA

Thank you Mr. Chairman and Members of the Committee.

I appreciate the opportunity to testify regarding the pending merger between US Airways and United Airlines.

As you know, US Airways is based in my state of Virginia. I am very concerned that absent this merger, the customers now served by US Airways may lose this fine service and thousands of US Airways jobs will be lost. I am also enthusiastic about DC Air, a new airline created by the merger that will serve many of the areas currently served by US Airways and compete with United Airlines.

In my years, I have seen Pan Am, Eastern, Braniff, TWA and others all file for bankruptcy. I am concerned that without this merger with United Airlines, US Airways may suffer the same fate. Last year, I am told US Airways reported a loss of \$269 million.

In today's air travel network, there seems to be less and less room for mid-size carriers such as US Airways. Mid-sized airlines face increasingly stiff competition from the larger, better-financed carriers and from the smaller, low-cost carriers. US Airways does not have the resources to compete with the large carriers and its fixed costs are too high to compete with the newer airlines.

Several Virginia communities such as Charlottesville, Roanoke and Lynchburg have expressed their concern to me about the merger. In response to these concerns, I have personally met with Steve Wolf, Chairman of US Airways and Jim Goodwin, Chairman of United. They have assured me that all Virginia cities currently served by United or US Airways will continue to be served after the merger.

In addition to guaranteeing continued service on all existing routes, Mr. Wolf and Mr. Goodwin assured me ticket prices will be frozen for two years and that all US Airways and United jobs are guaranteed for at least two years.

Additionally, I have arranged for two meetings between several concerned Virginia airports and US Airways and United Airlines. My intent was to provide the airports with an opportunity to raise their concerns directly with the airlines. It is my sincere hope that these meetings were productive and I intend to sponsor another round of meetings if the merger is approved.

While I take the concerns about the merger very seriously, it is my firm belief this merger will serve Virginia and as best any carrier can.

I urge members of the committee to consider this merger within the context of saving jobs and preserving service to the communities currently served by US Airways.

Thank you Mr. Chairman.

Senator DEWINE. Representative Meeks, thank you very much for joining us. You may proceed.

STATEMENT OF HON. GREGORY W. MEEKS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Representative MEEKS. Thank you, Mr. Chairman, for the opportunity to testify today. I am here because of the tremendous impact aviation has on my district's current and future economic welfare, as well as the significant role aviation has in our country's economic and national security infrastructure.

For the record, I understand and share some of the concerns expressed regarding consolidation in the airline industry. Since I was elected to Congress 3 years ago, I have fought vigorously for service to smaller communities and increased competition. Despite much opposition from local elected officials in New York City, as well as civic organizations in my district, I and Senator Chuck Schumer successfully brokered a compromise in the historic AIR 21 legislation that increased service opportunities to upstate New York and other underserved destinations around the country from both of New York's airports.

Furthermore, I worked tirelessly with former Secretary of Transportation Rodney Slater and Senator Schumer to get JetBlue Airlines the regulatory approval to operate out of John F. Kennedy International Airport which lies in the center of my Congressional district.

However, the announced agreements between United Airlines and US Airways, as well as American Airlines' acquisition of TWA's assets, have my strong support because I believe that both deals will increase domestic competition, continue air service to communities that now have service, and protect the jobs and retiree health and pension benefits of thousands of current and former employees.

I judge each deal on a case-by-case basis, weighing the merits and public interest benefits. In the United/US Air and American/TWA proposals, consumers, employees, creditors and other stakeholders will benefit from not having two financially distressed airlines, such as US Airways and TWA, go out of business like their former counterparts Pan Am, Eastern and Braniff.

It is important for you to recognize the economic impact of having an airline go out of business. My district still suffers from the devastating economic losses of Eastern Airlines and Pan American Airways. In both cases, the court allowed the airline's assets to be

liquidated to the highest bidder. It resulted in the two airlines' competitors acquiring Eastern and Pan Am's most prize routes only.

However, it also resulted in thousands of permanent displaced workers who in many cases were employed by one of the carriers for more than 30 years. This action by the bankruptcy court left those American workers without a job and no benefits after a lifetime of service and dedication to Eastern or Pan Am.

Despite the claims by opponents that are being made against the two announced consolidation proposals, if you look back closely to the Eastern and Pan Am cases, you will see a contradiction to the argument being made against the United/US Airways and American/TWA deals.

Eastern and Pan Am's competitors achieved greater market concentration with their newly acquired assets from two liquidated, defunct airlines. Mr. Chairman, I ask how did this increase competition? It did not. As I stated earlier, it only resulted in the employees and retirees of Eastern and Pan Am being hurt the most. We must not repeat that mistake again.

Let me be very clear. The proposed agreements between United/US Airways and American/TWA are in the public interest. As a result, a New York Times editorial said travelers in the Northeast will probably see more competition as a result of these agreements. I agree.

For example, these deals will bring a strong third competitor into the lucrative Boston-New York-D.C. shuttle market. Meanwhile, the nationwide competitive impact will be enhanced greatly. For example, United's Charlotte hub will compete more vigorously with Delta's Atlanta hub, United's Philadelphia hub will compete more vigorously with Continental's Newark hub, and American's St. Louis hub will compete more vigorously with Northwest's Minneapolis hub.

Furthermore, the DC Air/American deal will also ensure strong competition between United and DC Air in the Washington, D.C. region. DC Air's agreement with American Airlines also ensures the initial success of DC Air as an independent entity with a lower cost structure, which can be translated into lower fares for consumers which will be served on the 45 routes by DC Air.

The DC Air/American Airlines partnership enables DC Air to move from a virtual airline, which it must remain until the United-US Airways merger is approved, to a fully operational airline serving some 45 communities from Washington National Airport overnight. It ensures that the commitment which DC Air has made to uninterrupted service to these communities will be kept.

On a personal note, I am honored to support this endeavor by Bob Johnson. Bob has made significant contributions to the African-American community and our country. I enthusiastically welcome his entry into the aviation industry for three reasons.

First, as a businessman Bob has successfully demonstrated time and again that he can effectively and efficiently manage an organization from the ground up. Second, Bob Johnson is a man of the highest character and integrity. He will be a welcome addition to an industry that once upon a time not too long ago was represented by two individuals who I believe had the lowest of character and

no integrity, two individuals who intentionally bankrupted successful companies for their own personal gain. Third, and finally, he will be the first minority owner of an airline in over 30 years.

Mr. Chairman, let me conclude by again thanking you for the opportunity to testify. I hope that this distinguished Committee sees the many public interest benefits of the United/US Airways, American/TWA, as well as DC Air transactions. Fostering an environment that allows low-cost carriers such as Southwest, JetBlue, DC Air and others to grow alongside the global network, full-service airlines is the best means to encourage competition and affordable air travel.

Thank you, Mr. Chairman.

Senator DEWINE. Congressman, thank you very much.

Let me just say to all of our panel members I thought the statements were excellent. Each one of you brought a very interesting and valid perspective to our hearing. It has been a real contribution.

Senator Bond, let me just say that, as you and I have personally discussed before, you make a very compelling argument about the problem in regard to TWA. I think that those of us who do have some concerns about the big picture here and what is going on fully realize the unique TWA problem, and that our problem with these different proposals really does not have directly to do with TWA. We know that that has to be dealt with and we look forward to working with you to resolve that. We have a lot of jobs at stake and we understand that, and we appreciate your very compelling testimony.

Senator BOND. Mr. Chairman, thank you very much for your understanding. If other members of this Committee or other members of this body wish to discuss it, I will be happy to discuss it either here or later and I am at your service. If there are questions, it would be my honor to be able to provide answers and such persuasion as I might muster.

Senator DEWINE. Well, you have done a good job in both cases.

Senator BOND. Thank you, sir.

Senator DEWINE. We appreciate that very much.

We thank the panel very much.

Representative MYRICK. Thank you.

Senator DEWINE. Thank you.

I will have a statement that I am going to make right now, and then I will turn to Senator Kohl and Senator Schumer.

We are holding this hearing today to examine the competitive impact of the announced mergers involving United Airlines, US Airways, DC Air, American Airlines, and TWA. Since the United/US Airways merger was announced in late May of last year, the Antitrust Subcommittee of the Judiciary Committee has been actively examining all implications of that proposed deal. We held a hearing last June, and at that time many of us noted that the most troubling aspect of the merger was the likelihood that it would lead to further consolidation. Sure enough, here we are again today.

I am troubled about this. I am troubled because it seems that our worst fears are being realized, that we are headed in a direction that could cripple competition in the domestic aviation market. Just look at what has happened since our hearing last June.

American Airlines has joined in the United/US Airways deal apparently because it believes it will not be able to compete effectively with the new United Airlines unless it also grows in size. Not surprisingly, the other major airlines also are considering their options for growth.

The significance of this rapid consolidation cannot be overstated. The proposed mergers will dramatically restructure the domestic aviation market, likely leaving us with three or four giant mega-carriers. Each of these carriers, these mega-carriers so to speak, will have extensive national networks that would make it very difficult for regional and for startup carriers to ever compete.

As we have learned through experience, when airlines are able to dominate a hub city, for example, they are likely to raise prices in that particular market. And so it would seem that it is very likely that if several airlines are also able to dominate large sections of the aviation market nationwide, consumers across the Nation will have to pay higher ticket prices.

The resulting mega-carriers would compete with regard to scheduling and frequent flyer benefits certainly, but price competition likely would suffer as a result. Those smaller carriers that remain and that are able to stay in business likely would be relegated to a role of serving regional markets with little chance of growth. In circumstances such as this, I believe that competition in the aviation market would clearly be at risk.

Additionally, I believe that adverse consequences await U.S. travelers if we are forced to rely on only a few, a handful of mega-carriers for the bulk of our air transportation needs. We already have seen the serious congestion and frustrating delays that passengers face when one of the major airlines has labor difficulties. I shudder to think of the impact on the flying public if a merged United/US Airways would face a work stoppage.

These disturbing facts are certainly not going unnoticed. Last week, Senator McCain chaired a hearing in the Commerce Committee to examine this issue. He and others on the Commerce Committee expressed serious concerns about these deals. Also, last week Senator Kohl and I, along with six of our colleagues from the Judiciary Committee, sent a letter to the Justice Department expressing our concerns and asking for a thorough review of the competitive impact on the aviation industry of consolidation on competition and consumers.

Yesterday, I met personally with Secretary of Transportation Mineta to express my concerns, and I asked that the Transportation Department carefully scrutinize these transactions to determine whether or not they are in the public interest.

Now, let me make it clear, as I did a moment ago to Senator Bond, that my primary concern lies with the larger proposed deals, those involving United, US Airways, and American. While it is certainly important for the Justice Department to examine the specifics of the agreement between American Airlines and TWA in the context of these larger deals, I believe that review must be done in an expedited manner.

There is little dispute that TWA has been struggling for a long time. In fact, the airline has not been profitable since 1988 and has

just entered bankruptcy for the third time. Most people would agree that TWA is not viable in its present form.

Moreover, we are all concerned about the preservation of 20,000 TWA jobs and continuing service to the many communities that TWA currently serves. For that reason, we believe that review of this deal should be completed, whatever the result, as quickly as possible.

The larger deal among United, US Airways and American will require much more scrutiny, and we will continue that process today. We are glad to have with us each of the airlines involved in the proposed mergers, as well as representatives of a number of other airlines and experts on airline competition.

My hope is that we can gain a better understanding of the proposals and their competitive impact. However, based on what we have learned so far, it does not appear that these deals are good for the domestic aviation market, nor for the American flying public.

Instead, it at least appears that the results of this consolidation will be to improve the fortunes of one or two giant airlines at the expense of the American consumer. That, in my opinion, would be simply unacceptable. I do think, however, that we have more to learn about these deals. That is why we are having this hearing today, and I look forward to further examining these issues.

On a final note, I want to stress that these are important issues which have tremendous competitive implications and are, of course, very important to the individual businesses represented here today. We are fully cognizant of that fact—the impact on businesses, the impact on the stockholders, and the impact on the employees.

As we work our way through this process, it is important that we as policymakers continue to discuss these issues with those in the industry who struggle with these problems every single day. I would like to thank in advance those in the aviation community who have taken time from their busy schedules to be here with us today. You have all been very forthright and willing to work with us as we examine these issues and we certainly very much appreciate it, and we look forward to hearing your testimony.

I am going to turn now to Senator Leahy, the Ranking Member of the committee, and then after Senator Leahy we will turn to Senator Kohl, the Ranking Member of the subcommittee.

Senator Leahy, good morning.

Senator LEAHY. Mr. Chairman, I would yield first to Senator Kohl. This is the Subcommittee that is going to have the most work on this.

Senator DEWINE. Senator Kohl.

**STATEMENT OF HON. HERBERT KOHL, A U.S. SENATOR FROM
THE STATE OF WISCONSIN**

Senator KOHL. Thank you very much, Mr. Chairman and Senator Leahy.

Mr. Chairman, we thank you today for holding this hearing. This is indeed a crucial time for us to consider airline consolidation because we could be witnessing the beginning of the end of airline competition.

If all the proposed mergers and acquisitions go through as announced, real competition among airlines could be virtually eliminated in many markets, and American consumers will pay. So we should say it: these proposed mergers are dangerous to American consumers. If we do not intervene to protect competition now, in a few years two or three large airlines could dominate the skies all across America.

With all the mergers and acquisitions among the airlines announced in the last few months, we may be seeing the competitive situation in the airline industry, already far from ideal, take a sharp nose dive. The result of all these deals, if they are approved, will be a radically concentrated domestic airline industry.

Two airlines, United and American, will collectively control about 50 percent of the domestic market, with their closest competitor, Delta, behind with about 18 percent of the market. Yet, in the last few days the press has reported that Delta and Continental are now in serious merger discussions.

So this massive restructuring and consolidation among competitors whose size and scope has rarely been seen in modern times in any industry leads us to worry about the future of competition in the airline industry, or if indeed there will be any meaningful competition left at all.

Today's hearing will closely examine these issues, but we need to do more. We need to consider legislation to help ensure that airline competition does not become a distant memory and to loosen the grip that large airlines have on essential facilities and airports.

We do not criticize any airline for doing all that it can to make it the strongest and the best airline in its markets. Indeed, all of the CEOs who will testify before us today have a responsibility to their shareholders to do just this. But we here in the Congress have a very different and perhaps more important responsibility, for our responsibility is to the public to protect consumers and to ensure that no airline or small group of airlines gains a stranglehold over the market.

We need to be sure that the announcement that we have all heard flight attendants say at the end of a flight, quote, "We know that you have a choice among airlines," does not become as obsolete as airlines like Braniff, Pan Am, Eastern, Republic, Piedmont, People Express, and now TWA and US Airways.

So we thank all of our witnesses for appearing here today. We look forward to your testimony on these very important issues.

Thank you, Mr. Chairman.

Senator DEWINE. Senator Leahy.

**STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR
FROM THE STATE OF VERMONT**

Senator LEAHY. Thank you, Mr. Chairman, and I compliment you and Senator Kohl and Senator Hatch and others for having these hearings.

I worry that the airline industry is going in the wrong direction. I see many of the leaders whom I respect greatly here in the audience, but I look at it from the point of view as one who travels a great deal, perhaps more than I would like. And I worry that the region that is going to suffer the most is along the East Coast,

States which I would remind everybody—each of those States have two Senators, including even the smallest State in the Northeast, Vermont, a lovely State.

I worry that control of landing and takeoff slots and the control of gates by just two major airlines, United and American, could become a stranglehold on competition on the East Coast.

I updated a chart which I used during our June hearing. Now, as you can see, the cost of a round-trip ticket—incidentally, I realize you can always get tickets for less. I am talking about yesterday we called a travel agency and asked for a 1-week fare. Washington to Burlington, Vermont, is \$772. Washington to London, a lovely city, I understand—many speak English there and everything else—is \$338. Washington to San Francisco is \$408.

Now, I like London, I like San Francisco. I live in Burlington. I am going to be going to Burlington a lot more often than I am going to be going to London or San Francisco. I still have a hard time understanding why it costs twice as much to go 500 miles to Burlington than it would cost to go to London or San Francisco.

If the airline mergers that are on the table are approved, two major carriers will control more than half the air traffic in the U.S., and I think that they will charge what the traffic will bear using monopoly slots. Landing slots, like the spectrum which carriers television shows and wireless phone calls, have become a priceless commodity, even though they are nothing more than the use of space for a period of time. But as Benjamin Franklin said in 1748, time is money.

From a more national perspective, these mergers will put us one merger away from an oligopoly of three major carriers, and higher air fares and reduced competition will follow unless there is significant divestiture of slots and gates and other assets.

The industry is going to be one work stoppage away from closing down one-quarter to one-third of America's air system. This prospect has become even more frightening when you read the papers the last couple of days and see the potential labor strikes at four major airlines—Delta, American, Northwest, and United.

The American purchase of bankrupt TWA does not present serious competition issues. That was going bankrupt. It protects 20,000 jobs. I know Senator Carnahan and others have worked hard on that. But the United merger with US Air and the slots which American will receive, coupled with the next defensive merger which could be either Delta with Continental, or Delta, I guess, Senator Schumer, with Northwest—that means over 75 percent of airline service is from only three large airlines with large hubs, lots of slots and gates, alliances with overseas carriers, and frequent flyer deals galore.

Now, when Vermonters write to me about air service, they don't talk about networks or connections. They tell me the prices are too high, service is poor, and they don't have enough choices. It comes down to price, and it is so difficult for somebody to say I can go 5,000 miles or I can go 500 miles, but the 500 miles is going to cost me a lot more.

I don't see how this situation is going to improve in Vermont or a whole lot of other cities, especially along the East Coast. It is already an uphill battle for low-cost carriers to break into new mar-

kets. I think we need more slots for airlines like JetBlue and Southwest and AirTran and other low-cost carriers. If you don't do that, you are not going to have real competition.

When we get through this merger, I think it is going to be impossible for any competitive low-cost carrier to break in unless we have some real conditions, Mr. Chairman. I don't have a magic wand to tell us exactly how to do it, but I know that if you are in rural America, and that can be Ohio, Wisconsin, New York or Vermont, you may find yourself with a real problem. If you are in one of the very, very large hubs where there is competition, then it is a different situation.

Thank you.

[The prepared statement of Senator Leahy follows:]

STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Mr. Chairman, the airline industry is going in the wrong direction. The region likely to suffer first, and the most, is the East Coast, which includes a lot of states with two Senators each, including a wonderful state called Vermont.

As I have pointed out in the past, control of landing and takeoff slots and control of gates by just two major airlines—United and American—can become a stranglehold on competition on the East Coast.

I updated a chart which I used during our June hearing. Now, the situation has just gotten worse.

As you can see, the cost of a roundtrip ticket to Burlington, Vermont, is \$722—whereas similar advance-purchase roundtrip tickets to London are \$338, and a trip to San Francisco costs \$408.

If the airline mergers on the table are approved, two major carriers will control more than half the air traffic in the U.S. and will offer ticket prices based on what the market can bear—using monopoly slots, rather than providing low-cost service.

Landing slots, like the spectrum which carriers television shows and wireless phone calls, have become a priceless commodity even though both are nothing more than the use of space, for a period of time.

From a more national perspective, these mergers will put us one merger away from an oligopoly of three major carriers.

Higher airfares and reduced competition will follow unless significant divestitures of slots, gates and other assets are mandated.

The industry will also be one work stoppage away from closing down one-fourth to one-third of America's air system. This prospect has become even more frightening with potential labor strikes at four major airlines (Delta, American, Northwest, United).

The American purchase of bankrupt TWA does not present serious competition issues, by itself, and is needed to protect 20,000 jobs. I know that Senator Carnahan has worked diligently to help keep these current TWA jobs in Missouri.

However, the United merger with U.S. Air and the slots which American will receive, coupled with the next "defensive" merger—Delta with either Continental or Northwest—down the pike, will mean that over 75 percent of airline service is from only three large airlines with large hubs, lots of slots and gates, alliances with overseas carriers and frequent flyer deals galore.

Proponents of the mergers say that consumers will benefit from wider networks and seamless connections. But when Vermonters call or write me about air service, they don't talk about networks or connections, they tell me that prices are too high, service is poor, and that they do not have enough choices.

With the proposed merger, I don't see how this situation will improve in Vermont or in hundreds of other cities across the country. In fact, I'm afraid it can only get worse—and the worst of it will be on the East Coast.

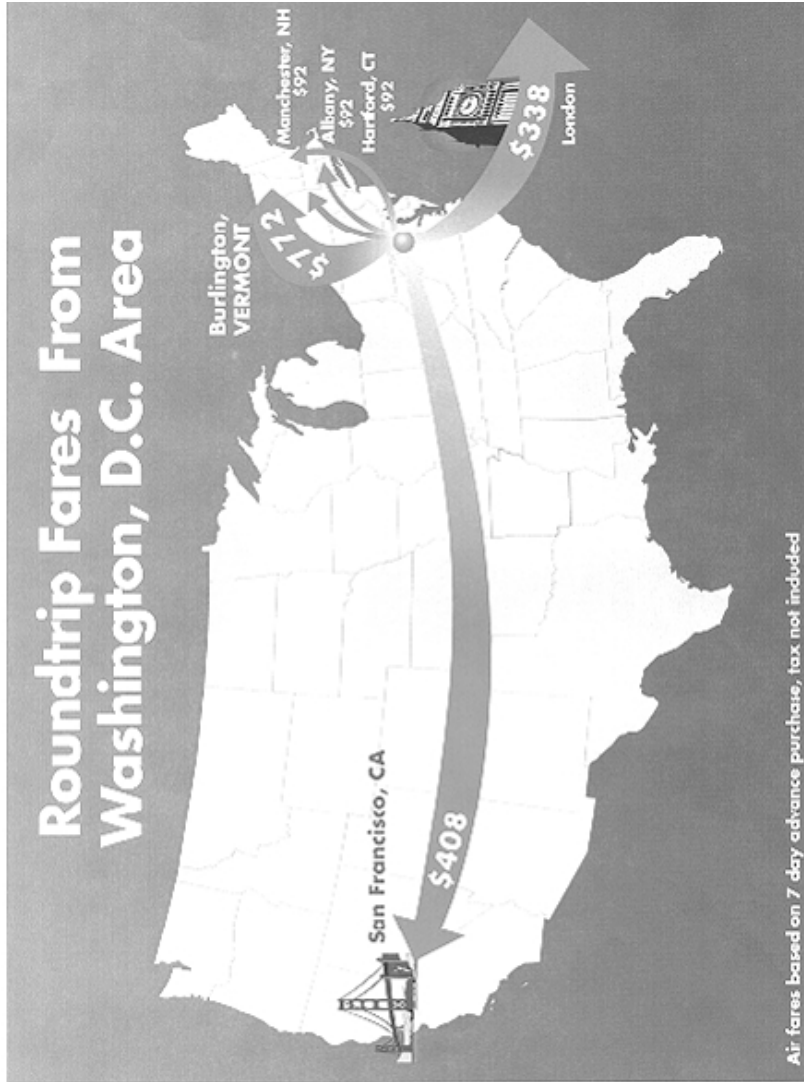
In many cases, it's already an uphill battle for low-cost carriers to break into new markets. We need to get more slots to JetBlue, Southwest and AirTran, and other low-cost carriers, to increase real competition.

After this round of mergers, it might be like trying to scale Mt. Everest for a new carrier to break into the market.

This is especially true in rural America.

Mr. Chairman, if the United merger is approved without conditions it will upset the delicate balance that has allowed more Americans to fly at a lower cost. If we

don't tread carefully re-regulation will be around the corner with all its inefficiencies.



Senator DEWINE. Senator Schumer.

**STATEMENT OF HON. CHARLES E. SCHUMER, A U.S. SENATOR
FROM THE STATE OF NEW YORK**

Senator SCHUMER. Thank you, Mr. Chairman, and I want to thank you and Senator Kohl for holding this hearing in such a timely way on the proposed mergers by United, US Air, DC Air, American, and TWA.

I also want to wish Senator Kohl a happy birthday. I am sure everyone here joins us in wishing him just that.

I just want to say that these far-reaching proposals are going to have a dramatic effect on consumers, especially in my State, New York State, where upstate New York has been treated extremely poorly by airline service, not only costing consumers more but costing us jobs. When you interview corporate executives about why they don't move to upstate New York, infrequent, high-cost service is one of the top two or three issues that they mention. So I will make a number of points in that context.

First, I would like to say that I support American's acquisition of TWA and agree with my colleagues from Missouri, with Senator Leahy, and with others that the TWA deal should move forward as a stand-alone proposal. The deal would, of course, save jobs, 20,000, and over 4,000 in New York State, and preserve the carrier's route network and St. Louis hub. The jobs, health benefits, and retirement security of thousands of TWA employees are at stake, and DOJ and the bankruptcy court must move quickly. This acquisition would not lower competition. It would actually increase it because if there is no acquisition, TWA is gone. So this is not a question of eliminating competition; this is a question of creating competition.

Having said that, I am troubled by the other mergers before us, greatly troubled. First, the huge mega-merger between United and US Air, and then the division of some of the spoils of that merger with American, create real problems for competition. If we were to emerge, as most experts think we do, with three major airlines, competition suffers.

When we deregulated airline competition over 20 years ago, we thought it would increase competition. How in God's good name can having only three major airlines increase competition?

I have talked to Alfred Kahn, who couldn't be here today—I know he was invited—the architect of deregulation. He is appalled at this situation, and would be willing to say so to the committee. He believes that what he and others structured has gone awry, and our flying constituents see that everyday.

For that reason, I am sending a letter today to DOJ asking for a moratorium on consideration of all these future mergers now. Let the Department of Justice study the situation for 9 months, figure out where we are going, and not be dragged willy nilly, piecemeal, merger by merger, and end up with a situation that nobody wants and everybody feels will foster less, not more, competition.

DOJ, the Antitrust Division, has a real challenge here before it. If they are simply to approve each merger on an ad hoc basis, they will end up undercutting antitrust law, as I read it. A moratorium to study the situation, to study how we can foster new competition

particularly with low-cost carriers, to look at the issues of predatory pricing—in my State, Mr. Chairman, we have experienced, when a new, startup airline comes in, the big boys lower the price, put that new airline out of business, and then raise the price back up. All that has to be studied before the United, American, US Air and DC Air mergers are approved.

Finally, and my No. 1 concern, is the issue of upstate New York. As I mentioned, we have been struggling with poor air service, and only recently with the advent of Southwest and JetBlue have prices begun to come down. They did come down when United, American, US Air and Delta provided most of the service. They got higher and higher, so that Buffalo, Rochester and Syracuse were in the top 20 in terms of price.

The chart that my good colleague Senator Leahy showed in terms of Burlington could be repeated for Albany, Syracuse, Rochester and Buffalo. But all of a sudden, when competition came in, the prices have gone down, when low-cost air carriers came in.

And in that regard, of particular troublesome nature to me is the creation of DC Air and then its purchase of 49 percent of its shares by American. American is a nice, good company, but they sure haven't done much for upstate New York. The 222 slots which are being given to DC Air at what most experts believe is a reduced price are a public good.

There is nothing in the merger proposal that would say that that reduced price should have the benefits passed on to the flying public. In fact, given the recent structuring of the deal and removal of a no-flip clause that required the forfeiture of any profits from the sale of DC Air within the first 3 years, I feel that DC Air will all too quickly be subsumed by American, leaving the U.S. market dominated by just three or four major carriers, leaving upstate New York, which has finally begun to see progress, in the same poor position.

So, Mr. Chairman, these mergers are vital to the people I represent. They are vital to all consumers of New York because costs are important. They are vital, as well, to upstate New York, whose economic viability depends on getting better air service.

I thank you, Mr. Chairman.

Senator DEWINE. Thank you very much.

We have a statement from Senator Feingold which we will make a part of the record at this point.

[The prepared statement of Senator Feingold follows:]

STATEMENT OF HON. RUSS FEINGOLD, A U.S. SENATOR FROM THE STATE OF WISCONSIN

Mr. chairman, thank you for holding this hearing. I share the concerns, voiced by some of my colleagues, about the trend toward consolidation in the airline industry. We feared that the proposed merger between United and US Airways announced last year would spur additional mergers. That fear was realized when, in January, American announced plans to acquire TWA and work with United to acquire a piece of US Airways. United and American are currently two of the so-called "Big Three" in the airline industry. But if these mergers are approved, United and American will become the "Big Two" of the airline industry: together they will have a nearly 50% share of the domestic market. This raises real concerns about competition and consumer choice. I joined in the letter sent by Senators DeWine and Kohl and others on this Committee on February 1st, to the Justice Department urging a full and thorough review of the implications of the merger transactions among United, US Airways and American on Competition and Consumers.

Now, it appears that the concerns we raised in that letter are even more troubling. Just this week, we learned that Delta and Continental are reportedly in merger talks. Delta is the third of the "Big Three." If Delta, in fact, enters a merger agreement with Continental, the "Big Three"—United, American and Delta—would be poised to claim an even greater share of the domestic airline market, thereby threatening competition and consumer choice.

I appreciate the need for efficiency and the airline companies' desires to reduce costs and increase profits. I also understand that there is a potential upside of a United/US Airways merger for some Americans who could benefit by "seamless," one carrier travel, as United would gain access to some east coast markets that it previously serviced on only a limited basis or not at all. But I believe the federal government has an important role in ensuring that increased efficiency and profits do not come at the cost of lack of consumer choice or poor service.

Airline consolidation, particularly when service is concentrated among only 2 or 3 major airlines, means fewer choices for consumers. If the mergers proposed by United and American are approved and completed, some markets may be served by only two carriers or even one carrier. This is devastating to consumers. Reduced competition means increased fares. This is especially a problem for small city and rural markets—markets in places like my home state, Wisconsin.

Take, for example, the Dane County airport in Madison, Wisconsin. Currently, there are eight commercial passenger airlines providing service to that airport. There are an average of 104 daily departures and arrivals fairly evenly spread among those eight airlines. But if the proposed acquisition of US Airways by United and American is completed, as well as the acquisition of TWA by American, there will be a concentration of departures and arrivals by the new United and the new American. Over half the 104 average daily departures and arrivals will be under the control of the BIG TWO airlines. Smaller airlines that already struggle to compete are likely to find it even more difficult to compete with the Big Two. Even Midwest Express, a successful regional airline, may find it difficult to compete with only about 9 average daily departures and arrivals. Mr. Chairman, our economy—both consumers and businesses—has thrived when there is healthy competition. And I believe the airline industry is no different. How can United US Airways and American assure this Committee and the American people that Americans will continue to have choice and competitive fares?

Finally, I also would like to hear about how a proposed merger would affect employees. Our nation has already seen a spate of lay-offs in recent months. I fear that the proposed mergers would result in even more hard-working Americans losing their jobs.

I think the Justice Department should consider the many issues that have been raised and will be raised at this hearing. I look forward to hearing about how United, US Airways and American propose to quell the very real fears of lack of competition, increased fares and continued poor service and delays.

Mr. Chairman, I commend you again for holding his hearing and I look forward to hearing from the witnesses. Thank you.

Senator DEWINE. Let me invite our first panel to come up, and as you come up I will begin to introduce the members.

Gordon Bethune is Chairman and Chief Executive Officer of Continental Airlines. He has held major management positions in several airlines and is also a licensed pilot and mechanic. We welcome him back to the committee.

Leo Mullin is Chairman and Chief Executive Officer of Delta Air Lines. Prior to joining the airline in 1997, Mr. Mullin served as Vice Chairman for Unicom and served 15 years with First Chicago, culminating in his appointment as President and Chief Operating Officer of the bank. We also welcome him back to our committee.

William Franke is the President and Chief Executive Officer of America West Airlines, and also serves as Chairman of the Board for the airline's parent company, America West Holdings. His career also includes service in U.S. Army Intelligence.

Joe Leonard is Chairman and Chief Executive Officer of AirTran. He joined them in 1999. His experience in the airline industry includes executive positions with Allied Signal, Boeing, Northwest Airlines, and American Airlines.

Professor Michael Levine is Adjunct Professor of Law at Harvard. His research interests lie in regulation and deregulation, with a specific focus on the airline industry. He has published numerous pieces regarding airline competition.

Mr. Bethune, we will start with you and then we will just proceed right down the panel. Each one of you has submitted a written statement which will be made a part of the record. We would ask you to proceed as you wish. We will go through the whole panel and then we will open it up for questions.

Mr. Bethune?

STATEMENT OF GORDON BETHUNE, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, CONTINENTAL AIRLINES, HOUSTON, TEXAS

Mr. BETHUNE. Good morning, Mr. Chairman and members of the subcommittee. I am Gordon Bethune, Chairman and Chief Executive Officer of Continental Airlines. It is certainly a pleasure to be here representing the 54,300 employees of Continental. Four thousand, I might add, work at our Cleveland, Ohio, hub and are honored to be represented by the distinguished Chairman of this subcommittee, Senator DeWine.

Let me start with a short version of my written testimony, if I may.

The proposed mega-merger of United, American, US Airways and TWA, if implemented, will create a cartel that will control the U.S. domestic market and marginalize smaller carriers like Continental. Unchecked by competitors anywhere near the same size, these 800-pound gorillas will be a certain disaster for consumers and communities.

In the short run, the poor customer service which is characteristic of the current operations of these carriers seeking to merge will look glorious compared to the inevitable service disruptions and even worse customer service that will prevail in a post-merger environment.

Nearly 50 percent of U.S. air travel consumers suffer while the new cartel attempts to integrate the operations and the employees of four separate airlines. Continental, I might add, stands to gain in the short term because we will offer a welcome alternative to the surly and unreliable service offered by these mega-carriers.

But we are not big enough and can't grow fast enough to offer a truly competitive alternative in the long run. Therefore, if these mergers go forward, as I fear they will, further consolidation will be inevitable and necessary if we are to preserve competition. So, Mr. Chairman, I believe the right answer to these merger proposals is just say no.

I know the Department of Justice has the responsibility and capability to stop these mergers, and the Justice Department was just recently successful in opposing a much smaller airline acquisition, Northwest's purchase of 51 percent of the voting stock of my company. Federal approval of these mergers would be directly at odds with the Department's position in the Northwest/Continental case. In fact, it would be absurd, given the much larger size and scope of United and American's acquisitions.

Everyone should understand that if the mergers are permitted to occur, the rest of the industry will be forced to consolidate. Let's look at what is being proposed here. American and United have proposed to build a cartel that will divide and conquer the United States aviation market. United and American actually have an agreement between them to stabilize the relative shares of the two largest airlines in the world. I am not making this up; it is publicly filed information. GAO testified that they had never seen such an extraordinary agreement. I have attached a copy of this agreement to my written testimony.

Today, there is a competition equilibrium among the major airlines in the United States. Most significant viewers of the airline industry, whether they be academic or government, have concluded that the major network carriers provide effective competition. Concentration levels in the airline industry since deregulation have remained relatively low, and while each major airline has strengths in specific areas of the country, none is overly dominant.

Today, we have the big three, who are roughly the same size and who really actually balance competition. The big three are considerably larger than the next group of airlines, but they provide an equilibrium for each other. The four medium-sized carriers, of which Continental is one, can remain competitive on a national basis because their scale disadvantage is not so large that they cannot at least partially overcome it by offering superior service or lower prices as compared to the big three. There are also three smaller national carriers that have added competition by way of their own regional focus. Finally, there are a number of new entrants and low-cost carriers that also compete in a limited number of individual markets.

Against the backdrop of a competitive environment that is basically at equilibrium, United and American have proposed to divide and conquer the entire U.S. market. The immediate result will be two giant carriers that control nearly 50 percent of the U.S. airline market. The mega-carriers will each have twice as many hubs as Delta, Northwest, or Continental.

They will be 50 percent larger in terms of capacity, traffic and revenue than the next largest non-merged carrier, Delta, and three times as large as ourselves, Continental. They will dominate America's Northeast and Western regions, as was said earlier, which accounts for most of the revenue and most of the business traffic. They will have frequent flyer loyalty programs two or three times as large as their nearest competitor. Post-mergers, their distribution and marketing systems will smother other airlines.

Let me give you an example close to home. If this deal is approved, almost 80 percent of all the slots at the four federally controlled, slot-controlled airports will be controlled by the duopoly of American and United. At Washington Reagan and at New York's LaGuardia, where slot controls are likely to remain indefinitely, the two mega-carriers will have control of over 65 percent of the slots. By comparison, Continental operates with less than 5 percent of the slots at Washington Reagan or at New York's LaGuardia Airport.

Should these proposals be approved, United and American will each be of such vast scale and scope that other U.S. airlines will

be unable to offer effective competition to them. Significant harm to consumers, communities and employees is inevitable.

Other airlines will be forced to combine, be carved up, or be put out of business by the onslaught brought upon by the United and American cartel. Communities will be adversely affected by the loss of competition, and the process of getting to that dismal future won't be pretty. If you thought last summer was bad, buckle up your seatbelt because with these pending mega-mergers, you haven't seen anything yet.

These mega-mergers are bad for customers, they are bad for communities, and they are bad for their employees. In recent years, American has been through pilot and flight attendant slow-downs. Just last summer, United endured a work slow-down which created one of the worst operational and customer service problems this industry has ever known.

For the year 2000, United ranked last in the Department of Transportation on-time performance statistics. Their future partner, US Airways, ranked seventh out of the ten major airlines. You put these two together and they will rank 17th. Their performance at this dismal level is without being in the midst of merging these two enormous airline systems.

Just think about the service disruptions and service problems while nearly half of the airline service in the United States is integrating systems and operations and aircraft fleets, and most importantly four groups of fragmented and sometimes hostile workers.

It is true that this would offer a short-term competitive opportunity to Continental, which was ranked, I might add, No. 1 in on-time performance in the year 2000. We will be able to offer an alternative to surly and unreliable service, but we simply will not be big enough to offer a truly competitive alternative because we won't be in enough markets with enough planes and enough slots to put a dent in the market share of the mega-carriers. The vast majority of passengers will have no choice but to suffer whatever United or American may want to offer.

Why can't we and Delta and others simply grow in order to compete with mega-carriers? Obviously, we could try to do that, but even if we grew at twice the aggressive way in which we have just grown over the past few years, it would take us nearly two decades to grow to something approximating the size of United and American. And that assumes that we could get the slots particularly at Washington and New York, the routes, the capital, aircraft and the employees necessary to grow that fast for that long, or are we going to put out of business by these guys during that time?

So internal growth is not a long-term solution here. Consolidation won't be just inevitable; it will be necessary to preserve competition. Super-United and mega-American will dominate the aviation market unless a third and even a fourth network carrier of similar size can recreate the competition necessary to serve the traveling public.

So let me end this testimony as I started it. Congress, the Department of Justice and the Department of Transportation should just say no, and say yes to continued, vibrant competition and constantly improving service for our Nation's airline passengers.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Bethune follows:]

STATEMENT OF GORDON BETHUNE, CHAIRMAN AND CHIEF EXECUTIVE OFFICER,
CONTINENTAL AIRLINES, INC.

