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REGULATION OF INTERNATIONAL AIR FARES

GOVERNMENT

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HEARINGS

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BEFORE THE

SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS

OF THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE HOUSE OF REPRESENTATIVES

NINETY-SECOND CONGRESS

FIRST SESSION

ON

H.R. 11416 and H.R. 11825

BILLS TO AMEND THE FEDERAL AVIATION ACT OF 1958 TO
PROVIDE FOR THE REGULATION OF RATES AND PRACTICES
OF AIR CARRIERS AND FOREIGN AIR CARRIERS IN FOREIGN
AIR TRANSPORTATION, AND FOR OTHER PURPOSES

NOVEMBER 17, 18, AND 19, 1971

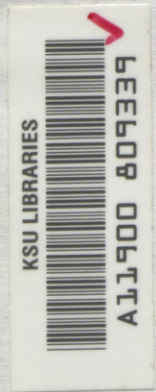
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ORGANIZATIONS REPRESENTED AT HEARINGS

Air Transport Association of America :

Landry, James E., general counsel.

Phillips, Gabriel, vice president, International Services.

Capitol International Airways, Inc., Morten S. Beyer, president.

Civil Aeronautics Board:

Browne, Hon. Secor, Chairman.

Johnson, R. Tenney, General Counsel.

National Air Carriers Association, Edward J. Driscoll, president.

State Department:

Rein, Bertrum W., Deputy Assistant Secretary for Transportation and Telecommunications.

Silberstein, Joseph A., Chief, Aviation Programs and Policy Division, Office of Aviation.

Transportation Department:

Baker, Hon. Charles D., Assistant Secretary for Policy and International Affairs.

Barnum, John, General Counsel.

Binder, Robert H., Deputy Assistant Secretary for Policy and International Affairs.

Eastman, Samuel E., Director, Office of Policy Review.

REGULATION OF INTERNATIONAL AIR FARES

WEDNESDAY, NOVEMBER 17, 1971

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. John Jarman (chairman) presiding.

Mr. JARMAN. The subcommittee will please be in order. This morning we will commence hearings on various proposals to amend the Federal Aviation Act of 1958 to provide for the regulation of rates and practices of air carriers and foreign air carriers. The bill before us, H.R. 11416, was introduced by Chairman Staggers, and an identical bill, S. 2423, was introduced by Senator Cannon.

I understand that S. 2423, with amendments, was reported from the Senate subcommittee to the full committee yesterday, and that the full committee expects to meet on this tomorrow.

I know that the witnesses whom we will hear have various proposals to amend H.R. 11416, but I understand that there is full agreement by all concerned that some additional powers over rates and practices in foreign air transportation should be vested in the Civil Aeronautics Board.

I am further advised that the Secretary of Transportation delivered a proposed bill on this subject yesterday and has requested its introduction so that it may be considered along with all other proposals in this hearing.

I am sure that we will receive the details on that from the Department of Transportation witnesses.

(The text of H.R. 11416 and H.R. 11825 follows:)

(1)

92^D CONGRESS
1ST SESSION

H. R. 11416

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 21, 1971

Mr. STAGGERS introduced the following bill; which was referred to the Committee on Interstate and Foreign Commerce

A BILL

To amend the Federal Aviation Act of 1958 to provide for the regulation of rates and practices of air carriers and foreign air carriers in foreign air transportation, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 404 (a) of the Federal Aviation Act of 1958
4 (49 U.S.C. 1374 (a)) is amended by inserting "(1)"
5 immediately after "(a)" and by adding at the end thereof
6 the following new paragraph:

7 "(2) It shall be the duty of every air carrier and for-
8 eign air carrier to establish, observe, and enforce just and
9 reasonable individual and joint rates, fares, and charges, and

1 just and reasonable classifications, rules, regulations, and
2 practices relating to foreign air transportation; and, in case
3 of such joint rates, fares, and charges, to establish just, rea-
4 sonable, and equitable divisions thereof as between air
5 carriers or foreign air carriers participating therein which
6 shall not unduly prefer or prejudice any of such participating
7 air carriers or foreign air carriers.”

8 SEC. 2. Section 801 of such Act is amended by insert-
9 ing “(a)” immediately after “801” and by adding at the
10 end thereof the following new subsection:

11 “(b) Any order of the Board pursuant to sections 1002
12 (f) or 1002 (g) of this Act establishing, discontinuing, or
13 suspending a rate, fare, or charge for foreign air transporta-
14 tion, or conditioning the continuation of service by a foreign
15 air carrier in foreign air transportation upon compliance with
16 any such order, and any order suspending the effectiveness
17 of any such order, shall be reported to the President by the
18 Board before publication: *Provided*, That any order of the
19 Board directing an air carrier or foreign air carrier to alter
20 any rate, fare, or charge, or any classification, rule, regula-
21 tion, or practice affecting such rate, fare, or charge, to the
22 extent necessary to correct any discrimination, preference, or
23 prejudice, and any order that the air carrier or foreign air
24 carrier shall discontinue demanding, charging, collecting, or
25 receiving any such discriminatory, preferential, or prejudicial

1 rate, fare, or charge or enforcing any such discriminatory,
2 preferential, or prejudicial classification, rule, regulation, or
3 practice, need not be so reported."

4 SEC. 3. Section 1002 (d) of such Act (49 U.S.C. 1482
5 (d)) is amended by changing the colon following the word
6 "effective" to a period and striking out the following:
7 "*Provided*, That as to rates, fares, and charges for overseas
8 air transportation, the Board shall determine and prescribe
9 only a just and reasonable maximum or minimum, or maxi-
10 mum and minimum rate, fare, or charge."

11 SEC. 4. Section 1002 (e) of such Act (49 U.S.C. 1482
12 (e)) is amended by inserting the words "and foreign air
13 carriers" after the words "air carriers" where they appear in
14 paragraphs (2) and (3) of the subsection, and by inserting
15 the words "and foreign air carrier" after the words "air
16 carrier" where they appear in paragraph (5).

17 SEC. 5. Section 1002 (f) of such Act (49 U.S.C. 1482
18 (f)) is amended to read as follows:

19 "RATES AND PRACTICES IN FOREIGN AIR TRANSPORTATION
20 "(f) Whenever, after notice and hearing, upon com-
21 plaint or upon its own initiative, the Board shall be of the
22 opinion that any individual or joint rate, fare, or charge, de-
23 manded, charged, collected, or received by any air carrier
24 or foreign air carrier for foreign air transportation, or any
25 classification, rule, regulation, or practice affecting such rate,

1 fare, or charge or the value of the service thereunder is or
2 will be unjust or unreasonable or unjustly discriminatory, or
3 unduly preferential, or unduly prejudicial, the Board may
4 alter the same to the extent necessary to correct such unjust-
5 ness, unreasonableness, discrimination, preference, or preju-
6 dice and make an order that the air carrier or foreign air
7 carrier shall discontinue demanding, charging, collecting, or
8 receiving any such unjust, unreasonable, discriminatory,
9 preferential, or prejudicial rate, fare, or charge, or enforcing
10 any such unjust, unreasonable, discriminatory, preferential,
11 or prejudicial classification, rule, regulation, or practice. The
12 Board may in the aforesaid order set forth and prescribe
13 the lawful rate, fare, or charge (or the maximum or mini-
14 mum or the maximum and minimum thereof) thereafter to
15 be demanded, charged, collected, or received, or the lawful
16 classification, rule, regulation, or practice thereafter to be
17 made effective."

18 SEC. 6. Section 1002 (g) of such Act (49 U.S.C.
19 1482 (g)) is amended to read as follows:

20 "SUSPENSION OF RATES

21 "(g) (1) Whenever any air carrier or foreign air carrier
22 shall file with the Board a tariff stating a new individual or
23 joint (between air carriers, between foreign air carriers, or
24 between an air carrier or carriers and a foreign air carrier or
25 carriers) rate, fare, or charge for air transportation or any

1 classification, rule, regulation, or practice affecting such rate,
2 fare, or charge, or the value of the service thereunder, the
3 Board is empowered, upon complaint or upon its own initia-
4 tive, at once, and, if it so orders, without answer or formal
5 pleading by the air carrier or foreign air carrier, but upon
6 reasonable notice, to enter upon a hearing concerning the
7 lawfulness of such rate, fare, or charge, or such classification,
8 rule, regulation, or practice; and pending such hearing and
9 the decision thereon, the Board, by filing with such tariff,
10 and delivering to the air carrier or foreign air carrier affected
11 thereby, a statement in writing of its reasons for such sus-
12 pension, may suspend the operation of such tariff and defer
13 the use of such rate, fare, or charge, or such classification,
14 rule, regulation, or practice, for a period of ninety days, and,
15 if the proceeding has not been concluded and a final order
16 made within such period, the Board may, from time to time,
17 extend the period of suspension, but not for a longer period
18 in the aggregate than one hundred and eighty days beyond
19 the time when such tariff would otherwise go into effect; and,
20 after hearing, whether completed before or after the rate,
21 fare, charge, classification, rule, regulation, or practice goes
22 into effect, the Board may make such order with reference
23 thereto as would be proper in a proceeding instituted after
24 such rate, fare, charge, classification, rule, regulation, or

1 practice had become effective. If the proceeding has not been
2 concluded and an order made within the period of suspension,
3 the proposed rate, fare, charge, classification, rule, regulation,
4 or practice shall go into effect at the end of such period:
5 *Provided*, That this paragraph shall not apply to any initial
6 tariff filed by an air carrier or foreign air carrier.

7 “(2) Whenever the Board finds that the government
8 or aeronautical authorities of any foreign country have refused
9 to permit the charging of rates, fares, or charges contained
10 in a properly filed and published tariff of an air carrier
11 filed under this Act for foreign air transportation to such
12 foreign country, the Board may, in its discretion and with-
13 out hearing, (A) suspend the operation of any existing
14 tariff of any foreign air carrier providing services between
15 the United States and such foreign country for a period or
16 periods not exceeding three hundred and sixty-five days in
17 the aggregate from the date of such suspension, and (B)
18 during the period of such suspension or suspensions, order
19 the foreign air carrier to charge rates, fares, or charges which
20 are the same as those contained in a properly filed and
21 published tariff (designated by the Board) of an air carrier
22 filed under this Act for foreign air transportation to such
23 foreign country. The charging by the foreign air carrier of
24 the rates, fares, or charges required by the Board's order and
25 the effective right of an air carrier to start or continue service

1 at such rates, fares, or charges to such foreign country shall
2 be a condition to the continuation of service by the foreign
3 air carrier in foreign air transportation to such foreign
4 country.

5 “(3) The Board may, at any time, in its discretion and
6 without hearing, order any foreign air carrier to file, within
7 twenty days for effectiveness within thirty days, tariffs under
8 which such foreign air carrier will charge rates, fares, or
9 charges which are the same as the rates, fares, or charges in
10 the properly filed and published tariffs (designated by the
11 Board) of an air carrier filed under this Act for the same
12 foreign air transportation. When such tariffs are filed by
13 the foreign air carrier, such foreign air carrier may request
14 the Board to institute an investigation concerning the reason-
15 ableness of such rates, fares, or charges, and may request the
16 Board to suspend their effectiveness as to such foreign air
17 carrier pending the conclusion of such investigation. Upon
18 receipt of such a request, the Board shall institute such an
19 investigation and shall determine, in its discretion, whether
20 or not to so suspend such rates, fares, or charges during the
21 pendency of the investigation. If the Board determines not
22 to suspend such rates, fares, or charges, the tariffs filed by
23 the foreign air carrier shall be in effect for the period of the
24 investigation, or until otherwise terminated in accordance
25 with this Act, but not for a period exceeding three hundred

1 and sixty-five days unless continued in effect by order of
2 the Board pursuant to the investigation. Compliance with
3 an order of the Board under this paragraph shall be a con-
4 dition to the continuation of service by a foreign air carrier
5 in foreign air transportation with respect to which such order
6 is applicable."

7 SEC. 7. Section 1002 (i) of such Act (49 U.S.C.
8 1482 (i)) is amended by changing the colon following the
9 word "operated" to a period and striking out the follow-
10 ing: "*Provided*, That as to joint rates, fares, and charges
11 for overseas air transportation the Board shall determine and
12 prescribe only just and reasonable maximum or minimum or
13 maximum and minimum joint rates, fares, or charges."

14 SEC. 8. The amendments made by this Act shall not be
15 deemed to authorize any actions inconsistent with the pro-
16 visions of section 1102 of the Federal Aviation Act of 1958
17 (49 U.S.C. 1502).

18 SEC. 9. The amendments made by this Act shall take
19 effect thirty days after the date of its enactment.

92^D CONGRESS
1ST SESSION

H. R. 11825

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 17, 1971

Mr. STAGGERS (for himself and Mr. SPRINGER) (by request) introduced the following bill; which was referred to the Committee on Interstate and Foreign Commerce

A BILL

To amend the Federal Aviation Act of 1958 to provide for the regulation of rates of air carriers and foreign air carriers in foreign air transportation, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 801 of the Federal Aviation Act of 1958
4 (49 U.S.C. 1461) is amended by inserting "(a)" immedi-
5 ately after "801" and by adding at the end thereof the
6 following new subsection:

7 "(b) Any decision of the Board disapproving a rate,
8 fare, or charge pursuant to section 1002 (e), or any decision
9 of the Board suspending a tariff pursuant to section 1002
10 (g) (2), or any decision suspending a tariff or ordering car-

riers to charge a rate, fare, or charge pursuant to section 1002 (j) shall be submitted to the President before publication, and such decision may be approved, disapproved, or stayed for a period not exceeding ninety days by the President within ten days after its submission to the President. Absent disapproval or staying by the President the decision of the Board shall be effective. Whenever the Board shall enter upon a hearing concerning a rate, fare, or charge for foreign air transportation, a copy of the notice of such hearing shall be transmitted to the President before publication thereof.

SEC. 2. Section 1002 (d) of such Act is amended as follows:

(a) The title of section 1002 (d) is amended to read as follows: "POWER TO PRESCRIBE RATES AND PRACTICES AND RULE OF RATEMAKING IN INTERSTATE AND OVERSEAS AIR TRANSPORTATION".

(b) Subsection 1002 (d) of such Act is amended by inserting "(1)" immediately after "(d)".

SEC. 3. Section 1002 (e) of such Act is amended as follows:

(a) The title to subsection 1002 (e) of such Act is deleted.

(b) Section 1002 (e) of such Act is amended by substituting "(d) (2)" for "(e)", and redesignating items (1)

1 through (5) thereunder as items (i) through (v), respectively.

3 (c) Section 1002 (e) shall read as follows:

4 "POWER TO DISAPPROVE RATES IN FOREIGN AIR
5 TRANSPORTATION

6 "(e) (1) Whenever after notice and hearing, upon com-
7 plaint, or upon its own initiative, the Board shall find that
8 any individual or joint rate, fare, or charge demanded,
9 charged, collected, or received by any air carrier or foreign
10 air carrier for foreign air transportation, is or will be unrea-
11 sonably high or unreasonably low and is or will be detri-
12 mental to the commerce of the United States, the Board shall
13 disapprove the rate, fare, or charge.

14 "(2) In determining whether a rate, fare, or charge of
15 a carrier is unreasonably high or unreasonably low under this
16 section and section 1002 (g) of this Act, the Board shall be
17 governed by the following:

18 "(i) Any rate, fare, or charge should not be ex-
19 cessively above its fully allocated cost of operations in-
20 cluding reasonable profit, taking into account any classi-
21 fication, rule, regulation, or practice affecting such rate;

22 "(ii) Any rate, fare, or charge should be compensa-
23 tory taking into account any classification, rule, regula-
24 tion, or practice affecting such rate.

25 A rate, fare, or charge shall be deemed compensatory when

1 it exceeds the variable cost of providing the specific trans-
2 portation service to which it is applicable.

3 “(3) In determining whether a rate, fare, or charge of
4 a carrier is or will be detrimental to the commerce of the
5 United States under this section or section 1002 (g) of this
6 Act, the Board shall be governed by the following:

7 “(i) The need to avoid substantial impairment of
8 scheduled services and charter services;

9 “(ii) The magnitude and permanency of the effect
10 of such rate, fare, or charge on the movement of traffic
11 and on the ability of air carriers to earn revenue suf-
12 ficient to enable such carriers to provide adequate and
13 efficient air carrier service;

14 “(iii) The need in the public interest of adequate
15 and efficient transportation of persons and property by
16 air carriers and foreign air carriers.”

17 SEC. 4. The title of section 1002 (g) of such Act is
18 amended to read, “SUSPENSION OF RATES FOR AIR TRANS-
19 PORTATION AND LIMITATION OF EFFECTIVENESS OF RATES
20 FOR FOREIGN AIR TRANSPORTATION,” and section 1002 (g)
21 is amended by inserting “(1)” immediately after “(g)”
22 and by adding at the end thereof the following new para-
23 graphs:

24 “(2) Whenever any air carrier or foreign air carrier
25 shall file with the Board a tariff stating an individual or joint

1 (between air carriers, between foreign air carriers, or be-
2 tween an air carrier or carriers and a foreign air carrier or
3 carriers) rate, fare, or charge for foreign air transportation,
4 the Board is empowered, upon complaint or upon its own
5 initiative, at once, and, if it so orders, without answer or for-
6 mal pleading by the air carrier or foreign air carrier, but
7 upon reasonable notice, to enter upon a hearing to determine
8 whether such rate, fare, or charge would be unreasonably
9 high or unreasonably low and detrimental to the commerce
10 of the United States; and pending such hearing and decision
11 thereon, the Board, by filing with such tariff, and delivering
12 to the air carrier or foreign air carrier affected thereby, a
13 statement in writing of its reasons for such suspension, may
14 by order suspend the operation of such tariff and defer the
15 use of such rate, fare, or charge, for a period of ninety days,
16 and, if the proceeding has not been concluded and a final
17 order made within such period, the Board may, from time
18 to time, by order extend the period of suspension, but not for
19 a longer period in the aggregate than one year beyond the
20 time when such tariff would otherwise go into effect; and,
21 after hearing, whether completed before or after the rate,
22 fare, or charge goes into effect, the Board may make such
23 order with reference thereto as would be proper in a pro-
24 ceeding instituted after such rate, fare, or charge had become
25 effective. If the proceeding has not been concluded and an

1 order made within the period of suspension, the proposed
2 rate, fare, or charge shall go into effect at the end of such
3 period: *Provided*, That this subsection shall not apply to
4 any initial tariff filed by an air carrier or foreign air carrier.

5 “(3) The Board may in the public interest, at the time
6 a tariff stating a rate, fare, or charge for foreign air trans-
7 portation is filed with the Board by an air carrier or foreign
8 air carrier, whenever it appears that changing circumstances
9 may result in such rate, fare, or charge becoming unreason-
10 ably high or unreasonably low and detrimental to the com-
11 merce of the United States, limit the effectiveness of such
12 tariff to a period of time not less than one year.”

13 SEC. 5. Section 1002 of such Act is amended by adding
14 the following new subsection:

15 “POWER TO SUSPEND AND ORDER RATES IN FOREIGN AIR
16 TRANSPORTATION IN SPECIAL CIRCUMSTANCES

17 “(j) Whenever the Board finds that the government or
18 aeronautical authorities of any foreign country have refused
19 to permit the charging of rates, fares, or charges contained
20 in a properly filed and published tariff of an air carrier filed
21 under this Act for foreign air transportation to such country,
22 the Board may, by order, in its discretion and without hear-
23 ing, (i) suspend the operation of any existing tariff of any
24 foreign air carrier providing services between the United
25 States and such foreign country, and (ii) order air carriers

1 and such foreign air carrier to charge such rates, fares, or
2 charges for foreign air transportation to such country as are
3 in accordance with agreement reached between the United
4 States and such country. The effective right of an air carrier
5 to start or continue service at the rates, fares, or charges
6 contained in a proper filed and published tariff filed under
7 this Act for foreign air transportation to such country, or at
8 such rates, fares, or charges as may be ordered by the Board
9 pursuant to this subsection, shall be a condition to the con-
10 tinuation of service by such foreign air carrier in foreign air
11 transportation between the United States and such foreign
12 country."

13 SEC. 6. Section 1006 of such Act is amended by delet-
14 ing the words "section 801 of this Act," and by substituting
15 therefor the words "section 801 (a) of this Act or any deci-
16 sion approved, disapproved, or stayed by the President under
17 section 801 (b) of this Act,".

18 SEC. 7. The amendments made by this Act shall not be
19 deemed to authorize any action inconsistent with the provi-
20 sions of section 1102 of the Federal Aviation Act of 1958
21 (49 U.S.C. 1502).

Mr. JARMAN. Our first witness this morning is Chairman Secor D. Browne of the Civil Aeronautics Board. We are happy to welcome to the subcommittee Chairman Browne and we will ask you to introduce your associates for the record and proceed with your testimony in any manner in which you prefer.

Mr. HARVEY. Mr. Chairman, before Mr. Browne introduces his associates, I wonder if I could inject at this time to apologize to you and Mr. Baker and Mr. Rein because of the fact that the minority has a conference this morning and that accounts for the small attendance here.

I will have to leave to attend that conference myself at the request of the minority leader. It is my understanding that the Democrats also have a caucus this morning on the bill pending in the House this afternoon and we do apologize to you for that, but I want you to be assured we will look very closely at your statement because this is a very important subject matter.

Mr. SKUBITZ. Since I have already made up my mind, I shall be pleased to remain.

STATEMENT OF HON. SECOR BROWNE, CHAIRMAN, CIVIL AERONAUTICS BOARD; ACCOMPANIED BY R. TENNEY JOHNSON, GENERAL COUNSEL

Mr. BROWNE. Thank you, Mr. Skubitz.

Mr. Chairman, I have with me today our General Counsel, Mr. R. Tenney Johnson. My statement is somewhat lengthy but it does set forth our position with respect to this legislation.

Mr. JARMAN. Yes; that is certainly satisfactory.

Mr. BROWNE. Thank you, sir. Mr. Chairman and members of the committee, the Civil Aeronautics Board appreciates this opportunity to support legislation to arm the U.S. Government with the same power to regulate international air fares that foreign governments have. The Board has long sought this equality of power. Equality of power is essential if our Government is to obtain and maintain reasonable international air fares.

Without this power, the Board simply cannot protect our traveling public against unreasonable high rates, nor can we protect our own carriers against destructive low rates. Our Government's lack of power in this area—and we are virtually the only Government without it—is all the more startling when you consider that U.S. passengers make up, for example, two-thirds of all international air travelers in the North Atlantic market, and U.S. airlines carry almost half of the total traffic in the same market.

PRESENT POWER

We can, it is true, investigate, and after formal hearing, disallow international fares which are discriminatory. Indeed, we have already started such an investigation with respect to those extraordinary fares for youths and students the foreign carriers initiated last summer. And we can influence fares to some extent by our power to approve or disapprove the price-fixing agreements among the international car-

riers which have been the traditional method for setting international fares.

But we cannot suspend a proposed fare even though it appears on its face to be discriminatory or too high or too low. Even if we were to find a proposed or an existing fare to be unjust and unreasonable, we could not compel the carriers to roll it back. And if we were able to disapprove a price-fixing agreement, or if the carriers could not agree on one, we could not deal with any of the fares the carriers would then file individually. If our carriers seek fares which a foreign government refuses to accept, we have no power over the fares the carrier of that government files with us.

Of course, international ratemaking can't be entirely like domestic ratemaking. In international markets, we simply don't control both ends. In other words, international rates, like international routes, are ultimately a matter for agreement either by the carriers concerned, with government approval, or by the governments concerned. Other governments, which can exercise the powers we lack, are well aware of our statutory deficiencies in this area, and we frankly are not now able to bargain with them on a basis of equality.

CURRENT SITUATION

While this has been a longstanding problem, it has become more urgent with the recent failure of the carriers to agree on new fares over the North Atlantic. A number of foreign carriers, led by Lufthansa, have filed some remarkably low fares to go into effect next February 1. The situation still appears unsettled, and the carriers are reportedly continuing to negotiate a new fare agreement at their current meeting in Honolulu.

I admit to real skepticism about whether the precise levels Lufthansa has recently proposed—attractive as they are to the prospective traveler—are truly economic, either to them or to the other carriers, including our own. In response to the Board's request, Lufthansa has furnished some data on which it relies, and the Board is currently evaluating this data. Should there be a new agreement, I for one would hope that it would incorporate some of the features of the Lufthansa proposal, at least in concept, such as reducing the number of different fare packages offered and lowering the basic coach fare level.

My colleagues and I believe that international air travel will grow more rapidly if fares can be reduced reasonably than if the carriers successfully maintain a too high and too complex fare structure. We have just published a staff forecast of international traffic projecting annual average rates of growth through 1980, of 7 to 15 percent, with the higher growth depending on the stimulation caused by an assumed downtrend of fares on the order of 2.5 percent per year.

Moreover, as we recently told the carriers meeting in Miami, "The Board is convinced that the sound development of civil air transportation in the long term will be greatly enhanced, and indeed may well depend upon, the offering of fares and rates for the various services which are closely attuned to the full economic costs of providing those services. Conversely, we have very substantial doubts that a fare structure composed of multiple-discounted fares, applicable in periods of

peak demand, and used by a majority of travelers can hope to have that result. By the same token, the complex discount structures more often than not depend upon arbitrary and sometimes discriminatory rules to distinguish among the various discount fares which are difficult for the traveling public to understand."

A principal objective of the Civil Aeronautics Board is to work toward a rational and efficient level and structure of fares properly related to airline costs including reasonable profits for the carriers. In domestic markets, the Board has made some progress toward this goal, but the level and structure of international fares are both far from ideal. In our judgment, enactment of legislation to regulate international fares is an essential step to give the Board the opportunity and some needed authority, to work toward a rational, efficient, cost-based system of international air fares.

PROPOSED NEW AUTHORITY

Mr. Chairman, perhaps the easiest way for me to explain the effect of this legislation is to describe how we believe H.R. 11416, if enacted, would work in practice.

First, let us assume that the carriers continue to use the International Air Transport Association rate conferences to arrive at agreements on a schedule of international air rates. The Board gives public notice of the filing, and interested persons are entitled to file comments. Upon consideration of the filing, the comments, and our own staff evaluation, the Board either approves or disapproves. If the Board approves, the U.S. carriers receive antitrust immunity for their price-fixing agreement. If the Board disapproves, the agreement does not take effect.

At the present time, the Board's alternatives are limited when it is presented with a conference agreement containing rates which are objectionable. If the Board disapproves, it risks creating an open rate situation in which it has no influence at all, and the carriers may file individually the same rate to which the Board objected, or even less desirable ones. Foreign governments and the carriers, U.S. and foreign are completely aware at the time of the IATA conferences that the U.S. Government is without power to take prompt and effective remedial action. It is that flaw in the U.S. Government's power which we seek to correct.

If this situation is changed to one in which the United States can cope effectively with rates to which it objects, the whole atmosphere of the conferences will be changed. The U.S. position will then be given a great deal more weight, since the carriers would know that an open rate situation would serve only to trigger the Board's suspension and investigation powers. Conversely, the Board would be much less reluctant to disapprove a particular resolution than it is now, since the effect of disapproval would not be to render the Board even more powerless.

Thus, if the United States has the same authority possessed by the other nations, the U.S. influence in IATA conferences will be much more effective. Indeed, if we could take action against rates which are objectionable, a climate would be created which would lessen the chance that the conference would produce such rates. The very presence of real governmental authority respecting rates would result

in the establishing of more reasonable rates through the IATA machinery.

Now, let us assume that the conference has not produced an agreement, or that, for whatever reason, the IATA machinery is not functioning. In this situation, the rates contained in individual tariffs would be separately considered by the Board as they were filed. International carriers who are not members of IATA would also file individual rates. Such tariffs must be filed not less than 30 days in advance of their effective date. These tariffs would be publicly posted by the carriers, and complaints could be filed against them. This is the same process followed now with proposed domestic tariffs.

At this stage, the executive agencies can appropriately participate by providing views and information which may not be available to or expressed by the carriers and which are important to the public interest. Decisions on rates should be reached in a public process in which all relevant points of view may be heard.

If the Board found a tariff objectionable, it could invoke the power granted under section 6 of the bill to suspend the tariff pending investigation. In doing so, the bill would enable the Board to apply the same standards as it now applies to rates in interstate air transportation—justness and reasonableness, as well as unjust discrimination. The bill thus give the Board for the first time power to suspend foreign rates, and power to investigate the reasonableness of foreign rates. The Board would no longer be restricted to removal of unjust discrimination following formal investigation.

Prior to publication of any suspension order, the Board would, pursuant to section 2 of the bill, transmit the order to the President for further Executive comment. Allowing for full consideration of the complaint and answers thereto, and remembering that tariffs can be filed on 30-day notice, we believe that it would be possible to transmit to the President a proposed suspension order approximately 5 days prior to the date the tariff would otherwise become effective. The proposed legislation thus fixes and preserves the responsibility and the capability for commercial tariff decisionmaking solely in the Civil Aeronautics Board. In our view, this is a wise and proper delegation of congressional authority. On the other hand, the system of advance notification preserves the President's opportunity to protect his foreign policy responsibilities in the few cases in which this might be required, simply by advising the Board.

Following Board suspension of a tariff, the affected carrier or carriers would have the choice of either withdrawing the tariff and filing a new tariff which might be found more acceptable, or participating in the investigation, which is a full hearing procedure for formal determination of the lawfulness of the rate. Here again, the public participation of the interested Federal agencies would be most appropriate. In the latter event, the Board, after hearing, would under this bill be entitled within 6 months to prescribe a specific rate considered reasonable.

The Board's order would be submitted to the President under the same terms as a suspension order. If the Board's order issued, the carrier would be required to conform to the rate prescribed. During the course of the Board's rate proceeding, and indeed even prior to

the Board's suspension order, the United States would, in accordance with procedures set forth in the applicable bilateral air transport agreements, be conducting intergovernmental negotiations in an effort to arrive at mutual agreement upon a lawful rate satisfactory to both governments.

As I have said, the crying need for this legislation is to put the United States on a basis of equality in its rate negotiations with foreign governments. Let me cite just one prominent example of this need, the so-called Chandler rate dispute. In 1963 the Board disapproved an IATA agreement which would have increased fares by eliminating the round-trip discount. Recognizing, however, that the Board lacked authority to suspend the individual fares of the carriers, various foreign governments required their government-owned carriers to file individually the same rate that had been disapproved by the Board. They also exercised the suspension power, which they but not the Board possessed, to preclude continued operations by U.S. carriers at the previously existing rates. As a result of the absence of equivalent rate authority, the U.S. Government was ultimately required to bow to the European viewpoint in order to avoid subjecting U.S. carriers to the severe penalties imposed by the foreign laws and regulations. Possession of the suspension power would have prevented the need for this capitulation.

The legislation before you would also be effective to permit the Board to consider the reasonableness of existing, as well as proposed new rates. Thus, the Board could, pursuant to section 5 of the bill, initiate proceeding for investigation of tariffs already in effect. If the Board finds that the fares are unreasonable, the Board may prescribe the appropriate fare which should thereafter be charged. It would, of course, act in accordance with intergovernmental consultation procedures of any bilateral air transport agreement that might be in effect.

The bill contains another provision which will add to the Board's effectiveness in such intergovernmental consultations. That provision contained in section 6, permits the Board to suspend an existing rate of a foreign carrier, without formal hearing procedures, in the event that the foreign government has refused to permit effectiveness of a lawfully filed U.S. carrier rate. Pending resolution of the dispute, the foreign carrier would be required to conform to any board designated tariff of a U.S. carrier with appropriate procedural safeguards in the form of subsequent hearings.

POWER TO PRESCRIBE FARES

In the long run, the availability of the ultimate power in H.R. 11416 to prescribe fares, as distinguished from the power merely to reject fare proposals—and wait for the carriers to propose new ones—would enable the Board for the first time to deal effectively with the problem of existing unreasonably high rates.

If the Board were in a position only to reject fare proposals, we fear the carriers would have little incentive to propose reductions from unreasonably high fare levels, except for the possible competitive spur provided by the supplemental carriers in those markets in which they are permitted to fly by foreign governments.

