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HEARINGS  
 BEFORE THE  
 SUBCOMMITTEE ON TRANSPORTATION  
 AND AERONAUTICS  
 OF THE  
 COMMITTEE ON  
 INTERSTATE AND FOREIGN COMMERCE  
 HOUSE OF REPRESENTATIVES

NINETIETH CONGRESS

SECOND SESSION

ON

**H.R. 17685**

A BILL TO AMEND THE FEDERAL AVIATION ACT OF 1958  
 WITH RESPECT TO THE DEFINITION OF "SUPPLEMENTAL  
 AIR TRANSPORTATION", AND FOR OTHER PURPOSES

JUNE 24, 25, 1968

**Serial No. 90-43**

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 Committee on Interstate and Foreign Commerce



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## CAB INCLUSIVE TOUR AUTHORITY

MONDAY, JUNE 24, 1968

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*Washington, D.C.*

The subcommittee met at 10 a.m., pursuant to notice, in room 2123, Rayburn House Office Building, Hon. Samuel N. Friedel (chairman of the subcommittee) presiding.

Mr. FRIEDEL. The subcommittee will be in order.

This morning we commence hearings on H.R. 17685, which would amend the Federal Aviation Act to specifically allow the Civil Aeronautics Board to grant inclusive tour authority to supplemental air carriers.

I understand that one circuit court of appeals has approved the Board's actions in this regard and that another has disapproved. Recently the Supreme Court by a 4-to-4 decision affirmed the disapproval. A legislative resolution of this conflict appears appropriate.

At this point in the record we will insert a copy of the bill under consideration, and agency reports thereon.

(H.R. 17685 and departmental reports thereon follow:)

[H.R. 17685, 90th Cong., second sess.]

A BILL To amend the Federal Aviation Act of 1958 with respect to the definition of "supplemental air transportation", and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That paragraph (33) of subsection (a) of section 101 of the Federal Aviation Act of 1958 is amended to read as follows:

"(33) 'Supplemental air transportation' means charter trips, and inclusive tour trips, in interstate, overseas, and foreign air transportation, other than the transportation of mail by aircraft, rendered pursuant to a certificate of public convenience and necessity issued pursuant to section 401(d)(3) of this Act and subject to regulations prescribed by the Board."

SEC. 2. Certificates of public convenience and necessity for supplemental air transportation and statements of authorization, issued by the Civil Aeronautics Board, which are in effect on the date of enactment of this Act, are, notwithstanding any contrary determination by any court, hereby validated, ratified, and continued in effect according to the terms, insofar as such certificates or statements authorize the performance of inclusive tour charter trips in interstate, overseas, and foreign air transportation.

BUREAU OF THE BUDGET,  
*Washington, D.C., June 21, 1968.*

HON. HARLEY O. STAGGERS,  
*Chairman, Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in reply to your request for the views of the Bureau of the Budget on H.R. 17685, a bill "To amend the Federal Aviation Act

of 1958 with respect to the definition of 'supplemental air transportation', and for other purposes."

This bill would clarify the power of the Civil Aeronautics Board to authorize the supplemental air carriers to engage in charters to inclusive tour operators.

It is already clear that the grant of such authority provides direct service to a new category of traveler and also benefits the general public by stimulating the scheduled carriers to provide a greater range of services and fares. It was to achieve these benefits that the Board in 1966 proposed, and the President approved, specific grants of such authority subject to appropriate regulations. It would be unfortunate if these benefits were now lost during a period of uncertainty about the Board's power to grant such authority.

The Bureau of the Budget supports the objective of H.R. 17685 and, subject to the clarifying amendments proposed by the Board in its testimony before the Senate Committee (attachment A), recommends its enactment.

Sincerely yours,

WILFRED H. ROMMEL,  
Assistant Director for Legislative Reference.

[ATTACHMENT A]

[S. 3566, 90th Cong., second sess.]

(Italic indicates the Board's recommended additions to the bill, matter in black brackets indicates the Board's recommended deletions in the bill.)

A BILL To amend the Federal Aviation Act of 1958 with respect to the definition of "supplemental air transportation", and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That paragraph (33) of subsection (a) of section 101 of the Federal Aviation Act of 1958 is amended to read as follows:

"(33) 'Supplemental air transportation' means charter trips, including inclusive tour charter trips, in [interstate, overseas, and foreign] air transportation, other than the transportation of mail by aircraft, rendered pursuant to a certificate of public convenience and necessity issued pursuant to section 401(d) (3) of this Act [and subject to regulations prescribed by the Board; and 'inclusive tour charter' trip means the charter of an aircraft or portion thereof by a tour operator for the carriage by a supplemental air carrier of passengers in interstate, overseas, and foreign air transportation on a round trip tour which is to one or more points and combines air transportation and land services.]" *to supplement the scheduled service authorized by certificates of public convenience and necessity issued pursuant to sections 401(d) (1) and (2) of this Act.*"

SEC. 2. Certificates of public convenience and necessity for supplemental air transportation and statements of authorization, issued by the Civil Aeronautics Board, [which are in effect on the date of enactment of this Act,] are [notwithstanding any contrary determination by any court,] hereby validated, ratified, and continued in effect according to [the] *their terms, notwithstanding any contrary determination by any court that the Board lacked power to* [insofar as such certificates or statements] authorize the performance of inclusive tour charter trips in [interstate, overseas, and foreign] air transportation.

GENERAL COUNSEL OF THE  
DEPARTMENT OF COMMERCE,  
Washington, D.C. June 19, 1968.

HON. HARLEY O. STAGGERS,  
Chairman, Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request for the views of this Department concerning H.R. 17685, a bill "To amend the Federal Aviation Act of 1958 with respect to the definition of 'supplemental air transportation', and for other purposes."

Section 1 of the bill would amend section 101(a) (33) of the Federal Aviation Act of 1958 (49 U.S.C. 1301(a) (33)) to include within the statutory definition of

"supplemental air transportation" (i.e., transportation furnished by United States air carriers holding Civil Aeronautics Board certificates authorizing them to engage in nonscheduled operations) the performance of inclusive tour charter trips. An inclusive tour charter is the charter of an aircraft by a tour operator to carry passengers on a round trip tour combining air transportation and land services (e.g., hotel accommodations, meals, sightseeing fees). Inclusive tour charters would be permitted in both domestic and foreign air transportation.

Section 2 provides for validation, ratification and continuance in effect of inclusive tour authority previously granted by CAB to supplemental air carriers.

The occasion for introduction of this measure was a recent Supreme Court action which left standing a Circuit Court of Appeals decision to the effect that supplemental air carriers lack authority to engage in inclusive tour charters under the Federal Aviation Act of 1958. More specifically, the appellate court held that in amending the Federal Aviation Act in 1962 (Public Law 87-528) Congress did not intend to permit supplemental air carriers to engage in the transportation of individually ticketed passengers, as is often the case with persons joining inclusive tours. The intent was rather to limit supplemental carriers to group charters, in which transportation is contracted for the group as a whole rather than for each member as an individual and which do not extend to land services.

The Department of Commerce recommends enactment of H.R. 17685.

The supplemental air carrier performs useful services in furtherance of the air commerce of the United States. It supplements the services offered by the scheduled carriers by providing a flexible charter capacity for transportation of both passengers and cargo. This is particularly valuable in times of emergency, and the supplemental carriers have contributed materially to military airlift operations. In enacting P.L. 87-528 Congress recognized the value of these carriers and in fact sought to lessen their dependence on military business by broadening their opportunities to obtain commercial charters. H.R. 17685 is in furtherance of this objective.

Development of inclusive tour charters would have a useful balance of payments effect. Inclusive tours to vacation areas in the continental United States, Hawaii, Puerto Rico and the Virgin Islands would be in line with the Administration's efforts to reduce the travel gap by encouraging Americans to take their vacations within the dollar area.

Moreover, inclusive tour authority would permit supplemental carriers to bring to the United States inclusive tour groups originating abroad, with a resultant inflow of foreign currencies. Inclusive tour charter authority to bring foreign groups to this country is an important means of furthering this Department's objective of bringing more foreign visitors to the United States. The inclusive tour is highly developed in Europe and is particularly attractive to persons in lower income groups who otherwise would be financially unable to visit this country.

We have been advised by the Bureau of the Budget that there would be no objection to the submission of our report to the Congress from the standpoint of the Administration's program.

Sincerely,

BURT W. ROPER,  
(For General Counsel).

DEPARTMENT OF STATE,  
Washington, D.C., June 19, 1968.

Hon. HARLEY O. STAGGERS,  
Chairman, Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington D.C.

DEAR MR. CHAIRMAN: The Secretary has asked me to reply to your letter of June 7, 1968, requesting the Department's comments on H.R. 17685, a bill to amend the Federal Aviation Act of 1958 with respect to the definition of "supplemental air transportation," and for other purposes.

From a foreign relations standpoint, the Department of State has no objection to the proposed legislation. The Department notes that one consideration which might hamper the development of an extensive international inclusive tour program by the supplemental airlines is the reluctance which many foreign countries, particularly in Europe, have shown toward such charter services. Their reluctance has been based on concern that this charter activity will divert traffic from their scheduled international air carriers.

The Bureau of the Budget advises that, from the standpoint of the Administration's program, there is no objection to the submission of this report.

Sincerely yours,

H. G. TORBERT, Jr.,  
Acting Assistant Secretary  
for Congressional Relations.

DEPARTMENT OF JUSTICE,  
Washington, D.C., June 27, 1968.

HON. HARLEY O. STAGGERS,  
Chairman, Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice on H.R. 17685, a bill to amend the Federal Aviation Act of 1958 with respect to the definition of "supplemental air transportation", and for other purposes.

The bill would modify the Federal Aviation Act of 1958 by amending the definition of "supplemental air transportation" in Section 101(33) to include within the term inclusive tour trips in interstate, overseas and foreign air transportation subject to regulation by the Civil Aeronautics Board.

Section 2 of the bill would validate, ratify, and continue in effect any certificates or statements issued by the Board authorizing the performance of inclusive tour charter trips which were in effect on the date of the enactment of the bill, notwithstanding any contrary determination by any court.

Existing law, Section 101(33) of the Federal Aviation Act, 49 U.S.C. 1301(33), defines "supplemental air transportation" as "charter trips in air transportation", but does not expressly refer to inclusive tour charter trips. The Civil Aeronautics Board recently held that under the existing statute it is authorized to define the term "charter trips" and that it may grant certificates to supplemental air carriers authorizing them to conduct inclusive tour charter trips. The Court of Appeals for the District of Columbia Circuit sustained this ruling as it was applied to domestic air transportation. *American Airlines v. Civil Aeronautics Board*, 365 F. 2d 939. Thereafter, in a case involving international charter authority, the Court of Appeals for the Second Circuit construed the same language in the statute but reached a directly contrary result. *Pan American World Airways v. Civil Aeronautics Board*, 380 F. 2d 770. The Supreme Court granted certiorari to resolve the conflict but one justice disqualified himself and the judgment was affirmed by an equally divided court. *Civil Aeronautics Board v. Pan American World Airways, Inc.*, S. Ct. O.T. 1967, No. 946, May 27, 1968. The conflict between the circuits is thus unresolved and the scope of the Board's authority is presently uncertain.

H.R. 17685 would resolve the conflict in favor of giving the Civil Aeronautics Board the authority to issue a certificate to supplemental air carriers to conduct inclusive tour charter trips. We believe that this is a desirable result since it will lead to the strengthening of the supplementals and consequently to the enhancement of competition in the air transportation industry. In this connection we note that the Department represented the Board in the several cases challenging its authority to authorize such service, and that it fully supported its decisions.

We believe, however, that the bill should be modified in one respect. Section 2 of the bill should be modified by striking the words "which are in effect on the date of enactment of this Act" in lines 5 and 6 of page 2. Deletion of this language would avoid any dispute over the effect of the Second Circuit's decision setting aside Board orders granting inclusive tour authority.

The Department of Justice recommends enactment of this legislation, modified as suggested above.

The Bureau of the Budget has advised that it has no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

WARREN CHRISTOPHER,  
Deputy Attorney General.

Mr. FRIEDEL. We shall hear first this morning from our colleague and member of the full committee, the Honorable John E. Moss. Mr. Moss is one of the authors of the legislation under consideration. Mr. Moss.

**STATEMENT OF HON. JOHN E. MOSS, A REPRESENTATIVE IN  
CONGRESS FROM THE STATE OF CALIFORNIA**

Mr. Moss. Mr. Chairman, I appreciate this opportunity to appear in support of H.R. 17685, a measure which I have coauthored and the measure which you are considering this morning.

There is no question that our country needs a low-cost system of transportation that will enable citizens in the low- to middle-income category to enjoy vacation travel. Authority from the Civil Aeronautics Board to provide air transportation for such low-cost package tours was first granted to the supplemental carriers for domestic operations in 1966. Subsequent to that time, the Board granted identical authority for international flights.

Now we are faced with a situation, due to litigation, where immediate congressional action is required if low-cost vacation tours are to be available this summer to the citizens in that low- to middle-income bracket.

I might point out that, incidentally, Mr. Chairman, in the hearings held in the other body on similar legislation, the only opposition expressed was by the Air Transport Association and its member airlines. I am most anxious to see this committee act on the legislation in a timely way so that these tours which have been of great benefit to the traveling public can be continued. I urge immediate approval.

Mr. FRIEDEL. Thank you, Mr. Moss.

The next witness this morning will be my good friend, the chairman of the Science and Astronautics Committee, Congressman Miller of California.

**STATEMENT OF HON. GEORGE P. MILLER, A REPRESENTATIVE IN  
CONGRESS FROM THE STATE OF CALIFORNIA**

Mr. MILLER. Mr. Chairman, thank you very much.

I am also one of the coauthors of this bill. I believe that its enactment will clear up once and for all some of the questions that arise relative to certain of the supplemental carriers in connection with their nonmilitary work and in connection with their transportation of passengers.

I think it is essential that we get the air cleared so that this facet of the air transportation industry, so important to this country both economically and militarily, will be in a position to know their rights and perform their services without always being under the cloud that someone may raise the technicality of law. This not only embarrasses them but retards their development.

I do not have to tell you or the committee of the value of the supplemental air carriers or the important and indispensable part they play in times of war.

After World War II, the military not only encouraged the supplementals but actually advanced money so that they could buy planes to use in the public business because of the need a great mass of transportation then required.

Of course, then when times get a little bit difficult, you get away from the immediate necessity for these things; those companies that had the

permanent right to operate began to assert their rights and they nearly drove these supplementals out of business.

We need them, we need them in the civil facet of life more than we need them anyplace else. The contract air carriers perform a new function of transportation that as time goes on will become more important and continuously more popular.

I am certain that you have seen studies that in the future industrial complexes will be dependent on large airports and that air transportation will relieve the necessity for maintaining huge stocks of inventories around the country.

That will contribute to efficiency in the business of this country. With the increased population we are going to need more and more of this type of transportation. I think it is time now that we clear up once and for all by fiat law and define for the rights of these people.

Mr. FRIEDEL. Thank you very much.

Are there any questions, Mr. Kuykendall?

Mr. KUYKENDALL. Yes, Mr. Chairman.

Mr. Chairman, may I be a little bit more presumptuous and ask you to be the devil's advocate here for just a second.

What is the opposition to this bill based on?

Mr. MILLER. Of course, it actually stems from the fact, and it is not nice to talk about this and we should not sweep it under the rug, the opposition to this bill comes from the fact that the big carriers who have received certificates of convenience and necessity from the Government would like to get the supplementals out of business so that they can exercise the monopoly that they now control in air carriage.

Mr. KUYKENDALL. I want to get into the legal thing. I am not an attorney. I don't know whether you are or not.

What was the basis of the dissent on the position of the air carriers? Do you know what was the basis of the refusal? I know it was a split decision. What was wrong with the act legally that they threw it back into our laps?

Mr. MILLER. I think the big carriers have always challenged the right of these people when things get a little bit tough. On the other hand, in the field of air carriage the Government does more for them than it has done for any other facet of transportation. The money we spend for airports, maintenance of airports, all of this is almost gratuitous to the carriers.

But these other carriers do not hesitate occasionally to get into other facets of business. One of them has a very fat contract with the Defense Department and with NASA to furnish all the tracking stations and maintain the tracking stations and tracking ships that contribute to its welfare and to its very high profits. They are not confining their efforts entirely to the matter of transportation.

I would just like to say that some years ago, in my part of California, though not classified as an agricultural district although it produces one facet of agriculture for a county of its size that compares favorably with many of the things that we generally recognize as agriculture and that is cut flowers.

Cut flowers must be on the market within 12 hours after they are actually cut. Many years ago we had to come to Congress and get a waiver on the laws governing freight forwarders to allow flower grow-

ers to combine to ship their product to the market. It relieved them of being charged with unfair practices in restraint of trade.

It is a multimillion-dollar business. In the bay area we produce in excess of \$15 million a year of cut flowers. So there have to be exceptions to all the hard rules of law governing any form of transportation.

I at one time was a secretary of a truckowners association in the late 1920's in California. We were having the same fight then with the railroads that these people are now having.

Mr. KUYKENDALL. You are still fighting the railroads.

Mr. MILLER. We were still fighting the railroads until the railroads chose to carry the trucks piggyback.

Mr. KUYKENDALL. Thank you, Mr. Chairman.

Mr. FRIEDEL. Mr. Adams.

Mr. ADAMS. I have no questions.

I just want to welcome the chairman of the Science and Aeronautics Committee this morning.

Mr. MILLER. Thank you. I should say he is an alumnus of our committee and like a good institution we take care of our alumni.

Mr. FRIEDEL. He is a very worthy member of this committee, too.

Mr. MILLER. A very important member. I want to thank you, Mr. Chairman, for holding these meetings. I want to thank you for the privilege of being here.

Mr. FRIEDEL. Our next witness will be Mr. Donald G. Agger, Assistant Secretary for International Affairs for Special Programs, Department of Transportation.

#### **STATEMENT OF DONALD G. AGGER, ASSISTANT SECRETARY, INTERNATIONAL AFFAIRS AND SPECIAL PROGRAMS, DEPARTMENT OF TRANSPORTATION**

Mr. AGGER. My name is Donald G. Agger. I am Assistant Secretary of Transportation for International Affairs and Special Programs.

I am here today to present the views of the Department of Transportation on H.R. 17685, a bill to amend the definition of "supplemental air transportation" as it appears in section 101 of the Federal Aviation Act of 1958.

This bill would make clear the authority of the Civil Aeronautics Board to authorize certificated supplemental air carriers to engage in inconclusive tour charter trips. The Department supports a clarification of this matter by the Congress so as to leave no question that the Board has that authority.

Public Law 87-5268, enacted in July 1962, empowered the Board to award certificates of public convenience and necessity to this class of carrier. A great deal of controversy followed the enactment of this legislation, and the present situation is exceedingly confused.

The Circuit Court of Appeals for the District of Columbia has held that the Board does have authority to authorize supplemental air carriers to engage in inclusive tour charters. The Second Circuit Court of Appeals has held that it does not, at least with respect to international flights.

The Supreme Court affirmed the Second Circuit Court's decision by a 4-to-4 holding. A second case involving the legality of the Board's authority to authorize domestic inclusive tour charters is now pending in the Second Circuit.

It is apparent that this difference of opinion between two circuit courts, with a 4-to-4 holding of the Supreme Court, provides no clear guideline or precedent for Board or industry thinking.

The Department of Transportation believes that Congress should resolve this matter with a clear statement that supplementals may engage in inclusive tour charters in domestic, overseas, and foreign air transportation. This is the only sound way in which to resolve the uncertainty.

Through their inclusive tour charters, the supplemental carriers have provided the benefits and experience of air transportation to people who otherwise might not have traveled by air.

The Board has indicated that the development of this traffic has meant minimal diversion from regular route carriers. The supplementals have provided a new degree of competitive endeavor which the scheduled airlines have been unwilling or unable to initiate, despite encouragement by the Board.

With this new source of traffic, the supplemental carriers have been able to bring into better balance the ratio of their military and civilian charter business. They have operated competitively, fairly, and on a nondiscriminatory basis.

In sum, the inclusive tour charter has meant a wider choice of services and prices, both domestically and internationally. By authorizing inclusive tour charters by the supplementals, the Board has been able to promote progress in aviation, and has provided a flexibility which allows it to respond to changing opportunities and changing needs.

The Department of Transportation believes that such goals should be encouraged.

We think it desirable to allow the Board to fix the precise characteristics of inclusive tour charters. The Board should have the flexibility it might need to determine, perhaps by experimentation, the kind of inclusive tour charters which best satisfy the public need. This should be left to the Board to prescribe by regulation, as it did in part 378 of its economic regulations.

We recommend, therefore, that paragraph 33 of section 101 of the Federal Aviation Act of 1958 be amended to provide that supplemental air transportation includes inclusive tour charter trips.

Mr. Chairman, the Department supports enactment of H.R. 17685 with some slight variations. I have the Department's recommended amendments with me and can either read them to you or, if you prefer, simply submit them to you in writing.

Mr. FRIEDEL. Thank you, Mr. Agger.

Do appendixes I and II include your amendments?

Mr. AGGER. That is right.

Mr. FRIEDEL. You may proceed to read them.

Mr. AGGER. As appendix I, the Department of Transportation recommends that paragraph 33 of section 101 of the Federal Aviation Act of 1958 be amended by simply adding the phrase "including inclusive tour charter trips" after the words "charter trips."

We also support the language suggested by the Board to amend section 2 of the bill, which would preserve the validity of certificates issued by the Board to supplemental air carriers authorizing them to perform inclusive tour charter trips.

H.R. 17685 uses the words "inclusive tour trips" rather than "inclusive tour charter trips." The bill's language is somewhat ambiguous, suggesting that supplementals should be authorized to directly ticket individual passengers on inclusive tour trips.

The Department recommends that the Board should have the power, but not be required, to authorize supplementals to directly ticket inclusive tour trips. We, therefore, suggest the use of the term "inclusive tour charter trips" in the place of "inclusive tour trips," so that the Board will clearly have the discretion to determine what authorizations will best serve the needs of the traveling public.

As our appendix II, the Department recommends that paragraph (33) of subsection (a) of section 101 of the Federal Aviation Act of 1958 should read as follows:

"Supplemental air transportation" means charter trips, *including inclusive tour charter trips*, in air transportation, other than the transportation of mail by aircraft, rendered pursuant to a certificate of public convenience and necessity issued pursuant to section 401(d)(3) of this act, to supplement the scheduled service authorized by certificates of public convenience and necessity issued pursuant to section 401(d)(1) and (2) of this act.

Mr. FRIEDEL. Thank you, Mr. Agger.

Are there any questions, Mr. Adams?

Mr. ADAMS. Yes, I want to be sure, Mr. Agger, that I have the changes suggested in the bill. It is a little confusing. Do you have a copy of the bill in front of you?

Mr. AGGER. I do, Mr. Adams.

Mr. ADAMS. I take it that on page 1, looking at your appendixes here you would include the words on line 6 where it says "charter trips and inclusive tour trips," you would insert the word "charter"; is that correct? That is on line 6.

Mr. AGGER. That is right, Mr. Adams.

Mr. ADAMS. Now is there another change that you want or are suggesting in that paragraph?

Mr. AGGER. In that same line, Mr. Adams, line 6 of the bill, the word "and" is deleted and the word "including" is substituted therefor.

Mr. ADAMS. So that it now reads starting at line 5:

Supplemental air transportation means charter trip and inclusive tour charter trips in interstate, overseas—

And then you have the word "including"?

Mr. AGGER. Let me read it as I think it should be, Mr. Adams.

Beginning on line 5 of the bill:

Supplemental air transportation means charter trips including inclusive tour charter trips in air transportation—

The point being that the phrase "air transportation" includes by definition "interstate, overseas, and foreign air transportation."

Mr. ADAMS. So it now reads:

Supplemental air transportation means charter trips including inclusive tour charter trips in air transportation—

And then continuing on—

Mr. AGGER. "Other than the transportation," et cetera.

Mr. ADAMS. That is the change in 33?

Mr. AGGER. That is the change in 33.

Mr. ADAMS. Is there another change in the proposed bill? You had something in your statement wherein you stated you did not want to include individual ticketing, you wanted to leave that to the CAB. Does that require some additional change in the bill?

Mr. AGGER. Not in the bill we are talking about now.

Mr. ADAMS. In other words, the bill now with that change meets the Department's objections?

Mr. AGGER. Yes, sir. Appendix II sets forth the definition in paragraph (33) as we believe it should read.

Mr. ADAMS. Another question I have is: You have in your statement on page 2 and I notice it is going to be the issue so I would like to get the Department's position very well.

You say:

The supplementals have provided a new degree of competitive endeavor which the scheduled airlines have been unwilling or unable to initiate, despite encouragement by the Board.

I would like you to simplify that for me because the argument is going to be that if we authorize or allow the CAB to continue this matter and decide by themselves, the individual ticketing, this will cut directly into the business of scheduled air carriers in that they are required to make trips at reduced loads and so on.

Now that is the issue. So I would like you to amplify.

Mr. AGGER. Mr. Adams, it is our understanding that the experience to date does in fact suggest that it is a new class, a new category of business which is being exploited by the supplemental air carriers. It is our feeling further that if properly managed this authority need not cut into the traditional business of the regularly scheduled carriers.

Mr. ADAMS. Now I understand, and I will ask you before the other witnesses come on, that the complaint is made that most of these charters are within the served markets such as Hawaii. I understand that is a very large percentage of the total.

Now is it the position of the Department that these should continue even though they are over scheduled routes and if so is this because the price is lower or there are limitations on them that the regular carriers can't or won't carry out?

Amplify it a bit for me, would you please?

Mr. AGGER. Our feeling, Mr. Adams, is that the supplemental carriers have been a good influence in this industry. Our feeling is further that when the supplementals are regulated, the fundamental interests of the regular carriers need not be prejudiced.

The intention of this legislation is that authority would be granted to the Board to authorize the supplemental carriers to offer this particular type of service. It is contemplated that this authority would be within the framework of a regulatory system which would protect adequately the interests and rights of the entire industry.

Mr. ADAMS. In other words, you are saying that we should not go into the details of whether or not there should be one stop or three stops or whether there should be individual ticketing through travel agencies or not, that we should leave this in the Board's area of discretion?

I will ask you this: Are those hearings that are held in the general sense that other hearings on certificates of convenience and necessity are heard where the parties can come in before the Board and present their arguments as to whether or not it should be done?

Mr. AGGER. I do not have personal and detailed knowledge as to the mechanics of the granting, Mr. Adams. It is my understanding that other parties whose interests would be affected would in fact have adequate opportunity to present their point of view in the rulemaking proceedings by which the Board develops its regulations respecting inclusive tours.

Mr. FRIEDEL. Will the gentleman yield for a question?

Mr. ADAMS. Yes, I will yield, Mr. Chairman.

Mr. FRIEDEL. At the present time aren't the supplemental carriers required to make three stops on an inclusive tour?

Mr. AGGER. Three stops, as I understand, Mr. Chairman.

Mr. FRIEDEL. At the present time.

Under this language could the Board authorize just one stop?

Mr. AGGER. It is our view that the Board should have that authority but we have carefully tried to avoid expressing any view as to what the precise nature of the exercise of that authority should be. We feel this is a matter properly within the province of the Board.

Mr. FRIEDEL. Mr. Adams.

Mr. ADAMS. I have no further questions.

Mr. FRIEDEL. Mr. Kuykendall.

Mr. KUYKENDALL. Let me ask you this:

There is another case coming up in the Supreme Court. I believe Justice Marshall will probably be in a position to rule on this case that is coming up.

Would it not be wise to find out what the Supreme Court is going to say? They have until September 16 to rule on this case. You know it seems to me the reason you are here is because we have left the door too wide open. Yet you do not want us to define anything much further.

I thought the reason we had this thing come back in our laps is because you want some clarification. Yet I don't get much clarification from what you say.

Mr. AGGER. I will try to be clear, Mr. Kuykendall.

We are supporting this legislation. What has occurred is that the various circuit courts and the Supreme Court have interpreted differently the intention of the Congress with respect to legislation passed in 1962. That legislation, as you will recall, was a compromise worked out by conferees from the two Houses.

Now surely we could wait until the judicial process has run out on this issue. On the other hand, since the question at issue is one of congressional intent it seems to us logical that the Congress should speak clearly and unequivocally to this question.

Having taken that view it is our further view that the Congress should give to the CAB the authority to authorize the supplemental air carriers to offer the class of service which is the subject of the legislation.

Mr. KUYKENDALL. It seems to me to use your own terms we are clearly and unequivocally passing the buck. It seems to me that we are being asked for some definitions. Is this not true?

Mr. AGGER. That is right, Mr. Kuykendall.

Mr. KUYKENDALL. This has been the heart and core of all the questions I have been asking. What about single ticket? And we are not defining it then about single ticket, are we?

Mr. AGGER. That is right, Mr. Kuykendall, the legislation would not define or bring precision to that point.

Mr. KUYKENDALL. Would you say this was one of the basic areas of disagreement here, the matter of single ticket?

Mr. AGGER. I would submit in fact that it is not. It has seemed to us that the real issue here was whether the supplemental carriers would have the authority to offer the inclusive tour charter services. It has seemed to us that the better course for the Congress would be to leave to the CAB responsibility for making the economic judgments and determinations which would lead to decisions about such matters as individual ticketing.

Mr. KUYKENDALL. Would you define in your own terms the difference between individual ticketing and inclusive tour charter?

Mr. AGGER. I think the critical element is that in individual ticketing there is a direct relationship between the passenger and the airline and under inclusive tour charter that direct relationship may or may not be there. There can be a tour operator between the passenger and the airline. I want to say though in all candor the definition that I have offered leaves me somewhat less than enthusiastic for its precision and validity. It is a terribly difficult area.

Mr. KUYKENDALL. What would be the difference between your definition and simply my operating a travel agency, which I do not.

Mr. AGGER. I think without meaning to duck the question, Mr. Kuykendall—which if I may say so I would be inclined to do because this is a field with which I have less than a profound acquaintance—our position in the Department is that it is not easy for the Board to determine what precise constraints should be imposed on the operation of the supplementals. At what point should the CAB permit the supplementals to impinge on areas of business which are considered to be critical to the regularly scheduled carriers.

There is a point, I don't propose to know what it is in this particular area, but the CAB up to this point has seen fit to impose certain restrictions and limitations. Our feeling has been that it ill behooves us as an executive department to second guess what the Board has done and to say that it has imposed too many or too few constraints.

Mr. KUYKENDALL. It is pretty obvious here in this case it is a second go around. It is pretty obvious that in 1962 some very fine members of this committee passed out a bill that they thought was clear. Now we are having it dumped back in our lap. I see absolutely no clarity in this proposal and I am here to try to clarify this case, not to make it cloudier.

Thank you, Mr. Chairman.

Mr. FRIEDEL. Thank you very much, Mr. Agger.

Our next witness will be our colleague, Congressman Cohelan.

**STATEMENT OF HON. JEFFERY COHELAN, A REPRESENTATIVE IN  
CONGRESS FROM THE STATE OF CALIFORNIA**

Mr. COHELAN. Mr. Chairman, I appear today to express my strong support for H.R. 17685 which would clarify the authority of the Civil Aeronautics Board to grant authorizations to supplemental carriers to perform inclusive tour charters. Prompt passage of this bill is necessary to end a judicial stalemate concerning the Board's power to authorize such charters.

Inclusive tour charters by supplemental airlines fill an important need on the part of low- and middle-income travelers which is not being met by the large trunkline carriers. Experience shows inclusive tour charters reach a new market of moderate income travelers, many of them first-time air passengers, who otherwise would be unlikely to travel to overseas vacation points. The Civil Aeronautics Board has found that tour charter service by supplementals meets an important public need. Passage of H.R. 17685 would assure continuation of that service. Vacation air travel should not, in my view, be restricted to affluent citizens.

We should not be misled, Mr. Chairman, by claims that inclusive tour charters constitute individually-ticketed service by supplemental air carriers. Under existing CAB regulations an entire aircraft is chartered to an independent tour operator. It is the tour operator not the carrier who determines the dates and composition of the tour and markets it to the public. And what the public receives is entirely different from the point-to-point individually ticketed transportation provided by the scheduled airlines. Inclusive tour charter passengers must purchase both land services and air transportation, and they must come and go as a group. CAB regulations also require, among other things, that the tour be of at least 7 days duration; that it include at least three separate points of destination; and that the package tour price shall not be less than 110 percent of the scheduled air fare. This form of service is thus substantially different from the individually ticketed, point-to-point service of the scheduled carriers.

Inclusive tour charters are of vital economic importance to the supplemental air carrier industry. Supplemental carriers have since the end of World War II performed invaluable service for the national defense. "The United States," as the CAB has stated, "thus has a sizable stake in their continued survival and viability." (Order E-24237, p. 9.) I believe inclusive tour charters authority is essential to the economic well being of the supplemental carrier industry.

Accordingly, I urge the prompt enactment of H.R. 17685.

Thank you, Mr. Chairman, for this opportunity to appear and express my views concerning this important matter.

Mr. FRIEDEL. Thank you for your views, Mr. Cohelan.

The next witness is Mr. Stuart G. Tipton, president of the Air Transport Association.

**STATEMENT OF STUART G. TIPTON, PRESIDENT, AIR TRANSPORT  
ASSOCIATION OF AMERICA; ACCOMPANIED BY GEORGE BU-  
CHANAN, ASSISTANT VICE PRESIDENT, TRAFFIC; AND JOSEPH  
HEALY, ASSISTANT GENERAL COUNSEL**

Mr. TIPTON. Mr. Chairman and members of the committee, I first want to express my appreciation to the committee for taking me some-

what out of order in order that I could attend a meeting tomorrow which seemed to be essential to attend. I do appreciate it very much.

Before I start I would like to introduce these gentlemen with me. On my left is Mr. George Buchanan, assistant vice president, of traffic of the Air Transport Association. On my right, Mr. Joseph Healy, assistant general counsel, both of whom are specially familiar with the subject of this discussion this morning.

My name is Stuart G. Tipton. I am president of the Air Transport Association of America, the trade and service organization representing virtually all of the scheduled airlines of the United States.

These carriers provide regular and frequent air service to well over 600 cities in the United States, both large and small, as well as to points in more than 100 countries of the world. They do so under the authority, and the companion obligation conferred by certificates of public convenience and necessity issued by the Civil Aeronautics Board.

### *1. Introduction*

H.R. 17685 would empower the Civil Aeronautics Board to authorize supplemental air carriers to sell, either direct to the public or through an agent, so-called inclusive tour trips on either an individual passenger or group basis.

While it may have been designed to validate and ratify the existing inclusive tour authorizations which have been granted by the Board, contrary determinations by any court notwithstanding, it goes beyond what the Board attempted to do.

The legislation has been introduced at this time because of the recent action by the Supreme Court of the United States affirming, by an equally divided court, a decision of the U.S. Court of Appeals for the Second Circuit which held that the CAB had exceeded its statutory powers in authorizing such inclusive tour charters.

We strongly oppose this legislation because of its individual ticketing features. Congress decided in 1962 that the role of supplemental air carriers was to be "charter" transportation and that they should not engage directly or indirectly in the sale of individual transportation, except as provided in section 417 of the Federal Aviation Act. The decision was a good one; it should not be altered.

An inclusive tour charter under the CAB's current concept is an arrangement whereby a supplemental carrier is authorized to "charter" the entire capacity of an aircraft to a tour operator or travel agent who then sells "tours," including individual seats on the "chartered" aircraft, through the solicitation of individual members of the public at large.

The concept provided for in H.R. 17685 would go even further since it permits the CAB to authorize supplemental carriers to sell direct to the public on a single-seat basis without going through a tour operator.

The term "inclusive tour" has on occasion been used synonymously with the more familiar "all-expense" or "package" tour. This is an inaccurate generalization since the Board's current requirements can be met by providing in the tour only the air and surface transportation and hotel accommodations, without the other land arrangements, meals and sightseeing ordinarily part of an all-expense or package tour.

In fact, even the term "tour" is a misnomer under such circumstances. It is neither inclusive nor a tour.

This inclusive tour concept should not be confused with the unchallenged right of the supplemental carriers to charter their aircraft to a single person or company which bears the full cost of the transportation, such as a professional football team or a manufacturer offering a sales incentive travel program to his dealers; or their right to charter aircraft to the bona fide members of an educational, civic, fraternal, or similar organization, who divide the cost among themselves.

Such "single entity" and "pro rata" charters, respectively, along with the charters performed for the military services, account for the vast preponderance of the traffic carried by the supplemental carriers today.

As we have observed, this bill does not simply propose to codify the inclusive tour charter program which the CAB has formulated by administrative decision.

Rather, it would abandon altogether even the Board's concept of a so-called inclusive tour "charter" and provide that a distinct new type of authority may be granted to supplemental carriers in addition to the right to provide "charter trips," that is, the right to provide "inclusive tour trips."

It thus permits the Board to authorize supplemental carriers to sell individual tours and seats to the public direct instead of through an agent. Equally disturbing, and certainly unexplained, is the fact that the bill also deletes from the existing statutory definition of supplemental air transportation, the congressional expression of intent that supplemental air service be rendered "to supplement the scheduled service authorized by" the certificates of public convenience and necessity of the regular route carriers.

Thus, it is evident that this proposal is not merely a limited ratification of CAB action, let alone a clarification of the intent of an earlier Congress. Rather, as will be demonstrated, it would not only depart from the statutory program enacted by Congress for the certification and regulation of the supplemental carrier industry, but also would be in derogation of established and proven concepts for the sound regulatory control of air transportation in this country.

Before addressing ourselves to the specific merits, or lack thereof, of the proposed legislation, it is necessary to first consider in some detail the background and objectives of Public Law 87-528, the statutory plan for the permanent certification of supplemental air carriers which Congress enacted in 1962.

## *2. Nature of the 1962 congressional plan for the certification of the supplemental air carriers—purpose of the legislation*

Public Law 87-528, enacted in July 1962, amended the Federal Aviation Act of 1958 so as to establish a specific statutory plan for the certification and regulation of a separate class of carriers designed as "supplemental" air carriers—a class of operators which at earlier stages of their development had variously been known as "non-scheduled" or "large irregular" air carriers.

The amendment empowered the Civil Aeronautics Board to grant certificates of public convenience and necessity authorizing these car-

riers to engage in "supplemental air transportation," a term which was defined as "charter trips in air transportation \* \* \* to supplement the scheduled service" which the certificated route carriers are authorized and obligated to provide.

One of the principal purposes of the 1962 legislation was to clarify the permissible scope of the authority which could be granted to supplemental carriers; a legislative review undertaken by reason of two court decisions which had set aside the Board's previous attempts to formally license these carriers.

The agency actions which were held to be unlawful by the courts had never, of course, authorized inclusive tour charters, a concept which was not then known in the air travel industry in this country.

Legislative history of Public Law 87-528: This amendment to the Federal Aviation Act evolved from proposals which were introduced in both Houses early in the 87th Congress.

Hearings were held in June 1961, before the Aviation Subcommittee of the Senate Committee on Commerce, as well as before the Subcommittee on Transportation and Aeronautics of the House Committee on Interstate and Foreign Commerce.

Following the hearings each committee reported out its own bill.

The Senate bill contained a definition of the term "charter service" which would have permitted, but not required, the CAB to authorize the supplemental carriers to offer their services to members "of a group on an all-expense paid tour"; being an express exception to the policy otherwise laid down in the definition that prevented the board from authorizing individually ticketed service whether offered by the carrier directly or through arrangement with a travel agent.

This bill passed the Senate on August 28, 1961. The House bill, which was passed on September 18, 1961, did not define charter, although it used the term in its definition of supplemental air transportation.

The conflicting House and Senate bills were then submitted to a conference committee. After numerous meetings, the committee reported out a substitute bill which followed the House version in this regard, eliminating entirely the Senate's definition which would have permitted the Board to authorize all-expense paid tours.

This bill was the one ultimately enacted as Public Law 87-528 in July 1962. At the end of this long conference a solution had been reached by the conferees on the problem that Congress had set out to solve some 18 months before.

They had drawn a clear line of demarcation between the role of the supplemental carrier and that of the scheduled airline. The supplemental carrier was to supplement the scheduled service by devoting himself to the performance of charter service, and he was not to engage in individually ticketed or solicited transportation, with one limited exception (which proves the general rule).

As the conference report explained it:

The substitute agreed to in conference adopts the provisions of the House amendment with respect to the prohibition of individually ticketed and way-billed services on a permanent basis.

It further stated that at the end of the 2-year period authorized—

In order to permit an orderly transition to all-charter operations—

By these carriers— supplemental air transportation would be limited to all-charter operations, except for individually ticketed service which may be authorized by the Board on a temporary basis.

Thus, the only individually ticketed operations thenceforth permitted was to be the special authorization for up to 90 days, under the new section 417 of the statute, in situations where the Board finds a temporary insufficiency or lack of scheduled air transportation.

Any remaining question concerning the intent of the conferees in striking this provision was answered when several of the bill's floor managers addressed themselves to this subject during debate in each House.

Their statements, which went unchallenged, unanimously declared that the—

All-expense tours that were provided for in the Senate definition were not accepted by the House, and the Senate receded and concurred in [the House's] position on that. (108 Congressional Record, 12322 (June 29, 1962)).

The quoted remarks are those of Representative Williams, chairman of the Subcommittee on Transportation and Aeronautics.

Representative Harris, then chairman of the Committee on Interstate and Foreign Commerce, further explained this action:

Travel agents, being agents for transportation services, rather than carriers themselves, have never been allowed to engage airplanes in their own name for their own account. Nor should they be allowed to. That is why the House objected to the proposal of the Senate including the "all-expense tour" language. (108 Congressional Record, 12322.)

He went on to state:

The law is well established that, in air transportation, charter means essentially the lease of the entire capacity of an aircraft for a period of time or a particular trip, for the transportation of cargo or persons and baggage, on a basis which does not include solicitation of the general public, or any device where individually ticketed services would be offered or performed under guise of charter. The basic concept being thus clear, it is important that the Civil Aeronautics Board, by regulation and other appropriate measures, make sure that charter serves its planeload service concept, and is not employed as a subterfuge to perform individually ticketed services. Manifestly, the nature of such subterfuge may change from time to time, and the regulatory agency needs some flexibility to modify its regulations to guard against any new subterfuges that may emerge. For this reason, the House committee objected to any attempt to freeze into the act a definition of charter service which would prevent the Board from dealing effectively with abuses. Thus, the bill, as passed by the House, contained no definition of charter.

The Senate bill, on the other hand, contained a definition of charter service. This was necessary, in large part, because the Senate proposed to modify the established concept of charter in order to permit carriage, as charter of "a group on an all-expense paid tour." The Senate conferees have receded from insistence on the all-expense paid tour exception, it followed that the remainder of the Senate definition was superfluous since it merely established law and policy.

Other House Members spoke to the same effect, including Representative Collier, a member of the subcommittee (108 Congressional Record, 12324).

After a review of this legislative history, the second circuit concluded:

These statements are specific in rejecting the notion that the term charter can be construed to include all expense tours. (380 F. 2d 770, 781.)

Congress thus determined that inclusive tours are not charters and are thus not included within the area of permissible operations which it established for the supplemental carrier industry.

It drew a precise line of demarcation between the supplementals and the regular route carriers; one that they were not to be permitted to cross. This statutory plan was clearly intended to be finally dispositive of their role in the national air transportation system.

#### SUBSEQUENT ADMINISTRATIVE AND JUDICIAL ACTION

A series of supplemental carrier certificate proceedings before the Civil Aeronautics Board followed enactment of Public Law 87-528. The first of these cases in which the question of inclusive tours was in issue was the transatlantic charter investigation, decided in October 1963.

Although awarding planeload and split charter authority across the Atlantic to certain of the supplemental carriers applicants, the Board denied their requests to also be allowed to charter aircraft to travel agents for all-expense tours.

The Board relied on the serious diversionary consequences that such authority would have for the scheduled transatlantic route carriers in view of the significant portion of their traffic and revenue derived from the carriage of economy fare passengers on all-expense tours sold by travel agents.

In March 1966, however, the Board issued its decision in the domestic phase of the supplemental air service proceeding which awarded inclusive tour authority to the successful applicants. This action was upheld on appeal by the District of Columbia circuit, 365 F. 2d 939.

Thereafter, in September 1966, the Board issued its decision in the foreign and overseas phase of the supplemental case; similarly awarding inclusive tour authority to the carriers selected to operate in the nontransatlantic markets at issue.

At the same time, the Board issued a decision in the reopened *Transatlantic Charter* case which reversed its earlier determination and granted inclusive tour authority to the supplemental carriers in these markets as well.

These latter two decisions were appealed to the second circuit which set aside the Board's orders as outside the permissible scope of its statutory powers. This decision of the second circuit has now been affirmed by an equally divided Supreme Court.

#### 3. *A sound basis existed for the distinction drawn by Congress between charters and individually ticketed transportation*

In the 1962 act the Congress brought to a close one of the bitterest controversies which has ever arisen in the air transport industry.

In resolving this issue the Congress reached a solution to the underlying economic and regulatory problem which was fair to all concerned.

The problem was simply this. For many years prior to the arrival of the nonscheduled or irregular carriers, the scheduled airlines had operated under a detailed scheme of economic regulatory controls which provided for the regulated carrier a mixture of benefits and burdens—a system calculated to provide the public with airline service where and when it was needed, at a reasonable cost.

The carriers thus regulated were authorized to serve routes on which there were usually a mixture of good traffic generating markets, and markets which in and of themselves could not sustain the type of service that the public required.

In addition, the carrier was subjected to constant regulatory supervision as to the adequacy of the service he was performing.

Then came the so-called irregular or nonscheduled carrier, who received authorization to conduct an irregular and infrequent, individually ticketed service to the general public, either directly or through travel agents.

These carriers not subject to detailed regulation were under some economic compulsion to try to have the best of all possible worlds—to garner great benefits while shouldering few burdens.

They sought out the finest travel markets, restricted their services to those markets, and proceeded under various schemes to run their services as regularly and frequently as they could.

The Board sought to enforce their regulations in order to avoid this obviously unequal competitive battle, and through endless and futile enforcement proceedings sought to force the irregular carriers into the mold the Board had prepared for them.

The scheduled carriers, concerned that the regulatory concept to which they were subject not be destroyed, entered this controversy with great vigor and enthusiasm.

Many arguments in Congress resulted. Litigation was constant. The Board finally turned to Congress with the problem, and everyone involved recognized that sensible conclusions had to be reached as to the respective roles of the two types of carriers, so that controversy could be ended and the carriers could proceed to the development of air transportation and good public service without devoting time, attention, and effort to fighting with each other.

The important thing that Congress did was to draw a line that was clear and one that could readily be understood. The irregular carriers were to be charter operators, and they were not to engage in individually sold passenger transportation.

The solution to the controversy produced a favorable effect upon the supplemental carriers, which is well documented. We will talk about that effect a little more later.

The favorable effect on the air transport system as a whole is quite clear. The reason we oppose this bill so vigorously is that it begins a process which can only end by a return to the chaotic situation which existed before Congress solved the problem.

#### *4. The proposed legislation would be in derogation of sound transportation regulatory concepts*

The role assigned to the supplemental carrier industry by Public Law 87-528—that of charter specialists supplementing the services of the scheduled route carriers is a logical and suitable one for them.

But, by its very nature, this places them in a flexible position of being able to pick and choose the air services they will provide within their geographical areas of operations (which in some cases are worldwide), without any of the concomitant service obligations which a regular route certificate entails.

They are thus free to select the markets they will serve and when and how often they will serve them. Small traffic generating points

can be and are ignored; seasonality problems can be disregarded, as can weekly traffic demand peaks and valleys.

So long as their certificates are limited to true charter transportation, the lack of such specific service responsibilities is a proper characteristic of their authority. This clearly would not be the case if individually sold passenger transportation could be provided to the general public.

This would be true even under the Board's present inclusive tour "charter" requirements, much less under the almost carte blanche authority entailed in the proposed legislation.

It would simply make no regulatory sense to allow this class of carrier to invade at will, under no real regulatory constraints, the markets which the scheduled carriers have the obligation to serve—a right to enjoy the benefits of these markets without any corresponding duty to provide adequate service to these and other less lucrative points on a day-in and day-out, year-round basis.

This was the precise situation which Congress remedied in 1962. It would be a complete reversal of this determination of congressional regulatory policy to permit the same thing to happen now.

There can be no real doubt that inclusive tour authority conferred by statute would have this practical effect. The inclusive tours offered by the supplemental carriers are indistinguishable in nature from the traditional tour services of the scheduled carriers.

In fact, considerably less in the way of the usual tour land arrangements is required to be offered—simply hotels and ground transportation which virtually all travelers must utilize in any event.

And, under the proposed legislation, this could be eroded even further so as to allow the supplemental carriers to offer to the public individual passenger transportation so long as minimal lodging and ground transportation arrangements are made to complete the "inclusive tour" pretense.

Thus, not just the tourist trade of the scheduled carriers is threatened. As an illustration of this point, Mr. Chairman and gentlemen, I would like to present to you a copy of an advertisement which appeared in the New York Times yesterday.

That advertisement put forward by Standard Airways, a certificated supplemental airline. In that advertisement you will find reflected the very difficulty with which we are concerned because the carrier there is not only advertising his charter service, full plane charter service, for which he is fully authorized to operate, he is also advertising to the general public as individuals and is saying, if you are not part of a group, don't worry; call us in effect and we will put you in touch with a travel agent who will include you in an inclusive tour.

Another important aspect of that advertisement is that the carrier announces the days on which it will operate the service to Las Vegas. He is not only holding out his service to individual members of the public so long as they buy their transportation from a travel agent, which is reasonably easy, but he is also announcing when these airplanes are going to leave.

The distinction between that and the nonindividually ticketing service provided by a regular route carrier is difficult to find.

(The advertisement referred to follows:)

# If we can't save your group \$144 apiece on our jet flight to Las Vegas, we won't go.

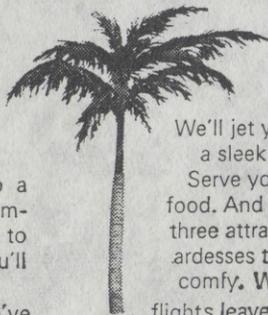


**That's enough to pay for most of your meals, entertainment, hotel, and baccarat lessons. If you don't have a group maybe we can help you find one.**

Standard Airways will jet your group from New York to Las Vegas and back for just \$122\* apiece. Compare that to the \$266 it costs for single jet economy tickets on any other airline. It adds up to a savings of \$144 for every member of your group. Enough to pay for almost everything you'll want to do when you arrive.

Another nice thing. We've been in this business for 20 years. Flying groups to Vegas and other resort areas is our specialty, not just a sideline as with so many other airlines.

\*Plus tax



We'll jet you there in a sleek 707 fanjet. Serve you delicious food. And send along three attractive stewardesses to keep you comfy. What's more, flights leave New York each Monday, Thursday, Friday and Sunday. (Other days, too, by special arrangement.)

If you don't want to go to Las Vegas, maybe you'd be interested in Mexico or Nassau. Or, how about Hawaii? We've got a good deal going to all those places. Almost every day. Want to get aboard? If you've

got a group, you've got it made. Elks. Eagles. Kiwanis. The PTA. Almost every group qualifies.

If you're not a member of a group, don't panic. We can put you in touch with a travel agent who has arranged a complete Inclusive Tour Charter group. Its purpose: get places and save money. With Standard Airways.

Send us the coupon below,

and we'll send you a packet of free information. Facts. Figures. And costs. It's all designed to help you get off the ground. For about half price.

So don't make up your mind about flying to Las Vegas, or anywhere else until you read about Standard Airways flight plans. It'll cost you a 6c stamp (less, if you want to Telephone 752-8555) to get the whole story. But it could save you a bundle.



**TELL ME MORE, STANDARD.**

- My group is anxious to take off for Las Vegas. Send me more info. Fast.
- I'm not a member of a group, but I'd like to go to Las Vegas for half price. Which travel agent do I call for information about Inclusive Tour Charters?
- My group already has plans for this year, but we're going to \_\_\_\_\_ next year, and we'd like the same deal. How about it? (fill in blank)
- I'm not going anywhere right now, but I want the information for future reference.