Good morning, Mr. Chairman and Members of the Subcommittee. I am Gordon Bethune, Chairman and Chief Executive Officer of Continental Airlines. It is a pleasure to be here representing the 54,300 employees of Continental. It is a special honor to be able to appear before a Subcommittee headed by Chairman Mike DeWine of Ohio, who represents our Cleveland hub. Continental is honored to have such strong representation in the Senate and we thank you for your leadership.

I thank you for your invitation to discuss the important topic of aviation industry consolidation, and specifically, the proposed mergers between United Airlines and US Airways, and between American Airlines, TWA, and US Airways. As the fifth largest airline in the United States, Continental has a unique perspective on the two proposed mergers and the effect these mergers will have on the U.S. aviation system and on the passengers that utilize air travel every day.

My goal today is to explain to the Subcommittee why we at Continental believe that the proposed airline mergers should not be approved. The mergers will harm competition and consumers. Moreover, federal approval of these mergers today would be directly at odds with positions taken by the government just a few months ago when the Department of Justice successfully opposed a much smaller airline acquisition: Northwest's purchase of 51% of Continental's voting stock. While I know that it is ultimately the Department of Justice's decision as to the future of the proposed United and American mergers, it is important that everyone be fully briefed and that everyone understand the inevitable outcome if these mergers are permitted to occur. I intend to explain why other airlines will be forced to grow to remain competitive and to discipline the two new mega-carriers. I will show why this growth can only be achieved through further industry consolidation.

Continental itself is an airline that emerged from a series of mergers in a very different era and a very different industry structure. Texas International, New York Air, PEOPLEExpress and Frontier all merged into what is now Continental Airlines. As a result, Continental went through years of delivering poor service to customers, treating employees poorly and managing its finances poorly (including two bankruptcies). However, in 1995 Continental implemented a sensible plan and motivated its employees to turn things around, and over the past six years things have been very different at Continental. Continental is now recognized as the best major airline in the industry. In fact, over the past five years Continental has won more JD Power and Associates/Frequent Flyer Magazine awards for customer service (this year taking top honors for both long and short haul flights) than any other airline in history. Just two weeks ago, Continental was named 2001 Airline of the Year by Air Transport World, the second time Continental's worldwide peers have recognized it in five years. Finally, I am especially proud of the fact that we have been ranked in the top half of the past three Fortune magazine lists of the 100 Best Places to Work in America, this year ending up in the top twenty. No other major airline, except Southwest, is even on the list. It is from this perspective that I want to give you my thoughts on what is currently facing the U.S. airline industry.

I. The Airline Industry Currently is Characterized by a State of Competitive Equilibrium

Allow me to describe the current environment within the U.S. airline industry. There is currently a competitive equilibrium among the major airlines in the United States. Major reviews of the airline industry since deregulation have concluded that the major network carriers provide effective competition. Air travel has skyrocketed since deregulation, airfares (adjusted for inflation) have declined and the current system of carriers has been able to offer a wide variety of competitive services. The levels of concentration in the airline industry since deregulation have remained relatively low for a network business. Even after the airline mergers of the 1980's, concentration in the airline industry has stayed below critical levels. While each merger airline has strengths in specific regions of the country, none is truly strong in every U.S. region. Thus, national competition has been balanced and effective.

The major carriers can be split into three distinct groups: very large national carriers (the "Big Three"), medium national carriers, and small national carriers. United, American, and Delta make up the very large national carrier group. Each of these three airlines has over 16% of domestic system capacity and traffic. They are the largest three airlines in the world. They already have the largest frequent flyer programs and distribution channels, and they control more airport real estate than any other carrier. While the Big Three are considerably larger than the next

group of carriers, they provide equilibrium for each other. Moreover, the medium national carriers can remain competitive because their scope and scale disadvantage is not so large that it cannot be at least partially overcome by offering superior service or lower prices compared to the Big Three.

The medium national carrier group consists of Northwest, Continental, Southwest, and US Airways. Each of these carriers maintains between 7% and 9% of domestic capacity and traffic. These four airlines, while not as large as the Big Three, offer strong competition on a national basis and have found a niche in which they are able to compete. For example, US Airways holds many slots at the four federally slot-controlled airports and has a strong position in the important Northeast region of the country. Southwest competes based on price. Northwest has a strong North Central and Asia market position. Continental competes based on our internationally recognized superior customer service. Each medium sized carrier has found a way to be successful, even though they are about half the size of their larger counterparts.

The final group, small national carriers, consists of TWA, America West, and Alaska. These carriers are each between 2.5% and 6% of domestic capacity and traffic. While these carriers have found it more difficult to compete against the seven larger airlines, all but TWA have been successful in their regional focus. TWA has historically shown strength at its Midwest hub, while both America West and Alaska have shown similar strengths in the West.

Finally, there are currently a number of successful new entrant/low cost/niche carriers that help in maintaining balance and competition in the airline industry. Airlines such as Midway, Midwest Express, Air Tran, and JetBlue all compete vigorously with larger carriers in a limited number of individual markets.

II. The Proposed Mergers Will Harm Competition

Against this backdrop of a competitive environment that is at equilibrium is the proposal of United and American to split up US Airways and for American to also absorb TWA. This will create an unbalanced competitive environment in which the two resulting mega-carriers are significantly larger than their next largest competitors. Clearly United and American's plan is to reach detente, build a cartel, and carve up and dominate the U.S. air travel market. Look closely at the proposals; they include sharing the Northeast shuttle and sharing the Northeast region between the cartel members. Ultimately, the same way United and American have split Chicago O'Hare and London (Heathrow), they will split the rest of the U.S. (and maybe even split global aviation). The two mega-airlines have even incorporated a provision in their agreement that restricts American's ability to merge with other carriers and puts limits on American's growth. Should American grow faster than United wants it to, United would have the right to terminate the Northeast shuttle agreement the two airlines have proposed. United would also have the right to repurchase certain US Airways assets being divested to American and a right of first refusal for any assets American divests as part of a subsequent transaction. This provision is clearly a horizontal restraint between major competitors. It allows United to restrict American's future growth by acquisition, requires cooperation between United and American on future acquisition, and has the effect of stabilizing the relative shares of the two largest airlines.

After consolidation, United and American will each be of such vast scale and scope that other U.S. airlines will be unable to offer effective competition against them. The airline industry will change for the worse, adversely affecting competition, consumers, communities and employees. Other airlines will be forced to combine, be carved up, or be put of business by the onslaught brought on by the United and American cartel.

After the current wave of proposed consolidation, United and American will control nearly 50% of the U.S. airline industry and have twice as many hubs as Delta, Northwest, or Continental. The new United will serve one hundred more domestic destinations than its nearest competitor. Additionally, American and United will each become more than 50% larger in terms of capacity, traffic, and revenue than the next largest non-merged carrier (Delta), and they will be almost three times as large as Continental. After the mergers, United and American will also be the #1 and #2 airlines in the largest regions with the most revenue and business traffic, the Northeast and West regions. Via the mergers, United and American will have created the only two truly national networks. While other airlines may continue to maintain some regional presence, their ability to compete nationwide will be lost. Consummation of these mergers will allow United and American to ensure that they have eliminated competition on the national (and even on the global) stage. In conjunction with their national presence, the two mega-carriers will have frequent flyer loyalty programs two or three times as large as their nearest competitors, and dis-

tribution and marketing systems that no other airline will be able to match. The combined effect of this will be to produce a quantum shift in the distribution system that squeezes out other carriers in a manner that has never occurred before.

Finally, the two airlines will operate almost 80% of all slots at the four federally slot-controlled airports (Washington Reagan, New York LaGuardia, New York JFK, and Chicago O'Hare). At Washington Reagan, where slot restrictions are expected to remain in place in perpetuity, and at New York LaGuardia, where the FAA has already stopped expansion and slot restrictions are likely to be reinstated, the two airlines will control over 65% of all slots. By way of comparison, Continental operates only 3% of all slots at the four airports, with less than 5% of the slots at Washington Reagan and New York LaGuardia.

In order to compete with the two mega-carriers, other airlines will need to grow to at least a scale that is near that of the market leaders. Independent growth to the scale of United or American will be nearly impossible. An airline like Continental, with just over 8% of the current domestic capacity, would need nearly twenty years to grow to the size of United and American even if Continental could grow at a very aggressive average annual rate of 10% (2-3 times expected GDP growth) and if the two mega-carriers grew at expected GDP levels of about 4%. By comparison, over the past six years that I have been the CEO, Continental has only been able to grow at an average annual rate of just under 5%. Hyper-growth of 10% annually for Continental is not realistic over the long term.

First, as I mentioned earlier, slot restrictions at Washington Reagan, New York LaGuardia, New York JFK, and Chicago O'Hare limit growth in major eastern markets. Not only is access to these airports limited, but United and American will hold the keys with their combined 80% share of the slots. Additionally, the limitations on the supply of capital, mechanics, pilots, and aircraft, and limitations on the capacity of the air traffic control system, will also impede the ability of airlines to grow at such a hyper-rate for extended periods. More importantly, however, Continental is concerned that faster than historical growth will limit our ability to do what we do best, which is providing passengers with quality customer service. With hyper-growth, an airline runs a serious risk of spoiling its product, something Continental is not willing to do.

The destruction of the competitive equilibrium that is the obvious and direct result of these proposed mergers means that independent growth to compete with United and American is virtually impossible. Airlines will be left with no choice but to merge in order to compete effectively with the two mega-carriers. Additional airline mergers will be required to restore a competitive playing field to an airline industry that would otherwise be split by the United and American cartel.

III. The Proposed Mergers Will Harm Consumers, Communities, and Employees

The labor and service disruptions coupled with reduced customer service brought on by the integration of the four merging airline systems will, in the short run, benefit Continental as we attract passengers looking to escape the uncertainty and problems they will experience with the mega-carriers. The service disruptions and customer service complaints of the past few years are nothing compared to what is coming if the proposed mergers are approved. Think back over the past few years. American has been through pilot and flight attendant slowdowns. United also has been through work slowdowns which created some of the worst operational and customer service problems this industry has ever known. United ranked last in Department of Transportation on-time performance statistics seven times this past year, with an average quarterly on-time performance (in the second and third quarters) of barely 50%. Continental, by way of comparison, ranked in the top three each quarter of the year. I might add that Continental's on time performance last summer was better than previous years and in December we beat our closest competitor by almost seven percentage points in on time performance. Continental was also the #1 airline in on-time performance for the entire year 2000, out of all major network carriers. With regard to baggage performance, United again had poor performance, finishing each quarter in ninth or tenth place, with statistics at least 25% worse than the industry average. And regarding customer complaints, let's just say that United's record is so bad that by the third quarter of last year, United's number of complaints per 100,000 enplanements was more than double the industry average. Now think about the same service disruptions and service problems aggravated by the incredibly difficult task of integrating four systems, four aircraft fleets, and most importantly four distinct groups of fragmented and hostile workforces. If you think that the problems this industry has seen over the past few years have been bad, you have not seen anything yet! And while Continental stands to gain in the short run because we offer an attractive alternative to surly and unreliable service,

we will simply not be big enough to offer a truly competitive alternative in the long run. The vast majority of passengers will have no choice but to be forced to suffer whatever service, or perhaps more accurately, lack of service, United or American may offer.

Understand that this is not a call for legislation to re-regulate the airline industry. That is exactly the wrong way to go. I have long said that customer service is a competitive issue, not a legislative one; you simply cannot legislate whether someone enjoys coming to work. Continental has made great strides in customer service, and we have received much recognition for it. We are proof of what a competitive response to customer service issues can be. We have even gone to federal court to stop United from installing baggage sizing templates at security screening checkpoints here at Dulles Airport, which prevented Continental passengers from utilizing Continental's flexible baggage policy and large overhead bins. These bins were installed at a cost of many millions of dollars to accommodate customer expectations and desires. In its ruling in favor of Continental and finding that United violate antitrust law, the court said "Indeed, if there is proof of failure in the market to be gleaned from the record, it is United's failure to provide what its customers desire." The court agreed that customer service is a competitive issue (it said, ". . . the record unambiguously discloses that airline carry-on policy is not an insignificant aspect of airline competition."), and it is worth noting that the carrier attempting to carve up its smaller rivals (United) is one of the least competitive with regard to service.

The proposed mega-mergers are bad for consumers, bad for communities, and bad for employees. The picture I have painted clearly explains the problems that consumers face. Operational disruptions will be widespread. Customer service levels at the merging carriers will continue to tumble as those carriers will be able to do nothing more than keep just their systems running.

The proposed mergers are also bad for communities. According to the General Accounting Office, in its report "Aviation Competition, Issues Related to the Proposed United Airlines-US Airways Merger," released December 2000, 290 markets will have reduced competition or have competition eliminated completely because of only this one merger. The report goes on to state that "About 16 million passengers traveled in those 290 markets in 1999. . . ." Last week in testimony before the Senate Committee on Commerce, Science, and Transportation, the GAO reported that "the United and American proposals would each reduce competition in approximately 300 markets, with each affecting over 10 million passengers." As a point of comparison, the Northwest/Continental transaction opposed by the Department of Justice entailed reduced competition in only 63 markets affecting 2 million passengers. Finally, many more markets and passengers will be affected by the two proposed mega-mergers if the GAO analysis is expanded to include all markets.

Communities will not only be affected by a loss of competition and deteriorating service, but also could face service cutbacks and route elimination as United and American rationalize their systems. By merging all of the routes each carrier serves from their pre- and post-merger hubs, it is highly likely routes will be eliminated to reduce overlap. While United has given a "commitment" that it will not eliminate routes, this "commitment" is for only two years, does not hold for American, and does not extend to reductions of service on routes short of route elimination.

It is clear that the proposed merger will be bad for consumers and bad for communities. The mergers will also be bad for employees. Unlike Continental, which prides itself on its excellent management-labor relationships and on the fact that it is a great place to work, history has shown that both United and American have different views on how they treat employees. The United and American mergers will occur on the backs of the employees of both the acquiring and acquired airlines. The ramifications of poor labor relations that we have felt over the past few years will be amplified and continue for years to come. Significant labor integration issues have accompanied virtually every major airline merger in the history of our industry, and these proposed mergers will not be exceptions to this rule. Think of how disruptive a relatively simple merger like American/Reno Air was. Now think of the complex issues raised by American merging with not one but two airlines much larger than Reno Air.

IV. US Airways and TWA Have Other Options Readily Available

There are other options for the two acquired companies. While it is clear that TWA has significant problems, allowing it to merge with American and parts of US Airways is not its only option. A truly level process for competitive bidding, which Continental has fought for in the bankruptcy court, could provide alternatives for TWA. As an aside, as I have said publicly before, if American were to follow through with its statements and unconditionally commit in writing to hire all of the TWA

employees and protect the benefits of all employees and retirees of TWA, and if this commitment were not contingent on the US Airways deal, then Continental would step aside and not oppose the American/TWA transaction. Of course, the Department of Justice would still face the task of prescribing remedies to restore competition, such as requiring the divestiture of some slots and facilities to smaller national network carriers, like Continental.

Turning to US Airways, it is unclear to me that any merger is necessary, as US Airways has one of the richest pools of valuable assets in the industry. Their cache of lucrative slots and their Northeast strength cannot be matched. If Continental was able to turn itself around (with its more limited assets yet intensely focused management team) and become the financial and commercial success it is today, there is no reason that US Airways, with the right incentives and appropriate management, utilizing US Airways' crown jewels of assets, cannot do the same. But if US Airways is determined to sell itself, allowing the airline to be split by United and American is not the only option. Continental made an offer for US Airways' Washington Reagan position that was for a much higher price than the current DC Air/American deal. Continental's offer was turned down, not based on the economics, but based on the fact that it would put a crimp in the cartel's plan. Continental is also very interested in the significant slot and facility holdings of US Airways in New York. These assets were never even offered to anyone except American.

V. If the Proposed Mergers are Approved, Then Remedial Action Must be Taken to Preserve What is Left of Competition

So what is the answer to the proposed mergers that will create two mega-carriers that have the ability to dominate the market, reduce or eliminate competition and are bad for all constituencies? JUST SAY NO!

The conspiracy by United and American to reach detente, create a cartel, and control the U.S. domestic market (thereby tightening their stranglehold on foreign markets as well), if implemented, will be so devastating that it should be disapproved outright. **The government should stop trying to find fixes to mergers that should not be approved in the first place. And the government needs to clearly understand that it cannot fix, after the fact, the problems these mergers will create.**

It is important to note that, just last month, the Department of Justice prevailed in its antitrust challenge of Northwest's proposed acquisition of 14% of Continental's stock (representing a little more than 50% of Continental's voting rights). This case was brought to trial notwithstanding the fact that Northwest signed a governance agreement limiting its control of Continental for at least six years. The government brought the case because it believed that Northwest's partial ownership would lessen competition primarily on routes between the six Northwest and Continental mainland U.S. hubs. Today we are faced with the prospect of a combined United/US Airways (10 hubs) and American/TWA/US Airways (7 hubs). Consolidation of these carriers would give the combined firms more than 90% of the non-stop traffic on the routes between their respective hubs. Moreover, unlike the Continental/Northwest transaction in which Continental and Northwest would have continued to compete, United and American will actually have eliminated their primary competition between those important hubs.

While the facts should compel the government to reject the proposed acquisitions, I am not confident that the right thing will be done to protect airline consumers and competition from the United and American cartel. Because of my skepticism, I must impress upon you that if, against all of the best wisdom, United and American are allowed to move forward with their plans, further airline consolidation is inevitable and will be required to assure effective competition. The U.S. aviation industry will require at least three or four large national network carriers to recreate the equilibrium that we currently have and that will be lost if United and American are allowed to complete their proposed transactions. Only through the smaller airlines' ability to grow and their ability to further consolidate will marketplace protection be possible.

If the proposed mega-mergers are approved, as I fear they will be, action must be taken by the Congress, the Department of Transportation, and the Department of Justice to give some small glimmer of hope that competition in the aviation industry can survive. The ability of airlines to obtain assets in order to create networks of similar scale and scope is key to disciplining the United and American cartel.

Congress, the Department of Transportation, and the Department of Justice *must ensure that appropriate slots, gates, and other facilities at slot and capacity constrained airports are made available to smaller network competitors* by the two mega-carriers. Special attention must be paid to airports such as New York

LaGuardia, Washington Reagan, Chicago O'Hare, Boston Logan, Los Angeles International, and San Francisco International.

The Department of Transportation must also exercise fully its duties and responsibilities in determining whether the international route transfers occurring in these mergers are consistent with the public interest and what impact they have on competition in the domestic airline industry. *The Department of Transportation should re-award those international routes to competitors of the mega-carriers as necessary to preserve competition.*

It is crucial that the U.S. ensure that government operating privileges, such as slots, are not used to create monopoly power at the very airports necessary to provide effective competition among networks. Specifically, the U.S. must be prepared to *insist that a concentration of slots by the largest of carriers does not occur and that a process exists so that competing networks can get the needed slots.* As discussed above, post-merger United and American will control nearly 80% of the slots in the highly significant business markets of the Northeast and North Central. Competition simply cannot survive in those cities with that level of concentration between two carriers who actually are cooperating with each other.

If the proposed mergers are allowed to proceed, there must also be assurances that the remaining U.S. airlines have more access to the capital they will need to sustain continued growth. Currently, U.S. carrier access to new capital is severely limited by unnecessarily low limits on foreign investment. *The foreign ownership limits on U.S. carriers should be increased to 49%.* This will provide new sources of capital while maintaining U.S. control and protecting U.S. employees.

Finally, as United and American strengthen their domestic positions, the ability of other U.S. carriers to compete internationally will be reduced. For example, United and American are already the only two airlines with the right under the U.S.-U.K. bilateral to fly into London Heathrow airport, the most important business airport in Europe, United and American's growing control of the domestic market will make this already huge disadvantage to Continental and other U.S. airlines even greater. The U.S. should renew its efforts to negotiate more access to London Heathrow for competitors of the mega-carriers or negotiate to substitute other carriers at London Heathrow for the two mega-carriers. Additionally, United and American have a large array of foreign partners with which they have alliances, making their control of world air transport even greater. The ability of small network carriers to offer foreign partners enough scale and scope in the U.S. is limited, and it is clear that given a choice of partnering with a member of the cartel or partnering with a smaller carrier, foreign airlines will choose the cartel. As antitrust immunity only exacerbates this problem, I call for a *serious re-evaluation and possible revocation of the antitrust immunity already granted to the mega-carriers and their foreign partners.*

VI. Conclusion

Mr. Chairman, I know what I have discussed today will not be popular with many people, especially my peers at United and American. But I have no choice but to make sure that the U.S. Senate, your constituents, and all Americans are aware of the consequences that the proposed United and American mergers will have on consumers, communities, employees, and on the U.S. aviation industry as a whole.

While I know that it is not ultimately this Committee's decision as to whether the deals are allowed to proceed, it is within this Committee's power to ensure that all of the facts are available and that the consequences are known. If the Department of Justice nonetheless decides to allow these mergers, you must insist on the action items I have proposed today. If these two mega-deals are permitted, other airlines will be forced to merge and those mergers will be necessary to restore effective competition. Therefore, once the Department of Justice approves the pending merger others *will* follow and must be approved.

Mr. Chairman and members of the Committee, I thank you for giving me the opportunity to discuss this very important issue with you and for your attention. I would now be pleased to answer any questions that you may have.

Senator DEWINE. Mr. Bethune, we always appreciate your very candid testimony. Thank you very much.

Mr. Mullin?

STATEMENT OF LEO F. MULLIN, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, DELTA AIR LINES, ATLANTA, GEORGIA

Mr. MULLIN. It is always difficult to follow Gordon Bethune.

I, too, am grateful to testify, Mr. Chairman, because much is at stake here. I submitted to the Committee an expanded version of my testimony and ask that it will be included in the record, and I will be brief in my comments.

The apparent subject at hand is United Airlines and US Airways, and, of course, American and TWA. But actually decisions on this matter will not represent a simple ruling on these transactions. In fact, it will be the catalyst for a complete structural and competitive change to the industry.

Mergers and acquisitions are a good, basic business tool for all industries, including aviation, but they require careful review. If approved, these deals will create two mega-carriers with giant networks, and size matters. United Airlines, American Airlines and Delta currently have comparable shares, at 17 percent of the domestic market. As mega-carriers, the numbers will be United, 27 percent; American, 22 percent. And in the strategically important Northeast markets, where there is currently a balance of power and no dominant carrier, it will be changed dramatically, such as Senator Leahy has suggested.

To take some statistics and to elaborate on what Gordon Bethune has said, the duopoly will represent 58 percent at LaGuardia, 64 percent at JFK, 60 percent in Boston, 60 percent at DCA, 76 percent at Dulles, and 76 percent in Philadelphia.

Given the current issues in customer service and labor the current seven network carriers are experiencing, the act of concentrating air service with only two carriers must take careful review. With that as a context, let me address a specific area of concern about how the transactions before us might at some point proceed.

Should these transactions proceed, then the airlines at the next layer down will be required to make dramatic competitive responses, including mergers and acquisitions. What cannot occur is that the current two transactions simply be allowed and that that be followed with some thought of a "the door is now closed" policy.

If these deals go through, Delta, like other airlines, must use the full range of competitive tools, including internal growth. But internal growth, as Gordon Bethune has just said, will not suffice for any of the other airlines to reach the necessary size.

In short, approval of these transactions, in my judgment, must be viewed as tacit approval for those that follow because it will be a necessary step for us to take in order to compete with them. Thereby, the Government will have initiated the process that will result in the total remaking of the airline business as we know it today.

Mr. Chairman, it is my belief that such a dramatic structural and competitive change in the vital area of the Nation's transportation system requires time and forethought, and should not be accomplished simply as a consequence of approving current transactions.

Therefore, I would recommend that the decisions on these very important issues, with the exception which I agree with of the American/TWA acquisition, which is essentially a rescue mission, in contrast with the US Airways situation which is clearly not a rescue mission—US Airways is not a failing carrier—I would rec-

commend that all of these other transactions be delayed until we can fully assess the consequences.

I am expressing, I find, in different words the same idea that Senator Schumer has just expressed. I propose we pause to aim before we fire. With such a pause—the Senator used the term “moratorium”—we gain the time to fully consider what type of aviation system we want for our country.

In 1792, while President Thomas Jefferson was confronting one of the most difficult decisions of the Washington administration, he wrote to then President George Washington and said, quote, “delay is preferable to error,” end quote. None of us can predict exactly where these consolidations will lead, but we do know that it will be profoundly different. And for that reason, I believe our next step should be to ensure that the decisions made about this important subject reflect the commitment we all share to ensuring that America’s air transportation system remains the best and most competitive in the world.

I will be delighted to answer any questions.

[The prepared statement of Mr. Mullin follows:]

STATEMENT OF LEO F. MULLIN, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, DELTA
AIR LINES

Mr. Chairman and Members of the Committee, I am grateful for the opportunity to appear before you today to deliver a message which I believe is of crucial importance to the continued health of our nation’s air transportation system. This is a very timely hearing and I commend the Committee for its attention to the issue of consolidation in the airline industry.

As you consider the proposed transactions among four of the seven major U.S. hub-and-spoke carriers—American, TWA, United and US Airways—you are reviewing what could become the catalyst for a complete structural and competitive alteration of U.S. airlines. The conclusions reached about these proposals will have an effect on the future course of the entire aviation industry—an industry of immense importance to the social and economic health of our nation—and it will also impact the viability and success of individual airlines.

Mr. Chairman, there are many issues that you must consider as part of this important hearing, but the eventual outcome must be accompanied by a decision, that, in approving the currently proposed transactions, so must there also be tacit approval of any further airline combinations—obviously with appropriate modifications for the public interest.

This morning, I would like to outline for you three primary implications of the proposed transactions which I hope will illustrate how such a decision would affect everyone connected with the aviation industry—including the 670 million passengers airlines serve each year.

1. These transactions will require that other airlines make dramatic competitive responses.

2. The option of future mergers and acquisitions must be available to these airlines if they are to continue to compete effectively.

3. As all airlines make responsive competitive moves, these first transactions discussed here today will have the effect of completely changing the airline business as we know it today.

THESE TRANSACTIONS WILL REQUIRE THAT OTHER AIRLINES MAKE DRAMATIC
COMPETITIVE RESPONSES.

First, let me describe for you how the aviation marketplace will look if these deals are successfully implemented.

- United will have 50% more capacity than Delta; American will have 42% more capacity.
- United will have 939 planes, American 991. Delta currently has 606 planes.
- United will have 26% of the U.S. airline market, and they will gain a substantial foothold in the lucrative domestic market east of the Mississippi River.

- American, through its acquisition of TWA, DC Air and US Airways assets, will have a market share of 22% of the domestic market. American too, will gain a sizable share of the East Coast market.

Clearly, the impact on the industry will be huge. These carriers are simply doing what their customers and shareholders are demanding: growing to meet customer demand.

The mission of every airline—be it Delta, American, United or any other carrier—is to create a network that allows us to take our customers from anywhere to everywhere. By doing so, we create the convenience as well as the benefits (such as frequent flyer programs) that cause our customers to call on one airline for all their travel needs. Because customers will choose as “their airline” the carrier that provides service to all the places they want to go, size definitely matters when it comes to networks and market share.

Mergers and acquisitions are a means to create a network large enough to accomplish that mission. Such transactions allow carriers to grow their business in an efficient, cost-effective manner—which is what American and United propose to do. As I have said since I joined this industry three years ago, mergers and acquisitions are essential strategic options for any industry, including aviation.

The proposed transactions before the Committee are not, per se, anti-competitive. However, if these transactions are allowed to go forward with an understanding that “the door is now closed” in terms of further industry consolidation, then consumers and other carriers may be required to deal with a huge duopoly. Essentially, Mr. Chairman, the current competitive balance in the industry will be disturbed—and the remaining airlines will be required to make dramatic competitive responses. And mergers and acquisitions must be part of the competitive response arsenal.

Hence, my second point:

THE OPTION OF FUTURE MERGERS AND ACQUISITIONS MUST BE AVAILABLE TO THESE AIRLINES IF THEY ARE TO CONTINUE TO COMPETE EFFECTIVELY.

Let me interject at this point that certainly Delta is among the airlines giving careful consideration to how we can continue to compete effectively if these transactions occur. My purpose here today is not to discuss any possibilities we might have under consideration, nor can I speculate about Delta’s planned response.

As I have stated on many occasions, we are always talking to a number of airlines about commercial opportunities, be they mergers, marketing partnerships, alliances, or other possible arrangements. And while my point is that we must ensure that the option of mergers and acquisitions remains open, I do want to emphasize that internal growth is a viable option for us.

Delta has been the most profitable network carrier for three straight years and we have the lowest unit costs of the large network carriers. We are confident of our ability to compete effectively with American and United in the near term.

Currently, Delta is the largest carrier in the Eastern U.S. Though strategic acquisitions and internal growth, we have targeted our franchise to be a strong competitor in this region, and we have been very successful in that effort.

Delta will continue to respond to this consolidation trend by choosing from all the tools of the marketplace those which best position us to be more effective competitors—and certainly that will include internal growth.

Now, the question often asked is why Delta and other airlines cannot rely solely on internal growth as a means of achieving parity and restoring balance to the industry. Mr. Chairman, if American and United grow to be mega carriers, then to ensure continued competition, all carriers must also grow in some proportionate way.

And while internal growth is an important component of our competitive response, we will require other sources of growth if we are to keep pace with the mega carriers. Consider the math:

- Delta has grown traffic at an average annual rate of 5 percent for the past five years—in a vibrant market.
- Assuming United grows at 3% a year, it would take us more than 18 years to eliminate the network gap.

My point, Mr. Chairman, is that if and when other airlines need to access the powerful tool of mergers and acquisitions in order to remain competitive, they must be allowed to do so.

If the decision the government makes in this case is that “the door is closed” on mergers following these transactions, then the U.S. airline industry will face a competitive problem: dominance by two large carriers. The suggestions that competition would be preserved by closing the merger option to other carriers after the pending transactions are completed is an intellectually barren theory. If United and Amer-

ican are allowed to use mergers to expand their networks, others must be allowed to do so as well.

This brings me to my final point:

AS ALL AIRLINES MAKE RESPONSIVE COMPETITIVE MOVES, THESE FIRST TRANSACTIONS DISCUSSED HERE TODAY WILL HAVE THE EFFECT OF COMPLETELY CHANGING THE AIRLINE BUSINESS AS WE KNOW IT TODAY.

In short, Mr. Chairman, approval of the transactions under consideration must be viewed as tacit approval for those that follow. Once mega carriers have been created, then a competitive marketplace is possible only if the remaining airlines are allowed to respond effectively, with all the necessary tools, which must include acquisitions and mergers.

And thereby, the government will have initiated the process that will result in the total re-making of the airline business as we know it today. As Bismark once said, "Events will be in the saddle."

None of us can predict today exactly where this will lead—but we do know it will be profoundly different.

Mr. Chairman, we appreciate your consideration of Delta's views on this critical issue. I would be happy to answer any questions that you or members of the Committee may have.

Senator DEWINE. Mr. Mullin, thank you very much.

We have a statement that has been submitted by Senator Santorum which will, without objection, be made part of the record. [The prepared statement of Senator Santorum follows:]

STATEMENT OF HON. RICK SANTORUM, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Thank you Chairman Hatch, Senator Leahy and members of the committee. I appreciate the opportunity to submit testimony today on the impending airline mergers. Last year, I appeared before the Antitrust, Business Rights, and Competition to express my concerns regarding the effect of this merger on my constituents. I have also joined Senator Specter at a subcommittee field hearing in Pittsburgh further investigating the specifics of the proposal. Finally, I submitted written testimony for the Senate Commerce Committee's hearing last week on this subject. In each of these instances, I have expressed my particular interest in how the United-US Airways merger relates to jobs and services for my constituents and how they impact competition in the airline industry.

I made it clear when the United-US Airways merger was first announced that to gain my support the airlines had to address my two principal concerns—protecting existing jobs in my state and continuing plans to build a new maintenance facility in Pittsburgh. Since that time, I have received commitments from both United Airlines Chairman Jim Goodwin and US Airways Chairman Stephen Wolf that these concerns would be addressed.

In particular, I was very pleased that United Airlines committed to the long-planned expansion of the maintenance facility in Allegheny County. As one of the largest employers of Southwestern Pennsylvania, this project is critical to the economic well-being of the region and to the thousands of maintenance workers that depend on these jobs to support their families.

I have also heard from many of the small regional airports in Pennsylvania who are concerned that this merger threatens commercial air service to their facility. However, I am heartened by Jim Goodwin's commitment to continue providing the best small community air service possible. I appreciate Mr. Goodwin's recognition that these airports are economic development engines for their rural communities, and I will hold him to his commitment.

I understand that there are still critics of the United-US Airways merger, but I respectfully request that you consider the alternative. Just a few weeks ago, US Airways reported that high fuel prices and expanding low-cost and network carrier competition combined to produce disappointing financial results for the company—a net loss of \$269 million for the year 2000. Absent this merger, US Airways would be in dire financial straits and jobs at US Airways would be in jeopardy. Previous air carriers didn't have the opportunity that US Airways has today. Consider the employees of Pan Am, Eastern and Braniff and how the states where they operated have been impacted.

The status quo is not an option for US Airways. Without the merger to preserve US Airways' service network, the future of air service to Pittsburgh, Philadelphia

and smaller communities across may state is in doubt. The merger would not only ensure but expand service to and from the Commonwealth of Pennsylvania.

Thank you, Mr. Chairman.

Senator DEWINE. Mr. Franke, thank you very much for being here.

STATEMENT OF WILLIAM A. FRANKE, PRESIDENT AND CHIEF EXECUTIVE OFFICER, AMERICA WEST, PHOENIX, ARIZONA

Mr. FRANKE. Mr. Chairman, Senator Kohl, Members of the Subcommittee, thank you for the opportunity to appear today to consider the important issue of airline competition. I am Bill Franke and I represent the 16,000 employees and 20 million customers of America West Airlines.

Four years ago, I appeared before the Senate Aviation Subcommittee and warned that the task of airline deregulation had not been completed. I explained that in the Northeast the lack of access to airport gates and facilities, slot restrictions at New York-LaGuardia, Reagan National and Chicago-O'Hare, and the perimeter rules at LaGuardia and Reagan National represented the unfinished business of deregulation. They still do.

In 1997, I noted that fares in the Northeast were much higher than in the Southwest, where such constraints do not exist, and I urged Congress to take immediate action to level the playing field by creating access and enabling competitive new entry to promote more consumer choice and lower fares.

The Department of Transportation and Congress in last year's AIR 21 legislation took some limited—I might add very limited—steps to address these entry barriers. However, these actions were simply inadequate based upon the scope of the problem. Without significant remedial measures to ensure access to markets by new, limited incumbent, low-cost carriers, approval of the United Airlines/US Airways merger and American's acquisition of TWA, coupled with the splitting of US Airways and DC Air between United and American, firmly closes the door on competition at major Northeast airports.

Fares will go up, particularly in the Northeast to Western markets where, upon completion of these transactions, American and United will together control approximately 62 percent of the market. With the publicly reported possible arrangement between Delta and Continental, the big three would then control over 80 percent of the market.

For 9 years, America West has worked to expand service from its Western hubs in Phoenix and Las Vegas to the Northeast. Today, America West is the only post-deregulation full-service, low-cost network carrier to achieve major carrier status, as defined by the Department of Transportation.

We currently serve 91 cities in the U.S., Canada and Mexico directly or indirectly through America West Express. In East Coast-West Coast markets, our average fares are approximately 29 percent below the major incumbent carriers, and our walk-up fares in these markets are an average of approximately 50 percent below those of our major competitors.

If these proposed transactions are approved, our current level of service in these markets will be threatened and our ability to grow

will be stymied. Simply stated, these transactions represent an attempt by the two dominant carriers to insulate themselves against competition from low-cost carriers such as America West. The transactions will do nothing to make gates, facilities and slots available to new-entrant/limited-incumbent carriers, the only carriers that can provide true stimulus to competition.

With this background, I would like to briefly discuss what must occur with respect to airport gates and facilities, slots and perimeter rules to preserve the potential for new entrant competition in the Northeast.

If the Department of Justice rejects all the proposed transactions, it will still be necessary for the Government to take action establishing reasonable access for new entrant limited incumbents if competition in the Northeast markets is to exist.

First is the issue of gates and facilities. Nothing is more necessary to airline service than an airport gate. Unfortunately, at most of the Northeast airports and Chicago O'Hare, America West and others cannot obtain gates. We simply cannot obtain gates. America West and other new entrants must sub-lease gates and facilities from major incumbent carriers under short-term leases. New entrants have virtually no ability to expand service at these airports or to respond to demand.

For example, at LaGuardia we currently sub-lease a gate from TWA, with which we have a joint frequent flyer program, and recently signed a code share agreement that also provides us access to facilities at several key airports. When American takes over TWA, we have been advised that these arrangements will probably disappear. And without adequate conditions to ensure our access to gates at LaGuardia, our service there is threatened.

At four airports crucial for business markets—Reagan National, New York-LaGuardia, as well as Boston and Philadelphia—the new American/United duopoly will expand from a combined 70 gates to 160 gates. We have been serving the three New York airports for 15 years, but still cannot obtain a gate of our own for our own control and use. We have also been unable to secure gate space in Philadelphia.

Another problem for us is Chicago's O'Hare Airport. While American and United have long dominated this key market, after the proposed transaction they will control 49 percent of the traffic. While officials at O'Hare talk about building a new runway, building gates for new entrants seems beyond their ability.

We are currently sub-leasing a gate from Continental. Recently, when we discovered that six new gates were being built, we asked for two of them. We were refused. Airport officials explained the gates were being built with private money, so the airport was powerless to provide access. We then offered to build two gates ourselves. No, they said, we can't accommodate that. By the way, these six new gates are going to United Airlines.

The incumbents' control over many of these airport facilities is de facto regulation and anticompetitive behavior. The Department of Transportation and the GAO have documented that the major incumbents do not fully utilize their airport facilities and simply refuse to make them available to the low-cost competition.

Significantly, United and American each stands to acquire, respectively, a total of 27 and 33 scarce gates at Logan, LaGuardia and Reagan National Airports. Unless enforcement action is taken, United and American will control 60 percent of all gates at these high-density airports.

To ensure competition is a condition to approval of these transactions, if you should so be inclined, United and American should be required to make a sufficient number of gates and other critical airport facilities available to allow for meaningful competition by new entrant, low-cost carriers to these hubs at the congested airports that United and American will dominate either individually or in combination.