Over the long run, high rates have been by far the predominant problem. The situation in the north-central Pacific areas is a good example. For years following the 1963 Board disapproval of an IATA agreement increasing Pacific rates, the Board was unable to secure a reduction of the unreasonably high rates, either through the IATA machinery, or through individual rates filed by carriers. Indeed, when the U.S. transpacific carriers ultimately were persuaded to file lower tariffs, these were rejected by foreign governments.

The unreasonably high fare problem results from several factors. One, of course, is the national inclination of air carriers to establish a rate structure which will be as profitable as possible. Another is the prevailing philosophy in foreign countries, especially in Europe, of common carrier protectionism, as contrasted with the competitive anti-trust consumer orientation in the United States. For example, intra-European coach air fares on scheduled services, generally speaking, are equal to or higher than equivalent per mile first-class air fares in the United States.

I should like to emphasize, however, that merely to have the authority to prescribe fares may equally be as important as to exercise it. With this authority ultimately available to the Board, the carriers themselves will be more likely to take into account the position of the U.S. Government, so that the power granted may never need to be involved. This could lead to the carriers themselves formulating and accepting the kind of fare structure more closely attuned to cost and other economic factors, which the Board has favored. Had the substantially similar version of H.R. 11416 which the Senate passed in 1963 been enacted by the Congress, the present unusual situation would most likely have not arisen.

BILATERAL AGREEMENTS

I must point out that if H.R. 11416 is enacted in its present form, the new legislative power could not be invoked immediately to suspend the new low fares which have been filed by Lufthansa and a few other foreign carriers. The bilateral agreements in effect with Germany and many other countries provide that upon grant of foreign rate authority—that is the power to suspend and fix rates of U.S. and foreign carriers in foreign air transportation—rates filed by either country's carriers will be permitted to go into effect provisionally pending resolution of any dispute as to the rate by intergovernmental negotiations, or ultimately by arbitration. These provisions were intended to enable U.S. carriers to introduce lower fares in traditionally high-fare markets, and it was not expected that foreign carriers would be the ones introducing lower fares.

We recognize the force in the argument that if the Board were given something less in the international field than the full domestic powers to suspend, investigate, and prescribe, the bilateral agreements which allow for provisional effectiveness would not go into effect and the Board could act, say, to suspend the Lufthansa filings. We understand, for example, that the Senate is considering a bill empowering the Board to suspend, investigate, and reject or cancel questionable fares, but not to prescribe them. This more limited power would not, under the bilateral agreements, give U.S. carriers the right

to file lower tariffs with foreign governments free from the threat of foreign government suspension. In the long run, it appears desirable that they be able to do so. Nevertheless, in the short run, the Board could work effectively with such a modification. For example, in citing its reasons for rejecting or canceling a fare after investigation, in accordance with the statutory criteria, the Board would indicate what range of rates would be acceptable. While not actually prescribing fares, that is reasonably close. However, as I have said, I don't know whether in fact the Lufthansa filings will remain in their present form, and so I don't know whether it will be necessary to deal with them, under this legislation or any other. Moreover, I must reserve judgment on how the Board would deal with them.

CONCLUSION

Mr. Chairman, I come back to what I said at the beginning. The Board believes that the legislation before you—or the modification being considered by the Senate—would permit the United States to exercise an effective influence over international air fares. It would permit the board to deal effectively with both unreasonably high fares and uneconomically low fares as well as unjustly discriminatory fares. It would place the United States in a position of equal power with foreign governments with respect to international air fares. The time is long past due for correction of the present situation where this Government must attempt to resolve international rate disputes with one hand tied behind its back.

Thank you, Mr. Chairman. My colleague and I would be glad to answer any questions.

Mr. JARMAN. Thank you, Mr. Chairman. I understand that the subject of providing the Civil Aeronautics Board with additional legislative power over rates and practices of air carriers and foreign air carriers in foreign air transportation goes back for many years.

Will you furnish for the record the chronology of the formal and informal considerations given to this subject and outline the proposals which have been made to alleviate the difficulties which arise under the conference technique employed by IATA?

Mr. BROWNE. Yes, Mr. Chairman, we have that and we will submit it for the record.

(The following information was received for the record:)

SUMMARY OF EFFORTS OF CIVIL AERONAUTICS BOARD TO OBTAIN LEGISLATION AUTHORIZING IT TO REGULATE RATES AND PRACTICES IN FOREIGN AIR TRANSPORTATION

The Civil Aeronautics Board has recommended in its Annual Reports since 1942, except for its 1943, 1944 and 1966 reports,¹ that it be vested with authority to regulate rates and practices in foreign air transportation. Legislative proposals implementing the Board's recommendations have been included in bills submitted by the Board to the Congress or incorporated in omnibus bills.

¹ The Board stated in its 1943 and 1944 reports that no detailed recommendations on legislation were being made since a number of bills were pending in the Congress on almost every aspect of aviation in which the Board could be interested. Although the 1966 report did not contain a rate control recommendation as such, a proposal of this nature was deemed to have been included in the "various other legislative proposals" referred to in the report as being under consideration by the Board.

During the period between 1943, when rate control legislation was first introduced in the Congress, and 1965, when legislation of this nature was last introduced prior to the introduction of H.R. 11416 and S. 2423, the Board has, in brief, supported legislative proposals of the following nature with respect to air carriers and foreign air carriers.

1. *Air carriers.* Bills were supported in all of the Congresses which would have given the Board the same authority over rates of air carriers in foreign air transportation as it now has over rates of such carriers in interstate air transportation. The following bills are typical of those which were supported: S. 246 and H.R. 1012, 78th Cong., 1st Sess. (1943) and S. 907 and H.R. 465, 88th Cong., 1st Sess. (1965).

2. *Foreign air carriers.* The following types of bills were supported with respect to foreign air carriers:

(a) Those requiring foreign air carriers to provide service and establish just and reasonable rates. The following bills would have so provided: S. 1944 and S. 1949, 78th Cong., 2d Sess. (1944); S. 1, 79th Cong., 1st Sess. (1945); S. 1 and H.R. 1699, 80th Cong., 1st Sess. (1947); and S. 2647, 83d Cong., 2d Sess. (1954).

(b) Those giving the Board authority to suspend rates of foreign air carriers after and pending hearing. The following bills would have so provided: S. 308, S. 1119, H.R. 4648 and H.R. 4677, 84th Cong., 1st Sess. (1955).

(c) Those giving the Board the same authority over rates of foreign air carriers as it now has over rates of air carriers in interstate air transportation. The following bills would have so provided: S. 246 and H.R. 1012, 78th Cong., 1st Sess. (1943); S. 1553 and H.R. 7596, 86th Cong., 1st Sess. (1959); S. 958 and H.R. 7309, 87th Cong., 1st Sess. (1961); S. 1540 and H.R. 6400, 88th Cong., 1st Sess. (1963); and S. 907 and H.R. 465, 89th Cong., 1st Sess. (1965).

Since the Board first supported legislation which would give it the authority to control rates in foreign air transportation, the only bill of this nature which was passed by either body of the Congress was S. 1540, which was passed by the Senate on November 23, 1963. Under S. 1540, as passed by the Senate, the Board would have been given the same authority over the rates of air carriers and foreign air carriers in foreign air transportation as it now has over the rates of air carriers in interstate air transportation. H.R. 11416 and S. 2423, which have been supported by the Board at hearings before this Subcommittee and before the Senate Subcommittee on Aviation differ principally from S. 1540 in that the Board would be authorized under the current bills to suspend an *existing* tariff of a foreign air carrier, and/or order such carrier to file a new tariff. In either instance, the foreign air carrier rates would, as a condition to the continuation of service by such carrier in foreign air transportation, have to match fares in the tariffs of a U.S. air carrier for the same foreign air transportation.

Mr. JARMAN. I think the particular question or several questions that I would like to ask as we begin the hearing would be on the basis of testimony that was given in the hearing that has already been held in the other body and simply in terms of getting your reaction to it.

One of the witnesses, a president of a major American international airline, said—and I will pick out just several sentences from his testimony which came later in the hearing—he made very clear the fact that the prescription of rates, the setting of rates, rather than the suspension of rates, is the matter to which they object; that the proposed rates fixing legislation would deprive the United States of its present power under the bilaterals and under legislative authority which could be used effectively to meet the situation now. That it would substitute in its place a cumbersome, time-consuming and useless authority.

He went on to say, "Putting aside for the moment the fact that no government can effectively fix the rates of airlines of other governments, the proposal is administratively impractical."

He mentions that presumably CAB would review, after legislation giving the CAB the power to fix the rates, presumably CAB would

review its regulation, both procedurally and economically, to position itself to cope with this new type of ratemaking.

It might well decide that it needs recurrent traffic and financial reports from all foreign airlines such as it gets from U.S. airlines. Passing over the question of whether it could compel the filing of such reports, at least without an international ruckus and retaliation on U.S. airlines, is it fair to ask how meaningful such data would really be for only part of a foreign airline's operations and without effective audit authority.

"At some point CAB would start a formal rate proceeding with its pre-hearing conference, information requests, special studies, exhibits, and ultimately a long and complex hearing. But this is just the beginning.

"Then there are briefs to the examiner and initial decisions by the examiner, exceptions, more briefs, oral argument and finally a CAB decision.

He went on to say :

A year is pretty fast for a simple case confined to U.S. carriers. Just think of the task and time involved in fixing trans-Atlantic rates, or fares for over 25 airlines effecting an even larger number of countries. The very prospect of going through all of this is a nightmare.

I know that this testimony came after you testified in the other body. I simply think it would help the record if we could have a response to some of the objections that have been raised by the major carriers themselves.

Mr. BROWNE. Needless to say, Mr. Chairman, I think the president of the airline should consider the alternative. I admit that the Board procedures, in order to be both lawful and effective, must be full and this takes time, but I would respectfully point out to that airline president that the alternative to this is even longer and more complex procedures of international negotiation under the terms of the particular bilateral agreement. During all of this negotiating time it is quite possible that a destructive rate would be in effect.

What we are asking for is this: to have the authority to suspend what could be a destructive rate while we determine by the appropriate processes what would be an economic fare in the public interest. I would like to ask Mr. Johnson to add to that.

Mr. JARMAN. Before you do, let me interject this. As I understand the testimony of spokesmen for the international airlines, they take the position that IATA has worked very well as an international forum.

Am I correct in understanding that there has to be a unanimous agreement in IATA by a decision on rates?

Mr. BROWNE. That is correct, Mr. Chairman. There must be unanimity in a rate conference and I agree that IATA has worked well for 25 years in many respects. It has not worked well in reducing fares as a whole, particularly in such areas as the North/Central Pacific, and so on, but on the whole it has worked well.

However, if you look at the present situation where the IATA carriers have still not reached agreement therefore we are threatened as of February 1 with North Atlantic rates which may prove destructive to our own carriers. It is time for the U.S. Government to act to protect the public interest and our corporate entities.

Mr. JOHNSON. Mr. Chairman, I would like to add to the point that merely to have this power to prescribe fares may be as effective as the actual exercise of it. In other words, you don't really have to exercise

this authority in order to have the carriers exercise their own responsibility and try to create a situation in which the Board would not have to go through the procedure prescribing fares.

In other words, this is the horseshoe and the glove thought that perhaps you never have to prescribe fares at all but your ultimate power to do so would encourage the carriers themselves to come forward with fares which are more reasonably attuned to cost and to public benefit.

Mr. JARMAN. Isn't it an old adage that an unused power diminishes in its effectiveness as it is used?

Mr. JOHNSON. Yes, that is quite true. There is such an adage, and I personally agree with it.

Mr. JARMAN. Let me ask for one further comment in line with the testimony in the other body by this particular witness speaking for international carriers. He said:

Let's take one step further. Let us assume that eventually there is a CAB rate-fixing decision.

Does that mean that Italy, Germany, France, and United Kingdom and all other European governments would have to accept it? Of course not. The CAB fixed rate would be only a starting point for intergovernmental negotiations. There would be a country-by-country negotiation. It would be difficult to conjure up a more wiggly can of worms.

Let us say that the United States Government reached an agreement with the United Kingdom. If we reached an agreement with the United Kingdom, France might quite effectively veto that agreement by holding out for lower fares which would not only divert tourists from the United Kingdom, it might even undercut the New York-London direct fare with a routing through Paris.

I could go on and on illustrating the problems but I hope it is already clear that to authorize the CAB to fix international rates would substitute for an existing effective power a futile and theoretical authority.

In contrast, suspension power nips the problem in the bud.

Well, I won't go on beyond that, but in view of testimony that followed the testimony that you gentlemen gave in the other body, I was particularly interested in your reaction to points that were made. And if you have anything additional I would be very glad to hear it.

Mr. BROWNE. My reaction, of course, is that the alternative that he proposed leads us to the situation that existed between this country and the United Kingdom in 1965 as a result of the Chandler problem where the United States could not protect its carrier and essentially had to roll over and play dead.

At least this gives us the power to begin negotiations. What that testimony says is we don't begin the negotiations because we have no real power to make them effective. I remind us all again that we have to live with the rates that we cannot suspend and while we go through the diplomatic procedures provided by the bilateral, we may bankrupt one or more of our own carriers.

Mr. JARMAN. Let me ask this. If you have the power to suspend, would that not of itself be the kind of leverage that would be effective in getting results from IATA conferences and negotiations?

Mr. BROWNE. Mr. Chairman, as we say in our testimony, by the power to suspend and reject, we ultimately get to the power to prescribe. It is a longer and more complex procedure.

Mr. JOHNSON. Mr. Chairman, may I add on that point, if the Board were only given the power of suspension, the fare would then go into

effect after the period of suspension, so it would just delay the ultimate effectiveness of the fare.

In other words, if the power of suspension is not coupled with some additional power, it is merely a delaying tactic rather than a truly effective weapon.

Mr. JARMAN. As I understand from your statement, near the end of your statement you did state, nevertheless, in the short run the Board could work effectively with such a modification. You say, "We understand, for example, that the Senate is considering a bill empowering the Board to suspend, investigate, and reject or cancel questionable fares but not to prescribe them.

This more limited power would not, under the bilateral agreements, give U.S. carriers the right to file lower tariffs with foreign governments free from the threat of foreign government suspension. In the long run, it appears desirable that they be able to do so.

Nevertheless in the short run the Board could work effectively with such a modification.

What interpretation would you give to the words, "in the short run" as you have mentioned in the statement?

Mr. JOHNSON. In the short run we have to deal with the situation created by the Lufthansa filings. As the chairman's testimony points out, if we were given full prescription powers now, we would not be able to act to suspend the Lufthansa filings.

On the other hand, if we were not given full prescription power but power to suspend, investigate and reject or cancel, we would be able to suspend the Lufthansa filings, assuming that the Board found it appropriate to do so.

In other words, that is the short run, the immediate situation that we have.

Mr. JARMAN. I understand. Thank you very much.

Mr. Adams?

Mr. ADAMS. Thank you, Mr. Chairman. Mr. Browne, I appreciate your appearance here this morning. I know there is going to be some conflict because we are going to have two Government agencies, one dealing with airplanes and one dealing with foreign affairs, and that conflict is going to be something that we are going to have to reconcile. In anticipation of that, I want to ask you some questions so you can present your side and then I will ask the other witnesses when they come on as to what their side is.

First, let's take the Lufthansa problem. Suppose the German Government authorizes Lufthansa for \$120 fare and they file it. Suppose we suspend it. If we give you that power and you suspend it, how in God's name do we prevent the German airline from picking people up at \$120 apiece in Germany and flying them over here? You are not suggesting in here that we stop them from landing entirely? What are you suggesting we do at that point?

Mr. JOHNSON. Mr. Adams, if I may respond to that—

Mr. ADAMS. I am assuming IATA is anticipating it will and Lufthansa says we are coming in at \$120. You say we are going to suspend it. Where are we?

Mr. JOHNSON. First, the carrier cannot land in this country without an effective tariff on file. That is a requirement in the bilateral agreements.

Mr. ADAMS. All right, he has filed a tariff and the German Government has authorized \$120.

Mr. JOHNSON. Yes, and if the U.S. Government were to suspend it, that tariff would not be effective and therefore he could not, in accordance with international agreements, land in this country and charge that suspended fare. It would not be an effective tariff in this country.

Mr. ADAMS. I know it is not an effective tariff. I assume they could not go to New York City and say you could fly to Germany for \$120 but they have taken this \$120 in Berlin and the passenger is on the airplane that has landed in New York, what are you going to do about it?

Mr. JOHNSON. We will let the passenger disembark, to be sure, but the right of the German Government to fly in would be suspended by action of the U.S. Government, and the carrier would be subject to heavy fines.

Mr. ADAMS. In other words, now you are going to tell the State Department, "OK, you inform the Germans that we are going to pick up all of their airplanes when they land."

Mr. JOHNSON. The effect of it would be that the airplanes would not be permitted to land, and there probably would be a considerable international discussion.

Mr. ADAMS. International discussion. At that point won't the Germans say, "OK, nobody is going to land over here"?

Mr. BROWNE. Mr. Adams, this is precisely what happened in the case of the United Kingdom and our own carrier which was Pan American.

They said if you land, carrying passengers at that tariff, we will fine you, and so on.

Mr. ADAMS. All right, should we give you that power or should we give it to the State Department?

Mr. JOHNSON. In the first place the power to decide the question of rates is basically an economic one. There is no question that foreign policy matters are sometimes involved but the actual decision on the rate matter is technically an economic decision, and that is a matter for the Board.

Naturally, the Board in reaching any decision in this matter would take into account all of the testimony and all of the advice that it receives.

Mr. ADAMS. Let's assume the State Department says, and I am going to bring you in a minute to the Pacific route cases, which we are all familiar with—that we just don't want to have a big flap with the Germans right now so don't do anything to Lufthansa. However, you decide from an economic viewpoint, which I can assume very well that you might, that if you allow \$120 fare over the North Atlantic, you are going to kill all American carriers, so you say they can't land.

Now, the State Department, would they be bound by your decision?

Mr. JOHNSON. Yes; they would.

Mr. ADAMS. I will ask the State Department witnesses in a few minutes whether they like that type of operation. I am not saying maybe you should not have this power.

Shifting gears briefly, you have the power to get international routes for American carriers at the present time, do you not, within CAB?

Mr. BROWNE. Subject to approval of the President.

Mr. ADAMS. Now, as I remember, a set of routes were set up over the Pacific in effect on an economic and route basis—according to the general rules used by the CAB back in the period 1966, 1967, or 1968; isn't that correct?

Mr. BROWNE. That is correct.

Mr. ADAMS. Then, when the President came in, he said—I don't know why he did it but they changed all of those routes.

Mr. BROWNE. He made substantial changes.

Mr. ADAMS. Substantial changes. Then what did you do?

Mr. JOHNSON. We followed the instructions of the President and carried out those instructions.

Mr. ADAMS. So that in effect, regardless of what the economics of it were that you had previously decided, a whole new set of things were done?

Mr. BROWNE. Well, I was not on the Board at that time, Mr. Adams, and I simply don't know.

Mr. ADAMS. I am not questioning one way or the other the motives, economic effects, or what happened between the two bodies, but obviously this morning you are asking this committee and on the Senate side you are asking the Senate committee to make a determination of how this matter should be handled and I think I am in agreement with your position that obviously the U.S. Government must have some power to deal with the international situation, and capsulize this for me, if you will, Mr. Browne.

You mention in your testimony that you have the power to disapprove IATA agreements, and I think you say there is another power in here of disapproval, termination of a particular thing. What do you do when they say, in effect, too bad?

Mr. BROWNE. Could I back up, Mr. Adams, and point out first of all what we are discussing here is the relatively narrow field of rates which, of course, is a highly technical matter. We are not discussing routes. The other thing I would like to remind us all is that not all of these matters affecting rates involve or could involve international policy of any significance.

Mr. ADAMS. I agree with you. I don't think international policies are generally involved in economics of the airlines, although the President may say so and may become involved. I am trying to determine if IATA meets and agrees on something, and you disapprove of it, what do you do now?

Mr. JOHNSON. Sir, the disapproval action by the Board is not subject to the President's review. If we disapprove an IATA agreement, the IATA carriers are free to file any tariffs they so desire. We have no control over those tariffs. That is one of the gaps in the power that we hope to see corrected.

In other words, when the Board is faced with IATA agreement for approval or disapproval, one of the factors we have in mind is what would happen if the agreement were disapproved and the carriers could file any rate they saw fit.

Mr. ADAMS. And they do.

Mr. JOHNSON. They do.

Mr. ADAMS. What do they do then? They simply fly into the United States, the foreign carriers do, at whatever rate they have filed with you?

Mr. JOHNSON. That is correct.

Mr. ADAMS. What do you do with American carriers then?

Mr. JOHNSON. American carriers would be permitted to match those rates.

Mr. ADAMS. Would be or are they automatically?

Mr. JOHNSON. We have no control over those rates in international air transportation—"Foreign air transportation" as it is called—over our U.S. carriers.

Mr. ADAMS. So that when I ask you what you do in that situation, the answer is you made a very formal statement and then vanish.

Mr. JOHNSON. Yes, sir. For example, today, with regard to the Lufthansa filings, the Board has no authority whatsoever.

Mr. ADAMS. All right, let us assume that IATA breaks down over the Lufthansa matter and there is no North Atlantic Agreement on fares and then American carriers begin to set a whole set of different rates. They may match Lufthansa or they may go in with a whole lot of different fares. What is your power on that?

Mr. JOHNSON. Nothing.

Mr. ADAMS. Are you requesting in this bill a power to prescribe rates for American carriers or for foreign carriers landing in the United States or both?

Mr. JOHNSON. Both.

Mr. ADAMS. When you ask for this power over foreign carriers, do you think that the Congress has the power to set rates over foreign carriers as opposed to the Presidential power to negotiate a treaty with a foreign country as to what the relationship will be between those two countries?

Mr. JOHNSON. Well the Board could not prescribe the fares in such a way that they would automatically go into effect because this is an international situation and there is no one governmental entity in control of both ends.

Mr. ADAMS. That is what I am asking you.

Mr. JOHNSON. Therefore, as the chairman's testimony pointed out, there is a requirement for ultimate agreement among the governments concerned on the rate. The reason that the Board needs to have this prescriptive power, or at least the power to reject and cancel fares, is that those powers are the same as foreign governments have, so that when it has to enter into negotiations with those foreign governments, it does so with a relative equality of bargaining power.

Mr. ADAMS. But do you bargain with the foreign government on the fare at that point or does the President through the State Department or his adviser bargain on that fare?

Mr. JOHNSON. Well, I don't think it would be fair to say that the two groups are completely separate and apart.

Mr. ADAMS. Well, I assume you talk with one another but you are asking us to draft a fundamental statute here and the CAB is an arm of the Congress and we approve, at least many of us do, of the Congress asserting itself and doing what it should with its regulatory agencies. However, at this point you are asking us, aren't you, Mr. Browne, that you be given the power to prescribe a rate that will go into effect with a foreign government and, if they don't perform, that you be given sanctions within the internal workings of the CAB against that foreign government? Isn't that what you are asking for?

Mr. BROWNE. Essentially that is correct, Mr. Adams, because that is the power that the governments with which we are dealing have and the power which they exercise against our carriers.

Mr. ADAMS. I agree with that, but when you say that we are dealing with—do you as the Chairman of the CAB sit down with them? Who runs the German regulatory system over their airlines?

Mr. BROWNE. It is run by a minister who really gives the responsibility to a director general of civil aviation.

Mr. ADAMS. In other words, there is, in effect, a department of transportation in the German Government that sets rates and does these things; is that correct?

Mr. BROWNE. That is correct.

Mr. ADAMS. Do you deal with him when you get into this situation of a rate or do you go over to the State Department and they go and deal with their State department on this matter?

Mr. BROWNE. As it is now, it goes from us to our State Department to their foreign office to their Ministry of Transportation to their Director General of Aviation.

Mr. ADAMS. In your bill, do you want to change that so that you deal with the Director of Transportation in Germany, for example, on the Lufthansa?

Mr. BROWNE. We do not propose to change it.

The mechanism is the act of the carrier which is the instrumentality of the foreign government filing with our Board the same as our carriers and we act.

Mr. ADAMS. You act then on the individual carrier just as though it were a domestic carrier?

Mr. JOHNSON. Yes, sir. We would not undertake any negotiations on our own authority. We would work completely with the State Department.

Mr. ADAMS. I will ask you this, do you think that we should give power to prescribe rates to some place else within the Government hierarchy other than the CAB?

In other words, do we want to give it to this gentleman from the State Department or to this gentleman from the Department of Transportation?

Do you have a suggestion as to where you want to place this power? When I speak of prescribing rates, I am including, of course, the only sanctions that you have which is suspension of landing rights.

Mr. JOHNSON. Well, insofar as placing the expertise elsewhere goes—

Mr. ADAMS. Not necessarily the expertise but the final decision of the power. I assume you would have to be involved in this process. We are not going to set up a little CAB department in the State Department. They have too many departments over there already.

Mr. BROWNE. Since the powers we are concerned with are economic powers of the Congress delegated by the Congress to the CAB as its instrument, I would presume those powers should stay in the Civil Aeronautics Board and not be transferred to an organ of the administration.

Mr. ADAMS. That is the position?

Mr. JOHNSON. That is the position stated in the bill.

Mr. ADAMS. I know that is the position in the bill.

Thank you, Mr. Chairman.

Mr. JARMAN. Mr. Skubitz?

Mr. SKUBITZ. Mr. Browne, if I understand you correctly now, you can establish rates that would be effective against any other country in the world. If a country refused to be bound you could stop their planes from landing in the United States; is that correct?

Mr. BROWNE. Right now, sir, we can't do anything about such—

Mr. SKUBITZ. If we gave you the authority under this bill—

Mr. BROWNE. If you give the authority under the bill and if we found that the \$120 fare was destructive as far as our carriers were concerned, it would force them virtually to go bankrupt in meeting these rates, we and the Board would act the only way as we could. Yes; the landing rights would be suspended.

Mr. SKUBITZ. And you expect our State Department to sit by and permit you to do that?

Apparently you have not had much experience with our State Department.

Mr. BROWNE. Well, sir, I merely point out that this was done to us several summers ago by the Government of the United Kingdom. I would again point out that this is a power which we want to exist, not to use. Its mere existence, I believe, would preclude its use.

Mr. SKUBITZ. There is one thing that bothers me in ratemaking. A first-class ticket from here to San Francisco, from New York to San Francisco is \$410. The first-class ticket from New York to London is \$782.

Mr. BROWNE. These are round trip tickets.

Mr. SKUBITZ. But there is a difference of \$300 on a ticket. Now why the big spread?

Mr. BROWNE. The big spread—

Mr. SKUBITZ. There is only about 700 miles in distance. One of them is a through flight.

Mr. BROWNE. The big spread is due to the fact that that is the agreed first-class fare between IATA carriers over which we have no power. And under this legislation we would have the right, as we state, when we talk about existing fares, to ask a carrier or carriers to give us an explanation as to why the fare should be that high.

In other words, whether it is indeed excessively high.

Mr. SKUBITZ. About 15 years ago I talked to some of the airline people about their rates to Europe, as compared with the rates to San Francisco.

The excuse then was—"We would like very much to lower our rates but IATA stops it."

Now we have some of the same companies telling us that they can't meet the competition. Have the chickens really come home to roost in the sense that we have priced ourselves out of the market and can't meet the competition?

Mr. BROWNE. No, sir; I don't believe so. We are on the horns of the dilemma whereby the first class round trip fare across the Atlantic is perhaps suspiciously high, yet where our ski resorts in the West are worried that this low fare will take the ski business to Europe instead of bringing it to the West.

All the Board wants is the power to look at the fares and determine whether they are economic.

It is conceivable that a foreign country operating a state airline—and I am picking no country in particular—could on the “make-on-the-apples-what-you-lose-on-the-oranges-principle” subsidize via air fares an improvement in their tourist business. Our carriers are obviously not in the same position.

So we simply need the power to examine the fares on their merits to decide whether they are or are not economic.

Mr. SKUBITZ. You say they are suspiciously high today. Have you ever raised that suspicion before and tried to get the rates reduced?

Mr. BROWNE. We have no power to act, Mr. Skubitz.

Mr. SKUBITZ. Have you ever said anything about it?

Mr. BROWNE. We have been saying it for about 25 years, to my knowledge; yes, sir.

Mr. SKUBITZ. This is the first time you have come before this committee in 25 years—

Mr. BROWNE. No, sir; the Board has tried long before my time to get this power in international rates. Long, long before.

Mr. SKUBITZ. That is all, Mr. Chairman.

Mr. JARMAN. Mr. Thompson?

Mr. THOMPSON. Thank you, Mr. Chairman.

Mr. Browne, in effect what you are doing is, you are asking the Congress to put the CAB in the same bargaining position as the regulatory agencies of other foreign nations; is that not in fact correct?

Mr. BROWNE. That is correct, Mr. Thompson.

Mr. THOMPSON. When you are relating domestic fares, as my colleague was here, say in New York to Los Angeles, and then relating them to trans-Atlantic fares, how do U.S. domestic fares internationally relate to domestic fares intra-Europe?

Mr. BROWNE. Well, as I pointed out in my testimony, Mr. Thompson, the coach rates intra-Europe are approximately the equivalent of first class rates in this country.

Mr. THOMPSON. Then it is possible for a foreign government, in order to attract Americans over there for tourist reasons, or whatever it may be, to offer a very attractive rate to get them into Europe and then when they have to travel between various points in Europe, they actually are paying a higher fare than they would if they were traveling domestically in the United States?

Mr. BROWNE. That is possible.

Mr. THOMPSON. What percentage approximately of the trans-Atlantic business is carried by American flag carriers and the foreign carriers?

Mr. BROWNE. May I submit that figure for this year? We carry almost half of the market but I can give you the precise number for last summer if we have it.

Mr. THOMPSON. If you would submit it for the record I would appreciate it, sir.

(The following information was received for the record:)

U.S. AIR CARRIERS' PERCENTAGE OF IATA NORTH ATLANTIC
UNITED STATES-EUROPE PASSENGER TRAFFIC

For the year ended September 30, 1971, United States air carriers carried 46.1 percent of the IATA North Atlantic United States-Europe passenger traffic.

Mr. THOMPSON. Do you have any idea of the passengers in trans-Atlantic travel—how many are American citizens and how many are foreign citizens?

Mr. BROWNE. We say two-thirds of all international air travelers are U.S. citizens across the Atlantic.

We provide two-thirds of the customers and carry about half of the number.

Mr. THOMPSON. Do you have any idea whether or not any of the foreign governments, and I am bearing in mind that most of your foreign airlines are state owned, whereas our airlines, of course, are privately owned, do they try to attract U.S. citizens over there by low fare in order to build up their own tourist business inside of Germany or Italy or France?

Mr. BROWNE. It is a very hard case to make, Mr. Thompson. The foreign state carriers operate networks which may lose money because of national interest routes, for instance, routes into Africa, routes to the Far East where they want to show the flag, and it is a very hard job if you try to factor that in with all sorts of other traffic to determine what they really are doing.

Mr. THOMPSON. But if we were to come down to a competitive battle between Pan Am and Lufthansa, the German Government has more money than Pan Am has?

Mr. BROWNE. That is quite right.

Mr. THOMPSON. So you could get into a very hazardous situation. Do you have any idea or would you have available to the CAB figures from foreign governments as to whether or not the fares they are proposing on their transatlantic flights actually would make money?

Mr. BROWNE. The only data we have relates specifically to the current Lufthansa proposition which we are now evaluating and we asked them, in other words, for data to support the economics of the fare. We have it and we are studying it.

Mr. THOMPSON. Do you know whether or not there is excessive passenger seat capacity on the North Atlantic run, taking into consideration all of the aircraft of the various carriers?

Mr. BROWNE. Certainly at this moment in time there is excess capacity on the Atlantic.

Mr. THOMPSON. And normally you would expect that if a carrier has this capacity, he would want to try to reduce his fares to increase his passenger load?

Mr. BROWNE. That is correct.

Mr. THOMPSON. This, of course, could be very disruptive to the other carriers.

Your primary responsibility in the CAB then is to look after the economic well-being of the air carrier industry as a whole?

Mr. BROWNE. No, sir; our primary responsibility is the public's convenience and necessity for air transport of their persons and their goods. Our philosophy is that you need a healthy air transport industry in order to do that, but the public is first, the industry is second.

Mr. THOMPSON. At the same time would you not have a responsibility to maintain a certain degree of financial stability among the carriers related vis-a-vis American carriers as related to foreign carriers?