Name \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

**Mail to: STANDARD AIRWAYS, 509 Madison Avenue, New York, New York. Ph: 752-8555.**

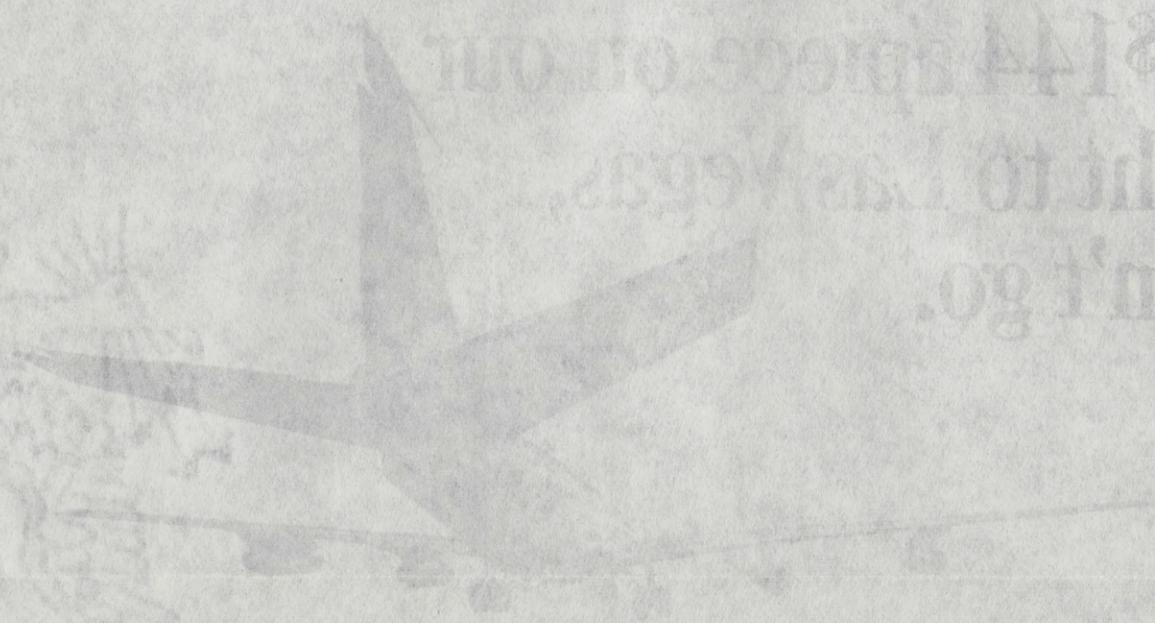


STANDARD AIRWAYS INC.

STANDARD AIRWAYS INC.

STANDARD AIRWAYS INC.

If we can't save you  
Group & 144 business  
jet flight to Las Vegas  
We won't go.



That's enough to pay for most of your meals, entertainment,  
hotel, and parking less than you can save a group  
maybe we can help you find one.

Standard Airways will let  
you know if you can  
save on your flight to  
Las Vegas. We'll compare  
the cost of flying with  
Standard Airways to the  
cost of driving. And we'll  
tell you if we can save  
you money. We'll also  
tell you if we can help  
you find a hotel, car  
rental, and parking.



Standard Airways will let  
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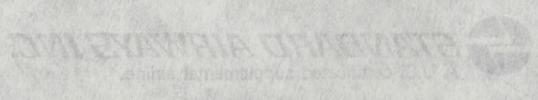
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tell you if we can save  
you money. We'll also  
tell you if we can help  
you find a hotel, car  
rental, and parking.

OUR MEMORE STANDARD

Standard Airways will let you know if you can save on your flight to Las Vegas. We'll compare the cost of flying with Standard Airways to the cost of driving. And we'll tell you if we can save you money. We'll also tell you if we can help you find a hotel, car rental, and parking.

Form with checkboxes and lines for name, address, and phone number.

Mail to: STANDARD AIRWAYS, 509 Madison Avenue, New York, New York 10022-1001



Mr. TIPTON. To proceed with my statement, we have been asked why we think granting inclusive tour authority to the supplemental carriers would have the effect of putting the supplementals into the business of selling individual passenger air transportation.

I have in part answered that question by discussing the advertisement.

We are asked this question both in regard to what the Civil Aeronautics Board has tried to do by regulation without statutory authority, and in regard to legislation such as H.R. 17685. The answer in both cases is quite clear.

Whatever the concept may be of inclusive tours offered by the supplemental carriers, the effect is to authorize them to sell to individual persons, either direct or through travel agents, single-seat air transportation so long as that air transportation is a part of some package which includes minimal land arrangements.

Since most air travelers away from home at least overnight require lodging and ground transportation, and thus could qualify for an inclusive tour so arranged, much of today's scheduled air transportation market would be available to the supplemental carriers.

Moreover, the travel agent is a retail travel store which sells a good part of today's air transportation. On his shelves, the travel agent has stocks of the services offered by the scheduled carriers and, under the inclusive tour concept, would also have comparable supplemental carrier products at the same time, at the same basic price, and under the same basic conditions—all of which would be offered to the public to choose from.

Clearly, it was this unreasonable mixture of highly regulated and unregulated competition which concerned the Congress in 1962, and led to the enactment of Public Law 87-528 which denied to the supplemental carriers the right to offer individual passenger transportation under the guise of inclusive tours.

Any supplemental carrier is free to make application to the Civil Aeronautics Board for a regular route certificate, and to assume the obligations which the issuance of this type of certificate would entail.

Grant of such an application would involve giving up its status as a supplemental carrier, since the line of demarcation drawn by Congress in 1962 expressly provides that a carrier cannot hold both classes of authority at the same time.

This has been done in the past—Seaboard World and Trans Caribbean, for example, were both formerly nonscheduled carriers.

And, it is still being done today; two of the largest of the supplemental carriers, World Airways and Trans International Airlines, have applications pending before the Board for regular route certificates.

This is the answer to any supplemental which finds the statutory limitations of its role too confining—not the proposal to effectively end the distinction between the two classes of carriers. It must make the choice, however; it cannot expect to have the best of both worlds without the strictures which each entails.

I was struck by Mr. Agger's statement by the comment that the supplementals would be authorized by this statute to provide a class of service which notwithstanding encouragement from the Board the scheduled airlines have not been prepared to initiate.

I was surprised at that because the offerings of the scheduled carriers in the inclusive package tour business are a long standing and are of great quantity.

Let me now tell the committee about it.

5. *No public interest objectives would be served by the proposed legislation—no new or unique programs would be made available to the public through inclusive tour charters*

In the CAB examiner's recommendation in connection with the Supplemental Air Service Proceeding in 1965, the examiner concluded, in essence, that the all-expense tours offered by the scheduled carriers furnished the same public service features as those then proposed under the all-expense tour charter program.

That conclusion was valid in 1965 and experience has proven that it is equally valid today. Nothing in the inclusive tours which have been operated, nor in those which have been approved by the CAB for operation in 1968, would indicate anything different.

As noted earlier, the very term itself tends to be misleading because the word "inclusive" connotes something more in the nature of the familiar all expense tour—more than most inclusive tours offer. Even the term "tour" is a misnomer under these circumstances.

While some go further, most of the so-called inclusive tours of the supplemental carriers basically offer to make available to individually solicited passengers air transportation to three cities and airport ground transportation and hotel arrangements while in those cities.

Attractions which most people think of as a part of a tour—such as sightseeing trips—are either left up to the devices of the individual traveler or are offered as optional add ons at extra cost. Meal arrangements while at the various stops are rarely included in the basic price, but again are offered as optional add ons.

In fact, most of the supplemental carrier tour brochures make a point of emphasizing that such tours are available to individuals, and that there is no regimentation. The brochures highlight the at leisure days at the various cities.

Clearly, therefore, experience under the inclusive tour program demonstrates that there have been no startling new innovations offered to the public but that, instead, these tours offer only that which has always been available to individually ticketed passengers on scheduled airlines—transportation and hotel arrangements.

Moreover, many of the supplemental carrier tour packages seem to be higher priced than those offered by the scheduled carriers, notwithstanding the shallow plea of the supplementals for the alleged need for lower priced packages in the interest of lower and middle-income groups.

The scheduled airlines, on the other hand, offer genuine package tour programs which go well beyond these minimum arrangements; programs which are carefully designed to fit the particular economic and travel needs of various segments of the public.

These individually ticketed air tours have been offered by the scheduled carriers for many years. They offer the traveling public a wide choice of tour packages. The May issue of the "Register of Advertised Air Tours," issued by the Air Transport Association, for example, contains a listing of over 1,000 domestic tours.

Publications of the International Air Transport Association contain listings of several hundred more international tours, providing altogether for over 20,000 different itineraries.

Another publication, the "Consolidated Air Tour Manual," is distributed to travel agencies and to the offices of participating airlines—13,500 copies in all. This publication contains over 800 pages of tours to key vacation and resort locations throughout the United States and nearby areas.

The scheduled carriers, with the strong assistance of the travel agency industry, have always vigorously promoted the domestic and international tour market. In 1963, sales of such tours amounted to almost \$100 million.

In 1966, almost 2 million tour passengers, representing \$251 million in sales took advantage of the scheduled carriers' tour program. In 1967, these figures had risen to almost 3 million passengers and \$344 million in sales, an increase of 47 percent in passengers and 37 percent in revenue over 1966.

The scheduled carriers' promotional programs for 1968 are designed to continue this increase and at the same time to encourage travelers from foreign countries to visit the United States.

Experience amply demonstrates that the operation of inclusive tour charters by the supplementals has not opened up new air transportation markets or origins and destinations which proponents of the program claimed in the past would be the case.

It is largely diversionary from the scheduled carriers. According to CAB statistics, 167 supplemental carrier inclusive tour charters were operated in 1967. None of these was to new markets. To the contrary, 140 operated to Hawaii, seven operated to the U.S. west coast, and 20 operated from the United States to Europe.

Inclusive tours planned for 1968 are indeed ambitious. Through June 1 of this year the CAB has approved 877 of them and there are still several months to go.

But again, of these, 723 are for operation to Hawaii, 92 to other U.S. domestic destinations, 26 from the United States to Europe, with the remaining 36 to other destinations such as the Far East, South America, and the Caribbean.

None, by the way, are for tours from foreign countries to the United States—in stark contrast to the assurances by the proponents that there will be a massive infusion of new foreign visitors under the inclusive tour charter program, with a resultant salutary effect on the balance-of-payments deficit.

We see, therefore, that the supplemental carriers are not providing a new, unique, or different service, but rather have merely duplicated the individually sold passenger tour services already offered by the scheduled carriers.

There is no genuine economic need for the supplementals to have inclusive tour authority. The charter transportation market which the supplemental carriers have been granted the right to develop and serve is one of almost unlimited economic potential. There clearly is no economic need or justification for them to have access to the individual passenger air travel market as well.

Military charters, single entity charters for some of the Nation's largest corporations, and pro rata charters to members of bona fide

affinity groups constitute the vast preponderance of their present traffic and revenues and have been almost entirely responsible for the impressive financial position enjoyed by these carriers today.

Last year's revenues from inclusive tour traffic totaled only an estimated \$6.4 million, or but 2.5 percent of gross operating revenues.

It is evident that the supplemental carrier industry has been enjoying very significant increases in traffic as its members continue to modernize and offer increased capacity.

Indeed, they have been experiencing a recent unparalleled period of profitability, with the years 1966 and 1967 being the most prosperous in the industry's history. Significant gains were made in both absolute numbers and percentage increases.

Gross operating revenues in 1967 reached \$259 million, up to 23.9 percent over the \$209 million in 1966. Net profit after taxes amounted to \$20 million in both 1966 and 1967. The rate of return on investment amounted to 13.7 percent for the supplemental carriers in 1967—well in excess of the 8.2 percent earned by the major scheduled carriers that year.

Moreover, net operating profit for the scheduled airline industry declined 27.6 percent in 1967, a downward trend that continued, and even accelerated, in the first quarter of 1968.

As we have seen, the attainment of this healthy financial position has been accomplished without any significant contribution from inclusive tour operations.

Thus, the supplemental carriers clearly do not need inclusive tour authority to achieve profitability, or to remain economically viable.

#### 6. *Conclusion*

Congress in 1962 made a legislative policy determination which was intended to be dispositive of the question of the future role to be played by the supplemental carriers within our national air transportation system.

It drew precise line of demarcation between charter transportation which they were to be authorized to provide and individually sold passenger transportation which they were not to engage in except for temporary periods under very limited and special circumstances.

The proposed legislation would abridge this sound and carefully considered congressional policy determination, and would establish instead a radically different plan which would do violence to the present system of regulatory control over air transportation in this country.

No valid reason for doing so has been presented.

Certainly, no public interest objectives would be served thereby. No new or unique programs would be made available to the public which are not well provided today by the scheduled carriers. No genuine economic need exists for the supplemental carriers to be granted this type of authorization; their present impressive financial posture has been attained almost wholly by the provision of true charter transportation services.

All in all, adoption of H.R. 17685 would be a retrogressive step in the legislative formulation of a sound national transportation policy. Congress should adhere to its 1962 decision and not permit supplemental air carriers to engage, directly or indirectly, in the solicitation and ticketing of individual passengers.

That concludes my statement, Mr. Chairman.

I do appreciate the committee's patient listening to what is quite a long statement.

Mr. FRIEDEL. Thank you, Mr. Tipton, for your considered testimony. I have a few questions I would like to ask.

The first question is on page 1. You say:

While it may have been designed to validate or modify the existing inclusive tour authorizations which have been granted by the Board, contrary determinations by any court notwithstanding, it goes beyond what the Board attempted to do.

Would you be satisfied if we limit the Board's inclusive tour authority to the status quo—that is, the authority that it has been exercising?

Mr. TIPTON. No, I think not because the Civil Aeronautics Board exceeded its statutory authority in our opinion and in the opinion of four Justices of the U.S. Supreme Court at least, when it authorized the supplemental carriers to engage in the inclusive tour business under any circumstances, a decision which was directly contrary to the limitation of the carriers to pure charter services as expressed so clearly by the chairman of this committee on the floor of the House.

Mr. FRIEDEL. Does the foreign supplemental have a right to this all-inclusive tour?

Mr. TIPTON. Of course the foreign supplemental carriers or charter operators are authorized under laws quite different from ours. I am not sure what their authority is.

I believe that they do have the authority that the Board has provided for the supplementals.

Mr. FRIEDEL. I understand they can bring passengers into the United States.

Mr. TIPTON. The Board can authorize them under the statute to provide service to the United States and I think has done so. In some cases the Board's efforts are to establish some sort of reciprocal arrangement.

Mr. FRIEDEL. One thing I gather from this statement is that you are bitterly opposed to individual ticketing. Do you have any prepared amendment to take care of that?

Mr. TIPTON. We do not have an amendment with us this morning, Mr. Chairman. We would be glad to submit one.

Mr. FRIEDEL. We will be very happy to have your proposal.

Mr. TIPTON. At this point in the record we will submit such an amendment and insert it if we may at this point in the record.

Mr. FRIEDEL. Fine.

(The amendment requested, and supplemental information, follows:)

AIR TRANSPORT ASSOCIATION,  
Washington, D.C., June 25, 1968.

HON. SAMUEL N. FRIEDEL,  
Chairman, Transportation and Aeronautics Subcommittee, Committee on Inter-  
state and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. FRIEDEL: During the course of my testimony with respect to H.R. 17685, I was asked to supply for the record an amendment to this bill which would satisfy the objections raised by the scheduled airlines. I am happy to submit a suggested amendment which removes the objectionable features of the present bill by insuring that the inclusive tour charters which may be authorized

by the CAB will not depart from the concept of true charter transportation, i.e., will not involve the solicitation and sale of individually ticketed transportation to members of the general public.

In order to accomplish this, H.R. 17685 should be amended as follows:

1. As already suggested by the Department of Transportation, the phrase "and inclusive tour trips" on line 6 of page 1 of the bill should be amended to read: "including inclusive tour charter trips."

2. On line 1 of page 2 of the bill, the phrase "to supplement the scheduled service authorized by certificates of public convenience and necessity issued pursuant to sections 401(d) (1) and (2)", which presently appears in Section 101 (33) of the Act, should be reinserted before the words "of this Act."

3. The period after the word "Board" on line 2 of page 2 of the bill should be changed to a semicolon and the following language added thereafter: "and 'inclusive tour charter trip' means a travel package, including charter air transportation, lodging, and such surface transportation and other land arrangements as are appropriate, offered at one all-inclusive price and sold by a tour operator or travel agent to members of a specific group or groups, organized for purposes other than travel, but does not mean a tour offered or sold by a supplemental air carrier, tour operator or travel agent, either directly or indirectly, to individual members of the general public."

In connection with the advertisement placed by Standard Airways in the New York Times on June 23, 1968, we were asked to compare the prices set forth therein with the prices available to passengers using services of the scheduled airlines. The \$122 per person (plus tax) price cited in this ad apparently is the transportation-only cost applicable to members of an affinity group or groups which charter an aircraft, fill all the seats, and then share the cost of the transportation among themselves. It is not the price for an inclusive tour.

A single affinity group could charter the aircraft of a scheduled carrier, at or below the same per person cost offered by Standard Airways. For example, a standard DC-8 can be chartered from New York to Las Vegas and return for about \$15,800, or about \$120 per person (plus tax) if all 131 seats are used. Since the scheduled carriers do not have "split charter" rights, they could not offer this service to a combination of affinity groups.

No prices are given in the Standard Airways advertisement for any inclusive tours, which would have to involve, at the minimum, stops at two places in addition to Las Vegas, hotel accommodations for at least seven nights, ground transportation, and a minimum tour price of 110 percent of the applicable scheduled air fare. We were not able to obtain from Standard Airways any prices or other details of the inclusive tour charter services for which this advertisement was designed to produce sales. Thus we have nothing to compare with the prices of tours using the individually ticketed services of the scheduled airlines. However, for the information of the Subcommittee, we are submitting as attachment A to this letter, price comparisons of supplemental and scheduled airline tours between the United States and Europe, and between the West Coast and Hawaii.

As a final point, I would like to note that my testimony with respect to the current CAB limitations on the off-route charter services of the scheduled airlines was not precisely accurate. Under § 207.5 of the Board's Economic Regulations, a scheduled carrier authorized to carry both passengers and property may not perform off-route charters during any calendar year which in the aggregate exceed two percent of the base revenue plane miles flown by it during the preceding calendar year; not 2½ percent of the revenue plane miles flown during a particular calendar quarter as I had indicated. This error will, with your permission, be corrected by me in editing the typewritten transcript of my testimony.

A copy of Part 207 in its entirety is enclosed as attachment B, for the Subcommittee's information, so that you may see the somewhat different limitations which apply to all-cargo carriers (§ 207.6) and the additional restrictions which the Board has imposed on frequency and regularity of off-route charter trips (§ 207.7a).

Cordially,

S. G. TIPTON, *President.*

## [ATTACHMENT A]

## COMPARABLE UNITED STATES-EUROPE 2-WEEK INCLUSIVE TOURS—LONDON, PARIS, AND ROME

Carrier	Price	Arrangements
U.S. supplemental.....	\$699	Superior hotels, sightseeing each city, daily breakfast and dinner, airport-city transfers, 1 cocktail party.
U.S. scheduled.....	679	Same as above, based on independent (individual) tour fare.
Do.....	630	Same arrangements, based on GIT (group inclusive tour) fare.
Do.....	647	Same arrangements, except lower price hotels, based on independent tour fare.
Do.....	598	Same arrangements, except lower priced hotels, based on GIT fare.
Do.....	579	Same arrangements, including superior hotels, except no meals, based on independent tour fare.
Do.....	530	Do.

## COMPARABLE WEST COAST-HAWAII INCLUSIVE TOURS

Supplemental.....	359	3 days and 3 nights in Honolulu; 5 days and 4 nights in neighbor islands.
U.S. scheduled.....	1399	5 days and 4 nights in Honolulu; 4 days and 4 nights in neighbor islands.
Do.....	290	8-day, 7-night tour of Oahu. <sup>2</sup>

<sup>1</sup> The difference in price is due, in part, to the fact that the U.S. scheduled airline tour is 1 day longer in duration.

<sup>2</sup> Island of Oahu only and lower priced hotel.

## [ATTACHMENT B]

## CIVIL AERONAUTICS BOARD ECONOMIC REGULATIONS

## PART 207—CHARTER TRIPS AND SPECIAL SERVICES

[Issued as ER-419 effective Oct. 26, 1964, as amended by ER-422, ER-443, ER-482, ER-507, and ER-515]

## Sec.

- 207.1 Definitions.
- 207.2 Applicability of part.
- 207.3 Scope of authorization.
- 207.4 Tariffs to be filed for charter trips and special services.
- 207.4a Written contracts with charterers.
- 207.5 Limitation on amount of charter trips which may be performed by combination carriers.
- 207.6 All-cargo carriers: limitation on amount of charter trips which may be performed.
- 207.7 Charter trips and other special services within the State of Alaska.
- 207.7a Restriction on frequency and regularity of off-route charter trips and other special services.
- 207.8 Notice of proposed special services.
- 207.9 Record retention.

## § 207.1 Definitions.

As used in this part, unless the context otherwise requires:

"All-cargo carrier" means an air carrier holding a certificate of public convenience and necessity issued pursuant to section 401(d) (1) or (2), which authorizes the carriage of property only or property and mail only.

"Base Revenue Plane Miles" means revenue mileage operated by an air carrier in scheduled services, extra sections, and on-route charter trips or special services.

"Charter trip" means air transportation performed by an air carrier holding a certificate of public convenience and necessity where the entire capacity of one or more aircraft has been engaged for the movement of persons and their baggage or for the movement of property, on a time, mileage or trip basis—

- (1) By a person for his own use,
- (2) By a person (no part of whose business is the formation of groups for transportation or the solicitation or sale of transportation services) for the transportation of a group of persons as agent or representative of such group.
- (3) By two or more persons acting jointly for the transportation of such group of persons, or their property.

(4) By an air freight forwarder holding a currently effective letter of registration issued under Part 296 or Part 297 of this subchapter for the carriage of property in air transportation.

Within the meaning of this part, a charter trip shall not be deemed to include transportation services offered by an air carrier to individual members of the general public or performed by an air carrier under an arrangement with a person (other than an air freight forwarder defined in subparagraph (4) of this paragraph) who provides or offers to provide transportation to the general public or transportation services engaged by persons paying for such services an amount aggregating in excess of the transporting carrier's duly published charter rate or fare.

A charter trip shall not be deemed to include air transportation services offered by an air carrier under circumstances in which the services are advertised in mass media, whether or not the advertisement is addressed to members of a specific organization, and regardless of who places or pays for the advertising. Mass media shall be deemed to include radio and television, and newspapers and magazines. Advertising in such media as newsletters or periodicals of membership organizations, industrial plant newsletters, college radio stations and college newspapers shall not be considered advertising in mass media to the extent that

(1) The advertising is placed in a medium of communication circulated mainly to members of an organization that would be eligible to obtain charter service, and

(2) The advertising states that the charter is open only to members of the organization referred to in subparagraph (1) of this paragraph, or only to members of a subgroup thereof. In this context, a subgroup shall be any group with membership drawn primarily from members of the organization referred to in subparagraph (1) of this paragraph: *Provided*, That this paragraph shall not be construed as prohibiting air carrier advertising which offers charter services to bona fide organizations, without reference to a particular organization or flight.

"Combination carrier" means an air carrier holding a certificate of public convenience and necessity issued pursuant to section 401(d) (1) or (2) which authorizes the carriage of persons, property and mail or persons and property only.

"Hawaiian charter trip" means a charter trip between points within the 48 contiguous states of the United States, on the one hand, and points in the State of Hawaii, on the other hand.

"Mixed charter" means a charter trip in which passengers and cargo are carried on the same flight.

"On-route" shall refer to service performed by an air carrier between points between which said carrier is authorized to provide service pursuant to either its certificate of public convenience and necessity or exemption authority: *Provided, however*, That passenger charter trips by any all-cargo carrier are not considered to be on-route whether or not they are performed between points designated to receive service by such carrier in its certificate of public convenience and necessity, except that in the event services are performed pursuant to a contract with the Department of Defense or an agency thereof, by an all-cargo carrier between points designated to receive service by such carrier in its certificate of public convenience and necessity which (1) involves cargo transportation in one direction and passenger transportation in the other direction or (2) involves a mixed charter, the passenger charter leg or the mileage operated in the mixed charter, as the case may be, will be considered on-route.

"Off-route" shall refer to any charter which is not on-route, except (1) charters performed for the Department of Defense, and (2) charters performed in overseas or foreign air transportation on the reverse leg of a charter performed in the opposite direction under a contract with the Department of Defense calling for one-way service.

"Point" means any airport or place where an aircraft may be landed or taken off, including the area within a 50-mile radius of such airport or place.

"Special services" are all services rendered in air transportation which are authorized by section 401(f) of the act by an air carrier holding a certificate of public convenience and necessity other than (1) services rendered in air transportation over the route or routes designated in its certificate(s), (2) charter services

as defined in this section, and (3) services authorized by special exemption under section 416(b) of the act.

"Transatlantic charter trip" means a charter trip between points within the 48 contiguous States of the United States, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa, or Asia, as far east as (and including) India, on the other hand, performed by any air carrier other than Pan American World Airways, Inc. and Trans World Airlines, Inc.

"Transpacific charter trip" means a charter trip between points within any State of the United States, on the one hand, and points in Australasia (including Australia, New Zealand, Polynesia, Micronesia, and Melanesia), Indonesia, or Asia as far west as longitude 70 degrees east, on the other hand, performed by any air carrier other than Northern Airlines, Inc., and Pan American World Airways, Inc.

[ER-419 as amended by ER-428 effective Mar. 15, 1965, ER-443 effective Oct. 10, 1965, ER-482 effective Jan. 18, 1967, and ER-515 effective Dec. 1, 1967]

#### § 207.2 Applicability of part.

This part shall apply to all air carriers (other than Alaskan air carriers and air carriers certificated for supplemental air service) who hold currently effective certificates of public convenience and necessity issued by the Board pursuant to section 401 of the act.

#### § 207.3 Scope of authorization.

Charter trips and other special services may be performed by air carriers, subject, however, to the limitations and regulations set forth in the part. Apart from such trips and services, an air carrier shall not perform any air transportation except in conformity with its certificate of public convenience and necessity or with a special or general exemption issued by the Board.

#### § 207.4 Tariffs to be filed for charter trips and special services.

No air carrier shall perform any charter trips or other special services unless such air carrier shall have on file with the Board a current effective tariff showing all rates, fares, and charges for such charter trips and other special services, and showing the rules, regulations, practices, and services in connection with such transportation.

#### § 207.4a Written contracts with charterers.

(a) Every agreement to perform a charter trip, except charters for the Department of Defense, shall be in writing and signed by an authorized representative of the air carrier and the charterer prior to operation of a charter flight: *Provided*, That where execution of a contract prior to commencement of flight is impracticable because the charter has been arranged on short notice, compliance with the provision hereof shall be effected within seven (7) days after commencement of the flight. The written agreement shall include, without limitation:

- (1) Date and place of execution of the contract or agreement;
- (2) Signature, printed or typed name of each signatory, and official position of each;
- (3) Dates of flights and points involved;
- (4) Type and capacity of aircraft: Number of passenger seats available or pounds of cargo capacity; and
- (5) Rates, fares, and charges applicable to the charter trip, including the charter price, live and ferry mileage charges, and layover and other non-flight charges.

(b) No term or condition of the charter contract shall, on its face, be inconsistent with any provision of the carrier's published tariff.

[ER-507 effective Nov. 4, 1967]

#### § 207.5 Limitation on amount of charter trips which may be performed by combination carriers.

(a) Prior to January 1, 1965, a combination carrier shall not during any calendar quarter perform off-route charters which in the aggregate, on a revenue plane-mile basis, exceed 2½ percent of the revenue plane miles flown by it in scheduled air transportation during the preceding 12-month period.

(b) Effective January 1, 1965, a combination carrier shall not during any calendar year perform off-route charter trips which in the aggregate, on a

revenue plane-mile basis, exceed two percent of the base revenue plane miles flown by it during the preceding calendar year.

§ 207.6 All-cargo carriers; limitation on amount of charter trips which may be performed.

(a) Prior to January 1, 1965, an all-cargo carrier shall not during any calendar quarter perform off-route charters which in the aggregate, on a revenue plane-mile basis, exceed 2½ percent of the revenue plane miles flown by it in scheduled air transportation during the preceding 12-month period: *Provided, however,* That an all-cargo carrier shall be permitted to perform off-route cargo charters within its area of operations without any limitation as to volume of service.

(b) Effective January 1, 1965, an all-cargo carrier shall not during any calendar year perform off-route charters which in the aggregate, on a revenue plane-mile basis, exceed two percent of the base revenue plane miles flown by it during the preceding calendar year: *Provided, however,* That an all-cargo carrier shall be permitted to perform off-route cargo charters within its area of operations without any limitation as to volume of service.

(c) Within the meaning of paragraphs (a) and (b) of this section, the areas of operations of the all-cargo carriers are the following:

(1) Within the 48 contiguous States—Slick Airways, Inc.; Flying Tiger Line, Inc.; and Airlift International, Inc.

(2) Between the 48 contiguous States and Europe—Seaboard World Airlines, Inc.

(3) Between the 48 contiguous States and Puerto Rico—Airlift International, Inc.

(4) Between the 48 contiguous States on the one hand the the Caribbean, Central and South America on the other hand—Aerovias Sud Americana, Inc.

[ER-419 as amended by ER-422 effective Oct. 26, 1964]

§ 207.7 Charter trips and other special services within the State of Alaska.

An air carrier shall not perform any charter trip or other special service in interstate air commerce within the State of Alaska.

§ 207.7a Restriction on frequency and regularity of off-route charter trips and other special services.

No air carrier shall perform off-route Hawaiian, transatlantic or transpacific charter trips, or any other off-route charter trips between any pair of points, or special services between any pair of points:

(a) In excess of a total of eight (8) flights in the same direction during any period of four successive calendar weeks,

(b) In the same direction on the same day or two or more successive calendar weeks,

(c) In excess of a total of three (3) flights in the same direction during any period of two successive calendar weeks unless such period is followed by a break of at least one calendar week during which no flights are operated in such market or between such points,

(d) Which are so arranged as to result in the observance of breaks required by paragraph (c) of this section at regular recurring intervals, or

(e) Which are so arranged as to result in any uniform pattern or normal consistency of operations:

Provided, That the restrictions imposed by this section shall not be applicable to off-route cargo charters performed by an all-cargo carrier within its area of operations as set forth in § 207.6.

[ER-443 effective Oct. 10, 1965]

§ 207.8 Notice of proposed special services.

No air carrier shall perform any special service in interstate, overseas or foreign air transportation unless at the time of filing of a tariff applicable to such special service or at the time of filing of an application for a special tariff permission, such air carrier shall have submitted to the Board a statement setting forth a full description of the proposed service and shall have mailed copies thereof to the air carriers authorized by certificates of public convenience and necessity to render service to any point designated to receive the proposed special service. The proposed special service shall not be inaugurated if prior to the effective date of the tariff applicable to such special service, or at the time of

action on the application for special tariff permission, the Board shall have notified such air carrier that the performance of such special service does not appear to be consistent with the public interest.

§ 207.9 Record retention.

Each air carrier shall retain the following records in accordance with Part 249 of this subchapter:

(a) A record of the names and addresses of all passengers transported by it on each pro rata charter trip operated on-route or off-route in interstate or overseas air transportation.

(b) A copy of every charter contract.

[ER-507 effective Nov. 4, 1967]

Mr. FRIEDEL. Mr. Adams.

Mr. ADAMS. Thank you, Mr. Chairman.

Mr. Tipton, is it your position that the statement made by the Secretary of Transportation proposing an amendment to the bill to add the word "charter" is not sufficient for your purposes?

Mr. TIPTON. No; it is not sufficient for our purposes because, as I explained, the bill as amended would still permit the sale of individually ticketed tour passengers through a travel agent.

Mr. ADAMS. You have submitted this advertisement from the New York Times of Sunday, June 23. What I am interested in is the relationship between these supplementals and regular air carriers. You mention tour services. What is the cost of tour services from New York to Las Vegas that is similar to the ad when offered by the regular airlines?

Mr. TIPTON. We will have to look up a Las Vegas tour in the book and submit it at this point.

Mr. ADAMS. I would like to have it submitted because the problem we seem to be struggling with here—let me ask you this question first. During this period of time from 1962 until now what has been the passenger percentage increase or decrease of the regularly scheduled airlines and also the revenue figures.

Mr. TIPTON. During that period we have had a compounded—about 15 percent increase in passenger revenue.

Mr. ADAMS. Between 1962 and now, what is it about?

Mr. TIPTON. I have the book with that in it, Mr. Adams.

Mr. ADAMS. Let us take what happened on the the Senate side. What was the traffic in 1966? There has been a 47-percent increase in passengers, has there not?

Mr. TIPTON. Since 1966?

Mr. ADAMS. Yes.

Mr. TIPTON. No; I don't think it is that large.

Mr. ADAMS. I used that figure because it is one used on the Senate side. If it is not correct, it should be changed.

Mr. TIPTON. I can give you that figure quite handily here. In terms of passenger ton-miles, I believe this serves to answer your question because it will reflect the amount of growth. In 1962 we had about 4 billion passengers. In 1967 we had 9 billion.

Thus, in those years to which you have referred the passenger ton-miles have practically doubled.

Mr. ADAMS. As I understand it, Mr. Tipton, the problem that we have here is whether or not these supplementals are diversionary and injurious to a regulated system because we require a regulated system

to maintain a regular carriage that takes the good with the bad and we try to help that by subsidizing, to give packages of regular service throughout the country and to the degree to which these supplementals are going to cut into it—this could be harmful. Now it is my understanding that there are only 13 of these left, of the old nonskeds left? They gradually have gone out of business or merged, or a couple of them have gone into the regulated routes. So you are down to about 13.

Mr. TIPTON. I think 13 is the number that have been certificated by the Board under the statute, yes.

Mr. ADAMS. The question that I want you to comment on and that is why I asked the question about the ad is that it is my impression that this type of service where you say you have to leave at this time and you have to go with this block of people and you go to these places and you come back at this time, is a different type of service and at a lower price that attracts new people into the market.

Now you apparently disagree with that, and that is what I am trying to find out from this ad and otherwise. It is my understanding this service is quite a bit cheaper because of the restrictions that are placed on these tours. The chairman asked about amendments. If you have some amendments to make sure this is a separate type of service, we would like to hear about it. I would like your comment if we are not really dealing with a group of people who are not the regular traveling public but instead are a group that is coming into the air transportation market for the first time.

Mr. TIPTON. The service being offered by the scheduled airlines offered by the scheduled airlines and at prices that are quite comparable.

Mr. ADAMS. Can you give me any comparable price to Las Vegas as for a tour?

Mr. TIPTON. Yes, I can.

Mr. ADAMS. Can you give me an estimate today?

Mr. TIPTON. I should point out in that ad what seems to be offered is a full plane charter to Las Vegas as at the price stated.

Mr. ADAMS. It says it costs \$266 for a single jet economy ticket, and they are going to take you for \$122, which is less than half. I am trying to get some idea of what comparable service is being offered by the scheduled airlines to meet this type of offering.

Mr. TIPTON. The service being offered by the scheduled airlines would be an inclusive tour or an all-expense tour to Las Vegas.

I cannot give you a price at the moment. My guess would be that the price offered there is for a full plane charter. Our inclusive tour prices would likely be higher because it would be an inclusive tour to Las Vegas, sold to individuals on that type of service. I cannot tell from that ad what the standard airlines prices would be for an inclusive tour.

Mr. ADAMS. Would you have your people develop a comparable price and would you put this in as what is being done? We would like a comparable price to see if the services are different.

(The information requested appears in letter dated June 25, 1968, p. 25.)

Mr. ADAMS. I have another question. As I understand it, one of the issues in this is whether or not a group or maybe two groups can

get together or maybe three groups, and say that you have, I believe you mentioned, say you have the Rotary or Kiwanis or some other group, and they may not be big enough in and of themselves to charter a whole plane. So they go to a travel agent, and he handles the details of their members, the members of maybe another group and a third group and says: "All right, we are now able to put together a package. Now this package is at this price. We have to go to these places, you have to come back at this time."

Do you object to that and, if so, tell me. And, if not, would you tell me whether or not you think this bill is too broad?

Mr. TIPTON. I think what you are describing there is what has begun to be known as a split charter. It is not the charter of a whole aircraft but the charter of a part of it, so to speak.

We did at one time object to that, and we litigated it. The court held that split charters were authorized.

While we do not like it very well, at that point we shut up, and consequently it now seems to be a part of the charter authority available to the supplemental carriers.

Mr. ADAMS. Would the Supreme Court decisions or what we are dealing with here deal with that problem at all?

Mr. TIPTON. Not with that problem.

Mr. ADAMS. In other words, this bill would neither prohibit nor authorize, nor would the Supreme Court decisions, is that right?

Mr. TIPTON. Well, to the extent that additional clarification is necessary, it would provide additional support for split charters, I suppose. Actually, the bill before the committee and, as I mentioned, by the Civil Aeronautics Board, there is very little limitation on the individually ticketed tour business that the supplementals could provide.

Mr. ADAMS. The last thing that I have is that your testimony indicates that you believe that the supplementals have not been relying on this heavily for their revenue. The military charters and the other are the great portion, and, therefore, these supplementals are such a small amount that it should not be a great diversion from the scheduled carriers.

I want to know, and I take it it is your opinion, that this proposal goes further than the CAB decision. Is that your position?

Mr. TIPTON. Yes, much further.

Mr. ADAMS. And you have indicated to the chairman that you will submit to the committee what you think would be an amendment, not necessarily supporting but that would place this in the same position, in other words, maintain the status quo of the day.

Mr. TIPTON. The amendment that I undertook to provide is an amendment which would eliminate the possibility of individually ticketed traffic to be carried by the supplemental carriers.

Mr. ADAMS. In other words, it would eliminate that.

Mr. TIPTON. Yes.

Mr. ADAMS. Thank you.

Mr. FRIEDEL. Mr. Watson?

Mr. WATSON. Thank you, Mr. Chairman.

We seem to have the cart before the horse now. We usually have the proponents first and then the opponents. But now we have the opponents to this measure.

Mr. Tipton, your statement has been very critical of the supplemental operators for their "all inclusive tours." I am sure that every airline, every scheduled airline, would probably give you a different interpretation of what an "all inclusive" tour is.

Do you not agree with that?

Mr. TIPTON. The all-inclusive tour is a very ill-defined term, even among scheduled air carriers or supplementals. I should interject that in my statement I had not intended to be critical of the supplemental air carriers. I was critical of their efforts to expand their authority in this way.

Mr. WATSON. I rather assumed you could offer a better deal now than they can offer. I did not read that directly, but I gained that impression.

I think we could all agree that it would be difficult for Congress to agree on what an "all-inclusive" tour is, because in my judgment, the airlines do not. I think we could expend a lot of time on that without getting anywhere.

You say this bill goes beyond the authority that they presently have. Do you have the bill before you? If so, wherein does it go beyond the present authority?

Mr. TIPTON. Let me direct your attention to line 6, the phrase "and inclusive tour trips."

Mr. WATSON. Yes. As I understand, that is presently being done and has been done for 2 or 3 years or more. The authority has been granted by the CAB.

Mr. TIPTON. That is right. The authority that the CAB sought to authorize in giving supplemental carriers the right to conduct all-expense inclusive tour charters has been held invalid. Now this goes beyond even what the Board tried to do, because they referred to the authority they were conferring as inclusive tour charter trips.

In other words, it was their thought that they were going to remain chartered, but they were going to be associated with an inclusive tour. This just says "inclusive tour trips."

Mr. WATSON. I grant you that probably it is necessary to put charters in there, but it does not appear to me that we are going beyond any authority which has already been granted by the CAB.

I realize that the court has thrown this thing into turmoil. Do they not have to get these certificates on the basis of public convenience and necessity, just as you do?

Mr. TIPTON. Yes. The standard is the same.

Mr. WATSON. I assume that all of these requests are given public notice, and I assume that the scheduled airlines will appear in opposition to them.

Mr. TIPTON. The scheduled airlines have appeared in opposition to the certification of some of the supplementals and some of the terms of their authorizations. The important thing is that when inclusive tour charters are authorized, you are authorizing a wide open, unknown type of individually ticketed transportation which permits the carrier that receives the authorization to pick and choose as to where he will go, what market he will hit. Now, that is an extremely broad authority, one not available, of course, to scheduled airlines who are restricted in their routes, and they can't pick and choose among the market they will hit and serve but will serve the ones specified.

In the inclusive charter trips the Board thus gives them a wide open hunting license, some of them all over the world, to hit whatever markets seem good for them.

Now, they have been hitting Hawaii very heavily, as said in my statement.

Mr. WATSON. The market likewise would have to be approved by the CAB on the basis of public convenience.

Mr. TIPTON. No.

Mr. ADAMS. Would the gentleman yield on that question?

Mr. WATSON. Yes.

Mr. ADAMS. Don't they have to approve each charter?

Mr. TIPTON. They do not have to approve each charter. The Board has established the practice of approving each inclusive tour charter arrangement, but that is a matter of practice that the Board has established. It is not something that the Congress has said they must do. They can abandon that notion right away.

Mr. WATSON. On the present policy, we are in accord there.

On page 11 you say about midway in the first paragraph:

The carriers thus regulated were authorized to serve routes on which there were usually a mixture of good traffic generating markets, and markets which in and of themselves could not sustain the type of service that the public required. In addition, the carrier was subjected to constant regulatory supervision as to the adequacy of the service he was performing.

"Authorized" is the term. It does not require you to serve any market. You make application yourself. You are selective in the routes for which you request certification. That is the way it works, is it not?

Mr. TIPTON. Once you get a certificate, you have no choice but to serve it. The statute provides—

Mr. WATSON. Yes, but you do not get a certificate unless you yourself request it. They do not require you to serve any of these places or routes.

Mr. TIPTON. I see the point you are making. The carriers apply for specific points and specific routes. They are either granted them or not granted them. The Board has asserted in the past some limited power to order a carrier into a new service. I hesitate to concede that power right out in front of everybody, but it has been done. So they have exercised that power.

I think the important thing is that these applications are made for routes with the conclusion in mind that no carriers will be permitted to parallel them for their individually ticketed business on their strong markets. When you apply for a certificate, you should be able to think, on the basis of existing law, that you can take this point and serve it without having another carrier or deluge of carriers, for that matter, to make off with the traffic on the service on which you rely to base your entire service pattern. It is that reliance that is being taken away by this legislation.

Mr. WATSON. Yes. The main point we are trying to make is that you are not required to do this. It is a matter of authorization granted to you as a result of your initial request.

Mr. TIPTON. That is true.

Mr. FRIEDEL. In the same paragraph, page 11, the end of your paragraph, you say:

In addition, the carrier was subjected to constant regulatory supervision as to the adequacy of the service he was performing.

Out at Friendship Airport we have 32 flights that leave Friendship to certain cities but no return flights from those cities. We had to go to the Board four or five years ago to get adequate service. We did get some improvements. That is where the airlines are falling down in not providing adequate service to some smaller cities. They try to get these long runs and bypass some other cities. That is one thing that should be watched closely. Something has to be done in that particular case.

We get correspondence from cities throughout the United States on the inadequacy of service.

Mr. TIPTON. I think that illustrates my point, Mr. Chairman. The scheduled airline is by statute required to provide adequate service. He cannot just take the long hauls and serve what he pleases. He is required, once he gets a certificate, to operate that service, and he is subject, as you have quite clearly pointed out and as we, as carriers, have found out—he is subject to being required to provide adequate service no matters how much it hurts.

I think that the distinction between the regulatory pattern for scheduled air transportation and the regulatory pattern for supplementals is illustrated in that fashion about as well as any other, because the president of the supplemental can sit in his office and decide what market he is going to hit and when he is going to hit it. The scheduled airline president probably would like to be able to do that, because that is the way to make money in the air transport business. But the law says he mustn't.

Periodically, we find out that the law means precisely what it says, as we found out in the case of Baltimore, Mr. Chairman.

Mr. FRIEDEL. I yield back to Mr. Watson.

Mr. WATSON. One final question.

You stated on page 15, the second paragraph:

On his "shelves"—

Referring to the travel agent—

the travel agent has stocks of the services offered by the scheduled carriers and, under the "inclusive tour" concept, would also have comparable supplemental carrier products at the same time, at the same basic price, and under the same basic conditions—all of which would be offered to the public to choose from.

So you both are trying to get the same market, and that is the long haul.

As the chairman pointed out, everybody wants to get the long haul. It is more productive, and I understand the economics of the situation. I just hope you won't overlook Columbia, S.C., and some of the other places. It seems that everybody wants to get into the long haul. They forget about these smaller communities that need the air travel service.

Mr. TIPTON. You have stated the situation precisely. Everybody is hard pressed to run a profitable air transport service. The way to run a profitable air transport service is to take a long haul and the high-density markets. That is the way to do it. The law does not permit us to do that.

If Columbia is not getting adequate service, Columbia has a very well established legal remedy. I don't know whether Columbia is getting adequate service or not, but, if that is the case, we are subject to that kind of compulsion. That being the case, it is extraordinarily

important that in establishing a regulatory policy that those that are subject to those obligations must be protected in markets where they can get together enough money to furnish their service all over and make a reasonable profit, so that they can buy new airplanes and do that sort of thing.

I think that is the essence of the point here today. It is the essence of what this committee and the Congress decided last time, that they had to draw a line between these two classes of carriers a line that was understandable, that would give the supplementals an important role to play, that would make them viable operators, and give the scheduled airlines, the regular route carriers, some protection for these long-haul, high density markets that keep them going.

Now, the line they drew was "charter," and this erodes that definition of charter because it is not a charter, really.

Mr. WATSON. Thank you, Mr. Chairman.

Mr. FRIEDEL. Thank you.

Mr. Pickle?

Mr. PICKLE. Thank you, Mr. Chairman.

Mr. Tipton, I take it that the main objection to the bill before us is that it allows the supplemental carriers to sell single-seat fares or individually ticketed fares.

Mr. TIPTON. That is right, Mr. Pickle.

Mr. PICKLE. If the congressional intent for supplemental carriers is to supplement the scheduled service, does it not follow then that if they are able to sell individual tickets that they are in effect a scheduled carrier?

Mr. TIPTON. They are duplicating the service rather than supplementing it.

Mr. PICKLE. Your statement is that they duplicate rather than supplement it as such?

Mr. TIPTON. Exactly.

Mr. PICKLE. For my own information in granting these certificates, does the CAB have certain guidelines that prevent the individual ticketing or an individual sale operation?

Mr. TIPTON. Under the statute they were given, before issuing a certificate to a supplemental they were required to find that public convenience and necessity required his service. The service referred to in the statute was charter service.

The Board, in my opinion at least, expanded the concept of charter service, which was a sale of charters to groups of people. They expanded that to permit the sale of service through a tour operator to individually ticketed people. It was the case of the supplemental carrier doing something indirectly that he could not do directly.

Mr. PICKLE. Does the supplemental carrier have to sell a certain percent of seats in offering a particular charter flight to an organization which is seeking a charter flight?

Mr. TIPTON. That is up to the supplemental as to how many seats he wants to have filled before he will operate the charter.

Mr. PICKLE. If he has a plane which has a hundred seats and he wants to sell this to Kiwanis, can he then offer the 50 seats to the

Kiwanis Club and then go out to the market and sell to individuals?

Mr. TIPTON. No. He can sell 50 seats to the Kiwanis Club and 50 to the Rotary Club. He can have two charters, or three, I believe, is the maximum that he can have on board at any one time.

Mr. PICKLE. If an individual carrier wants to charter the Kiwanis plane 50 seats, does that mean he cannot sell an individual who might answer this ad for Las Vegas that might also want to go on this plane?

Mr. TIPTON. It is our opinion that he cannot sell those individually.

Mr. PICKLE. What happens? Are they doing it now?

Mr. TIPTON. He will have a limit, I would assume—he will have a limit on the number of seats that must be sold before he will operate his charter. Otherwise, he would lose money on the charter.

Mr. PICKLE. Are those guidelines set by CAB, or are they left up to the supplemental carrier?

Mr. TIPTON. The determination of the number of seats that must be filled in the charter before it is operated, I believe, is the supplemental's business judgment, and it governs the price that each one of the members of the group—

Mr. PICKLE. The supplemental could sell half the planeload to Kiwanis and sell the other half to 50 other individuals? He has that decision; is that correct?

Mr. TIPTON. An inclusive tour, as the Board has authorized it, must be a planeload. You cannot have split charters. Have I answered your question?

Mr. PICKLE. I don't think so. I was impressed with the language of your statement when you quoted the former chairman of this committee, the Honorable Oren Harris, in which he talked very plainly about the basic concept by regulation and other appropriation measures to make sure that the charter serves the planeload service concept. I am sure that is the intent.

Though it may be a planeload, I am trying to decide who determines how to break it down, what route and what individuals. If they can sell individual tickets and if they go almost every day as this ad infers, then we are almost reaching the point where the nonscheduled carriers are in effect scheduled carriers.

Mr. TIPTON. Under the Board's authorization of the supplemental carriers to have what is called the inclusive tours, they can sell to individual people through a tour operator the seats in that airplane. They are not restricted to picking groups. They can sell them directly, but they must sell them through a tour operator.

Now, that restriction is not continued over into the bill that is before the committee. But even if it were, it is not a measure designed to prevent the individual ticketing of passengers, because tour operators are reasonably available to any supplemental carrier to make arrangements for the selling of individually ticketed service.

Mr. PICKLE. I think, Mr. Tipton, I can get the information I want from the staff, particularly with respect to what guidelines the CAB lays down that a supplemental air carrier must meet before they can establish a charter tour. I would like the staff to request the CAB to furnish the committee this information.

(The requested information follows:)

## CIVIL AERONAUTICS BOARD SPECIAL REGULATIONS

## PART 378—INCLUSIVE TOURS BY SUPPLEMENTAL AIR CARRIERS, CERTAIN FOREIGN AIR CARRIERS, AND TOUR OPERATORS

(Issued as SPR-14 effective May 13, 1966, as amended by SPR-15, SPR-16, SPR-17, SPR-19 and SPR-21)

## SUBPART A—GENERAL PROVISIONS

Sec.

- 378.1 Applicability.
- 378.2 Definitions.
- 378.3 Exemption.
- 378.4 Approval of certain interlocking relationships.
- 378.5 Effect of exemption on antitrust laws.
- 378.6 Suspension of exemption authority.

## SUBPART B—CONDITIONS AND LIMITATIONS

- 378.10 Requirement of a Statement of Authorization.
- 378.11 Procedure for obtaining a Statement of Authorization.
- 378.12 Statement of Tour Operator's Qualifications.
- 378.13 Tour Prospectus.
- 378.14 Charter contract.
- 378.15 Tariffs to be filed for charter trips.
- 378.16 Surety bond.
- 378.17 Contract between tour operators and tour participants.
- 378.18 Procedure applicable to periods on or after January 1, 1969.

## SUBPART C—POST TOUR REPORTING REQUIREMENTS

- 378.20 Post tour reporting.

## SUBPART D—MISCELLANEOUS

Sec.

- 378.30 Waiver.
- 378.31 Enforcement.

## SUBPART A—GENERAL PROVISIONS

§ 378.1 *Applicability*

This part establishes the terms and conditions governing the furnishing of inclusive tours in interstate overseas, and foreign air transportation by supplemental air carriers, certain foreign air carriers, and tour operators. This part also relieves tour operators from various provisions of the Act and the Board's regulations for the purpose of enabling them to provide inclusive tours to members of the general public utilizing aircraft chartered from supplemental air carriers and certain foreign air carriers. The provisions of this regulation shall not be construed as limiting any other authority to engage in air transportation issued by the Board. Nothing contained in this part shall be construed as repealing or amending any provisions of any of the Board's regulations, unless the context so requires.

§ 378.2 *Definitions*

As used in this part, unless the context otherwise requires—

(a) "Inclusive tour charter" means the charter of an entire aircraft by a tour operator for the carriage by a supplemental air carrier of persons traveling in air transportation on inclusive tours.

(b) "Inclusive tour" means a roundtrip tour which combines air transportation pursuant to an inclusive tour charter and land services, and which meets all of the following requirements:

(1) A minimum of seven (7) days must elapse between departure and return;

(2) The land portion of the tour must provide overnight hotel accommodations at a minimum of three places other than the point of origin, such places to be no less than 50 air miles from each other.