In this regard, American should also be required to honor TWA's existing contractual obligations to lease gates and facilities to America West at Reagan National, LaGuardia, Hartford, JFK, Dallas/Fort Worth, and other airports.

The second requirement for competition is the availability of slots at high-density airports. Every study ever issued on airline competition recognizes slots are a significant barrier to competition. Washington National, LaGuardia and O'Hare are among the top ten markets for virtually every airport in the country. AIR 21 in part was designed to help alleviate the slot problem. Unfortunately, particularly at LaGuardia, the net result was the major airlines obtained even more slots, while new entrants received a trickle of their need.

The transactions before us will result in American and United gaining 404 and 434 slots, respectively, at LaGuardia and Reagan National Airports, this at a time when America West cannot gain any slots for new service and, in fact, is at risk to lose existing Columbus-Reagan National and Columbus-LaGuardia service due to the potential loss of slots.

If, through a lack of slots, we were forced out of the Washington National and LaGuardia-Columbus markets, our Columbus hub and the competition it generates could be lost. This is at a time when United and American together would control nearly 75 percent of the slots at LaGuardia. At high-density airports, the two will control 69 percent of the slots.

The FAA should exercise its authority to withdraw slots United and American would acquire pursuant to these transactions and create a substantial slot pool made available on an as-needed basis to ensure that new entrant/limited incumbents could operate up to 20 slots a day, as contemplated by AIR 21. This slot pool could exist at both LaGuardia and Reagan National to create the potential for new competition at these critical airports.

The final and third component of competitive barriers that continue to exist is the perimeter rules at Reagan National and LaGuardia. Both DCA and LaGuardia are the subject of archaic rules which restrict the geographic reach of service to and from these airports. These rules prevent carriers like America West from flying non-stop from our primary hubs.

Currently, the larger network carriers operate a minimum of 7 to as many as 20 daily flights to primary hubs for connections to Western networks from these markets. These numbers will go up considerably if these transactions proceed as currently structured.

Without adequate service between our Western hubs and these two vital markets, America West's ability to provide a substantial competitive option to consumers will be prevented, and American and United will be able to raise fares dramatically on coast-to-coast service.

Well, why does all this matter, some might ask. I believe there are two major reasons. First, air fares to the consumers. The presence of America West or other low-cost airlines in the market gives the consumer a low-priced option, as well as placing pricing pressures on the larger airlines.

A case in point is our service to Chicago-O'Hare. O'Hare is a slot-constrained facility. Prior to 1999, we had only a few flights to O'Hare, mostly at less than optimal times. In 1999, the DOT granted us a number of slot exemptions at O'Hare. An example of the impact has been that our Chicago-to-Ontario service has seen a 100-percent increase in market share, and average fares are 39 percent below United's service. In fact, as I have stated previously, our average fares from these Eastern business markets to the West are currently 29 percent below those of the larger carrier networks, and nearly 50 percent below the walk-up business fares.

Next, the issue of diversity of service. If essential facilities are concentrated in the hands of a few mega-carriers, they will be used primarily to serve the mega-hubs. This threatens the continuation or expansion of hubbing activity for smaller cities, for places like Columbus or Milwaukee which can support this activity only if they have access to important markets.

As others have stated, we are at a competitive crossroads. Without immediate action in the short run to create access for new entrants at capacity-constrained airports, the Northeast will face escalating fares and a lack of choice in air travel. United and American will not compete on price unless compelled to do so by low-cost carriers.

Mr. Chairman, the commercial airline industry is a network business. You must be able to build a network to compete. In fact, my friend Don Carty, CEO of American Airlines, stated last week at the Senate Commerce Committee hearing that, quote, "If one airline is able to grow its route network significantly larger than its competitors, that airline would have a competitive advantage," end quote.

Mr. Chairman, I certainly agree with that principle. We are trying to grow our network, we are trying to be competitive. Approval of these transactions without requiring remedial measures to guarantee access to these key markets is a recipe for disaster. And where would it all end? Fix two airlines and endanger five others? Force 75 percent of the markets into 3 carriers? What about America West's 16,000 employees and 20 million customers? We just want to compete. We just want to compete, Mr. Chairman.

Thank you.

[The prepared statement of Mr. Franke follows:]

STATEMENT OF WILLIAM A. FRANKE, PRESIDENT AND CHIEF EXECUTIVE OFFICER,
AMERICA WEST AIRLINES, PHOENIX, AZ

Mr. Chairman, Senator Kohl and members of the subcommittee, thank you for the opportunity to appear before you today to consider important issues of airline competition.

Four years ago I appeared before the Senate Aviation Subcommittee and warned that the task of airline deregulation had not been completed. I explained that in the Northeast the lack of access to airport gates and facilities, slot restrictions at New York LaGuardia, Reagan National and Chicago O'Hare, and the perimeter rules at LaGuardia and Reagan National represented the unfinished business of deregulation. They still do. In 1997, I noted that fares in the northeast were much higher than in the southwest where such constraints do not exist and urged Congress to take immediate action to level the playing field by creating access and enabling competitive new entry to promote more consumer choice and lower fares.

The Department of Transportation and Congress in last year's AIR 21 legislation took some limited—very limited—steps to address these entry barriers. However, these actions were simply inadequate based upon the scope of the problem. *Without significant remedial measures to ensure access to markets by new entrant/limited incumbent low cost carriers*, approval of the United Airlines/U.S. Airways merger and American's asset acquisition of TWA, coupled with the splitting of US Airways (including DC Air) between United and American, firmly closes the door on competition at major northeast airports. Fares will go up, particularly in the northeast to western markets where, upon completion of these transactions, American and United will together control approximately 62 percent of the market. With the publicly reported possible arrangement between Delta and Continental, the big three would control over 80 percent of this market.

For nine years American West has worked to expand service from its Western hubs at Phoenix and Las Vegas to the northeast. Today, America West is the only post deregulation full service, low cost network carrier to achieve major carrier status as defined by the Department of Transportation. We currently serve 91 cities in the U.S., Canada and Mexico directly or through America West Express.

In East Coast/West Coast markets *our average fares are approximately 29 percent below the major incumbent carriers and our walk up fares in these markets are an average of approximately 50 percent below those of our larger competitors*. If the proposed transactions are approved, our current level of service in these markets will be threatened, and our ability to grow will be stymied. Simply stated, these transactions represent an attempt by the two dominant carriers to insulate themselves against competition from low cost carriers such as America West. The transactions will do nothing to make gates, facilities and slots available to new entrant/limited incumbent carriers—the only carriers that provide a true stimulus to competition.

With this background, I would like to discuss briefly what must occur with respect to airport gates and facilities, slots, and the perimeter rules to preserve the potential for new entrant competition in the northeast. If the Department of Justice rejects all the proposed transactions, it will still be necessary for the government to take action establishing reasonable access for new entrants/limited incumbents if competition in the northeast markets is to exist.

First is the issue of gates and facilities—Nothing is more necessary to airline service than an airport gate. Unfortunately, at most of the northeast airports and Chicago's O'Hare, America West and otehr cannot obtain gates. America West and other new entrants must sublease gates and facilities from major incumbent carriers, under short-term leases. New entrants have virtually no ability to expand service at these airports to respond to demand.

For example, at LaGuardia, we currently sublease a gate from TWA with which we have a joint frequent flyer program and a recently signed codeshare agreement that also provides us access to facilities at several key airports. When American takes over TWA, we have been advised that these arrangements will probably disappear, and without adequate conditions to ensure our access to gates at LaGuardia, our service there is threatened. At four airports crucial for business markets, Reagan National, New York's LaGuardia, as well as Boston and Philadelphia, the new AA-UA duopoly will expand from a combined 70 gates to 160 gates. We have been serving the three New York airports for 15 years but still cannot obtain a gate of our own to control and use. We have also been unable to secure gate space in Philadelphia.

Another problem area for us is Chicago's O'Hare airport. While American and United have long dominated this key market, after the proposed transaction they will control 94% of the traffic! While officials at O'Hare talk about building a new runway, building gates for new entrants seems beyond their ability. We are currently subleasing a gate from Continental. Recently when we discovered that six new gates were being built, we asked for two of them. We were refused. Airport officials explained the gates are being built with private money so the airport is powerless to provide access. We then offered to build two gates ourselves. No, they said, we can't accommodate that. The new gates, by the way, are going to United Airlines.

The incumbents' control over many of these airport facilities is defacto regulation and anticompetitive behavior. The Department of Transportation and the GAO have documented that the major incumbents do not fully utilize their airport facilities and simply refuse to make them available to the low cost competition. Significantly, United and American each stands to acquire, respectively, a total of 27 and 33 scarce gates at Logan, LaGuardia and Reagan National airports. Unless enforcement action is taken, United and American will control 60% of all gates at the high-density airports.

To ensure competition and as a condition of approval to these transactions, United and American should be required to make a sufficient number of gates and other critical airport facilities available to allow for meaningful competition by new entrant or low-cost carriers to their hubs, at the congested airports taht United and American will dominate, either individually or in combination. In this regard, American should also be required to honor TWA's existing contractual obligations to lease gates and other facilities to America West at Reagan National, LaGuardia, Hartford, JFK International, Dallas/Fort Worth International, and Philadelphia International airports. The second requirement for competition is the availability of slots at the high-density airports. Every study ever issued on airline competition recognizes slots are a significant barrier to competition. Washington National, and LaGuardia and O'Hare are among the top ten markets for virtually every airport in the country. AIR 21 in part was designed to help alleviate the slot problem. Unfortunately, paticularly at LaGuardia, the net result was the maor airlines obtained even more slots while new entrants received a trickle of their need.

The transactions before us will result in AA and UA gaining 404 and 434 slots respectively at LaGuardia and Reagan National airports. This is at a time when America West cannot given any slots for new service, and, in fact, is at risk to lose existing Columbus-Reagan National and Columbus-LaGuardia service due to a loss of slots. If through a lack of slots, we were forced out of the Washington National and LaGuardia-Columbus markets our Columbus hub, and the competition it generates, could be lost. This is at a time when United and American together would control nearly 75% of the slots at LaGuardia. At high density airports, the two carriers will control 69% of all slots.

Prior to these transactions slot concentration was at an all time high. The formation of a UA-AA duopoly will raise slot concentration levels to the point of monopolistic control. Competition among network carriers is possible only if they have sufficient slots at these constrained airports to enable them to provide a competitive level of service to their hubs. Control of these airports by the UA-AA duopoly directly threatens not only route competition but also utimately the viability of any new entrants seeking to compete as network carriers.

The FAA should exercise its authority to withdraw slots that United and American would acquire pursuant to these transactions and create a substantial slot pool, made available on an as needed basis to ensure that new entrant/limited incumbents could operate up to 20 slots a day as contemplated by Air 21. This slot pool should exist at both LaGuardia and Reagan National to create some potential for new competition at these two critical airports.

The third component of competitive barriers is the existing perimeter rules at Reagan National and LaGuardia. Both DCA and LGA are the subject of archaic rules which restrict the geographic reach of service to and from these airports. These rules prevent America West and several other new entrants from flying non-stop to our primary hubs. Currently the larger network carriers operate a minimum of seven to as many as twenty daily flights to primary hubs for connections to western networks from these airports. These numbers will go up considerably if these transactions proceed as currently structured. Without adequate service between our western hubs and these two vital markets, America West's ability to provide a substantial competitive option to consumers will be prevented and American and United will be able to raise fares dramatically on coasty to coast service.

These rules provide no current benefit as their original purposes to stimulate use of Dulles and JFK have long been achieved. Today the LaGuardia perimeter rule not only contributes to the high cost of service but also encourages the misallocation of airport resources that has led to the current congestion problem. Only Congress can abolish the perimeter rule at Washington Reagan and it should proceed to do so immediately. Either Congress or the Department of Transportation, however, can override the perimeter rule at LaGuardia. These are critically necessary actions to benefit consumers using these facilities.

"Why does all this matter?" some might ask. I believe there are two major reasons:

First—airfares to the consumers. The presence of America West or other low cost airlines in a market gives the consumer a low-priced option as well as placing pric-

ing pressure on the larger airlines. A case in point is our service at Chicago O'Hare. O'Hare is a slot constrained facility. Prior to 1999 we had only a few flights to O'Hare, mostly at less than optimal times. In 1999, DOT granted us a number of slot exemptions at O'Hare. An example of our impact has been that our Chicago to Ontario service has seen a 100% increase in market share, and average fares are 39% below United's service. In fact, as I've stated previously, our average fares from the eastern business markets to the west are currently 29% below those of the larger network carriers and nearly 50% less for walk-up business fares.

Next—the issue of diversity of service. If essential facilities are concentrated in the hands of a few mega-carriers, they will be used primarily to serve the mega-hubs. This will threaten the continuation or expansion of hubbing activity in somewhat smaller cities, places like Columbus or Milwaukee which can support this activity only if they have access to the most important markets. There is no reason cities such as these should be denied the economic benefits of affordable and convenient air service as envisioned by airline deregulation.

As others have stated, we are at a competitive crossroads. Without immediate action in the short run to create access for new entrants at capacity restrained airports the northeast will face escalating fares and a lack of choice in air travel. United and American will not compete on price unless compelled to do so by low cost carriers. If these transactions are approved, without adequate conditions imposed by the Department of Justice coupled with actions by DOT and Congress to promote competition, there will be limited or no low fare competition at many major airports. In addition, the potential to extend competition into smaller communities, as America West does in the west and seeks to do in the east through Columbus, will be lost. These issues are discussed in detail in our submissions to the Departments of Justice and Transportation, which I have attached to my testimony.

Mr. Chairman, the commercial airlines industry is a network business. You must be able to build a network to compete. In fact, my friend Don Carty, CEO, American Airlines, stated last week at the Senate Commerce Committee hearing that "If one airline is able to grow its route network significantly larger than its competitors, that airline would have a competitive advantage."

Mr. Chairman, America West agrees with that principle. We are trying to grow our network—to be competitive. Approval of these transactions, without requiring remedial measures to guarantee access to these key markets is a recipe for disaster.

Senator DEWINE. Mr. Franke, thank you very much.
Mr. Leonard?

**STATEMENT OF JOE LEONARD, CHAIRMAN AND CHIEF
EXECUTIVE OFFICER, AIRTRAN AIRWAYS, ORLANDO, FLORIDA**

Mr. LEONARD. Thank you, Mr. Chairman, Senator Kohl, members of the committee. Thank you for inviting me here this morning.

What the Government does or does not do in the next few weeks with regard to airline consolidation will have a very long-term impact on the costs and the quality of service in the airline industry throughout this country for decades to come.

In my view, there is only one way to reconcile the public interest with the market forces that exist, and that is a new initiative of genuine competition. You implement that initiative by breaking open the door to the fortresses that the major carriers have skillfully constructed around the publicly owned and government-regulated assets, i.e. slots and gates. That can be done under existing authority, and it should happen without delay and without regard to whether any of these mergers go forward.

DOT has the authority, and has exercised that authority in the past to open gates and slots to competition. In the next few days, AirTran intends to file a complaint with the DOT against American and United and TWA and US Air, without regard to what DOJ is doing on these antitrust issues, to open the facilities to us. I urge you to join in supporting that petition and I urge to join any other

low-cost carriers that file similar petitions, which I believe there will be.

Whatever else you think about these deals, it takes quite a bit of imagination or an intense sense of humor to argue that they comply with the antitrust laws and that they conform to the DOT's mandate to advance competition. These are not separate agreements, as has been announced. They are very much linked by the American role. Long-term control of assets without regard to who they belong to now is the end game here.

Let's take a look at a couple of the terms of the deal. In this case, the devil is definitely in the details. American and United have agreed that for the next 20 years they will fix fares and schedules in the shuttle markets. They have agreed to fix both corporate discount rates and consumer rates as well.

American and United have agreed not to operate or work with any other carrier in the high-frequency, competitive market between Boston and Washington. United has agreed to lease scarce gates and locked-in slots to American at a nominal rate, while at the same time every time we try to get a slot it is at an exorbitant rate. American and United have agreed to code share flights that feed hub-to-hub flights, including markets like San Jose-to-Denver where they are the only two competitors.

United has essentially sold the D.C. slots to American, with the elimination of the no-flip turn, from its original agreement with US Air. Therefore, DC Air can sell its slots to American any time it chooses, and its supposed role as an independent competitor will vanish completely.

American and United have agreed to limit each other's growth, with penalties if American gets too big. American and United have agreed to only sell and lease hangars to each other. This is simply another way of controlling yet another vital resource and asset in the aviation industry.

This sounds to me more like an antitrust extravaganza than a remedy to the problem. The human tragedy is that the employees of US Air and TWA and the cities that they serve are inadvertently hostages whose future is presented to you as a tradeoff for this anticompetitive consolidation.

For the cities affected, I would suggest that you study American's history in serving marginal cities after they acquire airlines. After the acquisition of Air Cal, all of those routes were eliminated. They have eliminated the Raleigh-Durham hub, the Nashville hub, the San Jose hub, and more recently the Reno hub. Reno is now down to 11 flights a day by American Airlines. So if history is a good teacher here, and I suggest it is, if I lived in St. Louis or Syracuse or Charleston or Morgantown, I would start checking the train schedules.

The only way to cure a monopolistic, anticompetitive practice is through real competition, which means open airports to low-fare carriers like AirTran and JetBlue. We will and can discipline the major airlines. We have demonstrated that in the markets that we currently operate in. Allowing us to develop networks is fundamental for competition to go forward.

You can't accomplish this by distributing a handful of slots here and a handful of slots there. For us, that means 100 to 150 slots

so that we can build a meaningful network at DCA and in many of your States. Whether the slots come from the FAA or DC Air or United, American and TWA is irrelevant. What is important is that there be a redistribution of these vital assets to create a network service on the East Coast. We are certainly willing to compete; we just need some help in opening the door.

Mr. Chairman, you and members of the Committee are the guardians of the consumers, the traveling public and the communities across America. You must speak out now before these events take place and it is too late. Otherwise, a year from now there will be another hearing talking about why fares are so high and service is so small and why service has been eliminated to small and medium communities.

Mr. Chairman, thank you very much for permitting me to be here today.

[The prepared statement of Mr. Leonard follows:]

STATEMENT OF JOE LEONARD, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, AIRTRAN AIRWAYS

Mr. Chairman and Senator Kohl, members of the Committee, I thank you for the opportunity to testify this morning. I commend you for your leadership in acting quickly to investigate proposals that will transform the airline industry as profoundly as did deregulation.

Make no mistake—what the government does, or does not do, over the next several weeks with regard to airline consolidation will have a long-term impact on our economy and on business and communities throughout the country. Unchecked and unmodified, the pending agreements will stifle competition, raise fares, and condemn hundreds of small and medium size communities to limited and high-cost air service for years. No one can seriously doubt that outcome.

Regardless of what happens with the pending proposals, this problem is not going away. The gravitational pull of market forces have brought these deals together, and those same forces will bring them back to you time and time again.

Interlocking networks, and the ability to flow passengers to multiple destinations, is the lifeblood of an airline—whether it be an old-line institutional carrier or a low fare provider. These deals are on the table because airlines want slots, gates and big networks—Don Carty told us that last week. What he didn't say was that American and United want these resources without the inconvenience of effective competition.

In my view, there is only one way to reconcile the public interest with these market forces—a new initiative on genuine competition.

You implement that initiative by breaking open the door to the fortress that the major carriers have skillfully constructed around publicly owned or government-regulated assets—slots and gates. That can be done now under existing authority and it should happen without delay and without regard to whether any of these mergers go forward.

Let me turn to the issues that confront the Subcommittee today—the legal and anticompetitive implications of the pending consolidations and acquisitions.

Whatever else you might say about these deals, it takes a lot of imagination or a great sense of humor to argue that they comply with the antitrust laws and conform to DOT's mandate to advance competition.

These are not separate agreements—they are linked by American's role. Control of the assets is the issue and how they fall into American's hands to the advantage of American and United is not a particularly relevant consideration. TWA's slots and gates are as much public assets as those belonging to USAirways. Putting them under American's control has the same anticompetitive consequences—the consumer pays and American profits.

All of these agreements among American and United, United and USAirways, American and DCAir and American and TWA are linked. They cannot be reviewed, approved or rejected separately. They are linked in terms of the business plans that stimulated them and they are linked because collectively they will define price and service for the consumer for years to come.

American and United will control 50% of the airline seats in the nation with levels of concentration that would make the robber barons of old green with envy:

- 94% at Charlotte
- 80% at Philadelphia
- 65% at Washington National
- 92% at Pittsburgh

These agreements provide American and United with a major structural advantage that they do not have today. That structural competitive advantage—the carving of the nation into three or four cartels—is the only reason these interlocking deals make sense. As my colleague at TWA, Bill Compton, has acknowledged, no offer came to his table until the original USAirways/United deal was on the radar screen. It also did not come until it appeared that DOJ was saying no to the original proposals.

Lets take one moment to look at some of the terms of these agreements—in this case the devil is definitely in the details—

- American and United have agreed that for 20 years they will fix fares and schedules in the shuttle markets—one of the most important business markets in the nation—they have even agreed to fix corporate discount rates on the shuttle and if that is not enough, they have also agreed to fix their non-published fares—the net fares and those discounted fares that are sold through consolidators—all of this on the back of their control of slots and gates in these markets;

- American and United have agreed not to operate or work with any other airline to operate high frequency competitive service between Boston and Washington;

- United has agreed to lease scarce gates and locked-up slots to American at a nominal rate;

- American and United have agreed to code share on flights that feed certain hub-to-hub flights including markets like San Jose/Denver where they are effectively the only two competitors. At the same time they won't codeshare with any new entrants;

- United has essentially sold the DCA slots to American with the elimination of the “no flip” term of its original agreement with USAirways; what this amounts to is that DCAir can sell its slots to American at any time and its role as an independent competitor—if it would in fact ever be one—is totally dependent on a “trust me” representation by its owner. I happen to have a great deal of respect for Bob Johnson as an honorable and smart businessman. But I have to note that when he was talking recently to the Washington Post about slots he commented that every businessperson has to have an exit strategy. Based on published reports, he appears to have financial incentives to sell his assets sooner rather than later. Whatever tiny element of competition comes with DCAir goes away when American controls it;

- American and United have agreed to limits on each other's growth—if American acquires any major airline that makes it 7.5% larger than United, American has to sell back all of the shuttle assets and if there is a divestiture in any acquisition deal, American must first offer to United the assets to be sold—a good way to avoid nuisance hearings before Congress;

- Finally, and here I must say this one is a bit of a puzzle—we have the “mystery of the maintenance bases.” American and United, which each have multiple line and heavy maintenance bases, have agreed that for 10 years they would not sell or even lease any such base without offering it first to the other. Don Carty last week testified that the four TWA maintenance bases were scarce resources and that that was one of the reasons American wanted to acquire TWA. That suggestion of control of scarce resources may explain the “mystery”, but what is that agreement doing in a deal that is supposed to be remedying antitrust concerns arising out of a carving up of USAirways?

As I said earlier, the devil is in the details. The details of these agreements sound awfully like an antitrust problem rather than a remedy.

The human tragedy is that the combined employees of USAirways and TWA and the cities that they serve are inadvertent hostages whose future is presented to you as the trade-off for an anticompetitive consolidation.

For the cities affected, I would suggest that they study American's history of promises when it acquires airlines. When American bought Air al and Reno, it trumpeted the same promises of more and better service and ended with American slipping out of town and leaving the communities with less service than before.

History is a good teacher here, and if I was in St. Louis or Syracuse or Charleston or Morgantown—I might start checking train schedules.

Let's also not be fooled by the now familiar theme that Southwest will save the consumers with the “Southwest effect” on fares—essentially this amounts to American and United saying, “don't worry if we gouge you on fares—Southwest will pro-

tect you." Well, Southwest is big in Baltimore, but travelers out of Washington National still pay premium rates going to the same places. That is not going to change simply because American replaces USAirways in Washington. As Mike Levine testified last week, Southwest appeals to a different market and is not going to save the nation from the major airlines as they consolidate.

As obvious as it is, it bears repeating now—the only way to cure a monopolistic, anti-competitive practice is through competition. Opening airports to low fare providers like AirTran can and will discipline the major airlines. It will spawn a new generation of low fare providers like AirTran and Jet Blue. Allowing us to develop networks is a foundation stone for competition going forward.

You cannot accomplish this with an Air 21 type solution of handing out a handful of slots. In a place like Washington National, AirTran and other low fare carriers needs a significant number of slots and a fair number of gates to effectively compete. For us that means we need at least 100 slots to put together a meaningful network to bring low fare service to Washington National. Whether those slots come from the actions that the FAA should take to fairly distribute these public assets or from DCAir or from the hundreds that American, United, USAirways and TWA collectively control is not the issue. What is at stake is the use of these public assets to bring competitive choice to consumers. We are prepared to compete against all of them—just let us get in the door.

DOT has the authority to open the gates to competition and in the next few days AirTran intends to file complaints at the DOT against United, American, USAirways and TWA to proactively force divestiture of slots without regard to what DOJ says on antitrust issues. I urge you to join in supporting that petition or similar petitions by other low fare carriers.

Mr. Chairman, you and the members of this Committee are the guardians for consumers, travelers and communities across America. You must speak out now before events make it too late. Otherwise, a year from now you will be having hearings on why fares are too high and why service is so poor to small and medium sized communities. At that point, it will be too late to do anything.

Do not let this situation turn into an airline version of the California power deregulation crisis. Do not put yourselves or the American people into a position a year or two from now when everyone may be saying—"how in the world did we get into this mess?" You have the answer to that question today.

Thank you again for letting me appear before you today.

Senator DEWINE. Mr. Leonard, thank you very much.
Professor Levine, thank you for being here.

STATEMENT OF MICHAEL E. LEVINE, ADJUNCT PROFESSOR OF LAW, HARVARD LAW SCHOOL, CAMBRIDGE, MASSACHUSETTS

Mr. LEVINE. Thank you, Mr. Chairman, and thank you for the Committee inviting me. I am, as you probably know, as a Committee witness. Unlike these gentlemen, I don't represent thousands of employees or anyone else, but I do have a perspective that I hope the Committee will find useful.

I have been a lifelong student of the airline industry and airline deregulation. I was a student of Bob Bork's at the Yale Law School and I studied economics at the University of Chicago, and I am not hostile to very active business competition and I don't think that mergers are, per se, a terrible tool for managing a company.

But we do have laws that are designed to keep mergers from forming monopolies, and I spent much of my early career trying to deregulate the industry so we could unleash the forces of competition. I have studied that. I was chief of staff for Fred Kahn at the CAB when we deregulated the airlines.

I have had experience in the business with three different kinds of airlines—Continental, which was then a transitional carrier moving from regulation to deregulation and struggling to change itself; New York Air, which was a new entrant carrier and in which I discovered how difficult it can be to compete a new entrant car-

rier; and more recently Northwest Airlines, which is one of the larger network airlines. So I think I have a somewhat different perspective on the industry from most people.

I am here because I frankly worry about the threat represented particularly by the American Airlines/United Airlines and US Air deal to deregulation and the fruits of deregulation.

A little history might be useful here. American and United are the survivors of the big four of the regulated period. They included Eastern, now gone to its reward, and TWA, whose funeral we are sort of presiding over as we sit. They adopted after deregulation a strategy that was going to allow them to grow, to become very big, ubiquitous network airlines. They kind of started an arms race between themselves.

Other airlines decided they didn't want to get left behind, and what you may remember from the 1980's was a sort of an orgy of expansion as everyone tried to become ubiquitous. The expansion was terminated abruptly by the recession of 1990 to 1992. Ubiquity seemed like a sort of disastrous pursuit.

Coming out of the recession, airlines built strong networks, as Mr. Bethune was saying, built around regional cores that also had a national extent. What happened, interestingly enough, is that market share actually began to move toward Delta and toward Continental and toward Northwest, particularly, and originally toward US Air as well for a while. That market share threatened to erode the network superiority that the ubiquity strategy was designed to achieve.

What has happened is that basically they have decided—United made the last move in attempting to put together a network by the US Air acquisition on its own. That has serious antitrust problems. It has been said that the so-called carve-out solution with DC Air didn't pass the laugh test. I don't mean that unkindly to Mr. Johnson or his intentions at all, but no one seriously believes that DC Air can be a major competitor in Washington to a large trunk airline that controls assets up and down the East Coast, especially if it is operating at relatively high cost with relatively small airports. DC Air is going to have relatively few big jets. Regional jets are another matter and they don't represent the same kind of competitive arrangement.

What happened was when that ran into trouble, American, in what I regard as a really brilliant move, concocted these two deals, the TWA deal which cast a kind of failing company, dark pall over the whole business and suggests that you can see this whole transaction—and it was presented here this morning as a transaction to save two failing carriers. There is only one failing carrier here, and that is important to understand.

And then, in addition, to end the war for ubiquity by declaring a truce with United, they are going to divide up US Air. As has been pointed out here by other members of the panel, the most important asset you get is control of the fortress; that is, of the limited slots and gates that are in the Northeast which is the key to running any network in the country because of the large number of people who want to travel there and who originate there. Those people cast a benefit over your whole system, a benefit which will be locked up by United and American by this transaction.

It is important to understand that this is a quantum leap. It is not just an evolutionary move, it is a revolutionary move. It is designed to end what had evolved into a rather competitive network industry. I don't mean to suggest there are no defects. I don't mean to suggest that some people don't pay some very high fares under some circumstances, and you can argue whether they should or not.

But the business on the whole has been examined by scholars for 20 years and every one of them has found it to be relatively competitive and beneficial to most travelers most of the time. This is designed to end that arrangement and to restore what they regard as the natural, rightful leadership of American and United as a big two, and a big two protected from encroachment, as you have heard on the panel this morning, by the slot, gate and runway shortages in the Northeast which are going to be with us for a long time to come.

I think it is important to understand this deal that way because this is not just another merger. It shouldn't be dealt with by the Justice Department as just one more business proposition put in front of them to examine. It should be understood in context, and I am trying to provide the Committee with some context this morning.

Joe has just been through some of the rather odd aspects of the United/American deal. I won't highlight them any more, but there are a couple of really interesting points that ought to be considered.

United and American have testified that they are arch-rivals, or at least American has testified last week that United is its arch-rival and they can be expected to be extremely competitive. Why is it United is prepared to let its arch-rival, American, provide competition at National Airport rather than Continental, which offered to make an arrangement for carve-outs, and Joe Leonard's AirTran which offered to make arrangements? I know that there are some non-public offers that have been made.

There is no question that these slots at Washington National are very valuable, and that there are several volunteers who would be happy to step up and assume the public duty of providing United with some competition here in Washington, D.C. I think it is kind of interesting that United has chosen its arch-rival, American, as its competitor.

United is acquiring as part of the US Air deal the shuttle, which is really from a network standpoint a crown jewel, as Delta recognized a while ago when they took over the other shuttle, the one we started at New York Air, actually, many years ago. The reason it is a crown jewel is that a lot of people who buy a lot of tickets to a lot of other places fly the shuttle. If you can get them in your frequent flyer program, if you can get their corporations to make contracts with you on the shuttle, it gives you a big leg up in making contracts elsewhere in what is a network business.

United has offered to share the shuttle with American, its arch-rival. Isn't that extraordinary? But the deal is off if American gets too big. That is also extraordinary. This is not a declaration of a new competitive war at a new level. This is a truce. This is at least an armistice that is meant to—I would say it is meant to last at least as long as the one in Korea has lasted. I don't really know

what will happen 50 years from now, but it is probably good for another 50 years. I think that is also extraordinary.

It has been suggested that you need not worry about this because Southwest and other low-cost carriers are going to provide competitive discipline. I have enormous respect for Southwest and the job they have done. I admire the consumer benefits they have brought. Their example and PSA's example in California I cited in an article 35 years ago when I urged the country to adopt airline deregulation as a strategy.

But what Southwest does is not a direct substitute for network competition. It provides an extremely valuable alternative to people who want to use it and who, in effect, Southwest pays for using it. I think that is great, but it won't get you to either the biggest airports, because Southwest finds many of them too expensive to operate to, or many of the smallest airports because Southwest doesn't flow enough traffic to them to make them valuable parts of its network.

Business people and leisure people need both network airlines and discount, quasi-network airlines to provide competitive choice. If the big two create a price umbrella, Southwest—I mean, Herb is a great guy and he is very benevolent, but Southwest will use that and take advantage of that to work their prices up—I don't mean to personalize this, but to work their prices up under that price umbrella. It gives them a lot more room. So customers will not only pay United and American, they will pay Southwest because of the United and American big two that has been organized.

You will see attempts by some of the other members of the panel and by others not here to try to form coalitions in response. That will have the effect of hyper-concentrating the industry. I don't think that is really good. It certainly isn't the vision I had in mind when I worked on airline deregulation.

I realize I have taken a lot of time and I am sorry for that. The written statement is even longer. I apologize.

Senator SCHUMER. I don't want him to stop, Mr. Chairman.

Mr. LEVINE. Finally, the Justice Department needs to take another serious look at its own guidelines for airline mergers. They are both too narrow and too broad. They focus on city pair competition and then they focus on share of the national market. What they don't focus on is the viability of network competition in a network business.

A rework has been done. In my testimony, I suggest a little bit directions in which that might go. But I think that if you do end up asking the Justice Department to examine these mergers very closely, you ought to also ask them to rethink the criteria that they are using to judge airline mergers, not to abolish airline mergers forever, not to eliminate mergers as a tool of business, but to eliminate the possibility of snaking around the antitrust laws to build a so-called competitive position which cannot be eroded for years and years.

Thank you. I will be happy to answer questions.

[The prepared statement of Mr. Levine follows:]

STATEMENT OF PROF. MICHAEL E. LEVINE, HARVARD LAW SCHOOL

Mr. Chairman and Members of the Senate Antitrust Subcommittee: Thank you for giving me the opportunity to testify before you today at what I believe is a critical point in the development of the deregulated airline industry. I testify at the invitation of the Committee as a private citizen and not on behalf of any airline, industry group or other organized interest. My reason for testifying is simple: I have dedicated most of my career first to bringing about a competitive deregulated airline industry and then to demonstrating through my own personal efforts that it is possible for a well-managed airline to survive and prosper in a competitive environment. I see a threat to the continued success of airline deregulation, and I hope to play some part in countering that threat.

I am at present a member of the faculty of the Harvard Law School, teaching courses in regulation and international joint ventures. I have attached a detailed biography to this testimony for your information, but let me say briefly that I have had the unusual opportunity to study, to regulate and to work in the airline industry. This experience has included work as a dean and scholar who has advocated and continues to advocate deregulation at USC, Caltech, Yale and Harvard. It also included a position as the senior staff member at the Civil Aeronautics Board under Alfred Kahn and then Marvin Cohen during the most pivotal deregulation period. And I also have had the opportunity to participate in the industry as a CEO or senior executive of a transitional network airline (Continental), a new entrant airline (New York Air) and finally at the fourth largest airline in the United States (Northwest).

I am very concerned about the consequences for industry competition and ultimately for consumers of the proposed division of US Airways between United Air Lines and American Airlines.

Before I discuss that transaction I should make clear that the "companion" merger between American and TWA on its own presents no serious competition problems. That TWA is a failing company seems beyond doubt. The TWA deal may present difficulties for American in terms of labor, fleet and systems integration. Those problems may present service problems for the traveling public but if they materialize, the public can deal with them by avoiding American. They will still have that choice because the American-TWA transaction will not change the structure of the industry and does not present a threat to the competition that is necessary for deregulation to succeed as a public policy. This matter should be left to the marketplace and the bankruptcy courts.

American has justified its merger with TWA on its own merits at the same time that it has presented it as part of a strategic package that includes American's agreement with United to divide US Airways. It seems clear to me that the most important purpose of the TWA deal is to help give a "failing-company" cast to the whole four-airline transaction, and to provide political cover (preserving 20,000 jobs and a large-airline hub presence at St. Louis) to politicians and government officials as they consider a total transaction much more difficult to justify on competition grounds. The second major benefit to American is not the chance to operate a St. Louis hub, but rather to use TWA's slots and facilities at congested East Coast airports to bolster American's New York and East Coast strategic position and to use TWA aircraft to achieve market share parity with United as part of the Big Two strategy discussed below.

The significance of the TWA transaction is that a closer look at it raises suspicions about American's strategic motives. On its own, the TWA transaction is difficult to justify commercially. TWA has been carefully examined as an acquisition candidate by every major airline (more than once, in many cases), and I believe that those studies all came to the same conclusion: while St. Louis is well-located and can support a hub of some size, it would be very difficult for a "normal" network airline to make any significant profit there.

First and most important, operating a hub on top of Southwest Airlines means that normal hub economics are impaired by the inability to charge normal hub fares to short-to-medium haul business travelers, and as Southwest's system continues to evolve out of its previous short-haul, point-to-point mode, that effect becomes more and more severe. Just ask America West, which has had considerable difficulty maintaining at Phoenix a revenue base adequate to support a significantly profitable hub operation, even at its very low costs. When you add into this equation American's labor costs and the transition costs of labor, systems and fleet integration, it's difficult to believe that American's better credit and better fuel purchase position and the overhead savings from eliminating TWA's management infrastructure make this transaction taken by itself additive to American's earnings or worth

the risk. I know these numbers didn't work for anyone else, and would be surprised to learn that they suddenly make sense on their own for American.

Second, this is clearly a case where American is acting in concert with United to achieve jointly-shared strategic goals. If United was only interested in solving the Washington, DC part of the antitrust problem presented by its own US Airways deal, any number of other airlines would have been willing to help them out. But rather than Continental or Airtran, who have publicly indicated a willingness to work with Robert Johnson to produce a DC Air that would be a full-blooded competitor to United (or rather than the couple of other airlines who are rumored to have expressed serious interest), United has chosen to work with the airline that is its supposed arch-rival and that should be its most difficult competitor from the standpoint of network coverage ("scope"). In fact, when the transaction is taken as a whole United has cooperated in fashioning a deal that represents a giant step forward for American in achieving its stated goal of network ubiquity even as it impairs United's attempt to build a uniquely ubiquitous position. Why would United do this? To understand, I think we need to look at a bit of history.

American and United are what remain of the prederegulation "Big Four". Eastern has gone to its reward and TWA, shrunk to a shadow of its former self, is about to follow. Both were victims not only of their own managements' strategic mistakes, but also of their inability to persuade their own labor forces to adapt proactively to the changed circumstances of deregulation. United and American, facing the same concerns about their ability to survive deregulation given their high costs, adopted a different management strategy: they persuaded their labor forces in the postderegulation period to reach accommodations that lowered marginal labor costs ("B"-scales, ESOP, periodic scope relief, etc.) and allowed fleet and system flexibility in return for assurances of growth, producing more job security and richer lifetime career paths for employees. They coupled this with adoption of a "ubiquity" strategy, in which the size and reach of their networks would allow them to meet almost every air transportation need of every airline customer. This ubiquity would be used to differentiate themselves from new entrants for business travelers and to gain a revenue advantage over other network competitors. United announced shortly after deregulation that it had become the first airline to serve all 50 states. American moved to Dallas so that it could serve a very large, centrally located, facility-unconstrained O&D market as a national hub. The idea for both American and United was that they would ultimately overwhelm smaller network competitors as customers and travel agents chose to sign contracts with and use the frequent flyer benefits of the airline that could satisfy the largest portion of their needs.