Mr. BROWNE. There is no question that our public would be ill-served by bankruptcy of our carriers.

Mr. THOMPSON. If you were given this power to suspend, do you think there would be any reluctance on the part of the American Government to enforce the power if there were breakdowns in negotiations and you simply, well, we just reached a dead end and could not agree, would there be a reluctance on the part of the American Government to utilize this power?

Mr. BROWNE. It is hard for me to predict what other parts of the Government would do, but let's say, for example, that there is a destructive rate on the North Atlantic, so destructive that our carriers appear in danger of going under or requiring rescue by this Congress, I would suspect the Government would indeed act to support our carriers. We have had some recent experiences, I would remind you, when the administration has stood behind the Board with respect to the disputes with Ireland and with Australia.

In the case of Australia we felt we were being discriminated against, and in Ireland years of refusal of U.S. landing rights in Dublin has really given, we feel, the Irish the very definite lion's share of the traffic.

In those two circumstances we have had the full support of the administration, the Board, and so on.

Mr. THOMPSON. Getting back to the percentage of passengers traveling as to nationality, you mention approximately two-thirds are American citizens. Is there any means or has there ever been any investigation of the thought whereby we could possibly restrict Americans to traveling on carriers that charge rates which we as a government state are fair rates?

Mr. BROWNE. This idea, encouraging Americans or forcing them to use American carriers goes back many years and was raised in the time of balance-of-payments concern in the early 1960's. But no practical method was ever devised and the scheme was abandoned.

Mr. THOMPSON. I don't know if it would be constitutional but it does appear to me that we have a severe balance-of-payments problem.

I know you are familiar with the latest reports that came out and most of these are Americans that are traveling abroad. We want to encourage use of American carriers and, searching my own mind, I cannot see how we could get around some constitutional problems if we were to tell American citizens they would have to travel on American carriers that charged a certain fare approved by CAB. Certainly something such as this should be considered because we need to let the foreign countries know that we are concerned about the stability of our carriers. We are concerned, of course, about serving the public interest, but we also recognize that there is a national interest in this, the balance-of-payments problem. I know that you are very concerned about this as well.

Mr. BROWNE. Yes, sir; I am.

Mr. THOMPSON. Relating again to the balance of payments and the foreign policy of the Government, as set forth by the President and with the oversight of the State Department, do you envision that our relations with foreign governments would be impaired seriously were we to give to the CAB the power that you are requesting, just the mere fact that we have granted this power?

Mr. BROWNE. I would think that if anything our relations with foreign governments would be improved. It would clear the air in many respects and eliminate a great deal of futile controversy in which we have been engaged. I again would remind the committee of the hundreds and hundreds of tariffs that are filed before the Board. I was asked in the Senate committee for an example of what would have to be approved by the President under the veto authority that was raised and he would be ruling on things like the importation of artificial sausage skins from Finland.

In other words, one tends in this kind of testimony to think that all of these cases are massive international problems when they obviously are not. Very few of them, such as this particular Atlantic situation or the problem with Australia or Ireland, ever reach the stage of high level consideration within the Government.

Most of them are technical and mechanical matters, economic matters which the Board is designed to deal with.

Mr. THOMPSON. But it is your affirmative assessment that were the CAB given this power, that rather than deteriorating our relations with foreign governments, the mere act of the Congress granting this power would improve the relations and, of course, put you in a more strengthened position in trying to maintain the stability in the market?

Mr. BROWNE. Yes, sir.

Mr. THOMPSON. Thank you very much, sir.

Mr. JARMAN. I think the only other question that the Chair would have at this time would be to ask for your comment on the bill that has now been reported from the Senate subcommittee to the full committee, and in that bill, and this is based on a press release from the committee, the subcommittee declined to provide the CAB with the authority to prescribe or fix rates and fares in foreign air transportation. The bill they report does give the authority to the CAB to suspend for a period of up to 1 year and to reject or cancel existing or proposed new rates or fares in foreign air transportation if such are found to be unreasonable, uneconomic, predatory, or will tend to monopolize competition.

This would be the part that I would like to have your comment on. Under the measure approved by the subcommittee, the President would be given the authority to disapprove such CAB actions, for reasons of foreign relations or national defense, provided further that the President took such action within 10 days, and provided further that the President explain in detail to the Board his reasons for taking such actions.

Would you have any comments to make on the provisions as to the President?

Mr. BROWNE. Only to repeat the comments made in my testimony here and before the Senate. The powers involved are the powers of the Congress delegated to this Board and naturally as Chairman, I know that my colleagues and I will go along with whatever the will of the Congress is in the matter. I can only repeat that we are concerned that the President himself will not deal with these problems, with these hundreds of relatively minor matters, and that, as a result, many matters will be delayed and in our judgment moved to areas where the expertise we respectfully submit is not as great as ours.

Mr. JOHNSON. The press release indicated that the President's powers would be limited to matters of foreign policy and national defense. We had not seen that actual text in the text of the bill. I would point out that section 801 of the act which now gives the President power over route selections is not so limited.

Mr. ADAMS. You say it isn't so limited?

Mr. JOHNSON. It isn't now so limited.

Mr. ADAMS. I thought it was. I thought the statement was made, when the route was changed, that it was made for international and not economic reasons. Or was that just a release as opposed to statutory powers?

Mr. JOHNSON. The statute merely says all orders of the Board concerning international routes are subject to the approval of the President. There is no limitation on that power of any kind.

We don't know whether in the bill that has been reported by the subcommittee, the limitation is stated to be foreign policy and national security.

Mr. BROWNE. Our problem, Mr. Chairman, obviously is that we don't have the document before us and it makes it very difficult to comment.

Mr. JARMAN. I understand. We don't either. We have a press release from the committee.

Are there additional questions? Mr. Springer?

Mr. SPRINGER. Mr. Chairman, thank you.

Mr. Browne, have you had any chance to review the cost of operations of foreign flag carriers versus our own flag carrier?

Mr. BROWNE. No, sir. In the particular instance of the Lufthansa filing, the very low fare filing, we asked Lufthansa for economic data in support of the filing. They have given it to us but the Board has not had time to evaluate it.

Mr. SPRINGER. You have not had a chance to evaluate it?

Mr. BROWNE. We have not completed the evaluation.

Mr. SPRINGER. Let me see if I can put something in the record.

This is a comparison of labor expense per employee of U.S. flag and selected European airlines which includes salaries, wages, and fringes. TWA, the minimum mechanic \$13,263. The maximum \$14,546.

Lufthansa, the minimum for a mechanic is \$3,770, in the neighborhood of 35 percent of our own. The maximum is \$4,992.

A ramp serviceman on TWA, a minimum of \$10,826 and a maximum of \$11,647.

A ramp serviceman for Lufthansa, \$3,276 and a maximum of \$4,524.

Now, ticket agents \$7,768 on TWA for a minimum, and \$10,527 for a maximum. The same on Lufthansa is \$3,770 minimum and \$6,084 maximum.

I will skip over the rest of them but I want to come to the captains.

Mr. Browne, may I ask a question, does Lufthansa operate 747's?

Mr. BROWNE. Yes, sir.

Mr. SPRINGER. Now, on TWA, a captain in a 747 minimum is \$51,045 and the maximum is \$66,181. On Lufthansa on a 747 a captain gets \$26,520 minimum and \$32,994 for a maximum.

I would like to point out that the captain minimum is just exactly half for Lufthansa and it is less than half at a maximum.

Now lets take the 707, so this record is complete. On the TWA 707, a captain gets \$38,804 to start. His maximum is \$51,099. Lufthansa he starts at \$23,291 and his maximum is \$29,765.

Let's come to the 727, TWA starting is \$30,975, the maximum is \$45,035. On the 727 Lufthansa, he starts at \$20,717, and the maximum is \$27,175.

Mr. Chairman, these are some of the figures that ought to explain something about Lufthansa, should it not?

Mr. BROWNE. Yes, sir. First of all you have touched on an area of very great concern to me and to the Board, with respect to our air carriers, which is the inflationary wage spiral which, in my judgment, is greater than any productivity gains we can hope for from the industry and any reasonable additional costs that we can ask the public to pay as passengers.

Mr. SPRINGER. Mr. Chairman, the general costs attributed to labor on any airline is somewhere between 40 and 50 percent, is it not?

Mr. BROWNE. Yes, sir, it is a highly labor intensive industry.

Mr. SPRINGER. Because you don't have much prospect to change this and keep flying, is that correct?

Mr. BROWNE. That is part of it, yes.

Mr. SPRINGER. Let me come—at this point I have been asked to yield and I do yield.

Mr. SKUBITZ. Mr. Chairman, I was familiar with those figures. I did not have them before me. That was the reason for my questions, Mr. Browne. Haven't we actually priced ourselves out of the market?

Mr. BROWNE. It still isn't. I just wanted to make the point of our concern with spiralling labor costs. But since you have chosen TWA, nonetheless, I would remind you that Lufthansa, even with these lower labor costs, lost money last year in their international operations and for this year they claim to be losing money, whereas my understanding is that TWA is making money in their international operations. So in addition to the labor cost, there are other ingredients of efficient management; better equipment utilization, route structure and the like. By and large over the years our carriers in all of their operations have been far more efficient, and far more profitable than their foreign competitors, even though they had to work with a higher cost structure.

Mr. SPRINGER. Mr. Chairman, TWA is a wholly privately owned carrier, is it not?

Mr. BROWNE. Yes, sir.

Mr. SPRINGER. And Pan American is the same?

Mr. BROWNE. Yes, sir.

Mr. SPRINGER. Lufthansa is 90 percent government owned and one-half of the remaining 20 percent is not eligible to vote?

Mr. BROWNE. Yes, sir.

Mr. SPRINGER. Second, all loans to Lufthansa have either been direct government loans or government guaranteed loans, haven't they?

Is that a fact?

Mr. BROWNE. I don't know it to be a fact, sir. I would suspect it is.

Mr. SPRINGER. I think my information is correct that that is the situation. I am trying to get this in perspective to see what the problem is here. If they can go anytime to the government and it is a finan-

cially sound government, there is no question about it, there isn't any money on the market better than the German market, but they can go to the Government any time they want to and get a guaranteed loan to get equipment, and they have to buy it over here, don't they?

Mr. BROWNE. Well, they do buy it.

Mr. SPRINGER. And they do it with a guaranteed loan or from a government loan at a reasonable rate of interest.

Are you familiar with the last Lufthansa report for 1970?

Mr. BROWNE. It was my understanding they lost money. I am not aware of it in detail.

Mr. SPRINGER. They did not meet operating costs and I want to pin this down, Mr. Chairman, not what Lufthansa did generally. In the last Lufthansa report for 1970, they stated the airline did not meet operating costs on their North Atlantic run, didn't they?

Mr. BROWNE. Yes, sir.

Mr. SPRINGER. All Right.

Mr. THOMPSON. Will the gentleman yield?

Mr. SPRINGER. Yes; I will yield.

Mr. THOMPSON. Dealing with the general subject of labor cost, this is not anything strange when we look at the wage structure. It is considerably higher than that which prevails in most foreign countries. This has been a problem we have seen in the textile industry and we have seen it in a number of other industries. I specifically recall the Hirschorn building we are going to build for the Smithsonian and in marble costs alone it was cheaper to import marble from Italy than it was to quarry the same type of marble in Utah and bring it over here because the quarry workers are paid four or five times as much in the United States.

So when we are talking about labor costs, this is a general problem that exists. We have a higher standard of living. We do have higher labor costs. But as the Chairman of the CAB pointed out, we have been able, through efficient management and other operating procedures, to make up for this and I wanted to inject that at this point in the discussion.

Mr. SPRINGER. Mr. Chairman, I would like to state for the record that a composite of all of these things show that TWA and Pan Am top salaries range from \$10,586 for ticket agents up to \$68,572 for senior 747 captains.

Now, among the four European-flag carriers, the range of top salaries is \$3,384 for a BOAC ramps serviceman to \$49,840 for a 747 captain. Now what you need now is authority to fix or to determine whether or not rates shall be allowed and shall be filed first with you before they go into effect on all foreign carriers; isn't that correct?

Mr. BROWNE. Yes, sir.

Mr. SPRINGER. And that is the authority you want?

Mr. BROWNE. Yes, sir.

Mr. SPRINGER. This is an opinion but I would like to have it from you. Based on all of the information you have with reference to this particular matter subject to this legislation, do you believe that our international carriers can survive eventually unless you have this authority?

Mr. BROWNE. I have grave concern, and it is an opinion, that if we do not get control, effective, immediate, control over fares that would be destructive for our carriers, our carriers would not survive, not because the European carriers have a lower cost structure but simply because I have deep suspicion that some of these fares are in fact uneconomic and below their costs.

Mr. SPRINGER. At this time you are fairly sure of that; correct?

Mr. BROWNE. No, sir; because you ask for an opinion and it is an opinion.

As a Board member I can't responsibly say I am fairly sure. After 25 years in the business, I just have deep suspicion.

Mr. SPRINGER. Do you have an economist present who has analyzed that problem?

Mr. JOHNSON. Mr. Springer, may I respectfully point out the difficulty of the question for the Chairman in that if he in fact gets this authority, he will be passing on the matter in his capacity as a Board member and we are anxious to assure that he is not accused of unnecessary prejudgment.

Mr. BROWNE. I have carefully referred to uneconomic fares in general and no specific fare and, as I say I have no data, only a suspicion over the broad range.

Mr. SPRINGER. Mr. Chairman, I ask that I may be allowed to insert in the record at this point Aviation Daily, October 29, 1971, page 332, and Aviation Daily, November 16, 1971, page 95, which covers this matter in considerable detail.

Mr. ADAMS (presiding). Without objection it is so ordered.

(The documents referred to follow:)

[From Aviation Daily, October 29, 1971]

PAN AM, TWA WAGE LEVELS 99% HIGHER THAN EUROPEAN-FLAG CARRIERS

Maximum salary levels for five major employee categories at Pan American and TWA are nearly double their equivalents at Air France, Lufthansa, Alitalia and BOAC, according to data made available to The Daily. The five categories are captains, accountants, ticket agents, ramp servicemen and mechanics.

Composite of TWA and Pan Am top salaries ranges from \$10,586 for ticket agents up to \$68,572 for senior 747 captains. Among the four European flags, the range of top salaries is \$3,384 for a BOAC ramp serviceman and \$49,840 for an Air France 747 captain.

Added together, the five maximum salary levels for Pan Am and TWA (an average of the two carriers at each level) total \$115,500, while the same figure for the four European carriers is \$58,500. Complete range of salaries for the six airlines appears below.

COMPARISON OF LABOR EXPENSE PER EMPLOYEE, U.S. FLAG AND SELECTED EUROPEAN AIRLINES (INCLUDES SALARIES, WAGES, AND FRINGES)

	TWA		PAA		Total U.S. flag TWA/PAA		Air France		Lufthansa		Alitalia ¹		BOAC	
	Minimum	Maximum	Minimum	Maximum	Minimum	Maximum	Minimum	Maximum	Minimum	Maximum	Minimum	Maximum	Minimum	Maximum
Mechanic.....	\$13,263	\$14,546	\$11,099	\$12,031	\$12,181	\$13,289	\$4,158	\$6,706	\$3,770	\$4,992	\$3,738	None	\$4,740	\$4,836
Ramp serviceman.....	10,826	11,647	8,659	9,759	9,743	10,703	3,570	5,740	3,276	4,524	3,178	None	3,240	3,386
Ticket agent.....	7,788	10,527	9,137	10,644	8,453	10,586	4,186	7,448	3,710	6,064	4,914	None	3,660	5,263
Accountant.....	8,930	11,906	9,137	12,900	9,034	12,403	3,948	6,776	4,225	6,266	5,614	None	3,480	4,116
Captains:														
747.....	51,405	66,181	58,435	70,963	54,920	68,572	41,950	49,840	26,520	32,994	---	\$44,919	---	21,600
707.....	38,804	51,099	45,057	54,720	41,930	52,910	38,496	45,725	23,291	29,765	---	---	18,014	19,014
727.....	30,975	45,035	40,377	49,032	35,676	47,034	34,282	40,638	20,717	27,175	---	---	---	---

¹ No maximum rates are issued since salary progression is based on seniority plus automatic cost of living plus individual performance on a basis similar to our merit system.

Note: All amounts represent U.S. dollars or U.S. dollar equivalents paid in local currencies to local employees of the respective airlines; and do not represent labor costs of employees working for the carrier in countries foreign to the carrier.

French Government is earmarking about \$236 million in 1972 budget estimates for the Concorde, Airbus A-300B and Mercure. FDES, French government's funding organization from which nationalized companies draw money, is authorizing \$271 million for Air France in 1972 to purchase two Boeing 747s, three B-727-200s, three Airbus A-300Bs, and two Concorde. Boeing orders are subject to review during the year.

[From Aviation Daily, November 16, 1971]

OWNERSHIP OF IATA AIRLINES LISTED

Testimony of Knut Hammarskjold, director general of the International Air Transport Association, before the Senate Aviation subcommittee recently showed ownership of IATA member airlines as follows:

100 percent privately owned (24 active members)

Aerolineas Peruanas	Flying Tiger Line
Air Siam	Linea Aerea del Cobre (Chile)
American Airlines	Mohawk Airlines
Aerovias Nacionales de Colombia	National Airlines
(Avianca)	Northwest Airlines
Braniff International	Olympic Airways
British/Caldeonian Air Lines	Pan American World Airways
CP Air	Trans Mediterranean Airways
Compania Ecuatoriana de Aviacion S. A.	Trans World Airlines
Servicos Aereos Cruzeiro do Sul	Union de Transports Aereins (UTA)
Delta Air Lines	United Air Lines
Eastern Air Lines	Viacao Aerea Rio-Grandense
Flugfelag Island H.F. (Icelandair)	(Varig, Brazil)

100 percent privately owned (13 associates)

AVNA (Aviation-Natal)	Continental Air Lines
Aerial Tours Pty. (Papua/New Guinea)	Eastern Provincial Airways (Canada)
Ansett Airlines of Australia	East-West Airlines (Australia)
Ansett Airlines of Papua	New York Airways
Chicago Helicopter Airways	Quebecair
Commercial Airways Pty.	Suidwes Lugdiens (South-West Africa)
(South Africa)	Territory Airlines (New Guinea)

More than 50 percent privately owned (4 active)

Compania Mexicana de Aviacion	Swiss Air Transport
Philippine Air Lines	Transportes Aereos Portugueses

Less than 50 percent privately owned (23 active)

Air Afrique	Ghana Airways
Air Algerie	Japan Air Lines
Air Congo	KLM Royal Dutch Airlines
Air France	Malta Airlines
Air Vietnam	Middle East Airlines (Lebanon)
Alitalia	Pakistan International Airlines
Ariana Afghan Airlines	Sabena (Belgium)
Austrian Airlines	Scandinavian Airlines System
Cyprus Airways	Tunis Air
Deutsche Lufthansa	Turk Hava Yollari
El Al Israel Airlines	Venezolana Internacional de Aviacion
Finnair	(Viasa)

Less than 50 percent privately owned (1 associate)

Viacao Aerea Sao Paulo (Vasp)

100 percent Government owned

Aer Lingus Teoranta (Ireland)	Ethiopian Airlines
Aerlinite Eireann (Ireland)	P.N. Garuda Indonesian Airways
Aerolineas Argentinas	Iberia (Spain)
Aeronaves de Mexico	Indian Airlines
Air Canada	Iran National Airlines
Air Ceylon	Iraqi Airways
Air Guinea	Jugoslovenski Aerotransport
Air-India	Kuwait Airways
Air Malawi	Libyan Arab Airlines
Air Mali	LAN Chile
Air New Zealand	Polish Airlines (LOT)
Alia—Royal Jordanian Airlines	Nigeria Airways
British European Airways	Qantas Airways
British Overseas Airways Corporation	Saudi Arabian Airlines
British West Indian Airways	South African Airways
Ceskoslovenske Aerolinie	Sudan Airways
China Airlines	Syrian Arab Airlines
DETA (Mozambique)	United Arab Airlines
DTA (Angola)	Zambia Airways
East African Airways	
Empresa Consolidada Cubana de Avia- cion	

100 percent Government owned (2 associates)

New Zealand National Airways
Trans-Australia Airlines

Mr. ADAMS. Any further questions of Mr. Browne?

Mr. THOMPSON. Yes. I would like to reflect on some of the figures by the gentleman from Illinois. This is merely an observation, but I noted that TWA has top pay for their mechanics of \$14,546 as opposed to Lufthansa of \$4,992, and that is, of course, a discrepancy of almost \$10,000.

Then you go down to the ticket agents. You notice that the TWA top ticket agent receives \$10,527, whereas Lufthansa ticket agent maximum is \$6,840.

Now, it may well be that Lufthansa paid their mechanics less than they pay their ticket agents. Why I don't know, but it is very apparent from the figures, whereas we pay our mechanics more than we pay our ticket agents. I think it may reflect somewhat on the general philosophy of safety and desire that we put on maintaining the mechanical perfection of the aircraft and keeping ontime performance and full utilization of that aircraft. I wanted to put that in the record.

Mr. SPRINGER. Will the gentleman yield?

Mr. THOMPSON. Yes, sir.

Mr. SPRINGER. I want to say publicly at this point, I think, Mr. Chairman, in asking for this authority you are right, and it is long, long overdue, and I can tell you this is going to have my support in this subcommittee and in the full committee.

Mr. BROWNE Thank you, Mr. Springer.

Mr. Chairman, may I make one more point to Mr. Thompson, and it deals with the point Mr. Springer made about the salaries, and I am not talking about TWA versus Lufthansa. You gentlemen have all traveled abroad. Have you ever noticed how many men it takes to service an airplane in Europe versus the remarkably smaller number of men you see around an airplane in this country?

You might well lose the advantage of a low-priced mechanic if you add six of them doing the job that one American man does. In other words, we do have productivity, we do have efficiency, which I think is the skill of our labor and responsibility of our management.

Mr. ADAMS. Mr. Browne, before you leave, are you speaking as an individual in your testimony today, or is your testimony agreed to by the other representatives on CAB?

Mr. BROWNE. The formal testimony has the approval of my colleagues. Naturally, my answers to questions, Mr. Chairman, have not been cleared.

Mr. ADAMS. But the position of the entire Board is that you should have this ability to set fares and to suspend rates?

Mr. BROWNE. Yes, sir; that is correct.

Mr. SPRINGER. Mr. Chairman, might I ask one further question?

Mr. ADAMS. Yes.

Mr. SPRINGER. To review this so that there is a full understanding for the subcommittee, under the Bermuda agreement, IATA has had more or less this authority to set rates by agreement. Is that all we have relied on through the years?

Mr. BROWNE. Essentially, yes.

Mr. SPRINGER. Now, do any other countries have the right to veto rates?

Mr. BROWNE. Yes, sir.

Mr. SPRINGER. Would you name those countries?

Mr. BROWNE. I could name all of the IATA members, I believe, with the exception of the United States of America. That is 107 countries, but I would have to check.

Mr. SPRINGER. And we apparently, as far as you know, are the only country that does not have the right or is not asserting the right at this point legally to veto air fares in international competition?

Mr. BROWNE. Yes, sir; that is correct.

Mr. SPRINGER. Thank you, Mr. Chairman.

Mr. ADAMS. Mr. Browne, would you and your colleagues send up your comments on H.R. 8108—I will give you a copy of it—which is the bill which would grant the CAB the power to select air carrier services over international routes with a Presidential veto after potentially 90 days?

We do not have your comments on that bill which addresses this same problem. So if you could submit that, we would appreciate it.

Mr. BROWNE. Yes, sir.

Mr. ADAMS. Thank you very much, Mr. Browne. We appreciate you and your colleagues being here to testify.

We have the opportunity, if other members of the committee wish to proceed for a few minutes.

Mr. Skubitz, do you want to proceed with the next witness for a while until we have a call and then try to come back later this afternoon?

Mr. Baker, do you want to proceed, please, sir?

STATEMENT OF HON. CHARLES D. BAKER, ASSISTANT SECRETARY FOR POLICY AND INTERNATIONAL AFFAIRS, DEPARTMENT OF TRANSPORTATION; ACCOMPANIED BY SAMUEL E. EASTMAN, DIRECTOR, OFFICE OF POLICY REVIEW; JOHN BARNUM, GENERAL COUNSEL; AND ROBERT H. BINDER, DEPUTY ASSISTANT SECRETARY FOR POLICY AND INTERNATIONAL AFFAIRS

Mr. BAKER. Mr. Chairman, with your permission, I have a phalanx appearing with me here. It is for two reasons: first, I want to make sure that we can give complete answers to any questions the committee may have, and further, these gentlemen have been deeply involved in the subject matter of the hearing, and I wish to make them visible to the committee. However, I will deliver the statement myself.

Mr. ADAMS. Would you indicate for the record and to the members of the committee who the gentlemen are who are with you at the table.

Mr. BAKER. On my right at the end of the table is Samuel E. Eastman, Director of our Office of Policy Review. On my immediate right is John Barnum, General Counsel of the Department. On my left is Robert H. Binder, Deputy Assistant Secretary for Policy and International Affairs. We have a statement which is lengthy, and the time of the committee is short. If it is your pleasure, I would be glad to summarize our statement and make ourselves available for any questions you may have. On the other hand, if you prefer, we will read the statement.

Mr. ADAMS. Why don't you summarize the statement, Mr. Baker, unless one of the members would like to have it read as opposed to summarized.

Mr. SPRINGER. I would move that the statement be inserted in the record, and he may proceed from there.

Mr. ADAMS. Without objection, it is so ordered.

If you want to summarize it, you may.

Mr. BAKER. H.R. 11416, the bill before the committee, gives the Board more authority in the international arena than it presently has. As the previous witnesses made clear and as the questions brought out, this is authority which is deemed by many to be necessary, and indeed it is authority which in large measure they simply do not have at the present time. It is the position of the Department and the position of the administration that the extension of the authority of the Civil Aeronautics Board in the arena of international air fares is a good thing, and I think we would share the view of many that it is long overdue.

We would have some reservations about H.R. 11416, however, in the following respects. That particular bill provides for the suspension or disapproval of fares. Subject to some comments I will make in a minute, we agree with that completely and would endorse it wholeheartedly. It also provides for the fixing of fares or the prescription of explicit rates to be charged. As to that particular proviso, we have several reservations.

On the one hand, we do not think it is clear that such authority is necessary to accomplish the purposes for which the legislation is being advanced; and second, as I think testimony this morning has brought out, it raises many administrative and practical difficulties.

The third item that I should like to suggest is the criteria under which the Board would act to suspend or disapprove fares. In a legislative proposal we have prepared and made available to your committee last evening, we have included certain criteria under which we would wish to see such authority executed. They fall into two areas. One relates to economics and the other to the impact on commerce. These are not necessarily the same. The latter area, impact on commerce, is included to insure we focus on what is significant. For example, one aspect of that might be fare structures which would have a detrimental impact on availability of aggregate service, and this we would regard as very detrimental to commerce.

In the proposed legislation given to this committee, we have specified some particular criteria. Further, we have endorsed the proposition that retaliatory authority should be available to this Government in the event that it is necessary to deal with another Government which in our judgment is acting unfairly to our carriers.

Finally, there is the issue of Presidential review. Essentially H.R. 11416 calls for Executive notification, not Executive review or approval. We think that the latter is desirable for two reasons.

First, it is clear that the Constitution places in the President the general responsibilities to deal with matters affecting foreign relations and national security. And I think, as the previous questioning brought out, any action in this area, while perhaps initiated on economic grounds, necessarily has ramifications in the foreign relations and national security field.

And, therefore, we would urge that the Congress grant the President the right, if authority is invested in the CAB, to suspend or disapprove international air rates, to review and approve Board actions. I hasten to add this would mean that the President could not act on his own motion in this area of regulation. He could not on his own motion decide the fares that were being filed were undesirable. He could only react to an action undertaken by the CAB, and I think that is an important point.

Finally, I would like to comment on something the previous witness and the testimony in the other body brought out very well, and that is that the fare situation now is extremely complex, that the cost relationships among various fares that are filed are indeed at best obscure, and that disparity and potential discrimination as between classes of travelers is indeed a very real problem, in our judgment.

Accordingly we heartily endorse the proposition that the Civil Aeronautics Board be empowered to act in this area, but we would repeat that we think that providing them the power to suspend or disapprove fares would be sufficient and that continued reliance on the forces of the marketplace to produce fares under surveillance by the CAB would be appropriate. I think, Mr. Chairman, that summarizes very briefly what we have in our prepared statement.

(Mr. Baker's prepared statement and exhibits follow:)

STATEMENT OF CHARLES D. BAKER, ASSISTANT SECRETARY FOR POLICY AND
INTERNATIONAL AFFAIRS, DEPARTMENT OF TRANSPORTATION

Mr. Chairman, members of the Committee:

The Department of Transportation welcomes this opportunity to testify in support of increased regulatory power for the Civil Aeronautics Board (Board) over international air rates and fares. As you know, the need for such increased Board authority was recognized by President Nixon last year, when he approved a Statement of International Air Transportation Policy in June, 1970. Developments since then have only served to underscore the need for greater U.S. authority in this area.

The bill which the Chairman introduced a few weeks ago, H.R. 11416, would indeed give the Board added authority. And in our judgment, increased regulatory authority is needed to implement our stated objective which is that:

"The U.S. should work for the broadest range of potentially profitable services designed to appeal to the broadest consumer market and based on the lowest cost of operating an efficient air transport system." Statement of International Air Transportation Policy, July 22, 1970, at p. 9.

However, we believe H.R. 11416 would give the Board more new authority than can now be justified. In coordination with the Department of State and other executive departments, we have prepared a proposed bill which we believe more closely fits the needs of the Board to regulate foreign air transportation while at the same time provide the necessary procedures for review of Board actions by the Executive. A copy of the Administration bill is attached to my statement as Exhibit C.

In summary, we favor the following additional authority for the Board:

(1) The Board should have the power to suspend and disapprove the international rates and fares of U.S. and foreign scheduled and charter air carriers. This would not include the power to fix or set such rates.

(2) The grounds for the exercise of this authority should be such as to prevent the use of fares which are unreasonably high or unreasonably low and which are or would be detrimental to the commerce of the United States.

(3) The Board should have retaliatory powers in situations where a foreign government refuses to permit U.S. carriers to offer air service at rates properly filed under the Federal Aviation Act.

(4) When the Board decides to suspend or disapprove a rate, the President should have the power to approve, disapprove, or stay the Board's proposed action.

The Department's concern about our international air fare situation is no new or occasional thing. Secretary Volpe has for some time been involved in trying to promote a fare structure designed to move all members of the traveling public at the lowest possible cost-related fares. A review of this Department's previous activity in this area, beginning with the Secretary's speech at the Paris Air Show in 1969 and concluding with the Department's recent comments to the Board on the various student/youth fare proposals, is submitted for the record as Exhibit A. Through all these Department actions run certain common themes which are relevant today:

(1) The inordinately complex and outdated international fare structure does not adequately reflect the economies of jet equipment. Under the present structure, for example, the amount many travelers pay is determined by length of stay, type of ground accommodations purchased, and ability to associate with a group.

(2) We have urged the development of a cost-related fare structure where fares would reflect a "taper" principle. For example, fares per mile would decline with distance, and there would be a specific charge for passengers making costly stopovers.

(3) The carriers have provided insufficient justification for the continual increase of normal economy fares. Evidence suggests that some of the carriers' present financial difficulties are caused by a substantial shift of their higher yield normal fare passengers to very low promotional fares. And those passengers that do pay the higher fares may in some cases be subsidizing the discount passengers. We favor a reduction in the dollar spread between the two classes of fares, and appropriate limitations on the use of promotional fares, i.e., to fill excess seats in off-peak periods.

(4) We are opposed to fares which favor a special segment of the public, such as student/youth fares, because they may be unjustly discriminatory.

(5) Despite having found fault with various IATA rate proposals, we generally have not advocated that the Board disapprove them. One major reason has been the inability of the Board to deal effectively with the consequences of such a disapproval: disapproval would result in an open rate situation where IATA carriers would either file the same fares anyway (as has been long true in the Pacific) or the carriers would engage in rate competition, possibly leading to the use of predatory, discriminatory, or noncompensatory rates.