(3) The tour price shall include, at a minimum, all hotel accommodations and necessary air or surface transportation between all places on the itinerary, in-

cluding transportation to and from air and surface carrier terminals utilized at such places other than the point of origin ;

(4) The charge to the passengers for the tour, as set forth in the tour prospectus, shall be not less than 110 percent of any available fare or fare charged by a certificated route air carrier or combination of such carriers (including charge for stopovers) for individually ticketed service on the circle route beginning at the point of origin, to the various points where stopovers are made, and return to the point of origin, provided that the tour shall be subject to the terms and conditions which are applicable to such fare or fares as set forth in the tariff of the certificated route carrier or carriers. For purposes of this provision, the term "available fare" includes promotional or discount fares, such as family fares, children's fares, excursion fares, fares applicable to special classes of persons, group fares, etc. Where similar promotional or discount fares are offered on both jet and propeller aircraft, the available fare shall be that charged for jet service. Where no regularly scheduled service is provided between the points involved, the available fare shall be based on the fares to the nearest point served by a certificated route air carrier ; and

(5) An aircraft under charter to one tour operator may carry a maximum of three tour groups, provided that if more than one group is carried each of the groups shall consist of 40 or more tour participants.

(c) An "inclusive tour group" means an aggregate of persons who are assembled by a tour operator for the purpose of participation as a single unit in an inclusive tour.

(d) "Tour operator" means any person (other than a direct air carrier) authorized hereunder to engage in the formation of groups for transportation on inclusive tours.

(e) "Tour participant" means a member of the inclusive tour group.

(f) "Supplemental air carrier" means (1) a supplemental air carrier as defined in § 200.8 of this chapter (Board's Economic Regulations) and authorized under section 7 of Public Law 87-528 or section 401(d)(3) of the Act to perform inclusive tour charters, or (2) a foreign air carrier which holds a permit issued under section 402 of the Act authorizing it to perform inclusive tour charters, but only to the extent that such tours are to be performed subject to the provisions of this regulation.

(g) "Tour price" means the total amount of money paid by the tour participant to the tour operator for the inclusive tour.

(SPR-14 as amended by SPR-15 effective May 13, 1966, SPR-16 effective Nov. 26, 1966, and SPR-17 effective July 29, 1967.)

### § 378.3 *Exemption*

Subject to the provisions of this part and the conditions imposed, tour operators are hereby relieved from the following provisions of Title IV of the Federal Aviation Act of 1958, as amended, to the extent necessary to permit them to provide inclusive tours :

Section 401.

Section 403.

Section 404(a), except the requirement to provide safe and adequate service, equipment and facilities in connection with tours operated hereunder.

Section 405(b).

Sections 408(a) and 409, except control or interlocking relationships with direct air carriers.

Section 412.

### § 378.4 *Approval of certain interlocking relationships*

To the extent that any officer or director of a tour operator would be in violation of any of the provisions of section 409(a)(3) and (6) by participating in interlocking relationships covered by the exemption granted by § 378.3, such participation is hereby approved by the Board.

### § 378.5 *Effect of exemption on antitrust laws*

The relief granted by §§ 378.3 and 378.4 from sections 408, 409, and 412 of the Act shall not constitute an order under such sections within the meaning of section 414 of the Act, and shall not confer any immunity or relief from operation of the "antitrust laws" or any other statute (except the Act) with respect to any transaction, interlocking relationship, or agreement otherwise within the purview of such sections.

§ 378.6 *Suspension of exemption authority*

The Board reserves the power to suspend the exemption authority of any tour operator, without hearing, if it finds that such action is necessary in order to protect the rights of the traveling public.

SUBPART B—CONDITIONS AND LIMITATIONS

§ 378.10 *Requirement of a statement of authorization*

No inclusive tour or series of tours scheduled to commence on or before December 31, 1968, shall be operated, nor shall any tour operator sell or offer to sell, solicit, or advertise such tour or tours, unless there shall be in effect a Statement of Authorization issued by the Board authorizing the specific tour or series of tours.

(SPR-19 effective Sept. 18, 1967)

§ 378.11 *Procedure for obtaining a statement of authorization*

(a) Applications for a Statement of Authorization shall be filed with the Civil Aeronautics Board (Director, Bureau of Operating Rights) jointly by the supplemental air carrier and the prospective tour operator at least 90 days in advance of the date of commencement of the proposed tour or series of tours. If a series of tours is to be operated for one tour operator pursuant to one charter contract, the application may cover the entire series, provided that the elapsed time between the commencement of the first tour and the completion of the last tour shall not be more than 180 days. Late filing of the application will not be permitted except for good cause shown.

(b) The application shall be signed by a duly authorized officer of both the supplemental air carrier and the tour operator and shall include the Statement of Tour Operator's Qualifications and the Tour Prospectus.<sup>3</sup> In the event of any change in the facts as reflected in the application, an amended application shall be filed no later than five (5) days following such change.

(c) Copies of the application shall be served upon each direct air carrier certificated to provide passenger service between any of the points involved in the proposed tour or tours, and on such other persons as the Board may require, and proof of such service shall accompany the application as provided in § 302.8 of this chapter. Answers to the application may be filed by interested persons no later than 10 days thereafter and shall conform to the requirements of § 302.1022(a) and (b) of this chapter.

(d) If the Board finds that the proposed tour or tours comply with the requirements of this regulation and that the tour operator applicant is properly qualified, it will issue a Statement of Authorization for the conduct of the tour or tours set forth in the application. Among the factors which the Board will consider in determining whether the tour operator applicant is properly qualified to engage in the proposed tour operation are its financial resources, prior experience in the transportation business, and any other information bearing upon the ability of the applicant to perform successfully the proposed operations. The Statement of Authorization may be conditioned or limited by the Board in order to assure compliance with the requirements of this regulation.

(e) Deviations from the tour or tours authorized by the Board may not be made without Board permission except where they are compelled by circumstances beyond the control of the carrier or tour operator and there is insufficient time to request Board permission therefor.

(SPR-14 as amended by SPR-15 effective May 13, 1966)

§ 378.12 *Statement of Tour Operator's Qualifications*

The Statement of Tour Operator's Qualifications shall be in the form set forth in the Appendix. A tour operator who has filed a Statement of Tour Operator's Qualifications in connection with one application may, with respect to subsequent applications, file a statement to the effect that the facts contained in his previously filed Statement of Qualifications have not changed, except as set forth in the later statement.

(SPR-15 effective May 13, 1966)

<sup>3</sup> Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willingly falsifies, conceals or covers up by any trick, scheme or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than 5 years, or both. Title 18, U.S.C., § 1001.

### § 378.13 *Tour Prospectus*

The Prospectus shall include copies of the charter contract, the contract between the tour operator and tour participants, and the tour operator's surety bond, and shall contain the following information:

- (a) Name and address of the tour operator;
- (b) The proposed date and time of each flight;
- (c) Equipment to be used, including the aggregate number of each type of aircraft and capacity;
- (d) The tour itinerary, including hotels (name and length of stay at each), and sightseeing or other arrangements, if any;
- (e) The tour price per passenger;
- (f) The number of persons expected to participate in the tour;
- (g) Charter price of the aircraft;
- (h) The individually ticketed air fare, computed as provided in § 378.2(b)(4);
- (i) Samples of solicitation material proposed by the tour operator (all sales advertising and solicitation materials employed by the tour operator shall state the name of the supplemental air carrier to be utilized).

### § 378.14 *Charter contract*

The charter contract between the tour operator and the supplemental carrier shall evidence a binding commitment on the part of the carrier to furnish the air transportation required for the tour or tours covered by the contract.

### § 378.15 *Tariffs to be filed for charter trips*

No supplemental air carrier shall perform any charter trips for inclusive tours unless such air carrier shall have on file with the Board a currently effective tariff showing all rates, fares, and charges for such charter trips and showing the rules, regulations, practices, and services in connection with such transportation.

### § 378.16 *Surety bond*

(a) Except as provided in paragraph (b) of this section, the tour operator shall furnish a surety bond in an amount of not less than twice the amount of the charter price for the air transportation to be furnished in connection with such tour: *Provided, however*, That the liability of the surety to any tour participant shall not exceed the tour price.

(b) The supplemental air carrier and the prospective tour operator may elect, in lieu of furnishing a surety bond as provided under paragraph (a) of this section, to comply with the requirements of subparagraphs (1) and (2) of this paragraph as follows:

(1) The tour operator shall furnish a surety bond in a minimum amount of \$10,000 per flight up to a maximum amount of \$100,000 for a series of 10 or more flights, for the protection of the tour participants, the bond to continue in effect until completion of the tour or series of tours: *Provided, however*, That the liability of the surety to any tour participant shall not exceed the tour price.

(2) The supplemental air carrier and tour operator shall enter into an agreement with a designated bank, the terms of which shall include the following:

- (i) Each tour participant shall pay for his deposit and subsequent payments comprising the tour price only by check or money order payable to such bank which shall maintain a separate account for each tour: *Provided, however*, That if the tour participant makes a cash deposit, the tour operator or travel agent who receives such cash deposit shall forthwith remit to the designated bank a check for the full amount of the deposit without deduction of commission;
- (ii) the bank shall not pay the supplemental air carrier the charter price for the transportation earlier than two banking days preceding the scheduled day of departure of the originating or returning flight, upon certification of the departure date by the supplemental air carrier;
- (iii) the bank shall reimburse the tour operator for refunds made by the latter to the tour participant upon written notification from the tour operator;
- (iv) if the tour operator or the supplemental air carrier notifies the bank that a tour has been canceled, the bank shall make the applicable refunds directly to the tour participants; and
- (v) except as provided in subdivision (iii) of this subparagraph, the bank shall not pay any funds from the account to the tour operator prior to 2 banking days after completion of each tour, when the balance in the account shall be paid to the tour operator, upon certification of the completion date by the supplemental air carrier.

As used in this subparagraph, the term "bank" includes a bank, savings and loan association, or other financial institution insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(c) The bond required under paragraphs (a) and (b) (1) of this section shall insure the financial responsibility of the tour operator and the supplying of the transportation and all other accommodations, services, and facilities in accordance with the contract between the tour operator and the tour participants, and shall be in the form set forth in the appendix attached to Part 378. Such bond shall be issued by a reputable and financially responsible bonding or surety company which is legally authorized to issue bonds of that type in the State in which the tour originates. For purposes of this section, the term "State" includes any territory or possession of the United States, or the District of Columbia. The Board will consider that a bonding or surety company is prima facie qualified under this section if such company's surety bonds are accepted by the Interstate Commerce Commission under 49 CFR 174.8, and if such company is listed in Best's Insurance Reports (Fire and Casualty) with a general policyholders' rating of "A" or better. If the bond does not comply with the requirements of this section, or for any reason fails to provide satisfactory or adequate protection for the public, the Board will notify the supplemental air carrier and the tour operator, by registered or certified mail, stating the deficiencies of the bond. Unless such deficiencies are corrected within the time set forth in such notification, the subject tour or tours shall in no event be operated.

(d) The bond required by this section shall provide that unless the tour participant files a claim with the tour operator within sixty (60) days after completion of the tour, the surety shall be released from all liability under the bond to such tour participant. The contract between the tour operator and the tour participant shall contain notice of this provision.

(SPR-21 effective Mar. 23, 1968)

*§ 378.17 Contract between tour operators and tour participants*

Where each participant in a tour receives the same accommodations, land tours, etc., the contract between the tour operator and the tour participants shall be the same.

Contracts between tour operators and tour participants shall include provisions concerning the following matters:

- (a) Method of payment, e.g., installment payments;
  - (b) Refunds in the event of the tour's cancellation or the passenger's change in plans;
  - (c) Carriers' liability limitations for passengers' baggage;
  - (d) Aircraft equipment substitutions;
  - (e) Seating accommodations; and
  - (f) Nonperformance of tour because of insufficient number of participants.
- (g) Unless the tour participant files a claim with the tour operator within sixty (60) days after completion of the tour the surety shall be released from all liability under the bond to such tour participant (see § 378.16(d)).

(SPR-14 as amended by SPR-21 effective Mar. 23, 1968)

*§ 378.18 Procedure applicable to periods on or after January 1, 1969*

(a) No inclusive tour or series of tours scheduled to commence on or after January 1, 1969, shall be operated, nor shall any tour operator sell or offer to sell, solicit, or advertise such tour or tours, unless there is on file with the Board a Tour Prospectus satisfying the requirements of § 378.13. If a series of tours is to be operated for one tour operator pursuant to one charter contract, the Prospectus may cover the entire series, provided the elapsed time between the commencement of the first tour and the completion of the last tour shall not be over 180 days. The Tour Prospectus shall be filed at least 60 days before commencement of the tour or tours. Late filing of the Prospectus will not be permitted except for good cause shown.

(b) In the event of any change in the facts as reflected in the Prospectus, an amended Prospectus shall be filed no later than five (5) days following such change. Deviations from the Tour Prospectus, or the amended Prospectus, may not be made except where they are compelled by circumstances beyond the control of the carrier or tour operator and there is insufficient time to file an amended Prospectus.

(SPR-14 as amended by SPR-19 effective Sept. 18, 1967.)

## SUBPART C—POST TOUR REPORTING REQUIREMENTS

§ 378.20 *Post tour reporting*

(a) Within 30 days after completion of a tour or in the case of a series of tours, the last of the series, the supplemental air carrier and tour operator shall jointly file with the Board (Supplementary Services Division, Bureau of Operating Rights) a post tour report. This report shall indicate whether or not the tours as authorized hereunder were, in fact, performed. To the extent that the operations differed from those authorized under § 378.11 or described in the Prospectus filed under § 378.18, such differences shall be fully detailed including the reasons therefor. However, the making of such an explanation shall not of itself operate as authority for or excuse any such deviation.

(b) The supplemental air carrier shall promptly notify the Board regarding any tours covered by a Statement of Authorization, or a Tour Prospectus filed under § 378.18, that are later canceled.

(SPR-14 as amended by SPR-15 effective May 13, 1966.)

## SUBPART D—MISCELLANEOUS

§ 378.30 *Waiver*

A waiver of any of the provisions of this regulation may be granted by the Board upon its own initiative, or upon the submission by a supplemental air carrier of a written request therefor, provided that such a waiver is in the public interest and it appears to the Board that special or unusual circumstances warrant a departure from the provisions set forth herein.

§ 378.31 *Enforcement*

In case of any violation of the provisions of the Act, or this part, or any other rule, regulation, or order issued under the Act, the violator may be subject to a proceeding pursuant to sections 1002 and 1007 of the Act before the Board or a U.S. District Court, as the case may be, to compel compliance therewith, to civil penalties pursuant to the provisions of section 901(a) of the Act, or, in the case of willful violation, to criminal penalties pursuant to the provisions of section 902(a) of the Act; or other lawful sanctions.

NOTE.—The reporting requirements contained herein have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

## STATEMENT OF TOUR OPERATOR'S QUALIFICATIONS UNDER PART 378 OF THE SPECIAL REGULATIONS OF THE CIVIL AERONAUTICS BOARD (14 CFR PART 378)

## 1. Identification of tour operator applicant:

(a) Name: -----

(b) Trade names: -----

(c) Name in which applicant wishes to be issued the Statement of Authorization: -----

2. Address of principal office: -----

3. Mailing address: -----

4. Form of organization:  Corporation;  Partnership;  Sole Proprietorship;  Other (Specify): -----

5. State in which incorporated or under whose laws company is authorized to operate: -----

6. Date of incorporation or formation of company: -----

7. Full name, address, title, citizenship (country) and percent of stock or other interest of officers, owners, or members of applicant, and owners of more than 5 percent of outstanding stock of corporation or owners of more than 5 percent of company if other than corporation: -----

8. Full name, address, citizenship (country) and percent of stock or other interest of directors of applicant: -----

9. Percent of voting interest owned or controlled by citizens of the United States or one of its possessions:  75 percent or more;  Less than 75 percent.

10. If more than 5 percent of applicant's stock is held by a corporation, percent of voting interest in such corporation owned or controlled by citizens of the United States or one of its possessions:  75 percent or more;  Less than 75 percent.

11. Description of current business activities and length of time engaged therein : -----

12. Description of previous business experience related to transportation activities and dates engaged therein : -----

13. Kind of operating authority (such as broker, surface or air freight forwarder motor carrier, ocean freight forwarder, etc.) issued to applicant by the U.S. Government, including (a) permit, registration or certificate number, or other evidence of registration, (b) issuing agency, and (c) effective dates of license held : -----

14. Has any operating authority or registration included in item 13, above, been revoked, canceled, suspended or otherwise terminated?  Yes  No  
If "yes," give reasons : -----

15. Description of previous business experience of applicant's officers, managers and key personnel in air transportation or other transportation : -----

16. State any additional information or comments as desired in support of the application : -----

17. Give a brief account of any arrangement through which applicant will have available to it the financial resources and facilities of other companies or individuals : -----

18. Submit with this statement, in duplicate, the most recent balance sheet of applicant. Use footnotes to explain items fully, in order to avoid time-consuming correspondence for explanation of balance sheet entries.

**TOUR OPERATOR'S SURETY BOND UNDER PART 378 OF THE SPECIAL REGULATIONS OF THE CIVIL AERONAUTICS BOARD (14 CFR PART 378)**

Know all men by these presents, that we ----- of -----  
(Name of tour operator)  
----- as Principal (hereinafter called Principal), and  
(City) (State)  
----- a corporation created and existing under the laws of the  
(Name of Surety)  
State of ----- as Surety (hereafter called Surety) are held and firmly  
(State)  
bound unto the United States of America in the sum of -----, for  
(See § 378.16 of Part 378)

which payment, well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Whereas the Principal intends to become a tour operator pursuant to the provisions of Part 378 of the Board's Special Regulations and other rules and regulations of the Board relating to insurance or other security for the protection of tour participants, and has elected to file with the Civil Aeronautics Board such a bond as will insure financial responsibility and the supplying of transportation and other services subject to Part 378 of the Board's Special Regulations in accordance with contracts, agreements, or arrangements therefore, and

Whereas this bond is written to assure compliance by the Principal as an authorized tour operator with Part 378 of the Board's Special Regulations, and other rules and regulations of the Board relating to insurance or other security for the protection of tour participants, and shall inure to the benefit of any and all tour participants to whom the Principal may be held legally liable for any of the damages herein described.

Now, therefore, the condition of this obligation is such that if the Principal shall pay or cause to be paid to tour participants any sum or sums for which the Principal may be held legally liable by reason of the Principal's failure faithfully to perform, fulfill, and carry out all contracts, agreements, and arrangements made by the Principal while this bond is in effect for the supplying of transportation and other services pursuant to and in accordance with the provisions of Part 378 of the Board's Special Regulations, then this obligation shall be void, otherwise to remain in full force and effect.

The liability of the Surety with respect to any tour participant shall not exceed the tour price (as defined in Part 378 of the Board's Special Regulations) paid by or on behalf of such participant.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penalty of the bond, but in no event shall the Surety's obligation hereunder exceed the amount of said penalty. The Surety agrees to furnish written notice to the Civil Aeronautics Board forthwith of all suits filed, judgments rendered, and payments made by said Surety under this bond.

This bond is effective the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, 12:01 a.m., standard time at the address of the Principal as stated herein and shall continue in force until terminated as hereinafter provided. The Principal or the Surety may at any time terminate this bond by written notice to the Civil Aeronautics Board at its Office in Washington, D.C., such termination to become effective thirty (30) days after actual receipt of said notice by the Board. The Surety shall not be liable hereunder for the payment of any of the damages hereinbefore described which arise as the result of any contracts, agreements, undertakings, or arrangements made by the Principal for the supplying of transportation and other services after the termination of this bond as herein provided, but such termination shall not affect the liability of the Surety hereunder for the payment of any such damages arising as the result of contracts, agreements, or arrangements made by the Principal for the supplying of transportation and other services prior to the date such termination becomes effective. Liability of the Surety under this bond shall in all events be limited only to a tour participant or tour participants who shall within sixty (60) days after the termination of the particular tour described herein give written notice of claim to the tour operator and all liability on this bond shall automatically terminate sixty (60) days after the termination date of the particular tour covered by this bond except for claims filed within the time provided herein.

In witness whereof, the said Principal and Surety have executed this instrument on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

*Principal*

Name -----

By -----  
(Signature and title)

Witness -----

*Surety*

Name ----- [SEAL]

By -----  
(Signature and title)

Witness -----

Only corporations may qualify to act as surety and they must establish to satisfaction of the Civil Aeronautics Board legal authority to assume the obligations of surety and financial ability to discharge them.

[SPR-14 as amended by SPR-15 effective May 13, 1966, and SPR-21 effective Mar. 23, 1968]

Mr. PICKLE. Mr. Tipton, I have one other question.

Mr. FRIEDEL. Will you yield for a question?

Mr. PICKLE. Yes.

Mr. FRIEDEL. As I understand it, the supplementals will charter an airplane to a tour operator who will sell an all-inclusive tour to someone who comes in and says: "I want to take this trip." The tour operator might turn space over to three or four other travel agencies to help fill up that plane, but he charters the whole plane, the first one.

Am I correct in this?

Mr. TIPTON. Yes. As I understand it, inclusive tours as the Board has viewed them up to now, is a case in which a supplemental carrier charters his airplane to a tour operator. The tour operator then sells

the tour to the general public. The general public buys this tour from him.

One guideline is that the entire airplane must be chartered.

Second, it must involve at least three stops, and it must be 7 days long.

Mr. ADAMS. At least or no more than that?

Mr. TIPTON. At least. It must include hotels and ground transportation. Those are the guidelines.

Mr. PICKLE. This is what I am trying to establish. I will again say that I am asking the CAB to delineate this for us, in one-two-three fashion, so that I understand what requirement the CAB establishes.

Can the scheduled air carrier operate as a nonscheduled carrier?

Mr. TIPTON. We can operate inclusive tours online over our authorized routes. In addition, we can perform full plane charters offline under restrictions.

Mr. PICKLE. You can do what the nonscheduled carriers are doing if you wish to do it?

Mr. TIPTON. That is right. We can do the individual ticketed business, the inclusive tour. We can do that online. We can also run a real charter service, that is, charter to a football team or charter to the Rotary or charter to somebody else.

But in the case of the scheduled airline, the Board has imposed restrictions on the amount of that business which we can conduct.

Mr. PICKLE. What is that restriction?

Mr. TIPTON. The restriction is that any scheduled carrier's charter revenue plane-miles in a calendar year must not exceed 2 percent of its base revenue plane-miles in the previous calendar year. That is the limit on our charter service.

In addition, we are limited on the number of charters that can be moved between any two particular points in a given period of time. It must be an irregular and infrequent thing.

Mr. PICKLE. If you are limited to a certain percent of charter flights above which you cannot exceed, then it would be the intent of Congress that you not get into the nonscheduled activity as such. I would assume that it would be the intent of Congress that the nonscheduled carriers would not compete with the scheduled carriers.

This committee is presented with the situation that we are asked over and over to determine which is economically fair to different groups. This nonscheduled activity has grown much like the CATV. So the supplemental carriers have come to us for an expression of intent, which perhaps is a proper role for us to play.

Now, do the supplemental carriers own their planes?

Mr. TIPTON. Own them, yes. Own them or lease them.

Mr. PICKLE. They own their own fleet of planes?

Mr. TIPTON. Yes.

Mr. PICKLE. They do not charter the planes from you or other carriers. They have their own individual planes?

Mr. TIPTON. Yes, they do. There may be some leasing in the industry, but—

Mr. PICKLE. We have two major companies as I understand it. How many planes would they have, roughly, fleet planes?

Mr. TIPTON. At the present time, World, a major supplemental, has in use nine 707's, Boeing 707's, and six Boeing 727's.

Mr. PICKLE. That is one airline.

Mr. TIPTON. Yes.

Mr. PICKLE. That means a total of 15 of the larger planes.

Mr. TIPTON. Quoting from an article in Air Transport World, which came out in May, it appears from this that they have in the neighborhood of 35 or 40 modern jets, with a larger number of similar airplanes on order.

I think that the supplemental industry under the legislation that this committee reported out in 1962 has done one thing that the committee wanted them to do, which was to equip themselves to conduct a good air transport service. And they have prospered in so doing. The legislation was good, and we would hope that the guidelines laid down by this committee in 1962, which have been so good, would be continued.

Mr. PICKLE. Thank you, Mr. Chairman.

Mr. FRIEDEL. Mr. Kuykendall?

Mr. KUYKENDALL. Let us get down to some specific facts here. I think this committee would be most interested in looking at the areas where you have a specific difference in the cost of doing business.

As we go through your costs here, a lot of this could be the same for a seat-mile; the cost of fuel would obviously stay the same. You pay the same for a 727 or 707 as one of your competitors.

I assume that, generally speaking, the crew salaries would be the same.

Let me get into some questions here.

How about the ticket tax? Is that the same?

Mr. TIPTON. The ticket tax is the same, 5 percent on each passenger.

Mr. KUYKENDALL. Are we not getting to the overhead of seat vacancies being the big difference in the cost of doing business, seat vacancies that are forced upon you by schedules? Is that correct?

Mr. TIPTON. I think that where the difference in operational responsibilities is reflected most is in seat vacancies, as you say. Our load factor is about 50 percent now. It also is reflected in airplane utilization by having rather complex schedules to meet and service to provide. We can't get the airplane utilization that can be gotten if you can plan your service with definite markets, particularly long-haul ones.

I would think those are two major cost differentials. Of course, you have to add to that, too, the ground cost of maintaining stations and a variety of similar costs that arise from the necessity of serving a wide variety of points.

I think you have touched on the major difference. You cannot maintain a scheduled service day-in and day-out and maintain load factors which are as good as you can maintain if you can set your service better.

Mr. KUYKENDALL. I have been rather amazed at some of the figures I have seen about the utilization. I want to get this clear. When we got into studying the SST, I was absolutely amazed at the number of annual hours that 707's were flying, that DC-8's and even some

727's are flying. I do not understand how you say that the charter boys have a better chance at utilization than you.

It would seem to me that no one could utilize an airplane any more fully in the air than ATA does.

Mr. TIPTON. Our average utilization systemwide is about 9 hours. You pick a long-haul route, for example, a relatively long-haul route with the stops widely separated, and you can get much higher utilization on that simply because you can turn them around faster.

Mr. KUYKENDALL. I realize this, Mr. Tipton. I cannot imagine a charter operator that could keep an airplane in the air 3,000 hours a year.

Mr. TIPTON. It may be that they can't, but I would think that they could.

Mr. KUYKENDALL. I believe the maximum is around 4,000 on some of your good airplanes down to 2,600 or 2,700, which you say averaged out about 3,000 hours a year certainly. So the difference between your seat-miles and your passenger-miles; that overhead is the primary difference in cost.

Mr. TIPTON. I think that is right.

Mr. KUYKENDALL. You say yours is around 50 percent, is that correct?

Mr. TIPTON. Right, at the moment it is at 50 percent.

Mr. KUYKENDALL. I will seek to get a comparable figure from your competitors when they come before us. I see this as your major difference in cost, because, needless to say, you are forced to carry half loads.

I am glad we do not see any single-passenger loads any more, like we did 7 or 8 years ago. I used to be on DC-3's on the southern alone, Mr. Chairman.

Thank you, Mr. Chairman,

Mr. TIPTON. We hope we do not see that again, either.

Mr. FRIEDEL. That concludes this morning's session.

Mr. TIPTON. Mr. Chairman, may I take 1 more second?

Mr. Barch, of TWA, intended to take advantage of the opportunity to appear before the committee on this issue. The hearings came on rather suddenly and caught him in London. He was not able to get here.

He asked me if I would present his testimony for the record at this point. May I do so?

Mr. FRIEDEL. You may.

I want to say that we are going to try to get permission to sit this afternoon. If we do, it will be 2 p.m. At that time, Mr. Tipton, you may proceed.

Mr. TIPTON. I am finished with my statement. And, as I understand it, I am submitting Mr. Barch's statement for the record.

Mr. FRIEDEL. Right.

(The statement referred to follows:)

STATEMENT OF JOHN R. BARCH, VICE PRESIDENT, INDUSTRY ASSOCIATION AFFAIRS,  
TRANS WORLD AIRLINES, INC.

In June 1962 the Congress passed Public Law 87-528 after an extensive investigation into the proper role and need for supplemental air transportation. As a result of that study the Congress concluded that the proper role of "supple-

mental air carriers" was to perform air transportation solely on a charter basis and supplementing the services of the regularly scheduled trunk and local service carriers. That purpose was carried out in the Conference bill which became Public Law 87-528.

In 1962, too, a bill was introduced that would have authorized the supplemental air carriers to operate inclusive tours, just as H.R. 17685 would do. Such a bill, in fact, was passed by the Senate in 1962. The House, however, rejected the Senate bill and insisted that the final bill should not change the meaning of charter so as to include individually ticketed inclusive tours in the definition of "charter" as the Senate bill would have done. As to this, the Chairman of the House Committee on Interstate and Foreign Commerce specifically advised the House:

"The Senate proposed to change the well established meaning of 'charter.' The House objected to changing it. . . ."

As a consequence, the bill that came out of conference and was enacted made clear that supplemental air carriers were not to be authorized to sell individually ticketed services under the guise of charters. As the Conference Committee Report pointed out:

"The substitute agreed to in conference adopts the provisions of the House amendment with respect to the prohibition of individually ticketed and way-billed services on a permanent basis . . . supplemental air transportation would be limited to all-charter operations, except for limited individually ticketed service which may be authorized by the Board on a temporary basis."

At the hearings which led to Public Law 87-528 the certificated air carriers supported the establishment of the separate class of "supplemental air carriers" limited to the all-charter operations provided for in that legislation.

Unquestionably charter transportation fills a definite need. Pre-existing groups should be able to travel together and to charter an aircraft for that purpose. We have not opposed, and do not now oppose, the charter operations of the supplemental air carriers which supplement the transportation services performed by the scheduled carriers. We do oppose, however, any attempt to destroy the distinction so clearly marked out in Public Law 87-528 between charter transportation on the one hand and the individually ticketed services performed by the certificated carriers on the other. We believe that H.R. 17685, in seeking to amend Public Law 87-528, would undermine the very purpose the Congress had in mind in adopting Public Law 87-528, which was intended to prohibit supplemental air carriers from engaging in individually ticketed services.

In enacting Public Law 87-528 the Congress was well aware of the established distinction between charter services and individually ticketed services. As was then pointed out by the Chairman of the House Committee on Interstate and Foreign Commerce, former Representative and now Federal Judge Oren Harris:

"The law is well established that, in air transportation, charter means essentially the lease of the entire capacity of an aircraft for a period of time or a particular trip, for the transportation of cargo or persons and baggage, on a basis which does not include solicitation of the general public, or any device where individually ticketed services would be offered or performed under guise of charter. The basic concept being thus clear, it is important that the Civil Aeronautics Board, by regulation and other appropriate measures, make sure that charter serves its planeload service concept and is not employed as a subterfuge to perform individually ticketed services. Manifestly, the nature of such subterfuge may change from time to time, and the regulatory agency needs some flexibility to modify its regulations to guard against any new subterfuges that may emerge. For this reason, the House committee objected to any attempt to freeze into the act a definition of charter service which would prevent the Board from dealing effectively with abuses. Thus the bill, as passed by the House, contained no definition of charter."

Individual ticketing, as the Congress recognized, is the sphere of the trunk and local service carriers. The bill would permit the supplemental carriers and travel agents (tour operators) to solicit individual members of the public—which is individual ticketing. That they have in fact done so is clear from their advertising, samples of which are attached.

(The material referred to has been placed in committee files.)

Any supplemental carrier who wants to individually ticket passengers may seek a certificate authorizing this in appropriate proceedings, as several of them have done. Permitting supplemental carriers to operate individually ticketed tours enables them to take traffic from the scheduled carriers obligated to serve a route regularly. It lets them choose the day and hour they fly so as to take advantage of heavy weekend traffic and fly full plane loads that would otherwise be carried by the scheduled carriers, all without any concomitant obligation to serve communities regularly. But if a supplemental carrier obtains a certificate authorizing individual solicitation, it can no longer operate as a supplemental carrier and must undertake certain obligations—primarily the obligation to adequately serve communities—which the supplementals do not have. A carrier which does not undertake such obligations should not be permitted to individually ticket passengers.

It is abundantly clear that what the supplemental carriers want is individual ticketing authority under the guise of "inclusive tour charters." This was true, as the Court of Appeals for the Second Circuit found, under the Board's regulations that have now been invalidated. The proposed bill, H.R. 17685, contains no definition but in effect validates all the certificates previously issued.

Let me emphasize that if this legislation is passed the supplemental air carriers will be able to compete for virtually all of the tourist business of the scheduled carriers destined overseas. And this is true even under the so-called restrictions presently contained in the Board's regulations.

There should be no mistake about it—the supplemental carriers can and do solicit individual members of the general public. As their advertising makes plain there is no requirement whatsoever that people solicited for an inclusive tour be members of any group. The fact that a tour operator is inserted as a middleman between the supplemental carrier and the public is of absolutely no significance. The supplemental carriers themselves frequently solicit the passengers and even when solicitation is done by the tour operator this is done on behalf of the carriers. The scheduled carriers also use tour operators for their all-expense or inclusive tours and there is no real distinction between their use by the scheduled carriers and by the supplemental carriers.

The Board's requirement that the tour last at least seven days is obviously no restriction. It is indeed a rare overseas tourist who does not want to stay that length of time. The requirement for hotel accommodations is no more onerous since virtually every tourist will want some hotel accommodations.

The Board's regulations contain no restrictions that would preclude any ordinary tourist from using the supplemental air carriers' inclusive tours. As one brochure for an inclusive tour put it:

"ABOUT REGIMENTATION—There simply isn't any! You fly as a group, but once you arrive at your destination you do as you please."

The fact that the supplemental carriers have not yet operated many foreign inclusive tours is no indication of what the real potential is. Their inclusive tour program is just getting underway. Some of them have stated that they have been held back because of the pendency of the litigation over the validity of the tours. In spite of this they have done very well indeed on inclusive tours to Hawaii. The Board's so-called limitations on inclusive tours have not prevented the supplemental carriers from making substantial inroads into the individual passenger traffic upon which the certificated carriers depend. For instance, in 1967 they reportedly carried 51,000 passengers between the mainland and Hawaii.

As I have indicated, their potential market is by far the largest proportion of transatlantic passenger travel. A recent Port of New York Authority survey shows that about 65% of United States residents bound for Europe by air do so for pleasure purposes. This percentage is steadily increasing. To be in a position to compete for virtually the entire tourist market, all the supplemental carriers need is enough different tours leaving at different times and for different periods so that they would be in a position to accommodate the needs of all tourists. They should have little difficulty scheduling tours on this basis as they begin to solicit more and more members of the general public, just as they already have scheduled tours on a regularly recurring basis between the mainland and Hawaii.

And it is not only the tourist that supplemental air carriers could carry. There are many business passengers who also would be able to fit their business trips into the pattern of the supplemental carriers' inclusive tour operations.

I should point out that many passengers individually ticketed by the regularly

scheduled carriers are all-expense tour passengers—that is, passengers who book substantially more than their transportation from the regularly scheduled carriers—for instance, at the time they book their transportation they also book hotels, meals, sightseeing arrangements and special events.

It should also be made clear that the so-called “tours” presently being offered by the supplemental carriers are not cheap. They often cost well over \$1,000. This is not going to enable the 50–60% of our American citizens who have never taken an airplane trip to partake of this mode of travel. Their advertising is not directed to low income travelers. Much of it appears in such high-priced magazines as “Holiday” and “The New Yorker”.

To permit the supplemental carriers to sell individually ticketed travel can only destroy the regulatory scheme established by Congress in the Federal Aviation Act. That scheme was to permit individual solicitation of members of the general public by a carrier only when it has been established that the public interest required such transportation and after a certificate of public convenience and necessity had been issued to the carrier. The scheme of the Act was regulated competition. Competitive service was to be authorized when the need for it had been established but not until this had been done. The amendment to the Federal Aviation Act adopted in 1962 as Public Law 87–528 modified this only to permit charter transportation by supplemental carriers to supplement the transportation provided by scheduled carriers, not to permit individual ticketing. It did not destroy the basic regulatory scheme that had previously been adopted. The proposed bill would do this.

When the bill which became Public Law 87–528 was being considered by the House, a number of Representatives voiced their concern about the Senate bill permitting individually ticketed services under the guise of tours. Thus Representative Walter stated:

“The part of the Senate bill which was written last summer, however, still has several undesirable features. The worst of these is the one giving the Board power to grant broad individually ticketed authority to these carriers. That authority has been used by some of the nonskeds ever since the end of World War II. In every year since then—every year, mind you—at least one, and often several, nonskeds have been engaged in regular, continuous, flagrant violation of that authority.

\* \* \* \* \*

“The Senate bill also has a definition of charter authority which would let a nonsked carry anyone, anytime—much more than even our main trunklines have authority to do—if only the carriage is part of a so-called all-expense tour. The result would be phony tours in which the only significant item was the air fare. . . .”

Representative Robert W. Hemphill, a member of the House Committee, also expressed his views on the all-expense tour authority set out in the Senate bill:

“It is beyond dispute that the individually ticketed authority which the Senate bill would provide is potentially much broader than the past unenforceable system. Moreover, the Senate would grant the nonskeds the right to carry so-called all-expense-paid tour business. In the past, adequate regulation failed because it was impossible for the CAB to police each flight conducted by the nonskeds. Under the Senate bill, the CAB would be required to police each passenger to determine whether he was a bona fide all-expense-paid tour passenger. This is clearly less workable than the already proven unworkable system.”

Chairman Harris, who presented the Conference Report to the House, explained:

“As is well known, the most difficult problem was that of transportation of individually ticketed passengers. The bill as passed by the House last September 18 sought to limit the supplemental carriers to charter operations, with no individually ticketed or individually waybill authority except in certain limited emergency situations.”

Representative John Bell Williams summarized the Conference action on the bill, stating:

“The Senate receded and accepted the position of the House on that provision. So, there is no statutory definition of ‘charter’ in the bill. That definition will be the one which is presently in effect under a regulation of the Civil Aeronautics Board. The all-expense tours that were provided for in the Senate definition were not accepted by the House and the Senate receded and concurred in our position on that, also.”

The supplemental carriers do not need individual ticketing in order to operate profitably. Their operations in recent years have been highly successful and they are doing well today. For instance, in the 12 months ending June 30, 1967, World Airways, Inc. had total operating revenues of \$57 million, up \$19 million from the previous year. Capitol International Airways, Inc. had operating revenues of \$33 million. Trans International Airways, Inc. had operating revenues of \$29 million. Saturn Airways, Inc. had operating revenues of \$26 million. The operating profit margin of the supplementals for this period was 15.7%. The operating profit margin of the certificated route air carriers was 11.8% (*C.A.B. Air Carrier Financial Statistics*, June, 1967; *C.A.B. Air Carrier Analytical Charts and Supplemental Carriers Statistics*, June, 1967).

Both World Airways, Inc., largest of the supplemental air carriers, and Trans International Airlines, Inc., a subsidiary of Transamerica Corporation, were reported in the press as stating that the Supreme Court decision, at which H.R. 17685 is aimed, would have little effect on their business (*The Wall Street Journal*, May 28, 1968, p. 5).

In closing, I wish to emphasize to you with the utmost conviction that this bill, if it were to become law, will represent a momentous change in the established regulatory pattern in air transportation in this country. It will enlarge the operating authority of supplemental air carriers to let them offer individually ticketed services to the general public in virtually direct competition with the regularly certificated air carriers. We urge you not to enact any such legislation and thus change completely the existing regulatory pattern of the Federal Aviation Act.

Mr. TIPTON. Thank you, sir.

(Whereupon, at 12:20 p.m. the subcommittee recessed, to reconvene at 2 p.m. the same day.)

#### AFTER RECESS

(The subcommittee reconvened at 2 p.m., Hon. Samuel N. Friedel, chairman, presiding.)

Mr. FRIEDEL. The committee will now come to order for the continuation of hearings on H.R. 17685, to amend the Federal Aviation Act with respect to the definition of "supplemental air transportation" and for other purposes.

Our first witness will be Mr. Glenn A. Cramer, president of Trans International Airlines and vice president of the National Air Carrier Association.

You may introduce those accompanying you.

#### STATEMENT OF GLENN CRAMER, VICE PRESIDENT, NATIONAL AIR CARRIER ASSOCIATION; ACCOMPANIED BY EDWARD DRISCOLL, PRESIDENT; AND CLAYTON BURWELL, COUNSEL

Mr. CRAMER. Thank you. I shall be joined by Mr. Driscoll, president of National Air Carriers Association; and Mr. Burwell, attorney for the association.

Mr. Chairman and members of the committee, my name is Glenn A. Cramer. My biographical statement is attached. I represent the members of the National Air Carrier Association, a group of supplemental airlines embracing almost the entire industry. The members of the association include the following carriers: Capitol International Airways, Inc., Nashville, Tenn.; Modern Air Transport, Inc., Miami, Fla.; Overseas National Airways, Inc., Jamaica, N.Y.; Purdue Airlines Corp., Lafayette, Ind.; Saturn Airways, Inc., Oakland, Calif.; Southern Air Transport, Inc., Miami, Fla.; Standard Airways, Inc., Seattle,

Wash.; Trans International Airlines, Inc., Oakland, Calif.; Universal Airlines, Inc., Inkster, Mich.; and World Airways, Inc., Oakland, Calif.

I am pleased to have this opportunity to present to you our views in connection with H.R. 17685, a bill to amend the Federal Aviation Act with respect to the definition of "supplemental air transportation."

This bill would clarify the authority of the Civil Aeronautics Board to grant to supplemental carriers authorization to perform inclusive tour charters. We are in full agreement with the purpose of the bill and support it wholeheartedly—although, as I shall presently point out, we suggest minor changes in wording.

As this committee knows, a similar but not identical bill has been introduced in the Senate (S. 3566), and hearings on that bill were recently completed by the Subcommittee on Aviation of the Senate Commerce Committee. At the Senate hearings, the Civil Aeronautics Board strongly endorsed S. 3566 but proposed certain changes in wording. The bill proposed by the CAB is entirely satisfactory to the members of the National Air Carrier Association and differs only slightly from H.R. 17685 (as shown on p. 114). In the interest of uniformity, we endorsed the CAB version.

We stress, gentlemen, that this bill is emergency legislation, for without prompt congressional action to end the existing judicial impasse the inclusive tour services of supplemental airlines may be terminated.

The central issue before you is not a technical amendment of the Federal Aviation Act. Rather, it is whether low-cost packaged vacations shall continue to be available to the great masses of our citizenry.

The ability of our citizens to enjoy a vacation is directly related to the price. Let me give you one example of the effect of price on vacation travel. Some years ago, the president of a nationally known travel agency testified before Congress about a tour arranged by his agency. Approximately 1,000 people had signed up for the tour on scheduled service. However, shortly before the start of the tour, the air fare was raised and the price of the tour was increased. The amount of the increase was not enormous—only about \$100. However, it was enough to cause 900 out of the 1,000 vacationers to cancel their tours. They could afford the original price of the tour. They could not afford \$100 more.

The proposed legislation is designed for those 900 tour dropouts—and millions of people like them. Behind the technicalities and legal language of the bill lies a fundamental question. In the jet age should vacation air travel be confined mainly to the affluent, the privileged few? Or should it be made more widely available to the great masses of the American people—people of modest means who would like to enjoy the advantages of vacation air travel and cannot afford the fares of the trunklines?

The bill before you would enable the CAB to continue to make vacation air travel via inclusive tour charters available to low- and middle-income groups who would not otherwise have this opportunity. This the real issue and that is why the National Air Carrier Association believes the proposed legislation serves the national interest.

A number of other significant issues are also involved.

Loss of inclusive tour charter authority will seriously threaten the existence of the supplemental airline industry which makes an important contribution to our national defense.

Loss of this authority will turn over by default the low-cost international tour business to foreign carriers with a resulting adverse effect on the balance of payments and the growth of the U.S. air transport industry.

Passage of the act will not damage the scheduled carriers. Although in the course of my testimony, I will discuss each of these points, it might be best to take a moment now to describe the inclusive tour charters which were actually authorized by the Board so that you can see how different they are from the point-to-point individually ticketed transportation of the scheduled route carriers.

Present CAB inclusive tour charter regulations permit supplemental airlines to charter the entire capacity of an aircraft to an independent tour operator who in turn sells to the public a package or inclusive tour, including transportation on the chartered aircraft and land services. The regulations further distinguish inclusive tour charters from the normal point-to-point service of a route carrier by requiring that the tour must be a round trip service lasting at least 7 days; it must stop overnight at a minimum of three points no less than 50 miles apart; the tour price must include all hotels and ground transportation; and the tour must cost at least 110 percent of the lowest fare on a scheduled airline. Other inclusive tour charter requirements are set forth in detail in part 378 of the Board's special regulations, a copy of which is attached (exhibit 3) but, on the other hand, inclusive tours conducted by the scheduled air carriers are not subject to these restrictions. One may buy an individual ticket, select his time, place and date of departure, and vary his itinerary. In other words, he may go at his discretion and not have to travel as part of a group.

The price of the air portion of an inclusive tour charter is normally between 30 percent and 40 percent below the equivalent transportation offered by the trunk carriers. This savings is the difference between many vacationists going or not going. The trunk carriers in most cases do not provide this service within the reach of many low income groups.

Visualize with me a typical supplemental inclusive tour charter selling for less than \$500 from points in the east such as Baltimore, Louisville, or Syracuse, and including 3 days and nights in Las Vegas, 7 days and nights in Hawaii and returning through San Francisco for an additional 3 days.

In addition to air transportation, all hotel, ground transportation, and sightseeing expenses and many other extras will be provided for the tour participants. The tour involves approximately 10,000 miles of flying. Gourmet meals are served on the aircraft, including cocktails or champagne. All ground transportation and baggage handling is included. The baggage is delivered directly to the hotels and collected at the hotels on departure.

These and other inclusive tours to South America, Europe, and other parts of the world have already been enjoyed by an estimated 100,000 persons. Chairman Crooker of the CAB testified in the recent Senate

hearings that in 1967 an estimated 25,000 persons traveled on inclusive tour charters to Hawaii and that this figure will increase to 136,000 in 1968. But there are still 50 percent of more of Americans who have never flown. And only 6 percent of the American population has ever traveled outside the borders of the United States.

Recent surveys substantiate the ability of inclusive tour charters to tap a vast new market. A survey of 400 passengers on inclusive tours to Hawaii conducted by World Airways and Berry Travel Service shows that 20 percent of the tour participants said they had never flown before. A large percentage of the tour participants responding to the questionnaire were retired persons or persons from lower or fixed income brackets who normally do not use air transportation. Another extensive survey of this type, made by American International Travel Service (AITS), showed that 89 percent of the 13,370 passengers surveyed had never before been to Hawaii.

It is also important to note the dramatic increase in 1967 over 1966 of vacation traffic to Hawaii from States not included on principal trunkline routes. With a national average increase of 43.5 percent in 1967 traffic to Hawaii over 1966, the increase from North Carolina, for instance, was 123.6 percent; West Virginia, 110 percent; Kentucky, 99 percent; and Iowa 75.9 percent. Cities not generally receiving direct air service to Hawaii and other oversea vacation points, but from which inclusive tour charters have been approved, include: Columbus, Ohio; Columbia, S.C.; Detroit, Mich.; Baltimore, Md.; Memphis, Tenn.; Wichita Falls, Tex.; Winston-Salem, N.C.

This health development of inclusive tour charter service will, however, be cut short and perhaps ended unless legislation is promptly enacted.

The committee is no doubt aware of the judicial stalemate which has resulted in the present need for clarification of Public Law 87-528, enacted in 1962. Two circuit courts of appeal are divided on the issue of the Board's authority to permit inclusive tour charters and, on May 27, 1968, the Supreme Court split 4 to 4 on the issue.

The Board, after careful study of the 1962 legislation, concluded that it was given the authority by Congress to define charter—a position, we must add, which was strongly supported by the Air Transport Association during the hearings on Public Law 87-528. The President reached the same conclusion in approving the Board's award of inclusive tour charter authority in supplemental certificates in the foreign field. The Solicitor General of the United States reached the same conclusion in presenting the cases to the courts. The U.S. Circuit Court of Appeals for the District of Columbia also decided that the act left to the Board the definition of charter.

Four of the eight Supreme Court Justices voting on the matter reached the same conclusion. And, only a few days ago, Senator Monroney, one of the principal authors of Public Law 87-528, unequivocally supported this view during the Senate hearings. But the judicial stalemate remains.

The Air Transportation Association has reversed its prior position and now bitterly opposes inclusive tour charters for the American public. While it generalized about diversion, which we will discuss in a moment, this is a red herring. The Travel Management News-

letter of May 28, 1968, gives a more accurate portrayal of the trunk carriers' motives for opposing inclusive tour charters, as follows:

The reaction to the news of the High Court's order was, predictably, mixed: "*Scheduled carriers.*—While the international airlines were obviously reluctant to say it out loud, there was little doubt they were jubilant on several counts: (1) competition for mass market, budget travel would diminish; (2) pressure for lower and lower fares to stay competitive with the supplemental airlines' ITC programs would lessen; and (3) the thrust for more and more special low-cost promotional tariffs, such as the group inclusive tour fare (GIT), would be parried. Said a vice president of one international airline, rather picturesquely: 'We will go into the fare conference at Cannes in September without that supplemental ITC sword dangling over our heads.'"

Mr. WATSON. May I interrupt to ask a question at this point?

Mr. FRIEDEL. Yes.

Mr. WATSON. What is your interpretation of that statement?

Mr. CRAMER. The interpretation of that statement is that the group inclusive fares that have been offered by the scheduled airlines last fall were in direct response to the inclusive tour charter fares being offered by the supplemental airlines and, therefore, there would no longer be any necessities for the GIT fares offered by the scheduled airlines to remain.

Therefore, they would quite likely be raised.

Mr. WATSON. The fares would quite likely be raised rather than for them to extend or give additional promotion to their own special tour programs?

Mr. CRAMER. That would be my interpretation of this statement, yes.

Mr. WATSON. Thank you.

Mr. CRAMER. Thus, the enthusiastic acceptance of inclusive tour charters by low and middle income groups is matched by the trunk carriers' resolve to deprive these groups of ITC service, so that they may, at the closed-door fare conference at Cannes, set the fares where they want them. You can be sure that if you do not consider the moderate-income vacationist here, he will not be considered in the IATA discussions on the Riviera in September.

Indeed, we think it evident that the low-cost air services and the innovations of the supplemental carriers have over the years caused the large trunk carriers to reduce their fares and provide improved service to travelers of modest means. (See exhibit 7.)

On June 13, 1968, Mr. James Montgomery of Pan American World Airways testified at the Senate hearings on S. 3566 that package tours on scheduled flights are now offered by Pan American and other trunk carriers in many of the same markets where supplementals have operated inclusive tour charters, and, moreover, at comparable prices.

While the purpose of this testimony was undoubtedly, to demonstrate the lack of need for supplemental inclusive tour charter service, we think it proves quite the contrary. It proves that the trunk carriers, under a competitive prod from the supplementals, have been moved to provide low-cost tours and that the traveling public has been the principal beneficiary.

Further, it is very difficult to understand why the supplemental carriers are able to carry any inclusive tour charter passengers at all, if in fact the scheduled carriers are offering the same tours at equal prices. Surely, given a choice of, say, TWA or Pan American or a rela-

tively unknown supplemental carrier, experienced travelers would choose TWA or Pan American.

The fact remains that people who are not used to traveling are every day joining with other in a group and using inclusive tours on supplemental air carriers because of the tremendous price advantage, even though they are subjected to the regimentation inherent in inclusive tour charters.

Before discussing the critical impact of the judicial impasse on the supplemental industry itself, it may be helpful to take a minute and update you on our progress. The industry is very different from that which faced you at the time you passed Public Law 87-528 in 1962.

There were 30 carriers then. The CAB, after extensive public hearings, by selecting the best, has whittled that number down to 13. The 10-member airlines of NACA have in the past 6 years flown 15 billion passenger miles without a single passenger fatality. We fly the most modern jets. No longer are there any compliance or enforcement problems with the supplementals differing in magnitude from those with the trunk carriers. The law violators are gone.

We now have an operation of 75 jet aircraft. By 1971, this fleet will exceed 100 jet aircraft and will represent a total investment of more than \$650 million.

Four of our companies are publicly held. Well over 170,000 stockholders are interested and no doubt dismayed by the action of the courts on inclusive tour charter authority.

The aggressive and healthy growth of the supplementals is well illustrated in the transatlantic charter market. In 1963, 184,000 passengers were transported on transatlantic charter flights by all classes of carriers. At that time, the U.S. supplementals flew 31,00 of these travelers, the foreign IATA carriers 138,000, and the U.S. IATA carriers 10,000.