On their way to unchallenged ubiquity, two things happened. Other network competitors saw what was happening and refused to roll over quietly. First Texas Air, then Delta, Northwest, Allegheny/US Air (remember the Piedmont merger and the name change?) and Continental on its own attempted expansions designed to enhance their own ubiquity and thus survivability. A sort of ubiquity arms race ensued, which caused severe self-damage to more than one participant and nearly destroyed the entire industry when the economic expansion of the 1980s segued into the recession of the early 1990s. In the process, Delta became large enough to approach American and United in size, but more important, the recession-induced stunting of the growth process evolved the industry into an "almost-national" mode, with each successful network airline building and defending regional core positions that supported a large but incomplete national hub system. The traveling public benefited hugely from this process (shareholders benefited less!). The almost-national systems were very large and provided many of the benefits of complete network scope. People in spoke cities often had a choice of as many as half a dozen competing hub carriers that could meet a particular trip need, hub-located travelers could get nonstop service to 80 or more destinations comprising most of their travel needs and most travelers could meet virtually all their needs by concentrating their business on two systems, for which they were rewarded with frequent flyer benefits they valued greatly.

But from United's and American's perspective, this was not such a splendid state of affairs. They had built their labor strategies around paying labor for growth and the ability to use their network strength to capture revenue premiums (monopolistic rents). Growth was slowing as it had become clear that capacity expansion would be defensively matched and there was not enough new business to support profitable expansion for American and United relative to the rest of the industry. The national market became more concentrated among the top five network airlines and Southwest, but almost all of the incremental share went to Southwest, Delta, Northwest and Continental. The development of alliances by smaller airlines as a way to achieve many of the benefits of network size without the risks of overcapacity further eroded their revenue premiums. The net result of twenty years of deregulation

was NOT that American and United had become uniquely ubiquitous airlines, but rather that they had come to share the network industry with several competitors that not only wouldn't go away, but which constrained the possibility of further share expansion. For American and United, the strategic question became: how can we (either American or United or both) gain a network size advantage that can't be duplicated and eroded and which will yield monopoly rents to support our very high costs?

Both airlines came to the conclusion that the key was the East Coast: United already dominated network service on the West Coast, but the West Coast has relatively few cities and while those cities wouldn't support more than one network (as American repeatedly found out through expensive tests—the Air Cal and Reno acquisitions and the San Jose north-south hub), its relatively uncongested, separated airports were ideal for expansion by Southwest. Further competitive shifts toward American/United were unlikely there. Delta's Atlanta hub operation along with expansion by Southwest and Airtran made the Southeast unpromising. The midline of the country provided as many opportunities to Continental and Northwest as to American and United, especially given the constraints at Chicago-O'Hare.

By contrast, the East Coast has a variety of interesting features which might allow it to underpin a sustainable network size and scope advantage which could be leveraged into a dominant position: a large part of the nation's population and travel origin is located there. Airports are congested and facilities tight, making substantial matching expansion by network competitors difficult and substantial discount competition at the primary business airports nearly impossible. Four major population concentrations are the focus of much of the business traffic: Boston, New York City, Philadelphia and Washington. Northwest has no presence there except through the Continental alliance. Continental's and Delta's strength is largely limited to Newark (Continental) and north-south and transatlantic service (Delta). Transcontinental business is already dominated by American and United. Continental has only been able to build a significant transcontinental business from its Newark hub using narrowbody aircraft and Delta has been unable to make a significant dent in these markets. United has built a hub at Dulles and American has made a significant effort to build its presence at Boston, but neither of these efforts have produced a sufficient increment in East Coast presence to allow unduplicable network expansion that could cast a halo over the entire United States system.

American started to build an alliance with US Airways, the only airline with strategically-located sufficient mass that could make a difference to its network strength. The alliance involved codesharing, a frequent flyer deal and computer systems integration which lowered American's costs. Northwest and Continental built an alliance which made Northwest a much stronger competitor to United in the Midwest and over the Pacific and strengthened Continental's position in New York. These developments concerned United greatly. United was offered the opportunity to do something decisive in response by US Airways management's conclusion that its structural and cost problems couldn't be overcome without major flexibility by its unions, and its consequent decision to save its shareholders by bailing out after an attempt to reach union accommodation failed. The result was the United/US Airways deal.

What United expected to get out of the deal was an effective monopoly in Washington and Philadelphia, a greatly enhanced position in Boston and New York, and a major frequent flyer presence in the very important Shuttle markets. It hoped simultaneously to strengthen its revenue position vis-a-vis American, achieving through system market power what it had never been able to achieve through service and operations and to finally separate itself from the increasing competition offered by Delta, Continental and Northwest. That United paid too much is a tribute to Stephen Wolf's bargaining skills. That it did the deal without getting the union consents that would have helped manage transition costs is a confirmation of the priority that United's management gave the deal and how much impact on competition of the priority that United's management gave the deal and how much impact on competition they expected it to have. There are many who think that this transaction might have in the end cost so much that it wouldn't have made a profit for United. That the costs of integrating the two airlines might have been such that its shareholders might not ultimately have benefited does not mean that there were no monopoly profits to be made, but only that the monopoly profits would be distributed among US Airways shareholders, United's labor force and Robert Johnson.

The only problem with all this is that the United/US Airways deal, despite its beautifully prepared political campaign, appeared to be in danger of failing. The DC Air "cure" to the Washington problem was not passing the laugh test. No one seriously believed that a United-supported DC Air with a large commuter component was likely to provide significant stand-alone competition to United in Washington.

Offers of “help” by Continental and Airtran put United between the devil and the deep blue sea with respect to its transaction goals. Giving Continental a strong Washington position was the opposite from what United was trying to achieve in redistributing network system strength away from its pesky pursuers. And allowing a discount airline like Airtran to operate from the business revenue heart of its East Coast hub strength (bad enough to have Southwest at BWI!) would be very damaging to United’s Washington economics and would make the transaction even more expensive by a substantial margin (in much the way that Southwest’s presence at St. Louis makes the TWA transaction expensive for American).

American, with the prospect of losing its US Airways relationship and of seeing its United rival get a structural lock on a superior network position, offered United a brilliantly-conceived truce that was much more valuable to United than a failed deal and a continued war with Delta, Continental and Northwest. In effect, it offered to jointly share ubiquity, establishing barriers to further merger. With the TWA deal and the deal as American and United have structured it, American and United would be almost exactly the same size at about 25% of the national market. Each of the Big Two could sustain a revenue premium relative to Delta, Continental and Northwest and generate network monopoly premiums to help stave off the economic impact of Southwest. Neither would have the incentive to erode those rents through price competition with the other (because little relative share gain would be possible), so pricing discipline would be maintained without collusion. While there would be a possibility that Delta or Continental might try to defend itself by combining with Northwest, none was a failing company and the Justice Department could be expected to be hostile, given its record in the Northwest/Continental control case. Paradoxically enough, the United/American joint monopoly position could be defended with the antitrust laws!

Even if their rivals could merge, no one would have the combination of Boston, Philadelphia and Washington strength available to the Big Two and could achieve the same system leverage. American could make itself stronger in New York through the TWA system leverage. American could make itself stronger in New York through the TWA deal, achieve near-parity in Washington and Boston, and concede Philadelphia. It could make excellent network use of the Washington and other Northeast slots and gates it gets in this deal because of its success in using regional jets to maintain presence on mainline routes. Its ability to sustain a network advantage over “the others” would be assured. United would strengthen its position in Washington, Boston and New York, gain control of key facilities and slots, and build an East Coast North/South system. For both American and United, rivalry with each other along nonprice dimensions while each had market power relative to the rest was an attractive alternative to the status quo.

The Big Two position that these transactions would create is likely to last a very long time. The large pool of customers available in the Northeast and the ability to use the scarcity of slots and gates at its congested airports to lock them up will make it impossible to duplicate the Big Two position that American and United will share. No comparable opportunity will be available to other big network airlines and therefore no other network airline will be able to match United’s and American’s ability to offer corporate contracts, travel agency and internet incentives and frequent flyer benefits. Over time, Delta, Northwest and Continental will find it increasingly difficult to capture East Coast business passengers, providing less flow at their hubs and supporting less service than American and United will be able to sustain. The gap between American and United and the “others” will grow.

Among the strongest pieces of evidence that this narrative captures what the participants predict and intend in this deal is the treatment of the US Airways Shuttle, which is a crown jewel in any network scope strategy. The Shuttle is used primarily by a group of business travelers who are also the ones most likely to buy high-priced tickets to elsewhere from Boston, New York and Washington. In Delta’s hands, the other shuttle is one of the assets most valuable in its efforts to move toward network parity with American and United. As a potential source of monopoly dominance, the US Airways shuttle is wasted in US Airways’ hands because US Airways doesn’t have the complementary system strength to take advantage of it. In fact, the Shuttle doesn’t even serve Philadelphia, which is US Airways focus for much of its valuable business flying! American had a temporary advantage over United through its alliance with US Airways. United grabbed it back. United’s giving up exclusive control of the network value of this Shuttle only makes sense in the context of a shared-dominance strategy in which both airlines see its principal value as enhancing their ability to suppress competition on the rest of their networks. This view of the transaction is confirmed by the fact that United gets to keep all of the Shuttle if American concludes an acquisition that makes its bigger than United!

This discussion doesn't deal with all of the potential objections to this transaction, some of which are common to the United/US Airways transaction as well. For example, public vulnerability to labor disruption is increased as more of the system falls into fewer hands. The public consequences of a job action on an airline so big that the rest of the system simply cannot absorb its business are very serious, as are the consequences of the associated imbalance in bargaining power. I have tried instead to focus on the subtle and complex competitive dynamics that underlie this transaction in an attempt to explain why this is not just another merger and just another rescue of some threatened airline jobs. (On that subject, I should say that the notion that US Airways is, like TWA, a failing company is entirely wrong. Faced with no alternative, management and labor could work together at US Airways to achieve costs and revenues that would enable it to survive, although some surgery might be necessary. But that's another story for another time.)

What can be said in favor of this transaction? Only that if consumers prefer to concentrate their business on one very large system, we should accomplish them. And there is no doubt that some consumers would prefer to do so, especially if all other things were equal. But all other things will not remain equal. This convenience will come at the price of choice and long-term competition. There are often conveniences to monopoly, as anyone who used to have only one number to call when they wanted to discuss their phone service will attest. But there are benefits from competition which have generally been judged superior as a matter of public policy. If one compares the utility to consumers of having competitive choices among airlines, almost any two of which can satisfy almost all their needs, with the "convenience" of one-stop shopping in a duopoly, I believe that most consumers would prefer competition. That comparison is reflected not only in our antitrust laws, but in the regulatory policies of the past twenty-five years.

It has been urged by at least one observer that we need not be concerned about loss of competitive pressure in the network business because Southwest in particular and other low-cost airlines in general represent a large enough share of the business to discipline United and American. I suppose that the first rebuttal is American and United clearly don't agree with him. It's difficult to justify the cost commitments and vulnerabilities which this transaction entails for American and United without assuming that they believe that they will earn substantial monopoly benefits from the transaction.

There are good reasons for thinking they may be right, even if in the end the transition and labor costs of the deal are so large that it ultimately doesn't benefit their shareholders:

First, although Southwest and its ilk offer a valuable service to their passengers, it is not a service, equally valuable to all passengers. These airlines do not have significant presence (indeed, Southwest has no presence) at the very congested and constrained airports that are the principal focus of this transaction. Business travelers value and will pay for airport convenience, which is why, for example, business fares are much higher from Boston to Reagan National than they are from Providence to Baltimore-Washington International.

Second, these discount airlines do not maintain networks that are easy to use for complicated itineraries or which afford easy access to airports close to smaller cities. They rely on the willingness of a traveler to drive to reach an airport where fares are low. For many travelers, this is an excellent tradeoff, but for a substantial number of business travelers, it is not.

Third, Southwest may be second in the nation in the number of passengers it carries, as some are fond of noting, but it is much smaller in terms of its overall volume of business, which is ultimately how economic impact is measured. Southwest is seventh in the number of Revenue Passenger Miles (the standard measure of output) and even if it grows as rapidly as analysts assure us it will, it will still be responsible for a substantially smaller share of industry total revenue or industry total output than its large network rivals, not to mention the Big Two.

Finally, Southwest itself is not a charitable organization, fully conceding Herb Kelleher's legendary benevolence and charm. Its pricing is constrained by network carriers, just as network carriers constrain it. If the pricing umbrella is set higher by the Big Two, Southwest itself can charge more. Southwest claims that its main competition is the car, but that is only true in the short-haul, point-to-point markets that are no longer the mainstay of its system or the source of its growth. In fact, the car has become much more a complement for travel on Southwest than a substitute. Its customers drive significant distances to get to its uncongested airports. If the Big Two price higher, Southwest can charge more and still make it worthwhile for its customers to drive to its flights. Each rise in Southwest's price level would cost the public a very great deal. Southwest and its brethren are a very val-

uable part of the U.S. airline system, but its existence is certainly not a substitute for strong competition among network airlines.

In conclusion, this is not just another merger and not just another bailout of a failing airline. The American/United/US Airways transaction is an attempt to undermine the competition created by deregulation. It will do this by building a wall of scarce East Coast infrastructure around a fortress occupied by a Big Two, who will use the protection of that fortress to attack their pursuers. With all its imperfections, deregulated airline competition has served the United States well. The Big Four of the CAB, protected from each other by regulation, is now a group of six highly rivalrous network airlines in which at least three of the smaller players are gaining on the larger two, supplemented and disciplined by a large and growing discount airline system. Congress and the Administration should not allow those who have the most to lose from this evolution to put a halt to it.

What should be done? In my view, the current Justice Department merger guidelines are inadequate to deal with network airline competition. By focusing on city-pairs and national markets, they are simultaneously too narrow and too broad. Creating duopolies in affected nonstop city-pair markets ought not to be the goal of merger policy. Counting remaining networks as one by one gets picked off without considering the degree of effective rivalry that the survivors can offer is equally shortsighted.

By considering mergers only one at a time, DOJ's policies allow eggs to be scrambled without gaining an understanding of the recipe of which they are a part. The Department should focus here on the fact that effective national network competition requires adequate traffic density to support competitive frequency and roughly comparable network scope, either directly or through alliances, to be able to meet competitively the transportation needs of a significant portion of the national market. Justice may wish to argue that the East Coast assets of US Airways and TWA when combined with existing American and United assets create a barrier to entry in national network competition because of the impossibility without them of building a network of the size and scope necessary to compete with the American and United that will emerge from this transaction.

American and United will achieve Big Two dominance by using together network scope much larger than their competitors and an access lock on the Northeast markets that serve as a source and destination for much of the nation's traffic. If these transactions go ahead, it is to be expected that as the remaining firms fall behind, they will try to combine their Northeast strengths and then try to offset their Northeast weakness relative to American and United by building a national network even larger in scope. The ultimate result would be an industry with three network competitors, two jointly dominant and one large and struggling, instead of six. DOJ should develop a merger test, at least for network businesses, that allows or requires them to look at and take into account both the implications for network competition and the probable further transactional consequences of mergers before them. If it doesn't believe it can do that within the current statute, the Congress should help them by making clear that DOJ has the right and obligation to do so.

I have already indicated why I don't think non-network discount airlines like Southwest represent a "cure" for the competitive illness this would produce. And I don't think that American and United should be given a "failing company" license to dismember US Airways. US Airways is a troubled, but not failing, company. Its management and labor have elected to sell out at a good price to a duopoly that will pay off shareholders and maintain above-market labor arrangements rather than to accept the hard choices that would be necessary to make their airline healthy again. It's the public that's expected to pay the bill.

In short, we have reached a critical point. We can either preserve competition among four or five or six network competitors, none of which have the potential of achieving a level of dominance which makes the others unable to compete. Or we can turn the deregulated airline industry into the preserve of two powerful airlines who have pulled up the ladder of access to the East Coast and who expect to watch their rivals fade away as they struggle to overcome an impossible competitive disadvantage. The authorities and the Congress should not stand by while this happens.

Senator DEWINE. Professor, thank you very much for your testimony.

Senator Grassley, do you have any opening comments, or Senator Specter?

Senator GRASSLEY. Are we going to ask questions?

Senator DEWINE. We will go to questions, but I wanted to see if you wanted to take the opportunity to make any opening statement, either one of you. Then we will go to questions after that.

**STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S. SENATOR
FROM THE STATE OF IOWA**

Senator GRASSLEY. Thank you very much. I have been following airline competition issues closely for several years because of their importance to my State of Iowa. Iowa air travelers and businesses have long been vocal about the lack of competition in air service and high air fares that have seemingly been much out of line for Iowa cities compared to other Midwestern cities like Omaha or Kansas City.

Competitive air service is directly related also to the economic future of our communities. The ability of business people to get in and out on a punctual and competitive basis is very important for economic development in my State.

I have been concerned about predatory pricing and other anti-competitive practices in the airline industry. I have also been concerned about airline mergers reducing competition and resulting in higher fares. I have been concerned that mergers between the large carriers could trigger other large airlines to merge, and then we would just have a handful of airlines controlling the lion's share of the United States market.

Right now, a number of airline transactions are being considered. I won't list those now because of time, but I would like to distinguish the American acquisition of TWA as somewhat unique in the sense that this transaction seems to be the only solution in terms of saving thousands of jobs and sustaining crucial flights in and out of Iowa.

I have gotten some assurances from Chief Executive Don Carty that American would not reduce flights into Des Moines, Cedar Rapids and other points in Iowa. So I believe that this particular asset buy, because of the dire straits and bankruptcy that TWA finds itself in, may be the only solution that is going to maintain competition in air service for these rural communities. I think that the alternative of TWA going out of business could be worse.

All of the talk of mergers fuels my general concern that if the largest carriers control the majority of the market hubs, gates and networks, won't they also have the pricing power to restrict the entry of startup airlines? How will these mergers then help air travelers, and how will these mergers help competition?

We also have to understand how existing regional airlines such as Great Lakes, Corporate Air, Chatauqua, Allegheny, Piedmont and PSA, will be treated under these mergers and acquisitions. They are, of course, the epitome of essential air service that we all talk about.

In the past, I have urged both the Justice and Transportation Departments to make sure that they are doing everything under their statutory authority to investigate and take enforcement action for antitrust violations by airlines. I have pushed the Justice Department to closely review all airline mergers, alliances, and other contractual arrangements that might violate antitrust laws.

A free market is the best system by which to solve the air service problems in the cities of Iowa and other rural parts of America. But I want to assure that rural communities like those in Iowa do not experience higher air fares, fewer flights and fewer connections just because there is no competition among airlines.

The Justice and Transportation Departments obviously should enforce the antitrust laws. I just want to make sure that it is done in the proper way, and make sure that competition out there is always high on the Justice Department and Transportation Department's agenda.

If you are wondering why we in Congress are talking about this—we are not enforcing the laws—we do it because we have a constitutional responsibility of oversight to make sure that the antitrust laws work and the resulting competitiveness of the U.S. airline industry or any industry is the result.

Thank you.

[The prepared statement of Senator Grassley follows:]

Statement of Hon. Charles E. Grassley, a U.S. Senator from the State of Iowa

I thank the Chairman for holding this hearing this morning and giving me the opportunity to speak and ask questions on this subject. As you know, I've been following airline competition issues closely for several years because their importance to my state of Iowa. Iowa air travelers and businesses have long been vocal about the lack of competition in air service and high air fares out of Iowa cities. On many occasions I've noted that competitive air service is directly related to the economic futures of these communities.

Because of this, I've been concerned about possible predatory pricing and other anti-competitive practices in the airline industry. I've also been concerned about airline mergers, particularly how mergers between the larger carriers can reduce competition and result in higher fares throughout the country. Moreover, I've been concerned that mergers between the larger carriers could trigger other large airlines to merge, resulting in just a handful of airlines controlling the lion's share of the United States market. That unquestionably appears to be the case today.

Right now, a number of transactions are being considered. United and US Airways, American and TWA, and the latest reports are that Delta and Continental are in preliminary discussions about a possible merger. Now, I want to distinguish the American acquisition of TWA as unique. This transaction may be the only the solution in terms of saving thousands of jobs and sustaining crucial flights into and out of Iowa. I've gotten assurances from American Chief Executive Done Carty that American will not reduce flights into Des Moines, Cedar Rapids or other points in Iowa. So, I believe that this particular asset but, because of the dire straits in which TWA finds itself, may be the only way to maintain competition and air service to these rural communities. The alternative, TWA going out of business, could be far worse.

Nonetheless, all this talk of mergers fuels my general concerns about continuing consolidation in the airline industry that if the largest carriers control the majority of the markets, hubs, gates and networks, won't they also have the pricing power to restrict the entry of start up airlines? How will these mergers help air travelers? How will these mergers help competition?

We must also understand how the existing regional airlines such as Great Lakes, Corporate Air, Chataouqua, Allegheny, Piedmont, and PSA, will be treated under these mergers and acquisitions. They help to provide service to smaller, underserved communities that the larger brands do not serve, though sometimes under a name directly affiliated with the larger brand. In many cases, they are the "essential air service" that all of us talk about. Media reports raise doubts about some of their futures.

In the past, I've urged both the Justice and Transportation Departments to make sure they are doing everything under their statutory authority to investigate and take enforcement action for antitrust violations by the airlines. I've pushed the Justice Department to closely review all airline mergers, alliances and other contractual arrangements that might violate the antitrust laws.

I still believe that the free market is the best system by which to solve the air service problems of Des Moines and other cities in Iowa. But if there is anti-competitive behavior, the free market system cannot work. If anti-competitive mergers go through, the free market system cannot work. I want to ensure the rural communities like those in Iowa do not experience higher airfares, fewer flights and fewer connections because there is no more competition among airlines. The Justice and Transportation Departments should enforce the antitrust laws. I want to make sure they do that. And we here in Congress have a significant role to play in terms of oversight of the competitiveness of the United States airline industry. So, I'm pleased that the Judiciary Committee will be reviewing the possible negative implications of excessive consolidation in the airline market.

Senator DEWINE. Senator Specter?

**STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM
THE STATE OF PENNSYLVANIA**

Senator SPECTER. Thank you, Mr. Chairman. I begin by thanking you, Mr. Chairman, for convening these hearings. They are very, very important.

As I take a look at the list of witnesses who have already testified and the others who are scheduled to testify, I am concerned about our other busy schedules, where we all have so many other commitments. I believe it may be necessary to carry over some of these witnesses to another day because the issues are extraordinarily complicated and extraordinarily important.

I am very much concerned, to echo what Senator Grassley has said, about the wave of mergers, concerned about what is happening with the reported talks between Continental and Delta, American Airlines taking over TWA, those bankruptcy proceedings, and what is happening with the proposed acquisition of US Airways by United.

The national implications are absolutely overwhelming, and they have a special application where one of the airlines is in a specific State, as US Airways is so dominant in Pennsylvania. It is a little hard to understand how the acquisition by United of US Airways is going to help United, where they have such major problems at the present time with so many complaints about customer service, so many complaints about baggage, so many complaints about late arrivals.

I worry about 17,000 Pennsylvanians who are employed by US Airways. The acquisition is one which has so many potential problems to be weighed against the concerns which are expressed that US Airways conceivably might not survive and those 17,000 jobs may be in jeopardy. That is a very hard issue to analyze and to make any determination on.

As I have heard the testimony this morning about low-cost air carriers, American West and AirTran and their efforts to get gates and compete, it is candidly chilling. You can't compete if you can't get slots and if you can't get gates.

And I wonder as I hear Mr. Leonard testify about the potential for private antitrust actions. The Justice Department has had some vigorous activities under Joel Klein, but the Justice Department can only go so far. It is my hope that the new Attorney General will be even more active and I have talked preliminarily to him about that, But Congress has provided for private rights of action to go into court and to stop these anticompetitive practices if, in fact, they are as serious as you say and if, in fact, they do violate

the antitrust laws. And having had some experience in that field, it looks to me as if they do.

Let me mention an unmentionable word, regulation or re-re-regulation. That is anathema to a free enterprise society, as Senator Grassley points out. But is free enterprise working? I would not like to see the Federal Government back regulating the airlines, but I wonder if we are better off now than we were before deregulation occurred.

I know that on the principal flight I take between Philadelphia and Pittsburgh, we had two carriers before deregulation and now we have one and what I consider to be very, very high fares. Problems about flying from Pittsburgh to Harrisburg: it is more expensive to fly from Harrisburg to Pittsburgh than it is to fly from Harrisburg to San Francisco with a stop at Pittsburgh. I have listened to long explanations which I still don't understand.

So, Mr. Chairman, I hope this Subcommittee will have time to really do a job here and try to figure out this maze because there are an enormous number of problems, and I worry that these acquisitions and these mergers can only spell higher costs for the consumers and, in the long run, problems for employees of these companies.

Thank you, Mr. Chairman.

Senator DEWINE. Thank you very much.

Let me invite Professor Kahn, who is here, to come on up and join us. Professor, thank you very much for being here.

The professor is Emeritus Professor of Political Economy at Cornell University and a special consultant to National Economic Research Associates. He is, of course, the former Chairman of the Civil Aeronautics Board, and is well-known throughout the industry as really the father of airline deregulation. We welcome him back to the committee.

Professor, you did not have the opportunity to make a statement, but we certainly welcome you to the Committee hearing. Maybe you could just take a moment and explain what impact you think the proposed mergers would have on the airline industry.

STATEMENT OF ALFRED KAHN, EMERITUS PROFESSOR OF POLITICAL ECONOMY, CORNELL UNIVERSITY, ITHACA, NEW YORK

Mr. KAHN. Well, when I testified last before this Committee on the United Airlines/US Air merger, I said that I hadn't totally made up my mind about it, partly because it appeared that there were some ways in which it might actually improve service. I noticed that Senator Rockefeller was a very strong proponent of it at that time, presumably because it did offer the possibility of improved service in an area that he represented.

I identified three reasons why I was eager to have the Department of Justice look at it very, very hard. One, of course, was direct competition, not merely on O and D routes at which ends they were both represented, but one of the most powerful forms of competition in the industry, which is over different hubs.

I noticed Senator Specter's example. The reason undoubtedly that he could get a lower fare Harrisburg to San Francisco than Harrisburg to Pittsburgh was that he had a choice of going Harris-

burg-Pittsburgh-San Francisco, maybe Harrisburg-O'Hare-San Francisco or Harrisburg-Cleveland, Cincinnati. So he had a choice of different carriers—respectively, US Air, probably American, or United. Cleveland would be Continental, Cincinnati would be Delta.

So there you would have a direct elimination of competition even by this merger alone.

The second was, of course, potential competition. I said that if it is really important for United to have a stronger hub in the Northeast, if it is really powerfully important for them, let them build one competitively rather than simply buy out the existing hub.

The third was the snowball effect. It was obvious at the time that if they got the competitive advantages that they would get by merging, other airlines would be quick to follow. And, of course, now we are seeing American Airlines doing exactly that and Delta already expressing an intention to do the same.

On that, there is nothing I can say that would improve on what Professor Levine has said. It has been effected in two splendid pieces of testimony. One is his and the other is by Don Carty, and I think both are brilliant. But if you read Mr. Carty's testimony, it is an elaborate and very powerful defense of this arrangement.

What is clear is that American, faced with the United acquisition of US Air, would then find itself at a disadvantage, and so it then began to exert pressure, partly because of the Government holding its hand over the United one and threatening to disallow it, in order to get equivalent advantages for American.

So the question is, is this a declaration of an intention to compete? In some ways, it probably will strengthen American's ability to compete for business traffic. Or is it a Treaty of Versailles, a non-aggression pact in which we too then will agree to accept equality of position?

Of course, there are aspects of it that are hard to argue with, like the acquisition of TWA, although then I would like to worry a little bit about the Caribbean and whether some sloughing off of assets might be required. It is possible that DC Air would by this be converted into a much more effective and powerful competitor.

But then look at the shuttle. I mean, what kind of increasingly effective competition is that if we agree to divide the shuttle between us? And indeed I understand that if American grows larger than United, the shuttle part of the deal is off.

So in a sense, this is a fulfillment of my prophecy, for which I claim no originality. It was perfectly obvious. We are really judging the likely transformation of the industry into one dominated by about three carriers, and I just think that is very troublesome.

Senator DEWINE. Thank you very much.

Because of time, we are going to limit the questioning, at least the first round, to 5 minutes apiece. I will start off.

Mr. Mullin, TWA and US Airways have both argued that these transactions should be approved because they are both failing airlines. It seems pretty clear that TWA is, in fact, struggling. We have talked about that. But as someone who has a great deal of experience running an airline, what is your opinion of this statement?

You have already said US Air is really not failing. Do you want to elaborate on that? Why do you say that?

Mr. MULLIN. Well, I feel very strongly about that, Mr. Chairman. I think, first of all, you could look at US Airways in many different ways. It is true that they have had net income losses in the past short period of time. But if you look at their cash from operations, as best I can tell from a quick review of their financial statements, their cash from operations has been extremely positive—\$870 million in 1997, \$1.2 billion in 1998, over \$600 million, I think, in 1999.

They have good, solid cash reserves on their balance sheet right now. In 1998, it was \$612 million. I think it is about \$500 million as we speak. They have completed a very, very extensive stock repurchase program in the period from 1997 to 1999. How, in fact, can a failing carrier possibly be even giving the remotest of consideration to a stock repurchase plan?

I think that the ultimate measure of that would be what United itself has, in effect, said by virtue of the bid that it has made. I mean, United is a wonderful airline, led by extremely competent people, and they have evaluated US Airways as worth \$60 a share, when it was selling in the mid-20's.

Now, how, in goodness sake, could anybody look at a situation like that and say that you have increased the price from in the mid-20's to \$60 a share and pay that kind of price for a failing airline? I think it is absurd on its face. US Airways is not a failing carrier. It has a tremendous amount of capacity and great assets all up and down the East Coast. So I would reject that proposition as offering any justification for moving forward at this point.

Senator DEWINE. Any other panel members want to comment on that?

Mr. LEVINE. Yes, I would like to if you don't mind. It is very unpleasant particularly in a network airline to do the things you have to do to become competitive if you currently find yourself in a high-cost position faced by some low-cost competition.

I have enormous respect for Mr. Wolf and the CEO of US Airways, Mr. Gengwal. They have a lot of experience between them at reorganizing and fixing airlines. It is interesting to me. I believe they came in with the idea that they could fix US Airways. They might then be happy, make money from their stock options, but I also believe that they had an exit strategy.

They worked with US Airways' unions. They could not come to an accommodation that gave US Airways competitive costs, and they have found a way out for them and for the shareholders of US Airways, but the people who are going to pick up the bill are the traveling public.

Senator DEWINE. Anyone else on the panel?

[No response.]

Senator DEWINE. Senator Kohl?

Senator KOHL. Thank you, Mr. Chairman.

Mr. Mullin and Mr. Bethune, are your discussions defensive? Do you want to go through with your merger regardless of what happens? Are you willing to put it aside if the other mergers don't happen? What is behind the strategy with respect to your discussions?

Mr. MULLIN. I think from the standpoint of Delta Air Lines, we feel we have got a great competitive position as it stands, Senator Kohl, and that would be very much our preferred option. As I mentioned in my testimony, I think that in the decisions that are made on these specific transactions, it will, in fact, launch exactly the kinds of thought processes to which many of the witnesses here have referred.

As all of us look for opportunities to catch the mega-carriers, American and United, there is just no way through internal growth alone that any of us could proceed to reach that size. So it must by itself force us to consider this itself.

As I said in my testimony, I think that given that these two transactions are going to launch the total remaking of the industry, it is a time to pause and step back and ask whether or not the industry that we have, with six major hub-and-spoke carriers, with Southwest Airlines as a terrific disciplining airline with respect to prices in the industry, and many small-size carriers and discount carriers coming along—it is a great industry and we are about to totally transform it.

Senator KOHL. Are you saying that your merger is only in response to theirs? If their merger doesn't occur, then yours doesn't occur?

Mr. MULLIN. I would say that I would prefer to stay where it is, and therefore not pursue those kinds of transactions, yes.

Senator KOHL. Mr. Bethune, do you have the same position?

Mr. BETHUNE. Yes, sir, Senator. We have come such a long way in the last 6 years and we have shown this equilibrium that I have discussed works for us. We have gone literally from worst to first in customer satisfaction and employee satisfaction. We can compete. We think the future for us is best if we are just allowed to compete in this equilibrium that currently exists.

Should that change, then we know that ultimately things will change for us because we can't, long term, survive with a consolidated structure. But our preferred route, as my friend Leo just said, is to remain independent, continue to compete in the marketplace and offer real competition and consumer satisfaction.

Senator KOHL. Do you all think that the Government should use its authority to control slots at major airports, when we can utilize that authority. Mr. Levine, what do you think?

Mr. LEVINE. It is a little complicated. I think if it were up to me, I would allow slots to be bought and sold, subject to antitrust restrictions on acquiring so many that you dominate an airport. I think another alternative which might be even better would be to allow congestion pricing at the airports and to allow airlines to respond to those prices and schedule their flights according to how scarce the time of day they wanted to fly was. I have a problem with that.

Airports are themselves monopolies, and one problem I have with congestion pricing is you are giving the airport owner, who is a monopolist, an incentive to exploit the airlines. So I have actually proposed at an FAA seminar that the congestion prices go into a fund that could only be used to build capacity at capacity-restricted airports, which I think would have the beneficial effect of both allow-

ing competitive access to airports and getting more infrastructure. But we have probably gone off the subject here.

Senator KOHL. Mr. Kahn, what authority should we use here that we have at the Federal level to control this?

Mr. KAHN. Well, I think the antitrust laws should clearly be sufficient in this case. These are acquisitions that, taking into account all their effects, threaten the effectiveness of competition in the industry. I shouldn't say I can't think of any others. It would happen even more if they all got together completely. I think the antitrust laws should clearly be sufficient.

Now, as Professor Levine points out, that does not solve what I think is the greatest failure of the last 22 years. And I am proud to say I gave a speech at the FAA in March 1978 in which I said exactly this, that deregulation was going to create a great new demand for infrastructure and we were not going to accommodate DOT by restricting or having slots. We wanted to unleash competition, and it was the job of the FAA and airport traffic control to respond to that. That was No. 1.

Second, you can give a parrot a Ph.D. in economics by teaching it to say supply and demand. The other is that you have got to price intelligently. You have got to set up a system the way our bumping rules do. The people to whom time is less valuable than money accept the bribes and they get off the planes. The people to whom money is more valuable than time reject the bribes and stay on the planes. The latter pay higher fares. The people who are flexible pay lower fares.

We just refuse to apply those simple principles to the pricing of this major input. The Achilles of heel of deregulation, I suspect more than lack of enforcement of antitrust, is that our institutions for providing and pricing infrastructure just stink. I think that Secretary Mineta is in a wonderful position if he can talk about how we will reorganize the pricing and the provision of airport capacity. That is something he can do now and nobody can understand the problem better than he. "Stink" is an economic term.

[Laughter.]

Mr. LEONARD. Senator Kohl, I think that as a matter of public policy that any time there is a merger of airlines there ought to be a reallocation of a certain percentage of the slots that those airlines have.

If you take the current case, slots were awarded to TWA, United, US Air and American under totally different circumstances than are being proposed today. If they had to give up 20 percent of their slots to get the deal done, they would calculate what that costs and then they could make a decision to go forward with the deal or not based on the economics.

It has been done in the past. In 1983, when the FAA deemed that there was a misallocation of slots, a new lottery was provided and slots were taken away and reallocated to the pool and redistributed. So there is precedent for doing that. The DOT certainly has the power to do that today, but they don't. I think as a matter of policy, any time there is a merger or a misallocation, they ought to be reallocated.

Senator KOHL. Thank you.

Senator DEWINE. Before turning to Senator Grassley, it is my understanding, Mr. Bethune, you have to leave. We will give you a 2-minute closing here, if you want to make any other comments.

Mr. BETHUNE. Well, thank you, Senator. I certainly appreciate the remarks of my colleagues and I largely agree with the positions here. I think given our druthers, as Senator Kohl asked, Continental would like the right to compete. I think we have offered real choices to Americans to find that there is a better way to get from A to B that will actually get you there safely with your underwear in a very consistent fashion. We have been very profitable with that approach.

We hate to be constrained in our ability to grow in the future by this behemoth that is on the table today for consideration, allowing two members to form a cartel to block what would be half of the American marketplace, which will certainly put a dampening effect on competition and certainly put a dampening effect on our ability to grow and to be profitable and provide literally thousands and thousands of jobs across America.

Thank you, Senator, for allowing me to testify.

Senator DEWINE. We thank you very much for your testimony.

Senator Grassley?

Senator GRASSLEY. Well, I am going to submit a question to Mr. Bethune because I wanted to know how the Continental/TWA deal might affect my State of Iowa and what would happen to the TWA route structure in my State.

Senator DEWINE. You have brought him back, Senator. He is still here.

Mr. BETHUNE. Senator, I want to be clear that we have publicly said that we do not oppose the TWA transaction, as Mr. Carty has represented in public that he would consummate it. We ask only that he confirm that representation in a document and say that he will, in fact, protect the jobs of the 20,000 people and protect the pensioners. When he does that, we will step aside in the bankruptcy court because we think those jobs are important.

We made a business at Continental that we decided we would fly to places people wanted to go to, and we are listening to the public and their demands. We haven't been able to grow in capital structure to get to your State the way we would like to, but it is very much our intention to try to get there. Given this consolidation, I would seriously doubt we would ever have the ability to fly to Iowa.

Thank you, Senator.

Senator GRASSLEY. Professor Levine, Mr. Schumer suggested a 9-month moratorium at the hearing this morning. Are you advocating a moratorium or cooling-off period for these mergers, and would you then propose a change in merger rules and how would you do it?

Mr. LEVINE. Well, first, I oppose these mergers. Cooling off is better than letting them go ahead. Disapproving them would be better than cooling off. I do think that the Justice Department does need to rethink the merger guidelines it is applying to airlines. I think that airlines are network industries. In fact, it is clear that the Justice Department needs to do some work more generally on what competition rules for network industries are to be.

So it would be acceptable to me if these things were put on the back burner and the Justice Department was requested to restudy its posture with respect to competition in network industries. But as I say, I think under the antitrust laws you could disapprove the United/American/US Air transaction right now.