So much for the past. Let me now address the issue at hand. The failure of the IATA carriers to agree at Montreal or in subsequent meetings has led to the possibility of an open-rate situation over the North Atlantic. The competitive pressures that have led to this are clear: the introduction of larger equipment by the scheduled carriers has depressed load factors and intensified their competition among themselves; and the competition between charter carriers and scheduled carriers continues to intensify.

Given these competitive pressures, and with an open-rate situation facing us next February 1, we are concerned that scheduled and charter fares may be cut to the point that yields for both types of service could be unduly depressed. Rates may be offered that unjustly favor certain groups—such as the young, or the aged. Rates may be offered that are predatory—intended not only to compete, but to eliminate competitors—and which may be subsidized—perhaps through higher fares charged to certain segments of the traveling public. We see all these possibilities, and we know that the Board's present authority to deal rapidly and effectively with such developments is simply inadequate. The Board cannot suspend an international rate pending hearing and investigation and the Board cannot disapprove an international rate on the ground that it is unreasonably low or unreasonably high, or detrimental to U.S. commerce.

Our concern about the rates to be offered in an open-rate situation over the North Atlantic is supported by our analysis of the rates which the carriers have already expressed a willingness to use: one fare package which was almost adopted at Montreal, and one filed by the German airline Lufthansa after IATA failed to reach agreement.

The Lufthansa package is a simplified fare package containing eight basic fares, five of which are substantially below current comparable fares. Lufthansa proposes reductions in the normal economy fares of between 15% and 25%; reductions in the excursion fares of between 24% and 45%; and reductions in the group inclusive tour fare of 35%. The Lufthansa proposal continues the first class fare at the existing level, and offers youth fares with a slight increase in the peak season.

The Montreal fare proposal, on the other hand, is a more complicated package than either the Lufthansa proposal or the one that exists at the present time. Montreal contains seventeen basic fares with additional surcharges added for travel during certain periods. The Montreal proposal contemplates modest reductions in the existing group inclusive tour fares and affinity/incentive fares, and the introduction of three new fares: a winter group inclusive tour fare; and an advanced purchase fare (or APEX, as it is called) for the off-peak and peak seasons.

What then would be the financial effect of each of these two fare packages on the scheduled carriers? Two U.S. flag carriers, Pan Am and TWA, have indicated to the Department that the Montreal fare proposal would bring an improvement in net revenues over the existing fares, with modest increases in traffic, but that the Lufthansa fare proposal would bring in substantially less net revenues than existing fares produce, with substantial increases in traffic. They estimate that probably one half of the increase in scheduled traffic under the Lufthansa package would be diverted from charter services. No foreign carrier has given us any similar revenue analysis. Our own analysis confirms the statement of U.S. carriers that the Lufthansa proposal would yield insufficient revenues to match existing levels, while Montreal would result in some revenue improvement.

Of course, we find no fault *as such* with a decreased level of revenue for the carriers, flowing from lower rates for the travelers. We favor "air services available on the lowest economic basis to the widest possible market." (International Air Transportation Policy Statement, p. 9) But given the financial posture of some international air carriers today, a predicted drop in revenue certainly raises the question as to whether the rates are compensatory or prudent

for the long term viability of the international air structure. We have no certain answers here, because we have not been able to acquire the relevant cost data. But, to take Pan Am as an example, we estimate that the use by Pan Am of the Lufthansa package could result in \$26 to \$38 million less revenue in a 12-month period than Pan Am's current fares are producing. Since Pan Am posted over a \$45 million operating loss for their Atlantic Division for the 12 months ending June 30, 1971, the non-compensatory nature of the Lufthansa package—as far as Pan Am is concerned—is certainly suggested.

Let me turn to other aspects of these fare packages which warrant attention.

It appears that both the Montreal and Lufthansa fare proposals are designed to attract a substantial volume of charter traffic to scheduled service. Certainly, competition for this bulk passenger market is wholly appropriate. But it can be expected that the charter operators (at least those which are not subsidiaries of scheduled carriers) will make comparable reductions in their charter rates (or ask for more extensive charter authority) in order not to lose their volume of traffic. In fact, Atlantis, a German charter carrier holding authority from the U.S. Government, has already announced that it intends to make comparable reductions in its North Atlantic charter rates in order to match Lufthansa's proposals—the number I recall was \$135. As such a situation develops, all charter operators would soon match the lower rates offered by Atlantis and then it would be the turn of the scheduled operators and so on. Let me say again: competition is desirable. But we are concerned that it could depress scheduled and charter rates to the point where the viability of certain carriers, and indeed the quality of air service in general may be at issue.

Let me also mention the question of cross-subsidy between groups of passengers: some high yield traffic moving on scheduled services covering the cost of low yield traffic also moving on scheduled services or charter services. For example, in the Montreal proposal, the basic advanced purchase fare is only 42.9% of the normal economy fare and, under the Lufthansa proposal, the 14-45 day excursion is 50% less than the normal economy fare. I offer for the record an analysis of selected economy fares and discount fares which shows these disparities (see exhibit B). It is hard to believe that the cost savings of handling either the APEX passenger, or the 14-45 day excursion passenger, is of the magnitude of 50% of the costs of handling the normal economy passenger.

We have heard IATA carriers argue that their seat factors are low, and these types of low so-called promotional fares will bring in additional revenues and fill seats that would otherwise go empty. While the fares would no doubt have that effect, we suggest that a sounder policy would reduce excess scheduled capacity and at the same time relate fares more closely to costs.

In the light of the foregoing considerations, let me again address both the Administration's proposal and H.R. 11416.

We believe the Board should be given additional authority to regulate international air rates for the carriage of passengers and cargo between the United States and foreign points, whether such rates are charged for scheduled or charter air service, and whether they are charged by U.S. or foreign air carriers. We differ with H.R. 11416, however, in the amount of authority to be given to the Board. First, we believe that the Board's authority should be limited to the suspension and disapproval of such international air rates, and that it should not include the power to prescribe or fix such rates. The powers contained in H.R. 11416 are an extension of the Board's domestic rate authority which we consider to be too wide ranging for use on the international side, and not necessary. We have two principal reasons for this position.

(1) We are aware of no demonstrated need for Board authority to fix international air rates; the powers we do favor seem to us adequate authority to deal with past, present and foreseeable situations. For example, the Board would be able to act in a timely and effective fashion in an open-rate situation by suspending or disapproving proposed fares that fail to meet the prescribed criteria, or by retaliating against the disapproval by foreign countries of fares proposed and filed by U.S. airlines. Thus the Board should no longer feel constrained to reject an IATA rate agreement for fear that a "chaotic" and uncontrollable rate war is the only alternative. (2) Under the view we understand the Department of State has of the clauses in certain existing air bilateral agreements, giving the Board the power to fix international air rates (in addition to the power to suspend and reject) would be counterproductive in that it would have the effect of limiting the power to suspend or reject a foreign air carrier's rate where there is a disagreement with a foreign nation.

Second, we believe the grounds for the exercise of Board authority to suspend or disapprove international air rates should be narrower than those in H.R. 11416. The Board should be able to act, on economic grounds and on petition or its own motion, where a rate is excessively high or low and detrimental to the commerce of the United States. We have developed statutory language to express the standards to be used by the Board in exercising the limited power over international rates. In determining whether a rate is unreasonably high, we recommend that the Board be governed by the standard that a rate, fare, or charge should not be excessively above its fully allocated cost including reasonable profit, taking into account any classification, rule, regulation or practice affecting such rate. In determining whether a rate is unreasonably low, we recommend that the Board be governed by the standard that a rate should be compensatory. That is, a rate should be at or above the variable cost of providing the specific transportation service to which it is applicable.

In determining whether a rate is or will be detrimental to the commerce of the United States, we recommend that the Board be governed by the need to avoid substantial impairment of scheduled and charter services, the magnitude and permanency of the effect of the rate on the movement of traffic and on the ability of the carriers to earn sufficient revenues to enable them to provide adequate and efficient air service, and the need in the public interest of adequate and efficient transportation by U.S. and foreign air carriers. These principles are reflected in the Administration's proposed bill that I have attached to my testimony (exhibit C). Our reliance upon an economic standard for international air fare regulations is consistent with the Administration's "Transportation Regulatory Modernization Act of 1971" (S. 2842), introduced last week in the Senate, as well as the Department's testimony in the Board's Domestic Passenger Fare Investigation.

H.R. 11416 would also allow the Board to act in retaliation by suspending the operation of any existing tariff of a foreign air carrier when the government of the foreign country involved refuses to permit the charging by U.S. carriers of fares contained in a tariff properly filed and published with the Board. The Administration's bill includes authority.

H.R. 11416 provides for limited Executive notice. The Department favors giving the President the power to review a decision of the Board to suspend or disapprove a rate, so that the President may approve, disapprove or stay the Board action. We believe that a period of 10 days is required and adequate for the President to exercise these powers. Executive review was recommended in the Statement of International Air Transportation Policy approved by the President, although the Board at that time noted that it had for years favored only Executive notice. We consider Executive review to be a necessity in view of the President's responsibilities respecting national security and foreign relations.

Mr. Chairman, that concludes my prepared statement. Thank you very much.

EXHIBIT A

A REVIEW OF THE DEPARTMENT OF TRANSPORTATION'S PREVIOUS ACTIVITY REGARDING INTERNATIONAL AIR FARES

1. SECRETARY VOLPE'S SPEECH OF JUNE 5, 1969—PARIS AIR SHOW

His speech gave credit to the IATA carriers for bringing about a substantial fare decrease in November 1969 in certain types of fares across the Atlantic (the so-called Caracas fares). After pointing out that U.S. supplemental charter carriers were largely responsible for the significant bulk inclusive tour fare reduction, he stated that these reductions were partially offset by an increase in normal fares (effective in May) which affected at that time over 60 percent of all transatlantic passengers. The Secretary said that there was no economic justification whatsoever for increasing normal fares at a time when the IATA carriers were introducing the lowest fares applicable on scheduled flights in the history of transatlantic service, and at a time when the wide-bodied jet made it possible to operate at lower unit costs.

The main thrust of the Secretary's speech was directed at the complex fare structure which was geared to the piston era and precluded the carriers from passing on to the public the cost benefits which have resulted from jet equipment capable of flying passengers over longer stages at reduced unit costs per mile. The concept of fares increasing in cost per mile beyond London, as well as free stopovers, was considered by the Secretary to be contrary to good economic principles.

2. STATEMENT OF POSITION OF DOT ON THE CARACAS AGREEMENT, DOCKET 20781,
FILED ON OCTOBER 14, 1969

The Department's filing criticized the complexity of the existing fare structure which was becoming even more complicated with three new fare packages being offered. We argued that fares should be based on through rates per mile, decreasing with distance and noted that the California proportional fares (introduced to compete with charter services) were a step toward this objective. We said that fares should reflect costs, and that passengers should pay more for more services rendered. If a passenger chooses to travel by a circuitous route, he should pay for it, including reasonable stopover charges.

If the present fare structure were simplified and the various fares offered more closely reflected carrier costs, normal economy fares could be reduced resulting in acceptable load factors during peak periods, and promotional fares could be used in a manner for which they were originally designed—to fill excess seats in off-peak periods.

On the issue of contract bulk inclusive tour fares (CBIT) we took no position on whether revenues to be derived therefrom would, in fact, add to the carriers' profits after giving consideration to all costs that should be associated with such fares and to self-diversion from higher priced fares. We took the position that the bulk fares should not be disapproved because they would divert to IATA carriers traffic now carried by supplementals. We stated that the new fares would generate a large amount of new traffic and there should be great reluctance to find unlawful the bulk fares—the lowest transatlantic fares ever offered by scheduled carriers.

Consequently, so long as a fare adopted by IATA carriers is reasonable when measured against the applicable costs, the fare should not be found unlawful simply because that fare would divert traffic from competing supplemental carriers. An exception might be made to this standard if the supplementals were threatened as a result of a new low fare. But the evidence in this proceeding did not support a finding that the existence of supplemental carriers would be imperiled by the bulk fares. Rather, the record supported that these carriers would continue to enjoy good growth rates in traffic.

3. MEETING WITH THE CAB STAFF ON AUGUST 5, 1970 PRIOR TO THE HONOLULU IATA
WORLD TRAFFIC CONFERENCE TO BE HELD IN SEPTEMBER 1970

We met with the CAB staff on this subject to present our views on a U.S. Government position. In sum these views were:

1. The IATA fare structure should preferably reflect a "taper" principle, i.e., fare per mile decreasing with distance.
2. There should be a special charge for passengers making stopovers.
3. While transatlantic passenger traffic thus far in 1970 is growing at a rate well above average, carrier yield is decreasing. This is principally due to diversion of normal economy fare passengers (the fare level which should account for most of all scheduled traffic) to the lower promotional fares introduced last November. There is no basis for further increasing normal fares which were previously increased in May 1969 when the round trip discount was eliminated.
4. The present promotional fares are too low and should be increased.
5. The family plan and youth fare proposals would encourage further diversion from normal fare traffic, and may also be unjustly discriminatory.
6. In the Pacific, economy fares are higher than justified and should reflect more closely the fare level now in effect in the North Atlantic.
7. There should be year-round excursion fares in the Pacific with reductions comparable to what we are advocating in the Atlantic, and a specific charge for stopovers.

The Board's publicly released letter of September 2, 1971 which was sent to the U.S. carriers just prior to the Honolulu Conference incorporated most of our views. For example, the CAB letter (1) supported our efforts to rationalize the relationship of fare to distance, and to limit free circuitous stopover privileges; (2) favored a rise in the level of the discount fares; (3) opposed family and youth fares as leading to uneconomic results; and (4) supported a promotional fare structure in the Pacific similar to that in the North Atlantic.

4. LETTER OF DECEMBER 9, 1970 FROM DOT TO CAB STAFF

We wrote to the CAB staff at this time because it seemed that the IATA carriers were reaching an agreement on a publicly released series of fares and expressed the following observations:

1. The proposed increases in normal fares are ill-advised, and not supported by economic facts. They increased the dollar spread between normal and promotional fares which we oppose.

2. The record shows that the carriers' present financial difficulties are caused in large part by a shift of their higher yield normal fare passengers to the very low Caracas/Alitalia promotional fares. For example, Pan Am's 1970 normal economy traffic was 24% less than it was in 1968. This shift has helped depress their yield to marginal levels at a time when passenger traffic is increasing at a rate well above average, and seat factors are climbing. Pan Am's proportion of discount fare passengers to total has increased from 42% in 1968 to 63% in 1970. Consequently, more of the burden of capacity costs is being placed on a declining number of normal fare passengers.

3. The Department supported the proposed increase in promotional fares. In fact, it favored the slightly higher promotional fares originally sought by Pan Am and TWA. However, the IATA agreement that was reached continued to reflect their concern with charter competition.

4. The IATA carriers had made some favorable progress towards fare simplification by (a) eliminating the CBIT and affinity fares for groups of 15 and 25, and (b) establishing a two season fare level by eliminating the shoulder season.

5. No progress was achieved, however, in creating a fare taper or tightening the fare structure by limiting circuitous and costly stopovers.

5. ASSISTANT SECRETARY BAKER'S LETTER OF JANUARY 11, 1971 TO CHAIRMAN BROWNE REGARDING IATA RESOLUTIONS ON THE NORTH/CENTRAL PACIFIC ROUTES, DOCKET 22628

The letter pointed out the difficulties engendered by the failure of the Federal Aviation Act to provide for CAB authority to regulate individual carriers' international rates and fares. The IATA carriers had made no demonstration that the fares under consideration met the criterion that the structure and level of air fares should reflect the costs of providing the service.

We pointed out the following deficiencies:

1. The existing fare taper across the Pacific has been all but eliminated.

2. The fare resolutions provided for no charge for costly stopovers.

3. The proposed increase in normal economy fares provided for in the resolutions were inconsistent with the President's Policy Statement that normal fares on North/Central Pacific routes "remain well above justifiable levels".

Notwithstanding these deficiencies we did not advocate that the Board disapprove the resolutions proposed, since we were not persuaded at that time that such disapproval would produce any meaningful different result. Disapproval would result in an open rate situation after February 1, 1971, and each of the IATA carriers involved might very well file (as they have done previously) much the same fares as are provided for in the resolutions, and the Board is without statutory authority to do anything about it.

The Department pointed out that the President had advocated that "the effectiveness of the Board in its dealings both with IATA and governments should be enhanced by vesting it with authority to regulate rates and fares between the U.S. and foreign points, subject to Executive review." We concluded that the legislation sought by the President obviously is what is required.

6. DOT COMMENTS OF JANUARY 21, 1971, ON THE NORTH ATLANTIC FARE PROPOSALS TO BE EFFECTIVE APRIL 1, 1971, DOCKET 22628

With some reluctance, the Department recommended approval of the proposed fare resolutions because the likely results of Board disapproval raised even more serious problems.

Many problems were raised by the fare proposals, such as the failure to produce a fare taper and to eliminate free stopover privileges, as well as increasing normal fares and further expanding the dollar spread between normal and promotional fares. Nevertheless, we considered it essential to increase yields in view of the financial health of the U.S. transatlantic carriers, and the proposed increases in promotional fares were expected to increase yield by 5 to 8 percent. We emphasized that it would be preferable if the CAB could require the increased yield to be predicated on a fare structure having a closer relationship to carrier costs. Again we noted that the Board unfortunately lacks the necessary regulatory tools to do effectively.

The only avenue open to the CAB should it find the fare proposals not to be in the public interest would be to disapprove the resolutions. In view of the large number of carriers serving the North Atlantic markets over many different routes, we believe that Board disapproval could result in a hectic open rate situation in which yields might be reduced even further. We wanted to avoid that result since the financial ill-health of carriers resulting from unduly depressed fares is clearly not in the public interest.

We also pointed out that the justifications presented by the carriers in support of the resolutions were solely inadequate. They did not provide sufficiently detailed traffic projections, cost projections or capacity projections. We stressed that in the future far more of a justification should be required in order to assure interested parties a real opportunity to comment meaningfully.

7. LETTER OF JUNE 25, 1971 FROM ASSISTANT SECRETARY BAKER TO CHAIRMAN BROWNE REGARDING STUDENT/YOUTH FARES

In this letter, the Department said that it would file a statement with the CAB recommending that the Board take the speediest course possible to have the presently effective individually filed student/youth fares discontinued, unless it can be demonstrated that they are not unjustly discriminatory. If the fares are not unjustly discriminatory, then we proposed that they be made available to all travelers.

DOT favors all members of the traveling public (not just a special segment) receive the benefit of the lowest possible cost-related fares. We look with disfavor on policies which discriminate against any major segment of the public since noncompensatory and below real marginal cost pricing must be paid by someone else.

The IATA carriers have now created a chaotic open-rate situation in an area of strong competition between scheduled and charter services which could result in fare-cutting to the point that yields for both types of services could be unduly depressed. While the Board lacks the authority to suspend these tariffs, and is limited to determining, after hearing, whether the filings are unjustly discriminatory, these unilateral carrier actions once again point out the necessity for the Board to be empowered to regulate international fares.

In this filing we also said it would be desirable for U.S. carriers to seek liberalization of IATA Resolution 045 (dealing with charter services) so as to make it consistent with the CAB's more liberal charter rules adopted on January 29, 1971. This would improve the ability of scheduled carriers to compete in the bulk market and would be in accord with the President's Policy Statement calling for uniformity of charter regulations for all classes of carriers, scheduled and supplemental.

EXHIBIT B

COMPARISON OF FARE PER MILE FOR SELECTED ECONOMY FARES

City Pair: New York to Frankfurt, Nonstop Mileage (CAB): 3,856 Miles

Package/fare class	Round trip fare	Fare per mile (cents)	Percent of normal economy
Honolulu:			
Normal economy:			
Basic	\$536	6.95	
Peak	636	8.25	
29 to 45 day excursion:			
Basic	312	4.05	58.3
Peak	372	4.82	58.4
Montreal:			
Normal economy:			
Basic	536	6.95	
Peak	636	8.25	
Apex (22 to 45):			
Basic	230	2.98	42.9
Peak	290	3.76	45.6
Lufthansa:			
Normal economy:			
Basic	420	5.45	
Peak	540	7.00	
14 to 45 day excursion:			9.94
Basic	210	2.72	
Peak	270	3.50	50.0

EXHIBIT C

A BILL

To amend the Federal Aviation Act of 1958 to provide for the regulation of rates of air carriers and foreign air carriers in foreign 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 section 801 of the Federal Aviation Act of 1958 (49 U.S.C. 1461) is amended by inserting "(a)" immediately after "801" and by adding at the end thereof the following new subsection:

"(b) Any decision of the Board disapproving a rate, fare or charge pursuant to section 1002(e), or any decision of the Board suspending a tariff pursuant to section 1002(g) (2) or any decision suspending a tariff or ordering carriers to charge a rate, fare or charge pursuant to section 1002(j) shall be submitted to the President before publication, and such decision may be approved, disapproved, or stayed for a period not exceeding 90 days by the President within ten days after its submission to the President. Absent disapproval or staying by the President the decision of the Board shall be effective. Whenever the Board shall enter upon a hearing concerning a rate, fare, or charge for foreign air transportation, a copy of the notice of such hearing shall be transmitted to the President before publication thereof."

Section 2. Section 1002(d) of such Act is amended as follows:

(a) The title of section 1002(d) is amended to read as follows:

"POWER TO PRESCRIBE RATES AND PRACTICES AND RULE OF RATEMAKING IN INTER-STATE AND OVERSEAS AIR TRANSPORTATION"

(b) Subsection 1002(d) of such Act is amended by inserting "(1)" immediately after "(d)".

Section 3. Section 1002(e) of such Act is amended as follows:

(a) The title to subsection 1002(e) of such Act is deleted.

(b) Section 1002(e) of such Act is amended by substituting "(d) (2) for (e)", and redesignating items (1) through (5) thereunder as items (i) through (v), respectively.

"POWER TO DISAPPROVE RATES IN FOREIGN AIR TRANSPORTATION"

"(e) (1) Whenever after notice and hearing, upon complaint, or upon its own initiative, the Board shall find that any individual or joint rate, fare, or charge demanded, charged, collected, or received by any air carrier or foreign carrier for foreign air transportation, is or will be unreasonably high or unreasonably low and is or will be detrimental to the commerce of the United States, the Board shall disapprove the rate, fare or charge.

"(e) (2) In determining whether a rate, fare or charge of a carrier is unreasonably high or unreasonably low under this section and section 1002(g) of this Act, the Board shall be governed by the following:

"(i) Any rate, fare, or charge should not be excessively above its fully allocated cost of operations including reasonable profit, taking into account any classification, rule, regulation, or practice affecting such rate;

"(ii) Any rate, fare, or charge should be compensatory taking into account any classification, rule, regulation, or practice affecting such rate. A rate, fare, or charge shall be deemed compensatory when it exceeds the variable cost of providing the specific transportation service to which it is applicable.

"(e) (3) In determining whether a rate, fare or charge of a carrier is or will be detrimental to the commerce of the United States under this section or section 1002(g) of this Act, the Board shall be governed by the following:

"(i) The need to avoid substantial impairment of scheduled services and charter services;

"(ii) The magnitude and permanency of the effect of such rate, fare or charge on the movement of traffic and on the ability of air carriers to earn revenue sufficient to enable such carriers to provide adequate and efficient air carrier service;

"(iii) The need in the public interest of adequate and efficient transportation of persons and property by air carriers and foreign air carriers."

Section 4. The title of section 1002(g) of such Act is amended to read, "SUSPENSION OF RATES FOR AIR TRANSPORTATION AND LIMITATION OF EFFECTIVENESS OF RATES FOR FOREIGN AIR TRANSPORTATION," and section 1002(g) is amended by inserting "(1)" immediately after "(g)" and by adding at the end thereof the following new paragraphs:

"(2) Whenever any air carrier or foreign air carrier shall file with the Board a tariff stating an individual or joint (between air carriers, between foreign air carriers, or between an air carrier or carriers and a foreign air carrier or carriers) rate, fare, or charge for foreign air transportation, the Board is empowered, upon complaint or upon its own initiative, at once, and, if it so orders, without answer or formal pleading by the air carrier or foreign air carrier, but upon reasonable notice, to enter upon a hearing to determine whether such rate, fare, or charge would be unreasonably high or unreasonably low and detrimental to the commerce of the United States; and pending such hearing and decision thereon, the Board, by filing with such tariff, and delivering to the air carrier or foreign air carrier affected thereby, a statement in writing of its reasons for such suspension, may by order suspend the operation of such tariff and defer the use of such rate, fare, or charge, for a period of ninety days, and, if the proceeding has not been concluded and a final order made within such period, the Board may, from time to time, by order extend the period of suspension, but not for a longer period in the aggregate than one year beyond the time when such tariff would otherwise go into effect; and, after hearing, whether completed before or after the rate, fare, or charge goes into effect, the Board may make such order with reference thereto as would be proper in a proceeding instituted after such rate, fare, or charge had become effective. If the proceeding has not been concluded and an order made within the period of suspension, the proposed rate, fare, or charge shall go into effect at the end of such period: PROVIDED, that this subsection shall not apply to any initial tariff filed by an air carrier or foreign air carrier.

"(3) The Board may in the public interest, at the time a tariff stating a rate, fare, or charge for foreign air transportation is filed with the Board by an air carrier or foreign air carrier, whenever it appears that changing circumstances may result in such rate, fare, or charge becoming unreasonably high or unreasonably low and detrimental to the commerce of the United States, limit the effectiveness of such tariff to a period of time not less than one year."

Section 5. Section 1002 of such Act is amended by adding the following new subsection:

"POWER TO SUSPEND AND ORDER RATES IN FOREIGN AIR TRANSPORTATION IN SPECIAL CIRCUMSTANCES"

"(j) Whenever the Board finds that the government or aeronautical authorities of any foreign country have refused to permit the charging of rates, fares, or charges contained in a properly filed and published tariff of an air carrier filed under this Act for foreign air transportation to such country, the Board may, by order, in its discretion and without hearings, (i) suspend the operation of any existing tariff of any foreign air carrier providing services between the United States and such foreign country, and (ii) order air carriers and such foreign air carrier to charge such rates, fares, or charges for foreign air transportation to such country as are in accordance with agreement reached between the United States and such country. The effective right of an air carrier to start or continue service at the rates, fares, or charges contained in a proper filed and published tariff filed under this Act for foreign air transportation to such country, or at such rates, fares, or charges as may be ordered by the Board pursuant to this subsection, shall be a condition to the continuation of service by such foreign air carrier in foreign air transportation between the U.S. and such foreign country."

Section 6. Section 1006 of such Act is amended by deleting the words "section 801 of this Act," and by substituting therefor the words "section 801(a) of this Act or any decision approved, disapproved, or stayed by the President under section 801(b) of this Act,".

Section 7. The amendments made by this Act shall not be deemed to authorize any action inconsistent with the provisions of section 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1502).

EXHIBIT D

FOREIGN AIR TRANSPORTATION REGULATORY ACT OF 1971 SECTION-BY-SECTION ANALYSIS

Section 1. Amends section 801 of the Federal Aviation Act of 1958 to require the Civil Aeronautics Board to submit decisions pursuant to sections 1002(e) and 1002(j) and decisions pursuant to section 1002(g) disapproving or suspending a rate, fare, or charge in foreign air transportation to the President before publication and such decisions may be approved, disapproved, or stayed by the President within ten days.

Section 2. Amends section 1002(d) of such Act to combine that section and 1002(e) under a new heading "Power to Prescribe Rates and Practices and Rule of Ratemaking in Interstate and Overseas Air Transportation."

Section 3. Amends section 1002(e) of such Act by deleting the title, substituting "(d) (2)" for "(e)," adding a new title, "Power to Disapprove Rates in Foreign Air Transportation," adding section (e) (1), to give the Board power to disapprove rates, fares, or charges in foreign air transportation when found to be unreasonably high or unreasonably low and detrimental to the commerce of the United States; adding section (e) (2) that a rate, fare, or charge of a carrier should not be excessively above its fully allocated cost of operations and compensatory, taking into account any classification, rule, regulation, or practice affecting such rate; and, adding section (e) (3) that a rate, fare or charge should not be detrimental to the commerce of the United States, avoid substantial impairment of scheduled and charter services, provide for the earning of sufficient revenues by the magnitude and permanency of its effect on the movement of traffic to enable carriers to provide adequate and efficient service, and to provide for the need in the public interest of adequate and efficient air transportation.

Section 4. Amends section 1002(g) of such Act to authorize the Board to suspend a tariff filed by a U.S. or foreign air carrier. It also allows the Board to limit the tariff's duration when it appears that changing circumstances may result in the tariff becoming objectionable.

Section 5. Amends section 1002 of such Act to provide a new section, "Power to Suspend and Order Rates in Foreign Air Transportation in Special Circumstances," section 1002(j) authorizing the Board, when a foreign country refuses to permit U.S. carriers to offer air service at rates, fares or charges properly filed under such Act, to suspend any existing tariff of a carrier of that country and to order air carriers and foreign air carriers to charge for foreign air transportation between the United States and that country rates in accordance with agreement between the United States and such country.

Section 6. Amends section 1006 of such Act by excepting from judicial review Board orders which have been approved, disapproved, or stayed by the President under section 801(b) of the Act.

Section 7. Amendments of such Act are not deemed to authorize any actions inconsistent with the provisions of section 1102 of the Act.

Mr. BAKER. My colleagues and I certainly will attempt to answer any questions you may have.

Mr. ADAMS. The Chair has one question before yielding to the other members, and that is, so far as the problem of the relationship between the economic regulation by the Board and the foreign policy powers of the President are concerned, don't you have just as much of a problem if the CAB has the power to suspend or disapprove of fares as if they fixed fares?

Aren't you under the same basic conflict?

Mr. BAKER. I don't think there is a difference there. Mr. Chairman. I think on the issue of Presidential review, our position would be the

same whether they were suspending or disapproving, or fixing. But I would suggest there may be a problem of degree, as I think the previous discussion brought out. When you get to the proposition of fixing individual fares, ultimately you are establishing the fare structure as between two nations. And as I think was mentioned with respect to the North Atlantic, something like 21 nations are involved in traffic between the North Atlantic countries and our own. This involves a proposition where you may have an extensive number of what amounts to international negotiations going on.

I think the proposition is the same whether you are fixing or simply suspending and rejecting, but I think the matter of degree is considerable.

MR. ADAMS. Since we fix all air fares in the United States through our CAB, and I assume most the other international governments fix their internal fares through their department whatever it is, and there is no qualitative difference between the prescriptions and suspension of fares so far as foreign policy vis-a-vis economic power is concerned, why not give them the power to prescribe as well as to suspend?

MR. BAKER. That goes to the issue of whether or not this is necessary authority and further whether it is practical authority. I think as far as it being necessary authority is concerned, we indeed would prefer that, generally speaking, we rely on pressures of the marketplace to produce fare levels and fare structures.

MR. ADAMS. Why do you do that in the international market and not in the domestic market? We don't allow the marketplace to fix fares in the domestic market.

MR. BAKER. As we testified before Senator Cannon's Aviation Subcommittee in the Senate last February, it has been the position of the administration to seriously explore doing exactly that and in short we have advocated close examination of a so-called zone of reasonableness which would put a greater reliance on competition in the development of fare structures domestic air transportation than is presently permissible under the 1958 act. This legislation has not been advanced.

I think in the case of the international fares we are moving from the other situation where basically there is no regulation and the question is to what extent should you extend regulation now found in the domestic situation. As you pointed out, we have considerable regulation in that area, and it would be wise to move away from that.

MR. ADAMS. We have complete regulation in the airlines as opposed to other modes of transportation on both routes and on fares, don't we?

MR. BAKER. Yes, sir.

MR. ADAMS. And you think there is a possibility anyway that you might go for deregulation in that area too?

MR. BAKER. If the chairman would permit, I would like to call it "modernization of regulation," but yes, sir. We are on record with the Senate and hope to have the opportunity to discuss before this body the question of the degree and shape of economic regulation in air transportation as well. No legislation has been advanced, however.

MR. ADAMS. Do you think that the market place system in the international fare out of the North Atlantic is working well?

MR. BAKER. I think it is working a lot better, but it is producing odd results, and I think that is the reason—

Mr. ADAMS. For the bill, that is why we are sitting here?