Looking at the 1967 total of 557,000 passengers, the supplementals flew 239,000, the foreign route carriers 151,000 and the U.S. IATA carriers 92,000.

Since the supplementals are the air charter specialists, it is natural that they should account for the major portion of the growth. However, it should be noted that the supplementals' growth was at the expense of the foreign carriers and not the U.S. IATA carriers whose charter traffic in this important market increased on a percentage basis even more sharply than that of the supplementals during the same period.

We hope the progress we have made has in some measure justified the confidence you placed in us in passing Public Law 87-528, the confidence the Board and the President placed in us by approving our authority, and lastly, the confidence the military and the public have placed in us in using our services. But all this progress is threatened by the court action which brings us here.

The Board certificated the supplementals to perform inclusive tours not only because there was an unfulfilled public need for this service, but also because the supplemental industry with only affinity charter authority might not survive without it. The Board's conclusion was reached after months of hearings, economic studies in depth, and a careful study by the Board of evolving roles and missions for each type

of carrier. But the action of the courts has served to stymie this careful development of policy by the Board and poses the question of how the supplementals are to survive on military and civil affinity charters alone.

The military services have a requirement that at least 40 percent of a carrier's revenues must come from civilian sources if it is to be eligible for military business. At present, even with inclusive tour charters, the supplementals in the business of carrying military personnel and cargo derive only 42 percent of their total revenues from civil sources. Military representatives propose to require in the post-Vietnam period that 60 percent of the carrier's revenues be derived from civil sources if it is to be eligible for continued participation in military business. How can the supplementals increase their civil business if a principal market which would permit them to do so is to be denied to them? The Board stated in its decision authorizing inclusive tour charters in foreign air transportation:

These (supplemental) carriers have proved to be an essential factor in our national defense civil augmentation airlift system, making substantial contributions in time of national crisis. The United States thus has a sizable stake in their continued survival and viability. Inclusive tour authority will make a contribution to that continued viability. (Order E-24237, p. 9)

Mr. FRIEDEL. Mr. Cramer, the House has a quorum call. We will be in recess for 15 or 20 minutes.

(A brief recess was taken.)

Mr. FRIEDEL. The committee will now come to order.

Mr. CRAMER, you may proceed.

Mr. CRAMER. Thank you, Mr. Chairman.

To make matters worse, there has been a decrease in the military business available to supplementals in the last few months. In fiscal year 1966 the supplementals carried 34 percent of the military contract lift awarded by MAC; but they carried only 24 percent in fiscal year 1967 and only 23 percent in fiscal year 1968. We fervently hope in the national interest that the negotiations for peace in Vietnam will be successful. The dramatic decrease in the airlift requirement of the military following a peace in Vietnam will, however, greatly increase our dependence on inclusive tour charters for survival.

Not only do the supplementals make a contribution to the national defense but through employment, the purchase of aircraft, fuel and maintenance that contribute substantially to the national economy. See exhibit 8. Also, by promoting new vacationists they help to bring in new revenues to hotels, restaurants and all vacation services.

The principal argument of the trunk carriers against inclusive tour operations by supplementals has been that such operations have a diversionary impact upon scheduled services. This argument has been proved to be unfounded. The vast financial strength of the trunks and their dominant share of the total air transport market would in itself be sufficient protection for them against competition from supplementals. But even more to the point, the fact is that inclusive tour charter services by supplements reach a largely new market and simply do not divert traffic from the trunklines.

In 1967, the domestic and international trunk carriers collected over \$6 billion in gross revenues. See exhibit 1. These revenues represent

over 86 percent of the total air transport gross. By comparison, the gross revenues of the supplementals for the same year, 1967, amounted to a tiny 3.7 percent. Again, the aggregate net profits for all trunks (\$414,509,000) for 1967 represented over 93 percent of the total. The supplementals' share (\$21,070,000) of the total is a negligible 4.7 percent.

The trunks' diversion argument has been made repeatedly to the CAB during the proceedings in which the supplementals were authorized to engage in inclusive tour charter operations.

The Board, upon consideration of detailed evidentiary records, has found this argument to be unfounded. Experience, as we will show, has substantiated the CAB conclusion. Furthermore, in the United Kingdom where inclusive tour charters have been conducted for a number of years, the Air Transport Licensing Board has found a lack of diversion from scheduled individually ticketed services to inclusive tour charters. (See exhibits 4-6).

Most importantly, facts concerning alleged diversion by supplementals from U.S. route carriers are now available. The experience which has been accumulated on the question proves that the inclusive tour services of supplementals do not divert traffic from the trunks' scheduled operations. Indeed, those services increase the total traffic base to the mutual benefit of the entire industry. As Mr. Montgomery of Pan American Airways testified at the Senate hearings, package tour passengers are likely on subsequent vacations to travel on their own via individually ticketed services.

Exhibit 2 shows that the fantastic yearly growth in mainland Hawaii individually ticketed passengers of the route carriers has not faltered even though the supplementals introduced a substantial volume of inclusive tour service in the market. In 1967, the year in which large-scale inclusive tour service was introduced in the Hawaiian market, the scheduled carriers' traffic increased by an estimated 30 percent over the preceding year. This is a greater growth rate than the 1962-67 compound growth rate of 27 percent.

The very substantial growth of the trunklines' sales of domestic and international tours on scheduled flights in 1967 over 1966—47 percent growth in passengers, 37 percent in revenues as stated by Mr. Tipton before the Senate—is another indicator of the frailty of any diversion argument, since 1967 was the first full year of supplemental carrier inclusive tour operations. Similarly, the domestic and international trunklines experienced a more than 20 percent increase in gross revenues for 1967 over 1966.

For the same comparative periods, their net profits increased 7.4 percent. (See exhibit 1.) On the other hand, the supplementals suffered a decline in net profits of over 6 percent. Surely these facts show the fictional nature of the diversion argument in opposition to the proposed bill. And, needless to say, the Board would possess ample discretion under the bill to amend its inclusive tour regulations to stem any diversion should it later occur.

There is still another important reason why passage of the proposed bill is in the public interest. The CAB, with the President's endorsement, has authorized foreign charter airlines to engage in inclusive tour charters to and from the United States in order to encourage foreign travel to the United States.

The inclusive tour authority of these foreign carriers is unaffected by the conflicting court decisions just discussed. If U.S. supplementals are prohibited from participating in the international inclusive tour market, that market and its revenues will go by default to the foreign carriers with a resulting adverse impact upon the U.S. balance-of-payments position. Such a situation is wholly at odds with our national interest.

If, however, U.S. supplementals are permitted to engage in international inclusive tour services, they will be able to bring large numbers of foreign visitors to the United States. Inclusive tour charters have been widely accepted in Europe, and this mode of travel is perhaps the best way of breaking through the cost barrier which has thus far deterred large-scale tourism by Europeans to the United States. It is only in the past few months that U.S. supplementals have been authorized to charter to foreign tour operators.

This morning Mr. Tipton said we had not carried any foreign inclusive tour passengers in the United States. I would like to point out here that it has been only in the last 2 months that supplementals have been authorized to charter to a foreign tour operator, therefore, we have been excluded from this market until 2 months ago.

The use of foreign tour operators is an essential in order to conduct foreign originated inclusive tours.

In sum, amid all the claims and counterclaims of interested private parties, one point emerges loud and clear. The Board and the President, after conscientious and objective deliberation, authorized inclusive tour charters on the basis of their determination of the public convenience and necessity. In so doing, they weighed the interests of the traveling public and the supplementals and not merely the interests of large trunk carriers. The Board's and the President's action has now been frustrated in the courts. Only the Congress, at this stage, can preserve the public interest. I hope you will approve what the Board and the President have done and permit the continuation of inclusive tour charter services by supplemental carriers.

In summary, Mr. Chairman, although the United States is the wealthiest country on earth, only six out of 100 Americans have ever traveled abroad.

The high cost of an airline ticket is one reason why only 40 percent of the public has ever been up in an airplane.

The scheduled airlines, which control 93 percent of the market, have failed to recognize that the supplemental air carriers are not competing for a share of their market.

We have created an entirely new market, a market which—despite the urging of the CAB—the trunk carriers refused to tap.

Those signing up for low-cost package tours on the supplemental carriers are our citizens in the low- and middle-income brackets. They are people who have never been able to fly in an airplane before, those who limited their vacations in the past to a motor trip to some nearby resort.

This is a new market, just as ours is a new industry.

We must ask ourselves, have the spokesmen for the trunk carriers provided us with a single shred of proof that their business has been adversely affected by the rise of the supplemental airlines?

On the contrary, Mr. Chairman, the figures for travel flights to Hawaii reveal a dramatic upswing in the numbers of people using the facilities of the major trunk carriers. The figures on flights to Europe and the Orient reveal that the major carriers are enjoying unprecedented prosperity.

If anything, Mr. Chairman, the advertising of inclusive tour charters has stimulated business for all the carriers.

The only voice that has been raised against our low-cost vacation packages has been that of the major trunk carriers. Surely the elephant is complaining about the mosquito—an industry with \$6 billion in sales and \$414 million in profits after taxes worrying about the supplemental airlines' tiny 3.7 percent of air travel revenues.

Those who support the public interest join in asking Congress to grant authority to the CAB to approve the continued use of supplemental airlines for inclusive tour charters. The two concerned Federal agencies—the Department of Transportation and the Civil Aeronautics Board—have both found the need to enfranchise our operations so that we might continue this needed service to the public. The travel agencies and the consumer groups also support this position.

Mr. Chairman, the supplemental air carriers have come a long way in just a few years as the result of the wise enactment by the Congress of legislation which has built up a whole new travel market and travel industry. Our planes are now of the most modern type. Our safety record is enviable. Our commitment to the national defense is well known and has been much praised.

But I submit to you that no new airline, or group of airlines, could undertake at this late stage of market development a successful invasion of the scheduled carrier routes, or take business away from them.

In fact, it is difficult to think of any new company that has sprung up which could challenge them in their own backyard of providing point-to-point service. They are too big and too titanic. And with all our business knowledge I submit we could not compete with them either if we sought merely to duplicate their facilities or to make inroads on their market.

If we have been successful in providing inclusive charter package flights for groups it is because—and precisely because—we are not in competition. All our airlines together do not have as many planes as the ranking major carrier.

No. What we are providing is utterly and totally different. We are tapping not an existing market but a new market, a market which the major carriers spurned because they chose to fix rates with the foreign carriers and maximize profits while ignoring the common man, who earns, say, between \$6,000 and \$12,000 a year and cannot afford a very high air fare to take his family abroad.

Thanks to Public Law 87-528 we have gotten off the ground. The Congress, in its wisdom and vision, endowed us with an opportunity to compete—as Mr. Donald Agger testified, “fairly and on a non-discriminatory basis.”

We are not asking for special favors or favored treatment. We are not appealing for tax incentives, subsidies, or protection. We are asking a chance to develop this new market in the best tradition of the free enterprise system, to operate not as competitors to the existing

aviation market, but as contributors. We appreciate deeply the legislation which enabled us to carry on the business we hold today. We shall not fail your trust or disappoint your vision.

I would like sincerely to thank the committee for the opportunity to appear on this important subject.

(The documents referred to follow:)

#### BIOGRAPHY OF GLENN A. CRAMER

Mr. Glenn A. Cramer is presently and since 1964 has been President and a Director of Trans International Airlines, Inc., a supplemental air carrier certificated by the CAB for virtually worldwide supplemental air transportation. Mr. Cramer is also Vice President and a Director of the National Air Carrier Association, an association of supplemental air carriers. He is a Director of Transamerica Corporation.

Mr. Cramer began his business career after his three years in the Air Force during World War II. In 1946 he joined California Eastern Airways as a flight engineer, subsequently becoming Director of Maintenance and Engineering, and later a vice president and general manager of that company.

He joined Lockheed Aircraft in 1959 as a sales manager of the transport sales division, and three years later joined Trans International as executive vice president and general manager.

#### EXHIBIT 1.—U.S. AIRLINE INDUSTRY COMPOSITION OF REVENUES AND PROFITS, 1967 AND 1966

[In thousands]

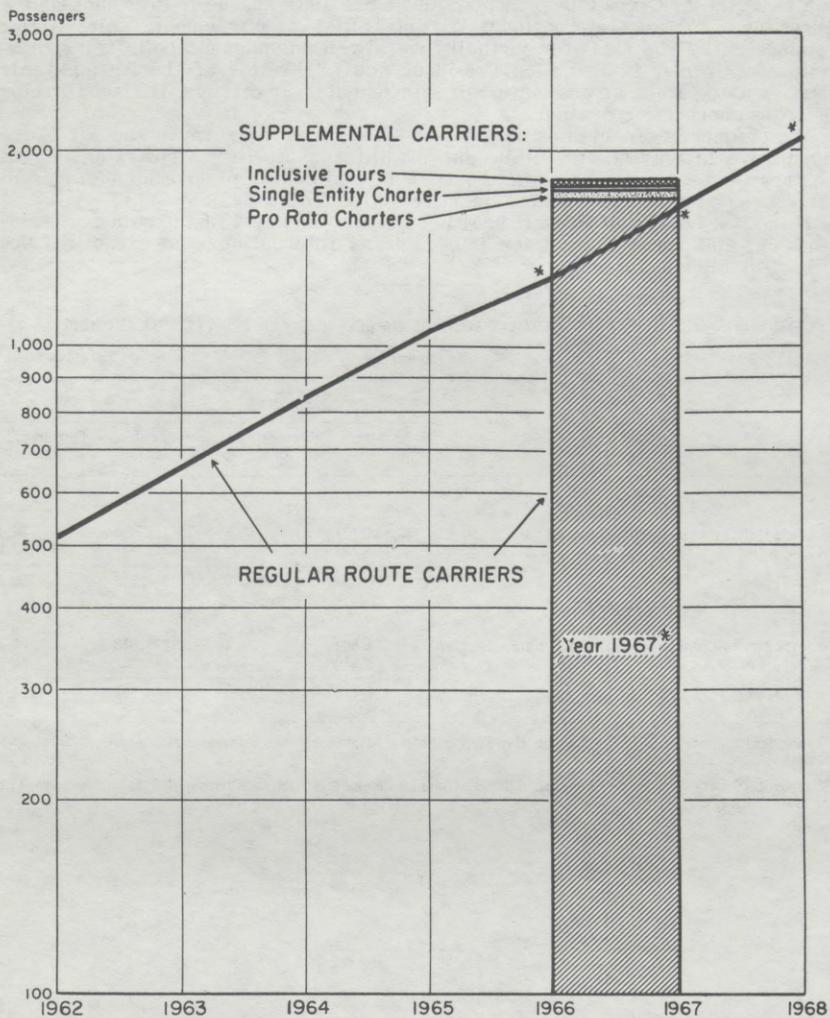
	1967		1966	
	Amount	Percent of total	Amount	Percent of total
<b>TOTAL OPERATING REVENUES</b>				
Domestic trunks and international flag carriers.....	\$6,164,177	86.5	\$5,118,494	86.1
U.S. supplementals.....	263,292	3.7	212,491	3.6
Total <sup>1</sup> .....	7,124,305	100.0	5,948,132	100.0
<b>TOTAL NET PROFIT</b>				
Domestic trunks and international flag carriers.....	414,509	93.3	385,848	86.3
U.S. supplementals.....	21,070	4.7	22,497	5.0
Total <sup>1</sup> .....	444,474	100.0	446,994	100.0

<sup>1</sup> Includes local service, all cargo, Alaskan, Hawaiian, helicopter, domestic trunks, international flag carriers and supplementals.

Source: CAB form 41 reports and published financial data for Capitol International Airways, ONA, Saturn Airways, TIA, and World Airways.

### MAINLAND-HAWAII TRAFFIC, 1962-1968

Indicating that Inclusive Tour Traffic could not have constituted any significant diversion from Scheduled Traffic, but rather supplemented it.



\*Estimated (per exhibit 2B).

## EXHIBIT 2B.—GROWTH OF MAINLAND-HAWAII TRAFFIC (REGULAR ROUTE CARRIERS' TRAFFIC)

[In thousands]

Year	Total	Growth over prior year (percent)
1962.....	514	-----
1963.....	651	+26.7
1964.....	847	+30.1
1965.....	1,090	+28.7
1966 estimate.....	<sup>1</sup> 1,233	<sup>2</sup> +13.1
1967 estimate.....	<sup>3</sup> 1,301	<sup>4</sup> +19.4
1968 estimate.....	<sup>5</sup> 1,698	<sup>6</sup> +30.5
	<sup>7</sup> 2,156	<sup>7</sup> +27.0

<sup>1</sup> Estimate based on all originated traffic at Honolulu—UAL plus PAA plus NWA, 1966 versus 1965, with change applied to 1965 per above. (Assumption: PAA originations for Orient and South Pacific had same relationship to total in both 1965 and 1966).

<sup>2</sup> Before adjustment for strike.

<sup>3</sup> 3d quarter 1966 traffic adjusted to equal same relationship to other quarters in 1966 as experienced in 1965 and 1967.

<sup>4</sup> After adjustment for strike.

<sup>5</sup> Increase in 3 carrier-originated traffic at Honolulu and Hilo—1967 versus 1966—applied to 1966 estimated above.

<sup>6</sup> Growth over unadjusted figure is 37.7 percent. Note that above growth between 1965 and estimated 1967 is 56 percent.

The Hawaiian Visitors Bureau data for 1965-67 indicates a 2-year growth in Westbound visitors "to Hawaii" of 64 percent.

<sup>7</sup> Compound growth between 1962 and estimated 1967—27 percent—applied to estimated 1967.

Source: 1962-65—Recommended Decision of Examiner Park; CAB docket 16242 (Transpacific Route Investigation), p. 57; 1966-68—See footnotes.

## EXHIBIT 2C.—RELATIONSHIP OF MAINLAND-HAWAII CHARTER TRAFFIC TO SCHEDULED TRAFFIC FLOWS, 1967

	Passengers (O. & D.)	Percent of total
Scheduled traffic (per exh. 2B).....	1,698	90.61
Nonscheduled.....	148	2.56
Total, regular route carriers.....	1,746	93.17
Supplemental carriers:		
Inclusive tours.....	58	3.09
Single-entity charters.....	18	.96
Pro-rata charters.....	52	2.77
Total, supplemental carriers.....	128	6.83
Grand total.....	1,874	100.0

<sup>1</sup> United's experience doubled to provide for PAA and NWA nonscheduled flights from Honolulu and Hilo have increased as follows:

	United	PAA	NWA	Total
1965.....	12	399	7	418
1966.....	235	624	23	882
1967.....	440	1,742	20	2,202
Mar. 31, 1968.....	361	1,856	11	2,228

Source: Scheduled carriers: CAB form 41; Supplemental carriers: Reports to NACA from 6 carriers.

## EXHIBIT 3

Number 419  
8-23-67

5441

**PART 378—INCLUSIVE TOURS BY SUPPLEMENTAL AIR CARRIERS, CERTAIN FOREIGN AIR CARRIERS, AND TOUR OPERATORS \***

## [§ 12,651]

**Subpart A—General Provisions**

Sec.	
378.1	Applicability.
378.2	Definitions.
378.3	Exemption.
378.4	Approval of certain interlocking relationships.
378.5	Effect of exemption on antitrust laws.
378.6	Suspension of exemption authority.

**Subpart B—Conditions and Limitations**

378.10	Requirement of a Statement of Authorization.
378.11	Procedure for obtaining a Statement of Authorization.
378.12	Statement of Tour Operator's Qualifications.

**Sec.**

378.13	Tour Prospectus.
378.14	Charter contract.
378.15	Tariffs to be filed for charter trips.
378.16	Surety bond.
378.17	Contract between tour operators and tour participants.
378.18	Procedure applicable to periods on or after January 1, 1968.

**Subpart C—Post Tour Reporting Requirements**

378.20	Post tour reporting.
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**Subpart D—Miscellaneous**

378.30	Waiver.
378.31	Enforcement.

**AUTHORITY:** The provisions of this Part 378 issued under sections 101(3), 204(a), 401, 409 and 414 of the Federal Aviation Act of 1958, as amended (72 Stat. 737; 49 U. S. C. 1301; 72 Stat. 743; 49 U. S. C. 1324; 72 Stat. 754 as amended by 76 Stat. 143; 49 U. S. C. 1371; 72 Stat. 768; 49 U. S. C. 1379; 72 Stat. 770; 49 U. S. C. 1384) and section 7 of Public Law 87-528 (76 Stat. 146; 49 U. S. C. 1371).

**Subpart A—General Provisions**

## [§ 12,652]

§ 378.1 **Applicability.** This part establishes the terms and conditions governing the furnishing of inclusive tours in interstate, overseas and foreign air transportation by supplemental air carriers, certain foreign air carriers, and tour operators. This part also relieves tour operators from various provisions of the Act and the Board's regulations for the purpose of enabling them to provide inclusive tours to members of the general public utilizing aircraft chartered from supplemental air carriers and certain foreign air carriers. The provisions of this regulation shall not be construed as limiting any other authority to engage in air transportation issued by the Board. Nothing contained in this part shall be construed as repealing or amending any provision of any of the Board's regulations, unless the context so requires.

[§ 378.1 as amended by Amendment No. 2, effective November 26, 1966, 31 F. R. 12948; Amendment No. 3, effective July 29, 1967, 32 F. R. 9223.]

## [§ 12,653]

§ 378.2 **Definitions.** As used in this part, unless the context otherwise requires—

(a) "Inclusive tour charter" means the charter of an entire aircraft by a tour operator for the carriage by a supplemental air carrier of persons traveling in air transportation on inclusive tours.

(b) "Inclusive tour" means a round-trip tour which combines air transportation pursuant to an inclusive tour charter and land services, and which meets all of the following requirements:

(1) A minimum of seven (7) days must elapse between departure and return;

(2) The land portion of the tour must provide overnight hotel accommodations at a minimum of three places other than the point of origin, such places to be no less than 50 air miles from each other;

(3) The tour price shall include, at a minimum, all hotel accommodations and necessary air or surface transportation between all places on the itinerary, including transportation to and from air and surface carrier terminals utilized at such places other than the point of origin;

(4) The charge to the passengers for the tour, as set forth in the tour prospectus, shall be not less than 110 percent of any available fare or fares charged by a certificated route air carrier or combination of such carriers (including charge for stopovers) for individually ticketed service on the circle route beginning at the point of

\* As issued, effective May 13, 1966, 31 F. R. 4779; title amended by Amendment No. 3, effective July 29, 1967, 32 F. R. 9223.

origin, to the various points where stopovers are made, and return to the point of origin, provided that the tour shall be subject to the terms and conditions which are applicable to such fare or fares, as set forth in the tariff of the certificated route carrier or carriers. For purposes of this provision, the term "available fare" includes promotional or discount fares, such as family fares, children's fares, excursion fares, fares applicable to special classes of persons, group fares, etc. Where similar promotional or discount fares are offered on both jet and propeller aircraft, the available fare shall be that charged for jet service. Where no regularly scheduled service is provided between the points involved, the available fare shall be based on the fares to the nearest point served by a certificated route air carrier; and

(5) An aircraft under charter to one tour operator may carry a maximum of three tour groups, provided that if more than one group is carried each of the groups shall consist of 40 or more tour participants.

(c) An "inclusive tour group" means an aggregate of persons who are assembled by a tour operator for the purpose of participation as a single unit in an inclusive tour.

(d) "Tour operator" means any person (other than a direct air carrier) authorized hereunder to engage in the formation of groups for transportation on inclusive tours.

(e) "Tour participant" means a member of the inclusive tour group.

(f) "Supplemental air carrier" means (1) a supplemental air carrier as defined in § 200.8 of this chapter (Board's Economic Regulations) and authorized under section 7 of Public Law 87-528 or section 401(d)(3) of the Act to perform inclusive tour charters, or (2) a foreign air carrier which holds a permit issued under section 402 of the Act authorizing it to perform inclusive tour charters, but only to the extent that such tours are to be performed subject to the provisions of this regulation.

(g) "Tour price" means the total amount of money paid by the tour participant to the tour operator for the inclusive tour.

[§ 378.2 as amended by Amendment No. 1, effective May 13, 1966, 31 F. R. 6621; Amendment No. 2, effective November 26, 1966, 31 F. R. 12948; Amendment No. 3, effective July 29, 1967, 32 F. R. 9223.]

#### [§ 12,654]

**§ 378.3 Exemption.** Subject to the provisions of this part and the conditions imposed, tour operators are hereby relieved from the following provisions of Title IV

of the Federal Aviation Act of 1958, as amended, to the extent necessary to permit them to provide inclusive tours:

Section 401.

Section 403.

Section 404(a), except the requirement to provide safe and adequate service, equipment and facilities in connection with tours operated hereunder.

Section 405(b).

Section 407(b) and (c).

Section 408(a) and 409, except control or interlocking relationships with direct air carriers.

Section 412.

#### [§ 12,655]

**§ 378.4 Approval of certain interlocking relationships.** To the extent that any officer or director of a tour operator would be in violation of any of the provisions of section 409(a) (3) and (6) by participating in interlocking relationships covered by the exemption granted by § 378.3, such participation is hereby approved by the Board.

#### [§ 12,656]

**§ 378.5 Effect of exemption on antitrust laws.** The relief granted by §§ 378.3 and 378.4 from sections 408, 409, and 412 of the Act shall not constitute an order under such sections within the meaning of section 414 of the Act, and shall not confer any immunity or relief from operation of the "antitrust laws" or any other statute (except the Act) with respect to any transaction, interlocking relationship, or agreement otherwise within the purview of such sections.

#### [§ 12,657]

**§ 378.6 Suspension of exemption authority.** The Board reserves the power to suspend the exemption authority of any tour operator, without hearing, if it finds that such action is necessary in order to protect the rights of the traveling public.

#### Subpart B—Conditions and Limitations

#### [§ 12,658]

**§ 378.10 Requirement of a Statement of Authorization.** No inclusive tour or series of tours scheduled to commence on or before December 31, 1968, shall be operated, nor shall any tour operator sell or offer to sell, solicit, or advertise such tour or tours, unless there shall be in effect a Statement of Authorization issued by the Board authorizing the specific tour or series of tours.

[§ 378.10 as amended by Amendment No. 4, effective August 15, 1967, 32 F. R. 11986.]

#### [§ 12,659]

**§ 378.11 Procedure for obtaining a Statement of Authorization.** (a) Applications for a Statement of Authorization shall be filed with the Civil Aeronautics Board (Di-

rector, Bureau of Operating Rights) jointly by the supplemental air carrier and the prospective tour operator at least 90 days in advance of the date of commencement of the proposed tour or series of tours. If a series of tours is to be operated for one tour operator pursuant to one charter contract, the application may cover the entire series, provided that the elapsed time between the commencement of the first tour and the completion of the last tour shall not be more than 180 days. Late filing of the application will not be permitted except for good cause shown.

(b) The application shall be signed by a duly authorized officer of both the supplemental air carrier and the tour operator and shall include the Statement of Tour Operator's Qualifications and the Tour Prospectus.<sup>1</sup> In the event of any change in the facts as reflected in the application, an amended application shall be filed no later than five (5) days following such change.

(c) Copies of the application shall be served upon each direct air carrier certificated to provide passenger service between any of the points involved in the proposed tour or tours, and on such other persons as the Board may require, and proof of such service shall accompany the application as provided in § 302.8 of this chapter. Answers to the application may be filed by interested persons no later than 10 days thereafter and shall conform to the requirements of § 302.1022(a) and (b) of this chapter.

(d) If the Board finds that the proposed tour or tours comply with the requirements of this regulation and that the tour operator applicant is properly qualified, it will issue a Statement of Authorization for the conduct of the tour or tours set forth in the application. Among the factors which the Board will consider in determining whether the tour operator applicant is properly qualified to engage in the proposed tour operation are its financial resources, prior experience in the transportation business, and any other information bearing upon the ability of the applicant to perform successfully the proposed operations. The Statement of Authorization may be conditioned or limited by the Board in order to assure compliance with the requirements of this regulation.

(e) Deviations from the tour or tours authorized by the Board may not be made

without Board permission except where they are compelled by circumstances beyond the control of the carrier or tour operator and there is insufficient time to request Board permission therefor.

[§ 378.11 as amended by Amendment No. 1, effective May 13, 1966, 31 F. R. 6621.]

[¶ 12,660]

§ 378.12 Statement of Tour Operator's Qualifications. The Statement of Tour Operator's Qualifications shall be in the form set forth in the appendix. A tour operator who has filed a Statement of Tour Operator's Qualifications in connection with one application may, with respect to subsequent applications, file a statement to the effect that the facts contained in his previously filed Statement of Qualifications have not changed, except as set forth in the later statement.

[§ 378.12 as amended by Amendment No. 1, effective May 13, 1966, 31 F. R. 6621.]

[¶ 12,661]

§ 378.13 Tour Prospectus. The Prospectus shall include copies of the charter contract, the contract between the tour operator and tour participants, and the tour operator's surety bond, and shall contain the following information:

- (a) Name and address of the tour operator;
- (b) The proposed date and time of each flight;
- (c) Equipment to be used, including the aggregate number of each type of aircraft and capacity;
- (d) The tour itinerary, including hotels (name and length of stay at each), and sightseeing or other arrangements, if any;
- (e) The tour price per passenger;
- (f) The number of persons expected to participate in the tour;
- (g) Charter price of the aircraft;
- (h) The individually ticketed air fare, computed as provided in § 378.2(b)(4);
- (i) Samples of solicitation material proposed by the tour operator (all sales advertising and solicitation materials employed by the tour operator shall state the name of the supplemental air carrier to be utilized).

<sup>1</sup> Whoever, in any matter within the jurisdiction of any department or agency of the United States, knowingly and willingly falsifies, conceals or covers up by any trick, scheme or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or

makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both. Title 18, U. S. C., § 1001.

## [¶ 12,662]

§ 378.14 **Charter contract.** The charter contract between the tour operator and the supplemental carrier shall evidence a binding commitment on the part of the carrier to furnish the air transportation required for the tour or tours covered by the contract.

## [¶ 12,663]

§ 378.15 **Tariffs to be filed for charter trips.** No supplemental air carrier shall perform any charter trips for inclusive tours unless such air carrier shall have on file with the Board a currently effective tariff showing all rates, fares, and charges for such charter trips and showing the rules, regulations, practices, and services in connection with such transportation.

## [¶ 12,664]

§ 378.16 **Surety bond.** (a) Except as provided in paragraph (b) of this section, the tour operator shall furnish a surety bond in an amount of not less than twice the amount of the charter price for the air transportation to be furnished in connection with such tour: *Provided, however,* That the liability of the surety to any tour participant shall not exceed the tour price.

(b) The supplemental air carrier and the prospective tour operator may elect, in lieu of furnishing a surety bond as provided under paragraph (a) of this section, to comply with the requirements of subparagraphs (1) and (2) of this paragraph as follows:

(1) The tour operator shall furnish a surety bond in a minimum amount of \$10,000 per flight up to a maximum amount of \$100,000 for a series of 10 or more flights, for the protection of the tour participants, the bond to continue in effect until completion of the tour or series of tours: *Provided, however,* That the liability of the surety to any tour participant shall not exceed the tour price.

(2) The supplemental air carrier and tour operator shall enter into an agreement with a designated bank, the terms of which shall include the following: (i) Each tour participant shall pay for his deposit and subsequent payments comprising the tour price only by check or money order payable to such bank which shall maintain a separate account for each tour; *Provided, however,* That if the tour participant makes a cash deposit, the tour operator or travel agent who receives such cash deposit shall forthwith remit to the designated bank a check for the full amount of the deposit without deduction of commission; (ii) the bank shall not pay the supplemental air carrier the charter price

for the transportation earlier than two banking days preceding the scheduled day of departure of the originating or returning flight, upon certification of the departure date by the supplemental air carrier; (iii) the bank shall reimburse the tour operator for refunds made by the latter to the tour participant upon written notification from the tour operator; (iv) if the tour operator or the supplemental air carrier notifies the bank that a tour has been canceled, the bank shall make the applicable refunds directly to the tour participants; and (v) except as provided in subdivision (iii) of this subparagraph, the bank shall not pay any funds from the account to the tour operator prior to 2 banking days after completion of each tour, when the balance in the account shall be paid to the tour operator, upon certification of the completion date by the supplemental air carrier. As used in this subparagraph, the term "bank" includes a bank, savings and loan association, or other financial institution insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(c) The bond required under paragraphs (a) and (b)(1) of this section shall insure the financial responsibility of the tour operator and the supplying of the transportation and all other accommodations, services, and facilities in accordance with the contract between the tour operator and the tour participants, and shall be in the form set forth in the appendix attached to Part 378. Such bond shall be issued by a reputable and financially responsible bonding or surety company which is legally authorized to issue bonds of that type in the State in which the tour originates. For purposes of this section, the term "State" includes any territory or possession of the United States, or the District of Columbia. The Board will consider that a bonding or surety company is prima facie qualified under this section if such company's surety bonds are accepted by the Interstate Commerce Commission under 49 CFR 174.8, and if such company is listed in Best's Insurance Reports (Fire and Casualty) with a general policyholders' rating of "A" or better. If the bond does not comply with the requirements of this section, or for any reason fails to provide satisfactory or adequate protection for the public, the Board will notify the supplemental air carrier and the tour operator, by registered or certified mail, stating the deficiencies of the bond. Unless such deficiencies are corrected within the time set forth in such notification, the subject tour or tours shall in no event be operated.

(d) The bond required by this section shall provide that unless the tour participant files a claim with the tour operator within sixty (60) days after completion of the tour, the surety shall be released from all liability, under the bond to such tour participant. The contract between the tour operator and the tour participant shall contain notice of this provision.

[§ 378.16 as amended by Amendment No. 5, effective March 23, 1968, 33 F. R. 3273.]

[§ 12,655]

§ 378.17 **Contract between tour operators and tour participants.** Where each participant in a tour receives the same accommodations, land tours, etc., the contract between the tour operator and the tour participants shall be the same. Contracts between tour operators and tour participants shall include provisions concerning the following matters:

- (a) Method of payment, e. g., installment payments;
- (b) Refunds in the event of the tour's cancellation or the passenger's change in plans;
- (c) Carriers' liability limitations for passengers' baggage;
- (d) Aircraft equipment substitutions;
- (e) Seating accommodations; and
- (f) Nonperformance of tour because of insufficient number of participants.
- (g) Unless the tour participant files a claim with the tour operator within sixty (60) days after completion of the tour, the surety shall be released from all liability under the bond to such tour participant (see § 378.16(d)).

[§ 378.17 as amended by Amendment No. 5, effective March 23, 1968, 33 F. R. 3273.]

[§ 12,666]

§ 378.18 **Procedure applicable to periods on or after January 1, 1969.** (a) No inclusive tour or series of tours scheduled to commence on or after January 1, 1969, shall be operated, nor shall any tour operator sell or offer to sell, solicit, or advertise such tour or tours, unless there is on file with the Board a Tour Prospectus satisfying the requirements of § 378.13. If a series of tours is to be operated for one tour operator pursuant to one charter contract, the Prospectus may cover the entire series, provided the elapsed time between the commencement of the first tour and the completion of the last tour shall not be over 180 days. The Tour Prospectus shall be filed

at least 60 days before the commencement of the tour or tours. Late filing of the Prospectus will not be permitted except for good cause shown.

(b) In the event of any change in the facts as reflected in the Prospectus, an amended Prospectus shall be filed no later than five (5) days following such change. Deviations from the Tour Prospectus, or the amended Prospectus, may not be made except where they are compelled by circumstances beyond the control of the carrier or tour operator and there is insufficient time to file an amended Prospectus.

[§ 378.18 as amended by Amendment No. 1, effective May 13, 1966, 31 F. R. 6621; Amendment No. 4, effective August 15, 1967, 32 F. R. 11986.]

**Subpart C—Post Tour Reporting Requirements**

[§ 12,667]

§ 378.20 **Post tour reporting.** (a) Within 30 days after completion of a tour or in the case of a series of tours, the last of the series, the supplemental air carrier and tour operator shall jointly file with the Board (Supplementary Services Division, Bureau of Operating Rights) a post tour report. This report shall indicate whether or not the tours as authorized hereunder were, in fact, performed. To the extent that the operations differed from those authorized under § 378.11 or described in the Prospectus filed under § 378.18, such differences shall be fully detailed including the reasons therefor. However, the making of such an explanation shall not of itself operate as authority for or excuse any such deviation.

(b) The supplemental air carrier shall promptly notify the Board regarding any tours covered by a Statement of Authorization, or a Tour Prospectus filed under § 378.18, that are later canceled.

[§ 378.20 as amended by Amendment No. 1, effective May 13, 1966, 31 F. R. 6621.]

**Subpart D—Miscellaneous**

[§ 12,668]

§ 378.30 **Waiver.** A waiver of any of the provisions of this regulation may be granted by the Board upon its own initiative, or upon the submission by a supplemental air carrier of a written request therefor, provided that such a waiver is in the public interest and it appears to the Board that special or unusual circumstances warrant

a departure from the provisions set forth herein.

[§ 12,669]

§ 378.31 Enforcement. In case of any violation of the provisions of the Act, or this part, or any other rule, regulation, or order issued under the Act, the violator may be subject to a proceeding pursuant to sections 1002 and 1007 of the Act before the Board or a U. S. District Court, as the case may be, to compel compliance therewith, to civil penalties pursuant to the provisions of section 901(a) of the Act, or, in the case of willful violation, to criminal penalties pursuant to the provisions of section 902 (a) of the Act; or other lawful sanctions.

NOTE: The reporting requirements contained herein have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

[§ 12,670]

[Verification form deleted by Amendment No. 1, effective May 13, 1966, 31 F. R. 6621.]

[§ 12,671]

Statement of Tour Operator's Qualifications Under Part 378 of the Special Regulations of the Civil Aeronautics Board (14 CFR Part 378)

1. Identification of tour operator applicant:

(a) Name: .....

(b) Trade names: .....

(c) Name in which applicant wishes to be issued the Statement of Authorization: .....

2. Address of principal office: .....

3. Mailing address: .....

4. Form of organization:  Corporation;  Partnership;  Sole Proprietorship;  Other (Specify): .....

5. State in which incorporated or under whose laws company is authorized to operate: .....

6. Date of incorporation or formation of company: .....

7. Full name, address, title, citizenship (country) and percent of stock or other interest of officers, owners, or members of applicant, and owners of more than 5 percent of outstanding stock of corporation or owners of more than 5 percent of company if other than corporation: .....

8. Full name, address, citizenship (country) and percent of stock or other interest of directors of applicant: .....

9. Percent of voting interest owned or controlled by citizens of the United States or one of its possessions:  75 percent or more;  Less than 75 percent.

10. If more than 5 percent of applicant's stock is held by a corporation, percent of voting interest in such corporation owned or controlled by citizens of the United States or one of its possessions:  75 percent or more;  Less than 75 percent.

11. Description of current business activities and length of time engaged therein: .....

12. Description of previous business experience related to transportation activities and dates engaged therein: .....

13. Kind of operating authority (such as broker, surface or air freight forwarder, motor carrier, ocean freight forwarder, etc.) issued to applicant by the U. S. Government, including (a) permit, registration or certificate number, or other evidence of registration, (b) issuing agency, and (c) effective dates of license held: .....

14. Has any operating authority or registration included in item 13, above, been revoked, canceled, suspended or otherwise terminated?  Yes  No

If "yes," give reasons: .....

15. Description of previous business experience of applicant's officers, managers and key personnel in air transportation or other transportation: .....

16. State any additional information or comments as desired in support of the application: .....

17. Give a brief account of any arrangement through which applicant will have available to it the financial resources and facilities of other companies or individuals: .....

18. Submit with this statement, in duplicate, the most recent balance sheet of applicant. Use footnotes to explain items fully, in order to avoid time-consuming correspondence for explanation of balance sheet entries.

[§ 12,672]

**Tour Operator's Surety Bond Under Part 378 of the Special Regulations of the Civil Aeronautics Board (14 CFR Part 378)\***

Know all men by these presents, that we

.....  
(Name of tour operator)

of .....  
(City) (State)

as Principal (hereinafter called Principal), and ..... a corpora-

(Name of Surety)  
tion created and existing under the laws of the State of ..... as Surety (here-

(State)  
inafter called Surety) are held and firmly bound unto the United States of America in the sum of ..... for  
(See § 378.16 of Part 378)

which payment, well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Whereas the Principal intends to become a tour operator pursuant to the provisions of Part 378 of the Board's Special Regulations and other rules and regulations of the Board relating to insurance or other security for the protection of tour participants, and has elected to file with the Civil Aeronautics Board such a bond as will insure financial responsibility and the supplying of transportation and other services subject to Part 378 of the Board's Special Regulations in accordance with contracts, agreements, or arrangements therefor, and

Whereas this bond is written to assure compliance by the Principal as an authorized tour operator with Part 378 of the Board's Special Regulations, and other rules and regulations of the Board relating to insurance or other security for the protection of tour participants, and shall inure to the benefit of any and all tour participants to whom the Principal may be held legally liable for any of the damages herein described.

Now, therefore, the condition of this obligation is such that if the Principal shall pay or cause to be paid to tour participants

any sum or sums for which the Principal may be held legally liable by reason of the Principal's failure faithfully to perform, fulfill, and carry out all contracts, agreements, and arrangements made by the Principal while this bond is in effect for the supplying of transportation and other services pursuant to and in accordance with the provisions of Part 378 of the Board's Special Regulations, then this obligation shall be void, otherwise to remain in full force and effect.

The liability of the Surety with respect to any tour participant shall not exceed the tour price (as defined in Part 378 of the Board's Special Regulations) paid by or on behalf of such participant.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penalty of the bond, but in no event shall the Surety's obligation hereunder exceed the amount of said penalty. The Surety agrees to furnish written notice to the Civil Aeronautics Board forthwith of all suits filed, judgments rendered, and payments made by said Surety under this bond.

This bond is effective the .... day of ..... 19...., 12:01 a. m., standard time at the address of the Principal as stated herein and shall continue in force until terminated as hereinafter provided. The Principal or the Surety may at any time terminate this bond by written notice to the Civil Aeronautics Board at its Office in Washington, D. C., such termination to become effective thirty (30) days after actual receipt of said notice by the Board. The Surety shall not be liable hereunder for the payment of any of the damages hereinbefore described which arise as the result of any contracts, agreements, undertakings, or arrangements made by the Principal for the supplying of transportation and other services after the termination of this bond as herein provided, but such termination shall not affect the liability of the Surety hereunder for the payment of any such damages arising as the result of contracts, agreements, or arrangements made by the Principal for the supplying of transportation and other services prior to the date such termination becomes effective. Liability of the Surety under this bond shall in all events be limited only to a tour participant or tour participants who shall within sixty (60) days after the termination of the

\* As amended by Amendment No. 5, effective March 23, 1968, 33 F. R. 3273.

particular tour described herein give written notice of claim to the tour operator and all liability on this bond shall automatically terminate sixty (60) days after the termination date of the particular tour covered by this bond except for claims filed within the time provided herein.

In witness whereof, the said Principal and Surety have executed this instrument on the ..... day of ..... 19.....

PRINCIPAL

Name .....

By .....

(Signature and title)

Witness .....

SURETY

Name ..... [SEAL]

By .....

(Signature and title)

Witness .....

Only corporations may qualify to act as surety and they must establish to satisfaction of the Civil Aeronautics Board legal authority to assume the obligations of surety and financial ability to discharge them.



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MINISTRY OF AVIATION

Fifth Report of  
Air Transport Licensing Board

(FOR YEAR ENDED 31st MARCH, 1965)

*Presented to Parliament in Pursuance of Section 8(2) of the  
Civil Aviation (Licensing) Act, 1960.*

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*Ordered by The House of Commons to be printed  
27th July, 1965*

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### INCLUSIVE TOUR CHARTERS

10. One matter of procedure arising from the Minister's Statement concerns the handling of applications by British operators for inclusive tour charter services on holiday routes. At the end of the year under review, we had received no formal request from the Minister to consider the simplification and expedition of our procedures in this field; but this question had in any event been engaging our attention for some considerable time.\*

11. In 1961, when we first addressed ourselves to the licensing of inclusive tours, we were confronted with two rival theories. The theory of the charter companies was that I.T. charters not only catered for people who were not prepared to meet the cost of holidays based on scheduled service rates, but also had the effect, because of the especially economical facilities offered, of attracting others to air travel for the first time. Many of the latter, having been introduced to air travel in this way, would become air-minded and therefore more likely in future to use the scheduled air services as a normal means of travel in preference to rail or boat services. So far therefore from diverting traffic from the scheduled carriers, the charter operators were in the long run conferring a positive benefit upon them by providing an ever-expanding market for their services. The theory of B.E.A., on the other hand, has consistently been that it is obvious that the charter services, operating as they do at peak periods of the year, must inevitably skim off the cream of the holiday traffic which would otherwise accrue to the scheduled services.

12. On our first approach to the problem it appeared to us that to strike the right balance between these opposing views was a matter of some nicety (see paragraph 22 of our first Report). But after four years' experience of the interaction of the two types of traffic, we can find no evidence that inclusive tours have been responsible for any material diversion of traffic from the scheduled carriers. On the contrary, B.E.A.'s total passenger traffic continues to grow at much the same rate as before the inclusive tour charter traffic reached its present proportions.

13. It may be that no major change in procedure will prove necessary. We were glad to see the Minister's statement that it is not in his view desirable to apply restrictions to inclusive tour services. Our decisions on applications for the services in 1965, with marginal variations of emphasis in the light of the evidence presented in respect of the several routes, clearly convey the same general view. One of the most time-consuming elements in previous hearings of these applications has been the repetitive cross-examination addressed by scheduled service operators to witnesses supporting individual applications even though the objectors conceded that their real objection was to the total of capacity applied for to particular destinations rather than to the individual applications as such. We do not seek to deny to the objectors any of their rights under the procedure laid

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\*Note: The Minister's request was conveyed to us on 8th April, 1965.

down, but we think that, against the background of our accumulated experience, they may well reconsider the substance of their objections, or at any rate find a less onerous way of presenting their views to us. We shall review this question again in the light of experience of the 1965 hearings.

#### AMENDMENT OF APPLICATIONS

14. There are one or two more general matters of procedure on which we desire to comment in this Report. We alluded in last year's Report to the limits of our willingness to accept amendments to applications in the course of a hearing. The tendency to submit substantial amendments in this way has persisted in some degree, and we re-affirm our determination that any such amendments which in our opinion widen materially the scope of the application or change its character will not be accepted at a hearing.

#### PRESENTATION OF APPLICATIONS AND OBJECTIONS

15. We have also noted on occasion a regrettable lack of clarity and definition in both the reasons advanced for applications, and in the written grounds of objection. We recognise that the case for an application can seldom be presented comprehensively on an application form; and that, in framing his grounds of objection in writing, an objector can have regard only to that amount of detail of an application that is published in our Licensing Notices. We appreciate also that additional grounds of objection, and additional counter-arguments in defence of an application, can and often do arise during the course of a hearing. By no means, therefore, do we expect that the respective written submissions will necessarily embrace all the factors involved. But that is no reason why, as sometimes happens, virtually no reasons are advanced in the application form for the submission of the application; or, in the case of objections, little or no attempt is made to state the specific grounds on which the objection is based. We, and potential objectors, are entitled to know ab initio what purpose a proposed service is intended to serve. Similarly, in the case of objections, a mere reproduction of all the possible grounds of objection arising from Section 2 (2) of the Act may leave a comfortable freedom of selection on the day, but is patently unfair to the applicant and not helpful to us.

16. It is our view that the requirements of the normal procedure, in asking for a concise indication, in the case of applications, of the existing or potential need or demand for the proposed service and a concise statement, in the case of objections, of the grounds on which the objection is based are essentially reasonable; and we cannot be expected to countenance non-compliance with these requirements which, in the generality of cases, seems to result not so much from any intrinsic difficulty as from an absence of any real effort to comply. In voicing this criticism we should like to make it clear that it is only a minority of cases to which reference is intended; and we do not mean to imply that, for the most part, applicants and objectors do not co-operate fully in facilitating the discharge of our task.

#### "DUPLICATE" APPLICATIONS

17. During the year we heard a small number of applications for inclusive tour services which virtually duplicated applications we had already refused and were therefore, in effect, appeals against our decisions. In two cases, for special reasons, we granted the later applications; and, if only on this account, we can

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MINISTRY OF AVIATION

Sixth Report of  
Air Transport Licensing Board

(FOR YEAR ENDED 31st MARCH, 1966)

*Presented to Parliament in Pursuance of Section 8(2) of the  
Civil Aviation (Licensing) Act, 1960*

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*Ordered by The House of Commons to be printed  
29th July 1966*

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#### INCLUSIVE TOUR CHARTERS

20. We have continued to follow an increasingly liberal policy in the granting of licences for Inclusive Tours. In paragraphs 11 and 12 of our Fifth Report we described how we had over the years come to the conclusion that there was no evidence that Inclusive Tours had been responsible for any material diversion of traffic from the scheduled carriers. In the light of this conclusion we did not think it necessary to impose in 1965, as we had done in previous years, any limit on the capacity we granted for the operation of Inclusive Tours in the summer of 1966, provided that we were satisfied that a need and demand existed and that the applicant airline and his associated tour organiser or organisers were capable of carrying out the programme they described to us.

21. As a result of this liberal policy, and the energy and initiative of airlines and tour organisers, there has been a remarkable growth (shown in Table 1 below) in this kind of traffic during the five years of this Board's existence.

22. We also referred in our last Report to the procedure for handling the many hundreds of applications for such services that we receive each year. We are grateful to objectors who have facilitated this task by presenting their views in a far less time-consuming manner. We have every confidence that if this co-operation is continued we shall be able to deal even more expeditiously with these applications in 1966. We have simplified the procedure for reporting the results achieved on services licensed for the current year and associating these with applications to operate similar services in 1967. We do not expect that there will be many objections to applications for licences for the virtual repetition of established operations, and we should therefore be able to dispose of these with the minimum of formality.

TABLE 1  
*Inclusive Tour Charter Passengers*  
*Summer Seasons 1961-1965*

	<i>Outward Passengers Carried</i>		
	<i>All airlines</i>	<i>U.K. airlines</i>	<i>Foreign airlines</i>
	<i>Thousands</i>		
1961 .. .. .	295	225	70
1962 .. .. .	352	222	130
% increase over 1961	+20%	- 1%	+87%
1963 .. .. .	441	261	180
% increase over 1962	+25%	+18%	+38%
1964 .. .. .	592	397	195
% increase over 1963	+34%	+52%	+ 8%
1965 .. .. .	744	555	188
% increase over 1964	+26%	+40%	- 3%

Source: Ministry of Aviation

23. This should go some way towards meeting the view sometimes expressed that licences for Inclusive Tour operations should be granted for a longer period than one year, because a presumption will be established that the continuation of successful operations will not be frustrated by any refusal on our part to grant the necessary licences. We have no objection in principle to granting Class B licences for Inclusive Tours for a period of more than one year, and we are prepared to do so whenever satisfactory assurances of continuity of operation over the longer period are provided. But, as we pointed out in paragraph 100 of our Fifth Report, there is little point in our considering applications for licences extending over a period of years if the relationship between the air operator and the tour organiser is such that they cannot even produce evidence of firm arrangements in respect of the first year's programme.

24. The duration of Inclusive Tour licences was raised with us during the year under review in a representation made under Section 4 of the Act by the British Independent Air Transport Association Ltd. This representation was primarily concerned, however, with the question of minimum tariffs for Inclusive Tour holidays. It has been our general practice hitherto to prescribe Standard Tariff Provision I. This requires in effect, that the charge for an Inclusive Tour holiday using air transport shall not be less than the lowest fare that would have to be paid by an ordinary member of the public wishing to travel by scheduled service to the same destination on the same date and at the same time of day. The B.I.A.T.A. representation urged that this rule was too restrictive, and that in certain cases, particularly winter holidays, a relaxation would enable a large new market to be developed, to the benefit not only of the airlines but also of those who, for the first time, would be able to

afford a holiday in, for example, the Mediterranean area. The Association contended that Inclusive Tour operations and normal scheduled services catered for distinct traffic-generating markets, and that Provision I should be applied only where it could be demonstrated that any concession would result in a material diversion of traffic from an established scheduled service.

25. It was evident to us that this was a point of view that would not receive universal acceptance, and we therefore thought it right that all interested persons should be given an opportunity of expressing their views. Therefore with the agreement of the Ministry of Aviation—the Minister having ultimate authority over international fares—we published the B.I.A.T.A. representation in our official record (Civil Aviation Licensing Notices) and invited written evidence relating to the matters raised in the representation or directed towards a number of relevant matters.