Senator GRASSLEY. The end result of such a moratorium would then be to permanently change the merger rules?

Mr. LEVINE. Well, you are not changing the law, Senator. As I am sure you know, the Justice Department uses internal guidelines to decide what mergers it will challenge and what mergers it won't. The guidelines were developed for very different kinds of industries than the network industries that have emerged in transportation and telecommunications. In my judgment, the Department absolutely ought to take another very close look at those guidelines as they apply to these industries and come up with something that addresses the reality of network competition. I think right now the rules are both too narrow and too broad. They are not targeted right.

Senator GRASSLEY. So you are asking them to take a look at it and possibly change them, but you are not in a position from your position as a professor to suggest certain things?

Mr. LEVINE. Well, I have given a few broad hints in my written testimony and I am certainly willing to talk to Justice about whatever it is they might want to talk about.

Senator GRASSLEY. Mr. Leonard, you may not be the only one I should address this too, but quite frankly you did a very thorough job of discussing the slot system with Mr. Kohl. I guess my question to you would be, other than the lottery you mentioned, what would be an equitable way to reallocate slots?

My background on this is I think that since we do have a slot system at several of our busiest airports—and I doubt if anybody in Congress when it was first created thought that slots would end up being worth the money that they are today, and evidently they are worth a great deal of money. I happened to be a member of the AIR 21 conference Committee when that legislation was finalized. As a member of that conference committee, and even before that, I advocated that the slot system be eliminated through a phase-out. That is my position.

Now, you have already spoken to Senator Kohl about it and I guess the only thing that you could cover for me that you didn't cover for him is if there is anything beyond the lottery system, then, as an equitable way of doing something about slots. Also, anybody else on this panel who wants to comment on this should do so if they wish.

Mr. LEONARD. Well, I think that if you take a look at JetBlue, in my view JetBlue is one of the four small, new airlines that will likely be successful. I include Southwest in that. They are not new anymore, but you have really got us, Frontier, JetBlue and Southwest that are new entrants that are doing quite well.

JetBlue was awarded 75 additional slots by the Government to permit it to get started. One of the proposals that we have placed on the table is that as a condition of United/US Air, 100 to 150 slots should be taken away from them and given to a low-cost carrier to create a network at Washington National. Now, we would

like for that to be us. We have a self-interest in that, but it could be JetBlue or it could be someone else. It could be Bill Franke, but there needs to be creation of a network.

If you give us four or five slots, we are going to fly to Atlanta. That is all we are going to do, and the network benefit of a low-cost carrier would be lost. We save the consumers in Atlanta \$700 million. We believe that with a network of 100, 150 slots, we could create \$600 million of value to the consumers in the Washington and upper Northeast region and would get the same kind of benefits. But there have to be enough slots to make the network work for that to happen.

Senator GRASSLEY. I have no further questions of this panel, unless anybody else wanted to comment on the slot question.

Mr. FRANKE. I would make a comment, Senator. I think the slots, and to some extent the gates are an anachronism that go back in time that have no present place in the management of the airline system. As Mr. Leonard and I have pointed out, they are an impediment to successful competition by those of us who can provide lower-cost fares to the consumer.

We now have an opportunity to right some of that because there are specific proposals before the Department of Justice, the Department of Transportation, and you regarding specific transactions which involve hundreds of slots. So whether it is a lottery based on proof of public necessity or who can provide the best results to the consumer, I am not here to day, but I do think it is important that we stop now and take a look at the opportunity so we don't, as I said in my remarks, end up back here in a couple of years with several of us trying to figure out what to do with our systems without our ability to compete because of the gates and slots restrictions.

Mr. LEONARD. Senator, could I make one more point?

Senator GRASSLEY. Yes.

Mr. LEONARD. One of the things that we experience is that we have been trying to buy or lease slots, and we are capable of doing that. What we frequently find is that when we get close to a deal, the person who has these excess slots who is willing to lease them or sell them then goes to our competitor and says, oh, by the way, we are going to sell these to AirTran, you ought to pay a premium. And they do; they pay a premium as much as \$30,000 a slot. So it is another way that the big carriers are able to keep these vital assets out of our hands.

Mr. KAHN. Senator, may I just interject one sentence on this? Slot purchase and sale is clearly better than allocation. I mean, after all, we were supposed to have deregulated this industry 22 years ago and here the Government is still allocating ration tickets to compete or not compete.

Second is the point that is suggested right here by Mr. Leonard and by Professor Levine. If you just permit purchase and sale of slots, slots will always be more valuable to the incumbent to whom they are protection of monopoly power than to a new entrant, for whom it is merely an opportunity to compete.

Slot allocation is an abomination. It has nothing to do with regulation. We should let the price system do it, and that will create large returns and those should be used, as Mike has clearly sug-

gested and I have been saying for years, to develop subsidiary airports, which would relieve the congestion problem as well.

You could have competition in England between Heathrow and Stanstead and Luton. Stanstead and Luton went out and got Ryan Air in there to compete with Aer Lingus, and so you have low-fare competition. You don't get that now, except by Government allocation, which is not what we want. WE have got to get out of the business.

Senator GRASSLEY. Thank you.

Senator DEWINE. Senator Specter?

Senator SPECTER. Thank you, Mr. Chairman.

Mr. Franke and Mr. Leonard, in looking over your testimony you make some very, very strong charges. Mr. Franke, in your testimony at page 5 you recount your experience at O'Hare and say, quote, "Recently, when we discovered that six new gates were being built, we asked for two of them. We were refused. Airport officials explained the gates were being built with private money, so the airport is powerless to provide access. We then offered to build two gates ourselves. No, they said, we can't accommodate that. The new gates, by the way, go to United Airlines."

In your testimony, Mr. Leonard, you use very strong language, and I am not disputing it. Perhaps somebody else will. We want to give others a chance to talk about it. At page 2, "These agreements provide American and United with a major structural advantage that they do not have today. That structural competitive advantage, the carving of the Nation into three or four cartels, is the only reason that interlocking deals make sense." When you talk about cartels, you are talking about antitrust violations.

Then you go on to say that American and United have agreed that for 20 years they will fix fares and schedules in shuttle markets. That certainly sounds to me like restraint of trade.

And then you say at page 3, "American and United have agreed not to operate or work with any other airline to operate high-frequency, competitive service between Boston and Washington." That again sounds like an agreement on restraint of trade.

Then you say, "United has agreed to lease scarce gates and locked-up slots to American at nominal rates. American and United have agreed to code share on flights that feed certain hubs," and some more language, and you say they won't code share with any new entrants.

Have you considered a private right of action to sue under the antitrust laws for treble damages because of these injuries to your company?

Mr. LEONARD. We have considered it, Senator. We haven't done it to date, quite frankly, because we didn't have the money to afford the legal fees. We know this would be a very, very long fight. The legal fees would be quite expensive.

Senator SPECTER. Some of those cases are undertaken on a contingent fee arrangement.

Mr. LEONARD. I understand that, but we have—

Senator SPECTER. Well, how about it? Have all the lawyers turned you down on undertaking your case on a contingent fee?

Mr. LEONARD. We haven't pursued that yet, Senator.

Senator SPECTER. Why not?

Mr. LEONARD. Because we are trying to pursue this through the Department of Justice and the Department of Transportation, which we think is the best course to take.

Senator SPECTER. How long have you been pursuing it with the Department of Transportation and the Department of Justice?

Mr. LEONARD. Well, we have been pursuing predatory behavior for about a year-and-a-half, and we have filed formal complaints with both the Department of Transportation and the Department of Justice.

Senator SPECTER. Maybe after this hearing airs on C-SPAN you will get some calls from lawyers who can show you a faster timetable.

Mr. LEONARD. We might. I think to your point, Senator, we have taken this language directly out of the public documents that have been filed, and we do believe each one of these is an antitrust violation, as does our antitrust counsel.

Senator SPECTER. Well, how about it, Mr. Franke? It sounds pretty problematic when new gates are being built and you ask for a share and you offer to put up some private money and they won't deal with you. How about some self-help there on a private right of action?

Mr. FRANKE. We brought this to the attention of the Justice Department and the Transportation Department as an example of the kinds of practices that prohibit or limit competition for those of us who—

Senator SPECTER. How long ago did you bring it to the attention of the Justice Department and the Transportation Department?

Mr. FRANKE. At the time we were denied, which was about 8 months ago.

Senator SPECTER. And what have they done?

Mr. FRANKE. They have taken it into account as a part of the same process of reviewing the United/US Air transaction.

Senator SPECTER. They have taken it into account as part of the process and the transaction, but no direct assistance for you?

Mr. FRANKE. No, sir.

Senator SPECTER. Have you considered a private right of action to sue yourself?

Mr. FRANKE. We haven't because we want to see this process played out and completed before we do that. As Mr. Leonard pointed out, it is expensive. It consumes a significant amount of management time and the results are not predictable. So we want to follow the regulatory process first and then we will see where we are.

Senator SPECTER. Would your airline be better off, Mr. Franke, under regulation, before deregulation, with all the problems you are facing here?

Mr. FRANKE. I don't think so, Senator. We believe strongly we can compete. We have the lowest unit costs of any of the major hub-and-spoke carriers. We have successfully competed for the last 5 years. We simply want the right to fly the markets.

Senator SPECTER. Mr. Leonard, would you be better off with re-regulation?

Mr. LEONARD. No, Senator, the same as Bill said. We have demonstrated that we can compete. We have demonstrated that we are

a highly profitable company. We are a rapidly growing company, but we do need access to the key business markets to be successful in the long term.

Senator SPECTER. Mr. Mullin, I read in the media that Delta, as the bigger of the two as between Continental and Delta—there is talk about having Continental acquire Delta. How does it work out that the smaller of the airlines would acquire the larger of the airlines? What are the economics behind that if, in fact, those media reports are true?

Mr. MULLIN. It beats me, Senator. I don't know.

Senator SPECTER. You only read it in the newspaper, too?

Mr. MULLIN. Well, there has certainly been some speculation about that in the newspapers.

Senator SPECTER. Are you the last to know as the CEO?

Mr. MULLIN. No. I am saying that I am sharing your sense of incredulity about such a transaction. Certainly, Continental is a very fine airline. In 1998, we attempted to enter into a transaction with them, and that in turn led to their association with Northwest.

We have kept in touch with all other airlines throughout this entire effort that has gone on that we are discussing here today, but Delta's fundamental position is we would very much like to continue with our current framework of competition. We have no great interest in any merger or acquisition transaction.

I think that I have just attempted to reinforce the fundamental point that if, in fact, these transactions are allowed to go forward, that would in turn absolutely cause us to enter into some more serious discussions pertaining to such actions.

Senator SPECTER. One final question, Mr. Chairman, if I may, to Professor Levine and Professor Kahn.

You haven't exactly had a full picture, but based on the testimony of Mr. Franke and Mr. Leonard, do you think, *prime facie*, there is an antitrust violation here, Professor Levine?

Mr. LEVINE. Well, the antitrust violation would have to be focused on particular airports. One of the problems, as you know, Senator, and I know you know a great deal about this, with private action is that it is focused on damage to particular firms at particular times in particular places, whereas the Department has the ability to fashion and request broader relief from the courts that is more structural in nature.

Senator SPECTER. They have the right to do that if they do it, if they sue.

Mr. LEVINE. You mean the private—

Senator SPECTER. The Department has broader authority, but an inactive and an inert Department has less authority than an active private litigant.

Mr. LEVINE. Well, as I have tried to testify here this morning, sir, I really believe the Department ought not to be inert and I hope it will not be inert. Transaction and litigation costs are very high. I have experienced this. I was CEO of a new-entrant airline for a while, and reaching for the lawsuit weapon when you are a relatively small company puts you in a position where you are consumed by the lawsuit, whereas your larger defendant opponent sort of departmentalizes it, except when you can get the CEO for deposition, and it becomes a pretty uneven contest.

Senator SPECTER. Professor Kahn, will you take the case?

Mr. KAHN. Fortunately, I am not a lawyer. I would be very reluctant.

Senator SPECTER. I can understand why, since you are not a lawyer.

Mr. KAHN. Oh, I can do better; I can speak quite freely. My life expectancy would undoubtedly be exhausted before—

[Laughter.]

Senator SPECTER. All of our life expectancies may be exhausted by the length of this hearing.

Thank you very much, Mr. Chairman.

Senator DEWINE. Senator Schumer?

Senator SCHUMER. Thank you, Mr. Chairman. I thank the witnesses for their testimony. As you probably heard in my opening statement, I am sending a letter to DOJ asking for a moratorium so they can study all of this. I know Mr. Mullin mentioned that he was in favor of it.

Could I ask the other witnesses, would they support a moratorium so that DOJ could study this new situation and not just approve the merger piece by piece by piece? Mr. Franke?

Mr. FRANKE. I think the answer is I agree with Professor Levine. There is plenty of room in the antitrust laws as they exist today for more time to be given this process. I mean, there is a second request process and it is not uncommon to see one of these major transactions drag on for over a year. So I don't think we need any special action to accomplish that objective.

My concern is that we are acting on a piecemeal basis without any strategy, we understand, by the Justice Department for reviewing transactions in the airline industry, and that should be developed.

Senator SCHUMER. Well, that is my point, Mr. Franke, that they ought not just delay, but they ought to delay and get a comprehensive picture of where we are going. I mean, you might look at each airline and not look at the whole consequence of where we will end up and come up with a different answer and an answer that wouldn't be—that is what the letter says. Would you support that letter?

Mr. FRANKE. I agree with that, Senator.

Senator SCHUMER. Thank you.

Mr. Leonard?

Mr. LEONARD. Yes, sir, we would certainly support that, Senator.

Senator SCHUMER. Professor Levine?

Mr. LEVINE. I think I said earlier in response to a question about that that would be my second preferred solution. My first preferred solution would be that this merger be challenged and prevented from going forward, but certainly the suggestion you have made would be a lot better than considering it piecemeal according to the current guidelines.

Senator SCHUMER. Professor Kahn?

Mr. KAHN. I agree with what Mike has said. I would, before doing it, ask the people at Antitrust what they are doing. Maybe you have to wait until the administration decides who is going to be Assistant AG in charge of antitrust, but one way or another they have got to look at this thing.

Senator SCHUMER. I would like to ask Mr. Leonard some questions. As you know, I have great concerns about this new DC Air in terms of the cost, in terms of the ability to fly, and in terms of their independence.

Mr. LEONARD. Yes, sir.

Senator SCHUMER. Now, you have had certain preliminary discussions, or at least you have indicated that you would be interested in acquiring those slots on your own or somehow in conjunction with DC Air. Do you believe your costs would be cheaper than a DC Air/American proposed merger, and if so why?

Mr. LEONARD. Our costs would be substantially below the American/DC Air situation primarily because we start with a much lower base. Our costs versus American's are about 30 percent lower than American's at a 500-mile stage length, and so DC Air will start with high costs, i.e. American's costs on the jet portion of it.

Mr. Johnson has testified that he intends to expand the rest of the system with regional jets. Regional jets are much more expensive to operate on a seat-mile basis than our Boeing 717s. So if you start with high costs and then you downsize the size of the airplane, you cannot under any circumstances—Mr. Johnson is an excellent businessman and has an excellent track record, but he cannot defy the laws of physics here. Smaller airplanes, RJs, cost more to operate than 717s on a seat-mile basis.

Senator SCHUMER. Now, did you have any discussions? Did you let either United, US Air, DC Air, whoever, know that you were interested in getting involved here and maybe getting some or all of those slots?

Mr. LEONARD. Yes, Senator, we have let all three of those parties know—United, US Air and Mr. Johnson—that we would be certainly willing to partner with Mr. Johnson, take over the slots and run them ourselves, any number of things. We submitted several different plans to do that.

Senator SCHUMER. Would you like to get those slots at the cost Mr. Johnson is getting them at?

Mr. LEONARD. We can arrange financing and buy those slots in short order, I can assure you.

Senator SCHUMER. What happened when you made these requests? Did you hear anything back?

Mr. LEONARD. We didn't hear anything back from United. We had one limited conversation with US Air. We did have a number of conversations with Mr. Johnson and at the end of the day he decided to go with American.

Senator SCHUMER. And why do you think he did that, given that you will be able to offer better service, lower-cost service, at least in your opinion, to the people of New York and elsewhere?

Mr. LEONARD. He obviously got a better deal from American than he thinks he could have gotten with us. I happen to disagree with him. I think he would actually make more money with us, but obviously with more risk with us than with American.

Senator SCHUMER. Now, Professor Levine, you said that the DC Air proposal didn't support the laugh test. Could you elaborate on what you mean by that?

Mr. LEVINE. Yes. That is not at all an insult to Mr. Johnson, who I understand to be an excellent businessman.

Senator SCHUMER. I agree with you. He is an excellent businessman, very successful. That has nothing to do with it. Our job is to provide the best service to the consumers.

Mr. LEVINE. The laugh test comment was related to the idea that DC Air as a carve-out to cure the monopoly problem in the Washington area just simply doesn't make any sense. What you are going to end up with is a relatively high-cost, small-aircraft operation that will be tied by a frequent flyer program to either American or United, depending on whether you are talking about this version of the deal or the previous version of the deal. It is clearly designed, as Mr. Carty testified last week before the Commerce Committee, to work as a partner with American.

I have already testified that I have some doubt that American and United will be vigorous price competitors. I have no doubt that they will elbow each other for the last point of market share. But that they will be vigorous fundamental competitors I think defies logic and defies anything you might know about game theory.

It is clear that Mr. Johnson's role in this is to continue to provide service to small communities who are thought to be politically very important, and I don't mean to minimize at all the significance of that.

Senator SCHUMER. It is far more than politically important. It is life and death for a lot of these communities.

Mr. LEVINE. I don't doubt that. I am trying to, I guess, put together the strategic logic behind the construction of the deal, if you will. It was hoped that the DC Air aspect would operate as a sort of a reassurance and would gain political support for the deal as a result of being set up in that particular way. As originally constructed, it was meant to answer the objection that the slots will just migrate into other uses.

The removal of the flip provisions calls that into some doubt as well, but I am not sure that this would be a good idea even if you got Mr. Johnson to swear on a large stack of whatever he holds dear that he would operate these routes forever. I still think there would not be effective competition in the Washington area from this.

Senator SCHUMER. These slots are extremely valuable, obviously.

Mr. LEVINE. Yes.

Senator SCHUMER. Do you think a different arrangement could be made so that we would get a lower-cost airline flying to these places?

Mr. LEVINE. With all due respect, Senator, I really oppose the idea of regulatory tinkering in which you decide that Joe Leonard or Bill Franke are really nice guys and they ought to get the slots and operate. The experience, by the way, with those experiments has been rather poor. The slots tend to end up ultimately in the hands of the big airlines, for reasons that Professor Kahn explained a couple of minutes ago.

So I would hate to see a fundamentally anticompetitive deal approved with a kind of a carve-out bone tossed to a low-fare competitor who would have the incentive to operate at lower fares in Washington.

Senator SCHUMER. Because you feel that wouldn't last?

Mr. LEVINE. I don't think it would last and I don't think it would solve the fundamental problem, which is that the Northeast—Boston, New York, Philadelphia, Washington—themselves are the lynch pin of any network system and it is all being gathered into one duly administered fold.

Senator SCHUMER. You are saying, in other words, that in the context of the big merger a little solution like this wouldn't work?

Mr. LEVINE. Absolutely, sir.

Senator SCHUMER. I have got it, OK.

Thank you, Mr. Chairman. I thank our panel.

Senator DEWINE. Thank you, Senator Schumer.

Let me thank our panel very much. We appreciate your time. Your testimony has been very helpful. Thank you.

We invite our next panel to begin to come up as I introduce you.

Donald Carty has been President of American Airlines since 1995, and became Chairman, President and Chief Executive Officer of American Airlines in 1998. He has testified before our Committee before and we certainly welcome him back today.

James Goodwin is Chairman and Chief Executive Officer of UAL Corporation and United Airlines. Prior to his appointment in March 1999, he served as President and Chief Operating Officer. His service to United dates back to 1967, and he has held senior vice president positions for both the North American and international markets, as well as mechanical operations. He has also testified before this Committee and we welcome him back as well.

William Compton is President and CEO of Trans World Airlines. He joined TWA in 1968 as a pilot and has worked for the airline ever since. He has maintained his pilot's license and continues to fly for the airline on a monthly basis.

Robert Johnson is Chairman and CEO of DC Air. Mr. Johnson is also the Chairman and CEO of BET Holdings. He has also served on the US Airways Board and as a member of the Board of Governors for the Rock and Roll Hall of Fame, in Cleveland, Ohio. Mr. Johnson testified before the Subcommittee last June. Mr. Johnson, thank you for coming back again.

Stephen Wolf is the Chairman of US Airways and of the company's airline operating arm, US Airways, Inc. Previously, Mr. Wolf served from 1987 through July 1994 as Chairman and CEO of United Airlines. Mr. Wolf's aviation career began in 1966 with American Airlines. He has also testified before us on a number of occasions.

Mr. Carty, we will start with you. Thank you, all of you, for your patience and waiting, and we are eagerly anticipating your testimony, particularly in light of the last panel's comments.

STATEMENT OF DON CARTY, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, AMERICAN AIRLINES, FORT WORTH, TEXAS

Mr. CARTY. Good morning, Senator DeWine and Senator Schumer.

Senator DEWINE. Good morning.

Mr. CARTY. Thank you, in turn, for the opportunity once again to address this committee. Rather than read aloud my written statement, I would like to spend a couple of minutes trying to respond to specific concerns raised by several members of the Com-

mittee in your recent letter to the Department of Justice, by members, of course, of the previous panel, and by you, Chairman DeWine, in your testimony before the Senate Commerce Committee last week.

Senator DEWINE. That would be helpful.

Mr. CARTY. You are quite right to be concerned about industry consolidation and its ultimate impact on the consumer. So are we, but the real question is not whether any given transaction is desirable in the abstract. Rather, the question should be whether a given transaction is more desirable and pro-competitive than its alternative.

In that regard, I believe that there is an overwhelming consensus that our proposed acquisition of the assets of TWA is by far a better alternative than allowing that carrier to simply shut down and liquidate, and that clearly was the only alternative for TWA. As Bill Compton, I am sure, will testify today, no other carrier was willing to acquire TWA, none.

To turn the TWA deal would, as a number of people have said this morning, simply put 20,000 people out of work and eliminate the highly competitive St. Louis hub, and neither could possibly be beneficial either to consumers or helpful to the economy.

The proposed United/US Airways transaction is clearly more complex. I would strongly argue that American's role in the United/US Airways deal is to provide the remedy that certainly we, but also many others sought in order to make the transaction pro-competitive.

I was a little bit amused to hear charges made both last week and today that our agreement with United must be part of some grand conspiracy to divide up the market between us and then simply to declare a truce on competition. To us, that really is an absurd proposition, and I say that for a couple of reasons.

First, if there were a conspiracy, then clearly the Justice Department would have to be a co-conspirator because if it wasn't for express concerns about the magnitude of the original transaction, United would never have entered into discussions with us that led to this deal.

Second, I am fairly sure that the last thing that United had in mind a year ago when they began to think about this transaction was to make American a stronger player in the Northeast. In fact, contrary to what has been said by a number of people today, as Metropolitan Washington Airports Authority Chairman Jim Wilding stated, United and American are like the cobra and the mongoose. We are as fierce competitors as they come, and have been for many, many years.

In fact, American entered into our proposed transactions with United and DC Air because we shared precisely the same concerns that many of you did about the original merger proposal. In our view, without remedies, under the original deal United would simply have become too large, with a network far greater certainly than ours. And it would have dominated, in particular, the Washington market, and its relationship with DC Air was troublesome to all of us.

Now, our role in the transaction is to explicitly provide a remedy to each and every one of those problems. I have to remind the Com-

mittee that, to date, we have been a relatively small player in the Northeast corridor. By almost any measure, most of our competitors are far stronger in the Northeast than we are. After all, our closest hub is some 600 miles away, in Chicago. We are not in the shuttle markets. For us, the Washington airports have for many years simply been spokes from our hubs in Dallas/Fort Worth and Miami and, of course, in Chicago.

In contrast, using the strength of their shuttles and high-frequencies in all the airports in the corridor, the dominant north-south carriers on the East Coast are Delta and US Airways. United operates a major hub at Dulles Airport. Both US Airways and Southwest have hubs at Baltimore. Continental has a huge hub at Newark. Delta operates the largest international network in the Nation at JFK, and last year the Department of Transportation gave JetBlue 75 slots to establish a hub at JFK.

So let's make it clear. In the Northeast corridor, American does not have the resources to divide the market because, to date, we don't have anything to divide. For us, this opportunity is about entering or expanding, at least, in an area of the country in which others have been firmly entrenched. In fact, insofar as these markets are concerned, American is the new entrant.

By acquiring planes, gates and slots from United, we are bolstering our network in a part of the country where our competitors are already firmly entrenched and substantially larger than we are. As a consequence of this deal, we will for the first time be able to compete much more vigorously with them.

Now, some have argued that US Airways' slots and gates should be divested to new entrant, low-cost carriers. That is, in fact, in my view, what is on the table with the proposed divestiture to DC Air. Over the past several weeks and months, I have gotten to know Bob Johnson and I can tell you that Bob Johnson is for real.

American's role as an investor and a marketing partner with DC Air is simply to provide the resources and the cooperation to assure the success of DC Air. And make no mistake about it. If the transaction is approved, the Northeast will see a vigorous new competitor in DC Air. Moreover, this is the only competitor that has pledged not only to providing competitive air fares, but to serving the markets that clearly would lose service if the slots and gates were divided up among several others.

DC Air is going to give United, it is going to give Delta, it is going to give Continental, Southwest, Atlantic Coast, JetBlue and AirTran a run for their money in the Northeast. Quite frankly, at American we are very proud to be a partner of theirs.

In short, we have stepped up to the plate to provide very explicit, measurable remedies to the most pressing problems of the proposed United/US Airways merger. By any measure, this transaction will result in less concentration and more competition than what was in the original proposal.

I thank you very much for the time this morning and I will be glad at the right time to be responsive to questions.

[The prepared statement of Mr. Carty follows:]

STATEMENT OF DON CARTY, CHAIRMAN AND CEO, AMERICAN AIRLINES

Good morning. Thank you for the opportunity to appear again before this Subcommittee and testify on consolidation in the airline industry. Ever since United Airlines proposed acquiring US Airways last May, airline consolidation has clearly been on the Congressional radar screen. And rightly so.

I note that last week several Members of this Committee wrote to the Department of Justice to express strong concerns about the potential impact of United's proposal. That same day Chairman DeWine explained those concerns in testimony before the Senate Commerce Committee. Many others have warned that its approval would inevitably spark more mergers or acquisitions. In fact, I testified last September that United's proposed merger with US Airways had triggered us at American Airlines to think long and hard about a defensive response. That examination resulted in our announcement last month of an agreement that directly addresses many of our concerns about the size and scope of the United/US Airways merger while positioning American as a much more vigorous competitor in the Northeast.

Coincidentally, an opportunity arose for us to enter into a completely separate and unrelated transaction. Quite simply, TWA's continuing downward financial spiral had finally reached a point of no return, threatening the jobs of its 20,000 employees and air service to communities throughout the nation's heartland. With only \$20 million in the bank and needing \$40 million to meet its obligations necessary for operating a normal schedule, TWA filed bankruptcy on January 9. We agreed to acquire substantially all of TWA's assets and have provided it \$200 million in financing so that the airline can continue to fly during bankruptcy. As I will discuss in more detail later, the immediacy of TWA's situation as well as the carrier's significantly smaller size clearly dictates that this transaction be treated swiftly.

Let me begin, however, by addressing the broader question of airline consolidation. In an increasingly globalized business such as ours, competition will suffer if one network is allowed to dwarf all other networks. From a customer perspective, the benefits of a much broader network are clear. Our customers—both leisure and business travelers—increasingly expect their airline of choice to be able to take them everywhere they want to go. Accordingly, if one airline is able to grow its route network significantly larger than its competitors, that airline would have a competitive advantage.

The original United/US Airways proposal presented just such a scenario. Had its initial proposal been approved, United would have become 50 percent bigger than its nearest competitor, namely us. As you might imagine, for a company like ours that is determined to create a domestic and international network that is second to none, this got our attention. For air travelers, the unbalanced landscape caused by the lack of one or more competing networks of similar size and breadth would have surely led, I believe, to an eventual reduction in overall competition.

The ultimate size of United's route network was not the only cause for concern. As we all know, high market concentration on routes to and from the nation's capital led United and US Airways to propose creating a new entrant at Reagan National Airport named DC Air. While I tip my hat to both carriers for being able to persuade such an accomplished businessman as Robert Johnson to get mixed up in our industry—where margins are thin and headaches plenty—I think the relationship envisioned between United and DC Air caused most everyone, both inside government and out, to be somewhat skeptical. Simply put, it was hard to see any competitive benefit coming from the transaction given that DC Air's aircraft, flight crews, operational support, and management staff were mostly being supplied by either United or US Airways.

The potential effect on competition in the Northeast and on routes between United's hubs and US Airways' hubs was also problematic. American has a relatively small share of the key business routes between Boston, New York, and Washington, D.C. Our fear was that the proposed merger would entrench United, complete with its new, vastly larger transcontinental network, in an effective duopoly with Delta in these shuttle markets, an outcome that rightly alarmed outside observers as well.

In the closing months of last year, it became apparent that the original United/US Airways proposal would not stand. This prompted American—and a number of other competitors—to enter into discussions with the merger parties regarding proposals of asset sales.

In early January, we agreed to acquire certain key strategic assets from US Airways and to acquire a substantial stake in DC Air—both contingent upon the reconstituted United/US Airways merger receiving regulatory approval. In a nutshell, we would acquire from US Airways 14 gates, 36 slots, 66 owned aircraft and an additional 20 leased aircraft, as well as the gates and slots necessary for us to operate

half of the US Airways Shuttle. In addition, to introduce immediate new competition on United/US Airways hub-to-hub routes, we agreed to guarantee that the following routes would be served by at least two roundtrips a day for the next 10 years: Philadelphia-Los Angeles, Philadelphia-San Jose, Philadelphia-Denver, Charlotte-Chicago, and Washington, D.C.-Pittsburgh.

As for DC Air, we agreed to take a 49 percent stake in the carrier and enter an exclusive marketing arrangement with it in which DC Air will participate in American's frequent flyer program. We will also provide DC Air with 11 100-seat Fokker 100 aircraft in an arrangement by which American Airlines personnel will be flying and maintaining AA aircraft marketed as DC Air service. American will also have the right of first refusal on the acquisition of the remaining 51 percent of DC Air.

Taken together, we believe these transactions relieve the competitive imbalance in the Northeast. They will also increase competition by making DC Air a real competitor with significant independent backing while affording us, for the first time, a significant presence in Washington, D.C. and the Northeast. American, for example, now accounts for roughly 13 percent of passenger boardings at Reagan National and far less than that at Washington Dulles and BWI. As in the Washington area, our expanded presence throughout the upper East Coast will ensure that there are at least three major competitors of comparable size on the Shuttle routes and at least two competitors on the hub-to-hub routes. And, passengers travelling along the East Coast will also benefit by our establishing another source of connecting service to compete with the service offered by United, Delta, Continental and other East Coast competitors.

Obviously, we have given the Justice Department and the Congress a lot to digest. American looks forward to working with both Justice and this Subcommittee as you attempt to determine whether what we have put on the table sufficiently remedies the United/US Airways merger and, ultimately benefits the flying public.

On a more personal note, regardless of Justice's disposition of the transactions before it, I must say that I have gotten to know Robert Johnson over these past few months and am most impressed. He is a take-charge executive who knows how to provide consumers a service, and quite frankly, how to make money. Let there be no mistake, Robert Johnson and his team will run DC Air. He will be the majority owner and he will make the decisions. He has already begun recruiting a seasoned management team. American will be his marketing partner, and we will work closely together to add value to our respective networks. DC Air will be a valuable addition to our industry and bring to it the first minority-owned airline. I know that I speak for each and every one of American's 103,000 employees when I say that it has taken our industry far too long to reach this milestone and that we at American are proud to be affiliated with it.

As for the impact of America's entry into this equation, Jim Wilding, the president of the Metropolitan Washington Airports Authority, was recently quoted as being highly enthusiastic about the vigorous competition that American's affiliation with DC Air will bring to the Washington market in comparison with the original proposal. In Mr. Wilding's words: "If American and United are anything, they're competitors. They're like the cobra and the mongoose wherever they go."

Now let me turn to TWA—a storied but beleaguered airline that after 12 consecutive years of heavy losses and 3 bankruptcies has, in spite of valiant efforts by Bill Compton and his team, simply run out of money, time, and options. Carl Icahn has stripped this company over a period of years, selling assets, such as the prized route rights to London's Heathrow Airport, just to pay the bills. Going into this winter, typically the leanest months in the airline business, with the price of fuel soaring, TWA had nothing left to sell or mortgage that wasn't already encumbered. It also had a debt of \$100 million coming due on January 15. Unable to secure or justify additional financing from traditional sources and with no one willing to purchase the airline, TWA in early January faced the very real likelihood that it would have to shut down and liquidate.

From time to time, we at American had looked at TWA as a possible merger candidate. Indeed, its centrally located St. Louis hub provides a nice complement to our operations at capacity constrained Chicago O'Hare. In addition, TWA's current management team had—in the face of some formidable obstacles—done a very good job of improving the airline's operation, and in particular, of modernizing its fleet. Unfortunately, very high ownership costs on TWA's new fleet and an unusual arrangement that allows an entity owned by Carl Icahn to sell TWA's ticket inventory at a substantial discount, made a potential AA/TWA merger a non-starter.

TWA's bankruptcy filing and looming collapse three weeks ago, however, presented a far different set of circumstances. We stepped in to provide—when no one else would—the cash TWA had to have to keep operating. We are proposing to acquire substantially all of TWA's assets, to hire all of TWA's employees and to con-

tinue a hub operation in St. Louis. Obviously, this transaction, which excludes certain TWA contracts such as Mr. Icahn's deal, is contingent on bankruptcy court approval.

We look forward to adding TWA's 20,000 employees to the American Airlines family. We are keenly aware of TWA's illustrious history and know that were it not for the hard work and great performance of the people throughout TWA, they would not be the perfect fit for American that we believe they are. We also recognize what a good corporate citizen TWA has been in the state of Missouri and I can assure you that our company will be as well.

In closing, permit me to be blunt. Time is of the essence with regard to TWA. We at American cannot commit our shareholders' money to keep TWA afloat indefinitely. There is simply not enough collateral for debtor in possession financing. Also, I fear, uncertainty will only serve to accelerate TWA's collapse as travel agents will likely book away from TWA, as was the case with the demise of Eastern Air Lines a decade ago. Similarly, consumer uncertainty will eventually cause travelers to not advance book flights on TWA, effectively shutting off the airline's already severely limited cash flow.

As for the Justice Department review of this transaction, I think it is fairly evident that there is a failed firm here, which in itself should serve to expedite the review process. Even so, the transaction gives rise to very few competition issues. Indeed, the market share of this one-time giant of the skies has now fallen to only 3.9 percent in 2000. Finally, even if TWA were not failing and therefore unable to compete on a going-forward basis, there are only two hub-to-hub routes where American and TWA both offer non-stop service. In the case of St. Louis-Chicago, for example, Southwest Airlines, which has 12 gates at St. Louis Lambert, provides 15 daily nonstop roundtrips between St. Louis and Chicago Midway, while United provides 4 daily nonstops between St. Louis and Chicago O'Hare.

The bottom line is that TWA's situation presents a truly unique and exceptional circumstance. Indeed, our acquisition of its assets is not contingent on approval of the other deals. As such, it is truly a stretch of the imagination to believe that the American/TWA transaction would in any way trigger the merger of far larger airlines. Instead, what is before you is our taking on a financial risk that no other airline was willing to take and commitments to the 20,000 TWA employees and their families that no one else would make.

Mr. Chairman, that concludes my statement. I would be happy to answer any questions you or the Members of this Subcommittee may have.

Senator DEWINE. Mr. Carty, thank you very much.
Mr. Goodwin?

STATEMENT OF JAMES E. GOODWIN, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, UNITED AIRLINES, CHICAGO, ILLINOIS

Mr. GOODWIN. Chairman DeWine, Senator Schumer, on behalf of United Airlines' more than 100,000 employees, it is good to be back in front of this committee, and I welcome the opportunity to discuss our proposed merger with US Airways.

Last June, I appeared before this Committee to explain why United believes our customer-driven merger with US Airways should be approved, and how this transaction will significantly benefit consumers and the communities served by both carriers. Since that time, there have been several developments that United believes enhance the competitive benefits of our proposed merger with US Airways, and I appreciate the opportunity to describe them to the committee.

Simply put, we believe a good deal for consumers has gotten even better. Let me explain the significant steps we have taken in response to concerns you and others have raised. Also, I wish to discuss the pro-consumer impact of other transactions related to our proposed merger.

First, I would like to turn to DC Air. When I appeared before this Committee last year, United was very enthusiastic about the

creation of DC Air, an independent carrier that will enhance competition at Reagan Washington National Airport.

The committee's reaction to DC Air was cautious. Specifically, some Members of Congress were skeptical that DC Air would compete vigorously against us at United Airlines in the initial phases of the startup operation. There was also some concern expressed that DC Air lacked the experience to be a viable, long-term competitor. Last month, American Airlines entered into an agreement to acquire a 49-percent stake in DC Air, and we believe this transaction fully responds to the committee's concerns.

First, the transaction provides DC Air with access to a substantial network and operating expertise which will allow it to provide strong competition against United. Now, American will provide the support that United would have provided to DC Air.

Second, as this Committee knows, United and American are like the Hatfields and the McCoys when it comes to competing vigorously against one another, and I fully expect American to help DC Air carry on that tradition. Finally, with American as a partner, concerns about DC Air's long-term staying power should be laid to rest.

In addition to DC Air, some concerns were raised about a potential loss of competition on a number of routes where United and US Airways were the sole non-stop competitors. Again, we have taken corrective action, we believe, that fully addresses that concern.

Last month, we entered into an agreement with American Airlines under which it will provide non-stop competitive service on these key hub-to-hub routes. This service will ensure a minimum of two-carrier, non-stop competition on key United/US Airways hub-to-hub routes, thereby ensuring that competition is not only preserved but enhanced.

There are additional elements of our agreement with American, including a joint venture to operate the Washington-New York-Boston shuttle, and this agreement increases consumer choice in the Washington-New York-Boston shuttle markets.

So what does United believe the net effect of our proposed merger and these recent developments will be for consumers and competition? We believe domestic competition will be enhanced and consumer choice and convenience will be improved. In fact, the New York Times in an editorial on January 11, 2001, expressed the opinion that the United/American/DC Air agreements are in the public interest. The Times went on to note, and I quote, "This deal should assuage any lingering concerns about the United/US Airways merger. Indeed, travelers in the Northeast will probably see more competition as a result of these agreements," end quote.