Mr. BAKER. Yes, indeed, sir. In the president's international policy statement issued in the spring of 1970, it was made clear that one objective is to insure reasonable fares for air travelers and I think everyone would agree on that.

Mr. ADAMS. Wait a minute. According to the figures of Mr. Springer which he read in the record, if they are operating their airline with a wage structure that allows them to go out over the North Atlantic at some place a third below the cost we can, should we simply say to European carriers, "You can offer them more economical traffic over the North Atlantic so we will let the market place set it and you take the traffic?"

Do you think we should do that?

Mr. BAKER. I think there are two points on this, Mr. Chairman. First in the international aviation policy statement it says our carriers should have an equal and fair opportunity for air traffic.

Mr. ADAMS. We give them equal access.

Mr. BAKER. I think implicit in that would be, let me use the word, "subsidy."

Mr. ADAMS. Let us assume no subsidy but their wage level is much below and they pay the same price for their airplanes so they are able to go to the CAB and say, "we have a lower fare that we can offer out over the North Atlantic because we can fly cheaper."

Should we let them have it?

Mr. BAKER. Mr. Chairman, first, as Chairman Browne identified, because of the efficiency of U.S. air carriers, the unit costs of available seat miles of our American-flag carriers are in general significantly better than those of their foreign competitors.

I regret, inadvertently, I did not bring with me some statistics which summarize this through 1969—and we will try to get more current information. And with your permission we will file that for the record.

Mr. SKUBITZ. Mr. Chairman, Mr. Baker has agreed to place certification in the record. I ask consent that he be given that consent to place the figures in the record.

Mr. ADAMS. Without objection it is so ordered.

(The following information was received for the record:)

1969 UNIT OPERATING EXPENSES PER AVAILABLE TON-KILOMETER

[In cents]

Carrier	Flight crew salaries and expenses	Total operating expenses
Qantas.....	1.5	16.3
Air France.....	2.0	19.6
Lufthansa.....	1.2	18.8
Air India.....	.8	16.3
KLM.....	1.8	16.5
TAP.....	1.0	17.9
SAS.....	1.7	20.2
Iberia.....	1.1	17.5
Swissair.....	1.5	20.4
BOAC.....	1.1	14.8
PAA-System.....	1.6	13.0
TWA-System.....	1.5	12.4

1969 UNIT OPERATING EXPENSES PER REVENUE TON-KILOMETER

[In cents]

Carrier	Flight crew salaries and expenses	Total operating expenses
Qantas.....	2.7	29.0
Air France.....	3.6	35.3
Lufthansa.....	2.1	32.3
Air India.....	1.5	31.6
KLM.....	3.0	28.6
TAP.....	2.2	37.7
SAS.....	3.2	37.8
Iberia.....	2.0	32.2
Swissair.....	2.8	37.4
BOAC.....	2.1	28.7
PAAC-System.....	2.8	23.7
TWA-System.....	3.8	30.8

Source: ICAO Digest of Statistics No. 154.

Mr. BAKER. The American-flag air carriers, because of their efficiency of operation and greater productivity, are indeed able to compete on a cost basis head to head quite effectively with the foreign air carriers.

Mr. ADAMS. Why are all of our international carriers losing immense amounts of money then?

Mr. BAKER. Mr. Chairman, as Chairman Browne implied, first off, the books aren't closed on 1971, so we don't know the final answers.

Mr. ADAMS. Do you think they are going to come out ahead?

Mr. BAKER. Yes, sir. I think in the aggregate, with one noticable exception that we are all quite aware of, Pan American. It is pretty clear Pan American is going to lose money. I think it is quite likely but I will simply include the caveat we don't know the final answers yet.

Mr. ADAMS. My understanding is, because the fares have been fixed, they have made up on North Atlantic what they lost everywhere else, which is what happened in our domestic system.

The carriers made money on certain key routes and they have had to serve every place else. Do you think we ought to change that policy?

Mr. BAKER. I think generally speaking the proposition that there be extensive cross-subsidy as between areas of traffic or between classes of passengers is not a good thing. That is one of the factors that I think this particular piece of legislation would enable the CAB to explicitly examine.

You may recall in the so-called youth fare or student fare case, the Department of Transportation took the position before the Civil Aeronautics Board that we had grave reservations about the proposed fares for students, not because we were opposed to students, quite the contrary, but if in fact it is economically feasible to carry passengers at significantly lower fares, we would like to see that available to the aged, the blind, the handicapped, and other people.

In short, such low fares should be made available to everybody and that is under investigation presently by the Board.

Interestingly enough, that is an area where they do have authority right now on the international side. They are empowered under existing legislation, to suspend and investigate and ultimately deny, if they wish, fares which are discriminatory.

Mr. ADAMS. I have additional questions, but Mr. Skubitz and Mr. Thompson, I will defer to you and we will try to come back this afternoon and continue on with the witnesses.

Mr. SKUBITZ. I will reserve my time.

Mr. THOMPSON. I believe, Mr. Chairman, that the second bell is about to ring and I will defer if we are going to come back.

Mr. ADAMS. Mr. Baker and Mr. Rain, could you come back?

Mr. BAKER. We think this is important legislation.

We are pleased at the opportunity to be here and we will come as often and as long as you like.

Mr. ADAMS. Could we come back at 2 and see what we could do to proceed as long as possible to give everybody as much time as possible.

We have other witnesses tomorrow.

We are recessed.

(Whereupon, at 12:20 p.m. the subcommittee recessed, to reconvene at 2 p.m., the same day.)¹

¹ The subcommittee was unable to meet at 2 p.m. and subsequently gave notice they would meet at 10 a.m., Thursday, November 18, 1971.

REGULATION OF INTERNATIONAL AIR FARES

THURSDAY, NOVEMBER 18, 1971

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. John Jarman (chairman) presiding.

Mr. JARMAN. The subcommittee will please be in order, as we continue the hearings on regulation of rates and practices of air carriers and foreign air carriers in foreign air transportation.

When the committee adjourned yesterday, our witness was the Honorable Charles D. Baker, Assistant Secretary for Policy and International Affairs, Department of Transportation.

Mr. Baker, since several on the subcommittee had to be on the floor at that time, perhaps you could summarize your testimony to this point and then continue as you choose.

FURTHER STATEMENT OF HON. CHARLES D. BAKER, ASSISTANT SECRETARY FOR POWER AND INTERNATIONAL AFFAIRS, DEPARTMENT OF TRANSPORTATION; ACCOMPANIED BY SAMUEL E. EASTMAN, DIRECTOR, OFFICE OF POLICY REVIEW; JOHN BARNUM, GENERAL COUNSEL; AND ROBERT H. BINDER, DEPUTY ASSISTANT SECRETARY FOR POLICY AND INTERNATIONAL AFFAIRS

Mr. BAKER. Surely, Mr. Chairman.

We appreciate the opportunity to come back and expand on our earlier comments.

I am accompanied by John Barnum, our General Counsel; Robert H. Binder, Deputy Assistant Secretary for Policy and International Affairs; and Samuel E. Eastman, Director, Office of Policy Review.

In the proceedings yesterday, Mr. Chairman, we went on record as strongly endorsing legislation extending the authority of the Civil Aeronautics Board over international air rates. We believe this is something long overdue. It is necessary that our Government have the power to exercise some measure of surveillance over international air fares.

We do feel that H.R. 11416, the bill before this committee, extends that authority to a greater degree than necessary since it provides spe-

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cifically for the setting of rates, and not simply for their suspension or disapproval.

In short, we think an extension of the Board's authority is necessary.

We do not think it is necessary to go quite as far as H.R. 11416 would go.

Another major point that we made yesterday is that we do think it would be appropriate to provide for a measure of Presidential review over actions of the Board in this area. The President, of course, under the Constitution is vested with broad responsibilities in the field of foreign affairs and national security. Since it is commonly agreed that rate actions by the Board in the international field could have ramifications in those areas, we believe that the President should be involved.

There is another feature we have proposed in the legislation we brought up to the Committee the night before last which I would like to mention. It empowers the Board to take retaliatory action against a foreign air carrier where a foreign government fails to allow our carriers the opportunity to operate under properly filed tariffs.

Let me make one other summary remark. We think that the present fare situation, particularly on the North Atlantic, is exceedingly complex, the cost relationships are most difficult to follow, and the potential for discriminatory pricing and a resulting adverse impact on air service is very real. For these reasons, in short, in order to insure quality and availability of service to international air travelers we believe that this kind of legislation is indeed necessary.

Mr. Chairman, we will certainly attempt to answer in full any questions this committee may have.

Mr. JARMAN. Thank you very much.

I think the main question that I would ask of you gentlemen at this time is for clarification. I think I will direct the question towards the version of the bill that the Senate subcommittee has reported.

You are in agreement with their decision, then, declining to provide CAB authority to prescribe or fix rates and fares?

Mr. BAKER. Yes, sir.

Mr. JARMAN. You do favor the suspension of authority?

Mr. BAKER. Suspension and disapproval authority; yes, sir.

Mr. JARMAN. Let me ask for a little more clarification on this.

The Senate version, as reported by the committee in the press release:

Under the measure approved by Senate subcommittee, the President would be given the authority to disapprove such CAB actions for reasons of foreign relations or national defense; provided, further, that the President took such action within 10 days; and, provided, further, that the President explain in detail to the Board his reasons for taking such actions.

Are you in a position to endorse this part of the Senate subcommittee bill, or what comments would you make?

Mr. BAKER. We have two comments, Mr. Chairman. One, as far as the time frame is concerned, if I may, I am going to ask Mr. Binder, who has been involved in reviewing the administrative process that applies here, whether he agrees this is an appropriate length of time. As far as whether it is appropriate to request the explicit identification of the reasons for Presidential action, if I may, I would like to ask the next witness, Mr. Rein, to make comments on that.

It is not that I am trying to duck the question, but I think that has ramifications in the international sphere more pertinent to the functions of the State Department.

Is that agreeable?

Bob, would you comment on the timing?

Mr. BINDER. Mr. Chairman, we believe that 10 days is an adequate amount of time for the President to react to a proposed Board action under this type of legislation. This matter was discussed more than a year ago at a time when the Board was considering its own regulation, part 213, which involved its power to act in response to foreign charter restrictions. At that time, it was thoroughly debated within the executive branch how much time would be adequate, and 10 days was decided to be sufficient for that purpose.

Mr. JARMAN. I understand.

Thank you very much.

Mr. KUYKENDALL. Would the chairman yield?

Mr. JARMAN. Yes.

Mr. KUYKENDALL. The 10-day thing bothers me to this extent. I can fully understand that 10 days would be ample time to tell CAB no, but it doesn't seem to me that the 10 days would give you any time at all to do any negotiation.

Mr. BINDER. This has to be related to the basic power of the Board under the proposed legislation. If the Board suspends a tariff, which would be the likely action if it had to move rapidly, this itself creates a time for negotiation. If instead, the Board disapproved the tariff and the President wished to create time for a negotiation before the order of disapproval went in effect, the President could stay the order of the Board.

Mr. BAKER. John Barnum, our general counsel, has pointed out that we have included in the legislation we have provided this committee the provision allowing a stay for exactly the purpose that you have identified, in short, to allow more time to examine the issue. However, Mr. Barnum advises me that the committee print that the chairman referred to contains no such proviso. So I think in that context, Mr. Chairman, we should say that we would urge inclusion in the bill of this power to stay a decision.

Mr. KUYKENDALL. Mr. Chairman, I will continue this on my own time.

Mr. JARMAN. But the reason is a reason of foreign relations or national defense?

Mr. BAKER. Yes, Mr. Chairman. Those are the reasons we have advanced for Presidential involvement in the first place; yes, sir.

May our counsel speak for a minute?

Mr. BARNUM. Mr. Chairman, there is one additional point that I do not see in the Senate committee print and that is the provision in our bill that in the event of Presidential action with respect to a Board decision, that Presidential action would not be subject to review by the courts. We have accomplished this by adding to section 1006 of the 1958 act language that would apply to a decision in the area of rates. That is not in the Senate markup. I don't know whether its omission was intentional or whether it was an oversight. It is the kind of

thing that requires modifying another section and, therefore, may have been overlooked.

Mr. JARMAN. Mr. Adams?

Mr. ADAMS. I asked questions yesterday, Mr. Chairman. Thank you.

Mr. JARMAN. Mr. Harvey?

Mr. HARVEY. Thank you, Mr. Chairman.

Mr. Baker, on page 2 of your statement you speak of the fact that the Board should have retaliatory powers. Should this retaliatory power apply to all situations or should it be confined just to similar services?

Mr. BAKER. Well, I think in truth, Mr. Harvey, this would depend on the circumstances at hand. We have not gone into detail or attempted to restrict this authority in the legislation we have proposed on the presumption that you would want to exercise some latitude depending upon the circumstances at hand.

Mr. Binder, do you want to elaborate on that? You were instrumental in discussing this with the State Department.

Mr. BINDER. Section 5 of the proposed legislation which has been submitted to this committee by the Department addresses itself to the retaliatory power and limits it to the race area. Where a foreign government has refused to allow operations of our carriers under rates properly filed with it, it would empower the Board to suspend the operation of tariffs of the foreign carriers providing services between the United States and that foreign country. In that sense, the retaliatory action we are discussing is confined to the question of air carrier rates that have been filed.

I hope that was responsive to what I understood to be the thrust of your question.

Mr. HARVEY. Are you saying that it should apply to similar services or should it go beyond that?

Mr. BINDER. To any services that are being operated, as I understand.

Let me look at the provision. The reference is to any foreign carrier providing services without regard to the type of service, Mr. Harvey.

Mr. HARVEY. Well, as Mr. Kuykendall points out, it also says, "to the extent necessary." Does this mean that this retaliatory power applies to all situations or just to the similar service?

I haven't had an adequate chance to look at the bill yet; I have only scanned it, and your statement, but I haven't had a chance to study it.

Mr. BAKER. I understand, Mr. Harvey. When you say "similar services," would you be making a distinction between charter and scheduled services, because it would not be generally contemplated that one would be taking this kind of action relative to rates filed for scheduled services and then take action, if you will, vis-a-vis charter services. Perhaps in that sense we would be thinking of similar services, if that is the kind of distinction that you are making.

Mr. HARVEY. I will yield to Mr. Kuykendall.

Mr. KUYKENDALL. The bill says, "by any air carrier or foreign air carrier for foreign air transportation." "Air carrier or foreign air carrier for foreign air transportation." That looks to me like it covers everybody.

Mr. BAKER. I am sorry, sir?

Mr. KUYKENDALL. The bill says, in talking about the practices here, and describing the practices that may be corrected by altering to the extent necessary to correct such unjustness, on the top of page 4 of the bill, beginning with line 4, that is the correction offered, but then over here on page 3, line 23, it says, "or received by any air carrier or foreign air carrier for foreign air transportation or any classification."

It seems to me that just is carte blanche here. I hope it is.

Mr. BAKER. It was not our intention, Mr. Kuykendall, to extend this kind of reaction across the board as to kinds of service, if you will, but rather, our reaction, if the issue related to the filing of fares, for example, for scheduled services, would be directed toward scheduled operations of the foreign carriers concerned. That was our intention. If it is unclear, I think that should be examined further. I am sure our friends from the State Department also will want to comment on this issue because, in the final analysis, they will be up to their necks in this problem.

Mr. HARVEY. Let me ask another question, if I may, Mr. Chairman. Relative to the principle that you speak of on page 3 of your statement, regarding a fare structure, that would reflect the distance traveled, and so forth, isn't this an entirely new concept?

Mr. BAKER. I don't think so, Mr. Harvey. We have gone on record for some time to the effect that the relationship of fares to costs in international markets is something less than desired. For example, as one looks at various markets, one finds that the amount of revenue earned per traveler varies rather significantly around the world. There is indeed some improvement in the relationship on a revenue passenger mile or available seat mile basis, if you will, the further you go. We have not found, however, that fare structures show this, by and large, and we have made this comment in, for example, the Department's position respecting the Pacific fares roughly a year ago.

For some time we have felt that one of the advantages of relying on the marketplace to serve the customer is that there is continued pressure on the relationship between fares and cost.

Further, in terms of the long-term economic viability of the air transportation system, we feel, again, there must be some cost relationship on the "downside" as much as on the "upside" and indeed in the legislation we have presented to this committee we have suggested some rather explicit criteria under which the Board would act.

Mr. HARVEY. My question to you is whether or not this was an entirely new concept. Have you sounded out any other groups as to their willingness to accept this concept? Has it been used in the past at all in setting rates?

As far as I know, it has not.

Mr. BINDER. I think you are right, Mr. Harvey. It is not now generally applicable, say, in the North Atlantic. The fare structure in the North Atlantic seems to reflect the piston age where rates were based on legs between our continent and the first landing point in Europe, perhaps England, and fares beyond that were based on a add-on principle. If you were going beyond England, they would calculate the additional leg. Even though today the flights are being made non-stop, without landing in England, the fares are being calculated very

much on this same two-step principle and they do not reflect the taper principle that we believe is preferable.

Mr. HARVEY. To any extent are international flights in these areas subsidizing domestic flights?

Mr. BAKER. I would think if anything, Mr. Harvey, that it might be somewhat the other way around.

Mr. HARVEY. That is why I asked the question.

Mr. BAKER. I think that is a little hard to track. For example, Pan American carries in the North Atlantic area roughly half of the American-flag carriage, and to all intents and purposes does not have domestic traffic. TWA has both. The figures aren't in for this year, but it would appear that while TWA is probably losing some money domestically, they are probably making some internationally, some but not very much.

Mr. HARVEY. All right. I suspected so, myself, but I was curious in that regard as to what you would say.

Just below that, on page 3, you state your opposition to student or youth fares, and I assume to senior citizen fares, or anything of the sort. Isn't this one way of filling seats and helping to defray costs?

Mr. BAKER. I think there are two points to consider here, Mr. Harvey. One, to the extent fares are truly promotional and truly incremental, this is a marketing tool that indeed all kinds of businesses use, and in the criteria we have proposed for CAB intervention, we have suggested that a baseline for fares should be variable costs. In short, if you can indicate that you are covering the costs associated with the addition of the traffic, then I think we would agree this is probably pretty good stuff.

On the other hand, to the extent that fares are simply designed to serve a particular segment of the market without cost justification, we would feel that such low fares as might be available to students—we would like to see the fares made available to the entire traveling public and not wind up in a position where one part of the traveling public might be subsidizing another.

Our reactions, for example, to the Montreal fares——

Mr. HARVEY. Isn't that a common situation in any price structure, where one product will often subsidize another?

Mr. BAKER. I think in air transportation this has led to some difficulties, and I think, by and large, we would feel such an extensive cross-subsidy is not a good thing.

If in fact certain products or classes of transportation were effectively moving at full cost plus some measure of profit, while certain other classes of traffic were moving solely at incremental cost or something close thereto, you could make the argument that there was some measure of cross-subsidy going on. That would not particularly bother me.

What would bother me is the case where there are classes of traffic moving that were not covering out-of-pocket costs because I think one or two things has to happen. Either the carrier involved has to go bankrupt sooner or later, or, alternatively, passengers traveling in other fare class have to pay higher fares than they otherwise would. I really can't see the justification for asking one class of traveler to support another.

Mr. HARVEY. Except to the extent that you are filling space.

Mr. BAKER. Yes, indeed, sir. Yes, Mr. Harvey.

I wish to make clear that where fare structures truly fill available seats that otherwise would be unfilled, we would raise no objection. On the contrary, that is good business. One of the difficulties I would like to point out for the record here is that frequently one develops these so-called promotional fares and starts filling up seats that would otherwise go unfilled, and then ironically one finds that new equipment is being purchased to accommodate these added travelers and eventually you get to the point where the so-called marginal cost that you are worried about turns out to be exactly the same number as the average cost of your total operation. So, what we are trying to say, Mr. Harvey, is that we agree completely with the proposition you are making, that if in fact you have unused capacity, it is economically and socially desirable to develop a fare structure that would support it. If, however, that goes further and translates into the acquisition of new equipment, what you are really doing is not utilizing otherwise unused space, but simply adopting what essentially are discounted and noncompensatory fares. That is ultimately bad for the traveling public, and it is surely bad for the carriers.

Mr. HARVEY. You speak later on in your statement about the Montreal proposal which has 17 basic fares for travelers in certain periods. Aren't you bothered by the fact that you have 17 different proposals?

Mr. BAKER. Yes, sir.

Mr. HARVEY. Can you possibly run a business with 17 different charges at the same time?

Mr. BAKER. I think there are several problems with the Montreal package. I think it is exceedingly difficult for the traveling public to deal with it. It makes it difficult for all parties to determine the impact on them. I think we have long been on record as saying we would favor more simplified fare structures than seem to be emerging for international traffic; yes, sir.

Mr. HARVEY. I hope I am not plowing new ground here, but I think that the only thing I have to say as far as your taper principle is concerned in trying to make your fares have a specific cost related structure, is that you have a selling job to do. I don't see how you can possibly do it in the period of time that we are discussing now.

It would seem to me that this would be a long-range project, one that you should be thinking about for the future, rather than one that would be instituted in the immediate future.

Mr. BAKER. I think, Mr. Harvey, we would agree with that position completely, and what we have attempted to do here in my statement is simply indicate the general thrust of our thinking. The specific legislation that we have proposed here would certainly not go that far. It would simply provide some basic guidelines relative to cost under which the Civil Aeronautics Board would act, but by no means could it be construed as setting up criteria under which you would establish in short order a cost related fare structure.

It would simply provide high and low thresholds for fares that would guide the Board as to when it would be appropriate to suspend or disapprove a rate.

Mr. HARVEY. Thank you, Mr. Chairman.

Mr. JARMAN. Mr Podell?

Mr. PODELL. Thank you, Mr. Chairman. I have a few brief questions. Just how does the Department of Transportation get into this entire question of fare structure and rates?

I thought this was the CAB's responsibility not the Department of Transportation's area?

Mr. BAKER. Mr. Podell, the legislation that established the Department made clear that the Department is expected to provide policy leadership with respect to all forms of transportation, domestic and international. You are absolutely correct; we have no authority to prescribe rates, or to regulate rates. That is indeed the function of the Civil Aeronautics Board.

Mr. PODELL. Isn't that what you are trying to do here?

Mr. BAKER. No, sir. We are trying to propose legislation that we think in the context of overall transportation requirements would be appropriate for the Civil Aeronautics Board to execute its mission. For example, under the legislation we have proposed and under the provisions of the Senate committee print, no part of the executive branch would be able to take any action at all unless the Civil Aeronautics Board decided it should take action. There is no authority for the Department or the President to do anything at all in this area other than react to action taken by the Civil Aeronautics Board.

Mr. PODELL. Well, I certainly understand that you are trying to provide authority for the CAB. Yet what you are trying to do is set rates. You say on page 2, in asking for additional authority for the Board, "The Board should have the power to suspend and disapprove the international rates and fares of U.S.- and foreign-scheduled and charter air carriers. This would not include the power to fix or set such rates."

The power to veto a rate is the power to fix a rate. I think they are absolutely the same. If you are going to veto or disapprove any rate that is suggested or recommended, aren't you fixing the rate to be charged?

Mr. BAKER. I don't think so. Mr. Podell. I think there is a distinction and this goes to practicalities of how you get to the establishment of a rate. For example, in the event the Civil Aeronautics Board for various reasons told IATA, which is the conference of carriers that is presently engaged in setting the rates, that it did not like the rates they were proposing, but did not prescribe the rates, what they would be doing would be to send them back to the drawing board to develop a new schedule of rates.

Mr. PODELL. Until they came to the rate that you felt was adequate, i.e. fixing the rate. You are doing by indirection what you have prevented yourself from doing by direction. By vetoing every other rate except that which you have personally approved and by "you" I mean the CAB you are, in effect, fixing a rate.

Mr. BAKER. I think your point is exceedingly well taken. We have grave concerns about that issue and that is the reason the criteria we wrote into our proposed legislation are fairly explicit as to when the Board should or should not act. The two principal criteria are that a rate should not be unduly low, and that relates to some of Mr. Harvey's earlier questions as to whether or not it is indeed compensatory,

and it should not be unduly high, and it should not have a detrimental impact on commerce.

Now, if the Board was unable to convince itself, and I think demonstrate publicly that rates being proposed were in violation of those criteria, the Board would not have the authority to act. We feel that is a very important point, and in that sense we would agree with what I think is the line of your question, that we do not believe the Board should be in the position of prescribing the rates. We think the Board should have the power to indicate whether rates fall within some fairly broad parameters and are or are not acceptable. I want to underscore this.

Mr. PODELL. I don't comprehend the fine distinction that you are bringing out.

Mr. BAKER. I think it is a fine distinction because the legislation originally proposed by the CAB to the Senate and to this committee did two things: It explicitly said, yes, indeed, they should have the authority to prescribe rates and, further, the criteria under which they prescribe them by and large should be the same criteria used domestically which are sufficiently broad to allow them, in my judgment, to veto any rate on practically any ground they would want.

Mr. PODELL. The problem that I envision here, is that back home in my district my constituents would probably say that they could fly to Germany via Lufthansa for \$210 until their Congressman got ahold of it and now it is going to cost them twice as much.

Mr. BAKER. Could I comment on that, Mr. Podell?

Mr. PODELL. Don't explain it to me, but you might call Max Schwartz, my constituent, and explain it to him, will you?

Mr. BAKER. Yes, sir, I understand.

Mr. PODELL. I would imagine that we would need some sympathy when we have to explain it back home.

Let me ask you about something else. You said that you are opposed to these special fares which go to certain segments of the public such as youth fares. Does that include military fares as well?

Mr. BAKER. As to military fares, on theoretical grounds I think one would make the same argument one might make about youth fares as to their being discriminatory.

Mr. PODELL. If you deny one, you are going to have to deny them both.

Mr. BAKER. Yes, sir; but I would be perfectly willing to admit on such an item as military fares I would be inclined to rise above principle and face up to the fact that the military compensation system is not the same as the compensation system that is afforded to the average citizen in this country. They make less money and I happen to feel pretty strongly that people who are in uniform are pretty good guys and if Congress and the Civil Aeronautics Board want to give them a break, I am game to rise above principles and applaud.

Mr. PODELL. But it is the kids you can't stand? You don't want to give the youths—

Mr. BAKER. Not at all, sir. I would like to see the fare structure be advantageous to all classes of citizens, the aged, in fact, even the unidentified like myself who I guess rest somewhere in the middle. That is the general proposition. I think it is very desirable that we have the

kind of pressure that develops youth fares because that is the sort of competitive marketplace thing that keeps fares down, and I am for that, but I repeat—

Mr. PODELL. You don't say so in your statement.

Mr. BAKER. I wish to add to that, if I may, sir. I would repeat that when the use of this kind of fare turns into the provision of a special benefit to a special class, I do not think that is socially justifiable. Notwithstanding that brave principle, I stand by my comments on the soldiers.

Mr. PODELL. If we can provide some additional benefit to that class of our society which is unable to afford the standard rates, such as perhaps the youth or the aged or military, and there are empty seats on the plane, I don't know what the big fuss is about letting them get on.

Mr. BAKER. No problem at all, sir, as we are on record as favoring standby fares in the situation Mr. Harvey identified where you are filling space that otherwise would be unoccupied.

Mr. PODELL. Isn't that youth fare?

Mr. BAKER. No, sir. The kind of the youth fare we are talking about is a reservation fare where someone receives a discount but otherwise rides on exactly the same terms as you or I would. In short, he is blocking out the space.

Mr. PODELL. I haven't used youth fares for a couple of years, so forgive me.

Mr. BAKER. My children are getting to the age now where I am sure I will have a personal concern about this, too.

Mr. PODELL. Your testimony indicated that some of the carriers' present financial difficulties have been caused by a substantial shift of the higher yield fares to the low promotional fares. You further indicate that you favor a reduction in the dollar spread, but you also indicate that you do not approve of these promotional fares and gimmicks.

Talk about promotions, here is one where TWA offers a round-trip to London, Paris, and Rome for \$337 and in addition you get two theater tickets in London for the opera, free drinks at a nightclub in Rome, and local hostess service. [Laughter.]

Mr. BAKER. The witness has no comment on the latter.

Mr. PODELL. Have you made your reservation yet?

Mr. BAKER. I want to make our position clear because I think the issues you are raising are very real indeed and I think Mr. Harvey has addressed some of the same things.

Mr. PODELL. Will you explain "local hostess service"?

Mr. BAKER. May I decline to comment on that? Quite seriously, Mr. Podell, the issue of promotional fares is not by any means restricted to international traffic. This is an issue discussed fully in the domestic passenger fare investigation conducted over the last 18 months by the CAB.

To the extent that promotional fares are in fact developing new traffic, are in fact developing new travelers, are expanding air traffic generally, I think this Department applauds them. One of the difficulties is, however, that the promotional fare is designed to get something sold that otherwise would not be and, once sold, what you do is effectively crank it into the mainstream of operations. Unfortunately, and

this is most visible in domestic operations, our analysis would suggest that promotional fares have developed traffic on what amounts to an incremental pricing basis and then the airlines have added capacity to cover this traffic. What one ultimately discovers to one's dismay is that you have a price structure which in the aggregate is moving toward marginal cost pricing while the service being provided is based on full-cost pricing, and you get the sort of economic results we have seen over the last few years.

I think the Civil Aeronautics Board is concluding that has real disadvantages—domestic passenger fare investigation reports have suggested that they have very real reservations about promotional fares which aren't promotional but indeed are permanent discount fares. That is the sort of thing we would oppose for some of the reasons we have discussed.

Mr. ADAMS. Will the gentleman yield on that?

Mr. PODELL. In one second I will but I want to follow through.

Based on what you say, I return to page 6 of your statement, and there you say:

Of course, we find no fault as such with the decreased level of revenue for the carriers flowing from the lower rates for the travelers. We favor air services available on the lowest economic basis to the widest possible market.

Isn't that exactly what all of these promotional things are doing?

Mr. BAKER. Well, I think the important things in that particular sentence are the underscoring of the words "as such" and then in the last part of the sentence the words "the lowest economic basis for the widest possible market."

I want to make very clear that the Department does not oppose low air fares. Quite the reverse, as the Chairman of the Civil Aeronautics Board pointed out in his testimony yesterday, the primary responsibility of the CAB is to the traveling public. I regard the responsibility of the Department of Transportation as identical to the shipping and traveling public.

So indeed we are absolutely in favor of lower fares. However, I want to add we are in favor of low fares based on economic realism because in the short term they generate a lot of traffic and thus are very attractive to the class of travelers involved but result in economic disaster to the carriers. Then before long you wind up with fewer carriers and the traveling public loses.

Therefore, if promotional fares expand the market and get people traveling who would otherwise not be traveling, but in fact then are integrated on an economically realistic basis in the aggregate fare structure, we are all for them. If they wind up, however, as permanent discounted fares which do not cover costs and are detrimental to other classes of travelers or to the health of the operating carrier, we oppose them.

Mr. PODELL. Your answer is maybe. Am I correct?

Mr. BAKER. Well, or in view of the above.

Mr. PODELL. One last thought. I don't know whether or not this is within the province of the Department of Transportation or the CAB, but has anyone given consideration to finding other methods of consolidation of cost of the various airlines?

For example, you walk down Fifth Avenue in Manhattan, and the finest office space is owned by our airlines. If I want to call up an airline, I would do so not based upon where its office is but by the service that I had during my last flight or by some of the ads in the paper, but not by the location of office space.

Each of these offices has an array of help with its own computer reservation system.

Why not have one large office with telephone operators and if you call TWA, the girl says, "Hello, TWA. Can I help you?" And if you call American, the same girl answers "American. Can I help you?" The airlines might be able to save possibly millions of dollars a year.

Maybe some of these things are necessary, but I don't think that all of them are necessary. Congress has a travel agency. We have one office run by about four girls and they handle God knows how many airlines and God knows how many tickets they sell.

Mr. BAKER. Mr. Podell, as a matter of theory I think we agree there are probably economic possibilities as yet unexplored. As a matter of policy, I think that we have grave reservations about sort of injecting the Government, whether it be through the Board or ourselves or what have you, to a greater extent into this and interfering with competition among the carriers.

Mr. PODELL. How about doing a study. I don't say regulating.