26. We received in response to this invitation a considerable number of replies, expressing a wide divergence of views. These we are now considering, and we expect to be able very shortly to report to the Minister, as required by the Act, our conclusions and any recommendations we may think it expedient to make.

#### SUBMISSION OF APPLICATIONS

27. Regulations 4 and 5 require that applications for the grant, revocation suspension or variation of licences, or for the variation of the United Kingdom Domestic Air Tariff, shall be served on the Board not less than a specified period, in the more important cases six months, before the date on which the licence, revocation, suspension or variation is intended to come into effect.

28. Regulation 4 also provides that we may, if we think fit, consider an application notwithstanding the fact that the prescribed notice has not been given. When we first took up our duties, and our procedures were unfamiliar, we thought it right to be generous in the exercise of this discretion. We have continued to show the same forbearance even though this situation no longer exists. In the last year however this has led to a growing disregard for these provisions, and by the end of the year the number of late applications, on which applicants expected an early decision, became such that our administrative procedures were disrupted and applications submitted in accordance with the Regulations were being delayed.

29. We therefore wish it to be known that from now on we shall expect a stricter compliance with paragraphs (4) to (6) of Regulation 4, and that applications that do not give the prescribed period of notice may not be accepted for consideration.

30. We shall still be prepared to exercise our discretion under paragraph 7 of Regulation 4 in cases where the applicant can show that he was unable, for reasons beyond his control, to make his application earlier, and that the public interest requires an early decision. Where we are satisfied that the case is one where our discretion should properly be exercised we shall hear and decide the application as quickly as possible; but we can give no undertaking that applications so accepted will be decided by a particular date, or given precedence over others that have been submitted in accordance with the Regulation.

# Air Transport Licensing Board

Seventh Report

*for the year ended*

31st March 1967

*Presented pursuant to Section 8(2) of the Civil  
Aviation (Licensing) Act 1966*

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*Ordered by the House of Commons to be printed  
27th July 1967*

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SECTION 3  
Inclusive Tour Charters

**General**

40. While the general pattern of inclusive tour operations in 1966 showed little change from that of the preceding year, it will be seen from Table 3 below that the growth trend of summer traffic noted in our sixth report was not merely maintained but moved sharply upwards, particularly in respect to carryings by United Kingdom airlines.

TABLE 3  
Inclusive Tour Charter Traffic  
(outward passengers carried)  
Summer seasons: 1961 to 1966

	(thousands)		
	<i>All airlines</i>	<i>UK airlines</i>	<i>Foreign airlines</i>
1961	295	225	70
1962	352	222	130
increase or decrease	+ 20%	- 1%	+ 87%
1963	441	261	180
increase or decrease	+ 25%	+ 18%	+ 38%
1964	592	397	195
increase or decrease	+ 34%	+ 52%	+ 8%
1965	744	555	188
increase or decrease	+ 26%	+ 40%	- 3%
1966	1,090	898	192
increase or decrease	+ 47%	+ 62%	+ 2%

*Source: Board of Trade*

41. We continued to follow a liberal policy in granting licences for these tours and were assisted in our procedures by most applicant airlines and associated tour organisers both by the orderliness of their applications and by the detail of their reports of results achieved and expected on services being operated during the 1966 summer season. We were thus able to grant almost half the applications submitted without the need for a public hearing, and to dispose of the remainder during 16 days of main hearings, compared with 25 in 1965 and 35 in 1964, for both winter and summer season applications.

42. We have studied possible means of reducing still further the time taken in considering inclusive tour applications, and also the number of appearances before us of applicants and tour organisers. We examined whether we might not achieve these aims by grouping applications under tour organisers rather than under areas of destination, but we concluded that this would mean holding up our decisions until the complete programme of hearings had been completed. We are well aware of the tour organisers' need to know our decisions at the earliest opportunity, and with our present procedure we are able to issue these fairly soon after the hearings of each regional group of applications. We concluded that tour organisers would not wish us to delay our decisions, even at the gain of a few less attendances at hearings, and for at least our next programme we decided to continue our existing practices. We shall however deal with inclusive tour applications speedily, whenever possible granting them without a public hearing; we shall be assisted in this if applications and reports of the current season's operations are submitted promptly and in clear and correct detail.

#### **Duration of licences**

43. Despite our previous comments about the duration of Class B licences\* for inclusive tours (fifth report, paragraph 100: sixth report, paragraphs 22 and 23), we still receive applications for licences for periods of more than one year, usually on the grounds that a longer term licence would provide the tour organiser with a more secure foundation for the negotiation of his forward programme. But we have not yet been provided with evidence of the firm arrangements between air operator and tour organiser that we consider necessary if we are to reconsider our attitude in this matter. Nor do we feel that the absence of a longer term licence need embarrass any tour organiser, since he can expect with confidence the grant of any licence for the virtual repetition of an established operation.

#### **Advertisement prior to grant of licences**

44. We have from time to time remarked on defects in certain tour organisers' publicity about operations for which air service licences are required. These usually take the form of an omission to note in their brochures that certain operations advertised are subject to our granting a licence, or vague statements that flights are subject to Government approval. We appreciate that final preparation of these brochures cannot always be delayed until after the receipt of our decisions on some applications, but in these circumstances the public should be warned of the conditional nature of the tours offered. We have suggested in our official record that in such cases an appropriate insertion should be made in the brochure as follows:

Bookings for these holidays involving charter flights are accepted subject to the grant of licences by the Air Transport Licensing Board, to whom applications have been made.

45. We take an even more serious view of one instance which came before us in March 1967. The tour organiser had advertised and accepted substantial bookings for summer 1967 holidays involving daytime flights at prices based

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\* Definitions of the classes of air service licences are shown at Appendix 'D'.

THE SUPPLEMENTAL CARRIERS HAVE EFFECTIVELY PROMOTED  
PRICE COMPETITION TO THE GREAT ADVANTAGE OF THE  
TRAVELING PUBLIC

It is interesting to record the leadership which has been exhibited by the supplemental air carriers in price competition over the past several years and the extent to which their operations have served as a competitive spur to the large route carriers. Examples of this leadership are enumerated below. Taken together, they effectively demonstrate the contribution which the small supplemental segment of the industry has made to the traveling public.

A. Air Coach

In its 1955 decision in the Large Irregular Air Carrier Investigation, 23 C. A. B. 838, the Board made the following statement at page 860:

"Aside from helping to meet the immediate travel needs of the public, the irregular air carriers have played a significant role as innovators in air transportation. It was they who made an invaluable contribution to air transportation by risking their own capital to pioneer in and develop the field of low-cost coach-type air transportation. And it was largely as a result of such successful experimentation, that the certificated trunkline carriers became active participants in this field. This has made air transportation available to travelers who could not afford first-class accommodations." (Emphasis added.)

Today air coach travel represents 80% of total air travel. This is a market originated by the supplementals over the strong objections of the trunklines whose current prosperity can in large part be attributed to the fact that they misjudged the need to lower the cost for air transportation.

### B. Transatlantic Charters

In 1962 the Board approved the IATA Group Fare Agreement which provided that affinity groups of 25 or more persons could travel on scheduled economy jet service at a reduction of 38% from the regular economy fares. This new fare was a direct competitive response to the growing volume of charter services operated by the supplemental carriers in the transatlantic market. Following its introduction, the trunklines argued in the Transatlantic Charter Investigation that there was no longer any need for certificated charter carriers. The Board found otherwise and reached the following interesting conclusion:

"The certification of transatlantic charter specialists should not only provide a stimulus to the IATA carriers to develop a fare structure directed at developing a mass market; such certification will help to assure the continued provision of low cost air transportation in the seasonal transatlantic market, whatever course scheduled individually ticketed fares should take." (Emphasis added.)

The subsequent record proved the wisdom of this ruling because the charter business of the scheduled carriers, as well as the supplementals, has expanded without interruption, as shown in the following table:

GROWTH OF TRANSATLANTIC CHARTER TRAFFIC  
1961 - 1967

<u>Year</u>	<u>U.S. Route Carriers</u>	<u>U.S. Supplemental Carriers</u>
1961	26,048	37,203
1962	17,791	48,827
1963	9,865	31,676
1964	10,684	56,991
1965	22,199	84,040
1966	38,857	138,696
1967	92,620	239,686

Source: CAB Statistics, Release 68-8 Feb. 12, 1968

C. Inclusive Tour Charters

The impact in the transatlantic area was described in the following comments as quoted from the New York Times, January 1, 1967:

"Some observers here felt that the C. A. B. had forced I. A. T. A. 's hand, and that the scheduled airlines either would have to produce a competitive fare or face the prospect of losing customers to the supplementals. With new, larger jets in the offing, they argued, the major carriers could not afford to ignore the I. T. C. market.

"This proved to be the case. The I. A. T. A. airlines prodded by Pan American World Airways, which had announced its intention to introduce today a \$230 New York-London non-affinity tour-basing fare, finally agreed on a similar tariff during their recent air-fare talks in Rome.

"I. A. T. A. bought Pan American's \$230 proposal, which also entailed a \$70 minimum for ground services, but fenced it in with peak-season weekend blackouts and a \$50 peak-season surcharge.

"Now, presumably, everyone has what he wanted. The supplementals have overseas I. T. C. authority. The C. A. B. can feel its strategy of last fall paid off in lower fares for the general public. The I. A. T. A. airlines can congratulate themselves on averting an open-rate war, even at the expense of having to produce a fare they had not all wanted."

Meanwhile, there was a similar competitive response in the Pacific where three supplemental carriers had been granted inclusive tour charter authority. In January 1967 the I. A. T. A. operators responded with a new inclusive tour group rate substantially below the then existing affinity group and economy fares.

More recently, the Ministry of Transportation in Japan announced on March 1, 1968 a policy for a sharp reduction in air passenger fares to be put into effect over the next six years. One of the reasons for this policy was to enable the scheduled carriers "to compete with U.S. charter carriers which are transporting group passengers at greatly reduced fares."

Still more recent is the evidence from the Travel Management News Letter of May 28, 1968 (quoted in the text, supra) on the reaction of the scheduled airlines to the Supreme Court decision which has given rise to the need for this present legislative proposal - namely, that the decision would relieve the pressure for lower fares as a consequence of the supplementals' inclusive tour services.

STATEMENT ON THE SUPPLEMENTAL AIRLINES  
BY THE  
DEPARTMENT OF DEFENSE

REMARKS OF  
VINCENT F. CAPUTO  
DIRECTOR FOR TRANSPORTATION AND WAREHOUSING POLICY  
OFFICE OF THE SECRETARY OF DEFENSE  
BEFORE  
NEW YORK SOCIETY OF SECURITY ANALYSTS

21 February 1968  
New York, New York

Now, let us consider the supplementals.

The shakey - struggling, gooney-bird irregulars are now the reliable, thriving, jet-powered supplementals.

They forged themselves in the heat of competition and the fever of conflict. Their safety record is as superb as their tension-tested performance. They get glowing campaign stars for Korea, Berlin, Cuba and Vietnam.

No prose can equal the accomplishment of these Pros.

Over 55% of their more than \$275-300 million business is with the military. And they have reacted swiftly, reliably and commendably to Defense urgencies. Our government has not offered subsidy, but it has given stability to these air carriers. They are certificated by the CAB; offered incentive opportunity by the DoD; and assisted with other forms of International Transport in the growing facilitation of trade efforts of the DOT and the U. S. Travel Service.

The supplementals have put their own balance in the balance of payments scales. For every U. S. citizen transported outside the United States, they have just about imported one foreign traveler.

The scheduled airlines, the industry giants, have been taking giant strides. The industry has been on an average heady binge - a frothy 16% yearly increase in traffic (compounded annually). Last year they had a whopping 29 percent surge. In five years - from 1967 to 1971 - they will spend over \$8 billion for over 1100 aircraft. This is private investment in our national welfare. And let's face it: the needs of potential warfare.

In our time-sensitive world, the scheduled airlines are masterful in coping with unscheduled events.

The supplemental, as the other airlines, face three "X" factors, offset by three others. They face the 1) technology of the container, 2) the taxation of the traveler, and 3) the imponderable of international strife. To counteract these X factors they have 3 known factors in their favor, 1) new, bigger, faster aircraft, 2) history of growth, and 3) the ingenuity of their enterprise.

Mr. FRIEDEL. Thank you, Mr. Cramer, for a very fine statement. It has a lot of information in it which is very revealing. I gather that you heard the testimony this morning that H.R. 17685 goes further than your present authority calls for. Why do you ask for more?

Mr. CRAMER. We have asked only that the judicial impasse that has been reached, be corrected, and that the Civil Aeronautics Board authority be reaffirmed so that they can decide what a supplemental air carrier could do.

We heartily endorse the Civil Aeronautics Board amendment to the bill and believe that just as they are able to award major routes throughout the world, as they are presently doing in the transpacific case, they can certificate all cargo carriers, they should have authority to determine the role of a supplemental airline.

It would be our intention that this bill leave that power with the Civil Aeronautics Board, it does not add anything beyond what they presently have.

Mr. FRIEDEL. If it is the decision of this subcommittee to recommend a bill would you be satisfied with the status quo?

Mr. CRAMER. We would be satisfied with the Civil Aeronautics Board's wording, which we think quite adequately describes what their authority should be, and their role—

Mr. FRIEDEL. In other words, the amendment recommended by the CAB—

Mr. CRAMER (continuing). We believe would maintain the status quo. We believe that this maintains the status quo and merely clarifies that the Civil Aeronautics Board has the power to determine what a chartered trip is and that they should maintain that authority.

Mr. FRIEDEL. In the event we do not pass a bill, would the foreign supplemental air carriers have an advantage over the domestic supplemental carriers.

Mr. CRAMER. They would have a very distinct advantage in that they could not only bring foreign inclusive tour passengers to the United States, they also may take inclusive tour charter trips away from the United States.

There would be a very definite adverse affect on the balance of payments. We would not be able to compete in the marketplace with them at all.

Mr. PICKLE. Will the chairman yield on that point?

Mr. FRIEDEL. Yes.

Mr. PICKLE. It seems to me like we do not have any evidence to substantiate whether there would be an increase or deficit in the balance of payments. You have only had authority 2 months, you quote that factor why the CAB's position is inconsistent. On the other hand, you have not had the operation long enough to prove it will or won't. So this argument has not much validity on either side.

Mr. CRAMER. I would point to our testimony in the transatlantic charter market, the affinity charter market, where in 1963 we were carrying only a limited amount in that market, in direct competition with the foreign IATA carriers we were able to increase from 31,000 passengers in 1963 to 239,000 passengers by 1967.

At that time the foreign carriers went from 138,000 passengers to 151,000 passengers. Now, this money is being spent but it is being

spent with the U.S. carrier, not with a foreign-flag carrier. Similarly the foreign inclusive tour authority that we are talking about, we have had the foreign inclusive tour authority since late in 1966 but there has been a pall over us ever since we have received it by all these challenges in court.

We have not had authority to charter to a foreign tour operator until the last 2 months.

Mr. PICKLE. Then we really don't have any facts of a positive nature to prove whether it will or won't other than conjecture based on what foreign carriers have carried.

Mr. CRAMER. We have the very real fact that there are several foreign supplemental carriers who have been granted this authority by the Civil Aeronautics Board and the President. They are promoting this type of business. They are carrying people abroad and they are bringing people this way.

We are being precluded from participating in that market.

Mr. PICKLE. Thank you.

Mr. FRIEDEL. Getting back to your statement, on page 6, the last paragraph, you state:

It is also important to note the dramatic increase in 1967 over 1966 of vacation traffic to Hawaii from states not included on principal trunk line routes.

You further stated:

With a national average increase of 43.5 percent in 1967 traffic to Hawaii over 1966 the increase from North Carolina was 123 percent; West Virginia, 110 percent; Kentucky, 99 percent; and Iowa, 75.9 percent.

Now, can the domestic carriers do that now?

Mr. CRAMER. They could have carried the inclusive tour passengers on their regular services if they had promoted it. This is new business which has been promoted by the tour operators in these areas that are not served directly on a direct flight and made available to people who just wouldn't have had it available to them before.

AITS, the president, Mr. Harold Low, is appearing a little later for the tour operators. He can tell you, I think, pretty specifically how much they have been able to generate in these markets.

Mr. FRIEDEL. In further clarification of inclusive tours, a travel agency comes to a supplemental air carrier and says "I want this tour" and works out an itinerary which has to have at least three stops, at least 7 days, and other requirements, but when they charter his plane the supplemental air carrier is paid whether all seats are sold or not.

Mr. CRAMER. It is paid for by the tour operators for the entire capacity of the aircraft.

Mr. FRIEDEL. That is what he charters it for. Then the operator turns it over to three, four, or five travel agencies to fill up the plane. Is that individual ticketing?

Mr. CRAMER. No, sir; it varies from the individually ticketed service. The tour operator has to set up a complete itinerary. This trip only goes one day. It does not happen every day of the week.

It departs on one day and it must be a minimum of 7 days and all the other limitations that are placed upon it by the Civil Aeronautics Board. The passenger must leave at that time. He must travel with the

group. He must come back with the group. He does not have the alternative of canceling and going some other way unless, of course, he wants to pay the individually ticketed service on a scheduled airline to come back and forfeit whatever he has paid for the inclusive tour.

In contrast with that the individually ticketed services of the scheduled airlines, a man goes down to the ticket counter or he calls up on the phone and he says, "I want to go to San Francisco tomorrow and I want to fly"—so, he selects his time, his airline, whichever one he wants to go on. He does not have to join another group of people. He does not have to come back when that group of people comes back. So he is on an individually ticketed flight.

He does not have the regimentation whatsoever that is placed upon an inclusive tour charter.

Mr. FRIEDEL. Thank you.

I want to recognize the chairman of our full committee, Mr. Staggers, if he has any questions.

Mr. STAGGERS. No, I have no questions. I am just interested in your testimony. I am sorry I was not here to hear the first part of it.

I would like to know who the two gentlemen with you are.

Mr. CRAMER. Mr. Driscoll, president of the National Air Carriers Association, and Mr. Burwell, the attorney for the association.

Mr. STAGGERS. That is all, Mr. Chairman.

Mr. FRIEDEL. Mr. Pickle.

Mr. PICKLE. Mr. Chairman, thank you.

I notice the criteria that the CAB has laid down would appear to require that the supplemental carrier not be exactly a free agent in the ordinary sense of the word as far as schedules are concerned. It is required to have 7 days in length for the tour; is that correct?

Mr. CRAMER. Yes, sir.

Mr. PICKLE. That they have to have at least three stops at least 50 miles apart, and you furnish hotel accommodations.

Mr. CRAMER. Yes, sir.

Mr. PICKLE. And the total be 110 percent of the lowest fare of the scheduled airlines.

Now, you said just a minute ago to the chairman that your man has to be ready to go Monday morning at 10 o'clock with this group. He cannot go the rest of the week. He has to be one specific place at a specific time in contrast to a scheduled carrier.

Yet this advertisement that was presented to us this morning said, "If you don't want to go to Las Vegas, maybe you would be interested in Mexico or Nassau. How about Hawaii? We have one going to all those places almost every day."

If he goes every day he does not have to wait a week or two for the trip. He can go any day; is that correct?

Mr. CRAMER. No; I am afraid he can't go almost every day. He has to have a charter going on the specific day that he would want to go.

Mr. PICKLE. If I were a person living in New York and I remembered this ad, would I not be inclined to believe that I could pick up a phone and whether I went Monday, Tuesday, Wednesday, I could fly? What difference is the appeal to me compared to a person who might go on a scheduled airline.

Isn't that misleading if that is not a factual situation?

Mr. CRAMER. The ad which I saw at the recess here was aimed at groups, I believe, and mainly at affinity charter groups, and indicated the flexibility that the supplemental carriers have, in that if the group desires to go to a location they can choose practically any day they would like and charter that airplane and go there.

Mr. PICKLE. If you save that group that much, it is the same thing as saving the individual that much in the group. It comes out to the same thing. I have no objection to that. When you read an advertisement saying that you can save \$144 apiece, then it seems to me it is a little bit inconsistent with the fact that you have to have all these other criterias met. I wonder if it is really cheaper. It must be or it would not be growing in size, in volume.

Your fare must be 110 percent of the regular fare. Yet, you say the advertisement means chopping the price to one-half of its cost. Now, you are somewhat inconsistent. If you are going to save \$144 apiece, not only out of hand, your total cost has to be 110 percent. Now, is it 110 percent only of the price of ticket?

Mr. CRAMER. The 110 percent is 110 percent of the air fare over the route flown. It must include hotel accommodations, it must include ground transportation, and can include many other amenities and does.

Therefore, the real difference is that there are no firstclass sections on these airplanes. They are completely filled with seats. They are the same spacing as in the coach sections of the regular scheduled airlines. We intermingle our airplanes with a commercial charter one day and military charter the other day. We have an extremely high utilization because we have set ourselves to do this.

We change configurations an average of twice a week on every airplane. As a result, with the additional seats that are in each one of our airplanes we have on a regular DC-8, 180 seats as contrasted to 130 or 135 on a scheduled line.

Therefore, the price does come way down for two reasons. One, there are many more seats and, secondly, our utilization of the equipment is higher. The passenger suffers some inconvenience as a result of this because he cannot choose the desirable time of the day, perhaps, for departure.

He may have to leave at 2 o'clock in the morning. He has to come back with the rest of the group and he does not have the choice of a first-class section, and so forth.

But this is the difference, the difference then on a trip, say, from points in the East to Hawaii and return, if you have comparable facilities, the hotels and the ground transportation, sightseeing and everything being the same, the difference in price will be on the order of \$200 to \$250. With such a large plane in volume you could just cut your price of the ticket down, you give the balance in meals and hotels.

Mr. CRAMER. This is through efficient operation which makes it possible.

Mr. PICKLE. You state on page 17 that "the President's and the Board's action now has been frustrated in the courts. Only the Congress at this stage can preserve the public interest." That is not an unusual phrase these days.

Why is it really necessary that action be taken? Why is it that only Congress can clear this matter up?

Mr. CRAMER. It is our belief that this matter must be cleared up and just reaffirmed what we felt existed before, what the CAB and the President felt existed, that the Civil Aeronautics Board does have the authority to dictate to all carriers what they do.

Mr. FRIEDEL. As I understand it, a stay order has been given until the middle of September. Why is it mandatory that we enact legislation immediately at this session? This matter has only been brought to our attention in the last week or two.

Now, within 60 days or 90 days to the close of the session we have to have legislation and it has to be done this hour. You know legislation is not ordinarily moved along in this manner. It seems to me that we have a case before the courts. The courts have yet to resolve the question.

Mr. CRAMER. I think I can probably answer that pretty well but am going to let Mr. Burwell answer that, if I may.

Mr. BURWELL. Mr. Pickle, the stay as you stay is until September 16, there is possibly another stay another week or two after that, but the Court split 50-50 before and the tie went to the runner.

In other words, it went to the big trunk carriers when the Court split four to four affirming the second circuit. Therefore, we are out of business but for the stay. Now, the stay is in order that the Supreme Court may consider a petition for rehearing if the Solicitor General files it.

He has not filed one yet. If the Supreme Court considers the petition for rehearing, saying we don't want to hear it, then we are dead. We are not only dead but if the Congress does not act we have to go back to the Board for new certificate hearings if at a later date the Supreme Court changes its mind.

So we have no certainty that the Supreme Court will hear it any further at all. The only certainty we have is that they have not completely pulled the string on us until September.

Mr. PICKLE. If they don't have hearings, if the Court does not take action then we have an established status quo, don't we?

Mr. BURWELL. If they don't deny the petition for rehearing and extend the stay, yes, I agree. But we have no assurance that they will extend it beyond September. That is all they said.

Mr. PICKLE. Mr. Chairman, I have another question but in deference to the committee I will yield at this time.

Mr. FRIEDEL. Mr. Watson.

Mr. WATSON. Thank you, Mr. Chairman.

Mr. Cramer, you referred to the specific requirements laid down by the CAB relative to these inclusive tour charter flights in exhibit 3. One of those requirements was that the charge to the passengers shall not be less than 10 percent of any available fare or fares charged by a certificated scheduled air carrier.

What fare are you referring to that would have to be 10 percent above the minimum fare available on a scheduled carrier? Am I reading that correctly?

Mr. CRAMER. That is correct. That can be any promotional fare or their economy fare. But the 110 percent can include the other amenities such as the hotel—must include the hotel and ground transportation and sightseeing and items of this nature.

Mr. WATSON. Are not scheduled airlines permitted to offer the same inclusive package as you are permitted to offer?

Mr. CRAMER. Yes. They could fix their own price for an inclusive tour at whatever price they desire.

Mr. WATSON. Before you are able to fly any of these routes are you subject to proving the usual public convenience and necessity?

Mr. CRAMER. Yes, sir. We were certificated after public hearings at the Civil Aeronautics Board whenever one had an opportunity to present their estimates of the market and what the traffic might be. Further, after those hearings the Civil Aeronautics Board, with the approval of the President, granted our foreign certificates.

Mr. WATSON. What has been the experience in that field? Perhaps counsel could better answer this. Do they usually grant your request, or what has been the experience in that field?

Mr. BURWELL. You mean with respect to an application and whether they grant it?

Mr. WATSON. Yes, sir.

Mr. BURWELL. It varies, Mr. Watson. Everybody, of course, applies. Many are called but few are chosen. There were quite a lot of applications that were turned down. Now, the group we represent in one way or another got certification after these long economic hearings where everybody had a chance to argue about the statistics.

Some of them got more routes than others.

Mr. WATSON. Do the scheduled airlines generally register opposition to your request for these special features?

Mr. BURWELL. Yes, sir; they have registered opposition to everything we did in the last 10 years that I am familiar with. They have their best counsel there. They introduced massive exhibits. They made the same speeches there that they are making here. They have fought us all the way since 1948.

Mr. WATSON. You make the statement, Mr. Cramer, on page 8 that the Air Transport Association has reversed its position from that taken in 1962 when this first came up.

Now, what do you mean by that?

Mr. CRAMER. Again, I would like to have Mr. Burwell answer this because he was a part of those hearings at that time and can speak from intimate knowledge.

Mr. WATSON. In other words, I can gather that perhaps in 1962 the Air Transport Association supported the inclusive tour charter feature. I don't believe that would be an accurate statement.

Mr. BURWELL. No, that is not accurate, Mr. Watson.

Mr. WATSON. What do you mean by that?

Mr. BURWELL. What happened is that the Senate introduced a bill that was rejected. Now, the Senate bill, unlike Mr. Tipton's account of it this morning, required the Board, it mandated the Board to permit supplementals to have inclusive tour authority.

When it got to the conference that Senate bill was rejected on the ground that it required the Board to permit inclusive tours and the agreement in conference was that it was left open to the Board.

Now, you can search the record in the 1962 hearings in both the Senate and the House. Mr. Tipton, himself, introduced a memorandum recommending to the committee and the title of the memo-

random was "The Definition of Charter Should be Left to the Civil Aeronautics Board." Mr. Tipton and the ATA took that position and the memorandum is in the files.

This, of course, was brought out in the Senate hearings. There, Senator Monroney made a statement to this effect. He said that he had been the Senate conferee in conference and it was the intention of the conference to leave the definition of charter to the Board. Mr. Tipton's memorandum asked both the Senate and the House committees to do that.

Now, what happened is that after the bill was passed and the Board showed some inclination to grant inclusive tour authority, then they turned around and fought this through the Courts where we are now. But I think that pulling out that memorandum would be very instructive as to what their position was at that time.

Mr. WATSON. I am very much impressed with these figures so far on the impact that the supplementals have been having on the foreign IATA carriers. In 1963 your figures were 31,000 by supplementals. The foreign IATA carriers 138,000 and the U.S. IATA carriers 10,000. That was 1963. Now, in 1967 the foreign group carriers are 151,000, about the same as they had before.

You have jumped to 239,000 and you have seen a 900-percent increase in the scheduled carriers. I think somewhere along the line those figures should be stressed because certainly that would have a dramatic effect on the balance of payments.

I want to applaud someone somewhere along the line in developing these tour arrangements so as to give the American traveling public as well as the foreign traveler the opportunity to make these trips with at least an equal competitive advantage with the foreign lines.

Earlier, I believe Mr. Tipton said that you had promised in 1962 that you were going to make a determined bid to capture some of the foreign market and bring it over. I believe his statement was that you had not done so.

What has been your experience so far as any charter service bringing in foreign nations at this time?

Mr. CRAMER. His statement was a little misleading there in that he confined it to foreign inclusive tour charters. On a foreign inclusive tour charter as we described it here you must use a foreign tour operator.

An American cannot go over there, himself, very well unless he is using a foreign tour operator. Until the last 2 months we have not, the Civil Aeronautics Board again has precluded us from chartering to a foreign tour operator.

Therefore, inclusive tours that he was referring to we have not brought any. We haven't had the opportunity.

Mr. WATSON. Do the scheduled airlines have that opportunity?

Mr. CRAMER. They can bring it on an individually ticketed basis.

Mr. WATSON. Not on a tour basis.

Mr. CRAMER. They can bring them on a tour basis but they do not have to charter an entire aircraft.

Mr. WATSON. It certainly would appear to me that we should look into this very carefully because we have been losing a big chunk of the market to these foreign carriers. That shouldn't be, not only in this field but in others who are interested in the balance of payments.

Mr. CRAMER. If I could expand on that point just a bit, we have just stated why we have not brought foreign inclusive tour passengers. But quite unlike that in the affinity charter market a large number of these passengers that we have shown here from 1963 up to 1967 are foreign originating passengers. We can bring foreign groups under the affinity charter rules. We cannot charter to a foreign tour operator and bring inclusive tours.

Mr. WATSON. But you can with the affinity groups.

Mr. CRAMER. With the affinity we can.

Mr. WATSON. Why is there the distinction? Why does CAB allow you to do it domestically but not allow you to do it with the foreign travel agencies?

Mr. CRAMER. They just changed that distinction. Now they are permitting it.

Mr. WATSON. I assume that your association intends to pursue this matter and vigorously advertise it to try to get some of the foreign people to realize that America has something beautiful other than money?

Mr. CRAMER. Yes, sir. We certainly will just as soon as we get this stigma off from us and get out of the Courts and can get back into the marketplace.

Mr. WATSON. I have one final question. I believe it was earlier said that you have all the benefits and none of the burdens. You are subject completely so far as safety and certification and licensing of your pilots and aircraft, just like a regular line, are you not?

I am not familiar with this at all.

Mr. CRAMER. The standards for all certificated carriers, the scheduled carriers and the supplemental carriers, are set exactly the same by the FAA.

They vary some with the experience level of the carrier and how well he has demonstrated that he does have good operational capability, he has proper maintenance facilities. I would suspect that quite often the FAA does administer them a little harder on us because there was some stigma against the supplementals a few years ago.

Mr. WATSON. That is what I thought. I thought you had only aircraft that had been condemned by the regularly scheduled airlines. Apparently you have two or three pieces of pretty good equipment.

Mr. CRAMER. We have found that by setting standards, ourselves, that are even higher than the FAA would place upon us that it really does pay off because the services that we perform must be on time, we have to perform that service or we would not be able to be here.

Mr. WATSON. Thank you.

Mr. FRIEDEL. Mr. Adams.

Mr. ADAMS. Thank you very much, Mr. Chairman.

Mr. Cramer, and your counsel also, I want to follow up on this 1962 operation because I think the compromise may be a little different than some of us originally conceived it. Prior to 1962 were the supplementals allowed to do individual ticketing?

Mr. BURWELL. Yes, they were. That was the basic fight.

Mr. ADAMS. If you wanted to either charter or fly, you could do individual ticketing.

Mr. BURWELL. Yes, sir; we had the authority for several years preceding 1962 to take a certain number of trips with ordinary point-to-point individually ticketed transportation. It was 10 flights between any two cities. Now, that was a very different thing. That was ordinary country point-to-point individually ticketed transportation.

Mr. ADAMS. Is that what we usually refer to as the nonschedules, you fly San Francisco-New York, Seattle-New York, you set a price and you could ticket people and you advertised it and so on?

Mr. BURWELL. Exactly.

Mr. ADAMS. In 1962 when this statute was passed and you arrived at a compromise on these charters, what I am getting at is who gave what and how much when the compromise was made.

In other words, the issue before the Supreme Court now, as I get it, is over the definition of what was meant by a charter in that compromise; is that correct?

Mr. BURWELL. Precisely. What happened was that the big battle before this committee and the Senate committee was over the abolition of the ordinary point-to-point individually ticketed transportation.

Mr. ADAMS. You lose that?

Mr. BURWELL. We lost that.

Mr. ADAMS. In exchange for that you got what?

Mr. BURWELL. We got charter and we got in the conference—the written conference report, as you have noted, says nothing at all about limiting the definition of the charter in any way. It was left to the Board.

Mr. ADAMS. That was the argument that I understand Senator Monroney got into with some of the Representatives on the other side and the Supreme Court has split four to four on, and we had Mr. Tipton this morning quoting what Mr. Harris said and what other Members of the House said.

The sole argument was over what the supplementals got in terms of definition and, or expansion or contraction of the word charter in exchange for having no longer the right to do any individual ticketing at all; is that right?

Mr. BURWELL. That is right, I think.

Mr. ADAMS. Then I would ask this question, Mr. Cramer, to you. Do you receive any subsidy under the general regulatory system whereby we subsidize some of the regular carriers through mail and other type subsidy contracts, because of the difficulties that they have in maintaining schedules perhaps?

Mr. CRAMER. No, sir, we do not receive any subsidy and we are precluded from carrying the mail by our certificate.

Mr. ADAMS. I asked Mr. Tipton this morning to indicate what he would believe to be acceptable definition of the status quo, in other words, if this bill is not proper and it does something beyond what the present situation is, to submit that, without saying whether he supports it or does not support it.

I would ask also if you, through your counsel, would do so and I would say that I understand now your position which is that the CAB should define charter, and I want to ask you, did exhibit 3 attached to your statement is what the CAB has done in terms of defining charter? Is that correct?

Mr. CRAMER. That is correct.

Mr. ADAMS. Now, the next thing is that I wanted to know whether or not you felt that the Department of Transportation amendment which was testified to this morning by Mr. Agger, I believe it was, which inserted the language, "including inclusive tour charter trips in airplane transportation," if that amendment is something that you support, oppose, or have no flat-out feeling about it.

Mr. CRAMER. We support both the CAB and the Department of Transportation. The wording that they have included will be perfectly acceptable to us.

Mr. ADAMS. We have not had the testimony of the CAB on their amendment but I take your statement to indicate you have heard on the Senate side what CAB is going to put up and that is acceptable to you and the DOT position is acceptable to you?

Mr. CRAMER. We have here, I think, a marked-up copy that does state what the CAB and the DOT wording does. We would be perfectly happy to insert that in the record at this time.

(The document referred to follows:)

[H.R. 17685, 90th Cong., second sess.]

(Italic represents the Board's recommended additions to the bill, matter enclosed in black brackets represents the Board's recommended deletions in the bill.)

A BILL To amend the Federal Aviation Act of 1958 with respect to the definition of "supplemental air transportation", and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That paragraph (33) of subsection (a) of section 101 of the Federal Aviation Act of 1958 is amended to read as follows:

"(33) 'Supplemental air transportation' means charter trips, and *including* inclusive tour *charter* trips, in [interstate, overseas, and foreign] air transportation, other than the transportation of mail by aircraft, rendered pursuant to a certificate of public convenience and necessity issued pursuant to section 401(d) (3) of this Act [and subject to regulations prescribed by the Board] *to supplement the scheduled service authorized by certificates of public convenience and necessity issued pursuant to sections 401(d) (1) and (2) of this Act.*"

Sec. 2. Certificates of public convenience and necessity for supplemental air transportation and statements of authorization, issued by the Civil Aeronautics Board [which are in effect on the date of enactment of this Act] are [notwithstanding any contrary determination by any court.] hereby validated, ratified, and continued in effect according to [the] *their terms, notwithstanding any contrary determination by any court that the Board lacked power to* [insofar as such certificates or statements] authorize the performance of inclusive tour charter trips in [interstate, overseas, and foreign] air transportation.

Mr. ADAMS. All right.

I also wanted to ask you or your counsel on this 1962 bill that went into the compromise, prior to that time, did you have the right to do individual ticketing through an agent or a tour operator and did you do any other?

Mr. BURWELL. No, we did not, Mr. Adams. This is the reason for the Senate bill. Prior to that time we could only under the Board's regulations do affinity charters. It was felt this was too constricting and the Senate, therefore, proposed that the statute require the Board to include inclusive tours as charters.

After all the row, the House rejected in conference the Senate bill which would have compelled the Board, whether it wanted to or not, to include inclusive tours. So the whole battle was to leave it open to the Board to define charter and to put in inclusive tours and not as it chose.

Mr. ADAMS. In other words, we had the question that Mr. Watson raised, and I was confused about it also; in other words, Mr. Tipton's position of supporting allowing the Board to define charters, and your position of, in effect, allowing the Board to define charters, with both of you moving from prior positions that you had to a new concept, the inclusive tour charter concept; is that accurate?

Mr. BURWELL. No, sir. At that time we wanted Congress to require the Board to include inclusive tour charters in the definition of charter. The ATA wanted to leave it to the Board.

Mr. ADAMS. That is what I am saying: they said we do not want inclusive tour charters. You are saying we do. You arrived at a system of saying, "The Board shall define charter."

Mr. BURWELL. Which is what Mr. Tipton asked for.

Mr. ADAMS. The Board did define it, and these regulations in exhibit 3, part 378, are the culmination of that?

Mr. BURWELL. That is correct.

Mr. ADAMS. Thank you.

Mr. FRIEDEL. Mr. Kuykendall.

Mr. KUYKENDALL. Mr. Cramer, I think probably for the good of the hearings, and I know for your good, let us lay this thing to rest one way or the other.

Maybe you want to criticize part of it because in looking at this particular advertisement, I have a feeling that maybe the distortion in this ad points up some of our misunderstanding. Let us see if we cannot have a funeral here on this ad.

Do you think it proper—I do not say legal, I say proper—in your industry to take all the extras and advertise at a higher fare?

Mr. CRAMER. No, sir.

Mr. KUYKENDALL. Now, secondly, they have pretty clearly advertised a Monday, Thursday, Friday, and Saturday schedule, have they not, right below the palm tree, in the second column?

Mr. CRAMER. Yes, sir.

Mr. KUYKENDALL. Thirdly, over here it does make an overt attempt for an individual ticket, does it not, right by the Shriners?

Mr. CRAMER. Well, it makes an attempt to sell a group inclusive tour charter and it does not completely define what an inclusive tour charter is, and it should include that.

Mr. KUYKENDALL. You clarified something for us that is very revealing. That is that you cannot advertise a price or quote a price that is less than 110 percent of the regular air fare.

In other words, your extras have to add up to enough that it is 110 percent of the regular air fare. You see how this can be so misleading to us on the committee. They are bragging about the fact that they are advertising only slightly over half of an air fare, which is in clear violation of what you say the CAB rules on.

Mr. CRAMER. This is aimed, the primary ad is aimed at the affinity charter, in which case you could advertise in this fashion because you are not compelled to charge 110 percent of the air fare.

On an affinity charter you do not have to add hotels or add anything; you just sell transportation to a group.

Mr. KUYKENDALL. But the fare has to be quoted at 110 percent—

Mr. CRAMER. No, sir. On an affinity charter you file a tariff with the Civil Aeronautics Board.

Mr. KUYKENDALL. Just on a straight charter.

Mr. CRAMER. Straight charter. That is what this is aimed at here in the beginning.

Mr. KUYKENDALL. Over here it says, "If you are not a member of the group, don't panic; we will put you in touch with a group."

Mr. CRAMER. They will have to quote him a different fare at that time and it will have to be 110 percent of the fare.

Mr. KUYKENDALL. May I suggest you may want to say something to the committee now or for the record about advertising ethics in your profession?

Mr. BURWELL. Mr. Kuykendall, I think your point is well taken.

Mr. KUYKENDALL. It has confused us terribly.

Mr. BURWELL. Right. The Board, of course, has an enforcement differential for violations of their regulations, whether they are Pan American or whether supplemental. They also have a section of the statute called section 41 for any unfair competition, including misleading advertising.

Now, we, of course, never saw this before this morning and I did not have a legal opinion about it, but my only point is that if this violates the Board's advertising regulations or if it is misleading, the machinery is set up by which it could be prosecuted.

Mr. KUYKENDALL. If you will yield at that point, I realize this. You folks mentioned how strict you were with yourselves in the matter of safety. I would suggest you might look into something like this with members of your organization.

Mr. BURWELL. I think the point is very well taken.

Mr. KUYKENDALL. This is pretty well standard with this committee—that one side wants all the cake and the other side wants all the cake and we have to split the cake.

I see here as the main bone of contention the one thing that is mentioned here in this paragraph about the Shriners in this ad, and that is the matter of soliciting individuals to go from here to Las Vegas or New York to Las Vegas. This is the one place that I see that you might want to amend the bill or come up with something a little more amenable to the intent of the 1962 act. I don't think you people are attempting to run anyone out of business. Yet, I think it is quite improper to be soliciting individual fares from New York to Las Vegas.

Somewhere in between must be the answer and I guess it is our job to find it.

Thank you, Mr. Chairman.

Mr. FRIEDEL. I want to thank you. We have the second bell. We only have one more witness, Mr. Harold Low. I wonder if we can have his prepared statement submitted for the record because by the time we get back it may be pretty late.

Mr. PICKLE. Whom does Mr. Low represent?

Mr. CRAMER. The tour operators.

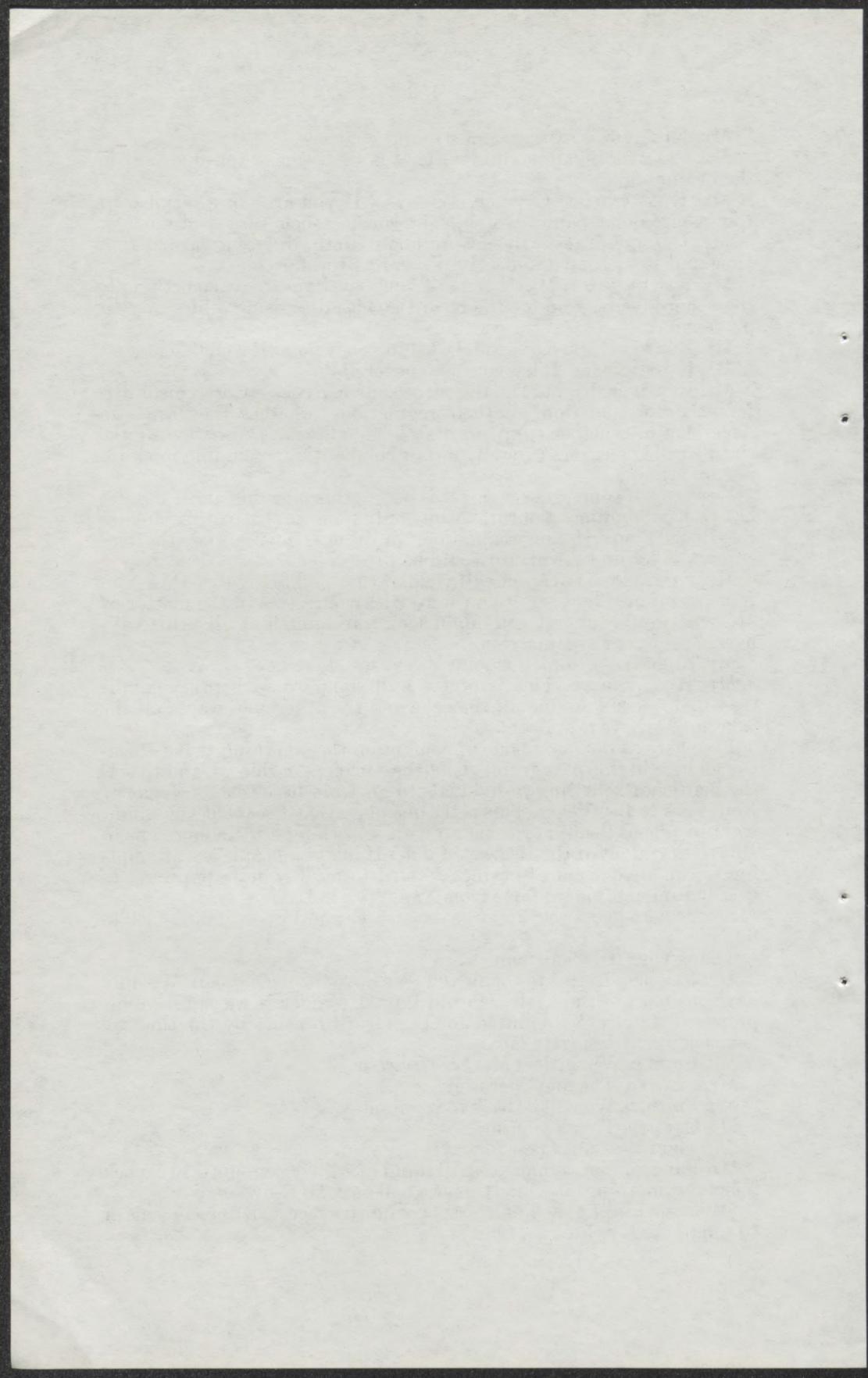
Mr. FRIEDEL. We will be back in 20 minutes.

Mr. CRAMER. Thank you, sir.

(A brief recess was taken.)

Mr. FRIEDEL. The committee will stand in adjournment until 10 o'clock tomorrow morning, at which time we will hear Mr. Low.

(Whereupon, at 4:50 p.m., the subcommittee recessed, to reconvene at 10 a.m., Tuesday, June 25, 1968.)



## CAB INCLUSIVE TOUR AUTHORITY

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TUESDAY, JUNE 25, 1968

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS,  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*Washington, D.C.*

The subcommittee met at 10 a.m., pursuant to notice in room 2123, Rayburn House Office Building, Hon. Samuel N. Friedel (chairman of the subcommittee) presiding.

Mr. FRIEDEL. The subcommittee will be in order.

This morning we continue hearings on H.R. 17685 which would specifically allow the Civil Aeronautics Board to authorize inclusive tour charters. As has been demonstrated by litigation in the courts, the Board's present practice in this respect is, to say the least, under a legal cloud.

We have a substantial history of the pros and cons on the question of the Board's all-inclusive tour powers. Perhaps now it is time we turn close attention to the development of the pertinent forms of air transportation, since the time back in 1962 when Congress dealt with the overall question of supplemental air carriers.

Our first witness this morning is our colleague, the Honorable Robert Leggett.

### STATEMENT OF HON. ROBERT L. LEGGETT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. LEGGETT. Mr. Chairman, thank you for the opportunity of making this statement in support of H.R. 17685 to provide continuing authorization for low-cost package tours via nonscheduled supplemental airlines.

The nonscheduled supplemental airlines have a long history of exceptional service to the American public. The low-cost package tours provided by these airlines have enabled innumerable American citizens to travel who could otherwise not afford to do so.

This group consists largely of students and teachers. The good will engendered by those students who have traveled in foreign countries in past years has been of great benefit to the United States. These student ambassadors with limited budgets cannot pay the cost of a scheduled airline fare.

The benefits to the teaching profession realized by the opportunity to take advantage of a low-cost tour is also clearly apparent.

A second and extremely powerful argument in favor of this bill relates to the balance-of-payments problem. In 1967 the American supplemental carrier flew 73 percent of the nonscheduled airline in-

clusive tour passengers, as opposed to 27 percent flown by the foreign nonscheduled airlines. If the Civil Aeronautics Board is not given the authority to continue this program, the foreign-based carriers will take the cream of the travel dollar. In conjunction with this program, the U.S. Government has promoted tourism in this country for a number of years. The nonscheduled airline group tours have made it possible for large numbers of foreign visitors to travel in this country who could not afford the scheduled airline rates.

In closing, I urge this committee to accept the position of the Civil Aeronautics Board and the Department of Transportation so as to insure the continuance of a vital low-cost transportation system. We should remember that 60 percent of the American public have never been in an airplane; 94 percent of the public have never been outside the continental United States limit—mainly because travel is expensive. If we want to help the poor, let's help the poor traveler and pass the pending legislation.

Mr. FRIEDEL. Thank you for your brief statement, Mr. Leggett.

Our next witness this morning will be the Honorable John H. Crooker, Jr., Chairman of the Civil Aeronautics Board. Mr. Crooker.

**STATEMENT OF HON. JOHN H. CROOKER, JR., CHAIRMAN, CIVIL AERONAUTICS BOARD; ACCOMPANIED BY JOSEPH B. GOLDMAN, GENERAL COUNSEL; ALPHONSE M. ANDREWS, DIRECTOR, BUREAU OF OPERATING RIGHTS; AND WARREN SHARFMAN, ASSOCIATE GENERAL COUNSEL, LITIGATION AND LEGISLATION**

Mr. CROOKER. Mr. Chairman, would it be all right if the General Counsel of the Board and Mr. Sharfman, in the Office of the General Counsel, and Mr. Andrews of the Bureau of Operating Rights, come to the table?

Mr. Chairman, I am glad to have this opportunity to appear before you today. I am here for the purpose of presenting the Board's views in support of the objectives of H.R. 17685, which would remove any doubts about the Board's authority to permit supplemental air carriers to conduct inclusive tour charters.

As the subcommittee probably knows, I recently testified before the Aviation Subcommittee of the Senate Commerce Committee in support of the objectives of S. 3566, a similar bill. Hence my testimony will be basically the same as that submitted to the Senate Aviation Subcommittee, except for brief comments on some of the points raised at that hearing.

**A. UNCERTAINTY AS TO PRESENT STATE OF THE LAW**

I am sure yesterday your subcommittee developed the situation resulting from the fact that the Court of Appeals for the District of Columbia had agreed with the Board in a case involving domestic operations, holding that such inclusive tours were charter worthy. The second circuit, on the other hand, disagreed in a case involving international operations. It considered such tours to constitute an individually ticketed type of transportation not falling within the charter concept. The Supreme Court affirmed the Second Circuit in a 4-to-4 decision. The Supreme Court's action, however, based on equal division without

opinion, does not, in our judgment, resolve the conflict between the two circuits. The result is that the planning of inclusive tour charters is being seriously handicapped pending a final resolution of the conflict.

The Board believes that this confusion and uncertainty should be resolved as promptly as possible, and it is pursuing its legal remedies in an effort to obtain a final decision—one way or the other. However, this will take some time—even if a decision favorable to the Board is obtained. We think that under these circumstances it would be desirable for the Congress promptly to confirm what the Board has understood to be the congressional intent with respect to inclusive tour charters.

The Board thought that it had authority to permit the supplementals to conduct inclusive tours both because of the language of the supplemental air carrier legislation and its legislative history. Although the legislation did not define the term "charter trips" as used therein, inclusive tour charters had been held by the Supreme Court as falling within charter services in the surface transportation field. Moreover, the supplemental bill passed by the Senate specifically included all expense tours within the definition of charter service. The Board understood that this express reference to tours was omitted from the final act because, in the language of the House report, it was believed preferable to leave the Board free to evolve its own definitions of appropriate charter service.

As the District of Columbia circuit said, the term "charter" denotes group travel, and Congress left the Board free to apply a reasonable definition of charter which did not depart from the group travel concept.

#### B. PAST AWARDS OF INCLUSIVE TOUR AUTHORITY

The Board determined to authorize the supplemental to conduct inclusive tours. The reasons for the authorization were that such tours we thought (1) would meet a substantial public need for low-cost pleasure air travel, (2) would provide an additional source of revenue to strengthen the supplemental air carriers, and (3) would not have any real adverse effect on the certificated route carriers. The Board found that its action was in accord with the purposes for which the Federal Aviation Act was amended in 1962 to permit the issuance of certificates of public convenience and necessity to the supplemental carriers.

The basic purposes of the amendments were to establish a stable and viable role for the supplemental carriers in the air transportation system. Congress we thought intended to strengthen the economic position of the supplemental carriers because of the public importance of their civilian and military operations and because of the relationship between economic stability and air safety.

In making these awards, the Board considered many factors of national importance, including the benefits to the public, and the importance of strengthening the economic position of the carriers to enable them to maintain and increase their already recognized value as a national defense asset. On the other hand, the Board also considered the effect these authorizations might have on the regular route carriers. The Board concluded, however, that with proper regulations, which the Board established, there would be no adverse effects upon

the regular route carriers since the inclusive tours would truly provide a new and supplemental service.