The United/US Airways merger will create a 21st century airline that offers consumers improved choices for more convenient single-carrier service on thousands of routes around the world. This transaction will enable United to fully use US Airways' assets to compete vigorously in a way not currently possible due to that carrier's financial challenges.

Second, the transactions also will increase the number of competitors and level of competition in the Northeast region. Currently, three network carriers compete in the Northeast region—US Airways, Delta and Continental. As a result of these trans-

actions, there will be four key network competitors—United, American, Delta and Continental. In addition, Southwest continues to expand significantly its competitive presence in the Northeast, as do JetBlue and AirTran.

Third, the transactions will greatly enhance inter-hub competition. I was pleased to see that Transportation Secretary Norm Mineta acknowledged the importance of inter-hub competition during his recent confirmation hearings. Secretary Mineta is absolutely correct. United believes consumers will benefit greatly from improved inter-hub competition resulting from our proposed merger. The transaction will enable United's Charlotte hub to compete more vigorously with Delta's Atlanta hub. Also, it will permit United's Philadelphia hub to compete more vigorously with Continental's Newark hub.

In addition to those competitive benefits, I would like to take a moment to reiterate the significant guarantees United has made to the traveling public, employees of United and US Airways, and the communities served by US Airways.

As you may recall, we have made the ground-breaking commitment that no United or US Airways employee will be furloughed because of this transaction. The daily reports of layoffs at companies across the country underscores the historic and important nature of this pledge to the employees of both companies and the communities in which they live.

In addition, we will honor all labor agreements that both carriers currently have in place. Also, as I testified in June, United will continue to serve all cities currently served by US Airways. Further, for 2 years following the completion of our proposed merger, United has made the extraordinary commitment not to increase structure fares, with the exception only for increases in fuel costs and the Consumer Price Index.

Finally, when I appeared before you in June, Senator Specter inquired about plans for a maintenance center in Pittsburgh. I am pleased to inform you that United has reached an agreement with the Commonwealth of Pennsylvania and Allegheny County contingent on regulatory approval to build that maintenance facility in Pittsburgh.

Mr. Chairman, I would like to conclude by again thanking you for the opportunity to testify. We have listened and responded to your concerns. We continue to strongly believe our proposed merger should be approved, and I look forward to responding to any questions you and the other Senators may have.

[The prepared statement of Mr. Goodwin follows:]

STATEMENT OF JAMES E. GOODWIN, CHAIRMAN AND CEO, UNITED AIRLINES

Chairman Hatch, Ranking Member Leahy, and other Members of this distinguished Committee, on behalf of United Airlines' more than 1000,000 employees worldwide, thank you for the opportunity to appear again before you to discuss our proposed merger with US Airways.

Last June, I appeared before your Subcommittee on Antitrust, Business Rights and Competition to explain why United believes our customer-driven merger with US Airways should be approved and how this transaction will significantly benefit consumers and the communities served by both carriers. Since that time, there have been several relevant developments that United Believes enhance the competitive benefits of our proposed merger with US Airways. We appreciate this opportunity

to describe them to the Committee. Simply put, we believe a good deal for consumers has gotten even better.

In my testimony before you last year, I pledged that I would listen carefully to concerns you raised and, to the extent possible, United would attempt to respond constructively to them. Let me explain significant steps we have taken in response to concerns you and others have raised. Also, I wish to discuss the pro-consumer impact of other transactions related to our proposed merger.

Let me first turn to DC Air. When I appeared before your Subcommittee last year, United was very enthusiastic about the creation of DC Air, an independent, entrepreneurial carrier that will enhance competition at capacity-controlled Reagan Washington National Airport. In addition to providing consumers in the Washington-area with a new competitive choice in air service, we were pleased that DC Air committed to maintain the current service pattern from Reagan National to many small communities. United has a longstanding commitment to small city service and this was an important consideration for us.

The Subcommittee's reaction to DC Air was cautious. Specifically, some Members of Congress were skeptical that DC Air would compete vigorously against United due to our commercial agreements with DC Air that were intended to assist that carrier in the initial phase of its start-up operations. There too was some concern expressed that DC Air lacked the experience to be a viable, long-term competitor.

Last month, American Airlines entered into an agreement to acquire a 49 percent stake in DC Air. We believe this transaction squarely and fully responds to concerns Members of Congress raised. First, the transaction provides DC Air with access to a substantial network and operating expertise, which will allow it to provide strong competition with United. Now American will provide the support United would have provided to DC Air. Second, as this Subcommittee knows, United and American are like the Hatfields and McCoys when it comes to competing vigorously against one another. We fully expect American to help DC Air carry-on this tradition. Finally, with American as a partner, concerns about DC Air's long-term staying power should be laid to rest.

In addition to DC Air, some Members also expressed concern about a potential loss of competition in a limited number of city-pairs where United and US Airways were the sole non-stop competitors. Again, we have taken corrective action we believe fully addresses that concern. Last month, we entered into an agreement with American under which it will provide competitive non-stop service on these key hub-to-hub routes. Specifically, American has agreed to provide non-stop service on the following routes for a minimum of 10 years: Philadelphia to Los Angeles; Philadelphia to San Jose; Philadelphia to Denver; Charlotte to Chicago O'Hare; and Reagan National to Pittsburgh (service to be provided by DC Air). This service will ensure a minimum of two-carrier, non-stop competition on key United/US Airways hub-to-hub routes. In some cases, as I will explain in a moment, United also agreed to sell or lease to American facilities and equipment to support this competitive service.

Mr. Chairman, let me be clear that our agreement with American to ensure non-stop competition in these key United/US Airways hub-to-hub routes will not simply maintain the competitive Status quo. To the contrary, the agreement will improve non-stop competition in these markets. By increasing the number of combined frequencies and overall seats on these non-stop routes, competition and consumer choice will be enhanced.

However, our efforts to make a transaction that is good for consumers enable better did not stop there. Let me explain.

Last month, we agreed to sell American key US Airways assets at several capacity and facility constrained airports to ensure that it will be a meaningful competitor to United and other network carriers. At New York's LaGuardia Airport, we agreed to sell American 22 jet slots and 14 commuter slots. We also agreed to sell American five gates at LaGuardia, three gates at Reagan National, three gates at Boston's Logan Airport, one gate at Philadelphia International Airport, one gate at Atlanta Hartfield International Airport and one gate at Newark International Airport.

In addition to slots and gates, we also agreed to sell American a large number of US Airways aircraft. Specifically, we agreed to transfer to American forty Fokker 100 aircraft, thirty-four Boeing 757 aircraft and twelve MD-82 aircraft.

Mr. Chairman, again, we did not stop there. United also entered into a 22-year joint venture agreement with American to jointly operate the US Airways Shuttle. Under this agreement, United and American will each fly half of the daily Shuttle flights between Reagan National, New York's LaGuardia Airport and Boston's Logan Airport, with each airline using its own planes and crews. Together, we will jointly market a Shuttle product and coordinate all relevant aspects of the operations. To ensure that consumers have the greatest choice possible, under the joint

agreement, customers will be able to select their frequent flyer program of choice possible, under the joint agreement, customers will be able to select their frequent flyer program of choice—either United Mileage Plus or American's AAdvantage program—and earn reward and recognition regardless of which airline's Shuttle flight they have selected.

Mr. Chairman, let me make several brief points relating to our agreement with American to jointly operate the Shuttle. This agreement increases consumer choice in the Washington, New York and Boston Shuttle markets. Instead of having the limited choice between US Airways and Delta as currently is the case, consumers of Shuttle service will have an added option of choosing between United, Delta or American. Moreover, our cooperative relationship with American on the Shuttle is strictly limited to the operation of the Shuttle. On all other routes, as is the case today, United and American will remain vigorous competitors.

So what does United believe the net effect of our proposed merger and these recent developments will be for consumers and competition? We believe domestic competition will be enhanced, and consumer choice and convenience will be improved. In fact, the *New York Times*, in an editorial on January 11, 2001, expressed the opinion that the United/American/DC Air agreements "are in the public interest." The *Times* went on the note, "This deal should assuage any lingering concerns about the United-US Airways merger. Indeed, travelers in the Northeast will probably see more competition as a result of these agreements."

First, the United-US Airways merger will create a 21st Century airline that offers consumers significantly improved choices for more convenient, single-carrier service on thousands of routes around the world. The transaction will enable United to fully use US Airways' assets to compete vigorously in a way not currently possible due to that carrier's financial challenges.

Second, the transactions will greatly enhance inter-hub competition. I was pleased to see DOT Secretary Mineta acknowledged the importance of inter-hub competition during his recent confirmation hearing before the Senate Committee on Commerce, Science and Transportation. Secretary Mineta is absolutely correct. United believes consumers will benefit greatly from improved inter-hub competition resulting from our proposed merger. The transaction will enable United's Charlotte hub to compete more vigorously with Delta's Atlanta hub. Also, it will permit United's Philadelphia hub to compete more vigorously with Continental's Newark hub.

Third, by creating a finished national airline network, the combined United/US Airways will have the scope and network efficiencies to compete vigorously in every region of the country.

Fourth, the transactions also will increase the number of competitors and level of competition in the Northeast region. Currently, three network carriers mainly compete in the Northeast region—US Airways, Delta and Continental. As a result of transactions, there will be four key network competitors—United, American, Delta and Continental—in this region. In addition, Southwest continues to expand significantly its competitive presence in the Northeast and according to recent DOT data, Southwest remains the largest domestic O&D carrier.

Finally, American's separate deal to acquire 49 percent of DC Air will also ensure strong competition between United and DC Air in the Washington, DC, region. The agreement gives DC Air a strong partner and will give its customers access to American's vast global network, which will also promote vigorous competition with United.

In addition to these competitive benefits, let me take a moment to update the Committee on guarantees United has made to the traveling public, employees of US Airways and communities served by US Airways. As you Subcommittee will recall, we made the groundbreaking commitment that no United or US Airways employee will be furloughed because of this transaction. The daily reports of layoffs at companies across the country underscore the historic and important nature of this pledge to the employees of both companies and the communities in which they live. In addition, we will honor all labor agreements that both carriers currently have in place. Also, as I testified in June, United will continue to serve all cities currently served by US Airways. Further, for two years following the completion of our proposed merger, United has made the extraordinary commitment not to increase structure fares, with exceptions only for increases in fuel cost and the consumer price index.

More recently, we have made several other important commitments. United has committed to build multi-million dollar maintenance facility in the Pittsburgh area. That decision is very important to the economy of the Pittsburgh area and Western Pennsylvania, and an important piece of our operational plan for the combined carrier. We too have committed to maintain the reservation centers that US Airways currently operates in Winston-Salem, North Carolina, Syracuse, New York and Pittsburgh. Again, we recognized the importance of these facilities to the local

economies and we will be pleased to have them join our other reservation centers in providing the best service possible to our valued customers.

Mr. Chairman, let me conclude by again thanking you for the opportunity to testify. We have listened and responded to your concerns. We continue to strongly believe our proposed merger should be approved. It is in the best interest of consumers, communities served by both carriers and the U.S. economy. I'd be pleased to respond to questions at the appropriate time.

Senator DEWINE. Mr. Goodwin, thank you very much.
Mr. Compton?

**STATEMENT OF WILLIAM F. COMPTON, PRESIDENT AND
CHIEF EXECUTIVE OFFICER, TRANS WORLD AIRLINES, ST.
LOUIS, MISSOURI**

Mr. COMPTON. Thank you, Chairman DeWine and Senator Schumer, for allowing me, on behalf of the 20,000 TWA employees, to testify here today. I appreciate the chance to explain why our decision to pursue an asset purchase agreement with American Airlines should be approved, and why this transaction is a good global solution for TWA's customers, its employees, retirees, creditors, and the communities served by both carriers.

I would like to begin by giving you my personal perspective on TWA and why, in my view, the proposed transaction is the only comprehensive solution that adequately serves competition and customers in light of the harsh realities facing TWA today.

Since the late 1960's when I became a pilot for TWA, the airline industry and the economy have changed dramatically. It has been an uphill battle for TWA, particularly over the last 15 years. To simply survive, TWA has struggled during that 15 years, after the acquisition by Carl Icahn during the merger and acquisition period of that decade. Subsequently, TWA was stripped of many of its most valuable assets.

Through the efforts and commitment of its employees, TWA eventually was able to secure a change in corporate ownership. At that point, however, TWA was saddled with enormous debt, an aging fleet, a pension fund that had been deemed to be seriously underfunded, and the loss through sale of many of its most valuable routes.

The fact that TWA survived in those circumstances was due to the sheer dedication of its employees. They gave concessions and survived not one, but two bankruptcies, to ensure the continuation of the airline to the present time. In fact, notwithstanding our financial predicament, TWA has made a remarkable operational turn-around over the last 4 years. TWA has been ranked at or near the No. 1 spot in on-time arrivals since 1997. In 1998 and 1999, customers voted us the winner of the J.D. Power Award for Customer Satisfaction, and in 2000 we finished second among all the major airlines in both J.D. Power award categories.

We replaced almost our entire fleet, and that results now in having one of the youngest fleets in the airline industry. We made these improvements without huge capital outlays or marketing campaigns. We did it with dedication, professionalism, and pride—hallmarks of TWA throughout its 75 years.

But TWA's operational successes have not been enough. We can no longer afford to operate, let alone sustain these advances. Despite TWA's many accomplishments, profitability remained illusive.

The events of the 1980's had made it virtually impossible to compete effectively. Due to its fragile financial condition, TWA is paying premium leases for its aircraft, almost twice the industry average.

The need to provide long-overdue wage increases for TWA employees and the recent staggering increases in the price of jet fuel have further drained TWA's reserves. TWA remains essentially a single-hub operation, putting us at a schedule disadvantage with the multiple-hub carriers.

Finally, this winter, by January 10, 2001, we ran out of time. We had cash on hand of only \$20 million, and needed more than that amount just to make it through the next day. With our cash reserves nearly depleted and a major commitment to lenders coming due, our backs were squarely against the wall.

The financial crisis that hit TWA this winter did not materialize overnight. A year ago, we could see the problems looming on the horizon that culminated in our recent bankruptcy filing, and we tried very hard to do something dramatic about it. We recognized that the viability of our airline was at stake, and we went knocking on doors to find a solution. There is not an airline of any size in America that we did not approach. There is not an airline of any size in America that did not have an opportunity to step in and join with us.

No one was interested in TWA as a going concern. In my view, most recognized that they would benefit from TWA's demise and they were willing, at best, to stand back and watch it happen. Only American Airlines saw fit to come forward with a proposal that was not merely an offer to cherry-pick a prized asset here or a prized asset there.

American proposed a comprehensive solution that will realize for our creditors the value of TWA as a going concern. It will preserve jobs for our employees and medical benefits for our retirees, and it will promote competition by maintaining our St. Louis hub and safeguard TWA's service and major economic presence in additional communities around our system, most notably Kansas City, New York and Los Angeles, where we employ thousands.

The transaction proposed with American Airlines offers a comprehensive solution to the problems facing TWA. It addresses the varying needs of TWA employees, retirees, creditors, consumers, and communities served by TWA.

The transaction protects TWA's 20,000 employees and many thousand retirees and dependents. American has made a bedrock commitment to retain the vast majority of TWA employees and to absorb responsibility for TWA's retirees' medical and dental insurance benefits. Not only does this speak volumes about American's integrity, it achieves TWA's goal of protecting its skilled and dedicated workforce. It is here that American is gaining TWA's greatest asset, its employees. American will find that it has acquired motivated employees who carry out their work with the highest level of quality and commitment.

The consumers and communities served by TWA will also be better served by the American transaction than by a liquidation. Liquidation of TWA's assets without a commitment to maintaining TWA's jobs would result in vast reductions of service to vast num-

bers of communities. Certainly, other carriers would benefit from such a reduction in competition, but consumers would pay the price.

The price to be paid in a TWA liquidation would be highest in our home State of Missouri and our hub city of St. Louis. In a court hearing the weekend before last, attorneys for the city of St. Louis stated that the economic contribution of Lambert International Airport in St. Louis to the local economy is \$8 billion per year.

Other communities would also be harmed by the liquidation alternative. TWA's 187 aircraft would cease to be in service. Air service to more than 100 communities would be negatively impacted. The result would be lower capacity, higher prices and less service for the traveling public, and a diminished business capacity for dozens of communities.

And acquisition of TWA's assets as a total operation best serves to protect the traveling public and the communities that rely heavily on TWA. American has committed to retain the St. Louis hub operations, and with additional aircraft from TWA's system American will be able to support TWA's route structure.

As I look to the future of aviation, there are many chapters yet to be written. I believe, however, that TWA's final chapter will be viewed in years to come as having provided major benefits to the aviation industry. Among the ranks of our current employees, there are many young and talented folks who have benefited from their apprenticeships under seasoned TWA veterans. They can take with them to American and to every corner of the aviation world knowledge and experience that is invaluable. When I consider this possibility becoming a reality for so many of our workers through this transaction, I know that all of our efforts will have been worthwhile. Indeed, TWA's legacy, if not its grand name, will be carried forward by its people.

Just as important, consumers will continue to see the same levels of service, without the dislocation that would otherwise have occurred if a bankruptcy with a parceling out of assets had occurred. Indeed, this is the only way that the public interest will be served in the long run.

Mr. Chairman, let me conclude by again thanking you for the opportunity to testify today. As I have said, we strongly believe that this transaction should go forward promptly.

Thank you.

[The prepared statement of Mr. Compton follows:]

STATEMENT OF WILLIAM F. COMPTON, PRESIDENT AND CEO, TRANS WORLD AIRLINES, INC.

Chairman DeWine, Ranking Member Kohl, and other Members of this distinguished Subcommittee, on behalf of TWA's more than 20,000 employees, I thank you for the opportunity to testify today. I appreciate the chance to explain why our decision to pursue an asset purchase agreement with American Airlines should be approved and why this transaction is a good global solution for TWA customers, employees, retirees, and creditors, as well as the communities served by both carriers. I would like to begin by giving you my personal perspective on TWA and why, in my view, the proposed transaction is the only comprehensive solution that adequately serves competition and consumer in light of the harsh realities facing TWA, its employees and retirees.

I. HOW WE GOT HERE

Since the late 1960s, when I became a pilot the TWA, the airline industry, and the economy have changed dramatically. It has been an uphill battle for TWA, particularly over the last 15 years, to simply survive. In 1985, TWA, during the height of Wall Street-driven mergers and acquisitions, was acquired by Carl Icahn. Subsequently, TWA was stripped of many of its most valuable assets.

Through the efforts and commitment of its employees, TWA eventually was able to secure a change in corporate ownership. At that point, however, TWA was saddled with enormous debt, an aging fleet, a pension fund that had been deemed to be seriously underfunded and the loss through sale of many of its most valuable routes. The fact that TWA survived in those circumstances was due to the sheer dedication of its employees. They gave concessions and survived not one, but two, bankruptcies to ensure the continuation of the airline to the present time.

In fact, notwithstanding its financial predicament, TWA has made a remarkable operational turnaround over the last four years. TWA has been ranked at or near the #1 spot for on-time arrivals since 1997. In 1998 and 1999, customers voted us the winner of the J.D. Power award for customer satisfaction. In 2000, we finished second among all of the airlines in both J.D. Power award categories. We replaced almost our entire fleet, with the result that it is now, on average, one of the youngest in the airline industry.

We made these improvements without huge capital outlays or marketing campaigns. We did it with dedication, professionalism, and pride—hallmarks of TWA throughout its 75 years. But TWA's operational successes have not been enough. We can no longer afford to operate, let alone sustain these advances.

II. TWA'S MANY SUCCESSES HAVE NOT BEEN ENOUGH

Despite TWA's many accomplishments, profitability remained elusive. The events of the 1980s had made it virtually impossible to compete effectively. Due to its fragile financial condition, TWA is paying premium lease prices for its aircraft—almost twice the industry average. The need to provide long-overdue wage increases for TWA employees and the recent, staggering increases in the price of jet fuel have further drained TWA's reserves. TWA remains essentially a single hub operation, putting us at a schedule disadvantage to multiple hub carriers.

Finally, this winter we ran out of time. BY January 10, 2001, TWA had cash on hand of only \$20 million and needed more than that amount just to make it through the next day. With our cash reserves nearly depleted and a major financial commitment to lenders coming due, our backs were squarely the wall.

The financial crisis that hit TWA this winter did not materialize overnight. A year ago we could see problems looming on the horizon that culminated in our recent bankruptcy filing, and we tried very hard to do something dramatic about it. We recognized that the viability of our airline was at stake and we went knocking on doors to find a solution. There is not an airline of any size in America that did not have an opportunity to step in and join with us. No one was interested in TWA as a going concern. In my view, most recognized that they would benefit from TWA's demise, and they were willing, at best, to stand back and watch it happen.

Only American Airlines saw fit this winter to come forward with a proposal that was not merely an offer to cherry-pick a prized asset here or there. American proposed a comprehensive solution that will realized for our creditors the value of TWA as a going concern. It will preserve jobs for our employees and medical benefits for our retirees. It will promote competition by maintaining the St. Louis hub and will safeguard TWA's service and major economic presence in additional communities around our system—most notably Kansas City, New York and Los Angeles, where we employ thousands.

III. AMERICAN AIRLINES TRANSACTION OFFERS COMPREHENSIVE SOLUTION

The transaction proposed with American Airlines offers a comprehensive solution to the problems facing TWA. It addresses the varying needs of TWA employees, retirees, creditors, and consumers and the communities served by TWA.

This transaction offers protection for TWA's 20,000 employees and many thousands of our retirees and dependents. American has made a bedrock commitment to retain the vast majority of TWA employees and to absorb responsibility for TWA retirees' medical and dental insurance benefits. Not only does this speak volumes about American's integrity, it achieves TWA's goal of protecting its skilled and dedicated work force. It is here that American is gaining TWA's greatest asset—its employees. American will find that it has acquired motivated employees who carry out their work with the highest level of quality and commitment.

The consumers and the communities served by TWA also will be better served by the American transaction than by liquidation. Liquidation of TWA assets without a commitment to maintaining TWA jobs would result in vast reductions of service to many communities. Certainly other carriers would benefit from such a reduction in competition, but consumers would pay the price.

The price to be paid in a TWA liquidation would be highest in our home state of Missouri and our hub city St. Louis. In a court hearing the weekend before last, attorneys for the City of St. Louis stated that the economic contribution of Lambert-St. Louis International Airport to the local economy is \$8 billion a year. TWA and its regional airline partners offer approximately 75 percent of the departures from Lambert. It is not difficult to envision the benefit of a continuation of this service under the auspices of American Airlines (or, for that matter, any other carrier that is willing to come forward in the auction process and commit to an acquisition of the TWA operation).

Other communities also would be harmed by the liquidation alternative. TWA's 187 aircraft could cease to be in service. Air service to more than 100 communities would be negatively impacted. The result could be lower capacity, higher prices, and less service for the traveling public and a diminished business development capacity for dozens of communities.

An acquisition of TWA assets as a total operation best serves to protect the traveling public and the communities that rely heavily on TWA. American has committed to retain the St. Louis hub operations. With additional aircraft from TWA in its system, American will be able to support TWA's route structure.

Our assets will be sold through a bankruptcy auction process, and we remain open to higher and better offers. But, so far, the American Airlines plan is the only global solution on the table. It is the only solution that will preserve the competitive benefits of TWA as a going concern for the consumers and communities we serve. It offers the most benefit to the greatest number of TWA stakeholders.

IV. TWA'S FINAL CHAPTER ENDS ON A POSITIVE NOTE

As I look to the future of aviation, there are many chapters yet to be written. I believe, however, that TWA's final chapter will be viewed in years to come as having provided major benefits to the aviation industry. Among the ranks of our current employees, there are many young and talented people who have benefited from their apprenticeships under seasoned TWA veterans. They can take with them to American, and to every corner of the aviation world, knowledge and experience that is invaluable. When I consider this possibility becoming a reality for so many of our workers through this transaction, I know that all of our efforts will have been worthwhile. Indeed, TWA's legacy, if not its grand name, will be carried forward by its people.

Just as important, consumers will continue to see the same levels of service without the dislocation that would have otherwise occurred if a bankruptcy with a parceling out of assets had occurred. Indeed, this is the only way that public interest will be served in the long run.

Mr. Chairman, let me conclude by again thanking you for the opportunity to testify today. As I have said, we strongly believe this transaction should go forward promptly. It is in the best interest of TWA employees, retirees, creditors, consumers, and communities served by both carriers. I would be pleased to respond to any questions.

Senator DEWINE. Mr. Compton, thank you very much.

Mr. Johnson, thanks for joining us.

STATEMENT OF ROBERT L. JOHNSON, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, DC AIR, WASHINGTON, D.C.

Mr. JOHNSON. Thank you, Mr. Chairman, Senator Kohl, and members of the committee. From the day that we announced the creation of DC Air, my vision for this ground-breaking company has remained intact. That vision is to build on the well-established service from 44 communities throughout the Mid-Atlantic region to Reagan National Airport that approximately 3 million passengers have come to rely on, to provide safe, reliable, high-quality service at competitive to customers and communities in the region we serve, to compete vigorously on price and service in the commu-

nities we serve, to facilitate the growth and economic development that accompanies air service, and to develop and maintain an airline that the Washington community will be proud to call its hometown carrier.

In addition, as Chairman, CEO and majority owner of DC Air, I pledged from our very first day to create, own and operate this new airline, America's first minority-owned air carrier in over 30 years, because in my heart I believed it would be good for the communities, ensure competitiveness in air travel, and do right by the 45 communities that we serve.

As you are well aware, Mr. Chairman, from the first discussion of DC Air, critics speculated that its proposed agreement with United Airlines for transition period resources, however brief and arms-length they might have been, might have compromised our goal of establishing DC Air as a viable, independent carrier. Obviously, now this has all changed with our announced partnership with American Airlines. American's recently announced agreement to invest in DC Air as a minority partner and to provide these transition resources proves that DC Air will be an independent, competitive carrier.

Why DC Air choose to partner with American? We had received expressions of interest from a number of carriers regarding partnership and entered into very detailed negotiations with several. While we could have chosen any of several different paths, I had the opportunity at a critical point to meet and get to know Don Carty, of American.

It became clear to me in that meeting and throughout our subsequent discussions that not only were the economic terms of the arrangement favorable to DC Air and the benefits to our passengers outstanding, and particularly what I would call the premium frequent flyer program in the country, American's Advantage Miles, but more importantly—and this was very important to me—that Don Carty and the American team truly understand what DC Air and minority ownership is all about and they are looking forward to being really true partners.

Let me clear about something that individuals have raised and have been questioned about. First and foremost, under the alliance with American I am the Chairman and CEO of DC Air, and under my leadership DC Air will be an independent company. Let me be absolutely clear about this. DC Air has no obligation whatsoever to sell additional shares to American. American has purchased a minority equity stake of DC Air. Consequently, as the majority owner, DC Air will follow my vision.

Now, the other issue that has been raised about DC Air is this question of will we be competitive. Mr. Chairman, I assure you I wouldn't get in a business if I didn't think I could compete and create value. We will be competitive because we will fly the right size aircraft for our 44 routes.

One thing that you heard from Mr. Leonard is that AirTran could be more competitive in flying the slots at DC Air. I think what Mr. Leonard failed to point out is that AirTran couldn't fly 104 of the 220 slots that we own because those slots are commuter and regional jet slots and AirTran's 717s couldn't fly those commuter and regional jet slots.

Furthermore, I disagree with Mr. Leonard. Regional jets are not more expensive to operate in the smaller markets that we serve. They are, in fact, substantially less expensive to operate. If AirTran, as Mr. Leonard proposed, flew their 717s in some of the smaller markets that we serve, they would have to charge more. It would be the same as taking a 747 to Buffalo. Most of the seats would be empty and the passengers would have to pay more to get back and forth. That is why no one does it.

So we will be a focused regional carrier with none of the overhead costs of some of the global major carriers. Our employees will be fairly paid at rates comparable to other regional carriers, below the rate of the major carriers and consequently far more productive.

Our alliance with American, as I have pointed out, provides great customer benefits in the frequent flyer program. So DC Air provides competition not just non-stop to and from Washington, but up and down the East Coast. For example, we will serve northern cities like Burlington and Buffalo and Columbus to a number of southeastern destinations—Orlando, Tampa, Jacksonville, Atlanta, Huntsville, Columbia, Charleston, and so on. This is real new competition in over 450 city pairs throughout the route system.

Mr. Leonard has talked about the slots and they should be carved up and handed out. When I accepted the responsibility of taking on the investment in DC Air, I made a pledge before this committee—I said I would do it before the Justice Department as part of a consent decree—that I will always fly those slots to the 44 communities that have had this service for over 40 years. No one else in this industry will make that commitment that they will continue to serve, Mr. Chairman, the 44 communities that have historically been served by US Airways. We will do that.

So I disagree with Mr. Leonard's assumption that DC Air would not pass the laugh test. I believe DC Air is, in fact, a new entrant that will provide competition on the East Coast. When you look at the East Coast market right now, there are two major carriers, US Airways and Delta, flying the majority of passengers up and down the East Coast. Now, we have Southwest, AirTran and JetBlue. I should point out that DC Air on the first day of its operations will be almost the size of AirTran and significant larger than JetBlue.

So after the proposed merger, you would have Delta very aggressive still, United very aggressive on the East Coast, American, with the new merger terms, very aggressive, as well as DC Air. In addition, you would have the low-cost carriers that we talked about earlier. This sounds to me like more competition, with DC Air being a part of it.

Now, in concluding let me go to one other issue that has been raised, the so-called no-flip restriction on DC Air, and what that was eliminated out of the original deal with United.

First of all, Mr. Chairman, I never supported that no-flip agreement anyway. It would be the same as if someone sold your house and said if you sell this house any time within the next 3 years, you have got to give me all the profits. Well, even if you plan to live in that house for the next 25 years, no prudent business person or homeowner would put that provision into an agreement.

There is nothing in eliminating that no-flip arrangement that implies in any way that I have any intention of flipping DC Air to American or any other carrier. By the way, I should point out there is nothing in the arrangement that prevents me from finding a new partner if I wanted to reacquire the opportunity from American.

So I think it is unfair to assert that DC Air, of all the carriers in the industry who buy slots, should have a no-flip. But I will tell you what I will do. If every airline would agree not to take a profit off the flip of a slot, I will sign with that same group of airlines. I doubt very seriously if they will do it, and I don't think it is fair to impose it on DC Air.

So, Mr. Chairman, I think when you look at the facts, DC Air is inheriting a very attractive route system in a very desirable airport, Reagan National Airport, and the opportunity to continue to provide service to these 44 communities with 3 million passengers, flying a combination of business and leisure customers that have historically come to rely on the quality of service that US Airways provided. We will do it at a lower cost. We will do it more focused, with more competition, and we will serve the public, I believe, to the best of our ability.

Thank you very much, Mr. Chairman.

[The prepared statement of Mr. Johnson follows:]

STATEMENT OF ROBERT L. JOHNSON, CHAIRMAN, AND CEO, DC AIR

Mr. Chairman, Senator Kohl and Members of the Committee, from the day that we announced the creation of DC Air, my vision for this groundbreaking company has remained intact:

- To build on the well established service from 44 communities throughout the mid-atlantic region to Washington's National Airport that approximately 3 million passengers a year have come to rely on;
- To provide safe reliable, high quality service, at competitive prices to customers and communities in the region we will serve;
- To compete vigorously on price and service in the communities we serve;
- To facilitate the growth and economic development that accompanies air service; and
- To develop and maintain an airline that the Washington community will be proud to call its hometown carrier.

In addition, as Chairman, Chief Executive Officer and majority owner of DC Air, I pledged from our very first day to create, own, and operate this new airline—America's first minority-owned air carrier in over 30 years—because in my heart I believed it would be good for consumers, ensure competitiveness in air travel, and do right by the 44 communities we will serve.

Mr. Chairman, I am proud and happy to report today that we have made a number of significant strides forward in realizing the full scope of this vision.

As you are well aware, from the first discussions of DC Air, critics speculated that its proposed agreements with United Airlines for transition period resources, however brief and arms-length these may have been, might have compromised our goal of establishing DC Air as a viable, independent airline. This has all changed with our announced partnership with American Airlines. American's recently announced agreement to invest in DC Air and to provide these transition resources proves that these theories could not be further from the truth.

Make no mistake about it, the resources that American Airlines is bringing to Washington, DC—an experienced staff, capital, and infrastructure—as it grows its operations here and throughout the Eastern United States will go a long way toward making DC Air a powerful, competitive, and independent airline on day one of our operations.

By far the most important outcome of the DC Air-American Airlines partnership is the benefits it will afford our customers. Of prime importance will be the consumer benefits associated with the 20-year marketing alliance between our two companies. This will allow passengers traveling on DC Air to earn American AAdvantage frequent flyer miles which they can redeem on DC Air, or anywhere in American's national network or its global system. Thus, passengers flying on DC

Air will reap the benefits of what many consider to be the premium frequent flyer program in the industry. In addition, DC Air passengers may enroll in American's airport lounge program, accessing facilities in National Airport and worldwide.

Through the alliance with American, DC Air's customers will also have access to a vast network of new destinations. For example, our passengers will be able to fly from Richmond to National on DC Air, and then from National to New York or Boston on American Airlines' Shuttle service. Additionally, DC Air passengers will have direct access to the rest of American's network, which includes service to Chicago, Dallas and Miami. And, should American's proposed acquisition of TWA be consummated, passengers could also take advantage of convenient connections over Reagan National to St. Louis and Los Angeles.

The alliance with American will expand DC Air's reach from point-to-point service to and from Washington and connections up and down the East Coast, into an established network that spans the globe. In turn, American Airlines will get a strategic partner with a significant network in the east, operating out of Reagan National Airport, to complement its planned growth within the east. By adding its relationship with DC Air to its internal growth and announced acquisitions, American will become a major competitor for North-South traffic flows along the Eastern U.S.

While the benefits to passengers bode well for the success of DC Air, many of the operational aspects of the DC Air-American alliance will go a long way toward addressing of the broader public policy concerns raised about DC Air's viability as a stand-alone entity and our ability to enhance the competitive landscape on the East Coast.

As you may recall, our original plan for DC Air had been to manage a rapid transition into a network of 44 cities using 37 aircraft on our first day of operations. We had arms-length arrangements with United Airlines to provide 10 wet-leased jet aircraft, as well as services including ground handling and other items, to ensure that DC Air had full access to all needed services on "day one" of operation.

Still, some observers of the process appeared concerned that any from of ongoing relationship with United Airlines, no matter what is was, somehow called into question DC Air's independence—in part, because United would be one of our major competitors in this region.

In response to those concerns, we at DC Air accelerated the process of entering into relationships with carriers other than United to provide these services. We had received expressions of interest from a number of carriers regarding a partnership and entered into very detailed negotiations with several. While we could have chosen any of several different paths, I had the opportunity at a critical point to meet and get to know Don Carty, the Chairman of AMR, American's parent company. It became clear to me in that meeting, and through our subsequent discussions, that not only were the economic terms of the arrangement favorable to DC Air, and the benefits to our passengers outstanding, but also that Don Carty and the American team truly understand what DC Air is all about and that they are looking forward to being our partner.

First and foremost, under the alliance with American, I am the Chairman of DC Air and under my leadership DC Air will be an independent company. American has purchased a minority equity stake, 49%, of DC Air, ensuring that the airline will follow the vision we previously have so clearly set out for DC Air.

Under this alliance, American Airlines has stepped into provide between 11 and 14 jet aircraft that will clearly help DC Air provide quality service to more destinations each day and has agreed to provide ground handling and other services to DC Air during its transition period.

Although I believe most of you view our independence from United in a positive light, I want to underscore to you that our alliance with American will only ensure that we will be able to compete aggressively in both service and fares with other airlines. United will no longer help to provide transition services. United is our rival, our foe, our adversary. And, we will face our competitors, including United, with the support of American Airlines behind us as we go into battle.

I have received some queries about the cost structure of DC Air under the arrangement with American. American will benefit from the success of DC Air through its equity investment, and it providing services at very competitive rate to DC Air. In addition, American has significant economies of scale in various areas that can be passed along beneficially to DC Air. Therefore, our costs will be fully competitive and our vision of competing aggressively in both service and fares is not only intact, but enhanced.

The American Airlines-DC Air alliance will ensure vibrant competition throughout the Washington area. Without this alliance, the metropolitan area would have one primary traditional carrier—United Airlines—offering nonstop service to a variety of destinations and connections to worldwide destinations from its hub at Dulles

International Airport. Of course, other airlines, notably Air Tran, Delta Air Lines and Southwest Airlines, would continue to serve the metropolitan area, but each of these airlines offers a more limited scope of nonstop destinations to Washington passengers. Instead, this alliance will bring into this region a significant new competitor, DC Air, with the support of a traditional carrier, American, which is combination will become the largest presence at Ronald Reagan Washington National Airport. This will provide for intense competition for both East Coast and worldwide passengers that will keep prices down and help ensure high quality service for area travelers.

And, with the new support provided by American Airlines, DC Air will have all the resources necessary to be fully operational on “day one,” pending the closing of the merger. When it is operational, DC Air will provide competitive air service to 44 communities—cities that, for the most part, currently enjoy direct access to the Washington area. As the majority owner of DC Air, I believe it is critical to sustain and enhance the existing US Airways network, which has provided affordable, safe, reliable service to cities in the Northeast for so many years. Nothing in the American agreement changes my long-term commitment to these communities.

When I agreed to build and run DC Air, I strongly believed it would provide to be a strong, independent airline. The new alliance between DC Air and American Airlines brings us closer to achieving the goals I set out when I agreed to build and run DC Air—to provide high quality, safe, reliable air travel, to help preserve competition in the airline industry, and to make air travel affordable.

Thank you for the opportunity to testify before you today.

Senator DEWINE. Mr. Johnson, thank you very much.
Mr. Wolf?

STATEMENT OF STEPHEN M. WOLF, CHAIRMAN, US AIRWAYS GROUP, INC., ARLINGTON, VIRGINIA

Mr. WOLF. Chairman DeWine and Senator Schumer, I appreciate the opportunity to come before this Committee once again.

During my earlier opportunity to testify here, I stated my concern that there was no place long term for a mid-sized, mature-cost U.S. carrier in commercial aviation, recognizing that US Air was the only one left out of an original group of six airlines at the start of deregulation. Today, I am more concerned than ever about US Airways' status.

In today's extremely competitive marketplace, there are only two platforms on which to operate an airline successfully. There is the low-cost, low-fare business model represented by carriers such as AirTran, America West, JetBlue and Southwest, and the mature, full-service network carriers such as American, Continental, Delta, Northwest and United. US Airways is neither, and there is no place for a “neither.” This is simply an economic reality.