Mr. BAKER. Regarding terminal construction, there was a large amount of pressure on the part of many of the air carriers to include in the terminal legislation the Congress passed in 1970 provisions for airport construction. This was opposed by the administration and Congress and it was not adopted. One of the reasons our Department and a variety of other people opposed the proposal was that by and large terminals are economic propositions and self-sustaining. If you get the Federal Government involved in supporting this kind of thing, you lose a certain amount of the marketplace economic heat needed to keep them efficient.

There are other reasons that proposal was not included in that legislation. On the other hand, that is one of the issues involved and I think it goes to the point you are making. But in terms of studying it, yes indeed, sir. The question of functional mergers has long been considered in the railroad industry. The question has been asked: Can you have two railroads that are in competition using the same tracks, the so-called functional merger? There have been activities conducted by airlines where they are using common facilities, perhaps most recently in the area of use maintenance of their large aircraft, and you can derive some real benefits from this kind of thing. We have made studies along this line and certainly I would be glad to make them available to the committee.

But I repeat, it is a matter of policy we are pretty nervous about. We will make the information available, but to try to inject ourselves into this kind of exercise is questionable.

Mr. PODELL. If you have made this study, why don't you avail this committee or the airlines of the benefit of it? There is an association of airlines and they might be interested in the study.

Mr. BAKER. I will be glad to do so, sir.

Mr. PODELL. Don't keep them secret.

Mr. BAKER. Fine. I agree.

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

Mr. PODELL. Yes.

Mr. ADAMS. I won't go into detail because we did this yesterday but you are against the CAB prescribing rates and yet, as I understand it from your answers yesterday, the foreign governments do have the right to prescribe rates for their particular airlines, their department of ministry of transportation does.

Mr. BAKER. That was the statement of Chairman Browne. Yes, sir.

Mr. ADAMS. Now we have the Denver skier special of \$127. Suppose Lufthansa comes in with a fare of \$120 to ski the Alps or wherever they ski in Germany, and the German Government decides they want to do this as a matter of prescribing rates—it was described yesterday how much lower the costs are on Lufthansa than they are on American airlines. If you don't give CAB the power to prescribe rates as they do in the domestic area, and if you can go to Europe and ski for \$7 cheaper than you can go to Denver, don't you think the American airlines in the domestic field are in trouble?

Mr. BAKER. I think it presents trouble. The question was raised in the Senate hearings in a somewhat different context as to whether foreign countries are in fact supporting other activities when they prescribe rate levels which are not economic and compensatory, and whether that be grounds in our judgment for the Civil Aeronautics Board to intervene and either suspend or disapprove the rates.

Our answer is this. To the extent that our airlines are being subjected to what amounts to competition which is subsidized, in short, rates not based on economics and cost, yes indeed, our criteria would make it perfectly clear this is the kind of thing that the Civil Aeronautics Board should worry about.

Mr. ADAMS. But you would not give them the power to prescribe a rate for Lufthansa coming into the United States.

Mr. BAKER. No, sir.

Mr. ADAMS. Nobody is going to prescribe a rate so we just suspend them?

Mr. BAKER. Yes, sir.

Mr. ADAMS. And leave the thing where the Germans say, "We suspend all of you coming into Germany."

Mr. BAKER. Yes, sir.

Mr. ADAMS. At that point then I assume our State Department man is going to tell us how we get out of it.

Mr. BAKER. I am sorry, sir.

Mr. ADAMS. I don't think that is a very good system but I will accept your position as to what you are recommending. I am not sure I want to go to the other position either, but it seems to me if a foreign government has a right to prescribe rates, that we should, if we are going to have a balancing, have within the United States similar authority someplace, which is the reason for Mr. Podell's question.

Right now you are really not in it. The CAB is in it or the State Department is in it and you are explaining both sides to us, but I hope you will think on the proposition I have just advanced that both should have equal powers or the State Department is not going to have a very good bargaining position.

You are using what used to be called in the military "massive retaliation" as opposed to something less than that in terms of your dealing with a particular country on a rate structure basis.

In other words, you go immediately to the ultimate rather than saying, "OK, we are going to prescribe your fares in here and take it or leave it." Then they said we want a little more and so you give them a higher fare. In other words, prescribing a fare gives you a better jockeying position than a sheer suspension of powers.

Mr. BAKER. I think we run into the kind of difficulty that was discussed with Chairman Browne yesterday. There are 21 airlines flying the North Atlantic and while they are not all serving the same city pairs, indeed there are multiple carriers serving multiple cities. As a practical matter, you get in a difficult position prescribing fares. This matter involves negotiations with a variety of people. I do not think that in the event a fare is prescribed by a group of carriers or a single carrier which is deemed to be inimical to the criteria we have proposed, that necessarily means a massive confrontation as between countries.

Mr. ADAMS. But if you give him the power which he requested to say that any passage which is two-thirds of the North Atlantic trade originating out of the United States—Boston, Philadelphia, Dulles and New York—must be carried at this fare, then he has or the United States has with the State Department operating through it, a great deal more leverage in terms of dealing with 21 carriers out of Paris than to say we don't like your fares and we are going to suspend it.

Mr. BAKER. I think in terms of the way the fare structure seems to emerge through IATA conferences this becomes what amounts to a group of carrier discussions. Then they go back to the drawing board. I concede immediately that the positions of the participating carriers are indeed influenced by their governments but I think it is a much less formal and more practical way than making an explicit proposal.

I grant there are problems here, as you imply, and I think they are well worth consideration. On balance we concluded that the difficulties in fare prescription far outweigh those involved in empowering the Board only to suspend or disapprove rates.

Mr. BINDER. I wonder if I might add a word on that, Mr. Adams. I think Chairman Browne's testimony yesterday indicated you lose something when you give the Board the power to fix rates. I think Chairman Browne's testimony indicated yesterday, and we agree, the way our bilateral agreements are worded with foreign countries, if the Board has the power to fix rates and there is a disagreement with a foreign country about a foreign carrier's proposal, and there is no agreement between ourselves and the foreign government about that carrier's rate, the rate goes into effect provisionally even though we don't like it, even though the Board does not like it.

Under those same bilateral agreements, if we do not have the power to fix rates and we get into this situation where we have a rate we don't like and we talk and can't reach agreement, we can then act under whatever statutory power we have and, if the power allows the Board to reject or suspend the rate, we can reject or suspend. So in a sense, giving the Board this ultimate power of fixing or prescribing rates is counter-productive under the provisions of our bilateral arrangements. This is an anomaly you would not expect to find, but it is true. Apart

from the impracticality of fixing rates, this is one of the disadvantages we find in going that extra step.

Mr. BAKER. Let me make a final comment. I think the point Mr. Binder raises is correct. That is the way the agreements read. That is the fact.

On the other hand, I think we would concede also that these agreements are subject to modification and I would hope this question would be raised with Mr. Rein because since this involves the function of foreign affairs which his Department handles, I think that would be worth further exploration here.

Mr. ADAMS. Thank you, Mr. Chairman.

Mr. JARMAN. Mr. Kuykendall?

Mr. KUYKENDALL. Mr. Secretary, to take up a couple of points on this same subject and try to put it more on a layman's plane, are you not saying that because of a peculiar situation of CAB primarily being involved with private enterprise in this country, but in the other countries around the world it becomes primarily governmental matter, that it is necessary, then, when that type disagreement arises, that our Government start negotiating with their government?

Mr. BAKER. I think that is very well put, sir. Yes, indeed.

Mr. KUYKENDALL. So, we are not going to have a private enterprise-oriented function on this side of the Atlantic dealing with a government on the other side, and that is the reason the State Department steps in at a certain level so they will be operating government to government.

Mr. BAKER. Yes, indeed, sir. I think that is the basic underpinning for the legislation.

Mr. KUYKENDALL. Let's try to bring something else into focus. So often these hearings get so complicated that we get out of focus here. Let's talk about how we get into this kind of trouble. Everyone knows that the plushiest international route in the world is the North Atlantic during June, July, and August. And any airline that can't run 80 percent without subsidized fare is not very much of an airline. Everybody also knows that flights between here and Copenhagen in December run about 15-percent full and so anything you can do to load bodies on those flights is good business, don't we, because they run 75-percent empty instead of 75-percent full. So, are we not saying that we should encourage merchandising of the product at the advantageous rate that fit into space that is not likely to be filled at a better rate?

Mr. BAKER. I don't think there would be any argument on that at all.

Mr. KUYKENDALL. I know sometimes we don't get elementary enough in this committee or in this record to say what we are really trying to say. Now, fares between here and Europe in November, sure they are attractive. The 747 is half-full right now. So anything they can do to get bodies on that aircraft is important. But the idea of making reservations on a scheduled airline in July for a 28-year-old guy at student fares is ridiculous, isn't it?

Mr. BAKER. Since I am 43, I might be prejudiced but I think that is the kind of issue we are talking about.

Mr. KUYKENDALL. So you and I both agree that anybody who is old enough to be in Congress ought to pay adult fare?

Mr. BAKER. I would like to phrase it—

Mr. KUYKENDALL. You don't have to comment on that.

Mr. BAKER. I would like to say I would hope all Members of Congress would have the same advantages of low cost fares as all other segments of the population.

Mr. KUYKENDALL. There are certain Members of Congress who could have ridden on student fares last summer, according to the age that was allowed. I don't know whether any of them did or not, but there are several of them who could have.

Mr. Harvey says you are as old as you feel, but I have never been able to convince the ticket agents of that.

So we get down to this kind of economics. The 707 might capitalize out including all crew cost, all gasoline cost, all capitalization of the aircraft with a flat cost of \$60,000 to go to Paris and back if you can fill that up with \$700 fares, but if you run it at 25 percent of \$700, you have lost money. So all of the standby fares and November fares we fill that up with is pretty good business.

Mr. BAKER. I don't think there is any argument at all that we should utilize the equipment in being to the maximum extent.

Mr. KUYKENDALL. I have heard the airline industry accused of being prone to fratricide.

Mr. BAKER. Or suicide.

Mr. KUYKENDALL. I have accused some of my close friends, I see some of them in the audience, of that. However, I think possibly, to come to their defense, the idea of the foreign competition would get down to survival on some of them, is this correct?

Mr. BAKER. I made reference, Mr. Kuykendall, to some relative cost figures on U.S. flag and foreign carriers, and, Mr. Chairman, I do have that paper which I would like to file for the record at an appropriate place,¹ and I think it would suggest that from an economic standpoint, the American flag carriers because of their efficiency are economically better operators. In short, their aggregate costs are lower than those of their foreign competitors.

To the extent that the total fare structures lose their economic rationality, then you are quite right, there is suicide for everybody, and the travelers lose.

Mr. KUYKENDALL. Let me get on one other area before I close, and I know we are going to have to go to a roll call.

I want to carry the line that the gentleman from New York carried about what are you doing here. The idea that the CAB, and I have noticed this with other regulatory agencies, sometimes seem reluctant to ask for the authority that either DOT or this committee may think they need, and maybe the regulatory agency that has as its mandate staying as nonpolitical and nonlegislative as possible, maybe it is understandable that both authority and determine if we think they need any more. They don't have to use it if we give it to them, do they?

Mr. BAKER. I think that would depend on the specific provisions. In the legislation under consideration, the authority would be permissive.

¹ See "1969 Unit Operating Expenses Per Available Ton-Kilometer," p. 58, this hearing and "1969 Unit Operating Expenses Per Revenue Ton-Kilometer," p. 59, this hearing.

Mr. KUYKENDALL. In one last note here, I still don't like the idea of requiring that responses as important and sometimes as massive as are required here in 10 days from the administration, the President, to the CAB, I don't see how you can accomplish some of the things that you would need to accomplish in 10 days.

Mr. BAKER. May I say, Mr. Kuykendall, I am glad you make that point because we agree and that is the reason that there is an additional provision in the legislation we proposed allowing a stay and thus a longer period for examination as opposed to the committee print that the chairman referred to a moment back which contains no such power.

Mr. KUYKENDALL. I yield to the gentleman from Michigan for a question.

Mr. HARVEY. One question.

We have two gentlemen from Michigan, Mr. Baker.

As I read your statement, and I have not had the chance to study it closely, I still feel that it does not reflect the urgency of the present situation. So that I am absolutely clear for the record you are not recommending that we enact legislation that will provide a cost-related fare structure on this taper principle at the present time. Rather, you are recommending something that will do substantially what the Senate did; a bill that will give the CAB the right to suspend rates up to a period of 1 year, or to reject or cancel existing or proposal new rates?

Mr. BAKER. First off, the proposed legislation we have submitted tracks substantially with the Senate subcommittee print. There are some differences.

Mr. HARVEY. That is what you are recommending?

Mr. BAKER. Yes, sir; the original bill that we discussed H.R. 11416, is somewhat different, and, yes, the committee print that has been produced is substantially along the lines we suggest. There are some differences such as the one Mr. Kuykendall discussed, the provision for stay, and so forth.

Mr. JARMAN. Mr. Dingell?

Mr. DINGELL. Thank you, Mr. Chairman.

I am going to ask our good friend from the Department of Transportation for one item and that is with regard to H.R. 8108. I know that bill has been pending for some time down at the Department of Transportation, and I am sure you gentlemen are not prepared to comment on it at this time.

But, Mr. Chairman, I would like to ask that reports on that bill be expedited. I am informed that the staff requested that such reports be expedited from CAB and members of the committee did, yesterday.

In my view it is a very good bill, and, Mr. Baker, I would appreciate it if you would see to it that the reports on H.R. 8108 would be expedited. That is a bill that would define the President's power regarding international air transportation and would vest in CAB greater authority over foreign and American flag carriers.

Mr. BAKER. Yes, sir; I am familiar with the bill and we have had discussions on it within the administration and with the State Department, in particular. I regret the delay and I assure you we will do everything possible to expedite the report.

Mr. DINGELL. My comments are not critical. I suspect, if there was to be delay after this colloquy, they might become critical, but at this moment they are not.

I would observe, I think, a bill of this kind would be of immense help to eliminate some of the bad smells that tend to hang over some of these international selections, and I think it would tend to obliterate some of the practices that go on with regard to these selections.

Mr. JARMAN. Gentlemen, we appreciate your being with us this morning to help make the record.

Mr. BAKER. Thank you very much.

Could I mention one thing for the record?

Yesterday in my testimony I made an error. I said the Board had authority now to suspend rates if they felt them to be discriminatory. That is not true. They have authority to investigate and then ultimately disapprove a rate on such grounds, but not have power to suspend. That was an error in my earlier testimony which I would like to correct.

Mr. JARMAN. The record will stand corrected.

Let the chair announce that we are now under call of the House and it is necessary for the committee to go to the floor and answer this call. We will then resume the hearings as soon thereafter as we can get back to the hearing room.

The committee will stand in recess for a short time.

(Brief recess.)

Mr. JARMAN. The subcommittee will please be in order.

As we continue the hearings, our next witness will be the Honorable Bert Rein, Deputy Assistant Secretary for Transportation and Telecommunications, Bureau of Economic Affairs, Department of State.

Mr. Secretary, it is good to have you with us.

STATEMENT OF BERTRUM W. REIN, DEPUTY ASSISTANT SECRETARY FOR TRANSPORTATION AND TELECOMMUNICATIONS, DEPARTMENT OF STATE; ACCOMPANIED BY JOSEPH A. SILBERSTEIN, CHIEF, AVIATION PROGRAMS AND POLICY DIVISION, OFFICE OF AVIATION

Mr. REIN. Thank you, Mr. Chairman.

Mr. Chairman, I am accompanied by Mr. Joseph A. Silberstein, Chief of our Aviation Programs and Policy Division in the Office of Aviation.

I have a prepared statement which I think might be useful to present. It is not very long and I might also as I go through it elaborate on points which have been raised in the previous testimony and require some clarification. Even before I embark on that, I would like to say that we have prepared and have put in the Senate record, and would like to submit for the record here, an analysis of the rate powers which are exercised by other governments. There has been some talk about that issue and we think it would be useful to have the survey that we have done through our posts in the field.

Mr. JARMAN. It will be helpful to have that in the record and the committee will be glad to receive it. The summary will be placed in the record immediately following your verbal statement. (See p. 83.)

Mr. REIN. This will show that the type of powers sought by the Administration, as Mr. Baker has explained, may indeed be closer to the

power foreign governments exercise than the power which the Board is seeking. It is not entirely correct to say that foreign governments exercise power to prescribe rates. Generally their power might be more aptly described as power to approve or disapprove rates rather than prescription power.

Mr. Chairman, I appreciate your invitation to present the views of the Department of State on H.R. 11416, and to discuss the difficult and delicate problem of regulation of international air rates.

The statement of international transportation policy approved by President Nixon on June 22, 1970, provides that "the effectiveness of the Board in its dealings with IATA and governments should be enhanced by vesting it with authority to regulate rates and fares between the United States and foreign points, subject to executive review." Starting from this premise, my comments on H.R. 11416 relate: (1) to the appropriate scope for authority over international rates; (2) to the problem of effectiveness in dealing with IATA and with governments; and (3) to the need for executive review of international rate actions.

In general, we believe that while H.R. 11416 has a number of useful features it is overly broad, particularly insofar as it would confer international ratesetting powers on the Board.

We think that the public interest supports Board authority to suspend and reject predatory, below-cost rates or excessively high rates and we approve H.R. 11416's impact in those areas. We strongly endorse the retaliatory provisions of H.R. 11416, which would enhance the possibility of open competition and render Board disapproval of IATA agreements, or carrier rejection of IATA rates, meaningful and sustainable over foreign government objection. We are not, however, persuaded that regulation should extend beyond the prevention of uneconomic low rates or excessively high rates, and we are concerned that the broad regulatory powers conferred by H.R. 11416 might detract from, rather than enhance, our ability to deal with IATA and with foreign governments.

It is our responsibility in the Department of State to solve the problems which will arise when this Government tries to make its will felt, in the public interest, in international matters. I think what we all care about in the end is the tariffs which the carriers are permitted to charge and fly under and the rate which the public has to pay. The way we approach the question is to ask ourselves what kinds of mechanisms we can create in this country that will give us the maximum useful input into that question, which is of such great interest to the passengers we provide and to our air carriers. So for us, in our responsibility, it is a practical question: How do we arrange ourselves and position ourselves so we are effective internationally on this question?

Finally, because every international rate action will have political as well as economic consequences, we are convinced that such actions should be subject to stay, disapproval, or approval by the President, within a reasonable period after the Board's determination.

In approaching possible Board regulation of international rates, two basic points provide a framework for our judgments. First, we are dealing with an industry which has grown from infancy to multi-

billion-dollar scale in the absence of such regulation, and, despite occasional problems, has provided generally satisfactory service to the public. The United States has taken the lead in supporting the free development of international air commerce under the Bermuda principles and we have emphasized the need for relatively unfettered management discretion in this dynamic field. Other nations have been much quicker to call for government supervision of such management matters as capacity and equipment, and it has been a struggle for us to uphold Bermuda capacity regimes which are of great and proven value to our carriers and to the traveling public. Thus, from an economic and tactical point of view, we approach the subject of additional regulatory powers with caution.

Second, every international route involves another sovereign nation, and it is therefore, unrealistic to believe that unilateral United States regulation of rates will be accepted without question. International rates will be agreed internationally either between governments, between carriers or through government agreement to permit market forces to operate.

At that point I would like to stop for a moment and say I recall the question that Mr. Adams asked about what do you do if you can't prescribe the rate? If you say no, how do you settle with another country? If you prescribe it or not, you have to settle with another country. There are two ends of the route and ultimately we are going to have to come to an agreement with them or we will be in an impasse. It is going to be negotiated ultimately.

The question we face is, how do we prepare ourselves to get that agreement? What is the best thing we can do to maintain the position that would get us the best agreement from our own point of view?

We have traditionally preferred the third option, although we have accepted the second in the area of scheduled service. The first, inter-governmental agreement, may prove inevitable in some circumstances but it is not attractive, particularly were it to arise from our attempt to set rates over foreign opposition, and as in the maritime field, on the basis of information limited by foreign government strictures against compliance with United States regulatory requirements. There is thus added reason for caution, from the jurisdictional point of view, in approaching international rate regulation.

Within this framework, we do not find adequate justification for the full scope of authority conferred by H.R. 11416. With the exceptions of preventing predatory, uneconomic fares or excessively high fares, we believe that the forces of competition and the structure of the industry can be relied upon to establish reasonable rates, provided that there is sufficient power to support carrier economic judgments against IATA pressure or foreign government intransigence.

The intense competition on international routes, the substantial capacity deployed, the real threat of charter competition, and the pressure of burgeoning tourism interests have created effective pressures against unreasonably high IATA rate agreements in most international markets. Indeed, in the absence of IATA agreement, the present structure of the industry would almost certainly keep rates very close to costs on the main international routes. Thus, protecting the pub-

lic against excessively high rates can, in our judgment, be accomplished by demonstrating clearly that such rates will not be tolerated, either under an IATA agreement or a series of individual filings, and by having available powers that will permit competitive carrier filings to come into effect. H.R. 11416 goes beyond this requirement and would substitute government regulation for carrier competitive judgment as a means of establishing rate levels outside the prohibited zone. In our view, it would be a far more effective international posture for the U.S. Government to use its authority in support of carriers' rights to implement competitive rate decisions rather than in support of our own regulatory wisdom.

The same market factors which now work against excessively high IATA rates may create pressure, especially in the North Atlantic, for predatory, below-cost rates designed to permit financial resources to be used to sustain losses and crush smaller, less well-financed competitors. While we have no indication that any government would be willing to subsidize economic warfare by a national carrier against its scheduled or nonscheduled rivals, and while there is no carrier which appears able to sustain heavy losses for predatory purposes for any substantial time from its own reserves, we cannot entirely discount the threat of such behavior with the eventual hope of reward in a less competitive market. Indeed, the formation of non-IATA daughter companies by some IATA carriers may signal an assault of this kind. The philosophy of our antitrust laws stands against such predatory tactics—no other nation could defend them—and suspension and rejection of any such rates by the Board would seem to be clearly in the public interest. H.R. 11416 would of course reach such rates, but we believe it should be much more narrowly targeted in this regard.

From the point of view of enhancing the Board's effectiveness in dealing with IATA and other countries, the breadth of H.R. 11416 is also questionable. Other nations, and European governments in particular, have resented U.S. assumption of regulatory jurisdiction over international transportation rates. Their complaint against the Shipping Act is a familiar story and their objections and counter actions to the application of the recent price freeze to international transportation is fresh evidence that H.R. 11416 would not create an atmosphere conducive to rapid solutions to what must ultimately become negotiating problems. While foreign governments often possess broad rate powers, these powers are not exercised in a regulatory framework and have been utilized against us mainly to prevent departure from IATA agreements. The pressure on foreign governments faced with a Board-set fare not to give in to U.S. "dictation" would be very great, and in my judgment, very difficult from the pressure against accommodating to U.S. sponsorship of a carrier-initiated rate filing.

In the case of uneconomic low rates H.R. 11416 may prove a hindrance to action in some cases. Under a number of our bilateral agreements, we have committed ourselves to permitting foreign rates to take effect provisionally, over our objection, if the power is conferred upon the Board to fix fair and economic rates. Thus, for example, were we to object to the Lufthansa filing with H.R. 11416 in effect, and were Germany to resist that objection, the Lufthansa rate would be placed into effect pursuant to section 1102 of the act.

I believe that point was also covered by Chairman Browne in his testimony.

For this reason, as well as the economic and foreign relations reasons I previously mentioned, I believe that it would be to the advantage of the United States for the Board not to have the power to compel the adoption of "reasonable" rates. To avoid the activation of this provision in the bilateral agreements, the Board's authority should be limited to rates which are unreasonable high or low and are detrimental to the commerce of the United States.

From the point of view of effectiveness, the proposal in H.R. 11416 to add retaliatory powers under a new subsection 1002(g) (2) appears to us to be critical if we are to be able to deal effectively with a number of problems we have faced, and are facing, in international air transportation. Retaliatory power would not, even if combined with suspension and rejection authority over excessively low or high rates invoke those rate clauses granting provisional effect to foreign rates to which we object. It would make more meaningful rejection of IATA agreements and consequent competitive actions by U.S. carriers, by giving us a tool to make such competition work. The committee is certainly aware that such powers would have been of enormous value in the 1963 Chandler controversy and greatly beneficial in the 1964-67 situation in the North Pacific where, despite Board rejection of excessively high IATA rates, it seemed apparent that foreign resistance would thwart any competitive initiative by U.S. carriers. At this very moment we face a similar situation arising out of European objections to non-IATA cargo filings by Seaboard World. The powers continued in proposed subsection 1002(g) (2) are urgently required.

I believe that almost everything that I have touched on indicates the foreign relations sensitivity of international rate regulation. Confrontation, or at least hard negotiation, are almost a certainty when international rate powers are exercised.

Substantial public, press and tourism interests on both sides of a route make it certain that the exercise of such powers will be an event of political, as well as economic significance. For this reason, I think it indisputable that the President should have the opportunity of staying, disapproving or approving Board action within a reasonable time after Board decisions.

The President's ultimate responsibility for international aviation affairs as they impact on foreign nations is made clear under section 801 of the Federal Aviation Act as well as under part 213 of the Board's regulations, which deals with retaliation against those, who in violation of an agreement, unfairly limit the schedules of U.S. carriers. There is simply no reason why events of the significance contemplated under H.R. 11416 should take place over the objection of the President, and whatever its eventual scope, H.R. 11416 should provide for executive review.

Mr. Chairman, the administration's thoughts as to how the purposes sought by H.R. 11416 might be more finely focused so as to hit just the targets I have indicated have been described for you by Assistant Secretary Baker of the Department of Transportation.

I thank the committee for the opportunity to present our views and I would be happy to answer any questions you may have.

(The summary referred to previously follows:)

SUMMARY OF POWERS OF FOREIGN GOVERNMENTS WITH RESPECT TO INTERNATIONAL AIR FARES

NOTE: Where an asterisk appears, text of laws referenced may be found in *Air Laws and Treaties of the World* prepared by the Committee on Commerce of the United States Senate, July 1, 1965, at pages noted. Information summarized for countries in Group I below is new or has been updated by information supplied by American Embassies in October 1971; information related to those in Group II is derived from the report mentioned above.

GROUP I

*Australia.

Air Navigation Regulation 106-A gives government power over international air fares; while no specific rate power article 12(1) (pg. 171) and article 26 (pg. 178) confer broad powers.

Austria.

Section 7, Federal Law of May 25, 1961. Fares must ensure safe and economic operations as well as reasonable profit for carriers. Procedure under bilateral applied, which means carrier agreement, or failing that, intergovernmental agreement.

*Belgium.

Law of June 27, 1937. DGCA has authority to disapprove. Foreign carrier's government can appeal to foreign Ministry. (article 5-pg. 251)

Canada.

Chapter A-3, Section 14(M). ATC may prescribe "just and reasonable" rates.

*France.

Aviation Code Article 129. Rates shall be submitted for approval. Gov't guides Air France and UTA rates and positions in IATA. (page 721)

*Germany.

Authorization for scheduled service extends to flight rates articles 20 and 21 (page 761); revision of 1968 did not change substance of law as it relates to powers over rates.

*India.

Aircraft Act of 1934. Power to approve or disapprove. (page 953)

Ireland.

Air Navigational Transport Act of 1965—Minister has "absolute discretion" to disapprove rates.

Italy.

Code Navigation, Article 779 states: "International airline services may also be licensed to foreigners when it is provided for in international conventions." No specific mention of fares but Ministry holds that it has power over international rates and accordingly disapproved Seaboard rates in October 1971.

*Japan.

Civil Aeronautics Law—Article 129(2) (pg. 1474) power to order altering of rates—Article 129(4) (2). (Note: Under Article 129(5) permit may be suspended or cancelled for violating provisions such as 129(2). Article 105 (pg. 1469) refers to "reasonable" and "no discrimination." Has been used to disapprove low rates filed by U.S. carriers.

Mexico.

General Communications Law (1940), Articles 49 and 50. All fares must be approved. Consideration given to carrier costs and expenses.

Netherlands.

No rate power. Some use of bilateral provisions.

New Zealand.

No rate power.

Norway.

Rates and fares subject to approval of Ministry of Transport. No specified rate making power.

Portugal.

No regulation or legislation specifically conferring powers over international air fares.

Spain.

Air Navigation Law No. 48 of July 1960, Chapter XII, article 101 states fares will be approved in advance by Minister of Air. No procedures for setting fares.

Sweden.

Rates analyzed and approved but not specific rate setting power.

**Switzerland.*

Federal Law on Air Traffic. Article 30. Fares must be approved. (page 2364).

United Kingdom.

Power to approve and disapprove fares; also, air service license either specifies tariff, or manner in which tariff is to be determined—but licensing only applies to aircraft of such countries as the Minister of Aviation prescribes. In the Part 213 proceeding, BOAC witnesses testified under oath that licensing did not apply to U.S. carriers, because the Minister had not “prescribed” the U.S. Under Article 73 of the Air Navigation Law of 1970 foreign registered aircraft cannot lawfully pick up or set down passengers without a permit. For technical reasons permits do not always contain tariff provisions but a permit would be withdrawn if the airline did not observe the relevant bilateral aviation agreement provisions.

GROUP II

**Afghanistan.*

No rate power, but vague broad power in Article IV (pg. 3) and Article 15 (k) (13) and (17) (pg. 5 & 6).

**Argentina.*

No rate power (page 15).

**Brazil.*

Power to approve rates, but only undertaking to observe them—Article 37(e) (pg. 272). Not a rate-fixing power. (Also see Article 68, Sole Paragraph, at pg. 276).

**Bulgaria.*

No rate power (see section 5, 8, and 10, at (pgs. 297-9)).

Israel.

No rate power.

**Lebanon.*

No rate power (page 1315).

**Philippines.*

Power to fix rates—Section 10(c) (2) (pg. 2087).

**Romania.*

No rate power, but see Article 85 (pg. 2172) with regard to domestic transportation.

**Saudi Arabia.*

Power to fix rates—Article 23 (pg. 2193).

**Taiwan*

(*Formosa*).

Power to fix rates, through interplay of Article 17 (pg. 2399) and Article 71 (pg. 2406).

**Thailand.*

Power to “consider and authorize” rates, with the approval of the Minister of Communications—Section 15(3) (p. 2416).

**Union of South Africa.*

Power to fix rates in a condition to a license—Article 11(3)(c) (pg. 2506) but license not required when service covered by bilateral—Article 2(2) (pg. 2500).

U.S.S.R.

Rate power re international flights not clear, but clear power to fix rates domestically.

Yugoslavia.

No rate power.

Mr. JARMAN. Thank you, Mr. Rein.

Let me ask this question: At the beginning of your statement you refer to a statement by President Nixon in June 1970, and quote in part:

The effectiveness of the Board in its dealings with IATA and governments should be enhanced by vesting it with authority to regulate rates and fares between the U.S. and foreign points, subject to executive review.

Then on the second page of your statement, you say :

We are not, however, persuaded that regulation should extend beyond the prevention of uneconomic low rates or excessively high rates.

Are you then completely in accord with what the President has said, or are you drawing a distinction there as to what you think the authority is that the Board should have?

Mr. REIN. We are completely in accord with what the President has said. As you know, the President's policy statement, and what I quoted is the full text on that issue, said that the Board's power should be enhanced by vesting it with authority. The further comments that I have made and Secretary Baker has made referred to the scope, the appropriate scope of authority, which was the question that was then not finally resolved, in the policy statement which left open the issue of how much authority ought the Board to have. It is quite clear that everybody agreed some authority should be granted, and we have further explored the question how to enlarge on it.

Mr. JARMAN. Then you are saying the Board should have the right to set a ceiling and a floor and within that area the carrier should be left to work out what the rate should be? Am I accurate?

Mr. REIN. I think that the practical effect of the administration bill may be to provide a rough concept of a ceiling and a floor. We are not asking for the specific authority to establish known ceilings and floors and to post them.

What we are asking for is the authority to suspend and ultimately disapprove individual rates which, looked at in their totality, given the conditions of the ticket and the type of service provided, are unreasonably low or unreasonably high, without going further and saying therefore we establish this floor or this ceiling.

We are trying to preserve the maximum flexibility but at the same time have power to deal with things that get out of line.

Mr. JARMAN. But, then, leaving to competitive forces of the marketplace the actual rates that are in being in most instances?

Mr. REIN. Yes, sir; we think that carriers are in a better position than regulators to make decisions on how best to adjust rates.