#### C. THE MECHANICS OF AN INCLUSIVE TOUR

I would like to first explain just what an "inclusive tour" is under the Board's regulations, and to point out the steps taken to insure that these tours will permit only group vacation travel. The inclusive tour charter principle allows a tour operator or travel agent to charter an aircraft from a supplemental air carrier. The carrier does nothing more than perform the air transportation for the charterer. The charterer puts together a package of air and surface transportation, ground accommodations, perhaps some sightseeing side trips, all over a fixed itinerary, which he sells to members of the public. The Board refers to this as an "inclusive tour".

Sometimes such tours have been referred to as "all expense" trips.

Under Board regulations, the tour price paid by members of the public cannot be less than 110 percent of the lowest available individual fare offered by a scheduled carrier for transportation over the same route. The price of the tour must include at least all hotel accommodations and air and surface transportation between all places on the itinerary. Each tour must be performed on a roundtrip basis, last at least 7 days, and have a minimum of three overnight stops at least 50 miles apart. Such a tour may be operated only by a regulated tour operator, pursuant to prior approval by the Board of the tour prospectus. Prior to approval of a prospectus, scheduled carriers serving the points involved in the tour must be given notice of the tour operator's application and an opportunity to object.

It is only the authority of the Board to permit supplementals to charter aircraft to tour operators for the performance of these inclusive tours that has been embroiled in the conflicting litigation.

#### D. VOLUME OF INCLUSIVE TOUR BUSINESS

The results of these tours thus far have shown that they are a valuable adjunct to the transportation system in terms of service to the public and a source of revenue to the carriers. During the first full year of operation of the tours, 1967, there were 175 tours, which carried approximately 30,000 persons. The bulk of the tours were from the mainland of the United States to Hawaii, with seven being operated within the continental United States and 20 to Europe. The Board believes that 1968 will show an increase in the availability and acceptance of inclusive tours. Hawaii would again appear to be the main destination point for most of the tours.

As of June 3, the Board had approved about 800 tours to be operated from the mainland to Hawaii. It is estimated that the 25,000 passengers carried on inclusive tours to Hawaii in 1967 will increase to 136,000 in 1968. A few tours also have been approved for Europe, Mexico, and the Caribbean and South America areas. The Board believes that in 1968 a much greater percentage of the civil charter revenues of the supplementals will be derived from inclusive tour charter flights than was the case in 1967.

I wish to point out that the limited number of tours to points other than Hawaii reflects in large measure the cloud that has hung over the inclusive tours almost from the beginning because of the court attacks mounted on them by the scheduled carriers.

The leadtime in establishing a worthwhile tour program is large. For example, now is the time when the 1969 program would ordinarily be established by the tour operators. But they are understandably reluctant to expend the necessary funds and energies in arranging and promoting tours, and carriers are reluctant to commit their aircraft to the tour operators' schedules, when the legality of the whole concept is in doubt.

Within the past couple of weeks, a tour operator canceled 19 tours to Hawaii and Mexico because of uncertainty regarding which, if any, of these tours could be performed in view of the recent vote by the U.S. Supreme Court concerning international inclusive tour charters by supplemental air carriers.

Domestic tours have been less troubled since the first court decision on the matter found domestic inclusive tours lawful—this was before the second circuit court decision going just the opposite way as to international inclusive tours. Thus, perhaps the most important determinant of the success of the inclusive tour program will be a resolution of the legal question as to the validity of these tours. Once that is decided, if decided favorably and finally, we believe that tremendous growth will follow.

#### E. INCLUSIVE TOURS ARE IN THE PUBLIC INTEREST

Mr. Chairman, we believe these inclusive tours have been of great benefit to the traveling public. The travel base has been broadened, and a great many persons in the lower income groups have traveled, who would not have utilized the services of the scheduled carriers because of their unfamiliarity with the problems of foreign travel. An additional benefit to the public has been the competitive incentive which the availability of inclusive tour charters has provided to the scheduled air carriers. I pointed out at the Senate hearings that an inclusive group tour fare of \$230 between New York and London had been established in 1966 by the scheduled carriers on the North Atlantic shortly after the Board authorized inclusive tours for both domestic and international operations. I stated that this was the lowest fare ever charged for scheduled service in the history of North Atlantic travel. The representatives of the scheduled carriers don't take exception to the fact that the availability of inclusive tour charters has been responsible to a great extent for the institution of lower fares by the scheduled carriers. Nor do they take exception to the fact that inclusive tours of the supplementals has removed to a large degree the fear of the "unknown" as far as foreign travel was concerned for first-time travelers.

#### F. THERE HAS BEEN MINIMAL DIVERSIONARY IMPACT ON THE SCHEDULED CARRIERS

Despite contentions to the contrary, the Board has concluded that inclusive tour charters would not have an adverse impact on scheduled carriers. The Board's findings were based in large part on the fact that

the services to be provided to the public by inclusive tours under Board regulations would be different in significant respects from those provided by scheduled services.

In addition to a 10-percent spread between the lowest individually ticketed fare of a scheduled carrier and the tour price, the charter tour passenger would be subjected to the rigidities of the group itinerary, would have to be willing to travel and share facilities with strangers, and would have to agree to some regimentation entailed in group travel. The tour passenger would not have the freedom to select from the multiple daily schedules offered by the route carriers, but would be confined to predetermined departure and arrival times selected by the tour operators. Under these circumstances, it was obvious to us that inclusive tours could not be used as an inducement to substitute travel on them for scheduled point-to-point transportation offered by the route carriers.

I would like to say that the scheduled carriers at the Senate hearings were confused as to the Board's regulations relating to inclusive tours, and the limitations placed on those tours by our regulations. They argued that since U.S. resident-transatlantic air passengers visited an average of three and six-tenths European countries on a trip, the requirement in the Board's regulations that inclusive tours be for a minimum of 7 days and encompass at least three different places was meaningless since it did not distinguish inclusive tours from point-to-point transportation offered by the transatlantic scheduled carriers in connection with United States-Europe traffic.

The number of countries visited by U.S. residents on a European trip would seem to have little bearing on the question as to whether the services provided by inclusive tours are different from those provided by scheduled services. The fact of the matter is that a person selecting an inclusive tour has no choice as to his itinerary, arrival, or departure times, or the type of accommodations to be utilized. For example, an inclusive tour passenger traveling New York-London-Paris-Rome and return would have to remain with the group throughout the entire period, conforming precisely to the tour as to dates of arrival and departure, cities to be visited, hotels to be utilized, traveling companions to associate with, and so forth.

On the other hand, a passenger using scheduled services could choose his own arrival and departure times, select his own hotel accommodations, visit as many and whatever points as he might desire, and stay as long as he desired, both at a particular point and prior to returning to this country. In these circumstances, it is obvious that the Board's regulations do not permit inclusive tours to be used as a substitute for point-to-point transportation of scheduled carriers.

Even though experience is limited, it does bear out the soundness of the Board's determinations in this respect. For example, in 1967, 25,000 passengers in this respect. For example, in 1967, 25,000 passengers traveled to Hawaii on inclusive tours, and 1,700,000 passengers were transported by the scheduled carriers—an increase of 700,000 over 1966.

Estimates for 1968 indicate that 136,000 passengers will travel on inclusive tours if all authorized tours are operated, in view of this present uncertainty, but that 2 million passengers will utilize sched-

uled services. Thus, the requirements for both inclusive tours and scheduled services would appear to be increasing together, rather than inclusive tours diverting passengers from the scheduled operations.

This would appear to be supported by the fact that the hearing examiner in the *Transpacific Route* case has recommended three new certificated services from the mainland to Hawaii. I cannot say what the ultimate outcome of this recommendation will be, but it seems reasonably clear that the Hawaiian market can support the beneficial services.

We think, in fact, that in all markets, the inclusive tours and the scheduled services can thrive. The scheduled carriers are growing, and are doing well. They have been incurring some revenue dilution of late, to some extent due to the cost impact of acquiring and absorbing the many costly aircraft which they have ordered to keep pace with traffic growth. But nobody is able to attribute that cost impact to inclusive tour charters.

It is the Board's view that each type of carriage stimulates air transportation as a whole—thus benefiting all. We feel that no positive gain to anyone—the supplementals, the scheduled carriers, or the traveling public—will accrue from taking away from the supplementals their inclusive tour charter authority. On the contrary, eliminating the inclusive tour charter authority will only serve to deprive the public of service, to take away the competitive spur which these charters have provided to the scheduled carriers, and to take away from the supplementals revenue which will help to sustain them and which is not diverted from the regular route carriers.

#### G. STATUS OF SUPPLEMENTAL AIR CARRIERS' OPERATIONS

The supplemental carriers have been recognized by the Congress as an integral part of the air transportation system. Their contributions have been significant to both civil and military transportation. They started the "no frill" air coach service domestically. One supplemental (Trans-Caribbean) later became a certificated passenger carrier between New York and San Juan. In the late 1950's, several carriers developed and promoted transatlantic vacation charters for affinity groups. In the earlier years, these carriers also flew numerous charters for the military between domestic bases. The supplementals were able promptly to supply airlift during the Korean war, during the movement of the Hungarian refugees, and during the breaking of the Berlin blockade.

Their current national defense importance, with particular regard to their aid to the military in the Vietnam airlift, is indicated by last month's award to eight supplemental carriers of some \$68 million in military Air Command business, which is about 25 percent of the total MAC business awarded. Indeed, their present contribution to the defense effort justifies the congressional purpose in enacting the supplemental legislation to preserve the carriers as a valuable adjunct to the military.

The Congress recognized in 1962, in legislating a permanent place for the supplementals, that they required civilian sources of revenue to sustain them when not engaged in operations for the military.

This policy was emphasized in 1966 by a new Defense Department commercial airlift policy. Under that policy, only those carriers receiving at least 30 percent of their air transportation revenues from commercial sources were to be awarded military contracts.

One of the reasons for the policy was to preclude excess reliance upon military business alone. This was for the purpose of insuring that the supplementals would maintain the required reserve capacity which could be called upon by the Defense Department in time of need. Thus, if the supplementals were not permitted to enlarge their civilian services, they would be deprived of the principal source of their revenue—military charters. This, in turn, would have deprived them of funds for the purchase of new aircraft to attract civilian passengers. The result would have been that the reserve capacity needed by the military would have been diminished. Under these circumstances, the Board believes that revenues derived from inclusive tours will continue to be an even greater factor in the ability of the supplementals to provide the expanded capability required in time of emergency.

At this time, the 13 supplemental air carriers have a total investment of \$217 million, and employ approximately 5,000 people. They operate a variety of large aircraft—about 192 in number. Forty-six of these are large jet aircraft, and additional jet aircraft are on order. Despite the fact that their revenues in 1967 were about 150 percent greater than those in 1962, they continue to rely heavily on military business.

For example, in 1967 revenues derived from military contracts represented more than 60 percent of their total charter revenues. The inclusive tour charter revenues in 1967 amounted to some \$7 million, almost 3 percent of the total.

While we expect other types of charters to continue to provide the bulk of the carriers' revenues, it is obvious that inclusive tour business constitutes a source of additional business which will become increasingly important to the carriers upon any falling off of military business.

#### H. COMMENTS ON THE WORDING OF THE BILL

H.R. 17685 accomplishes the broad objective of confirming the Board's interpretation of the statute and the various authorizations which it has issued. However, the bill also goes beyond this objective since it would permit the Board, or perhaps require it, to authorize the supplemental carriers to market inclusive tours themselves rather than through tour operators. The Board has never made a definitive determination as to its legal authority to permit such activity by supplementals under their authority to engage in charter trips in air transportation. Rather, as a matter of policy, the Board concluded that supplementals should not market inclusive tour trips directly to the traveling public, and its regulations specifically prohibit such activity.

We do not now ask for any change in the statute to specifically authorize the Board to permit supplementals to market inclusive tour trips directly to the traveling public. If the committee should decide that the Board should have this power, then we ask that the legislation clearly indicate that the Board has discretion to determine whether or

not to exercise such power just as it has in connection with the authorization of inclusive tour charters.

Our position in this respect is wholly consistent with our present powers under the act. At the present time there is no absolute prohibition against a supplemental air carrier controlling an indirect air carrier, such as a tour operator. There is, however, a requirement in section 408 of the act that such a control relationship be approved by the Board when it is not inconsistent with the public interest. It is apparent, therefore, that the Board might presently permit a supplemental air carrier to market inclusive tour trips through a subsidiary tour operator. The position that I am now urging upon you is that no change be made in the act which would require the Board to permit supplemental air carriers to market inclusive tour trips directly. Proper regulation of this entire area of the air transportation industry may best be accomplished when the Board has discretion to determine what authorizations to make in the light of the circumstances prevailing at any given time and their bearing upon the public interest, as defined in the act.

The following technical changes in the bill are also suggested:

(a) The provision in section 1 (which redefines "supplemental air transportation") that certain matters are "subject to regulations prescribed by the Board" is both ambiguous and unnecessary. It is not clear whether the regulations referred to relate to supplemental air transportation or to certificates of public convenience and necessity issued pursuant to section 401(d) (3). The Board already has adequate power to issue regulations in either area. The inclusion of the words "subject to regulations prescribed by the Board" should be omitted since they make no affirmative contribution and may confuse.

(b) Moreover, the present provision of the Act that "supplemental air transportation" is "to supplement the scheduled service" of the regular route carriers should be included in the bill. There is nothing in the inclusive tour charter problem which requires its omission.

(c) Certain technical changes would also appear to be desirable in Section 2 of the bill. This section validates certain certificates and statements of authorization permitting the performance of inclusive tour charter trips "which are in effect on the date of enactment of this Act" notwithstanding any contrary determination by any court. The above quoted words should be deleted from Section 2 since it is possible that some certificates, which we desire to preserve, may be invalidated by court action before Congress enacts this legislation. However, the only purpose of the section is to preserve certificates and statements of authorization from extinction because a court concluded that the Board lacked power to authorize inclusive tour charters. The language of Section 2 needs to be modified to clearly indicate that the powers of the Board and the courts to change or set aside certificates or statements of authorization for other reasons have not been touched.

All of the foregoing technical changes in H.R. 17685 (both deletions and additions) are shown in the comparative print which is submitted as attachment A.

In sum, the Board believes that inclusive tour charters have made a material contribution to the ability of the supplementals to meet their national defense requirements; that such charters have been beneficial to the traveling public; and that they have not had an adverse impact on scheduled services. For these reasons, the Board urges that the existing confusions and uncertainty surrounding the validity of inclusive tour charters be removed by legislation.

(Attachment referred to follows:)

[Attachment A]

[H.R. 17685, 90th Cong., second sess.]

(Italic indicates the Board's recommended additions to the bill, linetype indicates the Board's recommended deletions in the bill.)

A BILL To amend the Federal Aviation Act of 1958 with respect to the definition of "supplemental air transportation", and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.* That paragraph (33) of subsection (a) of section 101 of the Federal Aviation Act of 1958 is amended to read as follows:

"(33) 'Supplemental air transportation' means charter trips, and *including* inclusive tour *charter* trips, in ~~interstate, overseas, and foreign~~ air transportation, other than the transportation of mail by aircraft, rendered pursuant to a certificate of public convenience and necessity issued pursuant to section 401 (d)(3) of this Act ~~and subject to regulations prescribed by the Board to supplement the scheduled service authorized by certificates of public convenience and necessity issued pursuant to sections 401(d)(1) and (2) of this Act.~~"

SEC. 2. Certificates of public convenience and necessity for supplemental air transportation and statements of authorization, issued by the Civil Aeronautics Board, ~~which are in effect on the date of enactment of this Act, are, notwithstanding any contrary determination by any court,~~ hereby validated, ratified, and continued in effect according to ~~the~~ *their* terms, ~~notwithstanding any contrary determination by any court that the Board lacked power to insofar as such certificates or statements~~ authorize the performance of inclusive tour charter trips in ~~interstate, overseas, and foreign~~ air transportation.

Mr. CROOKER. Mr. Chairman, as to the comments on the specific wording of the bill, if there are questions, I would like to have the opportunity to have the Board's General Counsel, Mr. Goldman, comment on the specific points and wording of the bill.

Thank you for letting us make this statement, sir.

Mr. FRIEDEL. I want to thank you, Mr. Crooker, for your very straightforward statement.

Before we go into the amendments offered, I would like to have this clear for the record. Are group fares allowed on the scheduled airlines today?

Mr. GOLDMAN. Yes, sir; they can and do operate under what they call the GIT fares—group inclusive tour fares. I would say that the group inclusive fares of the scheduled carriers were in fact responsive to the inclusive tours authorized by the Board for the supplementals.

Of course the regulatory system is different. In other words, it is not under the Board's inclusive tour program.

Mr. FRIEDEL. If you want to have an inclusive tour to San Francisco, Hawaii, and then back to Las Vegas, three stops, and leave on a certain day and return on a certain day, could the regular carriers do the same as the supplementals do today?

Mr. GOLDMAN. My understanding is that they have authority to conduct charter operations, which includes authority to conduct inclusive tours.

Now, there are certain limitations upon the maximum number of charter operations that a particular carrier may conduct, but for practical purposes, I don't think that is a significant inhibition upon the authorization of the scheduled carriers as a group to engage in inclusive tour business if they choose to do so.

Mr. KUYKENDALL. Would the chairman yield for a question?

MR. FRIEDEL. Yes.

MR. KUYKENDALL. What is that limitation, sir.

MR. GOLDMAN. I think Mr. Andrews could respond to that.

MR. ANDREWS. In terms of charters there is no limitation on the extent of onroute charters that a certificated carrier can operate. With regard to off-route charters to points that are not on a carrier's certificate during any calendar year the certificated carrier can operate up to 2 percent of the mileage flown in its onroute services during the preceding calendar year.

MR. WATSON. Mr. Chairman, at that point.

MR. FRIEDEL. Mr. Watson.

MR. WATSON. Do you know whether the regular carriers are making maximum usage of permission to have these charters?

MR. ANDREWS. No, it is my understanding that the larger carriers are not utilizing anywhere near the 2 percent maximum. In the case of some of the smaller carriers we have taken some specific steps to authorize additional authority for them.

MR. WATSON. So that we might get this thing in proper perspective, am I to understand that presently the regular carriers have the same authority to conduct these groups inclusive tours as the supplemental airlines but they have not used that authority? Not to a maximum at least?

MR. ANDREWS. They haven't used the charter authority to a maximum. Maybe this might shed some light on the situation. Over a certificated carrier's regular route a certificated carrier can hold out inclusive tours to anyone.

For example, United Airlines between New York and San Francisco and Hawaii can offer to individual members of the public inclusive tours. There is no limitation on that. Furthermore, with regard to charter flights by United Airlines over those same points, there is no restriction with regard to the carrier's offering charter inclusive tour flights to a properly authorized tour operator.

There may be some question concerning authority on the part of a tour operator to charter from United Airlines, but the scheduled carrier has no limitation there with regard to charters it can offer to a tour operator transporting inclusive tours.

MR. WATSON. Are the scheduled carriers subject to the same limitations as the supplemental carriers? For example, must the tour be of at least 7 days' duration; must it have at least three stops, et cetera?

MR. ANDREWS. No, they are not.

MR. WATSON. In other words, they are not subject to these restrictions that the supplementals have. They can charter these inclusive tours anywhere on their route?

MR. ANDREWS. On their route; yes, sir.

MR. WATSON. And on their schedules?

MR. ANDREWS. On their schedules; yes, sir.

MR. WATSON. They are restricted according to schedule, but they can run it, and there are no particular numbers of stops they must make?

MR. ANDREWS. That is right.

MR. WATSON. Do they have the authority, or have you ever granted the authority, to exceed the 2 percent? I heard you say that with regard

to the smaller carriers. Can they request authority to run a special charter tour which is not on their schedule?

Mr. ANDREWS. Yes, they are free to file that request with the Board.

Mr. WATSON. What has been your experience in that regard?

Mr. ANDREWS. Very few, if any, have been filed.

Mr. WATSON. Very few, have been filed?

Mr. ANDREWS. Yes.

Mr. WATSON. Thank you, Mr. Chairman.

Mr. FRIEDEL. I have one further question.

What would happen if this committee did not take favorable action? Would the foreign supplemental carriers have the right to have these all-inclusive tours?

Mr. CROOKER. Mr. Chairman, the foreign carriers will have whatever rights are accorded them by their own governments and which are accorded by the foreign air carrier permit. We currently have several such authorizations outstanding and we have, for decision before the Board, cases involving three British supplemental carriers, and I wouldn't be in a position to discuss what the decision might be, but these three carriers have asked for supplemental and inclusive tour charter authority to this country and of course this would be a possibility.

Mr. FRIEDEL. Thank you.

Mr. ADAMS. May I ask a question?

Mr. FRIEDEL. Mr. Adams.

Mr. ADAMS. Mr. Crooker, I apologize for being late, but I had a question from yesterday on which I wanted to confer with you.

First, as background, I understand that you take the position that was taken by the D.C. circuit court that the CAB should be the one to define the word "charter," is that correct?

Mr. CROOKER. Yes.

Mr. ADAMS. My second question involves the amendment itself. We have been presented with the Department of Transportation amendment. I just asked counsel about it. I understand you have not presented to the committee your particular language on it, or have you?

Mr. CROOKER. No, I have asked the chairman's permission to have the General Counsel, Mr. Goldman, comment on the particular language, but our suggestions are appended to our formal statement.

Mr. ADAMS. In other words, the appendix at the end of your statement contains your suggestions as to what should be changed in H.R. 17685; is that correct?

Mr. CROOKER. Yes, sir.

Mr. ADAMS. I understood also, that at the end of this, in other words, we have dropped this language in 11, 12, and 13 in your statement. Is this the original statutory language, Counsel, because I noticed that in H.R. 17685, on page 2, after the word "act" we had simply put "and subject to regulations prescribed by the Board," and I notice you have returned language "to supplement the scheduled service" and so on.

Is that the original statutory language?

Mr. GOLDMAN. That is right. What we endeavored to do generally, Congressman Adams, was to make the minimum changes in the existing statute. Our basic objective is really to just try to get a congress-

sional confirmation of the view that the Board took of the current law without enlarging or subtracting from that point of view.

Mr. ADAMS. That was to be my final question.

You believe that this language, as you have placed it here, would return to the status quo as the Board interpreted it in 1962?

Mr. GOLDMAN. Exactly. We felt that any additional language changes might create questions and problems, and we felt that they were unnecessary to the objectives of the Board.

Mr. ADAMS. Thank you, Mr. Chairman. I have no other questions.

Mr. FRIEDEL. Mr. Devine.

Mr. DEVINE. I have no questions.

Mr. FRIEDEL. Mr. Watson?

Mr. WATSON. Thank you, Mr. Chairman.

How did this term "inclusive tour" originate? It seems to me that we have had a lot of controversy as to what "inclusive" means. How did the term originate?

Mr. CROOKER. Congressman, I don't know how the term originated, but it seems to me that the word "inclusive" leads the customer to believe and it does actually cover the cost of the transportation, the hotel accommodations, meals in many instances. The market is really the person who wants not just lower-cost transportation and a lower-cost vacation, but the market is for someone who wants certainty in knowing in advance what his cost will be.

A couple wants to go to Hawaii, and the man says, "Well, I will take you, Honey, if we know that we are not going to spend over  $x$  dollars." So they sign up for an inclusive tour and he knows that his hotel rooms, two meals a day, and these things will be cared for.

So I assume that inclusive means inclusive of the food, lodging, and transportation.

Mr. WATSON. There they had some controversy about whether or not it was an inclusive tour. Would it not perhaps be advisable if we try to spell it out that inclusive must include at least accommodations and ground travel, and beyond that let the airlines add the embellishments?

We had some controversy before us saying that the supplementals aren't offering an inclusive tour and the schedules aren't offering it. Would it be a better approach to take the minimum of what an inclusive tour should include, and beyond that if they want to give them caviar, they can do it. Would that be a better approach?

Mr. CROOKER. Certainly it is our understanding that inclusive tour does cover transportation, lodging, and a certain number of meals. Mr. Goldman points out that this was taken from British usage and it had come to mean this as something of a term of art and the parties probably felt it needed no further definition, but your definition would be consistent with what we have thought everybody understood as being covered by an inclusive tour.

Mr. WATSON. Yes.

Mr. GOLDMAN. Well, Mr. Watson, I think that in the context of the proposed legislation if the Congress saw fit to adopt the language that the Board uses in its proposed modification to the bill, I don't think there would be any necessity for attempting to define the term. It is perfectly clear in the whole history of this business that inclu-

sive tour has to include a number of extras and we would prefer, I think, to leave to the Board the discretion to determine just how to define what inclusive tour shall include.

I think that the Board's current regulations, part 378, spell out quite clearly and in detail at least what the current requirements are. I don't think there is any significant controversy about the fact that inclusive tours have to include a lot more than just transportation.

Mr. WATSON. Let me ask you this. We can argue for days and months and never really settle the question as to what the economic impact of these supplemental inclusive tours are having on the scheduled airlines.

I recall the figure that some 87 or 90 percent of travelers on the supplemental tours were first-time air travelers, but I mean it is axiomatic that if the supplementals were not providing these inclusive tours, they would have to go to the scheduled airlines if they were going to fly, unless they chartered a plane themselves. But that is a fact. If they wanted to fly to Hawaii, they would have to go by scheduled airline if you did not permit the supplementals to have the inclusive tours. That is a fair proposition, isn't it?

Mr. CROOKER. Yes, sir. The ways of going are by the scheduled airlines, by the planeload charters of affinity groups, or by the supplementals, or you don't go at all.

Of course, many would give up the trip if they didn't have the tour arranger doing the planning for them and with the certainty of the fares and costs.

Mr. WATSON. I feel that these figures have been impressive as I stated yesterday. I am sure you are concerned about this as an official of the executive department. It certainly has a good effect upon the balance of payments, and I am delighted to see that we have cut into the foreign part of this.

Thank you, Mr. Chairman.

Mr. FRIEDEL. I just want to ask one question.

The Department of Transportation offered an amendment. Is your proposed amendment identical?

Mr. GOLDMAN. My impression is that the Department of Transportation changed its position somewhat so that it was in agreement with the proposed draft of the Board. I am not certain that that is true in every detail, but I have reason to believe that that is their general position.

I understand that there was an attachment to Secretary Agger's statement yesterday, an appendix that sets out their agreement with the Board's position on the technical changes. I don't understand that there is any real substantive difference between DOT's position and the Board's position on what the basic objective should be.

Mr. FRIEDEL. I would suggest that you get in touch with our counsel.

Mr. GOLDMAN. We would be happy to do so.

Mr. FRIEDEL. Mr. Kuykendall.

Mr. KUYKENDALL. I suggest we kind of throw away all of the superfluous material about the size of different industries, who in the different industries are making progress and who isn't, get down to cases and take all the apples and oranges and separate them.

It seems the reason we are here is to clarify what you should do in regard to the court, and I think that there are only a couple of very small areas that need to be clarified. We agree on a lot of things.

I think we all agree with the interpretation that a straight charter is OK and nobody is arguing about it; is that correct?

Mr. CROOKER. I understand there is no argument.

Mr. KUYKENDALL. I don't think anyone is arguing about related, affinity groups being able to have a charter; is this correct?

Mr. CROOKER. So far as I know, that is correct.

Mr. KUYKENDALL. It has nothing to do with this hearing at all?

Mr. CROOKER. That is correct.

Mr. KUYKENDALL. Let's get down to cases. So we are getting into the question here. The question is: Is a tour office that goes to the public and puts together a group of unrelated people eligible for a tour? That is one question.

The next question, and here is where we get into some of the cloudy area, is: Can a "supplemental air carrier" break down his fare, take the fare part of it only, and advertise it as a cut-rate fare? Can he do that?

Mr. CROOKER. I think that the question of the advertising is entirely separate and apart from your first question.

With respect to your first question, you are of course aware of the fact that the supplementals sought authority to be their own tour operators, their own promoters, and this was a position to which the CAB did not and does not subscribe.

We feel that the function of the supplemental carrier is to enter into a contract with a travel agent or other tour operator under which a flat amount is paid by the travel agent or tour operator for the charter of the airplane.

It is a fixed dollar amount, and if the tour operator gets about an 85-percent load, he breaks even, and if he gets less than that, he loses money, and if he gets more than that, he makes money. So that, the Board does not go along with the supplementals on the idea of them serving as their own tour operators, and we want to stick to the posture of having the supplementals contract for the use of that aircraft.

Mr. KUYKENDALL. Would you like to have that written into the legislative intent report of this bill?

Mr. CROOKER. We thought that by the suggested wording that we used that that was the purpose we are achieving. Again, if you will forgive me, I will defer to counsel on how to accomplish it, but this is certainly what the present CAB prefers, and this is a point at which we differ, Congressman, from the supplementals in their own desires.

Mr. KUYKENDALL. Mr. Chairman, don't you think that we are getting into the real hard core of the disagreement here now and getting somewhere? For instance, I disagree with you that you can separate advertising from this problem because if you can't advertise it, you can't sell it, and if you can't sell it, you don't have the business. So that you do not have either quasi or actual control over what can be advertised in relationship to this?

Mr. CROOKER. Congressman, if the supplementals were advertising, and I assume that you might be discussing the type of advertising that was mentioned in yesterday's testimony, if the carrier violated

our rules, of course, we would have recourse. I looked at that ad. It referred to groups. It talked about taking the Elks Club and the Kiwanis Club and the PTA and so on.

Mr. KUYKENDALL. What else did it say? It said, "If you don't belong, come anyway."

Mr. CROOKER. It said if you don't belong to one, as I recall, "contact the tour operator or a travel agent and they are the people who will put the tours together."

I think, of course, in our approach we want the travel agent and other tour operator to be the focal point of where this work is carried on. This is where the travel agent earns his commission, and we feel the role of the supplementals is to charter the plane for a fixed dollar amount.

Mr. KUYKENDALL. Well, are you saying here that you do not think that a supplemental airline should advertise?

Mr. CROOKER. As far as the supplemental's advertising is concerned, if they advertise for groups, please bear in mind, sir, that they can advertise for the affinity groups and if they also advertise that if groups are in contact with a travel agent or tour operator, if the Congress confirms this authority in the Board, I don't know that that would be a violation.

Certainly we don't want the supplementals advertising for individually ticketed service where you call up the supplemental's director of sales and try to obtain an individual ticket for the transportation.

Mr. KUYKENDALL. What is the rule on the 110 percent? For instance, you say that the package has to sell at more than 110 percent of the regular fare.

Mr. CROOKER. Yes, sir.

Mr. KUYKENDALL. All right. Now, is either the travel agency or the supplemental allowed to advertise a fare less than the 110 percent? Are they allowed to put in their ad a figure less than 110 percent?

Mr. CROOKER. I would think there would be no question about the ability of the travel agent to advertise that the transportation is going to cost less on such a tour than it would if you took United or Pan Am because in fact it does. For the 110 percent the man gets not only his transportation but 7 days at the Ilikai and two at Coko Palms and a breakfast and a dinner each day.

Mr. KUYKENDALL. Don't you think that you are deliberately breaking your own rule here by allowing the advertising of a figure less than your own rule?

Mr. CROOKER. Not at all.

Mr. KUYKENDALL. Why did you put the 110 percent on if you are going to let him advertise less than 110 percent?

Mr. CROOKER. A very good reason, because, if I take a trip on business to Honolulu and if the fare I could pay on an IT would be less than 100 percent of what United and Pan Am would charge, I might be tempted to take the inclusive tour and forget staying at the Ilikai or eating with the group or driving out to Pearl Harbor, but if I have to pay 110 percent, and I am going on a business trip or something other than a genuine traveler with this tour, I am not going to pay the extra 10 percent to do it.

Mr. KUYKENDALL. You don't anticipate anybody but tour people going on tours, do you?

Mr. CROOKER. If we didn't have the 110-percent limitation, there might be someone who went on business who would be tempted to take a cut-rate trip, but with the 110-percent limitation, I think you keep your business traveler or persons other than general tourists on the tour out of the tours.

Mr. KUYKENDALL. Of course, he is going to have to stay somewhere if he goes to Hawaii.

Mr. CROOKER. Quite true.

Mr. KUYKENDALL. And eat somewhere.

Mr. CROOKER. He is going to have to. Even the businessman has to stay somewhere and eat somewhere.

Mr. KUYKENDALL. It seems, too, that we are in a situation here where we have one area of disagreement between the ATA and the travel agencies and the supplemental airlines and that area of disagreement is the matter of the ticketing, individual ticketing of unrelated groups. Is this not the area of disagreement?

Mr. CROOKER. There are two areas, Congressman, as I see it. One is the matter of ticketing and, second, if you say that some ticketing is permissible, then do you go as far as the supplementals want and permit them to do their own promotion of the tours or do you follow the CAB's view that there is a logical place for the travel agent and the other tour operator and have the supplemental carriers relegated to the position of contracting out for a fixed dollar amount for the use of the aircraft?

Mr. KUYKENDALL. If you would go on record here as stating that you would prefer to leave this entire promotional area to the tour operator, to the travel agency, I think it would help things here.

Mr. CROOKER. Congressman, I guess the only thing I am struggling with, and I am not trying to be difficult in my answer, but trying to think through a logical answer, is that in the American system of free enterprise you permit some advertising and if you say that bona fide advertising is permissible, you might get to the point where you would say that a supplemental carrier owning an aircraft could encourage people to visit their own travel agents and tour operators in order to promote the general concept of inclusive tours.

I will admit this is a gray area of course. But I see nothing wrong with the travel agents' advertising.

Mr. KUYKENDALL. Absolutely. I am proud of the travel agent. I like to see him do it, but I am rather amused at the idea that you can't control advertising. When you leave here, you might check with what has been said here over the years about controlling advertising.

I still say that this is not legitimate advertising, and that it is your job as the CAB to check on it.

Mr. CROOKER. It is our job to check on it, and we have the power to check on it, and I am sure if our Bureau of Enforcement concludes after looking at this—and I understand it was in last Sunday's paper, and I have not received my memorandum yet, so that I don't know what their view is—they and our legal staff, of course, will give some thought as to whether that was appropriate advertising.

MR. KUYKENDALL. But if it is your policy to leave the promotion of the tours to the travel agency, then I think this committee ought to recognize that fact, and I think it would help us make our decision here if that is what the policy is going to be.

MR. CROOKER. I think that to a large extent that is our policy. The only reason I am hedging is that I don't know just what, in wording, I would favor letting the supplementals say in an ad about putting such a tour together.

MR. KUYKENDALL. Well, I don't think you would want to be that specific anyway. I agree with you there, but I believe so strongly that this is the area that when we go into executive session to mark this bill up this is where the trouble is going to be, right on this point.

I went into this thing with a completely open mind and still have, and we are going to try to be totally fair in this area. You have done some things that have not been done before about the relationship between the travel agency and the carrier. I am glad you did because you clarified your basic intent. We hadn't know this before.

MR. FRIEDEL. Mr. Pickle, do you have questions?

MR. PICKLE. I have but one question, Mr. Chairman. I regret that I was not here at the beginning of the session this morning to personally greet the chairman before this committee. He and I have been friends for over 30 years. We were freshman at the university together. I have gone along my plodding way over the years, while he has had a most distinguished career in law and banking and business.

The Chairman of the CAB and his family have been those who have built our State. He will give to this Commission, this Board, the same kind of outstanding service, and I would like the privilege of greeting him personally.

MR. Chairman, since I came in late, let me see if I understand the position of the CAB to be that you think the position of the inclusive tour or charter ought to be in the statute, and it ought to have the word inclusive tour charter trip, and that your views parallel in effect the Department of Transportation position.

MR. CROOKER. Mr. Pickle, appended to the statement that has been put in the record today is a rather careful analysis of the detailed wording we would suggest.

In reviewing that with you, Mr. Goldman has already commented on that. We would be pleased to have him comment to you again.

MR. PICKLE. I don't think that will be necessary, but in general your views parallel those of the Department of Transportation, in essence?

MR. CROOKER. Yes.

MR. PICKLE. Is there any substance to an approach or any reasonableness to an approach with reference to the definition when you talk about inclusive tour charter trips adding some phraseology that might indicate the intent that we would expect the supplemental carriers to deal with groups, bona fide groups, by saying, provided that the bargaining group or the group which reserves the charter trip supply at least 50 or 75 percent of the ticketed volume?

What I am trying to get at is, you say yes, you can reserve a plane or a charter trip, and you would not have to have 100 percent occupancy of any one group or even two groups. This would still leave

some leeway for individual sales. I don't think the supplementals want to get into the really wide-open field of selling individual tickets, and I don't think they should.

Would we be going into too much detail in trying to spell out the percentage of an individual group?

Mr. CROOKER. Mr. Pickle, let me answer in these ways.

First, Congressman Kuykendall ably pointed out the difference between the IT's and the planeload charters or split charters. When you get to the IT's, you are talking about individual tickets or arrangements for these tours, so that, if Anita Schutz in Austin in your district puts together 100 people to fly to Hawaii, she does indeed sell those as individual tickets.

Now, with respect to how much you put in the legislation itself, your experience is much better than the experience of the people at the Board as to how detailed you want to be, but I would think that, if the legislative intent were made plain, the Board first would want to follow in its own regulations and it would certainly follow anything disclosed as intent in the regulations as to just how we would administer this and possibly as to how we would control the advertising by the supplementals rather than by the travel agents.

So we would prefer wording such as we have suggested, and we would hope that we would satisfy the Congress with the regulations adopted in line with the confirmation of our authority in this area.

Mr. PICKLE. I thank the Chairman. I have no other questions.

Mr. FRIEDEL. I want to thank you, Mr. Crooker, and your associates.

Mr. WATSON. Mr. Chairman.

Mr. FRIEDEL. Mr. Watson.

Mr. WATSON. May I ask one further question?

Mr. FRIEDEL. Yes.

Mr. WATSON. According to your regulation, Section 378(12)(4), under part 378, inclusive tours of supplemental air carriers, et cetera, "The charge for the passengers for the tour as set forth in the tour prospectus shall not be less than 110 percent of any available fare or fares charged by a certificated air carrier or combination of such carriers."

This ad has disturbed me some, too. The first line states, "Standard Airways will jet your group from New York to Las Vegas and back for just \$122 apiece. Compare that to the \$266 in cost for single jet economy tickets on any other airline."

Would that not be in derogation of the authority that you laid down here?

Mr. GOLDMAN. May I comment on that, Mr. Congressman?

Mr. WATSON. Yes.

Mr. GOLDMAN. Of course, I don't have all the details of that advertisement. I did have a brief look at it, and my understanding is that, at least on its face, it was designed to refer to ordinary charters as distinguished from inclusive tour charters. For example, if you charter an aircraft just for transportation to a group, and let's assume it's a group with a proper affinity so that it can qualify under our regulations, if you assume 100-percent load factor and divide the charter price for the aircraft by the number of people who could fly on that charter group, you could get a price like that in the ad.

I think what that arithmetic really demonstrates is the remarkable economies that can be achieved through a charter. In other words, when you are running at 100 percent load factor, you have quite a different economic problem involved. You spread the cost—you don't have empty seats and it is much cheaper.

Mr. WATSON. I can see that.

One final question. As I understand now, you have given 10 supplementals authority to originate these inclusive tours from foreign destinations to the United States, is that correct?

Mr. CROOKER. Well, are you referring to the U.S.-flag carriers? In other words, they can go and come?

Mr. WATSON. Yes, they can originate these from over there and bring foreigners here.

Mr. CROOKER. Yes, indeed.

Mr. WATSON. How recently did you agree to that?

Mr. CROOKER. To the extent that the Board can, it wants to encourage as much as possible, obviously, for balance-of-payments considerations an increase in the flow of foreign travelers to the United States.

Mr. WATSON. In your requirements laid down, and I assume they are about the same as this, do they further include the provision that an inclusive tour originating in a foreign country must include a guide? What provisions have you laid down?

Mr. CROOKER. Well, we have the standard provisions in part 378. In other words, the basic objective of the Board's regulations to insure that the inclusive tour charter shall be something quite different from the ordinary point-to-point ticket that the scheduled carrier can sell. It is to assure that there will not be any means by which travelers, ordinary point-to-point travelers, can use inclusive tours as a means of getting transportation that they would normally buy through individually ticketed point-to-point travel.

So we have set up what we believe to be very effective requirements including the 110-percent requirement, the requirement for three different stops, the requirement that you have to buy certain ground, hotel facilities, and the like, and the amount of time that you have to spend on those inclusive tours.

So far as we can tell, the actual implementation of those regulations in terms of the tours that have been operated demonstrates that what is being sold is quite a different package than the ordinary traveler would buy on a point-to-point ticket basis.

Mr. WATSON. I certainly have nothing against Standard Airways. In fact I flew on one of their charter flights down to Vegas. It says it gives you lessons on how to play baccarat but you will lose. I am not suggesting that I played it, but I certainly don't want to imply that I have anything against Standard Airways.

Mr. FRIEDEL. As I read this, evidently this advertisement is not for the inclusive tours. It is from Las Vegas and return. This would not be an inclusive tour, is that right?

Mr. CROOKER. Mr. Chairman, I understand Mr. Kuykendall's apprehension about this because it is like some other advertising. If somebody is trying to sell suits or groceries or anything else, he is doing his best to do effective advertising, and the start of it does relate to your paneload charter matters, but down in a paragraph in the second or

third column it goes on and says, "By the way, if you are not a member of a group, contact your travel agent."

And it says, "We will put you in touch with one." That is the thing that causes Mr. Kuykendall some apprehension.

Mr. FRIEDEL. I want to thank you, Mr. Crooker.

Mr. WATSON. May I state that although I can see the difference, it does include the term "complete inclusive tour charter group" in this advertisement, so that it could possibly be misleading, but I can see technically that it is just a charter proposition and is not a real inclusive tour package.

Mr. FRIEDEL. Our next witness will be our colleague from the great State of Hawaii, Congressman Matsunaga.

**STATEMENT OF HON. SPARK M. MATSUNAGA, A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF HAWAII**

Mr. MATSUNAGA. Mr. Chairman and members of the subcommittee, I thank you for this opportunity of appearing before you and expressing my views with reference to H.R. 17685, a bill to amend the Federal Aviation Act of 1958 with respect to the definition of "supplemental air transportation."

It is not very often, in the consideration of pending legislation, that we are faced with a situation that H.R. 17685 brings before us. Nor is it very often that, based upon a study of that situation, the speedy enactment of such legislation is so clearly indicated as it is in this instance. H.R. 17685 would clarify a situation which has evolved from the enactment in 1962 of Public Law 87-528. The need for clarification is evidenced by recent U.S. circuit court and Supreme Court decisions which have beclouded the original legislative intent. That the legislative intent was clearly manifested prior to the enactment of the 1962 law is a postulation to which a lawmaker of no less than the stature of Senator A. S. Mike Monroney has subscribed.

In speaking of the measure which later became Public Law 87-528, Senator Monroney, while presiding over hearings conducted earlier this month by his Aviation Subcommittee, of the Senate Commerce Committee, on S. 3566, a companion bill, said, and I quote:

In order to arrive at a bill the language of inclusive tours was stricken out on the theory we would leave this as we did the certification of these (supplemental airlines) to the Civil Aeronautics Board. It was not deleted as a means of eliminating the all-inclusive tour because I was head of the conference committee of the Senate, but it was the matter of having the lines more clearly defined as to what the Board would do in the all-inclusive tour field by definitions, and the bill was agreed to in both Houses.

Mr. Chairman and members of the subcommittee, the purpose of the present proposed legislation therefore is one of clarification, that is, to reaffirm by unmistakable definition the original intent of Congress. It would clear up, once and for all, an uncertain and unpredictable situation involving not only supplemental air carriers but scheduled air carriers as well. The Nation's air traffic experience has shown that the public convenience and necessity requires the continued services of both the supplementals and the regular route carriers. The inclusive tour charters or "all-expense tours" of the supplementals have brought modern jet travel within the financial reach of tens of thousands of

Americans and foreigners who otherwise would have been deprived of this mode of vacation transportation. This growth among the supplemental air carriers has taken place concurrently with tremendous growth of the scheduled airlines, indicating that the traveling public finds a need for both types of air service.

Nowhere is this need more impressively illustrated than in the history of vacation travel to Hawaii. At one time, many years before statehood, Hawaii was generally thought of as a remote and romantic South Sea paradise, accessible only to the very wealthy among Americans and the international social set. There was, indeed, more truth than fiction in this view of the inaccessibility of Hawaii to the ordinary vacation traveler.

The extent to which all this has been changed in recent years is shown by figures recently released by the Civil Aeronautics Board, indicating that in 1967 over 50,000 air passengers traveled from the mainland to Hawaii on inclusive tour charters. Projecting ahead, almost three times that number are expected in 1968, barring complications such as the present uncertain situation this legislation is designed to clear up. This growth of business among the supplemental air carriers has taken place concurrently with an equally impressive expansion of passenger traffic on the scheduled airlines. For example, in 1966, 1,090,000 passengers traveled from the mainland to Hawaii on the scheduled lines. In 1967, the number had grown to 1,722,000; and the 1968 projected total is 2,066,000 passengers.

We in Hawaii have never regarded the greeting "aloha," or welcome, as being reserved only for the affluent visitor. It has always been used as a greeting of equal warmth and friendliness to rich and poor alike, and the supplemental air carriers, with their inclusive tour charters, have in a very real sense helped to fulfill the dream of a Hawaiian vacation to persons of modest means.

The effect of the present state of uncertainty surrounding the validity of inclusive tour charters was graphically brought out in the Senate hearings on this legislation by the testimony of Chairman John H. Crooker, Jr., of the Civil Aeronautics Board. He stated that in early June 1968, one tour operator alone had canceled 19 tours to Hawaii and Mexico because of what Mr. Crooker termed "substantial uncertainty" surrounding the Board's legal authority to permit supplemental air carriers to conduct inclusive air charters.

H.R. 17685 and S. 3566 will provide legislative clarification not only to interstate and oversea air travel, but also to foreign air transportation. Our supplemental carriers will be provided with the needed authority to compete on an equal basis with foreign carriers for the low-cost international tour business. Successful competition by our supplementals at the international level would, especially with respect to tourism to the United States, help to improve our balance of payments.

Before concluding, I wish to point out another aspect of the operations of the supplemental carriers which should not be overlooked: It is the role they play to help meet our national defense needs. During periods of emergency, such as that which we are experiencing in Vietnam, the supplemental carriers, to a very substantial degree, enhance the Nation's capability to transport troops and materiel to areas where they are needed. As Vietnam requirements are lessened,

and we hope that this will take place to a marked degree in the near future, it is vital to the continued existence of our supplemental carriers that their continued and increased commercial operations are assured. The proposed legislation would help to insure the continued life of our supplemental carriers on a sound fiscal basis, so that their services would be available in future national emergencies.

Mr. Chairman and members of the subcommittee, for the reasons I have stated I respectfully urge that early favorable consideration be given to H.R. 17685.

Thank you very much.

Mr. KUYKENDALL. Mr. Chairman, before Mr. Matsunaga leaves, we have no intention on this committee of keeping anybody from going to Hawaii.

Mr. MATSUNAGA. Thank you. That is my interest in it.

Mr. FRIEDEL. Our next witness will be Mr. Leslie V. Dix, Director of Legislative Affairs of the Presidential Commission on Consumer Interests.

Mr. Dix.

**STATEMENT OF LESLIE V. DIX, DIRECTOR, LEGISLATIVE AFFAIRS,  
PRESIDENTIAL COMMISSION ON CONSUMER INTERESTS; ACCOMPANIED BY BETTY BAY, ASSOCIATE DIRECTOR**

Mr. Dix. Thank you, Mr. Chairman. Before I begin my testimony I would like to introduce my colleague and associate, Mrs. Betty Bay, our Associate Director for Legislative Affairs in our office, who joins with me in this brief. I am testifying today on behalf of Betty Furness, the Special Assistant to the President for Consumer Affairs, and the President's Committee on Consumer Interests. As you know, Miss Furness has strongly endorsed the principle of H.R. 17685 in a letter to subcommittee Chairman Friedel which she has requested be incorporated in the subcommittee hearing record. And I would request that this be incorporated in the hearing record if it meets with your approval.

Mr. FRIEDEL. It may be included.

Mr. Dix. Thank you.

(The document referred to follows:)

THE WHITE HOUSE,  
Washington, D.C., June 24, 1968.

HON. SAMUEL N. FRIEDEL,  
*Chairman, Subcommittee on Transportation and Aeronautics, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: I write in strong support of H.R. 17685, a bill to amend the Federal Aviation Act of 1958 with respect to the definition of "supplemental air transportation," and for other purposes and request that this letter be included in the record on the legislation.

The general purpose of the bill is to amend the definition of "supplemental air transportation" as it appears in paragraph 33, subsection (a) of Section 101 of the Federal Aviation Act of 1958 in order to make clear the authority of the Civil Aeronautics Board to authorize certificated supplemental air carriers to charter their aircraft to tour operators for inclusive tour trips.

The Office of the Special Assistant to the President for Consumer Affairs believes the clarification of this matter by the Congress is necessary in order to understand unmistakably that the Civil Aeronautics Board has authority to authorize supplemental air carriers to operate inclusive tour charter service

because (1) the legislative history of P.L. 87-528 enacted in 1962 indicates such CAB authority to have been the intent of the Congress, and (2) because the present legal controversy and uncertainty about the validity of inclusive tour charters seriously handicaps the planning of inclusive tour charters pending final resolution of the confusion.

This is a matter of significant importance to consumers—in this case consumers of travel service. It has urgency. Immediate Congressional action is required if low-cost package tours are to be available this summer to the great masses of consumers. Particularly affected will be low to middle income consumers who, deprived of the economy rates and convenience offered by the inclusive charters, may be forced to cancel their present trip plans and may not otherwise be able to afford such trips. My office understands that already this month one tour operator cancelled nineteen 1968 tours to Hawaii and Mexico because of substantial uncertainty of the legal status of the CAB's authority.

Since considerable lead time in establishing worthwhile tour programs is needed, even 1969 tours are in jeopardy, because now is the time when such programs must be established by the tour operators. The reluctance of tour operators to spend planning time and money to arrange and promote tours, as well as the reluctance of carriers to commit aircraft to tour operators' schedules is understandable in light of the present doubtful legality of the concept.

As Special Assistant to the President for Consumer Affairs, it is my responsibility not just to reiterate the President's support of the continued use of supplemented airlines for inclusive tour charters and the Board's authority to grant their franchise, a support expressed by the President in 1966; but equally important, to continue to speak out on behalf of consumers to provide them with the opportunity of choice as to the way they travel and their opportunity to match prices and wherever possible to get the most their money will buy. Choice for the consumer, and competition are the basis for our free enterprise system. The well informed consumer with choice in the marketplace is the best friend and true defender of our free enterprise system.

It is evident that inclusive tour charters have opened up a broad new choice for consumers—and a broad new market—for economy vacations for hundreds of thousands of Americans. It would appear that, in time, if inclusive tour charters are allowed to continue, millions of American citizens of low or medium income, who are not able to pay the cost of point-to-point air travel—will be able to fly under group arrangements to points abroad and on "See America" trips. That these flights are in the public interest appears to be absolutely incontrovertible. Statistics from the CAB are compelling evidence of the eager manner in which thousands of consumers have signed up for vacation group package tours. During 1967, the first full year of operation of the tours, 175 tours were scheduled, carrying approximately 30,000 persons, with 25,000 of that total going to Hawaii, our 50th State. The CAB as of June 3, 1968, had approved about 800 tours to be operated from the mainland to Hawaii alone, estimating that the passengers to Hawaii will increase to 136,000 in 1968. The CAB has indicated that the limited number of tours to other points reflects in large measure the uncertainty over the inclusive tours as a result of the court attacks mounted by the scheduled carriers. Domestic tours have been under less confusion since the first court decision found domestic inclusive tours lawful.

Yet another significant benefit to the public from the operation of the inclusive tours is the competitive incentive which inclusive tours have provided to the scheduled air carriers. In 1966, shortly after the CAB authorized inclusive tours for both domestic and international operations, the scheduled carriers on the North Atlantic instituted the group inclusive tour fare of \$230 between New York and London, the lowest fare ever charged for scheduled service in the history of North Atlantic air travel.

I will leave it to the Department of Transportation and the Civil Aeronautics Board to point out that it is not logical for the scheduled carriers to argue that inclusive tour charters are a major threat to competition when, with a six billion gross last year for the scheduled carriers the inclusive tour charters enjoyed only 3.7 percent of the market.

In conclusion, I would insist that elimination of the inclusive tour charter authority will only serve to deprive the public of service and choice, as well as take away the competitive spur which these charters have provided, all of which are the basis of our American free enterprise system.