When I joined what was then US Air 5 years ago, the company was seriously lacking in several respects. We had a fleet that begged for rationalization, no strategic direction, questionable service, multi-year, multi-billion-dollar losses, and uncompetitive labor contracts. Clearly, we had to address these issues, but the predominant and overriding concern was one of size. We had to get substantially larger in order to compete long term.

We committed ourselves to establishing US Airways as a vibrant, financially secure, global carrier. To this end, our superb and dedicated employees have made enormous strides. We have made significant improvements in our operational performance, established competitive labor agreements, launched the modernization of our fleet, purchased the shuttle, and expanded our international service.

Despite these improvements, the fundamental problem the company faced of getting substantially larger has magnified itself as a result of a significant increase in intra-east competition. Allow me to share with you two gentlemen visually just four charts that will sort of depict this graphically.

The first chart is US Airways' route structure, and of course you can't read the city names, et cetera. Just sort of look broadly at the lines. As you can see, US Airways is heavily oriented to north-south traffic in the eastern quadrant of the United States. If you look at the two vertical yellow lines, it shows that we serve 13 cities west of the Mississippi, and within those 13, 7 west of the Rockies. But, please, just focus on that eastern quadrant, that piece of geography, because I want to follow on with three charts that only show that piece of geography.

This is Southwest's route structure when I joined the company now some 5 years ago, clearly a limited pattern of service, 9 cities served, 157 departures, deploying 19 aircraft. This is Southwest's route structure today. I should add that in June of last year, Southwest placed its largest aircraft order ever for some 290 new Boeing 737 aircraft. On that occasion, Southwest's Chairman, Herb Kelleher, announced, quote, "a significant focus on the East," end quote, going forward.

Earlier this week, in Florida, Mr. Kelleher spoke before the Goldman Sachs aviation conference and indicated that Southwest would increase its capacity in the next 4 to 5 years by 50 percent, again heavily focused on the East Coast of the United States.

What you are looking at here, gentlemen, is new jet routes that Delta Air Lines has initiated during this same period of time, 365 jet departures, 61 aircraft. Now, this is not Delta's system in the East. These are the net adds that Delta has added during this period of time.

Senators, these are two particularly fine airlines doing what is in the best interests of their shareholders and employees, but enormously harmful to US Airways employees. For the 45,000 employees of US Airways and the communities we serve, the status quo is simply not an option. This merger preserves jobs, ensures the continuation of service to all communities on our system, and significantly enhances competition.

Senators, there are two certainties. One, US Airways does not have the financial wherewithal to become a large network carrier. Two, you cannot shrink an airline to profitability.

We all know all too well what happened to other similarly situated carriers such as Braniff, Eastern, Pan Am, and now TWA. Therefore, my strongly held view is that the merger with United Airlines, with a job guarantee for all 45,000 of our employees and a commitment to preserve and enhance service to communities large and small, is in the best interests not only of our employees, shareholders and the communities we serve, but of the traveling public as well. In the end, with a substantially larger American and United, competition in the East is going to be dramatically enhanced.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Wolf follows:]

STATEMENT OF STEPHEN M. WOLF, CHAIRMAN, US AIRWAYS GROUP, INC.

Mr. Chairman and Members of the Committee, on behalf of the entire US Airways family, I appreciate the opportunity this afternoon to offer some additional comments on our merger with United Airlines.

There have been some significant developments in the aviation industry since I testified before the Antitrust Subcommittee last summer, when we first announced our merger. First and foremost, as a result of the intense competitive pressures at work in the marketplace, TWA has filed for bankruptcy, its third time in the last ten years. In connection with the bankruptcy filing, American Airlines has agreed to purchase TWA and provide immediate financing, allowing the airline to continue its operations. Second, American has agreed to acquire an equity interest in DC Air, the independent, new entrant carrier created from our merger with United Airlines, ensuring vigorous competition in the Washington, DC region. Third, American has entered into an agreement with United to initiate flights on a select number of routes from US Airways' hub cities and to operate the US Airways' Shuttle with United pursuant to a joint venture. Fourth, despite the best efforts of our hard-working and dedicated employees, US Airways reported a loss of \$269 million for last year.

When I testified in June, I set forth in detail the driving forces behind our decision to merge with United, namely, our desire to provide comprehensive, global air service to our customers and our communities, while preserving jobs, service, and significantly enhancing competition. Importantly, the events that have transpired since my prior testimony serve to significantly enhance the pro-competitive, pro-consumer, and pro-employee benefits of our merger.

US Airways continues to be unique in the airline industry. There is no longer any other carrier in the country like us. We are the last mid-sized, mature-cost airline that remains out of an original group of six pre-deregulation carriers. All of the others have either gone out of business and disappeared completely, e.g., Braniff, Eastern, and Pan American, or while still operating, have gone through multiple bankruptcies, e.g., Continental and TWA (now, for the third time).

Neither of these options, in my estimation, is an attractive alternative because of the serious disruption and uncertainty they would bring to our employees, to our passengers, and to the communities we serve. They are, however, real threats given US Airways' unique position. Accordingly, the status quo is not a viable option for US Airways, our employees, or the communities we serve. Let me explain.

US Airways in its current form is an amalgamation of several small, pre-deregulation regional carriers such as Allegheny, Mohawk, and Piedmont. As a result, the airline has a route network that, like its regional airline predecessors, is largely confined to short-haul routes in the eastern United States. Indeed, US Airways has the shortest average stage length of any major carrier. Combined with a route structure that is essentially confined to the East Coast corridor, this severely limits US Airways' ability to mass enough presence in other areas to support any material expansion of its system.

As a consolidation of pre-deregulation carriers, US Airways also pays labor rates that are comparable or higher than those of American, Delta, Northwest, and United. The difference between US Airways and these other carriers, however, is that the other carriers have vastly larger route systems which permit them to spread their costs over a great number of more efficient, long-haul segments that are relatively less costly to operate.

Caught in the vice between its short-haul, high cost route system and its mature labor structure, US Airways is far and away the highest unit cost U.S. airline. For the year 1999, US Airways' average system cost per seat mile, the measure most commonly used to determine costs, was approximately 14 cents. By comparison, the average system costs during the same period were approximately 9.5 cents per seat mile for the major carriers and 7.5 cents for low-cost competitors such as Southwest. In sum, when compared to Southwest, a carrier that is aggressively expanding throughout US Airways' East Coast operating territory, US Airways has costs that are nearly twice as high.

When I joined what was then USAir five years ago, I recognized the historical reality that placed US Airways in such an "in-between" position—one that could not be sustained over the long run. US Airways was neither a "national" carrier with low costs and point-to-point routes. Accordingly, with the support of our employees, we committed to a strategic plan to restore financial stability to the company and establish the carrier's competitiveness, despite our high costs and incomplete route structure. To this end, we have made enormous progress. We have made significant and sustained improvements in our operational performance, established harmo-

nious labor agreements, begun fleet modernization, and expanded our international service.

However, the fundamental problems that constrain US Airways—high costs, short segments, and a limited network—remain in the face of increasingly intense competition. Unfortunately, US Airways does not have the financial reserves or the cost structure to support significant internal expansion.

Meanwhile, competition from well financed, well managed low-cost carriers such as Southwest, JetBlue, AirTran and others has been increasing dramatically on US Airways' most heavily traveled and most profitable routes. In 1995, for example, low-cost carriers had 618 departures per day in the eastern United States, US Airways' major service area. By 2000, that number had almost doubled to 1,098. These carriers now offer more than one out of every four domestic seats up for sale in that region. At the same time, major carriers' share of capacity actually fell one percent.

In the last year alone, Southwest, AirTran and Delta Express, as well as new entrants such as JetBlue and Spirit, have added 181 daily departures out of East Coast airports—a 25.5 percent increase over 1999. Since January 1, 1996, Southwest has increased its intra-East route system in terms of daily departures by 238% (157 to 531) and in terms of aircraft by 326% (19 to 81).

Facing ever more low-fare competition on its key eastern routes, with costs well above the industry average and no realistic way to alter that condition, US Airways is increasingly limited in its ability to support its route network and achieve profitability. Accordingly, as a stand-alone carrier, US Airways, which has sustained huge losses over the past decade, does not have the luxury of maintaining the status quo.

Neither did TWA and its fate is an example of what can happen. Over the past decade, TWA has been forced to reduce its employee base by almost half. Moreover, its once extensive global route network has similarly decreased, from 216 nonstop routes in 1989 to 114 in 2001. In sum, over the past decade, TWA has shrunk to a shell of its former self in a valiant, but now apparently unsuccessful attempt to survive.

Fortunately, the downsizing we have witnessed with other carriers is today not the only option for US Airways and our employees. There is a viable alternative that allows US Airways to become part of a broader and more efficient transcontinental and global system, thereby preserving jobs, ensuring service to scores of communities that otherwise could lose flights, and enhancing competition in the industry—our merger with United airlines.

For US Airways, this merger will help us provide the efficient, global service that our valued customers demand and deserve. Moreover, by merging with United, service to US Airways' communities of all sizes will be preserved, ensuring continued rather than decreased competition. The creation of DC Air, a vibrant, minority-owned airline that will have the benefit of American's frequent flyer program and access to its extensive network, will also add a new competitor based in the Washington, DC region with service throughout the eastern US. At the same time, thousands of high-paying, union jobs will be protected at a time of increasing economic uncertainty. For nearly a decade, the employees of US Airways have faced periods of uncertainty about the future of the company. Now they are guaranteed a secure future with a financially strong, global carrier.

I have been involved with this industry for over 30 years, and I understand, and appreciate, that there is some concern about consolidation and the potential effect the two mergers we are discussing today will have on consumers. But we cannot examine these issues without recognizing the fundamental forces that are at work in today's deregulated marketplace and acknowledging what will happen if the transactions do not take place. Who would have thought 20 years ago that Southwest would be the second largest domestic carrier in terms of passengers carried and have, by a wide margin, the highest market capitalization of any carrier in the world, that the original Pan Am would be gone, and that TWA would be entering its third bankruptcy. Nonetheless, these changes are happening, and the question is whether the proposals we are discussing today to deal with these changes are good for consumers, employees, and the traveling public.

The same can be said of American's proposed transactions. Like the US Airways/United transaction, American's purchase of TWA, as well as an equity position in DC Air, is not an issue of consolidation, but one of saving jobs, jobs maintaining service, and preserving competition. These transactions greatly enhance the scope and scale of American's route network, transforming American into a truly national carrier. By purchasing one-half of US Airways' shuttle operations, American dramatically increases its presence in three premier eastern markets—Washington, New York, and Boston. And by obtaining gates and terminal space at several eastern airports, including Philadelphia and LaGuardia, and agreeing to operate flights

on certain routes from US Airways' hub cities for up to ten years, American ensures that consumers on these routes will have competitive air service.

Significantly, American's proposal to purchase 49 percent of DC Air will directly link DC Air to a vibrant, financially strong major carrier, ensuring competition in the Washington metropolitan area over the long term and delivering important consumer benefits to DC Air passengers. DC Air will be a participant in American's frequent flyer program and will be linked to American's expansive domestic and international network.

As a former Chairman of United Airlines, I can attest to the fact that, despite the comments of some pundits who have declared that American and United are attempting to divide up the eastern seaboard, American and United are vigorous competitors and intense rivals. The proposed transactions under consideration today will introduce the benefits of this competition into new markets in the eastern United States, where Delta traditionally has been, and is, a leading force. They will also bring vigorous competition, innovation, access to the global marketplace, and sustained employment and job growth for airline workers. Importantly, by extending their rivalry into east coast markets, United and American will position themselves to be vigorous international competitors in the emerging open global aviation marketplace. This is a win/win for consumers. Millions of passengers begin or end their international trips in the eastern United States, and many new communities will now have seamless access to efficient global networks. At the same time, United American will be better positioned to compete in the new global marketplace where there are no guarantees. We know all too well, as we have witnessed radical changes in other industries, that American businesses will face increasingly challenging competition from their foreign competitors.

It will serve us all well to think outside the box. This is a dynamic, changing global industry. We cannot—and we do not want to—preserve the status quo. We must learn from our experiences in other industries—autos, steel, finance, aircraft manufacturing. We have an historic opportunity to create our first truly national and international network carriers—Delta, American, and United—who will compete vigorously with each to flow traffic over their systems, and, and vibrant group of new-entrant and low-cost carriers—led by Southwest, AirTran, and JetBlue—providing additional point-to-point competition.

For most of the last century, U.S. aviation led the world in technology, efficiency, innovation, and the development of free markets. We are now in a period of revolutionary change. The U.S. industry is responding to dynamic market forces and positioning itself to maintain and enhance its leadership position. That same bipartisan government, which first saw the wisdom of deregulation over 20 years ago and last year passed historic legislation for this industry in AIR-21, must not now constrain the industry's capacity to respond to marketplace force. The U.S. must continue, as it has during the first century of flight, to create conditions for innovation, efficiency, and growth, and to respond aggressively to real problems such as adequate infrastructure, air traffic control, and capacity that are serious threats to our industry.

Thank you for the opportunity, once again, to share my perspective with you.

Senator DEWINE. We have a statement that has been submitted by Senator Thurmond. Without objection, that will become a part of our record.

[The prepared statement of Senator Thurmond follows:]

STATEMENT OF HON. STROM THURMOND, A U.S. SENATOR FROM THE STATE OF SOUTH CAROLINA

I am pleased that we are holding this hearing today on the consolidation in the airline industry.

The competition that developed as a result of deregulation two decades ago was a boom to the airline industry and to consumers. It caused a drastic reduction in prices and a great increase in service.

Unfortunately, the competition that has made the airlines industry so successful is increasingly at risk today. The proposed merger between United Airlines and U.S. Airways would give the new United control of about 27% of the U.S. market. I expressed concerns about this potential merger at the time, and the passing months have only made those concerns more real. American Airlines has now proposed a merger that goes beyond simply acquiring financially-troubled TWA. If all of these mergers are approved as proposed, United and American together will control almost half of the domestic airline market.

However, it does not end there. It is likely that more airlines will see the need to merge to stay competitive, and we soon could have just a few giant airlines. In such an environment, it is hard to see how small or start-up carriers could compete effectively.

It is true that mergers such as these create more convenience for consumers. However, they also cause less competition and fewer choices. This is not only a problem in hub cities, it is also a problem in smaller markets where the merging airlines compete today. For example, if United and U.S. Airways merge, the new United would control almost half of the non-stop daily flights in the capitol of my state, Columbia, South Carolina.

The airline mergers that are pending today must be reviewed carefully in terms of their impact on overall competition. They could have widespread consequences for the entire industry and our nation's economy.

We are at a crossroads for the airline industry, and we do not know what the future will bring. However, if history is any guide, competition, not consolidation, is in our long-term best interest.

Senator DEWINE. Mr. Wolf, let me just follow on your testimony. I appreciate the charts and I appreciate the comment about competition, but you heard Mr. Mullin's comments about your airline and his belief that US Airways can't be considered a failing airline. Professor Levine basically agreed and said the same thing. We have heard that comment from other individuals.

I just want to make sure I understand what your position is. Is it your position that the merger is necessary for you all to avoid bankruptcy, or just what are you saying?

Mr. WOLF. I heard Mr. Mullin's comments and I heard all the comments. I would actually group the four airline executives into two similar comments; that is, the comments of the two network carrier CEOs and the comments of the two low-cost carrier CEOs.

Let me refer to a Bloomberg report of November 29 in Atlanta, where Mr. Mullin said, quote, "US Airways needs help. It is the most troubled of the large carriers, and I think the Government may well be looking at this as a way to introduce a strong carrier, United, into a weak carrier situation, US Airways."

If I was Mr. Mullin or if I was Mr. Bethune operating two network carriers, if you look at that Eastern quadrant of the United States, we are the big three, Delta and US Airways bigger and about the same size. Continental is No. 3, at about a 7.8-percent share. And they fall off dramatically from there—American, about 7.5; United, about 3.

If I was either of those two gentlemen, would I rather compete with US Airways in this market, as opposed to an expanded and enhanced United and American? There is no question about it, I would rather do that, and you would rather do that, also.

The reality is, as I indicated, the facts are simply the facts. We are not a low-cost carrier and we will never become a low-cost carrier, no matter how many bankruptcies we go through, as much as I abhor even imagining it. We must become a larger carrier and we do not have the financial wherewithal to do that. That doesn't make anybody bad or stupid. It is just an economic reality.

The merger with American Airlines addresses the issue. It preserves 45,000 jobs, it preserves service to all the small communities that we serve in the Eastern part of the United States, and it enhances competition significantly.

Senator DEWINE. Mr. Goodwin, both you and Mr. Carty have said American and United are, I think the term was arch-rivals, and will certainly vigorously compete. The professor posed the

question of why you would enter into a deal with your arch-rival instead of another airline. Do you want to answer that?

Mr. GOODWIN. That was in response to the joint venture on the shuttle agreement. I think both of us today do not participate in the shuttle marketplace. It is the purview of the Delta and US Airways. The shuttle market is a unique product, unique to the three cities that basically it serves, and we saw this is an opportunity, again in looking at the issues that have been surfaced by members of this Committee about concentration in the Northeast, to also introduce some competition into the shuttle market.

We do not believe this is entering into a transaction with our arch-enemy. We believe this is inducing competition into a heavily traveled core market where the three major carriers will have an opportunity to compete for passengers.

Senator DEWINE. Senator Schumer?

Senator SCHUMER. Thank you, Mr. Chairman, and I thank all of the witnesses for their testimony.

The first question is to Mr. Carty. As you probably heard in my statement if you were here, the two parts of this merger that give me least pause are the TWA/American, and except for the DC Air part the US Airways/United original proposal didn't. I mean, that had potential to help my constituents and help the country.

But the one thing that I am worried about in your situation is the domination that you, combined with TWA, would have at JFK. You would control three of the nine terminals, one-third of the real estate. What assurances can you give us that if this merger were consummated that you would make room for other carriers that are expanding, notably JetBlue?

Mr. CARTY. Senator Schumer, we are right in the middle of trying to assess our JFK needs in the context of both our own terminal and the TWA terminal. Now, we have got a pretty clear picture of the long term. We are building, as I think you know, in excess of a \$1 billion terminal that will encompass the space historically that Terminal 8 and Terminal 9 had at Kennedy. In the long term, that is all the terminal we will need. We will not need the TWA terminal.

Senator SCHUMER. So you would be willing to sell that to a competitor?

Mr. CARTY. Absolutely. During transition, whether or not we need some of the TWA space to be able to continue to operate all the flights we have got going on while we construct, is a question we are trying to sort out right now. We are working with the port on that.

Senator SCHUMER. How long is transition?

Mr. CARTY. Well, what we have got to do is figure out—

Senator SCHUMER. During transition, you have got to figure it out?

Mr. CARTY. Well, our construction process, Senator, is really 5 years. The question is does the availability of some gates that TWA is building allow us to accelerate that construction so we get gates quicker than we otherwise anticipate. I wish I could answer that question this morning and I can't, but we will have answers in the next couple of weeks.

Senator SCHUMER. Would you?

Mr. CARTY. Yes.

Senator SCHUMER. Could I ask, Mr. Chairman, that those be submitted in writing to me and to the record?

Mr. CARTY. I would be delighted.

Senator SCHUMER. The next question is for Mr. Johnson, and let me preface this, Mr. Johnson, by saying I have tremendous respect for you as a businessman and what you have accomplished. I must do what I think is best for my constituents. As I read it, 98 percent of the experts I have talked to who are not part of any side, no airline, think that this merger is not good for upstate New York. So let me ask you a few questions about that.

First of all, there are three issues here. The first is cost. Right now, for instance, United's round trip from Dulles to Buffalo is \$700. Southwest's trip to BWI is \$48 to \$65. You have obviously gone over the numbers here. You wouldn't have risked so much money if you didn't.

What is your estimated cost of your flights from Buffalo to National Airport?

Mr. JOHNSON. Mr. Schumer, I too share your commitment that you are committed to upstate New York, and I respect your concern about your constituents. On the matter of giving you an actual price of a flight from Buffalo to D.C. based on the restructuring of DC Air with American, with the combination of American's frequent flyer program and all the assets, I couldn't give you an actual price quote, but I could certainly provide that information to you by working with your staff. I could provide it for all the upstate markets, for that matter.

Senator SCHUMER. That would be very good. When we met with your staff, they said it would be about 30 percent lower than the existing flights, so you can see the huge gap between what at least this low-cost air carrier charges. Admittedly, National is more expensive to land at than BWI, but it is still an enormous gap.

Mr. JOHNSON. I think that is right. I think we have got to make sure we are comparing apples to apples because we fly only from DCA. We don't fly from BWI or Dulles.

Senator SCHUMER. Understood, but I would like to know what the costs are.

Mr. JOHNSON. We will certainly provide that.

Senator SCHUMER. A broader question which I am sure you had to investigate is what do you estimate your rate per passenger mile will be?

Mr. JOHNSON. Again, Senator Schumer, I couldn't give you that number sitting right here, but I could certainly provide it through the talented individuals I have hired to help me run this airline. I probably couldn't tell you the spot cost of air time on BET, and I ran that for 20 years, but I certainly could find people who could give you that information.

Senator SCHUMER. Again, I am not trying to put you on the spot.

Mr. JOHNSON. No.

Senator SCHUMER. This is vital information as to what the costs will be to upstate.

Mr. JOHNSON. Absolutely, Senator, and we will respond to any question you give us in writing, I assure you.

Senator SCHUMER. OK, thank you. Then we go to this memorandum of understanding, the so-called flip. I don't really care about the flip, how much profit you make or not. But I would tell you the analogy to someone buying a house is false because these slots are not your property, not Mr. Goodwin's property. They are the public's property, and I think they have been abused and that is one of the problems we face at the four airports with slots. They limit competition.

So the bottom line is the experts I have talked to have said you are getting them for a lower cost than they would go for if they were just bid in the free market. I don't have a problem with that if I would have some assurance that that lower cost would be passed on to the consumer. I don't see any of that in the numbers or anything else that you have given us, but let me go to the flip agreement and then you can answer that one.

Here is what I want to know. I want to know right now what your commitment is to continue running the airline and not selling your share to American. Is it a year, is it 2 years, is it 3 years? I mean, the whole argument here is we will have an independent airline. I think that is better than having a non-independent airline.

But now with this agreement, 6 months from now you could decide to sell to American Airlines. Because the slots at a lower price, you might make an enormous amount of money. God bless you, God bless America, but it wouldn't do much good for competition. So what commitment can you give us right here and now about how long you will keep this airline and not sell your 51 percent, particularly to American?

Mr. JOHNSON. Senator Schumer, as you said, God bless America. One of the things I just absolutely think is essential in this country is that businesses and individuals all be treated fairly and alike. I will answer that question by saying that I want to be treated just like the other carriers.

Let's go to the no-flip provision. I will sign the same no-flip agreement on slots, if they are a public trust, that every other airline will sign. If JetBlue were to sign a no-flip provision on its slots that it was granted at the airports, then I will sign the same kind of agreement.

Senator SCHUMER. If I might, JetBlue is independently financed by investment bankers and different people. They are not owned 49 percent by one of the major carriers that you would compete against. That is not an analogy.

Mr. JOHNSON. Senator Schumer, there is nothing in JetBlue's charter, I would imagine, that would prevent them from taking money from Don Carty. I imagine any airline here could take money from any other investor.

Senator SCHUMER. The bottom line is you will not make a commitment of any amount of time that you will not sell the airline to American. Is that fair to say?

Mr. JOHNSON. Senator, I will not make a commitment that the other airlines will not make. I mean, I am here as a new entrant. I am here as a minority American seeking an opportunity to get in the airline business, and I am not going to start that entry by signing agreements that the other carriers have never signed.

If you could get the other carriers here to sign an agreement that they will hold on to their airlines for the next 50 years or the next 10 years or the next 5 years, I will be treated equally the same as those other carriers. But I will not say what my business intentions are, as I wouldn't expect any business person up here to say.

As far as I am concerned, we should all be treated equally, we should all be treated fairly, and given the opportunity to compete. I am paying full price. I didn't set the price. The price was set by the marketplace, as transmitted to me by US Airways. If I choose to sell, it will be based on my own business decision, just as any of these gentlemen would have the same right.

Senator SCHUMER. Mr. Johnson, you are certainly entitled to that. I am entitled and my constituents are entitled to have no guarantee at that point that there will be an independent carrier with this huge bounty of 222 slots to compete.

Mr. Chairman, thank you.

Senator DEWINE. Senator Brownback has submitted a statement and questions for the record which, without objection, will become a part of the record.

[The prepared statement of Senator Brownback follows:]

STATEMENT OF HON. SAM BROWNBACK, A U.S. SENATOR FROM THE STATE OF KANSAS

Mr. Chairman, Thank you for holding this hearing on this important issue. I appreciate the opportunity to be here today although I am not yet officially a member of this Subcommittee. Aviation issues are on everyone's minds. In the Senate Commerce Committee on which I also serve, When we held a confirmation hearing two weeks ago for the Transportation Secretary Mineta, who I think will do an outstanding job, by the way, the questions to him were almost eighty percent involving aviation issues of one kind or another. Aviation issues are at the forefront of everyone's minds, whether it is mergers and acquisitions, delays and congestion, competition and pricing, or even customer service.

I come from a rural State, which has no Hub Airports, and has a lot of rural communities with little air service, or no air service at all. Many of our communities are dependent on essential air service. I share my colleagues' concerns that consolidation in the airline industry will mean higher prices and fewer choices for consumers, particularly those in rural states or states with no Hub Airports. If you Think Fares are high in Hub Airport cities, Try Coming to Wichita, Kansas, where last night, the walk up, round trip, same day return fare to Denver ranged from \$1,050 to \$1,643, and the Cheapest Flight goes East to Kansas City, Before Going West to Denver, In Fairness, I must point out, the Walk up fare between Wichita and the number one Destination out of Wichita, Dallas—Fort Worth, Ranged From \$349 to \$369. Pretty High for a 50 Minute Flight. But if you Think Fares are high in Hub Cities, or medium size cities which are spokes on the Hubs, try going to goodland or Great Bend, Kansas, which have lost their essential air service, and flying is not an option at all.

But as I Travel my home State, the number one aviation issue among my constituents is not fluffy pillows or whether the gate agent was helpful or not, or even which airline is going to combine with which airline. Although these are all important issues to one degree or another, the bottom line is, my constituents are tired of flying because of flight delays, cancellations and congestion at our airports. We have a capacity crisis in our nation's aviation infrastructure, and my constituents have caught on. They fly defensively, avoiding if at all possible certain airports because they are notorious for delays.

We must increase the capacity on the ground at our Nation's Airports. We must build more runways and build them faster than we are doing now. The new runway at Memphis, took, what 12, 16 years to complete? That is absurd. The crisis is here it was last summers, and it was the summer before that, and we still have done nothing about it. I am committed to doing something about it, and I look forward to working with the panelists and my colleagues in the Senate and the House to see that at least this one aspect of our Nation's Aviation capacity crisis is addressed by this Congress.

Senator DEWINE. Mr. Carty, let me follow up a little bit on the questioning that you and I had a moment ago, and let me also reference your written testimony. In your written testimony, you noted some of the problems with the United/US Airways proposal and specifically indicated that United and Delta would effectively have been a duopoly at least on the Boston-New York-Washington shuttle routes. You said that that rightly alarmed outside observers.

The new proposal allows American and United to jointly operate the shuttle route. It seems to me you could still argue that the shuttle route is going to be a duopoly of sorts, with American and United operating one route and Delta operating the other. Why shouldn't we continue to be rightly alarmed about that?

Mr. CARTY. Well, of course, the shuttle markets are a duopoly today. They are US Air and Delta.

Senator DEWINE. I understand.

Mr. CARTY. And the question is a very valid one. I can't remember who mentioned it earlier; I guess it was Jim who mentioned how important these markets were, not just in themselves but in their relationship to other markets, and you make a carrier a much more effective competitor in dealing with a corporate account.

When I go in the door of Goldman Sachs and try to get their business and I am trying to sell them New York-L.A. and I don't have as part of my package a shuttle offering, then Jim in the context of United and Leo in the context of Delta have an advantage over me.

So, in a sense, by allowing us access to the market, while we are still constrained to two operations—and God knows this is one more area that slots are constraining us. We would love to have our own shuttle. We don't want to operate anything with United, and I am sure Jim feels the same way, but once again we have got this supply problem that Alfred Kahn talked about earlier that is constraining us.

So what we insisted on in this deal—and this was quite a negotiation; we wanted some things, United wanted some things. One of the things that we wanted was access to those shuttle markets, not just in the context of competing with United from New York to Boston and New York to Washington, but being able to go in the door to our big customers and say we have the entire product offering and we are just as good as United and Delta in that context.

But you are right. In terms of operation in those markets exclusively, it is still two operations, and that unfortunately has got nothing to do with the airlines. That has got to do with the capacity we have at Washington National and at LaGuardia.

Senator DEWINE. Mr. Goodwin, yesterday the Washington Post reported the possibility of strikes at the four largest airlines this spring, big publicity on the nightly news. I am sure you would agree that if any of these airlines experienced a strike, the impact on air transportation would be significant. With effort, you also could argue that the five or six other carriers could probably handle the strain, at least to some extent.

But if the proposed mergers are approved, a work stoppage by one of the much larger airlines, much bigger airlines than we see now, I would think could certainly cripple the Nation's air trans-

portation system. Isn't that something that public policymakers have to look at and that the public should be concerned about? Doesn't the problem just get worse and worse and worse, and the effect much more dynamic if we are down to just a handful of major carriers?

Mr. GOODWIN. The short answer to that, Senator, is no, but I think it requires a little more explanation.

Senator DEWINE. You have got plenty of time.

Mr. GOODWIN. The industry at this point in time is unfortunately in a mode where we have a significant number of contracts coming due. We are just on that cycle. I didn't see the article, but I heard about the article that was in the Post and I assume that it was referring to the fact that Northwest and Delta and American and ourselves still have additional contracts to negotiate this year.

I think the laws that we currently have today that govern bargaining in our country and with respect to our industry have anticipated that question you just asked of would not the country be in jeopardy if a significantly large airline or a group of airlines found themselves in a work stoppage in this country.

The laws provide through the Presidential Emergency Board the capability to return workers to their jobs, which gives the country and the unions and the company an opportunity to get the parties back to the bargaining table to settle their differences. So I believe there are protections in place today that would preclude us having to worry about that.

Senator DEWINE. Well, I appreciate your answer. Yes, I understand we have laws in effect and they certainly do exist. I am cognizant of that fact. It seems to me that as we continue to merge and as we get smaller and smaller and smaller and fewer and fewer, anything that affects one of the much bigger airlines is going to have a bigger impact on consumers. It just seems to me to make common sense. Whether or not that can be remedied by the labor laws is certainly always an issue, but it seems to me that that is certainly a potential problem and it is something that at least this member of the U.S. Senate worries about.

Senator Kohl?

Senator KOHL. Senator Schumer has just one question.

Senator DEWINE. Sure.

Senator SCHUMER. Thank you, Mr. Chairman. Before I ask my question, I would just mention that when I negotiated slots for JetBlue, they were treated the same way. We said they would lose those slots if they stopped flying to the underserved cities, and that is why they are 1-year renewable slots. I believe slots are a public good, and that is why the public good should enter into them.

Now, I have a question of Mr. Carty and Mr. Goodwin. I am not an expert on many things, but one of the few things I am an expert on is the shuttle. I take it probably more than just about anybody else because my family is in New York, and so I am Mr. Wolf's and Mr. Mullin's good customer.

My question is this: Will United and American compete on price with their shuttle? Can we expect, with this new competition from the giants, to see the prices drop? I would ask Mr. Carty and Mr. Goodwin to each answer that.

Mr. GOODWIN. The proposal that we have put forth in front of the Justice Department today suggests that we would like to have permission to have a common price structure between ourselves for that market so that we could hold out to the consumer a common price structure. If we are going to fly at ten o'clock and American is going to fly at eleven, that was the initial proposal.

Are we going to compete effectively in the marketplace against Delta Air Lines on a price basis? Absolutely, and we think we are going to have a better product to compete with.

Senator SCHUMER. But I think if you asked the consumer, they would want you to compete on price. They would like to get more peanuts, they would like to get other things, but the No. 1 thing they want competition on is price. It would certainly increase the percentage chance that the price of the shuttle would decline or not go up as quickly, whatever the circumstance may be—who knows what fuel oil will cost—if the three of you would compete rather than the two of you.

Every economist knows that three is better than two in terms of competition. Frankly, Mr. Wolf and Mr. Mullin have not competed on price at all. They have competed in other ways. They keep changing their snacks around and you get different newspapers on different ones, but no price competition. So I am not too optimistic about a dual competition. Why wouldn't three of you compete on price?

Mr. CARTY. The current proposal that is in front of Justice doesn't have us competing on price.

Senator SCHUMER. It does not?

Mr. CARTY. It does not.

Senator SCHUMER. Thank you, Mr. Chairman.

Senator DEWINE. Senator Kohl?

Senator KOHL. Mr. Carty and Mr. Goodwin, are you really going to make the argument that the best thing for the airline industry in this country is to have three airlines controlling 75 percent of the market and a bunch of airlines fighting for the crumbs of what is left after that?

It almost boggles my mind to think that you would suggest this is going to be a good thing for the consumers of America for just three airlines to have an enormously dominant position in our country, and the power and the control that inevitably will accrue. Are you making the argument that that is going to be a good thing for the consumers of America?

Mr. CARTY. Let me try to respond, Senator. An awful lot of our earlier discussion this morning defined competition by doing a tally of the number of airlines. When I was listening to Senator Leahy earlier, it occurred to me what is important to Senator Leahy and his constituents is not how many airlines there are in the United States, but how many are in Burlington, Vermont, and I would say the same thing is true of Senator Schumer's constituents and your own.

What is important is how many players there are competing in every dimension of the business in a market where a consumer wants to go from A to B. I think what Steve's charts were trying to demonstrate to you is in the last couple of years we have had a dramatic increase on the East Coast. And while you think of

American and United as traditional carriers, we are not traditional carriers in this market.

By US Air and United doing this transaction, United begins to compete with Continental and Southwest and everybody else on the East Coast, and by them spinning off a number of assets to us, we enter this market now. So there are a whole bunch of markets where instead of having two carriers, you might have four, you might have five.

In those markets, as you think about the consumer, he or she is much more concerned about that issue. When I go to the counter, how many airlines are there that are willing to take me from where I am to where I want to go, not how many are there in the country.

I think what we have been trying to describe to you is we are not buying carriers that compete with each other. We are buying carriers that allow us to grow our system so we can become, as I said my remarks, the new entrant into markets that we are not present in today.

Mr. GOODWIN. Senator, I agree with what Mr. Carty said, but I would also like to point out that if you look at the potential combinations—and we talked about this the last time I was here—maybe you can get to give of the big carriers, but I don't ever see us getting down to the two or three that I keep hearing everyone talk about.

I guess sitting here reflecting on some of the conversation this morning and listening to the testimony of some of my colleagues, we were involved in another major transaction. We took another bold acquisition step back in 1985 and we bought the Pacific Division from Pan American Airways, not in bankruptcy, prior to bankruptcy. It was a healthy, ongoing concern. We bought routes and we bought airplanes and we bought employees, and we made a lot of commitments when we did that.

I was looking at some old clippings of some of the conversation that was going on when we announced that acquisition, and I found a lot of similarities between what we are talking about and the issues that we are wrestling with today, the first being you paid too much money. Two, this is going to create a wave of mergers in the industry because the largest domestic airline in the country just bought the Pacific.

In fact, several of the competitors who were flying in that marketplace, notably in this case Northwest, publicly announced that they wouldn't be able to compete. They would have to totally withdraw and exit from the marketplace. I think 15 years later, history has demonstrated that none of that happened. We have got more competition in the Pacific than we had 15 years ago. We have got plenty of new entrants, both foreign carriers and U.S. carriers.

So I think, again, as I said the last time I was before this committee, putting together two airlines, two networks, is not as simple as just sitting here and saying it is going to happen. There has to be some fundamental value that is produced not only for the employees and the shareholders which we tend to talk a lot about, but the customers. We believe that what we are trying to do benefits all three of those constituencies.

Senator KOHL. But your first responsibility is to your shareholders. Your responsibility is to take those actions which will do most to increase the value of your company. Your second responsibility is to your customer, and to the extent that those two things coincide, that is fine. To the extent they don't coincide, your first responsibility is to your shareholders, and if you say it is not, you will lose your job this afternoon. So we understand that.

From our point of view, our first responsibility is to the public, to your customers. It is altogether possible that there is a difference, that your point of view, which is legitimate for what you want to get accomplished, is not the same as our point of view. You cannot be masters to both equally. There is a difference between what is in the best interests of the shareholders of United and American and what is in the best interests of the consumers of America. In fact, I would bet there is a difference.

We are trying to represent different constituencies, and that brings us to the conflict that we have in this discussion. I hope that you can convince us—or I will just speak for myself, that what I am saying is not true, that your responsibilities on behalf of your shareholders are not the same as our responsibilities on behalf of the traveling public, that there is a conflict there.

You will fight for what is best for you and we will do our best to fight for what is best for the consuming public. Where that takes us, who can speculate? But I think all the words that I have heard today don't dissuade me from that fundamental difference in what it is you are trying to do and what it is we are trying to do. I would suggest it is fairly important for you all to convince us that the American public doesn't need us to protect their interests. I am not sure that the American public feels that way.

I know you have to go, Mr. Carty, but would you respond to that?

Mr. CARTY. Well, I would only say this. We run service businesses, and clearly the managers of service businesses, like managers of every business, have a primary responsibility to their shareholders. They are the people who hire and pay us.

But our view as a corporation and our corporate philosophy is you cannot be successful in our business unless you are serving all three constituencies. You cannot have a business strategy that is articulated in a way that says if you continually abuse your customers and your employees and your shareholders' interests—that business model fails. We know that business model fails.

Senator KOHL. Of course. That is an extreme point of view, and you are absolutely right.

Mr. CARTY. Similarly, your responsibility, of course, isn't just to the traveling public. It is to all our million employees in the business and our shareholders and everybody else. What we are really talking about here is whether these transactions are consistent with the antitrust laws, and I think what we have been trying to argue is if you look at the very specifics of market presence and market power market by market, as opposed to just saying there were ten airlines and now there will be nine, you will find that in many, many markets in this country the transactions that we are talking about will actually enhance competition.

That is really the argument, and I do think that is what Justice is busy preoccupying themselves with analytically. It is the reason

that they said to Jim Goodwin and US Air, you know, we have got five problems, you need to remedy them. That is really where the American transaction came from.

Senator DEWINE. Mr. Carty has to go.