Mr. JARMAN. Thank you.

Mr. Dingell?

Mr. DINGELL. Thank you, Mr. Chairman.

I am curious. You advocate, then, that the CAB should only have the power to suspend this kind of rate, am I correct?

Mr. REIN. No, sir. And to disapprove it, if upon full investigation it is found to actually violate the criteria of the suspension.

Mr. DINGELL. The word suspension is a word of art. I am sure you are aware of all of its implications. It means that for all intents and purposes that the rate continues to be utilized, the carrier continues to operate with that rate for a goodly period of time until the proceedings have been completed before the regulatory agency to bring that particular rate to a halt.

Now, is that exactly what you are asserting that we should have done here?

Mr. REIN. No, sir. I think it is the opposite. The way the bill is drafted would permit the Board to suspend the use of that tariff and

to not allow that tariff to go into effect pending either the running of the time provided, which is 365 days, or completion of the investigation which would validate that rate, so it would not work that way.

The suspension power would permit rather quick termination of the right to use that rate.

Mr. DINGELL. Well, look, for example, at some rates here by an American carrier, I am sure you can see them, U.S.A. Denver Skier Special \$176, Los Angeles to San Francisco, \$282, which includes air fare, hotel and car, to London, \$237, London-Paris-Rome, \$237, Ski Alps, \$277.

Now, I am curious. Would you say any of those would fall in the vein of what we are discussing here as being unreasonably low for an international carrier? Let's say it was Lufthansa coming in with Ski the Alps for \$100 or something of that order. Would that be subject to the prohibitions of the legislation you are discussing?

Mr. REIN. If I think you were down at \$99, I would have a pretty good guess that it would. I am not in a position to comment on those fares one by one at this time because they each have different terms and conditions and add-ons, in terms of ground arrangements and the like. I think each one could be analyzed against the prohibitions. We are not asking in the Department of State to have the power in the Department of State to do that analysis. That is a job that the legislation would confer on the Board, and I don't have all of the facts and figures with respect to any of those fares and load factors on those routes and the costs on those routes.

So, I can't answer that question.

But I don't think that the Board would have grave difficulties in making those judgments.

Mr. DINGELL. Thank you.

Thank you, Mr. Chairman.

Mr. JARMAN. Mr. Harvey?

Mr. HARVEY. Thank you, Mr. Chairman.

Mr. Rein, how can the market forces, or the forces of competition as you described them in your statement, operate when a carrier that is 100-percent privately owned sits down to negotiate an agreement with a carrier that is 100-percent government owned?

Mr. REIN. Sir, I think that gets at the issue of subsidy and access to government pocket and I think what you are asking is whether a carrier which is privately owned can stand up in competition to a carrier which is government owned.

Mr. HARVEY. I think that is the nub of the whole question before these hearings here today. U.S.-flag carriers argue that some foreign carriers are up to a hundred-percent government owned. Most of them receive either direct loans from the government or some form of government subsidized or government guaranteed loans. Thus, they aren't operating under the same set of circumstances at all. Foreign carriers really aren't in the same ball park as 100-percent privately owned airlines.

Yet in your statement you speak of having the market forces and forces of competition operate effectively. I don't see how you can expect that to happen.

Mr. REIN. I think I will answer the question this way. There are both advantages and disadvantages to government ownership and the disadvantages, if you look at the cost—and Mr. Baker is going to present for the record the cost of the carriers involved—the disadvantages seem in this case to outweigh the advantages. In terms of operating effectiveness, the privately owned U.S. carriers are more effective. They have been able to respond more quickly to forces of the market. They are operated more dynamically and in terms of their operating costs they have been able to beat the foreign carriers despite the difference in labor rates.

That is one thing.

Second, being government owned does not guarantee access to government funds. Some foreign carriers indeed have been subsidized but in the past we have subsidized U.S. carriers on certain routes and continue to do so in local service. I don't think that any of the witnesses here are aware of situations in which foreign governments are subsidizing carriers in hopes of conducting a kind of rate war which would knock privately owned carriers out of the market.

I would also point out that some of those terms are terms of art. Some of those are loans guaranteed not by foreign governments, but by our Government. That is a reference to the Eximbank and to air carriers purchasing U.S. equipment financed under Eximbank arrangements. So it is our Government that is doing it, not necessarily the foreign government.

But that is a side point.

I think traditionally foreigners have been afraid of U.S. carriers. They have looked to more and more restraint and control as means of holding down competition. That is why we are hesitant of acting as if we were trying to restrain things and control things to protect our carriers.

We think there is a time when you say "No." We think when the actual rate behavior gets to the point where a carrier operating efficiently and effectively can't stand up to it because he is up against a subsidy, we have got to say "No," that is not permissible, let's get ourselves out of this and get back in the competitive range." But I don't think at this point we are yet in a position where our carriers can't compete.

Mr. HARVEY. Let me ask one other question since time is short. Suppose one of our 100-percent privately owned carriers goes to the IATA conference along with a 100-percent government-owned carrier. The government-owned carrier is going to go there with some instructions from its government relative to the type of fare structure that it can negotiate. We know that CAB doesn't give any guidelines to the private carrier. Does the administration provide any guidelines at all? Should any guidelines be given?

Mr. REIN. CAB, sir, has from time to time issued general instructions or guidelines to the U.S. carriers. Chairman Browne read into the record part of an instruction or letter of advice which the Board recently gave to the carriers before they met in Miami.

Now, because the Board has not had international rate powers, power to disapprove certain things, the carriers have been free to read those instructions and make their own best judgments about what to do.

Mr. HARVEY. Yes, but the President is going to have the right to veto this statement. Is the President, regardless of who he is, going to recommend guidelines to members of the conference?

Mr. REIN. The President would have the right to review actions by the Board.

I think the Department of Transportation and the Department of State have both from time to time addressed themselves to the Board on specific issues before a rate conference.

Mr. HARVEY. I know, but we have experienced, once in my memory here, what happens when the Board allocates routes, and the President turns around and makes vast changes in these routes.

My point is this: We are sitting down to discuss fare structures; is the President going to provide guidelines that the Board can use in discussing with the 100 percent privately owned carrier whether or not they are in the ball park?

Mr. REIN. Well, sir, I think it is fair to say this. We don't conceive of the President's role in this as supplanting the role of the Board. We don't believe the President will review these decisions and attempt to amend them from the point of view of his economic judgments under the criteria. He will be doing this as foreign relations. What he will be saying is don't do this—

Mr. HARVEY. I am bothered by this right to veto. I don't know of any comparable circumstances in our Government where one of our agencies can sit down and do something and then have the President veto what has been done. I can see the point that you are talking about here, but I do think the President has some affirmative duty, as the Congress has often said, to permit us to get in on the takeoff as well as the crash landing. I think that he has some duty here, and it would seem to me important that he give the CAB and the parties concerned some measure of this thinking.

Do you disagree?

Mr. REIN. Sir, I think the President in taking action under the powers that we have sought, if he were to disapprove or stay an action of the Board, I think he would make every effort to explain his thinking as best he could. There may be areas in which his thinking relates to national security or other classified matters which are hard to explain or where a full explanation would compromise a negotiation that he was conducting in another field.

I think that has to rest in the President's discretion. I don't think, however, that we are really asking for the President to have an unlimited blanket right to review what CAB does in any way that he chooses and say, well, without explaining it, I don't like it. We are really pointing out that this is an international field and the Constitution lays upon the President responsibility for our foreign affairs.

Mr. HARVEY. Thank you.

Mr. JARMAN. Mr. Adams?

Mr. ADAMS. Mr. Rein, I want to understand these bilateral agreements that you have referred to.

Do our bilateral agreements with the IATA nations provide that if our Nation regulates rates, then any rate that the IATA nation wishes to set automatically goes into effect and remains in effect provisionally?

Mr. REIN. Basically, with the most important aviation countries, that is true.

Mr. ADAMS. How long does it remain in effect provisionally?

Mr. REIN. Pending resolution of international arbitration.

Mr. ADAMS. All right. So, then, you are saying to me that the questioning that I pursued with Mr. Baker and with Mr. Browne on having the CAB set rates would trigger the treaty obligations we had and make all of their provisional rates valid?

Mr. REIN. Yes, sir.

Mr. ADAMS. So Lufthansa could come at \$120?

Mr. REIN. Yes, sir.

Mr. ADAMS. You have said we could only use suspensatory powers and we could use retaliatory powers and these are not covered by the bilaterals, is that correct?

Mr. REIN. I am saying bilateral rate clauses are written in the alternative. They say in a situation in which the Board exercises powers comparable to its domestic powers, then rates take provisional effect. They have an alternative clause saying in situations where the Board does not exercise powers comparable to its domestic powers, then at the end of a consultation over a dispute, each side is free to take whatever action it considers appropriate.

Mr. ADAMS. So you end up at the same effect in both cases, they can put into effect the rates they want, correct—yes, sir; or no, sir?

Mr. REIN. No, sir. In the second case where the Board does not exercise those powers, the Government of the United States would be free to take whatever action it considered necessary including saying no to Lufthansa.

Mr. ADAMS. All right, by saying you could not land?

Mr. REIN. It would ultimately come to that as it always does, because ultimately that is the only weapon either side has.

Mr. ADAMS. Under the bilaterals that we have, if CAB were to regulate the American carriers that are operating in the international field, if you include the Pacific area, and were to indicate to foreign carriers that came in with rates that were what they considered to be injurious rates and used the suspending or the retaliatory power, would it violate the bilaterals?

Mr. REIN. In other words, if the Board were—

Mr. ADAMS. We regulate out over the Atlantic TWA and Pan Am, and we regulate out over the Pacific Northwest, Pan Am, TWA and others, but we don't touch any of the international carriers at all. They are still free to go at whatever rate they want. But if the CAB determined that a particular rate was not an appropriate rate, in other words, it was below cost or subsidized rate or rates of various kinds like that and said if that rate continues we are going to suspend it, would it violate the bilaterals?

Mr. REIN. I think that is a hard question, and the reason is—

Mr. ADAMS. Obviously, or I would not have asked it otherwise.

Mr. REIN. I will try to say why it is a difficult question, not just to say it is difficult.

The reason is that the mere suspension and rejection of predatory rates of an international carrier would not in itself trigger those clauses granting provisional effect. But the real world effect of regulating your

own carrier, since all carriers have to come to the same rate eventually to meet the public demand, is to indirectly exercise very substantial regulatory authority over the foreign carriers.

Mr. ADAMS. Of course. What I am asking you is, if I want to do what I want to do in this thing, which would be to regulate, this can be done outside of the bilaterals just like you are suggesting a scheme for doing it outside of the bilaterals?

Mr. REIN. Well, sir—

Mr. ADAMS. If you want to give us an opinion, and talk to counsel before you do it, I will be very happy to have you supply us with a written opinion, because it is a very serious question. As you know, I am concerned about the wrenching effect that international rates have on the domestic rates, just as the wrenching of international routes has on domestic route structure, and I think we have to harmonize these in terms of it, and this bill does not do that. Your proposal doesn't do it. The CAB bill does it.

Mr. REIN. I will give you a written opinion on that question.

(The following opinion was received for the record:)

If the Civil Aeronautics Board were enabled by the proposed legislation to prescribe rates only in respect to United States carriers, would this trigger the provision in the bilateral agreement we have with most of the principal aviation countries that a rate proposed by an airline of one party to which the other party objects, will nevertheless be permitted to go into effect provisionally, pending settlement including arbitration of any dispute between the parties in accordance with procedures specified in the bilateral?

It is the opinion of the Department that such legislation would bring into force this provision.

Mr. REIN. I was going to say that the situation you are describing is very parallel to the situation that existed under the freeze, where we said the freeze did not apply to foreign carriers, but it did apply to American carriers serving international routes, and the competitive effect is that it applies to foreign carriers because they can't go up while the U.S. carrier stays down.

We get ourselves in a box. If we regulate and put down an international fare in the Pacific, we would want to take advantage of those provisional effect clauses, because we would want the Japanese to put our fare in provisional effect. Once we started arguing for the advantages of provisional effect, we would be at a disadvantage when the other fellow was trying to reduce things. The way those things are written, you can't have the best of both worlds. You can't take an advantage on the high side, and avoid provisional effect for rates which we consider too low.

Mr. ADAMS. We don't try to do either. We just try to regulate on the same basis as we do domestically for our domestic carriers or we may end up having to try to bail Pan American out, and this is in the international area. If we don't do something about regulation and we have to end up doing something by subsidy, we have a problem.

So I am not arguing or questioning you on the academics. I am asking you how far we can go and what we can do in this thing to keep private enterprise alive as opposed to either some kind of Government subsidy assistance—

Mr. REIN. Yes, sir; and I am saying under the administration bill we can deal with the excessively low fares very effectively by suspend-

ing them and rejecting them and thus keep the fares at a level which will be compensatory and will permit our carriers to exist at a reasonable profit. That is always provided for.

Mr. ADAMS. All right. This is what our problem is. This is the problem we have had with the airline industry, and it has not, in my opinion, been their fault, or management's fault, but we deal with projections. You have stated in your comments to some of the others that the problem in the past has been that the American carriers have competed very well, and that Europeans and others have been involved with trying to keep American carriers from overwhelming them.

Now, the point that I am making is that in both the technical field and in the air operations field, we should be aware of the fact that a new day has arrived, and that the American carriers are no longer in this position. The European carriers now have the identical equipment.

Mr. Harvey brought out, and Mr. Springer brought out, that their wage rates are about half, and you can't tell me that just because we have got an American manager over here who is the world's smartest man, that you are going to take identical equipment and you are going to take wage costs at half and maintain through the next decade that the American airlines are going to be able to cut fares and be competitive. Now, can you? I just don't think that projection is valid.

Mr. REIN. Well, sir; I would say this. You have to look—I think Chairman Browne made this point—at the productivity of that labor.

Mr. ADAMS. Productivity is just another way of saying how well you do it. What I am pointing out to you is that if you use a low side authority rather than prescriptive rate authority, then you will have a European carrier come in and say, "We can meet our variable costs or whatever you want to call your costs—your cost factor—for about a quarter or a third less than what the American carrier can do it. Two-thirds of the people traveling are going to be the American market. We want to take American market," and they will take it up to capacity.

Under your rules, the Board is going to have to allow their rate, and it is going to go below compensatory rate for the American carrier.

That is what I am concerned about, and that is where I think we may be going, and I want your answers if you think that is a danger. If you don't think it is, we will put you on the record, and we will go with your bill out of the committee and worry about the consequences in 5 years.

Mr. REIN. Sir, I want to say two things. First, you are raising a question of the criteria for a rate being unreasonably low. You could take our bill and if you felt that, and Congress felt that, upon examination that there was a real problem of foreign carrier costs going below U.S. carrier cost, you could set the standards of what is unreasonably low with respect to cost of U.S. carriers alone. That is a possibility.

Mr. ADAMS. You could?

Mr. REIN. In this legislation, sir, you can write it as the Congress chooses.

Mr. ADAMS. And you think you can put that across, you as a member of the State Department, to the Europeans in carrying out your bilaterals?

Mr. REIN. Sir, I think there are grave dangers. I think it could be done. I think they would respond by saying now we will take a few cracks at the kind of things you like to do that compete very well

because we have to protect ourselves. I think once you start the road down to protectionism you are going to get it right back, and I really feel that when you look at these labor costs, two things are necessary. First, in an international route you pay the costs on both sides. So whatever Lufthansa pays somebody in Germany, when they come over here to hire a ticket agent, and they need them on both sides, they pay U.S. rate and our carrier gets advantage of lower foreign costs insofar as they hire a certain part of their personnel abroad. So that alleviates some of that problem.

Second, foreign wage costs are going up quite quickly and we are going to have revaluation of currency and that is going to impact on comparative rates.

I think it goes through cycles but I think, if you want an opinion, that the foreign costs are higher than ours now and probably will remain higher both on the question of how the companies are managed and set up and also on the fact that their relative wage levels are going up in relation to ours, getting to be a greater percentage of ours, and I think that will continue as their living standards rise.

Looking at all of that, I am not sure that we don't want, looking at total interests of the U.S. carriers, to preserve the forest environment, maybe take some risks to be sure, in order to keep the situation as a whole to our best advantage. And then again there are other rates; it is not only Europe. We fly down to Latin American and other routes where we may have high cost carriers on the other side. If we start to say a factor we have to take into account is lower cost, and we don't want the fare to go to a point where it hurts us because somebody else is lower cost, do we want to subject the public to that when they travel to points that have high costs? So, you may have to make the public pay.

There are a lot of hard choices to be made. I don't think the risk of being run out by a low cost carrier is sufficient at this point to risk the other things that we have to take into account.

Mr. ADAMS. Thank you. I just remember the shipping industry.

Mr. JARMAN. Mr. Kuykendall?

Mr. KUYKENDALL. Is it not true that there are no major foreign carriers in the world that deal almost or entirely in non-domestic operations?

For instance, we will keep beating Lufthansa to death here in this hearing, but there are a lot more companies involved. Air France is a domestic and international carrier. BOAC is. Lufthansa is heavily domestic and overseas. We have, for instance, one airline, Pan American. They can go broke on the North Atlantic. Lufthansa can't. This is a situation we have got here. It is very hard to talk about ecologically saving the alligator when one is biting your leg and that is what is happening here, I am afraid.

For instance, you talk about productivity. A pilot is a pilot. In fact, if you want to get right down to it, they let their pilots fly longer than we let ours fly. I bet you when you get down to cases, theirs are more productive than ours, not less, per day, much less per dollar.

Sure, the ticket agents have to be handled on both sides of the Atlantic, but that is a drop in the bucket. Their pilots and their major mechanical operations are all in their home base and that heavy stuff is there. And, yes, if we can survive for the next 10 or 15 years, it will

probably all balance out. I have hopes that it will, but we are now talking about next summer.

So I don't buy the idea of your talking about productivity. That is like a supermarket selling below cost and making it up on volume. It just does not work that way; does it?

Mr. REIN. I don't want to comment on supermarkets.

Mr. KUYKENDALL. It doesn't, anywhere. You can't sell below cost and make it up on volume.

Mr. REIN. I agree that you can't do that.

Mr. KUYKENDALL. How can you possibly talk about productivity making up for a minimum of a hundred percent difference in cost of the entire ground and air crew? Just to what extent is the executive cost away from the airport running an airline?

Mr. REIN. Well, I think that Mr. Baker is going to supply for the record some actual figures, and I don't want to theorize about where the costs arise and how you differentiate them—

Mr. KUYKENDALL. How do you go about being more productive as a pilot? You twist your wheel and go farther? You couldn't have a more productive pilot if you are flying across the Atlantic—

Mr. REIN. I think the point is in cabin crew you can't draw a distinction. You certainly can, in mechanics and ground crews, draw distinctions among carriers as to how many people it takes to handle passengers.

Mr. KUYKENDALL. Wouldn't it be more typical for TWA mechanics to be more productive than the one at Air France?

Mr. REIN. I know someone from TWA is here.

Mr. KUYKENDALL. I know he is not going to claim it.

Mr. REIN. I am not sure if we give TWA a chance to do all of its maintenance in France, they would take it. I think U.S. carriers like to do it here because it is less expensive. The overall operation is done better, it is done with fewer people, and the work rules maybe are better. I am not an operator, and I don't want to pretend to be an expert, but I think that the numbers speak for themselves.

I think certainly one of our carriers across the North Atlantic is making money across the North Atlantic, and I don't want to say why one doesn't and the other one does, but it is possible for a U.S. carrier to do so, because it is happening.

I think the October figures came out and reflect again substantial earnings across the Atlantic. I don't want to say one can and the other can't. That is a management matter. Someone else can speak to it. But I think we are not yet to the point where because of advantages that foreign carriers possess, their costs are absolutely lower. They are just not.

Mr. Baker will put the figure on the record, and I think we could find an explanation for that. It is not cabin crew, to be sure, but somewhere, somehow there is an explanation of how you tighten up your operations. I think the rest of the problem, we all would agree, is to get those differences in costs to reduce themselves over time.

Mr. KUYKENDALL. Let me ask you to consider something here; not answer it, consider it. When a half dozen major air carriers in this country get on the verge of receivership, you are not going to answer one iota, we are. They are going to be up here for guaranteed loans and

subsidies, and we are going to ask ourselves why didn't you think of this 5 years ago? This is not a pipedream. This is something we are already in the situation with the railroads and in some cases we are pretty close to it with the airlines. We are talking about reality and we want to try to avoid the disaster that theory got them into. You should have heard Mr. Saunders of Penn Central 14 months before he went under, making the statements about how he was going to do this and that, but it didn't work that way.

Now let's take this hat off completely and put another one on.

How many of the young people that went to Europe last summer ended up indigents in Europe?

I don't think you can give me that figure, but I would like for your people to give me personally and for the record a report, first on how damaging that situation was in Europe last summer. I know it was to an extent. I want to know whether there is some way that, before the issuing of visas some means of support should be demonstrated instead of dumping them on the shores in some cases with not even \$20 in their pocket. I want to know whether or not you need help here.

I am inclined to think you do.

I was with some State Department people, some consuls general and ambassadors in Europe, and some of them were terribly upset about having those kids dumped in their lap. How many times did this happen?

And, second, do you need any help in possibly requiring some means of support on "student fares" when they are dumped on foreign shores?

Thank you, Mr. Chairman.

(The following information was received for the record:)

YOUNG PEOPLE REQUESTING FINANCIAL ASSISTANCE AT AMERICAN EMBASSIES
AND CONSULATES LAST SUMMER

The Department of State estimates that the number of young people of American citizenship requesting financial assistance at American Embassies and Consulates last summer amounted to several thousand. In the vast majority of cases, the Foreign Service post informed relatives in the United States and the necessary funds were sent. The number of cases in which posts found it necessary to advance repatriation funds has remained stable at about 800 annually for the past several years.

Although the Department has this matter under review, it is not prepared to request new legislation to meet the problem at this time.

Mr. JARMAN. Gentlemen, we very much appreciate your testimony this morning, and in helping make the record on the subject before us.

The rolcall is in progress on the floor of the House, and the membership of the committee will have to answer it. The business of the House is such that we cannot continue this hearing today. We will meet again at 10 o'clock in the morning.

The subcommittee stands adjourned.

(Whereupon, at 12:52 p.m., the subcommittee adjourned, to reconvene at 10 a.m., Friday, November 19, 1971.)

REGULATION OF INTERNATIONAL AIR FARES

FRIDAY, NOVEMBER 19, 1971

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. John Jarman (chairman) presiding.

Mr. JARMAN. The subcommittee will please be in order as we continue hearings on regulation of rates and practices of air carriers and foreign air carriers in foreign air transportation.

Our first witness this morning is Mr. Morten S. Beyer, president of Capitol International Airways, Inc., from Smyrna, Tenn.

We are glad to have you with us, sir.

STATEMENT OF MORTEN S. BEYER, PRESIDENT, CAPITOL INTERNATIONAL AIRWAYS, INC.

Mr. BEYER. Thank you, Mr. Chairman and members of the Committee on Interstate and Foreign Commerce. It is a pleasure to appear here before you today, and I will try and summarize the position of Capitol International Airways as much as I can.

Capitol was one of the pioneers in the supplementals in the transatlantic market and even today we occupy a position of leadership in this market and I think we can speak with authority in the areas of concern of this committee and indeed of our whole industry.

Unlike some of our fellow supplemental carriers, we are gravely concerned with the potential impact on our industry of the enactment of the proposed legislation giving the CAB rate-fixing powers in international air transportation.

We believe that granting of such additional powers is unnecessary. It is contrary to the public interests and contrary to the principles of free enterprise and specifically it is contrary to the welfare of the charter airlines themselves.

We believe quite strongly that the Civil Aeronautics Board has the power already to act effectively in this area and, frankly, we do not understand their timidity in using the authority which they have got or their slowness in taking action in obvious cases.

We heard yesterday, e.g., a discussion of the youth fares. CAB some 6 months from the putting into effect of those fares is finally getting down to an investigation of them. Such delays in our opinion are unnecessary.

The CAB's own Bureau Counsel in the current IATA *North Atlantic Cargo Rate Investigation* case states that the Board has the power to suspend and reject such prejudicial and unreasonable fares.

I think that we all recognize that one of the benefits which the charter airlines have brought the American people is the reduction in effective air fares for people traveling in vacation destinations, both at home and abroad.

In the international area, where we can operate without rate restrictions, we have seen rates of the scheduled airlines decline some 31 percent and we have seen the transatlantic market grow very, very rapidly over the recent years.

In domestic markets in the last 10 years the fares have declined only 1 percent and that market has grown much less substantially indicating that really the international market is more responsive to the needs of the people. People are utilizing air transportation to a greater degree in response to the relatively lower fares which exist.

Whenever you stifle charter traffic, the big sked rates go up and the traffic stagnates.

One of the things that concerns us is that we don't believe that it is good Government policy to be overprotective of the least efficient operators, placing shackles on the efficient carriers in the form of unrealistic regulations and price controls. The scheduled airlines are experiencing staggering increases in labor costs, and other costs of operation on a per-revenue-ton-mile basis and there has been a great deal of discussion before the committee that the answer to these may be these gimmicky and promotional fares that rapidly become "set in concrete" as part of the fare structure which steadily debases airline rates.

I haven't heard anything to suggest that the smart thing for them to do is take off the empty seats in the first place. The scheduled airlines, as was reported in several of the trade magazines last year, are running an average of 100 jets a day of capacity empty across the North Atlantic. I would ask who asked them and who required them and what Government insists that they run 100 empty jets a day across the North Atlantic and why should the general public have to subsidize such waste and inefficiency?

It appears to us that over the years the Government regulations have hogtied the charter airlines to the point that it is a miracle that we survive at all. I have had extensive opportunity personally to observe the operations of airlines overseas and I think that the United States is unfortunately one of the few major countries in the world and maybe the only major country in the world that sees the objective of Government regulation as the protection of existing major airlines rather than the promotion of the public interest.

It seems that the objective of much of this regulation is to prevent people from riding on charter airplanes, low-cost economical transportation, on the mistaken theory that, if you prevent them from riding on charters, they will pay twice as much and ride on half-empty scheduled aircraft. I think survey after survey has proved that this is nonsense, that people will respond to a low-cost service. If that low-cost service is denied them, they will stay home.

We saw yesterday an advertisement that was being shown by members of this committee of the scheduled airline bargains to Europe.

You could go to Madrid for \$279. You could go to Rome for \$339, with air fare and ground arrangements and hotels as a package.

Capitol International has similar packages. We will take people from an east coast city to Malagua, Spain, give them 1 week in Malagua, ground transportation, a first-class hotel, breakfast, parties, sightseeing, and so forth, for \$169. But unfortunately, due to the regulations, we could offer this only to members of so-called affinity groups who have joined the group 6 months before, and is not a group organized for the purpose of travel and they have gone to five meetings in the last 6 months and they have a membership, and so forth, and this is nonsense and discriminatory and it is effectively denying the American people the right to travel at the lowest economical air fare.

We are concerned with the real objective of the big scheduled airlines, in pushing as hard as they are for the enactment of rate-fixing power over international air transportation by the Civil Aeronautics Board. I think I need cite only the testimony of the chairman of TWA before the Senate committee when he summarized, he said that:

Where then do we go from here? First, it is important to recognize the basic problem, the free-wheeling incursions of supplementals in a type of traffic they were intended to carry. Second, any long-term solution to this problem must start at least with a partial closing of the barn door before all of the horses are stolen. We have, in prior hearings before this committee and before the CAB, offered suggestions as to steps that can be taken to bring the supplementals more in line. Thirdly, but most importantly, we also believe that such rate making authority should be established with respect to supplemental carrier's rates.

The import of this is crystal clear. They want this legislation so that CAB can and will control the supplemental rates and, in effect, put the shackles on supplemental air transportation internationally that they have so effectively and so completely done in the domestic market.

Today in Europe, for example, 50 percent of the revenue passenger miles within Europe are on charter flights primarily from the northern European cities to south Europe, to Greece, Spain, north Africa, and so forth. This is a way of life in Europe and millions of people take advantage of these very, very low cost but economical charter vacation bargains. This is nonexistent in the United States. The most recent CAB statistics show that approximately 1 percent of the passenger miles in the United States are operated in charters, and of this 1 percent, half of that is carried by the scheduled airlines themselves.

So we are fearful that given the authority which they are pleading for, the CAB will do the same thing to the American people internationally that they have very successfully done domestically.

In contrast to the foregoing view of the big skeds, let me quote the words of the Edward's Committee, established by the British Government several years ago to examine the rules and regulations of air carriers. And this committee was established at a time when the British scheduled airlines BOAC and BEA were in trouble and were in effect asking for greater protection and greater restrictions, and so forth.

The result of this committee's work was the establishment of the large number of independent air carriers in Great Britain and an actual granting of some BOAC routes to these independent carriers, taking them away from the scheduled carrier and giving them to the supplemental or charter carrier in order to bolster it and permit it to operate more effectively.

But what the committee said, and I think it is of importance to the deliberations before the Congress today, is:

One of the odd things about statements on civil air transport is that they very rarely talk about the customer in simple language.

So let us say in our view the primary long term objective of a national policy toward commercial flying should be to see that each customer, be it for personal travel or freight, gets what he wants, not what somebody else thinks he ought to want, at the minimum economic price that can be contrived.

Romantic and exciting and important though the airline business may be, it is in the last analysis that they do the same job as butchers, bakers and candlestick makers, i.e., to provide services for money. Many other objectives are talked about in connection with air transport but we put this humdrum one right on the top. Moreover we believe that if any other objective conflicts with it, the onus of justification should fall on those who want to press that objective against the interest of the consumer.

In summary, we believe that the record is clear. Broader powers from CAB lead to regulation detrimental to supplementals as a class of carrier, higher prices to the public, slower growth of the industry, and even failure to assure the very objective of all of the regulations, namely, guaranteed profit for the scheduled airlines.

We, therefore, respectfully submit that this committee should not invest greater rate-making powers in the CAB but rather look to greater freedom for competition in the market-place by all classes of carriers in order to provide better, lower cost air transportation for the people of America.

Thank you.

(Mr. Beyer's prepared statement follows:)

STATEMENT OF MORTEN S. BEYER, PRESIDENT, CAPITOL INTERNATIONAL AIRWAYS, INC.

My name is Morten S. Beyer, and I am President of Capitol International Airways. Capitol is a Certificated Supplemental Air Carrier based in Smyrna, Tennessee, and we have the distinction of being the only one of the hundreds of original charter airlines which were started after the last war to survive under the same management and ownership. Today we operate a fleet of seven DC-8 Jets, and employ some 600 people.

Capitol pioneered charter flying across the North Atlantic, being one of the first two Supplementals certificated by the CAB for this service, and today we still occupy a position of leadership in this market. We, therefore, have a vital stake in the resolution of the current rate war which the IATA airlines have undertaken in their acknowledged attempt to exterminate the Supplementals.

Unlike several of our fellow Supplementals, who have stated their views through the National Air Carrier Association, Capitol most emphatically does not agree that Congress should give the CAB additional rate fixing and rate suspension powers in international air transportation. We believe that granting the CAB additional powers is unnecessary, is contrary to the public interest, contrary to the principals of free competition and free enterprise, and specifically contrary to the welfare of the Charter airlines themselves.

The ATA recently filed with the CAB a petition for rule making, contending that the CAB already has the power to control unreasonable fares filed by *foreign* air carriers. The CAB promptly denied that it had such power and continues to plead for sweeping new powers over international rates as set forth in the proposed legislation being considered here today. It is interesting to note however, that the CAB's own Bureau Counsel took the position in the current IATA North Atlantic Cargo Rates Investigation that, and I quote. . . "Since the North Atlantic cargo rate structure is unduly preferential and prejudicial, the Board can, pursuant to 1002(F) alter the rate structure to the extent necessary to correct such preference and prejudice and make an order that the air carriers and foreign air carriers shall discontinue charging such preferential and prejudicial rate."¹

¹ Page 46, Bureau Counsel Position in the IATA North Atlantic Cargo Rate Investigation, submitted by Martin F. McMahon, September 27th, 1971.

We concur with the eminent Bureau Counsel and suggest that, if there is any doubt about it, then let the Congress simply clarify its intent.