I urge this Subcommittee to clarify what I believe to be the intent of the Congress—removal of any doubts about the Board's authority to permit supple-

mental air carriers to conduct inclusive tour charters, both in the interest of the mass of American consumers and in the basic interest of competition which is the basis of our free enterprise system.

Sincerely,

BETTY FURNESS,

*Special Assistant to the President for Consumer Affairs.*

Mr. DIX. Schedule conflicts have made it impossible for her to appear before you personally, but she has reviewed the statement I am giving here today, and it coincides with her views.

Consumers have a crucial interest in the principles with which this bill is concerned. The bill specifically would amend the Federal Aviation Act of 1958 in order to clarify the authority of the Civil Aeronautics Board to authorize certified supplemental air carriers to charter their aircraft to tour operators for inclusive tour charter trips.

Present litigation makes evident the need for the Congress to clarify this matter in order to specify unmistakably that the Civil Aeronautics Board has authority to authorize supplemental air carriers to operate inclusive tour charter service. I might say at that point parenthetically that having heard the testimony of the Chairman just briefly, that our office would certainly endorse the comments that have been made and their suggested change in language of the bill as coordinated with the Department of Transportation. The present status and future planning of inclusive tour charters is in confusion because of the legal controversy and uncertainty about the validity of the inclusive tour charters. Legislative history would indicate such CAB authority to have been the intent of the Congress, hence this, in our view, is no new legislative proposal but simply one of clarifying the intention of the Congress in its original action.

Clarification of this issue carries a degree of urgency. Immediate congressional action is necessary to make clear the status of low-cost package tours for the 1968 travel season of American consumers. Already, we understand, during the month of June tour operators have canceled 19 of the 1968 charter tours because of the uncertainty of the legal status of the CAB's authority. Now is also the time when the 1969 tour programs must be established by tour operators, so even the tours for the next vacation season are in immediate jeopardy. The reluctance of tour operators to invest time and money in planning, and of the carriers to commit aircraft to tour operators' schedules is understandable in light of this uncertainty.

The basic consumer questions in this issue are twofold, and I suppose justify our concern and interest in being here. First, and this is very fundamental to the whole consumer spectrum with whom I think we should say, at that point, this Congress has notably grappled with so successfully.

1. The guarantee of the consumer's freedom of choice in the marketplace as opposed to an arbitrarily defined market in which he has no choice.

2. The guarantee of competition which permits the consumer individually to shop around in a free marketplace to get the best buy for his money, and the guarantee that consumers collectively can carry out their economic role in a free enterprise system.

Only when consumers are given a choice can the free enterprise system truly function. The well-informed consumer, given that free choice in the marketplace, is the true friend and defender of the free enter-

prise system. To eliminate his free choice through elimination of competition for his dollar, is to penalize consumers who travel as individuals in the interest of one segment of the industry.

The consumer's right to choose is one of the basic consumer rights which the administration and this office is committed to defend and to support.

We feel that the legislation sought is in conformance with this basic principle.

In this case, the consumers are between two large segments of the air carrier industry. We believe it is the desire of this committee and the Congress to take cognizance of the public's stake in this issue. Certainly all that has been said here this morning reinforces our view that this is your intention.

Particularly affected in this case will be the low- to middle-income consumers. If they are deprived of the economy rates and the convenience offered by these inclusive charters, they may be forced to cancel vacation plans and may not otherwise be able to afford such trips.

It is indisputable that these tour charter trips are in the public interest. Spokesmen for the Department of Transportation and the Civil Aeronautics Board have so testified, as well as a spokesman for the trunk carriers. The tour charter trips have operated safely, competitively, fairly, and on a nondiscriminatory basis. They have meant for the consumer a wider choice of services and prices, both domestically and internationally.

Statistics from the Civil Aeronautics Board indicate that during 1967, the first full year of the tours' operations, 175 were scheduled, which carried approximately 30,000 persons. Of that total, 25,000 went to Hawaii, our 50th State. As of June 3, 1968, the CAB had approved about 800 tours to be operated from the mainland to Hawaii alone, with an estimated passenger increase to 136,000. The CAB indicates that the limited number of tours to other points reflects the uncertainty over the inclusive tours as a result of the present litigation.

Consumer faith in the services offered by inclusive tour charters provides evidence that the charter companies do, indeed, serve a formerly untapped market—a market which, we understand, established scheduled carriers have not cultivated aggressively. This, despite appeals to do so by the Civil Aeronautics Board; we are told.

Yet another significant consumer benefit has accrued from the competitive incentive which inclusive tours have provided to the scheduled air carriers. This is some lowering of rates by the scheduled air carriers themselves. Shortly after the CAB authorized inclusive tours for both domestic and international operations in 1966, the scheduled carriers on the North Atlantic instituted the group inclusive tour fare of \$230 between New York and London. This is the lowest fare ever charged for the scheduled service in the history of North Atlantic air travel.

Statistics would refute arguments that the inclusive tour charters are major competition for the scheduled carriers when the scheduled carriers grossed \$6 billion last year and the supplemental airlines received only 3.7 percent of the market.

Historically, the supplementals have developed new markets and created new air travelers who later became customers of the scheduled lines. Introduced to the convenience of air travel through a tour charter flight, many of the first-time tourists may well become the seasoned air passengers of tomorrow, using the scheduled airlines to travel routes not included in tour itineraries.

As said earlier, we defer to the Department of Transportation and the Civil Aeronautics Board's recommendations as to the specific wording of H.R. 17685 which would achieve maximum clarification, which we believe you are seeking to achieve.

In conclusion, we urge immediate passage of H.R. 17685 so that the consumers, particularly those who might not otherwise be able to afford a long dreamed-of trip, will not be disappointed, to assure the basic right of the consumer's freedom of choice, and to guarantee protection of competition in a free enterprise system; a competition which creates a healthy economy and gives the consumer the advantages of lower prices or additional services through that competition.

Thank you very much.

Mr. FRIEDEL. Thank you very much, Mr. Dix.

I read Betty Furness' statement yesterday.

Are there any questions?

Mr. PICKLE. Mr. Chairman, I have no questions.

Mr. FRIEDEL. Are there any questions?

Thank you very much.

Mr. WATSON. Mr. Chairman, may I just make one comment?

Certainly I appreciate your testimony, Mr. Dix, but in all candor I personally would rather have had Miss Furness. But in lieu of that, you have done a remarkable job in bringing this lovely lady with you.

Mr. DIX. I am very mindful of my limitations, sir; and I shall convey your message to Miss Furness.

Mr. WATSON. If you will.

Mr. KUYKENDALL. I must say that I can find a great deal more consumer relationship here than I can on Miss Furness' expertise in gas and light plants.

Thank you.

Mr. FRIEDEL. Our next witness will be Mr. Harold Low, president and chairman of the board of the American International Travel Service.

Mr. KUYKENDALL. Mr. Chairman.

Mr. FRIEDEL. Yes.

Mr. KUYKENDALL. May I apologize as one of this committee for having kept Mr. Low waiting yesterday. We got tangled up in a rather difficult afternoon and I, for one, would apologize for the fact that you were kept waiting. I know all of you feel the same way.

**STATEMENT OF HAROLD LOW, PRESIDENT AND CHAIRMAN OF THE BOARD, AMERICAN INTERNATIONAL TRAVEL SERVICE; ACCOMPANIED BY STEPHEN POTTS, COUNSEL**

Mr. Low. Thank you.

I am perfectly satisfied to appear before you this morning.

Mr. Chairman and members of this committee, I am pleased to be here as the representative of tour operators throughout the country

that have been developing the ITC tour program since it was authorized by the Civil Aeronautics Board.

First I would like to introduce myself.

I am Harold S. Low, chairman of the board and president of AITS Inc. (American International Travel Service) which is a publicly owned corporation that employs more than 400 persons in nine offices. Headquartered in Boston, we maintain service offices in nine cities including New York, Philadelphia, Washington, Chicago, Las Vegas, San Francisco, Los Angeles, and Honolulu.

During my testimony today, which I intend to make as brief as possible, I will try to outline for you the tremendous benefits ITC's have had in creating new travelers, new markets, and year-round vacationers. In this regard, we have distributed a presentation which completely documents my review of this industry's growth and its subsequent contribution to the American public.

Our testimony is designed to present the facts of our industry as we know them. Yesterday we heard varying opinions and now you will be presented a statement by us as representatives of the tour operators who deal with both scheduled and supplemental carriers. We have called upon this knowledge and experience and causative research to present facts to you. This statistical evidence appears within our prepared presentation and in addition we have prepared charts which graphically illustrate these facts which you may see on our right.

(The data referred to has been placed in committee files.)

Mr. Low. I believe it appropriate for me to provide you with some background on our company, as its growth parallels that of this industry.

Our company was founded in July of 1965 and employed five persons. Our first charter left Pittsburgh in February of 1966 at which time we were operating affinity back-to-back charters as agents through organizations such as Shrine Temples, Knights of Columbus, State bar associations, and many other fraternal and professional organizations. When the inclusive tour charter regulations went into effect in May of 1966 we began operating under this regulation. This meant that we could utilize organizations in more remote areas with a smaller membership than that which could probably fill a plane. By knowing we could allow them to invite their friends and by our having the right to advertise to the general public, we had some assurance that we could operate the flight profitably.

Because of this regulation we operated direct flights out of areas such as Indianapolis, Baltimore, Charlotte, Charleston, Columbus, Miami, Memphis, Lincoln, Buffalo, Lansing, Ft. Worth, Hartford and other cities and States which are not airline gateways and did not offer direct service to the areas to which we took our vacationers. Because of heavy investments in the areas of sales, service personnel, training, imaginative packaging, and mass media advertising, we have increased our frequency during the past 2 years to the point where this summer we will operate six flights weekly on our Hawaiian carnival. It takes our vacationers on a 2-week all-inclusive tour to Las Vegas, San Francisco, and Honolulu. That is exhibit A which explains the tour in detail.

In addition, we have run inclusive tour charters to Europe, South America, and our all-Hawaiian carnival which visits three of the Hawaiian Islands (exhibit B).

Besides selling fraternal and professional organizations as the nucleus of the departures, our mass media advertising has resulted in ever-increasing sales through travel agents in those 37 States from which we now operate.

Probably the most important reason for our success is that inclusive tour charters have made accessible a virtually untapped market of inexperienced travelers who are now given an effortless way in which to enjoy a luxury vacation at a price they can afford.

In addition to creating a whole new travel market, inclusive tour charters also resulted in another phenomenon. It seems that the promotion necessary to fill a full plane combined with word-of-mouth reports on the vacation areas—in this case Hawaii—resulted in heightened interest in the States where this promotion took place.

If you will look at exhibit C, this graphically illustrates what I refer to. You will note that in those areas of the country from which we operated in 1966 and 1967 that this percentage of increase of visitors to Hawaii in 1967 was far greater than the average increase from the other areas. In other words, that percentage averaged 60.9 percent, where the areas that these inclusive tour charters were not operated by us only averaged 34.1 as compared to the national average of 43.5 percent.

In fact, you will note that the areas from which we did not operate in either 1966 or 1967 showed an increase of only 35.1 percent. As I said before, those States in which we did operate increased an average of 60.9 percent. In addition, exhibit D illustrates the percentage increase of visitors from each State we operated in in 1967. Better than 60 percent of these States doubled in the amount of visitors that went to Hawaii. And in 12 of these States where we had more than 14 percent of the market, the average increase in traffic exceeded 75 percent. For example, Alabama was as high as 143.6 percent; Kentucky, 84.6 percent; Mississippi, 121.9 percent; and North Carolina, 123.6 percent.

Mr. WATSON. What about South Carolina, 146 percent. That is the top one.

Mr. Low. I will ask, Mr. Potts, why didn't you list South Carolina?

Mr. WATSON. Excuse me.

Mr. Low. Another indication that inclusive tour charters awakened a heretofore dormant market are some tourist figures for specific States. For instance, we have a chart (exhibit E) showing the number of persons visiting Hawaii on a vacation who went on our carnival trip as compared to the total numbers of vacationers visiting Hawaii. And these statistics are by the Hawaii Visitors Bureau. By comparing the number of vacationers we took into the Hawaii Visitors Bureau figures of total visitors from each State, we came up with some pretty startling statistics. For instance, 41 percent of the vacationing tourists visiting Hawaii from Massachusetts which is our own home State, were on the carnival flights—and the figure was 30.6 percent for Kentucky; Pennsylvania, 28.2 percent; North Carolina, 27 percent; Connecticut and South Carolina, each 27.6 percent; Mississippi, 19.1 percent; New Jersey, 18.8 percent; Ohio, 18.3 percent; Alabama, 17.8

percent; Nebraska, 15.9 percent; New York, 14.1 percent and five other States, Florida, West Virginia, Maryland, Georgia, and Louisiana, each recording over 10 percent. As importantly, only 11 percent of our passengers indicated that they had ever been to Hawaii before while the visitors bureau figures indicated that 29 percent of all other visitors had been there at least once.

Naturally, supplemental airlines have benefited greatly by tour operators' promotion of inclusive tour charters. However, we find that this promotion has also greatly benefited the scheduled carriers.

For instance, we have retail offices in Boston and New York, and these retail offices sent almost 5,000 additional persons on our Hawaiian carnival package at a slightly increased price via United Airlines which sold for a higher price than the ITC's—and in fact, we believe that we are United's biggest customer to these areas. It is also obvious that the increased business from the States in which we operated also directly benefited the scheduled carriers. In West Virginia, for example, in 1966 we took better than 68 percent of all the visitors who went to Hawaii from that State for pleasure. And in 1967 the amount of visitors to Hawaii increased by some 105 percent, and we took a mere 10 percent of the market. So, you might say the scheduled carriers diverted traffic from us rather than we from them as they claim.

Many people prefer the flexibility flights the scheduled carriers give them. Our charter program naturally denies this flexibility as vacationers are required to leave on a prescribed day at prescribed times with a definite schedule and restricted length of vacation, utilizing specified hotels and other tour features.

In this respect it is interesting to examine our chart (exhibit F) which shows the total number of people who visited Hawaii from States in which we operated for pleasure in 1966, 1967, and the month of March 1968. Just as in West Virginia, you will note that even though our percentage of these markets increased during each of these periods from 8 percent in 1966 to 14 percent in 1967, to 17 percent during March of this year, other operators and scheduled carriers must have benefited greatly. Although our total sales in those States increased from 11,409 to 30,033 between 1966 and 1967, or about 18,500 people, other visitors to Hawaii from these States increased to a figure close to 61,000 persons.

Another indication as to the possible forces which can be exerted by inclusive tour charter programs, is the graph appearing at the top of exhibit F. You will note that a year before ITC's were put into effect that vacation visitors to Hawaii increased approximately 20 percent, whereas the year following the institution of ITC's visitors to Hawaii increased approximately 60 percent.

However, for that formerly dormant public that requires the impetus of great value and special service, we must have the advantage of charters. In this regard, we have found it extremely difficult if not completely impossible to charter from on-line carriers that are neither equipped nor inclined to provide charters on a regular basis. We have personally, on many occasions, requested charters for affinity groups on scheduled carriers with singularly unrewarding results.

Therefore, supplementals which allow us a total flexibility in scheduling departures have been of real benefit to our customers.

Mr. WATSON. Mr. Chairman, may I interrupt the gentleman at that point.

Mr. FRIEDEL. Mr. Watson.

Mr. WATSON. Do I understand you correctly that, at times, you have actually called upon the regularly scheduled carriers to supply equipment for an affinity group?

Mr. Low. On numerous occasions.

Mr. WATSON. And they would not handle it?

Mr. Low. I would not say unequivocally but for the most part our results have been very unsatisfactory.

Mr. WATSON. Thank you.

Mr. Low. As further evidence to the fact that inclusive tour charters have created a new travel market as well as being of tremendous benefit to the American public, are the computerized results of a survey conducted on each of our Carnival flights. We have, and presently are distributing a questionnaire to each of our couples and individual customers in which we ask various questions concerning services, various features of the trip and their travel habits (exhibit G). This questionnaire is distributed on the last leg of their trip along with a stamped, self-addressed envelope. They are then requested to complete the questionnaire and mail it to our home office in Boston for evaluation by various departments and for storage in our computer.

A very high percentage of these questionnaires were returned by our passengers. Out of the 30,033 people visiting Hawaii on our flights last year, we received, in the mail, over 13,000 questionnaires. As most of our passengers travel as couples this would represent approximately 26,000 passengers out of the 30,000 we carried.

An average of a little over 13,000 answered each question (exhibit H). You will note that 26 percent of these people had stated that they had never been on a jet before. This question has just been changed to read: "Have you ever flown on a jet for pleasure travel before?" which we feel will eliminate those persons who have flown for business purposes but who have used other means of transportation on vacations. In our opinion, this will obviously greatly increase this percentage. Ninety-two percent of the persons enjoyed traveling as a group while 89 percent stated that they had never been to Hawaii before. It is also interesting to note that when asked the question. Do you ordinarily take a vacation at this time? 45 percent said no they would not have gone anywhere on a vacation if they had not taken our trip. Forty-seven percent indicated that they would not have taken a vacation at the time of year that they went on our trip. So that, in those vacation seasons, almost half of the people would have stayed home or gone to their local resort.

It is important to realize that the basic requirements of an ITC program automatically benefit the public. One of the basic requirements of operating ITC's economically is to run them on a back-to-back pattern. By this I mean that every time a plane lands at the passengers' destination, there should, or must be passengers there who will board the plane to return home. This eliminates what is termed ferry mileage. Ferry mileage is the air miles a plane flies without passengers as opposed to live mileage with passengers. In order to make sure we are always flying live mileage, we must do a continuing volume week in and

week out. Bear in mind that the tour operator who charters the aircraft has the obligation of filling the plane and it is he who has to pay for the plane whether it is full, half empty, or one-third empty. This volume must be obtained even though we operate under the controlled conditions of specified departure points, dates, and the length and contents of the itinerary. Therefore, it is obvious that we must offer imaginative packaging that is an obvious value to the consumer.

This automatically means that the American public as a whole is the beneficiary of these specific programs. To illustrate just what kind of value the consumer receives, I would like you to note our Hawaiian Carnival folder (exhibit A). Whether the consumer leaves from the South, East, or Midwest, they receive accommodations at deluxe hotels, transfers to and from airports and hotels, all breakfasts, all dinners, sightseeing, cocktail parties, the services of a tour escort throughout the trip and, of course, the round trip by jet. The cost is \$599 plus taxes and service. Obviously this is a great value and makes it possible for a great many people to enjoy a luxury vacation that they could otherwise not afford.

It is also a consensus of opinion among tour operators that the example of low-cost, deluxe, ITC package programs led to the establishment of the scheduled airline's GIT fares.

Now, if the competition of ITC's for this newly created travel market is eliminated, there is a real fear within the travel industry that the airlines will find it unnecessary to continue offering low, group fares.

In this respect, we refer to a June 3 story (exhibit I) in "Travel Agent" magazine, a trade publication, as well as an editorial in "Travel Trade," which dramatically assess this possibility. In fact to quote Publisher Joel Abels' editorial in "Travel Trade":

You can bet your last Indian nickel that the domestic airlines will exert every pressure to knock out domestic ITC's as well, and that includes the lucrative Hawaii market. This is something which the travel agent industry cannot afford to let happen. The scheduled airlines challenge to the authority of ITC's to operate should serve as a challenge to the travel agent industry to go all out to fight, through legislation in Congress, for the preservation and even the enlargement of ITC powers. A victory in the ITC battle could reach epic proportions and open vast new sales areas of profit potential. Acceptance of the Supreme Court ruling would mean a return to a travel industry totally dominated by the airlines in which retail agents and wholesalers alike would have little opportunity to convince their scheduled airline principals to bargain with them on an equal basis.

There are at least two other major considerations in connection with the proposed legislation. Both refer to balance of payments and the President's request for Americans to restrict their travel to the Western Hemisphere.

We believe everyone is pretty much against restricting travel to anywhere by any American citizen unless it is absolutely necessary. Therefore, the ideal solution would be to create more travel by foreign citizens to our country. It is in this area that inclusive tour charters can play a most important role.

We know that many of the supplementals and tour operators had planned marketing programs designed to create more travel from Europe to the United States. For instance, we had already prepared a color film presentation, "American Carnival," in which it was our intention to prepare the narration in several foreign languages and

market inclusive tour charters from Europe to the Eastern United States. In this connection, our plan was to open sales offices in conjunction with our service offices in those cities visited by our European Carnival vacationers (London, Paris, Rome, Amsterdam, etc.). However, it was impossible for us to implement this marketing program without a clear-cut international ITC authority.

We can successfully run a program such as our European Carnival via scheduled carriers from the United States to Europe because there are enough Americans who can afford the cost of such a vacation. However, the European market can only be successfully developed with a low-cost economy package.

This is not just our opinion. Richard J. Davis, proprietor of the Davis Travel Agency in Frankfurt, Germany, and a member of our tour operators group has been arranging transportation from Western Europe to the United States for the past 8 years.

As an American citizen, Davis would like to do his part in the balance-of-payments battle. The fact that his contribution could be a major one is evidenced by the fact he was responsible for 10,000 persons flying to this country in 1967.

Davis intends to embark on an ambitious, inclusive tour program in 1969 designed to bring 20,000 persons to the United States. This could mean \$1,500,000 in fares for either American-flag carriers or for foreign supplementals. If American supplementals are not permitted to operate international ITC's then Davis has no alternative but to sign with a foreign carrier, as he must have charters to attract this type of foreign volume. Davis also pointed out that his program would also result in a great volume of business for the scheduled carriers on the domestic legs of his ITC program.

How many other programs besides ours and that of Richard Davis were nipped in the bud by the uncertainty surrounding ITC's? We do not know for sure but by personal knowledge there were a substantial number.

The second consideration that should be made is the fact that Americans were requested to restrict their travel to the Western Hemisphere. In order for Americans to have some place left to go, it was up to ITC's to help take up the slack. For instance, our organization as well as the other tour operators—while cutting back on European programs—scheduled more domestic patterns to vacation areas such as Hawaii, and so forth, and developed new programs such as our air-sea package to South America. This program included round trip jet to Recife, Brazil, where the vacationers would board a ship, and, incidentally, we had to charter that ship at a great hazard in addition to the aircraft and cruise down the South American coast to Buenos Aires and then return by a jet. We marketed this 2-week vacation from \$649 and took some 2,600 persons to South America in a 3-month period.

If these imaginative low-cost flights are stopped thousands of Americans who have already made vacation plans this year will find themselves with no place to go—that they can afford. We, alone, have more than 25,000 reservations under deposit for this summer and fall on Hawaiian carnival.

We believe it is important for Congress to realize the number of people affected by the decision they are about to make. The future if

not the very existence of supplemental airlines depends on this legislation. Countless thousands of travel agents who have earned substantial commissions on the sale of ITC's will be affected as well, and most importantly the public will lose the most. This year we alone have hotel accommodations for more than 50,000 persons on the Hawaiian carnival—and we are only one of many operators. We have already taken in excess of 18,000 on this trip since January. It is obvious from the success enjoyed by ourselves and many other operators in this field that more and more Americans are being introduced to air travel as a means to a more exciting and fulfilling vacation.

Within our presentation we have included just a few letters (exhibit J) from carnival vacationers thanking us for making it possible for them to enjoy this type of trip. I can't even begin to recount the number of people who have told or written me, members of our staff, travel agents, or our tour escorts how they never would have been able to afford a trip like they had enjoyed. Other tour operators have reported the same experience.

For instance, our own tours are a good example. We offer our Hawaiian carnival—with exactly the same features that are included on ITC flights—for \$749 via United Airlines (exhibit K). This is \$150 more than our ITC price for the exact same trip, and although the vacations are serviced by our staff in each city they are not accompanied on the flights by our tour escort as are ITC customers. Even at the \$749 price the package is an excellent value as evidenced by the fact that we took 5,000 persons on it, and could not even be offered at this price if it was not for the volume of our ITC program which gives us buying power and covers our staff overhead, et cetera.

If this legislation is not passed and this young industry is not allowed to progress at the rapid rate it has already achieved, untold hundreds of thousands of Americans such as these will be deprived of bargain luxury vacations. It might be appropriate here to discuss something that has been a crow in my throat and to clear up the minds of everyone of some conflicting and perhaps confusing testimony of the past 2 days.

I am referring to the terms "affinity charter" and "individual ticketing." Perhaps if I would define my interpretation of the two terms it might be enlightening to all concerned.

First, let me outline the guidelines for what we call affinity charters within which the ATA and the scheduled airlines want to confine the tour operator and the supplemental airline. Under the existing affinity charter concept, we as a tour operator or the airline would approach a bona fide affinity organization such as the Texas Bar Association or the Illinois Medical Society or the Grand Lodge of Masons in Tennessee and explain the advantage of reduced rate transportation through charters. If sold on the idea, the head of the organization would contract directly with the airline for a specific date and itinerary guaranteeing payment for the entire plane at a set rate per mile.

For instance, if it were to Hawaii and return, the mileage might be 10,000 miles. If the rate for a 180-passenger plane were \$4.50 a mile or a total of \$45,000 on a full plane the fare for each person would be \$250. He then might or might not require the services of a tour operator to help plan the land arrangements and hotel accommodations.

With these features included in the overall package price it would then be exposed to the members of the organization. Here is the catch. We know the rate if 180 members or the full capacity of the plane signs up. It is \$250. However, if only 90 persons respond to the offer, and another organization in the same area cannot be induced to travel on the same trip at the same time to help fill the plane, the organization leader is left with just two alternatives. He either cancels the tour and returns the money collected or charges each tour participant the difference in the cost which in this case is another \$250. Meanwhile the tour operator if involved who is making a profit on the land arrangements is forbidden from contributing any of his profits to the organization to help see that the organization members are assured of their trip. Does it seem feasible that the supplemental industry could have flourished under these restrictions? Imagine the reaction even on a less extreme case where 170 members of an organization sign up and are told 1 week before their long-planned vacation that they must pay their proportionate share of the 10 empty seats. Let's even go further and say 168 agree and two cancel. They all must be recontacted now to help subsidize the remaining two seats.

In addition if tour participants are taken ill before the departure none of the plane fare can be refunded unless the seats are subsequently sold to another member which, if near to departure time, is quite improbable.

Let's face it, gentlemen. If any of these situations arise you have some pretty disappointed and unhappy members of organization. Of course, the three organizations I mentioned such as the Illinois Medical Society, the Texas Bar Association, and the Tennessee Grand Lodge of Masons could probably fill a plane but what happens to members of smaller organizations and, further, those Americans who are not member nor wish to be members of organization. Are they second-class citizens? Do just some of our citizens deserve by circumstances of where they live or the financial wherewithall to belong to certain organizations to enjoy bargain vacations. I would say that few of us would desire such an inequitable situation. The other area which remains as a crow in my throat is the interpretation of individual ticketing. It would seem appropriate to define that term in relation to what we are discussing. For instance, even on an affinity charter each tour member must receive an individual ticket. Would this be considered individual ticketing by tour operators, the affinity organization or the airline? We believe it is quite obvious that there is a vast difference between ITC's ticketing practices and ticketing by scheduled airlines. How can you possibly compare a ticket on ITC which requires you to leave on a certain day at a certain time following a set predetermined and unchangeable itinerary with set features including specific hotels, how can you compare that with a scheduled airline ticket which allows the customer complete freedom in the selection of which airline he prefers, using the airport from which he chooses to depart, using the class of service he wishes to use, the time and the day he prefers for his departure and return, the length of stay in each city he visits which is also subject to change at his slightest whim.

As a travel firm and tour operator which deals in both forms of tour sales the difference between the two is obvious and clearcut. This

I might add is in direct conflict with Mr. Tipton's testimony yesterday in which he said:

Moreover, the travel agent is a "retail" travel store which sells a good part of today's air transportation. On his "shelves", the travel agent has stocks of the services offered by the scheduled carriers and, under the "inclusive tour" concept, would also have comparable supplemental carrier products at the same time, at the same basic price, and under the same basic conditions—all of which would be offered to the public to choose from.

All this legislation is designed to do is confirm the right of the supplemental carriers and tour operators to operate just as they have for the past year—providing the same necessary service to the American public.

Congress made it possible for this concept to be put into effect by the Civil Aeronautics Board and the industry has proven their concept to be extremely successful from the standpoint of acceptance by the public and the strengthening of the supplemental carriers, as well as new air travelers for the scheduled carriers.

The growth of a new phase of the travel industry, and the resultant jobs and added taxable income are just a couple of the benefits accrued from this regulation. In fact, no one, except the scheduled carriers even question the fact that the ITC's have proven the very thing that they were created to prove. These are the same airlines who have a consistent history of opposing almost all progressive legislation—just as they opposed coach fares originally with the argument that they would not create new travelers but simply lower revenue from the same passengers.

It would seem ludicrous to have an already successful program stymied and its benefits to the public halted for a lack of action. Therefore, may we say, speaking for all the ITC tour operators, that we are in complete accord with the bill exactly as proposed incorporating the suggestions of the Civil Aeronautics Board. We are pleased that we were invited to speak here today, as the tour operators have been the major contributors to the success of the inclusive tour charter program. It has been their investment in creative packaging, marketing and advertising, which in our case alone involved more than \$5 million that has made this program a success with the supplemental carriers and the American public, benefiting most of all.

May we emphasize that this is a bill that does not reflect any political philosophy or party affiliations. It is simply a business bill which when enacted will—

1. Restore the previously granted rights of supplemental carriers.
2. Allow the travel industry to continue offering the public true value.
3. Eliminate the truly chaotic conditions that exist in an entire industry.

Thank you very much.

Mr. FRIEDEL. Mr. Low, I want to thank you for your very fine statement. Evidently there was a lot of detailed work put into this presentation.

I have no questions to ask.

Are there any questions?

Mr. ADAMS. Mr. Chairman.

Mr. FRIEDEL. Mr. Adams.

Mr. ADAMS. I have just one.

You had two packages under exhibits A and K, one for \$599 and one for \$749. What is the difference?

Mr. Low. In the package itself there is absolutely no difference except in this one the passenger has the flexibility of staying longer in Hawaii if he so chooses, stopping longer in San Francisco. He can stop in Denver, Colo., on his way home or go to the outer islands in Hawaii and does not enjoy that flexibility on the nonscheduled airline.

Mr. ADAMS. And the additional charge is because you don't have the plane full?

Mr. Low. No, that is an individual basis, and that is why the difference.

Mr. ADAMS. That is the difference in price of the air fare?

Mr. Low. It's the difference in price, Mr. Adams, because on the one hand we are chartering the aircraft and assuming that we are going to operate on a 95 percent load factor. On the other we have no hazard whatsoever.

Mr. ADAMS. In other words, you give this person the package and he goes to the airline and gets on when he wants to, and then your people meet them at these spots and tour them?

Mr. Low. And if they choose to go a day later, they have that flexibility.

Mr. ADAMS. You have people going through a pipeline all the time on this?

Mr. Low. That is correct.

Mr. ADAMS. Thank you.

Mr. FRIEDEL. Mr. Watson.

Mr. WATSON. Thank you, Mr. Chairman. I also would like to commend Mr. Low for a very good job. It seems quite well documented and obviously you are deeply concerned about this; I believe rightly so.

Actually, you represent the travel agencies. You don't have any airplanes yourself?

Mr. Low. That is correct, sir.

Mr. WATSON. I think that the supplemental carriers would be placed in a rather impossible position. As I understand, the military requires them to have some 30 percent business before they can engage in military chartering. If they are knocked out of this, then they would be virtually nonexistent. I am delighted. I have had a lot of calls and a few letters from down home from travel agents. You are one who shows what a good job you have done in reference to the charter business.

Mr. FRIEDEL. Mr. Pickle.

Mr. PICKLE. Mr. Chairman, I wanted to ask Mr. Low a question about the choices of the airlines he uses. When you put together a tour, as a practical matter are most of your customers routed to World Airlines or the Trans World Airline? There are two major companies, is that correct?

Mr. Low. We have been using three different airlines on our Hawaii package, sir. We have been using Trans International Airlines, Overseas Airlines, and Standard Airways.

Mr. PICKLE. Have you put together any packages with certificated carriers?

Mr. Low. Yes, sir; as I stated before, we are probably one of the largest producers of business to Hawaii by United Airlines. We are also one of the largest producers of business to the Orient via Northwest Airlines, and we have operated a tour—I don't say we are one of the largest—but we have done a considerable amount with KLM to Europe.

Mr. PICKLE. I know you did considerable business with United.

Mr. FRIEDEL. Have you ever tried Pan American?

Mr. Low. No, sir; Pan American has never chosen to recognize us as a travel agent or given us their ticket stock.

Mr. POTTS. I might add, that is after repeated requests for it. I am Stephen Potts.

Mr. PICKLE. I was under the impression that someone from Pan American indicated in the Senate that they would be interested in putting on your package.

Mr. Low. That is what they indicated, and ironically the day after I returned from the Senate hearings I was approached by a representative of Pan American asking us to be one of their travel agents.

Mr. PICKLE. You represent a tour agency?

Mr. Low. I am the president of American International Travel Service which is a tour operator, and I am also the representative of many of the other tour operators which have been involved in this ITC program.

Mr. PICKLE. Do you or your company or your organization have stock in any of these three airlines you are using?

Mr. Low. No, sir.

Mr. PICKLE. Thank you, Mr. Chairman.

Mr. FRIEDEL. Mr. Kuykendall.

Mr. KUYKENDALL. Again welcome to the committee, Mr. Low. I want to also welcome your counsel with whom I have some indirect personal connections. It is always good to hear a good salesman operate. I am an ex-salesman myself.

I noticed in your brochures that you never advertise but just one price; in other words, the price of the tour, period.

I noticed that you don't break down the airline part and the hotel part and the transportation part at all.

Mr. Low. No, sir; it is not required under the ITC authority.

Mr. KUYKENDALL. I know it is not required, and I am glad it's not in there. Would you have any objection to regulations preventing the quoting in advertising of a part of a tour?

Mr. Low. No, sir.

Mr. KUYKENDALL. You would have no objections?

Mr. Low. In other words, if you are asking me if I would have any objection to this tour only being sold on a complete package price.

Mr. KUYKENDALL. That is right.

Mr. Low. I am in favor of it exactly that way.

Except, may I qualify that?

Mr. KUYKENDALL. Yes.

Mr. Low. In some instances we offer additional optional sightseeing and in some cases some tour operators do not include meals and have that as an optional, but the basic contents of the package, we have no objection to only being able to offer that at a complete package price.

Mr. KUYKENDALL. In our attempts to isolate the area of disagreement, and of course that is what we are here for, it would seem to me that one of the things that several of the parties have agreed on is that they don't want tour operators selling airplane tickets, just airline companies.

Mr. Low. That is correct, yes, sir.

Mr. KUYKENDALL. And I gather that up to now this has been one of the areas of disagreement and one of the areas that we want to be sure that we prevent. I am glad to hear your observation because in looking through your advertisements, as compared to the infamous ad that has been used so much in this committee the last couple of days, I find that you never break down in your advertisements in the way that this other type advertising does.

I don't know what the outcome of these hearings is going to be, Mr. Chairman, but I would hope that we would put at least as our intent in the report that a breakdown of the parts of the tour so as to isolate the cost of the airplane ticket, which I don't care whether it is technically legal or not, when a tour agent or a supplemental airline takes the cost of the airplane ticket out of the tour and advertises that alone, then he is selling airplane tickets, and I would like to see it in the legislation because I think this might tend to clarify a lot of the disagreement.

I am glad to see that you agree with that. Thank you.

Mr. FRIEDEL. I want to thank you, Mr. Low.

We have one more witness, to continue, the former head of the FAA, and president of Pan American Airways, Mr. Halaby.

Mr. Halaby, you may proceed.

**STATEMENT OF NAJEEB HALABY, PRESIDENT, PAN AMERICAN WORLD AIRWAYS, INC.; ACCOMPANIED BY JOHN C. PIRIE, VICE PRESIDENT AND GENERAL COUNSEL; AND NORMAN EATON, MANAGER, PASSENGER SALES**

Mr. HALABY. I have with me our vice president and general counsel, John Pirie, at my side, and our manager of passenger sales, Norman Eaton, at the table.

Mr. Chairman, I will submit for the record a statement and attempt to cover some of the points raised here this morning and yesterday.

Mr. FRIEDEL. Your full statement will be included in the record following your oral presentation.

Mr. HALABY. I hope it is safe after 3 years to reappear before this committee. Mr. Friedel and Mr. Devine were here at the time the original bill was passed and the record was made. It is a little uncomfortable to have to differ with the Chairman of the CAB and the Department of Transportation and Senator Monroney and even Betty Furness all in one morning, but 6 years and several millionaires later we are discussing the subject of the supplemental carrier bill passed in 1962.

As I see it, it is proposed to satisfy the appetites of the supplementals at the direct expense of the pioneers and builders of the system of regulated air transportation.

This committee 6 years ago insisted that there be a very sharp fundamental distinction drawn between the group charter and the individual ticketing, and I think the fact that this committee insisted on that distinction is a source of the satisfaction that has been expressed by some of the witnesses.

The issue is not the preservation of the supplementals. I don't know of anyone who is attempting to abolish the supplemental air carriers or to even attack the principle that they have a useful role in supplementing the scheduled services.

The issue here is whether they should be expanded or not, not whether they should be preserved. I don't think the issue is whether or not their advantages that have been legislated by the Congress and by the CAB should be preserved, but the desires to enlarge those advantages.

The phrase, "Carve out of the scheduled air transport industry business an area for the supplementals," is often used and it is truly a carving out. I have nothing against the able and aggressive operators who have built this supplemental complex of carriers and certainly not their superb advocates, but two decades of controversy and litigation are behind the present proposals, and I think we ought to try to hit some of the points raised here this morning.

I don't think we are returning to the status quo with this proposed legislation. I think what they are trying to do, the supplementals are trying to do, is to confirm an unauthorized expansion into the area of individual ticketing. I don't think, in the past at least, this committee has wanted to do that.

Now, much has been made of this Standard Airways advertisement. The fact is that that is not just a Standard Airways ad. That is a fairly standard practice prevalent in the supplemental industry.

Apparently that ad got by their general counsel but that is the way it is. In many places many carriers are now going out and finding a group for the individual. That isn't an isolated example. That is part of the competitive activity of the supplementals.

So that between the operating and the advertising, there isn't a great distinction such as has been suggested. They are the same very frequently, not always for every carrier, but it is quite prevalent that if there isn't an affinity group, if there isn't one readily available, if you can't combine two split charters, you will notice the ad says, "Don't panic. It has already been arranged." "Has been arranged" is the wording of the ad.

I don't think too much should be made of that but not too little either, because it is not atypical.

Mr. WATSON. Mr. Chairman.

Mr. FRIEDEL. Mr. Watson.

Mr. WATSON. Mr. Halaby, I have been concerned about this ad, but actually let's put it in proper context. It doesn't say, "It has been arranged." It says, "Don't panic. We can put you in touch with a travel agent."

Mr. HALABY. "Who has arranged." It doesn't say, "will arrange."

Mr. WATSON. Who will put him in touch with a travel agent?

Mr. HALABY. That means, "We will, in effect, sell you an individual ticket because if there is no group, an agent has already arranged an

ITC in which the individual can be included." That is the only point I am making.

Mr. WATSON. Thank you, Mr. Chairman.

Mr. HALABY. I have no question but what the previous witness is filling that area with very aggressive, very resourceful salesmanship. In fact, after listening to him I am glad that he is going to join the team. He certainly has the ingenuity and resourcefulness needed to fill our group tours and our ITC's.

Mr. WATSON. He is going to join the team? I thought you were going to join his team.

Mr. HALABY. As I understand it, he is going to start selling for us as well as Northwest and United and we will welcome this business.

Another point made very strongly here this morning is an interesting one to me, phrases like "the untapped market for inexperienced travelers." Now, I haven't been with Pan American very long, but I have read history and watched the development of the industry. The first air traveler to Hawaii went on a Pan American air clipper 40 years ago and the number of travelers has gone from zero to over 2 million.

Now, that pioneering, that developing of all of the airports, airways, the navigation, the airplanes, and so on, was done by the scheduled carriers, and now in the affluent years of much more new traveling you have the supplementals coming in under special protections and seeking to carve our an area, if that is the national policy it should be, I think, very precisely defined, and that is what I think you are up to today.

It is stated that we were not equipped or inclined to provide on-line charters. Yet the increase in the number of charters, particularly the Thriftaway charters from Europe to the United States, has been tremendously increased in the last 2 years.

It is true that if one of the tour operators came to a Pan American agent for a July 4th weekend tour he would likely be turned away. If he comes during the peak season, particularly if he comes late, it is hard and sometimes impossible to handle the business.

But as a matter of fact, nearly half of the authorized tours in 1967, authorized to the supplementals, were not operated. There was an implication that all of the supplemental tours that had been authorized had been operated.

One of the very important reasons why they haven't come to us, Mr. Chairman, is that they buy an airplane, all the seats on an airplane at wholesale price, the tour operator does, and then he sells it at the price the market will bear.

When he comes to us he is limited to 5 percent. If he can go and buy an airplane and sell it at  $x$  percent higher than 5 percent he is going to do that. That is in his interest and I think the committee should understand it and I think it is an important point.

Now, the claim that a vast new market has been developed is relatively important. When you use percentage figures you can go from 25,000—against, say, a 1,750,000 in 1 year and, if you increase—to 75,000 and you have a 200-percent increase as against a total market of 1,750,000.

The point here is that during this same period we have reached the greatest affluence in the history of the country and Hawaii which was

used as an example, is the No. 1 "first-time" market for all travelers, air and sea travel.

In other words, the Hawaii Visitors Bureau shows that 71 percent of the people coming into the islands by air or sea are making their first trip anywhere so that I think you need to discount some of those figures; not that we do not value that market very, very much and do not believe it is growing and very important but I think the fact is that we too offer this flexible service.

It may be true as has been suggested that in the past this has not been pushed, this has not been fully exploited. There are many reasons for it, one of which is the diversion of equipment to the war in Vietnam.

Sixteen of our jets are involved there which made it more difficult to operate with some of the flexibility that would according to many be desired.

Knowing how late it is, I would try to answer questions on my statement or any of the remarks I have just made if the committee wishes.

(Mr. Halaby's prepared statement follows:)

STATEMENT OF NAJEEB E. HALABY, PRESIDENT, PAN AMERICAN WORLD AIRWAYS, INC.

Pan American joins with the other scheduled U.S.-flag carriers in opposing the proposed legislation. As Mr. Tipton, President of the Air Transport Association of America, pointed out in his testimony here yesterday, the proposed legislation would fundamentally change the sound regulatory system established under the existing law. The carriers certificated to provide scheduled service under that law have the obligation to operate as a common carrier on a year-round basis—summer and winter, in season and off season—regardless of whether the loads are good or bad. Charter operations, on the other hand, are conducted only when the price for a full load is obtained and the operation is profitable. They are designed to take the cream and leave the rest for U.S. scheduled carriers.

Accordingly, the Congress has wisely provided a basic distinction between the charter business operations to be offered by supplemental carriers and the individually ticketed operations of the scheduled carriers. The proposed legislation would destroy this fundamental distinction and would permit the supplemental carriers to have access to a major part of the individually ticketed air travel market with freedom to operate when and where they choose, based solely on profitability. This would not be a matter of minor diversion of traffic or invasion of some peripheral fields of operations. It would be a matter of fundamental importance for the scheduled carriers. It could undermine, and in the long run could destroy, the basic air transport system. It will certainly weaken the ability of the scheduled U.S.-flag carriers to meet their foreign-flag competition.

We, therefore, wish to lend our strong endorsement to what Mr. Tipton has said in this regard. In short, we cannot survive much less thrive unless we can fully develop and exploit the good routes and fair seasons along with the poor routes and bad times in which we are required to serve.

It is important to emphasize that "inclusive tours" as they have been defined by the Board, are in reality individually ticketed travel for individual members of the public. They are marketed and promoted to individual members of the public, not to pre-existing groups.

As the most recent proof of this, let me submit a "Standard Airways" ad from last Sunday's "New York Times" and quote from it as follows:

"If you don't want to go to Las Vegas, maybe you'd be interested in Mexico or Nassau. Or, how about Hawaii? We've got a good deal going to all those places. Almost every day.

"Want to get aboard? If you've got a group, you've got it made. Elks. Eagles. Kiwanis. The PTA. Almost every group qualifies.

"If you're not a member of a group, don't panic. We can put you in touch with a travel agent who has arranged a complete Inclusive Tour Charter group."

Moreover, it should be clear that the so-called "restrictions" in the Board's regulations (at least three places included in the tour, minimum time period of

seven days, land accommodations, etc.) do not operate to distinguish inclusive tour charters from individually ticketed travel. This can be illustrated by reference to areas where Pan American has strongly promoted tour business.

Using transatlantic travel to Europe as an example, evidence was introduced in the *Transatlantic Route Renewal Case*, Docket 13577, *et al.*, that U.S. resident Transatlantic air passengers visit an average of 3.6 European countries on their trip (Exhibit PA-477). Thus, the requirement in Part 378 that the inclusive tours be for a minimum of seven days and encompass at least three different places does not in any way distinguish this individually ticketed service from the service that the transatlantic carriers must offer for the carriage of U.S.-Europe traffic. Indeed, Pan American, through tour brochures and other avenues, extensively promotes this type of multiple destination European travel.

The situation is similar for mainland-Hawaii travel. Hawaii Visitors Bureau data shows that 67.6% of all visitors to Hawaii in 1967 went to the neighbor islands. Thus, Hawaii is also a "multiple destination" vacation and this is the way that Pan American does and must sell it. In sum, the limitations in Part 378 do not act to make the inclusive tour traffic into group charter traffic; rather it is individually ticketed traffic that is the same as that carried by the scheduled carriers.

The proposed legislation in H.R. 17685 would authorize "inclusive tour trips" by the supplemental carriers "subject to regulations prescribed by the Board". There is no requirement in H.R. 17685 that an "inclusive tour" involve a charter of the aircraft to a tour operator and, therefore, it would be possible for the supplemental carrier to engage in the direct sale of individually ticketed air transportation to members of the public at large. Thus the present situation where the sales to the public are through an agent, the tour operator would become even more harmful with the supplemental carrier itself also selling transportation directly to individual members of the public. This would completely destroy the policy determination of Congress that the role of the supplemental carriers was to engage in group charter travel. It would make them free wheeling substitute carriers, rather than carriers supplementing the scheduled carrier services.

The proposal to authorize inclusive tour trips "subject to regulations prescribed by the Board" would do nothing to clarify the present situation. The definition of an "inclusive tour trip" would be left wide open and with no Congressional limitations. This could expose to diversion not only the important individually ticketed tour business of the scheduled carriers but also could permit the supplemental carriers to sell individually ticketed transportation directly to the public in a manner that would enable them to divert virtually all of the traffic of the scheduled carriers.

One concept that should be dispelled is that unless the supplemental carriers are authorized to provide individually ticketed service through inclusive tours, the public will be deprived of some special or unique type of air transportation service. The fact is that the scheduled carriers have marketed tours (with itineraries similar to those of the inclusive tours) to individual members of the public for years; thus the supplementals would not be providing a new or different service. Actually they seek merely to substitute their service for the individually ticketed tour services of the scheduled carriers. The Congressional decision not to grant them this privilege should be maintained or the whole regulatory scheme must be revamped.

Pan American has a long history, dating back before World War II, of operating package tours to all its destinations. To illustrate the vast array of available tours, in October 1967 the official IATA Tour-Register listed 22,118 different tour itineraries, all capable of sale to thousands of passengers. Pan American currently offers a choice of 443 tours, day after day, to passengers desiring to visit Hawaii.

Of all the pioneering that Pan American has done round the world, lowering air fares has been most significant. Making the world accessible to the tourist, as well as the businessman, and to those of lower, as well as to those of higher income, has been a persistent policy.

Low cost tours are available on Pan American and the other carriers at levels to fit every income group. The services, accommodations, and, in many instances, prices are comparable with those of the inclusive tours of the supplementals with the added advantage of choice of regular scheduled flights. For example, Pan American has a 14-day, four island Hawaiian tour at \$174 plus \$215 air fare from the West Coast set forth in its tour brochure for Hawaii. This compares favorably

with a 15-day Berry/World tour to Hawaii with a price of \$459. In addition, package tours are available on Pan American to Europe at prices as low as \$275 for two weeks. Also, group inclusive tour fares being offered by Pan American on the transatlantic route and the tour packages based thereon are as reasonable as the inclusive tour charter prices that have been offered by the supplemental carriers. Typical was an application by American International Travel Service, dated April 7, 1967 for a tour which involved 14 days in England, France and Italy with two meals a day for \$699. Similar current offerings by AITS price the two meals a day at \$100 for the tour bringing the remaining cost to \$599. Pan American is currently selling a 15-day tour of England, France and Italy at \$498 or \$529.50 if superior type hotels are used. This tour includes Continental breakfasts on all the days of the tour. Thus, while the ITC proposal was for a basic \$599, Pan American is selling a similar tour in similar hotels for \$529.50.

A point of emphasis should be made that a large part of Pan American's tour promotion has been directed to the visit USA program in Europe as an aid to the balance of payments problem. This year, for example, Pan American is bringing 186 very low cost "Thriftyway" charters from Europe to the United States, as compared with the 173 which we will operate from the U.S. to Europe. If the demand existed, this comparison would be even more favorable because requests for the lower cost charters from Europe are given priority over the outbound charters as to equipment allocation. We are not aware of any similar activity on the part of the supplementals.

The mainland-Hawaii market has so far been the primary area of inclusive tour operation by the supplemental carriers. The experience there indicates the effect on the development of scheduled services resulting from the breakdown of the distinction between charter and individually ticketed services. While Hawaii Visitors Bureau data shows a gain in total mainland-Hawaii air visitors of 18.2% between the first quarter of 1968 and the first quarter of 1967, the traffic of the scheduled carriers is growing at only one-half this rate or 9.0%. In contrast, the supplemental carriers had a growth of 220.5% and in this situation, their percentage of the total market is steadily increasing.

The full effect of supplemental carriers individually ticketed inclusive tours has not been felt in the international area, not because of regulation by our Government, but because of foreign government restrictions. This concern of foreign governments and airlines over the impact of such operations is another factor for consideration. The implementation of such services can lead to an unsettling of relations and major adverse effects upon the primary scheduled international services of the U.S.-flag carriers.

Mr. Tipton has pointed out that the financial position of the scheduled carriers is not such as to encourage experiments with the regulatory system which could undermine the basic transport system. In Pan American's case, while its operating revenues increased in the first quarter of 1968 as compared with the same period in 1967, expenses grew more sharply, and our operating profit of \$9,926,000 in 1967 compares with an operating loss of \$1,347,000 in 1968.

In summary, Pan American believes that Congress should not reverse the policy determination that it made in 1962 to confine the supplemental carriers to the group charter market and to exclude them from individually ticketed service.

The positive policy for the future is to enable and to facilitate the profitably healthy growth of the CAB certificated scheduled carriers giving the freedom for flexibility and economy in serving the public. When that is assured there always will be enough for the supplementals to do in supplementing the scheduled services.

Mr. FRIEDEL. I want to thank you, Mr. Halaby. It is always a pleasure to have you before us.

Mr. Pickle.

Mr. PICKLE. Thank you, Mr. Chairman.

Mr. Halaby, you started to make some reference to a comment I made yesterday and you were interrupted. What comment did you want to make?

Mr. HALABY. You, I think, raised the question, Mr. Pickle, as to whether or not the supplementals wanted to go out and sell individual tickets.

The way I understood your question was the suggestion that they really weren't seeking individual ticketing authority and I was making the point that they want to sell tickets, period, and naturally they do. There is nothing unexpected about that or abnormal. The manner by which they do the individual ticketing is what, as I understand it, is the intent of Congress to regulate and the intent of the CAB to regulate, but the so-called controls or restrictions that the Board has put on the supplementals are not restrictions.

They are simply legitimating the practice that is in effect and has been for years. And businessmen going to Hawaii visit the outer islands. They certainly eat and sleep, as the gentleman pointed out, and if they can combine a business trip with a pleasure trip they can go on the supplementals.

So that the restrictions are not onerous. They are not controls. They are simply "restrictions" that approximate the prevalent practice.

Mr. PICKLE. And do you have other restrictions in mind that you think would be more practical?

Mr. HALABY. Well, I think that if there must be a bill we would want it very precisely stated as to the intent of the Congress that there be no individual ticketing except by the scheduled carriers.