Senator SCHUMER, do you have any additional questions?

Senator SCHUMER. Mr. Carty, what you just told me about failure to compete on price on the shuttle—you are saying bring more airlines in, but the consumer wants price competition probably at the very top of the list, and it is probably a valid difference in what Senator Kohl was bringing up.

You would cut your margins further to better serve the consumer and not serve as well your shareholder if you competed on price. Is that an unfair statement?

Mr. CARTY. That is not an unfair statement. On the other hand, this is a game of balances. This is not a wildly profitable business. It is not a wildly profitable business anywhere. In fact, it is a disaster when you think about it from financial reward. So it is hardly a business, when you think about the antitrust problem, that has been busy milking the consumer in favor of the shareholder. Where all the money goes is a puzzle, but—

Senator SCHUMER. With all due respect, the shuttle is very profitable. What you are saying is you won't compete there maybe to do something somewhere else.

Senator KOHL. That may be true and I agree with you, but the one thing that does argue in their behalf is that the numbers in their industry are not very strong.

Senator SCHUMER. That is true.

Senator KOHL. Their return on investment and their percentage of sales as a profit are all very modest, for example, in contrast to the pharmaceutical industry, where it is a whole different ball game.

So the one thing that does argue in your favor is you are not—we had a small supermarket and my parents were from the old country and they didn't know much about America at that time. Their customers were Jewish people and one customer came through my dad's store, I remember, one time and he thought the prices were really high and he said to the checker, "plenty geskin to the people." That was a Jewish phrase that meant you skin the people a lot, which wasn't true. It wasn't true.

So what I am saying is it is not true about you either on the whole. It is not true. Where they can, they charge more. We know that.

Senator SCHUMER. Right.

Senator KOHL. Where they have competition, they have to charge less. There is no question about that. But on the whole, your industry is not a big money-maker.

Mr. GOODWIN. It sure isn't.

Senator KOHL. Mr. Wolf, is that true?

Mr. WOLF. Senator Kohl, I so very much want to say something that I—

Mr. CARTY. Could I interrupt? I really apologize, but I do have to run off, and I apologize for that.

Senator DEWINE. Mr. Carty, thank you very much.

Mr. Wolf?

Mr. WOLF. I think that there is enormously more harmony here than I somehow think we are getting to. Senator Schumer and you and Senator DeWine are very concerned about competition, and we all know what the benefits of competition are to the consumer.

If you look at that part of the United States right there, that Eastern quadrant of the country, and disregard the lines, just those States, in those States today there are two large carriers competing, Delta and US Airways, intra-east, those States, at about a 32-percent share. The next largest carrier is Continental, at about a 7.8-percent share. American is 7.5, United is 3 points.

Now, these two big guys that are competing—let me describe Delta for 1 second: probably the strongest balance sheet in the industry, the lowest unit costs of the major carriers, the largest trans-Atlantic carrier in the world, runs the largest hub operation in the world in Atlanta, a significant and growing presence to South America, a growing presence into Europe, and has just acquired ComAir and, in the process, hundreds of regional jets.

The other competitor is a “neither.” You missed my reference to “neither.” We at US Airways are neither a low-cost carrier nor a network carrier. There is only one like us. We lost \$290 million last year. Delta made about \$1 billion. Delta is a particularly fine company. These are the two competitors there.

If this transaction goes forward, Delta keeps its share of about 32 percent. United goes from 3 to, I would estimate, 25 percent. American goes from 7.5 to, I would estimate, maybe sort of double that, 14-something, low teens percent. We go from one network strong, visible carrier to three overnight. By the way, Southwest is still there, and JetBlue and the rest of them policing all of us. Competition in this part of the country goes up enormously if this transaction goes forward versus what it is today.

Senator DEWINE. Mr. Goodwin, as you know, the proposed acquisition by Northwest of a majority share of Continental’s voting stock was challenged by the Department of Justice. The General Accounting Office has released data showing that your merger would reduce competition in far more markets than would have the Northwest/Continental transaction. Do you believe there is something unique about your deal that makes it less of a concern?

Mr. GOODWIN. No. I think it is a significant concern that the Justice Department is doing a very due diligence job on reviewing. The GAO which has been widely quoted is a study that has created quite a bit of controversy because of some of the information and the decision criteria that was used.

I think in their own study they suggested that it was not a review of the antitrust impact of this transaction. In addition to that, the study was completed in advance of a lot of the transactions you heard about today. It did not include the impact of DC Air in their analysis. It did not include the impact of American in their analysis. So I believe that a lot of the assumptions that were drawn and the conclusions that were reached as a result of that are no longer perhaps valid.

Senator DEWINE. Mr. Wolf, do you have a comment about that at all? You don’t have to.

Mr. WOLF. I think Jim covered it.

Senator DEWINE. Very good.

Mr. Compton, let me just reiterate something that I said to Senator Bond when he testified, and that is we are all concerned about the employees at TWA and the people of St. Louis, and believe that the Justice Department really should expedite the review of the TWA/American acquisition to ensure that if the deal is approved, jobs are preserved and service is maintained. So we want to tell you that at least from this member that is my position, and we hope the Justice Department will move expeditiously forward.

Mr. COMPTON. Mr. Chairman, we very much appreciate that, and the 20,000 TWA employees appreciate it very much. They are hanging on every word here and it is very important to them, and that reassurance will go a long way and I thank you for that.

Senator DEWINE. Well, thank you very much. Before we enter the fifth hour of this hearing, I think it is probably time to call it quits. I appreciate your patience, gentlemen. I think we have had very good panels. I think you understood from the time you entered the room today the skepticism of the members of the panel.

You have given us something to think about, at least as far as this member is concerned, this Chairman of the Antitrust Committee. You will be hearing more from me on this, but I want to have a chance to kind of digest what you have said today. We appreciate your testimony very much.

Thank you.

[Whereupon, at 1:30 p.m., the Committee was adjourned.]

[Submissions for the record follow:]

SUBMISSIONS FOR THE RECORD

AMERICAN SOCIETY OF TRAVEL AGENTS
Alexandria, VA 22314

The Honorable Mike DeWine
Chair
Senate Subcommittee on Antitrust,
Business Rights and Competition
161 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator DeWine:

The American Society of Travel Agents (ASTA) Applauds your efforts to monitor competition in the aviation industry by conducting a hearing on "Airline Consolidation: Has It Gone Too Far?" As a proponent of airline deregulation and an advocate of the traveling consumer, ASTA is deeply concerned about the excessive concentration within the airline industry.

With the looming American Airlines acquisition of Trans World Airlines' assets, the proposed merger of United Airlines and U.S. Airways, along with the potential for further mergers among Delta Airlines, Continental Airlines and Northwest Airlines, the Nation will be left with no more than three giant carriers. The result is an unregulated shared monopoly in which consumers face increasing prices, fewer choices and further deterioration in already unacceptable service.

Attached is an editorial that was featured in the *New York Daily News*, on Sunday January 21, 2001, entitled, *Mergers: The latest air rage*. This editorial represents the views and concerns of ASTA, and we ask that it be included in the hearing record.

Sincerely,

RICHARD M. COPLAND, CTC
President & CEO

Attachment

Mergers: The latest air rage

By RICHARD M. COPLAND

IF THE U.S. Department of Justice approves the two deals, the merger of Trans World Airlines and American Airlines/TWA World Airlines, it will be the deathblow to competition in the airline industry. The deal would mean less aggressive discounting by the airlines, reduced competition means higher prices, less service and serious disruptions in travel when, inevitably, there are strikes.

Without price and route competition, the traveling public would be held hostage by a few monster airlines. It would mean less aggressive discounting by the airlines and more follow-the-leader behavior.

According to Merrill Lynch, if the American/TWA and the United will control 25% of the domestic market, while American will control 25%. That sounds bad, but it doesn't sound like the end of the world.

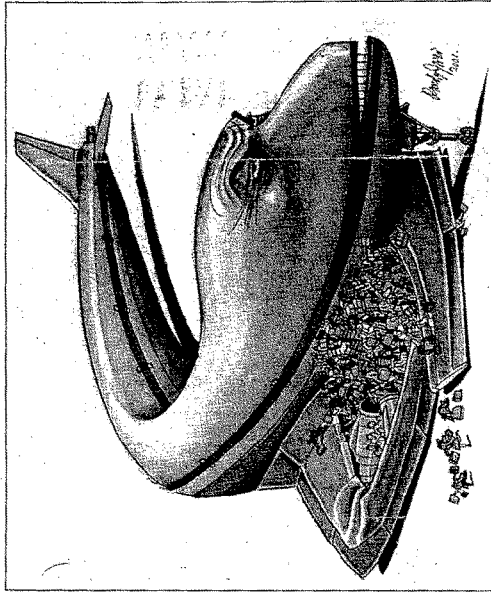
These giant airlines already have divided up the country and agreed not to compete on many routes. At Kennedy Airport, where American already controls 22% of the takeoff slots, American would control 48% daily, chances are you'll pay more than ever.

Domestic Airline Industry," the U.S. Department of Transportation says, "high fares in shorter haul airports where one major network airline has a dominant position." The fares are 50% to 80% higher when compared to just ask the folks in upstate Rochester, where the price for a one-way ticket to Chicago, for example, is \$100. A route to Spokane, Wash., a route to face but is serviced by a low fare carrier (Southwest), is \$100.

Prices, service & delays could get worse with airline mergers

price in Washington for United by controlling about 40% of the takeoff slots. American/TWA would give American a market share in San Juan of 59%. And on and on.

But it's not just about fares. It's also about service. There would be a profitable pleasure — profitable for the airlines and a pleasure for the consumer. As the mar-



are facing what kind of a national transportation eye- Labor issues are another major consumer concern. We survived the last American shutdown, but it was tough and long. With just two or three supergiant, low cost airlines, the consequences for our country's economy could have disastrous economic consequences for our country's economy.

A concentration of a handful of arrogant airlines means it would be far easier for price, labor to stick and right of control of the airway. The traveling public, the right of control of the airway.

If airlines want to increase market share, they should have to earn it by winning the loyalty of the customer, not by grabbing up competitors.

for carriers consolidate, the record of declining customer. In the first half of 2000, consumer complaints to the U.S. Transportation Department rose 65% over the previous year. In the first half of 1999, the number of flights with delays averaging about 50 minutes. The number of flights with late-out times of one hour or more increased 130% in 1999.

Travel agents sell about 50% of airline tickets. We listen to our customers' frustrations about airline service. The American Society of Travel Agents strongly believes that no more mergers, buyouts or airline alliances should be allowed until the Travelers Bill of Rights is signed by Congress. Our organization is a bill two years ago, and the airlines scoffed at it. They will do.

If every plane is full and profits are fat, but passengers

Copland is president and CEO of the American Society of Travel Agents.

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Statement of Hon. Tom Davis, a Representative in Congress from the State of Virginia

Mr. Chairman, Members of the Committee, I am pleased that the Committee has chosen to address the impending airline mergers, as I believe they will preserve jobs, enhance airline competition, and ensure quality service all of which benefit my constituents. Specifically, I believe the benefits of these mergers can be placed into three general categories: job security, greater competition, and more convenient travel.

We are clearly, facing some difficult economic times. As the President has stated, a warning light is flashing on the dashboard of our economy. One does not have to look far to see signs of the flashing red lights. Lately, it seems a day doesn't go by without a major company announcing that it is laying off a substantial number of employees. In the last few weeks alone, companies like Daimler Chrysler, Lucent, AOL Time Warner, WorldCom and GE have indicated that they are planning major lay-offs. Other like Bradlees, Montgomery Ward and now, TWA have gone into the bankruptcy courts seeking relief.

That being the case, it is inspiring that in both the United-US Airways merger and the American Airlines-TWA merger employees from both carriers will be offered jobs in the new airline. Much has been said and written about the need for the American Airline rescue mission of TWA. TWA is a company with a proud and memorable legacy in American aviation history. It is also a company whose time has passed in a highly dynamic—some might say, ruthless—post deregulation competitive environment in the aviation industry.

TWA is a mid-sized carrier that is saddled with high costs and a limited reach. Although it has gone through the bankruptcy court—not one, but twice—it cannot escape its fundamental structural flaws. It is too small to compete against the United, Northwests, Americans and Deltas of the world. And, its costs are simply too high to cope with the competition provided by low-cost carriers, such as Southwest Airlines within its own region of service. Frankly, its demise was inevitable. And, we could all see it coming.

Mr. Chairman, US Airways finds itself in exactly the same predicament. This company must merge or it will die. It is the last of the mid-sized mature cost carriers. Its fate is the same as TWA, as well as that of Eastern, Braniff and Pan AM. These were great companies in their era. Much like Mickey Mantle and Magic Johnson were great athletes in their era. But the magic ends and the era in which a company like US Airways can survive has come and gone. There are many benefits to the proposed merger of United and US Airways, but it begins with the fact that United will save the jobs of 45,000 US Airways employees—at a time when the major U.S. corporations are laying off hundreds of thousands of workers—or closing their doors altogether. The bottom line is that the United—US Airways arrangement is great news to my constituents, as US Airways alone employs over 3,000 in Northern Virginia.

With regard to airline competition, knowing that many critics of these mergers cite competition as a key concern, I would like to offer a different view. Under these mergers, my constituents and other greater Washington area resident will see increased rather than diminished competition. One of the keys to enhanced competition is the creation of a new airline, DC Air, which will be based out of Reagan National and owned by one of the Washington area's top corporate citizens, Mr. Robert Johnson. By taking over most of US Airway's routes to 44 cities in and out of Reagan National, DC Air will shake things up at one of Washington's most convenient, but also most high-priced airports. Mr. Johnson has already suggested that he plans to operate his airline as a low-cost carrier. And, knowing that many of you fly through Reagan National on a weekly basis, I am sure you are painfully aware of the high fares that can be charged to fly through this slot=controlled airport.

Clearly the introduction of this new carrier will be a welcome addition, but what can it really do to alter the competitive landscape in the greater Washington area.

Think about it.

United Airlines will have a hub at Dulles International, DC Air will have its strong presence at Ronald Reagan National Airport, and Southwest Airlines will have its strong presence at Baltimore-Washington Airport and all three will be competing to provide service to the millions of people who travel to the nation's Capitol and surrounding areas each year. In the absence of these mergers, the greater Washington area faces the prospect of one primary carrier and no competition to keep down prices or ensure high quality airline service.

Finally, with regard to travel convenience for consumers, these mergers are a win-win. In every case—US Airways with United Airlines, American Airlines with TWA, a partnership between American and an independent DC Air—will enable travelers to reach more destinations without switching airlines. Not only is direct travel more convenient in terms of connection times, baggage handling and frequent flier miles, it is also 55% cheaper than switching airlines.

Mr. Chairman, I would like to close by saying that I wholeheartedly believe that the mergers between United and US Airways and American and TWA will be good for my constituents and for air travelers across America. Most importantly, these transactions will provide secure employment for the thousands of hard working families who without these mergers would clearly lose their jobs, will spur rather than stagnate competition and will ensure high quality services for airline travelers. I believe that for these reasons, these transactions deserve your strong support.

Statement of Hon Richard J. Durbin, a U.S. Senator from the State of Illinois

Mr. Chairman, Senators DeWine and Kohl, thank you for holding this important hearing today on airline competition.

I represent the State of Illinois which includes O'Hare International Airport. Illinois has often been referred to as the transportation hub of the nation, and aviation issues, especially in the Chicago land region, are page one news.

In fact, I'd suggest that we are at a cross roads in my home state when it comes to aviation. The issues revolve and around ensuring the Downstate Illinois communities enjoy access to the Chicago and St. Louis markets, expanding O'Hare, building a third Chicago airport, and protecting the rights of consumers. I'd like to discuss these briefly today.

First, let me say that Chicago O'Hare International Airport is a vital economic engine in Chicago, the State of Illinois, and the Midwest. It is among the world's busiest airports and serves as the only dual hub with United and American Airlines basing significant equipment, employees, and assets at the facility. O'Hare serves more than 190,000 travelers per day, nearly 73 million in 1999. Some 2,7000 flights leave the airport daily. O'Hare employees 50,000 people and generates about \$37 billion in annual economic impact.

As we all know, the proposed United/US Airways merger is currently under review by the U.S. Department of Justice. The American/TWA buy out is under the jurisdiction of a bankruptcy court. Both may have a major impact on O'Hare and Downstate air service. I prefer to let these authorities work through the details and pass final judgement.

However, I continue to be concerned about Downstate Illinois air service in a consolidated industry.

A Number of Downstate communities have struggled to gain or maintain access to Chicago O'Hare. This service is vital to community economic development and tourism. As we've faced concern over O'Hare access, the one constant has been St. Louis service for these communities. Obviously, the American/TWA buy out announcement has caused great concern in the eight Downstate communities currently served by TWA/TWE.

I have written and personally spoken to both Mr. Goodwin at United and Mr. Carty at American to express my concerns about Downstate Illinois air service. Both are sensitive to the unique circumstances faced by these communities and have promised to work with the Illinois Congressional Delegation. In fact, Mr. Carty has accepted my invitation to meet with these communities in Illinois in the near future to discuss their concerns. As these mergers move forward, I will hold them to those promises.

Finally, with regard to consumers, let me say that although the airlines have made strides toward more responsive customer service plans—ones that treat the traveling public with respect, provide timely information, an attempt to remedy problems as quickly and fairly as possible—there's still a long way to go. I hope the airlines will continue to aggressively address the consumer challenges that still exist.

Mr. Chairman, there have been countless mergers and consolidation in the airline industry. It's a natural part of the business environment. The Department of Justice should continue to closely review all proposals. However, it is vitally important that small-to-medium communities, like those in Downstate Illinois, continue to have access to the major markets. It's important for consumers to be treated fairly. It's important for fares to be affordable. It's important that we maintain and expand our

aviation infrastructure where feasible. And it's important that airlines don't take unfare advantage of a deregulated industry.

I think this hearing goes a long way toward ensuring that the public as well as the federal government continue to monitor airline competition. Mr. Chairman, I thank you for the opportunity to participate today.

**Statement of Leonard L. Griggs, Jr., Director of Airports, City of St. Louis,
Missouri**

Mr Chairman and Members of the Committee: I am Leonard L. Griggs, Jr., Director of Airports for the City of St. Louis. The City is the owner and operator of the Lambert-St. Louis International Airport, historically the main hub for TWA. Thank you for allowing me the opportunity to submit the views of the City of St. Louis. Specifically regarding the proposed acquisition of TWA assets by American Airlines.

Mr. Chairman, not all mergers are created equal. As Senator Carnahan recently stated at a recent Senate Commerce, Science and Transportation Committee hearing: "[W]hile we may be initially inclined to view all of the current airline mergers in the same light, we must consider the American Airlines' acquisition of TWA independently of the other proposed mergers." The City of St. Louis agrees. Even as we explore and review the wide ranging implications raised by the possible consolidation of the airline industry, it must be stressed that the proposed American-TWA transaction should not raise anticompetitive concerns.

AMERICAN—TWA MERGER IS NOT LIKE OTHER MERGERS

The American—TWA proposed agreement is unlike any other mergers currently being discussed. Contrary to press reports, and the opinion of many pundits and even some critics in Congress, this proposed acquisition will not necessarily harm the development of the airline industry or be anticompetitive for consumers. On the contrary, given TWA's current financial condition, I believe that consumers would be worse off with the possible alternatives had American Airlines not come forward with its proposal to acquire TWA. This is why St. Louis fully supports the proposed transaction.

It was recently stated in our local newspaper that "TWA, after years of valiantly trying to turn around, is out of time and out of money." In Contract to its previous financial problems, this time it seems clear that without outside help TWA would have been forced to stop flying and simply liquidate its assets. American Airlines came forward with its proposal in the very same week that TWA would have stopped operating due to lack of funds. Reportedly, Mike Palumbo, TWA's CFO, testified before a Delaware bankruptcy court judge a couple of weeks ago that, without American's debtor-in-possession financing, TWA would have ceased to operate. Instead, American's commitment of \$200 million in debtor-in-possession financing has allowed TWA to continue serving the public until the transaction is completed.

In short, Mr. Chairman, without the American deal, TWA would have ceased to compete in the marketplace. This acquisition should not raise concerns of reducing or stifling competition. Instead, it is my opinion that the proposed deal is simply making the best of a worrisome situation.

Over the last few weeks, it became abundantly clear to us that TWA's options were fast disappearing. Since TWA no longer had the possibility of maintaining healthy, financially robust operations to compete with the other U.S. regional or network carriers, we were left with the choice of allowing American to take TWA as a whole, or allowing TWA to fail, and let others pick at the carcass.

TWA IS "FAILING AIRLINE" IN MERGER PARLANCE

This is a classic example of a failing airline whose on-going business concern can only be rescued by allowing it to merge with a healthy airline. Indeed, although Federal policy does disfavor the acquisition of healthy air carriers by their competitors, there is a long-standing exception when the proposed acquisition involves a failing carrier. The rationale for the exception is that, no matter what, a failing airline will not remain in the market. I believe that, by now, there is enough evidence to conclude that TWA will simply cease to exist. Therefore, the key question that must be answered is how to maximize the public benefit in the distribution of its assets.

Bill Compton, TWA's CEO, was quoted as saying that he has been "shopping" the airline for some time, and has had no other viable offers for its acquisition as a

going concern that would preserve its name and intangible assets. Moreover, although it is true that certain assets (such as slots and leased aircraft) could be sold and placed into service absent the proposed transaction with American Airlines, most of TWA's many valuable assets and resources (such as certain gatehold rights at Lambert, St. Louis aircraft maintenance facilities, and, more importantly, TWA's St. Louis workforce) would have been underused.

For St. Louis, the choice is clear. If the proposed acquisition is not allowed to proceed, St. Louis risks losing its air carrier hub. Without a large airline hubbing at our airport, our community will lose large numbers of well-paying jobs, as well as its close link to national and international markets that makes our region a favored business location.

AIR SERVICE REQUIREMENTS OF ST. LOUIS AREA ARE SUBSTANTIAL

Without TWA's operations, St. Louis risks the loss of substantial levels of air service. Although TWA is only one of nine major airlines serving the airport, it alone provides 73% of the daily flight departures from the airport. TWA's 374 daily flights out of St. Louis serve more than 100 non-stop markets, 65 of which would not otherwise receive non-stop service. Without the TWA-American agreement, St. Louis would lose valuable air service to many communities throughout the United States, and possible, the world. So far, other than American Airline's proposal, no other credible plan has been offered in the bankruptcy process which would maintain St. Louis' present level of air service.

NEW ST. LOUIS RUNWAY CAPACITY SUPPORTED BY AMERICAN AIRLINES

American Airlines's promise to serve St. Louis means the continuing use of the City's public airport infrastructure. In fact, American Airlines has stated that, after it completes its acquisition of TWA assets, it intends to use the St. Louis airport and TWA's gates for a mid-continental hub.

And Mr. Chairman, in connection with American's commitment to the St. Louis community, I have been assured by American's senior management, following an extensive briefing on our new runway project, that American will be fully and enthusiastically supporting our new runway (W-1W) expansion plan. This early decision by American is critical to keeping our expansion on schedule so that Lambert can maintain its hub status and remain competitive.

LOCAL TWA EMPLOYMENT WOULD BE PROTECTED

The risk of mass unemployment in our area is real. If TWA were to shut down, it could leave 20,000 TWA employees out of work, including almost 9,000 in our immediate area, and 12,000 throughout Missouri. TWA is the second largest employer in the City of St. Louis, and the seventh largest in the metropolitan region. It has been estimated that TWA's operations in St. Louis contribute more than \$5 billion annually to the local economy. American Airlines has proposed to maintain TWA's unionized workforce and as much of its administrative employees as feasible.

CONCLUSION

Mr. Chairman, the City of St. Louis asks that you consider American Airlines' proposal to acquire TWA assets separately from the other pending or proposed airline mergers. The American-TWA transaction is not a competition-reducing merger. If TWA were to shut down and liquidate, the City of St. Louis would lose most of its air service, close to 9,000 of its area citizens could be airport infrastructure would go unused, and valuable new national runway capacity might go undeveloped. We must not let that happen. That is why St. Louis fully supports the proposed acquisition of TWA.

Thank you.

Statement of Hon. John J. LaFalce, a Representative in Congress from the State of New York

Chairman DeWine, Ranking Member Kohl, and Members of the Subcommittee:

I appreciate the opportunity to submit this testimony to you Subcommittee regarding the imminent consolidation of the airline industry into perhaps three dominant airlines.

As you know, the current string of proposed airline consolidations including the merger of United Airlines and US Airways; the purchase by AMR Corporation/American Airlines of Trans World Airlines (TWA); the creation of DC Air; and now the possible acquisition of Delta Airlines by Continental Airlines would consolidate over 75% of the industry into three corporations.

I have serious concerns about the impact of these transactions, which are a serious threat to the national economy, and specifically to the local economy of upstate New York.

As an example of what limited competition can do to a small market, consider the plight of the business owners and residents of my district in upstate New York. This region has suffered from unacceptably high airfares for fare too long. In the past few years, Buffalo Niagara International Airport (BNIA) and Rochester International Airport (RIA) have been among the top five highest fare per mile destination in the country. In both cases, this was due primarily to the dominance of one carrier, US Airways, which had a market share of approximately 50% or more in both markets in 1997.

This monopoly stifled competition and inflated fares. This cost has burdened both business and retail travelers alike, and has been extremely distressing to the whole region's economy. In fact, the region is home to several Fortune 500 companies who have struggled to remain competitive in no small part due to above market regional airfares.

Today, through the efforts of federal, state, and local officials, this region's airfares are slightly more competitive with the addition of low fare airlines, such as Jet Blue, Southwest, Shuttle America, Air Tran, and others. As a result, the most recent statistics indicate that approximately 4.25 million passengers used BNIA in 2000, breaking the previous record of 3.6 million passengers set in 1984. This enhanced competition has allowed BNIA to fall from second to 48th nationally on the list of cities with high airfares. The Rochester market, with new low-fare service from JetBlue, has improved, but not a significantly. The pending TWA transaction will also permit American Airlines to invest in 49% of DC Air. I originally voiced by concerns about Air in May, 2000 when it was announced that this new airlines would assume the routes flown by US Airways from the Washington, DC metro area. I fail to see how these concerns about DC Air are addressed by effectively transferring control of these routes from one dominant carriers, US airways, to another, American. Any solution that does not permit new competition, as opposed to repackaged monopolies, is unacceptable.

Many people regularly fly between Buffalo/Rochester and Washington, D.C., and are forced to pay much higher fares than those paid on routes of similar distance. For example, it is now possible to fly between Buffalo/Rochester and New York City for \$100 round-trip (where JetBlue provides real competition), but it is often necessary to pay almost \$800 to commute to Washington National Airport from upstate New York because of the dominance of one carrier, US Airways, in the market. As just one more example, US Airways once charged over \$400 on a round-trip fare from Buffalo to Albany, New York. When Shuttle America began to compete on this route, offering a \$200 round-trip, US Airways immediately matched that fare. Shuttle America has since discontinued this service and it comes as no surprise to me that the US Airways fare on this route is again close to \$400.

Clearly, fundamental economic theory and these examples dictate that the crucial ingredient to low air fares is competition. The national economy, and the economy of communities like upstate New York, rely on competition to keep air fares low and business expenses reasonable. These mergers threaten to eliminate the very heart of competition in the airline industry and will negatively affect business growth in every industry save this one.

I urge you to keep these concerns in mind as you carefully examine airline consolidation.

Thank you.

**Statement of Lynn Lenosky, US Airways Master Executive Council
President, Association of Flight Attendants, AFL-CIO**

Thank you, ladies and gentlemen of the Judiciary Subcommittee, for allowing me this opportunity to provide written testimony on the proposed acquisition of US Airways by United Airlines. I am the US Airways Master Executive Council President for the Association of Flight Attendants, AFL-CIO, representing the more than 10,000 Flight Attendants of US Airways.

In May of 2000, United Airlines announced its proposed purchase of US Airways Group. That announcement came only weeks after the US Airways Flight Attendants had ratified our new contract agreement following three years of collective bargaining. The sale of our company took all of us by surprise.

In our initial public statement, the US Airways Flight Attendants said that we needed more details about the proposed transaction before we would pass judgment on it. Our concern then, our concern today, and our concern in the future is the long-term job security of the 10,000 US Airways Flight Attendants and their families.

We have literally hundreds of questions for United Airlines management about the transaction, integration, and future plans for the Flight Attendant group. If the transaction is ultimately approved by the U.S. Department of Justice, we are confident that those concerns will be addressed in our negotiations to merge the contracts that cover the US Airways and United Flight Attendants. These negotiations must be successfully concluded if United intends to merge the operations of the two airlines.

Until now, the focus of debate has been mainly centered on consumers and pricing. The elected AFA leaders at US Airways want to ensure that the futures of the 10,000 US Airways Flight Attendants and their families, and all US Airways employees are considered by this Subcommittee.

As a Flight Attendant for US Airways for the past 15 years, I have felt the brunt of this airline's attempts to make it through rough times. US Airways Flight Attendants made significant sacrifices in pay and work rules in our previous contract to help keep this airline afloat. But all the tinkering and reshuffling has not secured the long-term viability of US Airways.

US Airways Chairman Stephen Wolf and numerous airline industry experts have testified before you and stated in the press that the airline is very poorly positioned to continue in its current form. The squeeze has already started with US Airways reporting losses of \$101 million in the fourth quarter of the year 2000, and a loss of over \$269 million for the entire year. These losses resulted in spite of fact that revenues increased. Chairman Wolf and most of the experts agree that, if US Airways were to continue in its current state, it would likely fail.

United is bound by agreement and by law to the US Airways Flight Attendant contract. While it contains language that protects our Flight Attendants from furloughs through 2004, that contract can only protect the jobs of our 10,000 Flight Attendants if US Airways is still in business, or if US Airways is purchased by another entity.

Shutting US Airways' doors would have an irreparable, negative impact on the working families at US Airways and on the communities we historically have served.

The reality is that bankruptcies and business closures severely hurt not only the working women and men involved, but also their families and the communities in which they live. A failed US Airways threatens the livelihood of every one of us at this company, and this air service to many of the medium and smaller communities we now serve. This Subcommittee frequently talks about the air service, but I implore you not to lose sight of what this airline means to the tens of thousands of employees who work for US Airways, as well.

It is in the public interest to maintain these jobs, which provide medical and dental benefits, retirement benefits, and a living wage. Allowing US Airways to shut its doors will force tens of thousands more workers and families to seek state-sponsored support through unemployment compensation and, potentially, welfare.

The risk of loss of air service, if this merger is rejected and US Airways is allowed to fail, will be worst where US Airways has a significant presence: in the eastern portion of this country. Medium and smaller cities such as Norfolk, Virginia, Harrisburg, Pennsylvania, and Dayton, Ohio depend heavily on US Airways for air service and connections to communities across the country and around the globe. If US Airways were to "shut its doors," this service could end, leaving potential passengers in these areas essentially stranded.

The nearly guaranteed impact of a US Airways bankruptcy is an unemployed workforce and undeserved communities.

If things aren't allowed to change, this unacceptable alternative may be just a step away for US Airways. In the event of an economic downturn, it could happen much more quickly.

You and I have constituencies to serve. As members of the United States Senate, I have no doubt you hold dear the livelihood and vitality of the individuals and communities within your state. As an elected labor leader, I, too, hold dear the well-being of my members. It is here that we have common ground.

At stake are the jobs of tens of thousands of working families—those of AFA members and your constituents. At stake is the air service to thousands of communities—where you constituents and AFA members live.

Like many of you, we believe United Airlines still has many questions to answer before this deal should be allowed to be consummated.

And with all of the questions we have about United Airlines' future plans for US Airways, and its Flight Attendants in particular, it is obvious the United is still struggling to get its current house in order. The one issue in particular that concerns Flight Attendants is United's stone-walling of discussions to provide a raise to its current Flight Attendant group. United has stated its commitment to utilizing the standards applied to other work groups at the airline in providing a raise, rather than an outdated system that treats Flight Attendants like second-class employees. But United has not yet fulfilled that promise.

We urge United to come to a fair agreement with our sisters and brothers and we support them in their fight for equal treatment.

Like your concern for you constituents, AFA's leadership is committed to ensuring that the Flight Attendants at US Airways are treated fairly in this merger process. As you do for your constituents, we remain committed to ensuring our member's futures by utilizing all of the legal and strategic means at our disposal. The security and future of the working families and communities that depend on US Airways should be the major focus of the debate over this proposed transaction.

Thank you for the opportunity to submit the position of US Airways' 10,000 flight Attendants.

Statement of Roberta Quinn Pilkington, United Airlines Master Executive Council Secretary/Treasurer, Association of Flight Attendants, AFL-CIO

Thank you members of the Judiciary Subcommittee for providing me the opportunity to present this written testimony. My name is Roberta Quinn Pilkington. I am a United Airlines flight attendant and member of the Association of Flight Attendants, AFL-CIO (AFA), which represents more than 50,000 flight attendants at 27 carriers. AFA is the largest flight attendant Union in the world. I am the Secretary/Treasurer of the United Master Executive Council (MEC) which represents 25,500 United Airlines flight attendants, located in twenty bases around the world. I am writing today to tell the Subcommittee why the United MEC has taken a position against the proposed US Airways/United Airlines Merger.

Flight Attendants are known as safety professionals and passenger advocates, world-wide. Our presence has been required on aircraft since 1952. The Association of Flight Attendants led the way to "Smoke Free" skies, prevention of the removal of the over-wing exit doors on the B-747, promotion of the international Air Rage Campaign, Air Quality standards onboard aircraft, and "Whistleblower Protections." We work very hard to provide a safe and comfortable environment for our passengers on every flight, every day.

When the US Airways/United Airlines merger was first announced in May, 2000, the United MEC maintained a neutral position. We wanted to wait and hear all the facts and information regarding the merger and assess the impact on our members. However, on November 6, 2000, the United MEC took a strong position against the merger.

The summer of 2000 at United Airlines soon became known as the "Summer from Hell," for not only U.S. air travelers, but United flight attendants, as well. United's abysmal service record last summer was unprecedented. And, as badly as our passengers were treated, United management treated its flight attendants worse. Flight attendants were sent to drug infested, filthy hotels for layovers when flights were canceled. On several occasions, flight attendants were forced to get their "legal rest" on aircraft because Crew Scheduling personnel claimed they were unable to find hotel accommodations. Contract violations were too numerous to begin recounting here, and many of the situations are still unresolved more than six months later, despite the best efforts of our Union representatives.

It is clear, that United Airlines continues to have difficulty managing its current operation as management violations of our contract persist unabated due to management's inability to schedule the airline properly. Allowing United to add thousands of flights and tens of thousands of employees at a time when it cannot properly manage its current operation is asking for trouble.

We ask you to consider our opinion, as front-line employees of the airline, who get a first-hand look at United everyday. United's current management problems

would be compounded exponentially—in terms of further labor and operations problems—If the airline's proposed transaction is allowed to go forward at this time.

Thank you for allowing me to submit these written remarks on behalf of the United Airlines flight attendants.

**Statement of Betsy Tettelbach, Eastern Region Master Executive Council
Vice President, Association of Flight Attendants, AFL-CIO**

Thank you, members of the Judiciary Subcommittee, for allowing me this opportunity to provide written testimony on the proposed acquisition of US Airways and its wholly-owned subsidiaries by United Airlines. I am the Eastern Region Master Executive Council President for the Association of Flight Attendants, AFL-CIO, representing the more than 600 Flight Attendants at US Airways' wholly-owned express carriers Piedmont Airlines, Allegheny Airlines and PSA.

I am also the Local Council President for the Piedmont flight attendants, and I continue to hold my position as a line flight attendant for the airline.

The flight attendants at US Airways' wholly-owned Express carriers are worried about where our companies and our careers are headed. At this time, it is impossible for us to predict our future. We are a workforce dedicated to our company's continued success. We want the opportunity to continue our careers with a strong airline under a fair contract.

But since this proposed acquisition by United, the flight attendants at the US Airways' wholly-owned airlines have received little or no information from management at either US Airways or United Airlines on how the proposed purchase of US Airways Group will affect our jobs and our communities.

In the press, United has set off a landslide of speculation about whether the airline will continue to own the carriers, or whether they will sell our airlines before the proposed acquisition is completed.

United's fippant treatment of the wholly-owned carriers is disturbing. It leaves for all the question the security and future of thousands of jobs and the continued, uninterrupted air service to the large number of smaller communities that we are proud to serve.

The wholly-owned carriers are an integral part of the US Airways system. In fact, US Airways' Express carriers account for 1,600 daily departures. US Airways' mainline system has only 1,100 daily departures. That means United must fully outline for its employees and the flying public how it intends to maintain the jobs and essential air service to most of US Airways system of operation.

The communities serviced by US Airways Express stand to suffer along with the employees. In many cases, US Airways Express is the primary link, and often the only link, between smaller cities and business and leisure destinations around the world. These communities count on the air service and jobs that US Airways Express carriers provide. If that service were to be cut off or interrupted because of a problem that arises from United's lack of planning, the effect on the community and its residents could be devastating.

For United Airlines and US Airways Group to go forward in the merger process without a full and open guarantee of the continued existence of the express carriers and their routes is negligent.

If current events are any indication, the wholly-owned carriers' employees are in for a drastic drop in working conditions or a potential job loss altogether, and air service to the communities the carriers serve is open to a questionable future.

The chain of events that has already been set into motion is disturbing to say the least. A shadow company called Potomac Air has been created as part of the planned acquisition. This new airline is being set up to be spun off as the planned DC Air. The problem is, however, that this carrier is being set up in violation of our contract, and therefore the law.

US Airways and United management have taken Piedmont management and Piedmont aircraft and given them to the new airlines, Potomac Air. As the new airline, these aircraft fly what were once Piedmont routes. This is clearly a shadow, or alter ego, corporation. It is also a successor to Piedmont. And, therefore under the terms of our contract, the flight attendants that fly on these flights should be covered by the Piedmont flight attendant contract.

The timing of these anti-union activities is suspicious considering the flight attendants were forced to ask the National Mediation Board for a release from their contract negotiations at the end of December. After nearly 20 months of talks,

progress has stalled. The flight attendants have already voted overwhelmingly to go on strike to get the fair pay and treatment they deserve.

Regardless of which company ultimately owns the wholly-owned carriers, the flight attendants at Piedmont, Allegheny and PSA have contracts that will convey along with the airline because of the successor language we were able to negotiate into our contracts.

But United's failure fully explain its plans for continuing the operations of the wholly-owned US Airways' carriers begs the question: Does United truly plan on maintaining the jobs at these airlines that are so important to the communities they serve? Will United maintain the air service that is also so vital to these communities?

The flight attendants will continue to demand answers from United on these questions. And we thank you for hearing our voices and continue to look for the answers to these important questions, as well.