Mr. PICKLE. We spent a great deal of time in this committee when we reviewed the question of whether or not there would be supplemental air carriers. Apparently the courts are split just about as evenly as they can be split at this particular time.

Now, would you agree that in terms of equipment and financial ability, number of carriers, cost of transportation, and the number of passengers available, that there have been tremendous changes since the act was amended in 1962? Do you think that it would be in the public interest or better public interest might be served by an evaluation of the present and future needs for a particular type of service rather than a mere determination one way or the other of what was the congressional intent back in 1962?

Time and circumstances have changed. The question is not so much our intent in 1962 but what is the proper course for us to take at this point.

Could you accept the CAB's version of the amendment that they have offered for this measure or do you have other versions of it?

Mr. HALABY. Taking the last question first, Mr. Pickle, we would oppose the CAB amendment on the ground that it changes the national policy stated in the 1938 and 1962 acts and the policy is to have a very severely, seriously regulated scheduled air transport industry.

CAB and FAA regulations are the safeguards as well as the means of providing stability in the industry. That is built on the idea that in Pan American World Airways, if you come up to that counter and buy a ticket we have to take you on the schedule whether it is in the peak summer season, a beautiful day, a bad day, a wintery day, a weekend, and we have, as you know, tens of routes and service points that are very unprofitable to us and it is deliberately regulated to get a balanced transportation system.

We are not able to cream off the routes and the dates and the seasons as the national policy has so far permitted the supplementals to do to some extent.

Now, the second point, on the Supreme Court decision.

Mr. ADAMS. Would the gentleman yield on that point before you go to the Supreme Court decision?

You set your own schedules, don't you, within your certificates of convenience and necessity as to times and frequency?

Mr. HALABY. Right.

Mr. ADAMS. So that it is not regulated as to when you must fly and how you must fly. It is just that you provide the service, isn't it?

Mr. HALABY. The schedule selection is an airline prerogative.

Mr. ADAMS. Thank you.

Mr. HALABY. But the service, the routes served and the routes granted are in balance.

The airlines have to fly a lot of unprofitable—short—routes in order to get the right to fly the profitable ones. Pan American flies many unprofitable national interest routes. We expect to start operating to Moscow in a few weeks. You can put the profits on that route in a very small receptacle for the first few years, but we are doing it because the United States wants us to and we want to and eventually after 40 years we may have a market there and even the supplementals will start considering the cream.

Now, the second point, sir, is that the Supreme Court voted 4 to 4, and although my constitutional law is very stale, as far as I know that was a decision by the Court to uphold the circuit court. They ruled that Judge Oren Harris', the distinguished former chairman of this committee, version of the bill was the correct one; namely, that you did not intend, even though some members on the other side wished it, to permit individual ticketing, and that the practices by some of the supplementals were unlawful, unauthorized, improper, and in violation of the national policy. That is what I understood the 4-to-4 vote meant.

There wasn't an opinion so that it was hard to tell what was in the minds, and of course constitutional lawyers love to argue what a 4-to-4 decision means, but it was a decision as I understand it.

On your final and I think most important point, Mr. Pickle, should we just be limited as citizens to talking about stare decisis or should we talk about what is right for the future, I think we have to do both.

If you are going to reexamine the whole regulatory structure and revamp it as you may desire to, then that should call forth the whole discussion of all the regulatory policies and when it does I think you will find that all of the points made by the distinguished chairman of the CAB will be subject to reexamination.

For example, how much does the military need the supplemental air carrier industry now and in the next 5 years as distinguished from what was needed in the last 5 years?

Very serious questions are involved there with the coming of all of the C-141's and C-5A's and the dropping of \$150 million worth of air cargo contracts in the coming year. Who needs the supplementals for that kind of service is a question that would need to be asked and the traditional wisdom that the national defense requires the supplemental air carriers would have to be reexamined.

I don't know what the answer is. The spur of competition—the argument that we would not have reduced fares but for the supple-

mentals would have to be reexamined. Let's assume for a moment that it is true. It has been done. Are they still needed to reduce fares further? That is a good question I think for consideration in a whole review of national policy on this.

There are many others. Who will develop the new aircraft that earn the balance of payments in export over the coming years if the supplementals are carving, carving, carving out of the scheduled carriers?

That is all.

Mr. PICKLE. I think the gentleman has made some very good points.

Mr. ADAMS. Would the gentleman yield.

Mr. PICKLE. My time has expired I believe.

Mr. ADAMS. We got this one that showed the schedule carrier at \$749 and the supplemental \$599 on identical packages and I question the last statement the gentleman made as to whether it is all over.

Mr. HALABY. Mr. Adams, if we are authorized to serve New York to Hawaii we will see that that fare comes down for that tour.

Mr. ADAMS. Thank you.

Mr. Chairman, I also wanted to know this. You mentioned that the tour agent was limited to 5 percent on the airplane charter when the plane was chartered to a tour operator whereas the supplementals could go in and buy it for a package.

I don't find that in the CAB regulation that I have here and I wondered is that under IOTA or is there a regulation that I am not familiar with or is it a practice, or whatever—would you just explain it to me?

Mr. HALABY. I hope I can.

When a tour operator wants to buy a charter from us he charges a 5-percent commission on a group affinity tour. If he charters from the supplementals for a group affinity tour I believe he is also paid 5 percent.

However, when he buys a full plane charter from a supplemental and sells it to those members of a group or individuals who have been brought into the group, he pays a rate, I think it is a negotiated rate with the supplemental carrier for that particular flight for that particular type airplane from those points and then he sells it for what the traffic will bear. As I understand, it is usually over 5 percent and sometimes way over 5 percent.

Mr. ADAMS. Can't he do that with you?

Mr. HALABY. He cannot do that with us.

Mr. ADAMS. He cannot do that with you. In other words, with what he buys from you they can go on the tour but you don't charter him a whole airplane, is that what you are telling me?

Mr. HALABY. We can.

Mr. ADAMS. You can but you don't.

Mr. HALABY. But we have not done a great deal of it.

Mr. WATSON. Mr. Chairman.

Mr. HALABY. Just a moment.

Mr. ADAMS. I am sorry, I have taken the gentleman's time.

Mr. HALABY. Even when we do that he can only get the 5-percent rate.

Mr. WATSON. Let's pursue that question a little further. It's good to have you. You are a very able man. I am sure you recognize the fact that you are in a somewhat unusual position. Heretofore you have been before the committee supporting the administration and now you are opposing it.

Mr. HALABY. Differing.

Mr. WATSON. Differing, that is right. You say, "we can do this" and I just wonder why haven't you been doing it. You are allowed to do this. You stated earlier that you were unable to do it because a number of your aircraft is being used in Vietnam to transport cargo and personnel back and forth.

Likewise, don't the supplementals use a great percentage of their aircraft in providing military service or perhaps a greater percentage than you do?

Mr. HALABY. Oh, yes.

Mr. WATSON. Much greater?

Mr. HALABY. Several have a greater percentage. Of course that is part of the problem here.

The reduction and the future planned reductions as this huge new inventory of cargo aircraft come in is what is causing the activity here. It is not the only cause but it is a very important motivating factor in the concern that they are expressing to all the Members of Congress about this Supreme Court decision. That is why they want the Congress to reverse the Supreme Court.

Mr. WATSON. But the problem is, Mr. Halaby, at this point, that you are in a rather awkward position or at least I find it difficult to understand your position.

You are authorized to do the very same thing that the supplementals are doing so far as the inclusive tours up to 2 percent or what have you. You have not done it and this is a very lucrative market. Why all of a sudden do you want to forbid others doing what you yourself are not doing as you are authorized to do? That puts you, in my judgment, in a rather impossible position.

Mr. HALABY. If I were in that position, Mr. Watson, it would be impossible.

Mr. WATSON. Are you using the maximum authorization for this particular inclusive tour operation?

Mr. HALABY. Are we using it?

Mr. WATSON. Yes.

Mr. HALABY. Yes, sir. Currently we are offering 443 tours day after day to passengers desiring to visit Hawaii.

Mr. WATSON. Perhaps Pan Am is, but then your testimony is in conflict with what the gentleman from the CAB said. He said by and large the scheduled airlines are not taking advantage of this authority, that is full advantage of it. He said in fact, as I recall, that very rarely does he have requests from scheduled airlines for this authority.

Mr. HALABY. I think we have two different concepts here, one of the charter limitation and the other is the inclusive tour limitation. If I may just for a second, I would like to point out how the supplementals are preferred and advantaged over the scheduled carriers.

First, we, as the chairman pointed out, may not operate on off-route charter more than 2 percent of our route mileage for the previous 12 months.

Mr. WATSON. At that point the CAB said you had not even utilized that.

Mr. HALABY. That is in charters only, Mr. Watson. That is in charters only.

Second we have to be on-route to be unlimited.

Mr. WATSON. But you stated earlier you go everywhere that the supplementals go and you are well established. If you go everywhere the supplementals go then why can't you capture this market if you had gone after it?

Mr. HALABY. I didn't say that. The second restriction is that we may not have more than eight a month. We are not under the CAB rules permitted to combine split charters. Maybe they will in the future. So we have those restrictions plus operating requirements from the FAA, those burdens on top of operating the scheduled routes certificated by the CAB, day in and day out, year in and year out no matter whether we have the fine 95-percent load, the 90 passengers, or nine passengers.

We carry those burdens and it is, I think, unwise national policy to say you can have benefits without burdens in a balanced regulated industry. That is the basic point.

Mr. WATSON. I agree with you wholeheartedly. As I understand your position basically it is this: That you do not object to a travel agency individually ticketing someone for a group inclusive tour on a scheduled airplane, but you do object to that travel agency individually ticketing someone on an inclusive tour for a supplemental airline. Isn't that basically your point?

Mr. HALABY. It could't be better stated.

Mr. WATSON. Exactly. In other words, you would like to have it, but you don't want the other one to have it?

Mr. HALABY. No. Right up to that last conclusion, sir, I thought we were right on the same frequency, but at that point you abolished the regulatory system that has been established over the last 30 years. They are celebrating the 30th anniversary of the CAB downtown in a few minutes, and the whole core of the policy and the legislation is that if you are granted a benefit you have to carry with you a burden. This legislation will grant only benefits, very, very few burdens attached, and that is why we are 6 years and several supplemental millionaires later, because this interstice, this crevice between the scheduled carriers has been beautifully exploited by very able and aggressive men.

I am simply saying that as a matter of national policy the Congress should say, "You have gone as far as national policy should allow at the expense of the scheduled carriers."

Mr. WATSON. May I ask one final question.

Of course we are arguing about the intent of Congress when they originally passed this back in 1962. Actually the argument about individually ticketing the passengers goes to whether or not the supplemental airlines should have the authority to ticket individually the passengers rather than the authority of a travel agency to ticket

individually a passenger for the supplemental airline inclusive tour.

Mr. HALABY. No. I think we would oppose both of those because whether it is direct or indirect, you are moving over from a supplemental airline into what you might call a "substituted" airline. They are beginning to substitute their services for the scheduled service. It was not intended by the Congress to substitute. They were intended to supplement.

Mr. FRIEDEL. I was a member of the committee in 1962 when we passed the bill. It is my recollection that we had around 30 supplemental carriers, quite a few of them should not have been in the business, and we passed a good bill to try to keep the real legitimate supplemental carriers in the business. When we were talking about the individual ticketing, they were running on regular scheduled routes from New York to Miami and advertising the time the plane would leave and what time it would arrive, and that is the part that we opposed where they operated on regular scheduled lines and sold individual tickets.

That was the part that we were opposed to. We did have some unscrupulous people then, and I think we weeded them out.

Mr. HALABY. That is the reason, sir, that the circuit court referred to the conference report where the conference said, "The substitute agreed to in conference adopts the provisions of the House amendment"—this committee's amendment—"with respect to the prohibition of individually ticketed and waybilled services on a personal basis."

Mr. FRIEDEL. On a personal basis. They said, "We are going to leave with 50 passengers Thursday at 9 o'clock in the morning in competition with the scheduled airlines." That is the part that we were opposed to.

Mr. HALABY. Yes, sir, and your distinguished predecessor, Congressman Williams of this subcommittee, said, and this was unchallenged:

All-expense tours that were provided for in the Senate definition were not accepted by the House, and the Senate receded and concurred in the House position on that.

And Congressman Harris said:

Travel agents, being agents for transportation services, rather than carriers themselves, have never been allowed to engage airplanes in their own name for their own account. Nor should they be allowed to. That is why the House objected to the proposal of the Senate including the "all-expense tour" language.

He went on to state:

The law is well established that, in air transportation, charter means essentially the lease of the entire capacity of an aircraft for a period of time or a particular trip, for the transportation of cargo or persons and baggage, on a basis which does not include solicitation of the general public, or any device where individually ticketed services would be offered or performed under guise of charter. The basic concept being thus clear, it is important that the Civil Aeronautics Board, by regulation and other appropriate measures, make sure that charter serves its planeload service concept, and is not employed as a subterfuge to perform individually ticketed services. Manifestly, the nature of such subterfuge may change from time to time, and the regulatory agency needs some flexibility to modify its regulations to guard against any new subterfuges that may emerge. For this reason, the House committee objected to any attempt to freeze into the act a definition of charter service which would prevent the Board from dealing

effectively with abuses. Thus, the bill, as passed by the House, contained no definition of charter.

The Senate bill, on the other hand, contained a definition of charter service. This was necessary, in large part, because the Senate proposed to modify the established concept of charter in order to permit carriage, as charter of "a group on an all-expense paid tour." The Senate conferees have receded from insistence on the all-expense paid tour exception, it followed that the remainder of the Senate definition was superfluous since it merely established law and policy.

Mr. ADAMS. I want to tell Mr. Halaby that I appreciate his being here. I don't want to act as the devil's advocate, but I want to follow these charts.

As I understand, you have no objection to the travel operators or tour operators selling a package and in effect buying tour or selling a tour on Pan American to go to Hawaii or wherever it is going to be, telling the individual people they may go and get the hotel and these other things.

Mr. HALABY. That is correct. By the way, here is a book full of tours.

Mr. ADAMS. And you put him on at your regular airline price which accounts for the difference between for example in the \$599 and the \$749 figures that is indicated in this tour guide on United as compared to the supplemental, is that correct?

Mr. HALABY. No, that is not correct.

Mr. ADAMS. You mean you do charter it?

Mr. HALABY. Yes.

Mr. ADAMS. At a price that is not in your scheduled tariff?

Mr. HALABY. Again there is an inclusive tour operation on our scheduled flights and there is a group charter that can be sold to the tour operator within the CAB and IATA regulations.

Mr. ADAMS. And you do agree that we did as part of the compromise in 1962, following the chairman's last point, take away all right for them to individually sell tickets between points or to run 10 non-schedules a month and in return they were given just the right to charter and this is the whole argument over what can be done as a charter.

Mr. HALABY. Yes, that is right, but you see the point is, and I hate to hammer this Standard Airways ad, but let's call it a standard practice because that is the way it is. If you or I were in that business that is the way we would try, particularly when the going gets tough rather than when the "going's great." They have to scratch and scramble for the individual and for the tour that has been arranged.

For the future, as I see it, we are really talking about whether we can go on developing Boeing 747's and Boeing 2707's, whether we are going to be given the opportunity, the flexibility to serve the public and make enough earnings to advance the whole aviation front while these supplementals are permitted to fill the interstices supplementing the scheduled carriers.

Mr. ADAMS. You have done pretty well since 1962, haven't you, Mr. Halaby?

Mr. HALABY. If you would like our first four months' figures, they are very discouraging. I am not suggesting that is on account of the supplementals, although they are, particularly in the Hawaii market, taking business from Pan American and United at an alarming rate of increase, not in absolute figures, but the rate of increase is most

disturbing, and that is why I am here today. It is not that we think that the last year is the end of this affair. The rate of increase, the expansion of the authority is a direct threat not only to us as scheduled carriers but to the regulatory concept and system built up over the last 30 years.

Mr. ADAMS. Unless you meet their price.

Mr. HALABY. I don't think that is the issue. The air fare between California and Hawaii has been brought down by Pan American every decade for the last—

Mr. ADAMS. Perhaps I used the wrong word when I said price. Their package.

Mr. HALABY. It may be salesmanship.

Mr. ADAMS. I mean you are able to meet their package.

Mr. HALABY. We can meet their price at the present time for some packages. It depends on the route and the points served, and we will continue to do our best to provide the most flexible service. When some of the burdens are lifted, we will be in a much better position to do so, burdens they do not have to carry.

Mr. ADAMS. Thank you, Mr. Chairman.

Mr. FRIEDEL. Thank you, Mr. Halaby, for a very fine statement. You have been very, very helpful.

Our next witness is Mr. Lucian Hunt, president of American Flyers Airline.

#### STATEMENT OF LUCIAN HUNT, PRESIDENT, AMERICAN FLYERS AIRLINE

Mr. HUNT. I am Lucian Hunt, president of American Flyers Airline, Fort Worth, Tex. I do not have a prepared statement. The uncertainty of my presence and testimony did not make that possible. I would not delay adjournment of the subcommittee, but at your pleasure I would like to testify later in the day if that is possible.

Mr. FRIEDEL. Because of floor action, our meeting is going to have to be adjourned. If you want to submit a statement for the record by tomorrow, we will have it inserted in the record.

Mr. HUNT. I will do so. Thank you, Mr. Chairman.

(Mr. Hunt's prepared statement follows:)

#### STATEMENT OF LUCIAN HUNT, PRESIDENT, AMERICAN FLYERS AIRLINE CORP.

American Flyers Airline Corp. (AFA) is a medium-sized supplemental air carrier with executive offices in Fort Worth, Texas and with its operations base in Ardmore, Oklahoma. The air carrier has domestic, transatlantic, Caribbean, Mexican, and Canadian operating authority.

Although not a member of NACA, AFA supports the position taken by the CAB, DOT, Office for Consumer Affairs, and NACA. To be precise, we support H.R. 17685 with the amendments suggested by the CAB.

Our reasons for supporting H.R. 17685 with suggested CAB amendments are as follows:

1. *The legislation benefits the public.*—The legislation would make vacation air travel available to persons to whom it has been unavailable. Regardless of the number of vacation tours offered by scheduled air carriers, ITC authority makes it possible to offer air vacation packages at such low cost that it attracts couples and families that used to drive to the nearby mountains or beach for a vacation. Now these vacationers can see the rest of the U.S.A. Contrary to testimony of scheduled carrier representatives, existing scheduled fare structures in

the U.S., together with ground arrangements, are not competitive with ITC's and therefore do *not* tap the same market. Witness the Hawaiian Carnival package of AITS for \$599 which sells for \$749 if a scheduled carrier is used. And the fact is that AITS sold over 3,000 of the higher-priced packages to persons who desired to travel by themselves and have the choice and convenience available on scheduled service. The reason the ITC is less expensive is that the tour operator charters the entire aircraft and by filling it almost to capacity can build into his total package cost the reduced air transportation expense. Finally, the competitive aspect of ITC's causes the scheduled carriers to respond with fresh promotional ideas. They want to get their share of the new market. The GIT fare over the Atlantic is an example of this response, yet just as soon as it appeared the competitive spur of ITC's might be removed, the scheduled carriers started thinking about eliminating the GIT fare.

2. *The emergency need for legislation created by the impasse in the courts.*—The existing uncertainty as to our authority has caused Traveler House of Austin, Texas to cancel an ambitious ITC program to the Caribbean. But the problem goes far beyond a single program of ITC's. Other tour operators are afraid to initiate programs until they know that they will be able to operate. Only the requested legislation can provide that certainty. Since the customary lead time for an ITC program is one year, only passage of the legislation will insure the availability of ITC's to the traveling public for the summer of 1969.

3. *The supplementals' successful transition to jet aircraft requires an adequate opportunity to develop a new low cost market.*—AFA as well as the other supplementals are in the midst of the transition from propeller to jet aircraft. The transition has required large infusions of capital. Protection of these investments requires development of sufficient business to keep these aircraft fully utilized. The market which cries out for development and which, in the long run, benefits the scheduled carriers as well, is the ITC market. The history of ITC operations in the Hawaiian market last year proves this. It is *fact*, not the kind of conjecture indulged by spokesmen for the scheduled carriers.

4. *Decline of military business.*—In his remarks, Mr. Halaby, president of Pan American World Airways, pointed out that when the military receives delivery of the C-5A and comparable aircraft beginning next year, there would be little need for military airlift by the supplementals. If Mr. Halaby is right, the supplementals are in serious trouble. Historically the supplementals have derived well over 50% of their revenues from the military. If this source of business dries up as predicted by Mr. Halaby, the supplementals would either go broke or would have to develop other sources of revenue. In a nutshell, this is why the supplementals are so concerned about ITC authority. It is not what it has meant in the past. It is the promise it holds for the future. For it is the one type of service which enables the supplementals to tap a mass market as yet undeveloped. In all candor, we do not view the future of military business as grimly as Mr. Halaby. But it is anticipated that military business will undergo substantial shrinkage, not only because of new military transport equipment, but also because of the eventual, inevitable reduction or dissolution of our Viet Nam commitment. Moreover, in order to qualify for military business, MAC proposes to make more stringent the requirements that a supplemental do a high percentage of its total business in the civilian markets. Finally, the utility of the supplementals to the military exceeds that of the route carriers because of the ready response they can make to emergencies free as they are of route obligations and because vacation traffic in time of emergency can be quickly abandoned and the vacationers' places taken by soldiers and cargo. In time of emergency business must go on, but vacations do not have to.

In closing I would like to respond to certain contentions advanced by the scheduled carriers. The argument about what is and is not charter and what is and is not individually ticketed transportation is unrewarding and frustrating. What really matters is not the label but whether the actual service offered is the same or different from the prime business of the route carriers in supplying point to point individually ticketed transportation. The inclusive tours authorized by the Board are aimed obviously at a different market and are not the same as point to point individually ticketed transportation no matter what it is called. The authority is experimental and it is believed that the Board should have the power to control the experiment by adjusting the restrictions in the light of experience rather than having definitions frozen into a statute. As the guardian of the public interest, and the expert on the detailed regulation of the

industry, only the Board can fairly and objectively control the impact of one class of carrier on another. The Congress should not undertake the detailed burden of gapping with the complex economic data here involved any more than it should hear and try to decide the Transpacific Case.

Contrary to Mr. Halaby's assertion, the proposed legislation does not require a review of the entire air transportation system. The proposed amendment is a modest clarification of the authority of the CAB. It means a lot to the supplementals in opportunity and potential revenues under present CAB policy. To the scheduled carriers it is a spectacle of an elephant cringing before a mosquito. We suggest that the elephant's fear is not entirely unfeigned. It provides an excuse to delay action on this vitally needed legislation. But we are confident that this Committee is aware that the scheduled carriers are robust enough to defend themselves. And if they were not, the CAB would not stand idly by and witness the deterioration of scheduled service.

For these reasons we support H.R. 17685 with the amendments suggested by the CAB.

Mr. FRIEDEL. The subcommittee stands adjourned.  
(The following material was submitted for the record :)

AMERICAN SOCIETY OF TRAVEL AGENTS, INC.,  
New York, N.Y., June 25, 1968.

Re H.R. 17685—Inclusive Tour Charter Authority for Supplemental Air Carriers  
Hon. HARLEY O. STAGGERS,  
*Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: The American Society of Travel Agents, Inc. (ASTA) supports the above-named bill which would clarify the authority of the Civil Aeronautics Board to authorize the supplemental carriers to charter aircraft to tour operators to transport inclusive tour groups, commonly known as the inclusive tour charter concept.

ASTA, a trade association with headquarters at 360 Lexington Avenue, New York City, is the major organization representing the travel agent and tour operator industry. ASTA's active members operate more than 2,500 travel agency locations throughout the United States and Canada.

ASTA has supported the inclusive tour charter (ITC) concept before the Civil Aeronautics Board since 1961, and has been a major participant in the proceedings before the Board and the various courts on the subject of ITCs. ASTA supports the ITC concept because it should substantially increase the number of tourists taking vacation tours by air, without significant diversion from the scheduled air carriers. The scheduled carriers are ASTA's valued partners, and their welfare is of primary importance to ASTA. ASTA would not support ITCs but for its belief that they would not harm the scheduled carriers.

ASTA has reviewed the statement of Chairman John H. Crooker, Jr., of the Civil Aeronautics Board, presented to the Senate Aviation Subcommittee on June 12, 1968. Presumably this testimony will be repeated before your committee on June 24. In general, ASTA concurs with the matter set forth in the testimony.

In particular, ASTA supports the language proposed by the Board to modify H.R. 17685. These changes appear to be minor and technical, and ASTA would also support H.R. 17685 as introduced.

As Chairman Crooker notes, S. 3566 defines inclusive tour charter as a charter to a tour operator for certain purposes, which impliedly would prevent a supplemental carrier from setting up and marketing an inclusive tour on its own behalf, without the association of a tour operator. H.R. 17685 does not define an inclusive tour charter, which leaves open the argument that the supplemental carriers have authority under the basic Federal Aviation Act to set up and market inclusive tour charters themselves without the association of tour operators. As Chairman Crooker notes, the Board, as a matter of policy, believes that supplementals should not market inclusive tours directly to the traveling public, and its regulations specifically prohibit such activity.

ASTA would like it to be clear and made clear in the record, that in the event H.R. 17685, or the modification of it as proposed by the Board, should be enacted, this would not constitute any expression by Congress one way or the other, whether the supplemental carriers have the authority to market ITCs themselves under the Federal Aviation Act. That is, ASTA would like to be free to argue,

if the necessity ever arose, that the supplementals do not have this authority under the Federal Aviation Act.

But if the Committee should wish to express itself on the matter, then ASTA strongly urges the enactment of the present Board policy that the supplemental carriers be denied the authority to set up and market ITCs themselves. It is highly desirable that the function of the supplemental carrier and the tour operator be separated with respect to ITCs. To allow the supplemental carrier to set up the tours and assemble the participants would place serious temptations on the carrier to evade the Board's rules designed to prevent diversion from the scheduled carriers, evasions that would be difficult, if not impossible, to prevent.

Sincerely yours,

GEORGE L. FICHTENBAUM,  
*Executive Director.*

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THE COOPERATIVE LEAGUE OF THE USA,  
*Washington, D.C., June 18, 1968.*

HON. SAMUEL N. FRIEDEL,  
*Chairman, Subcommittee on Transportation and Aeronautics, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: The Cooperative League of the USA wishes to associate itself with the Department of Transportation, the Civil Aeronautics Board, and our member organization the American Travel Association in urging favorable action by your Subcommittee on H.R. 17865, the bill introduced by Congressman John Moss of California, which would enable the Civil Aeronautics Board to certificate supplementary air carriers for charter flights by organized groups.

Our member organization, the American Travel Association, came into being to foster purposeful travel at moderate cost for groups for whom the cost of foreign travel is usually prohibitive. The reason H.R. 17865 and its companion bill S. 3566 constitutes socially useful legislation is spelled out clearly and cogently in the accompanying letter by President Wallace Campbell of the American Travel Association.

I am sure members of the some 20 million member families of organizations belonging to the customer-owned businesses affiliated with our League would join me in urging favorable consideration of this legislation by the Subcommittee and by the Congress.

Sincerely,

STANLEY DREYER,  
*President.*

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AMERICAN TRAVEL ASSOCIATION,  
*Washington, D.C., June 14, 1968.*

HON. SAMUEL N. FRIEDEL,  
*Chairman, Subcommittee on Transportation and Aeronautics, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.*

DEAR CONGRESSMAN FRIEDEL: The American Travel Association is pleased that your Subcommittee is holding public hearings on Senate Bill 3566 which, in our view, proposes a much-needed clarification of existing federal regulation governing air charter flights.

Costs for both overseas and domestic vacation travel could drop substantially if this bill is passed. This is naturally of concern to the American Travel Association because the reduction of costs to travelers who are members of organizations belonging to ATA is precisely the reason we were organized.

Lowered costs, which is our reason for being, will open the door to foreign travel to others than those belonging to the affluent and favored minority. It is a fact that hardly more than one in 20 Americans has ever traveled abroad. Therefore no further statistical justification for our position is required. The ATA hopes to make serious purposeful travel a part of the experience of many millions of Americans to whom heretofore it has been financially out of reach altogether.

The charter flight is the answer when it is freed of strangling red tape, simple to organize, and priced at a figure the less well-to-do can afford. S. 3566 has these purposes in mind. The bill will allow the Civil Aeronautics Board to continue to permit package tours on supplemental as well as charter carriers.

This will open a new market among people of modest resources; and all types of carriers—the chartered as well as supplemental—will benefit when so many thousands get in the habit of flying.

The trunk or charter carriers grossed over \$6 billion dollars last year. They achieved nearly 90 percent of the market while figures for supplemental carriers indicate they did less than four percent of this business. Manifestly they offer no threat to the trunk or charter carriers.

We support the contention of Assistant Secretary Agger of the Department of Transportation who told the Senate Subcommittee considering this bill that it “would make clear the authority of the Civil Aeronautics Board to authorize certificated supplemental air carriers to charter their aircraft to tour operators for inclusive tour trips. . . . The Department of Transportation believes that Congress should resolve this matter with a clear statement that supplementals may engage in inclusive tour charters in domestic, overseas, and foreign air transportation.”

Secretary Agger further stated that “The inclusive tour charter has meant a wider choice of services and prices, both domestically and internationally. By authorizing inclusive tours by supplementals, the Board has been able to promote progress in aviation and has provided a flexibility which allows it to respond to changing opportunities and needs.”

The experience of the American Travel Association in this field bears out what this spokesman for the Department of Transportation is saying, and we heartily concur in Mr. Agger's conclusions.

We urge the Subcommittee to report favorably on S. 3566 and hope for its early passage by the Congress.

It would be appreciated if our statement could be made a part of the hearing record of your Subcommittee.

With sincere best wishes,

WALLACE J. CAMPBELL,  
*President.*

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CONTINENTAL EXPRESS INTERNATIONAL PASSENGER SERVICES,  
*Beverly Hills, Calif., June 6, 1968.*

Re: Bill S. 3566 (Monroney and Magnuson)

HON. HARLEY O. STAGGERS,  
*Chairman, House Interstate and Foreign Commerce Committee,  
House Office Building, Washington, D.C.*

DEAR MR. STAGGERS: On behalf of the traveling public and our industry, I would like to lend some observations in support of the above amendment.

The clarification of the definition of an air charter is entirely necessary if the extension of Inclusive Tour Charter authority as granted by the Civil Aeronautics Board be held valid.

As a leading West Coast tour operator serving over 15,000 passengers per year and with an extremely well developed mass marketing capability, we feel particularly qualified to make constructive observations in respect of the need for Inclusive Tour Charters. I personally was in a position to observe the development of the “Inclusive Package Flight” concept throughout Europe during the 1950s. Acceptance among holidaymakers there was overwhelming. Hundreds of thousands of persons whose economic circumstances made Southern Europe and the Mediterranean an impracticability in the light of high scheduled airline fares were suddenly able to take advantage of the low cost “Full Charter Concept”. To them this was no more than the timely and natural extension of the “Cook's Tour Special” or chartered train that had provided transportation for the masses prior to World War II. Initial concern on the part of scheduled carriers that low cost charter flights to specific resorts might adversely affect their revenues proved groundless. In fact, millions of Europeans whose original reluctance to fly was overcome by the inducement of a low cost vacation have since become frequent clients of scheduled airlines in respect of their normal transportation needs.

In a country as vast as these United States, where air transportation has become a virtual necessity, the introduction of the Inclusive Tour Charter seemed obviously desirable and even inevitable. With every statistic indicating that as late as 1967 only some 10% of the population had ever been able to avail themselves of the advantage of air transportation, the need was clear. Immediately upon introduction, thousands began to take advantages of this opportunity. It was quickly ascertained through questionnaires that these people did indeed

represent the "New Market", and that in this vast majority these were passengers who would not have flown without the inducement of low cost air charter rates. During the one year period of remarkable growth in Inclusive Tour operations, relevant scheduled route carriers continued to show a steady increase in passenger boardings and revenues. In every area, the introduction of ITCs led to healthy economic consequences. The comfort, convenience and economy of modern jet travel was being extended for the first time to the average man on the street. Hotels and resort areas from the Virgin Isles to Hawaii and from San Francisco to Miami enjoyed an unprecedented increase in tourism. Aircraft manufacturers had found a new market for their aircraft both at home and abroad. Supplemental airlines could project, for the first time, utilization of their planes and could with confidence improve upon their standard of equipment. Tour operators could now remove the dread inefficiency inherent in short term planning. It seemed that at last the entire travel fraternity could formulate long range plans so necessary to public service and yet so rare in our fast developing industry.

Could it be that these many advantages are to be denied to such a broad segment of the American public and to such a vital industry? It would seem that in the light of recent contentions by various scheduled airlines which were upheld by recent supreme court findings, that this indeed may become the case.

Therefore, sir, I most respectfully urge your support for the amendment as set forth in Bill # S3566 which I understand is soon to be presented to the legislature. There is no doubt that the exercise of your authority within the House Interstate and Foreign Commerce Committee will have a dramatic and far reaching effect upon the travel industry and the traveling public.

I thank you in anticipation of your support.

Sincerely

MICHAEL R. HOOKER.

INDUSTRIAL UNION DEPARTMENT, AFL-CIO,  
Washington, D.C., June 27, 1968.

HON. SAMUEL N. FRIEDEL,

*Chairman, Subcommittee on Transportation and Aeronautics, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: We want to express our support of H.R. 17685 which clarifies the authority of the Civil Aeronautics Board to permit supplemental air carriers to charter their aircraft to tour operators for inclusive tour charter trips. We request that this letter be included in the record.

A number of our unions have, over the years, seriously tried to interest their members in travel abroad and in the United States. Some have succeeded in getting a very meaningful participation by their membership in such travel. And so charter flights made up of workers have traveled throughout Europe, to California, to Hawaii, etc. etc. Indeed, in recent years this has become a rather commonplace occurrence.

We have found this travel program to be stimulating, educationally rewarding and enjoyable for our members. These trips have offered a new dimension and understanding to those who have participated in them.

Of course, travel for workers, especially to distant places, has been possible only when the cost of travel has been kept to a reasonable level. And this is where the inclusive tour charters have contributed immeasurably. They have brought travel prices down and put them within reasonable reach of many of our members. The fact is that without inclusive tour charters much of our worker travel programs would come to an end; too many workers who now travel together on the inclusive tour charter basis simply could not afford the normal commercial charter rates. Thus tourism among workers in the United States and abroad would drastically suffer if tour charter flights became unavailable.

Therefore, because we believe that worker travel can be purposeful and deeply significant as a social instrumentality; because such travel can be more effectively realized by the clear legitimizing of inclusive tour charters, we strongly urge the passage of H.R. 17685. We earnestly believe the bill to be in the broad public interest.

Sincerely yours,

JACOB CLAYMAN,  
*Administrative Director.*

UNITED AUTOMOBILE WORKERS,  
Washington, D.C., June 21, 1968.

HON. SAMUEL N. FRIEDEL,  
Chairman, Subcommittee on Transportation and Aeronautics, Committee on  
Interstate and Foreign Commerce, House of Representatives, Washington,  
D.C.

DEAR CONGRESSMAN FRIEDEL: As a member of the American Travel Association and on our own behalf as an international union, we are pleased to endorse the general principles of H.R. 17685 and S. 3566.

I am sure it is not strange to you that our union is involved in broadening the horizons of our members, thus we have been engaged for a number of years in providing low-cost travel for our members and members of their families for flights overseas. We call our program "Travel with a Purpose". To the extent that we have been able to achieve a lowering of cost we have been able to bring travel to thousands of our members. Therefore, we believe that the opening up of air travel through a revision of the charter regulations of certified supplemental air carriers would be most beneficial.

Certainly, as vacation time increases, we need to modernize our regulatory laws in a constructive manner so that the wide benefits of travel may be made available to workers and their families.

We trust that your committee will give this bill a favorable report.

Sincerely yours,

PAUL A. WAGNER,  
UAW Washington Office.

ROGAL TRAVEL SERVICE,  
Philadelphia, Pa., June 12, 1968.

HON. HARLEY O. STAGGERS,  
U.S. House of Representatives, Washington, D.C.

DEAR CONGRESSMAN STAGGERS: A Bill has been introduced into the House of Representatives (H.R. 17685) to amend the Federal Aviation Act to make it clear that Supplemental Air Carriers may charter to Tour Operators for the purpose of operating Inclusive Tour Charters.

We feel very strongly that the introduction of this Bill is necessary in that the United States Court of Appeals for the Second Circuit and the United States Court of Appeals for the District of Columbia decided the question of the authority of the Civil Aeronautics Board to authorize Supplemental Air Carriers to perform Inclusive Tour Charters inconsistently with one another.

As you are well aware, the Supreme Court reviewed the case, but it split 4 to 4, thereby leaving the issue unresolved, unfortunately.

It is our experience in the last two years that Inclusive Tour Charters have had a healthy and stimulating effect upon travel from our city and others on the Eastern Seaboard throughout various areas of the United States.

We firmly believe that most of these travellers would not have travelled had it not been for the availability of an Inclusive Tour Charter. The economics of the situation, the ability to travel in groups conveniently, plus many other peripheral advantages are tremendous in our eyes.

Moreover, we feel it is very much in the public interest to stimulate our fellow citizens to travel within our country, to share experiences, and to get to know more about their fellow countrymen.

It is in this spirit that we urge you to lend your very valued support to the Bill pending before the House of Representatives.

Cordially,

KEITH C. ROGAL,  
President.

AIR LINE DISPATCHERS ASSOCIATION,  
Vienna, Va., June 20, 1968.

HON. SAMUEL N. FRIEDEL,  
House Office Building, Washington, D.C.

DEAR CONGRESSMAN FRIEDEL: Please consider these remarks as part of the House Hearings on Supplemental Air Carriers beginning June 24, 1968.

It is understood by our organization that this hearing intends to deal with the economic aspects of supplemental air carrier operation and the authority of the Civil Aeronautics Board, under the Federal Aviation Act, to grant authority for all inclusive charters.

Nevertheless, it is conceivable that an issue might be raised relative to the air safety provisions of the applicable Federal Aviation Regulations. ALDA and the supplemental carriers were involved on March 26, 1968, in FAA hearings pursuant to FAR 121, and copies of those hearing transcripts are available now to the Congress.

ALDA takes the view that the safety regulations present to the Congress and to the public a "double standard" of safety, in which military and civil charters can be operated without minute to minute flight watch, weather service, dispatch information, and many other safety regulations which are required of scheduled airlines.

Perhaps this is not the forum for our arguments, but we do believe that the Congress should not neglect this highly significant question. The Armed Services Committee of the House has from time to time become disturbed over this double standard, and the most horrifying accident involving military personnel in Richmond, Va., resulted in some small but significant improvements in FAR 121.

Should this hearing presently being conducted decide to move into safety areas we would appreciate being summoned to present testimony.

Very truly yours,

ROBERT E. COMMERCE,  
*President.*

STATEMENT OF ROBERT E. COMMERCE, PRESIDENT, AIR LINE DISPATCHES ASSOCIATION, BEFORE THE FEDERAL AVIATION ADMINISTRATION HEARING ON REVISION OF FLIGHT FOLLOWING REQUIREMENTS, DOCKET NO. 8351, MARCH 26, 1968

First of all, let us comment that insofar as the written docket is concerned, ALDA has established its objections to the proposal in its present form, therefore it will not serve the purpose of this meeting to restate the bulk of that material.

There is little doubt in our minds that Draft Release 67-38 is one of the most vague, confusing and contradictory proposals to emanate from the Administration. Let us tell you why we think so.

The invention of this operational plan appears to be a tortured way of getting around FAA's enforcement responsibilities. On one hand it establishes in 121.537 (c) a clear and unmistakable responsibility upon the Director of Operations of a carrier to insure that a plan exists that will produce the maximum degree of safety obtainable, then it reaffirms the present language in 121 which gives him the authority to delegate the function. Having done this, it then turns to (D) and says that everything that was furnished heretofore through the Flight Following and Flight Release System must be present in the operational plan. It even requires that the pilot prepare and sign a flight release. A flight release to us is in fact a joint undertaking. It is like an air traffic control clearance in concept, in that someone issued permission to transit a piece of airspace and there are certain conditions attached to it that a pilot understands when he accepts this ATC clearance. To make a pilot sign a flight release when he alone is making full determination of the operational control aspects of the flight, seems to be an exercise in futility, and it appears that retaining this vestigial process is just a way of trying to make it appear as though maximum safety is being achieved and that joint control does exist when in fact it does not.

But to carry this further, FAA has told us that one of the air carrier complaints against the present regulations is that the execution of a flight release is an inconvenience which serves no useful purpose. It is a rubber stamp in other words.

The proposal speaks in (c) to joint responsibility for initiation, continuation, diversion and termination, and then immediately absents the balance of the regulation by saying that nobody can do the job of operational control except the pilot of the flight, because he has more information than anyone else has. This assumption simply is not always true, and FAA apparently knows it is not true because it goes on to say in the proposal that the operational plan system must insure rapid communications for monitoring the progress of the flight. Certainly, if the joint responsibility concept infers here that the pilot must be furnished information that affects the safety of the flight, it must come from somewhere, and it certainly has to come from a responsible and reliable source.

One of the greatest difficulties, therefore, is in understanding what is meant by the *Operational Plan*. Nowhere is it adequately defined.

Maybe after we have an opportunity to read and understand what an operational plan really is supposed to be, we might find that we have no objection to the

concept, provided that it is backed with properly qualified ground support personnel. We would hope that one of the reasons for this meeting would be to explain for everyone present what all the ramifications of an operational plan are and to explain it again for the college men.

We would need to know answers to the questions posed in our written docket material, such as "What happens when the operational plan has to be revised with considerable frequency, or perhaps even while a flight is enroute?" And what about the operational plan of Spasmodic Airlines, Inc., which owns one C-46 and is going to operate just one flight from Seattle to Tucumcari in early April?

One obvious defect seems to be that FAA appears to be saying that the carriers cannot comply with the present rules, and that FAA is incapable of monitoring and supervising the supplemental operations being conducted. If this is so, and FAA cannot effectively regulate it, how much better will FAA be able to regulate it under the new rules, if they are adopted?

We also need some understandings about FAA's responsibility in this operational control equation. For example, when an FAA inspector approves an operational plan, does it mean that he has assumed responsibility as part of the total complex for what happens to the flights conducted under the plan?

ALDA wants to emphasize that it expects to get answers to these and many more questions concerning the *operational plan system*. This is the forum at which these matters must be exhaustively discussed. If the concept is sound, this fact will develop during the hearing, and we do not wish to take a posture of blind opposition. FAA must explain it all to us here and now and who knows, we may be able to endorse it. Right now it looks unwieldy and shot through with holes. It looks like an extension of the double standard for one thing, and a reversion to the old CAR 42 regulation which gave the pilot 100% control over non-scheduled operations, in which he released himself except when air carriers chose by their own volition to cause such flights to be released and flight followed by dispatch personnel or flight following centers. FAA apparently didn't like the holes in CAR 42 because it plugged them when it recodified FAR 121.

In summation, ALDA wants its position clear on the question of adequacy of the available technology. We believe that facilities are available around the world, except in some areas where political considerations are at work, which permit continuous communications with flights and the proper exercise of operational control. We believe that with the infusion of certain amounts of money, personnel and talent, perhaps with a pooling of informational sources, operational control can and should be exercised. Secondly, we see no reason for the perpetuation of the concept that says if you fly PAA and NWA to Tokyo you are carried aboard a multi-million-dollar jet which is flown by the finest of pilots, aided on the ground by well qualified dispatchers, communicators and meteorologists. Yet, if you are an air force sergeant, flying to your new base in Vietnam, in the same type of equipment, your flight is not entitled to the same degree of service and vigilance which the scheduled operator provides to its passengers . . . and this in the face of the technology already present and working.

We thank Mr. Hodson and the Administration for giving us this opportunity to present our views, and we earnestly request that no question be turned aside at this hearing unless it is cumulative or redundant. We feel that the lives of many military servicemen may be at stake and FAA has an obligation to explore the whole picture, and if indeed the facts do develop either a need for increased operational control or a lack of need for the proposed change, that the proposal be abandoned, as you state in the preamble.

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#### STATEMENT IN SUPPORT OF THE SOUTHERN FLORIDA HOTEL AND MOTEL ASSOCIATION

The Southern Florida Hotel and Motel Association is pleased to have the opportunity to present this statement in support of H.R. 17685, a bill to amend the Federal Aviation Act of 1958 with respect to the definition of supplemental air transportation.

The Association is a trade organization composed of 43 of the leading tourist hotels and motels located in and around Miami Beach, Florida. It was organized in 1943 to represent the common interests of the hotels and motels of the Miami Beach area and to promote tourist travel to Southern Florida. The member hotels and motels offer 12,500 rooms to Florida vacationers, employ over 10,000 workers and have a total annual payroll in excess of \$30 million. Its members are :

Algiers  
 Allison  
 Americana  
 Balmoral  
 Barcelona  
 Beau Rivage  
 Cadillac  
 Carillon  
 Casablanca  
 Castaways  
 Colonial Inn  
 Crown  
 Deauville  
 Delano  
 De Lido  
 Doral Beach  
 Doral Country Club  
 Dupont Plaza  
 Eden Rock  
 Fontainebleau  
 Holiday Inn—22nd Street  
 Holiday Inn—87th Street

Hollywood Beach  
 Ivanhoe  
 Kenilworth  
 Lucerne  
 McAllister  
 Monte Carlo  
 Montmartre  
 Nautilus  
 New Everglade  
 Newport  
 Sans Souci  
 Saxony  
 Seagull  
 Sea Isle  
 Seville  
 Shelbourne  
 Sheraton Four Ambassadors  
 Sherry Frontenac  
 Shore Club  
 Surfcomber  
 Versailles

A primary purpose of the Association is to promote the development of tourism in the Miami Beach area. We believe the proposed legislation could make a substantial contribution to tourist development in several different ways, all of which are in the public interest.

The bill is intended, as we understand it, to clarify the intent of Congress concerning the authority of the Civil Aeronautics Board to grant to supplemental air carriers inclusive tour charter authority. We believe its passage during this session of the Congress is vital to preserve the public benefits flowing from inclusive tour charters, confirm the existing authority of the supplemental airlines and avoid the chaotic and confusing situation which would otherwise result from recent court decisions.

The Committee is fully familiar with the history of the inclusive tour charter problem, which we will not repeat. Instead, we wish to detail the public benefits of this legislation, and to emphasize the role which can be played by inclusive tour charters as a spur to lower cost vacations, whether air travel be by supplemental or scheduled carrier. We will discuss these matters in terms of our own experience, since that is what we know best.

Miami Beach is, of course, one of the greatest vacation areas of the world. Each year, millions of tourists enjoy the beaches, recreational facilities and hotels of this fine resort community. A large portion of these visitors arrive by air. The Florida Development Commission, in its 1966 Florida Tourist Study, estimated that 2,469,541 tourists took airplane flights to Florida.

While Miami Beach is perhaps first thought of as a winter vacation spot, the off-season (which stretches from April through early December) has attracted more and more visitors over the years. This is because we offer outstanding vacation value during this period, which cost-conscious vacationers recognize as one of the greatest bargains in the world. For example, Miami Beach hotel rates during the off-season average fully 50% below winter prices. The summer vacationer can enjoy the full facilities of our resort hotels for \$12 daily, including two full meals.

The special characteristics of the Florida off-season markets are reflected in statistics of the Florida Development Commission. During the summer the average Florida vacationer stays 11.50 days, at a cost averaging \$15.30 daily. Thus he spends, on the average, \$175.95 per stay. His winter counterpart stays about a week longer, despite higher costs, and spends some \$320.80, or 80% more, not counting differences in air fare.

Thus, Florida and particularly the Miami Beach area are ideally suited to travel by inclusive tour charter. Based on current tariffs, air charter costs from New York to Miami would approximate \$50 per person, round trip. The cheapest fare available on regular schedules is \$99 off-season, \$142 on-season. The typical family group thus would save well over \$150 on air travel using an inclusive tour charter.

As the Committee probably knows, charter programs have been run to Miami in past years. For example, a series of charters during the winter of 1961-62 attracted thousands of vacationers. Statistics collected by us show that seventy percent of these passengers had never flown before.

Thus the charter flight builds future passengers for the scheduled airlines, by giving them their first exposure to the ease, speed and comfort of travel by air. The experience cited, although it involved affinity charters, should be equally applicable to inclusive tour charters.

Inclusive tours also can greatly benefit our country's balance of payments by bringing American vacations within the budgets of foreign travelers. This Association and its individual members for some years have actively sought foreign business. We have made many marketing trips to Europe and Latin America. Our members have long offered special rates—even below the off-season discounts—to our foreign guests. Several hotels maintain special foreign departments, print menus in other languages, and offer special international services.

But a major deterrent to foreign travel in this country is its cost. Although international air rates have come down in recent years, they are still high. What is more, costs of first-class hotels throughout the country are generally thought of, by our foreign friends, as beyond their means.

On the other hand, the low off-season rates of Miami Beach tourist hotels meet the needs of international visitors. At a May meeting in Miami sponsored by this Association for foreign travel agents, they were most pleasantly surprised to learn of our low rates. Many foreign travel agents said their clients would come to Miami Beach if air travel costs could be lowered. This, of course, would be dramatically accomplished by inclusive tour charter flights. On such a package tour, a European visitor could easily spend two weeks at a beach resort hotel for \$350-\$400 including air travel. (This estimate includes \$200 for round trip air fare, which is easily attainable in a charter program, based on current tariffs for the modern large jets operated by the supplemental airlines.)

In 1966, some 1,100,000 persons arrived in Florida from foreign countries. Of these, 422,000 were aliens and may be counted as tourists. Fully 88% arrived by air. While these are impressive numbers, they do not begin to compare with the potential market. Civil Aeronautics Board figures show that there were 3,284,000 transatlantic passengers in 1967, of whom 557,000 traveled by charter.

The supplemental air carriers, if their inclusive tour authority is continued, would have maximum incentive to develop this travel. Many already have European sales offices. International inclusive tour charters have been slow to develop because of legal problems with which the Committee is fully familiar. Clarifying legislation, such as H.R. 17685, would remove this uncertainty and speed development of the market.

Inclusive tour charter authority plays one other very important role: by acting as a competitive spur to low cost individually ticketed air travel it encourages the regularly scheduled carriers to reduce their fares. This has been particularly evident in the transatlantic market. The Committee will recall that the IATA carriers did not introduce their low Group Inclusive Tour fares until after the CAB had moved to grant inclusive tour charter authority to the supplementals. The continued availability of inclusive tour charters will supply an important spur to the scheduled airlines. It will help keep them operating as efficiently and at the lowest cost possible.

In sum, the limited experience which has been possible under the inclusive tour charter program of the CAB demonstrates that this is an extremely effective device for making the benefits of low cost vacations available to large segments of the public. Potentially, the inclusive tour charter is an excellent means of stimulating travel to the United States by foreign visitors and thereby making a significant contribution to the nation's balance of payments. It will also act as a competitive spur to the scheduled carriers. Miami Beach off-season tourist travel could well benefit from continuation of inclusive tour charter authority, particularly if there is a clear declaration of Congressional intent which would enable the CAB to liberalize the regulations under which it has approved such charters in the past. The Association enthusiastically supports passage of the proposed legislation at the earliest possible date.

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, AFL-CIO,  
New York, N.Y., July 2, 1968.

HON. SAMUEL N. FRIEDEL,

*Chairman, Subcommittee on Transportation and Aeronautics, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: The International Ladies' Garment Workers' Union is interested in H.R. 17685 to amend the Federal Aviation Act of 1958 dealing with the authority of the Civil Aeronautics Board to certify supplemental air carriers to charter their aircraft to tour operators for inclusive tour trips.

This bill, which is supported by many organizations in the consumer and cooperative field as well as the President's Consumer Advisory Commission and the President's Consumer Advisory Counsel, Betty Furness, would protect the consumers in a field which is growing very fast—charter flight tours.

In the last number of years, many of our local unions have chartered tours overseas and in this country on behalf of its members. If H.R. 17685 is passed, our union would be able to compare costs and perhaps save many dollars through this comparison for our members and their families.

As a person who is concerned with protecting the rights of consumers of low income particularly, the International Ladies' Garment Workers' Union looks to you to take the leadership to have your subcommittee report favorably on the bill.

I should like to have this letter included in the hearing record to indicate our support of the legislation.

Respectfully yours,

EVELYN DUBROW,  
*Legislative Representative.*

(Whereupon, at 12:45 p.m., the hearings adjourned, subject to the call of the Chair.)