Everyone knows that one of the major benefits which the charter airlines have brought to the traveling public is that we have kept the Big Skeds and the IATA Cartel "honest", and through such limited competition as we have been permitted to undertake under the regulations, have stimulated reductions in air fares and market growth. In the North Atlantic, where the charters have been relatively effective, and where a substantial amount of traffic moves by charter, average fares of Pan Am and TWA have declined from 7.10¢ per passenger mile in 1961 (before charters became a factor) to 4.89¢ today—a decline of 31%. In the domestic market, however, where less than *one percent* of all traffic is by charters, average fares have declined only a mere *four percent*, from 6.28¢ per passenger mile in 1961 to 5.99¢ in 1970. And as a matter of fact, during the last three years domestic fares have gone up 7% from 5.61¢ to 5.99¢, while international fares have continued to decline, down 10% from 5.45¢ in 1968 to 4.89¢ in 1970. The effect on traffic growth is well known—in the last three years domestic traffic has been up 19%, and today is virtually stagnant, while North Atlantic traffic is up 43.5% in the same period. The evidence is clear that where charters provide the effective spur of competition, rates go down and traffic goes up. When charter traffic is stifled, big sked rates go up and traffic stagnates. I think we all remember that when North American Airlines offered an \$80 transcontinental fare some 10 years ago, the scheduled airlines met them—until the CAB put North American out of business. Today the lowest cost transcontinental excursion fare is \$142.00 and the regular economy (sic) fare is \$163.00—double what was available a decade ago.

There is no question that the low-cost charter rates offered by the Supplementals have encouraged the IATA Cartel to steadily cut its rates through a proliferation of excursion, directional, youth, senior citizen, GIT, mini-charter, and other gimmickry fares which today account for the bulk of Transatlantic travel. At the same time, however, they have raised basic economy fares, which has evidently resulted in a degree of self-diversion which was not anticipated as normal regular economy passengers sought to take advantage of the lower gimmick fares. However, much of the public has benefited, and total travel has increased sharply.

I believe we should be careful not to be overly-protective of the last efficient operators by placing shackles on the efficient carriers in the form of unrealistic regulations and price controls. The scheduled airlines have seen an eleven percent increase in labor cost per *revenue ton mile* in the last year, on top of a seven percent increase the year before. Last year the IATA carriers reportedly flew the equivalent of 100 empty jets per day across the North Atlantic. Domestically load factors fell from 49.5% in the first six months last year to 46.7% in the same period this year. The point is that we should not expect the general public to finance these inefficiencies when there is an alternative available—greater freedom for low cost charter operations. It is not right to expect the general public to pay for inefficiencies, or a passenger to pay for his own seat and the two empty seats beside him every time he takes a transcontinental flight.

I think the record shows clearly the difficulty of trying to regulate profit into an industry in the face of the forces of supply, demand, and free competition. The CAB has tried hard to help the industry, and yet the harder they have tried, the more airlines seem to have lost. In 1966 the U.S. Scheduled Airline Industry made \$488 million dollars on almost six billion dollars of revenue—a return of 7.6%. By the second quarter of 1971 industry revenues had risen to almost ten billion dollars per year, but profits had fallen steadily, culminating in a \$238 million loss for the last 12 months.

U.S. SCHEDULED AIRLINE INDUSTRY

[Dollars in millions]

Year	Gross revenue	Net profit	Percent profit
1966	\$5,929	\$448	7.6
1967	7,081	436	6.2
1968	8,077	236	2.9
1969	9,136	57	.6
1970	9,571	(165)	(1.7)
12 months ending June 30, 1971	9,764	(238)	(2.4)

Source: McDonnell Douglas "Airline Industry Data."

All during this period there have been numerous fare increases, new route awards, mergers, subsidies, and various other CAB-approved actions designed to regulate profit into the industry. And, of course, the Mari-time Commission and the ICC have been equally unsuccessful with the shipping lines and railroads.

I wholeheartedly join with others of the Supplemental Industry who have stated that "it would be a serious mistake for this Committee to limit its interest . . . solely to the matter of fares". The problem is far larger: We need policies aimed far more at providing the people of America with a low-cost air transportation system, and directed less to the maintenance of the unprofitable high cost system we have today.

Over the years government regulations have hog-tied the charter airlines to the point it is a miracle that they survive at all. I have had an extensive opportunity to observe the operations of airlines overseas, and I think that the United States is one of the few major countries in the world where it seems that the objective of government regulation is the so-called protection of the existing major airlines rather than the promotion of the public interest. It almost seems that the two are synonymous—what is good for Big Skeds is good for America. In contrast, in Europe we have seen the growth of a whole new industry in the last decade—the ITC charter industry, which today accounts for almost half of all European intercity traffic, which has a fleet of 246 jets (up over 100 in the last year alone). As a matter of fact, the CAB has certificated some 22 of these new carriers to provide new charter service to the United States in the last five years.

The European ITC Charter Airlines operate with substantially less regulation than we impose on our U.S. Charter Airlines. There are no "three stop" restrictions, and little limitation on length of stay. Fares are generally unregulated, and the CAB's "110% rule" that prices most ITC charters out of sight, is unknown. Tour operators and airlines can share the risks of their programs, and can even be under joint ownership. Even the IATA carriers can have their own charter subsidiaries. McDonnell Douglas Aircraft's Market Research Department reports that ITC charter "traffic on the Intra-European market continued to grow at a rate exceeding 30% . . ." in the last year (1970-71). The average European can take an all-expense two week vacation by air at a cost of \$100 to \$200 for the entire package—an opportunity which existing charter regulations substantially deny to the American people.

It seems that existing charter regulations have on objective and one objective alone: *Preventing* the charter airlines from offering low cost vacation travel to the general public. It is apparently the mistaken belief that if only you can *prevent* people from flying on low cost charters, they will then fly on high cost half-full sked flights. This is nonsense, and survey after survey has proved it—the majority of people simply stay home, or take the family jalopy to the beach if they can't get a reasonably priced charter flight. In Europe the charter airlines have developed a vast new charter business, without apparent detriment to their scheduled brethren—largely without rate regulation, restrictions on length of stay, points of operations, etc. The lesson is plain: The less regulation—price and otherwise, the stronger the development of air transportation and the better deal the public gets.

Capitol is concerned that, armed with greater powers over international rates, the Board would end up further tying the hands of the U.S. Supplementals, while still being ineffective in dealing with the rate schemes of the IATA Cartel, their charter affiliates, and the growing hoard of European independents. We saw in the case of the Hawaii market—where the Board had ample power—what happens when the scheduled airlines "move in" on a Supplemental market. We were stripped of a \$20,000,000 market which we had developed in a matter of a few months. The Scheduled carriers filed a wide range of mini-charter and GIT fares which effectively undercut us. And, hampered by the three-step rule, the 110% rule, and the prohibitions on risk-sharing, we were no longer able either to compete or to fight back. We fear the same thing in the North Atlantic.

The Big Skeds have made it crystal clear that the major objective of the proposed international rate fixing legislation as far as they are concerned is to muzzle the Supplementals. The Chairman of TWA, in his testimony before the Senate Commerce Committee last month summarized his position as follows, and again I quote: . . . "Where then do we go from here? *First, it is important to recognize the basic problem—the free-wheeling incursions of the supplementals into a type of traffic they were never intended to carry.*

Second, any long-term solution to this problem must start with at least a partial closing of the barn door—before all of the horses are stolen. We have, in

prior hearings before this Committee and before the CAB, offered suggestions as to steps that can be taken to bring supplementals more in line with the truly "supplemental" type of role they were originally authorized to perform.

Third, we believe that the Executive Branch, either directly or through the CAB, should act promptly to block the implementation of uneconomic international fares. Authority to do so with respect to scheduled air fares, in our judgment, already exists. To the extent legislation is deemed necessary to clarify the plain intent of the bilateral agreements in this respect, or to clarify the respective roles of the branches of government, we are in favor of it. *But, most importantly, we also believe that such authority should be established with respect to supplemental carrier rates.*

In contrast to the foregoing views of the Big Skeds, let me quote from the words of the Edwards Committee, established by the British Government several years ago to examine the roles and regulations of air carriers. . . . "One of the odd things about statements on civil air transport is that they very rarely talk about the customer in simple language. So let us say that in our view the primary long-term objective of a national policy towards commercial flying should be to see each customer, be it for personal travel or freight, gets what he wants—not what somebody else thinks he ought to want—at the minimum economic price that can be contrived. Romantic, exciting and important though the airline business may be, it is, in the last analysis, there to do the same job as butchers, bakers or candlestick makers, i.e. to provide services for money. Many other objectives are talked about in connection with air transport, but we put this humdrum one right at the top. Moreover we believe that if any other objective conflicts with it the onus of justification should fall on those who want to press that objective against the interests of the consumer".¹

In summary, we believe that the record is clear: Broader powers for the CAB lead to regulations detrimental to the supplementals as a class of carrier, higher prices to the public, slower growth of the industry, and even failure to assure the very objective of all the regulation: Profit for the scheduled airlines. We, therefore, respectfully submit that this Committee should not vest greater rate making powers in the CAB, but rather look to greater freedom for competition in the market place by all classes of carriers in order to provide better, lower cost air transportation to the people of America.

Mr. JARMAN. Thank you, Mr. Beyer, for a very good statement.

You take the position then that the Congress should not give the CAB additional, not only not give additional rate fixing powers but you would oppose the rate suspension authorization that is contained in the legislative proposals?

Mr. BEYER. That is correct. We feel, one, that they already have ample authority and they are failing to use that authority, and any additional authority vested in their hands would be detrimental really to the American people.

Mr. JARMAN. You take the position that no legislation is needed?

Mr. BEYER. No legislation is needed, that is correct, except we do feel it will be very meritorious if this committee would take legislative action to strike some of the unrealistic shackles from the charter industry, and then let us go out, and do the kind of job in this country that is being done by the charter airlines in Europe.

Mr. JARMAN. I understand. Thank you.

Mr. HARVEY?

Mr. HARVEY. Thank you, Mr. Chairman.

Mr. Beyer, as you told the chairman, you do oppose the granting to the CAB of this additional power. But without it, won't the American airlines be at a severe disadvantage in any international rate conference?

¹ The Edwards Committee Report, The UK Committee of Enquiry Into Civil Air Transport, paras. 46 and 47, Cmnd. 4018, HMSO, 1969.

They would face international rate warfare if such power were not granted.

Mr. BEYER. I really don't think so. I have worked 28 years in this industry and worked with Pan American and United Airlines and TWA for the majority of it, so I think I understand the problem from that side of the fence as well as from my own. I think that the American carriers have generally been pretty successful and we saw yesterday that they apparently have resolved the problem in Honolulu, which I think has created the need or supposed need for this legislation here today.

I have not found in my experience that the American carriers have ever been disadvantaged. Generally, our carriers have been proposing lower rates and taking advantage of our greater efficiency in the world transportation market. I can't speak for them, but I would say that really from an objective standpoint, as I see it, I don't think that they are disadvantaged and I don't think they need any additional shelaghes to get what they want.

Mr. HARVEY. That is certainly an unusual viewpoint. I get just the opposite impression from reading the morning paper with regard to the settlement that was reached in Honolulu. I get the impression that it was reached because of the hot breath of this legislation breathing down the necks of the foreign participants. I wonder whether or not this could possibly have been settled without this power or the threat of this power?

Mr. BEYER. Well, this obviously is an area where you don't know. I think the history of IATA over the years has been that they really have been able to resolve their problems through their own machinery successfully.

Mr. HARVEY. This year is probably the closest they came to not resolving it.

Mr. BEYER. I think this may have been. There have been several other cases, however, in the past of threatened open rate situations that have been closed up before all of the horses got out of the barn.

Mr. HARVEY. Do you feel there are two markets for international air travel? Or, is there just the one market?

Mr. BEYER. I think that really there are two basic markets but there is a substantial area of interphase between these two markets. Essentially there is the business traffic, the Government traffic, military traffic, and so forth, where people essentially go because they have to go, and there is the discretionary travel or the vacation travel. I think the vacation travel is a highly elastic market. It is very responsive to prices, e.g., in the European market we have seen a growth in the charter airlines that has run around 25 to 30 percent a year.

Last year in the United Kingdom it was up 40 percent from 5 million people to 7 million people, which is pretty close to five times as many people that went from the United Kingdom to intraEuropean charter vacation as went from all of the North Atlantic from all of the countries combined on charter flights.

So I think that there is a well-defined and separate vacation market which is responsive to effective rates.

Mr. HARVEY. Thank you very much for your appearance here this morning.

Thank you, Mr. Chairman.

Mr. JARMAN. Mr. Skubitz?

Mr. SKUBITZ. Mr. Beyer, did I understand you to say that you provide a flight from New York to Malaga for \$159 per week?

Mr. BEYER. We do and that includes the hotel.

Mr. SKUBITZ. Do you do that at a profit?

Mr. BEYER. Yes, sir.

Mr. SKUBITZ. I think the airline tourist rates from New York to Malaga run a little over \$500.

Mr. BEYER. That is correct. That is one of the problems.

Mr. SKUBITZ. Why can you do it and they can't?

Mr. BEYER. A number of things. One is the supplemental air carriers as a class are more efficient than the scheduled air carriers. We have to be or otherwise we would not be here and it is primarily in the productivity of employees. Most of the supplemental air carriers employees are unionized by the same unions that unionize the big skeds but I think they are productive and, therefore, we have less labor cost. We put more seats in our aircraft and eliminate a lot of the frills, for example, a stretch DC-8 would normally carry 250 people, most international carriers will carry 190 or in some cases less.

Mr. SKUBITZ. You pack them in like sardines in a can?

Mr. BEYER. I don't think we sardine them in, I think you will find our seat space is the same as theirs but we eliminate galleys and other nonproductive areas and utilize all our aircraft space. I think you will find the comfort level of our aircraft is as good as anybody's.

Mr. SKUBITZ. What about your workers, are they unionized?

Mr. BEYER. Yes, sir.

Mr. SKUBITZ. How do your wage rates compare with TWA and Pan Am?

Mr. BEYER. I think one of the problems TWA and Pan Am has is to let some of their wage rates get away from them. But even worse than that, they have permitted the imposition of the made work rules which have been so ruinous, with limitations, with strict limitations of hours of service and number of landings a pilot can make and the amount of time that he has to have off, which are above and beyond the regulations required by FAA which are the same for us as they are for them.

So our people basically get paid for being productive.

Mr. SKUBITZ. What you are saying is that your wage rates are lower than theirs.

Mr. BEYER. No, I am saying that our wage rates are quite comparable but we pay our people to fly and they pay their people for a large degree of featherbedding.

Mr. SKUBITZ. Maybe you should be a wage negotiator for TWA and Pan Am. Maybe that would help.

Mr. BEYER. It might.

Mr. SKUBITZ. I yield, Mr. Harvey.

Mr. HARVEY. You say you pay your people to fly and they pay theirs to what?

Mr. BEYER. Substantial featherbedding restrictions imposed on labor contracts to big airlines.

Mr. HARVEY. What do you pay your first pilot?

Mr. BEYER. First pilot for us on a stretch DC runs around \$35,000 to \$40,000 a year.

Mr. HARVEY. That is your pay scale?

Mr. BEYER. That is ours.

Mr. HARVEY. And scheduled airlines pay in the neighborhood of \$60,000?

Mr. BEYER. I am not familiar with what they are paying on 707 but I would guess it is around \$45,000 to \$50,000.

Mr. SKUBITZ. It is \$38,000 to \$51,000. They are paying less than you are.

Mr. BEYER. Well, I am not aware of what you are looking at.

Mr. SKUBITZ. These are figures from Aviation Data. For 707, captain, \$38,496 for TWA.

Another point that interested me is your statement on page 4, "Last year IATA carriers reportedly flew equivalent to 100 empty jets per day across the North Atlantic."

And then you go on to say: "The point is that we should not expect the general public to finance these inefficiencies when there is an alternative available, greater freedom for lower cost charter operations."

Mr. BEYER. Yes, sir.

Mr. SKUBITZ. The thing that bothers me is that when your planes take off for Europe, it is loaded, is this correct?

Mr. BEYER. I hope it is.

Mr. SKUBITZ. Suppose it is halfloaded, does it take off?

Mr. BEYER. Under the existing CAB regulation the aircraft in effect must be fully loaded, that the chartering party must purchase the entire capacity of the aircraft.

Mr. SKUBITZ. And if it isn't, would you "take off" with a half load?

Mr. BEYER. We are in effect forbidden by the law, unless we file a special tariff to carry that half load at half price.

Mr. SKUBITZ. Do you do that?

Mr. BEYER. We do that, yes.

Mr. SKUBITZ. In other words, you do carry over——

Mr. BEYER. If we have a split load——

Mr. SKUBITZ. I was under the impression that you required a capacity load or the flight would be cancelled.

Mr. BEYER. No, our economics are based on flying with a full aircraft and it is only very occasionally that we can file a special tariff.

That is one of the things that concerns us, the freedom to file special tariff and move the group we are committed to.

Mr. SKUBITZ. I wonder what our whole transportation system would be like if TWA or Pan Am was scheduled to take off at 9 o'clock and people were ready to go and they said, "We are not taking off because we don't have a full load." They have to run their scheduled line. They have to leave at a certain hour and be there whether the plane is full or empty. I don't think you folks would do that.

Mr. BEYER. Let me say this, we are in the charter business of moving groups of people, and we move when we have a group of people, and that is why we are efficient, and what I said is that, sure, Pan Am flies at 6 or 7 o'clock in the evening from Kennedy, but Pan Am flies 6 or 8 or 10 that night and TWA does, and all of the foreign carriers do, and the aggregate of this is the capacity of 50 jets per day in each direction completely empty across the North Atlantic, and I

am not saying that they should not go at 9 o'clock in the morning as you said. Somebody should go. You go out here to Dulles and at least before they enacted the schedule cut-back agreement, you had your choice. You could go on TWA or United or American Airlines nonstop to the west coast on a 707 or 747. If you went on one of those airlines, there were 15 or 20 other people in there with you if the airline was lucky, and I say the public has no business subsidizing that kind of nonsense and inefficiency.

Why should the airlines fly parallel flights at 9 o'clock in the morning and expect the average public and average businessman or vacation traveler to pay for that? And I don't think they should.

Mr. SKUBITZ. If the public wants an adequate transportation system it must have planes that will fly on schedule. If we want to have a competitive system, we have to allow more than one company to operate. We just can't depend upon nonskeds.

Mr. BEYER. We are looking at two different kinds of markets. You are talking about the individual businessman or itinerant traveler who wants to go at 9 o'clock in the morning. We are talking about groups of people who can be joined together by the travel industry to take a vacation together at some point in Europe or the Caribbean and/or somewhere. I go back to the European example. In Europe you have a definition. The business people and individual travelers ride on scheduled airlines. The scheduled airlines by and large control their frequencies. Often they pool, and so you can go every hour on the hour from London to Paris, and you may go on Air France or BEA but there is an adequate level of service. The load factor is heavy enough to be compensatory.

The charter airlines have grown fantastically in Europe and history indicates that the scheduled airlines have also grown, and while our business stagnated this year in the U.S., it had zero growth, in Europe it is reported that scheduled airlines have grown 15 percent and charter airlines have grown 35 percent.

So I am saying that our system as we are presently working is ruinously competitive between the scheduled airlines and at the same time is denying the American people the right to fly on lowest cost, economically available of a type of transportation, which is charter for vacation puposes. I think we need to realize our thinking about aviation to give this opportunity to the American people and I think the scheduled airlines would be a lot better off, too.

Mr. SKUBITZ. Thank you, Mr. Beyer.

Mr. JARMAN. Thank you very much, Mr. Beyer.

The next witness will present the scheduled airlines viewpoint on the need for international rate legislation.

We had hoped to hear from Mr. Stuart Tipton, the president of the air transport association, or Mr. Charles Tillinghast, chairman of the board of TWA, and Mr. J. N. Hallaby, chairman of the board of Pan American. They have expressed regret to the subcommittee that it is not possible for them to be present. There is a critical session, as we know, of IATA in Honolulu this week.

The morning press indicates that an agreement has been reached on the part of the agenda under consideration out there, specifically dealing with the North Atlantic rates and efforts to avoid an open rate

situation. So we do understand why these gentlemen can't be here to testify for the scheduled airlines position.

The airlines are represented here today by Mr. Gabriel Phillips, vice president, International Services, Air Transport Association of America. With him is Mr. James E. Landry, general counsel for ATA.

Mr. Phillips, we are pleased to have you and Mr. Landry with us and you may proceed.

Mr. SKUBITZ. Mr. Phillips, you just heard how inefficient you were and I hope you will explain some of this to us. The first witness said you were very inefficient in the operation of scheduled lines and I would like to hear you discuss that point somewhere along in your testimony.

STATEMENT OF GABRIEL PHILLIPS, VICE PRESIDENT, INTERNATIONAL SERVICES, AIR TRANSPORT ASSOCIATION OF AMERICA; ACCOMPANIED BY JAMES E. LANDRY, GENERAL COUNSEL

Mr. PHILLIPS. Very good, sir; I will make an attempt to meet that. Thank you very much; Mr. Chairman.

When we submitted this statement, we did not have an agreement. As you indicated, the press reports tell us that they have reached some sort of understanding in Honolulu. I believe that most, if not all, of our statement is relevant under the circumstances, and I will proceed along those lines.

I would like to present our views on H.R. 11416 and its companion bill in the Senate, S. 2423, over which hearings were held last month. In doing so I will also comment on the amended version of S. 2423, which was approved by the Senate Aviation Subcommittee on Tuesday and on the administration's proposal as advanced by the Assistant Secretary of Transportation, Charles Baker, in his testimony yesterday and the day before.

In summary, we believe H.R. 11416 as presently worded is both unwise and unworkable. We have long maintained that the Civil Aeronautics Board has adequate power to protect the public interest against unreasonable rates in foreign air transportation. We still think so; however, the Board has now formally rejected our contention. We, therefore, urge the enactment of legislation giving the Board increased power over rates in foreign air transportation but not the power contained in H.R. 11416. This bill seeks to apply domestic rate regulation principles to the fundamentally different international rate problem. This simply cannot and should not be done. Before reviewing the substantive features of this bill, it is important to describe the current environment in international air transportation.

THE IMPENDING OPEN RATE SITUATION ON THE NORTH ATLANTIC

With rare exceptions international air fares are established by agreement among airlines through the rate-making machinery of IATA. Such agreements require unanimous approval of the affected airlines and their governments. On those rare occasions when the airlines fail to reach agreement in a given service area, an open rate situation arises. Each airline is free to file fares individually subject to applicable laws and regulations of the governments concerned.

Today for the second time in a decade the airlines thus far have been unable to reach agreement on 1972 fares for the vital North Atlantic market. As a result, there is great concern in all quarters of the international aviation community that a price war could develop which might be destructive to a sound international air transport system.

This situation has again raised the specter that United States aviation authorities may not have sufficient power to protect the public interest in that event.

While the legislative issue is a narrow one, it is symptomatic of the larger problems facing international air transportation. These problems are most acute in the North Atlantic market. The scheduled airline operators over the North Atlantic face the most serious economic difficulties they have experienced in decades. They have had the burden of placing into service a new generation of large-capacity aircraft—aircraft which offer the greatest promise since the beginning of the jet age for extending international air transport to masses of travelers at reasonable fares. The Boeing 747 and other wide-bodied aircraft have tremendous potential to offer the passenger the most convenient and comfortable air service ever and to offer the airlines over the long run economic viability in the face of rising costs.

But, because of their tremendously greater unit size—nearly $2\frac{1}{2}$ times the number of seats in standard B-707's and DC-8's—a temporary, but significant, capacity increase has resulted. Unfortunately, this new equipment cycle and attendant capacity come at a terribly difficult time. Scheduled airline profits have declined over the last several years. Nearly all transatlantic operators are either losing money or failing to earn an adequate return on investment. Despite a substantial traffic increase in 1970—due to various factors, including fare reductions and the introduction of the 747, this additional traffic did not generate revenues sufficient to offset the decline in unit fares or to overcome the introduction costs of 747 operations. Even more unfortunately, scheduled airline traffic growth over the North Atlantic in 1971 has dropped sharply.

A major ingredient in these economic difficulties and one of the most troublesome aspects of international air transportation today is the actual and potential threat of destructive competition from charter operators. There are simply too many of them and their scope of operations is too wide. Not only are there six U.S. supplemental or charter operators who will carry well in excess of 1 million passengers annually across the North Atlantic in 1971, there are more than twice as many foreign-flag charter operators. Under current policies, nearly every foreign charter carrier that gets the appropriate authority from its own government can be assured of a U.S. permit. The aggregate impact of the charter operations is immense—it will be well over one-fourth of the transatlantic market in 1971—and has grown in geometric progression.

Faced with these competitive pressures and the need to fill the huge number of seats provided by 747 operations, the scheduled airlines necessarily brought to the conference table at the most recent negotiations—held at several different times this year—a variety of marketing strategies. Since the essence of rate planning is prediction of the future—an unknown quantity, particularly in the current state of air

transport economics, and indeed, world economics—it is surprising that agreement was difficult to reach. The time for the airlines to settle the North Atlantic fare controversy grows short, but they may well do so. Nevertheless, we must face up to the question as to whether legislation should be passed to deal with problems arising out of a potential open rate situation.

EXISTING CAB POWER TO DEAL WITH OPEN RATES

We recognize the need for governments to have such control to insure that international fares and rates are not inconsistent with the public interest.

Within the borders of a single nation that regulation may be as extensive or as loose as its government and people desire. But regulation of international air transportation rates is another matter. Here no one nation is sovereign. On the contrary, regulation must accommodate the separate interest of at least two countries. Where the market is extensive, yet homogenous like the North Atlantic, the legitimate interests of a host of nations must be accommodated.

The IATA rate setting mechanism was developed as the most practical instrument to achieve this objective.

There is no controversy over the Board's power to protect public interest with respect to rates agreed on in IATA. There is no controversy over the utility of the IATA rate-setting mechanism.

Thus we are confined to the narrow issue of non-IATA rates and the Board's power to protect the public interest in dealing with such rates. Even then there is no controversy over the statutory power of the Board to deal with discriminatory, preferential or prejudicial rates. The only open question has been the issue of unreasonable rates, that is, rates which are too high, or too low.

Over the years the board has argued that it needs this legislation to protect against unreasonably high fares. Yet the record of constantly declining fares in international scheduled services is a rebuttal of that contention.

In 1961 the average price per mile that the airlines received in international transportation was about 6½ cents. Last year it was just about 5 cents, a drop of about 25 percent. Ten years ago a secretary had to work 4 weeks to earn enough money to pay for a trip from New York to London and back. Last year she only had to work 2 weeks.

At this point, Mr. Chairman, Mr. Browne in his testimony commented on Trans-Pacific fares and left the impression that there had been no change since 1963. In 1963 the lowest peak season round trip fare between San Francisco and Tokyo was \$783. In 1971 the lowest peak season round trip fare was \$445, nearly a 45 percent drop.

Of course, the \$445 fare was a group fare where as the \$783 was an individual fare. The equivalent individual fare was \$600 in 1971, or some 25 percent below the lowest fare in 1963.

The present problem and real danger is that such fares may become too low. We have argued consistently over the years that the Board has authority to protect the public interest in the remaining issue of non-IATA rates and most recently petitioned the Board for a declara-

tory ruling or a prompt rulemaking in that respect. The Board formally rejected our petition and claimed the need for additional regulatory tools for Congress.

ENACTMENT OF H.R. 11416 WOULD DIVEST THE U.S. GOVERNMENT OF
CONTROL OVER RATES

H.R. 11416 would empower the Board both to suspend and, after hearing, to fix international fares. A major objective sought in considering this legislation at this time is to prevent the establishment by foreign-flag carriers of such low fares as to cause North Atlantic operations to be uneconomic. If this bill were passed, immediately upon having been given the power to suspend the rate of a foreign-flag carrier, by operation of law the Board would lose that power.

This, of course, is a paradox and the reasons must be explained.

At the beginning of postwar air transportation, all nations and particularly European nations were concerned that the predominance of U.S. air transportation would prevent them from inaugurating effective air transport services under their own flags. Thus, there was a great effort made to create an international ratemaking system which would provide all nations with protection against the possibility of destructive competitive rate cutting. Efforts to establish this system multilaterally failed but the problem was tackled again when the U.S. and the United Kingdom met at Bermuda to establish an economic framework for air transport operations between their respective territories.

The terms of the rate article in the Bermuda agreement, of course, reflect this controversy. The utilization of IATA as a primary rate-making system was endorsed, but the possibility of open rates was anticipated and provided for.

If one government were to find the rates charged by a carrier of the other to be objectionable, that government could protest, consultations would follow and ultimately the dispute would be submitted for an advisory opinion by an arbitral tribunal. However, the major question which occupied the attention of the negotiators was the question as to whether the disputed rates would continue in effect during all of this time—consuming negotiating and arbitrating process.

The United States took the position that the disputed rate should continue in effect. The British contended that it should not. As a compromise, the parties agreed that if the Civil Aeronautics Board were to receive power to suspend and prescribe rates for its carriers in foreign air transportation, the disputed rate could continue in effect during this long process of negotiation and arbitration. However, until the Board obtained the power to suspend and prescribe rates, either government was free to take unilateral action to suspend the disputed rate. (See attachment A, p. 113.)

If the Board's bill is adopted, the condition previously referred to would be met and thus in this instance the Board could protest unduly low rates and could negotiate with the governments whose carriers were putting them forward and could press the issue to arbitration, but it could not suspend the rate it finds objectionable. Most of our agreements with European countries follow this same pattern.

Thus, in considering H.R. 11416, the Congress must recognize that it will be preventing the United States from dealing effectively and swiftly with rate proposals advocated by foreign flag carriers if it gives the CAB power to prescribe rates.

Actually the enactment of this legislation with its resulting prohibition against the suspension of foreign carrier rates would be contrary to current U.S. policy on this same subject. The United States in negotiating more recent bilaterals has inserted in them a standard rate article which provides that the government objecting to a disputed rate may, after consultation, suspend that rate pending further negotiation. Thus, if the legislation were enacted, we would have a wholly confused situation in our relationships with foreign governments. Some who are party to older bilaterals would be bound by a provision which prevents suspension; others who are parties to newer provisions would be free to suspend the newer rate during consultation and negotiation.

H.R. 11416 IS UNWORKABLE

Leaving aside this more detailed but fatal objection to H.R. 11416, the bill should be rejected on the ground that it is wholly unworkable.

No one government can unilaterally prescribe international rates. As I have already indicated, the issue involves the sovereignty of scores of countries and the complexity of varied and conflicting interests of governments and their airways, some state owned, some private, some subsidized. As in every other issue where the sovereignty of nations is concerned, negotiation and accommodation is essential to accord. The International Association of Airlines, bringing to the negotiating table firsthand operating experience and economic facts, has been remarkably successful in achieving multilateral accord down through the years. Were a single government, especially one from a country of such importance in international aviation as the United States to directly prescribe rates for its carriers, the airline ratemaking machinery would become a shambles. What is needed is governmental ability to insure that no transitory breakdown in the IATA conference system will operate to the detriment of the public interest.

As a matter of time, it would be impossible for the Civil Aeronautics Board to make this rate regulation system work. A number of years ago we had a general passenger fare investigation dealing with domestic rates which took 4½ years. With commendable speed the Civil Aeronautics Board has concluded the major phases of the present investigation in 1½ years. When one considers the additional complexities, both economic and political, introduced in a rate case under this bill, the case would in all likelihood be endless. The United States just could not keep international ratemaking on dead center while this arduous process was going forward.

If all of this procedure were concluded, the CAB would have established legally and formally the fare and reasonable rate to be charged and thus would have placed the carriers and U.S. Government in an impossible position. No one doubts that in the nature of things international rates must be the product of negotiation. The board through its efforts to fix rates would have placed itself in a position where it could not deviate from its conclusion to accommodate

legitimate interests of other countries, and in IATA negotiations, the U.S. carriers would be bound to the CAB position.

H.R. 11416 IS UNNEEDED

The elaborate and unworkable legislation is not needed to solve the problems which the U.S. faces now and will face in the future. The Senate Aviation Committee, the administration and CAB all now seem to agree with us that the elaborate regulatory provisions of H.R. 11416 are not necessary and are supporting a more limited but workable scheme of regulation.

We presented in the Senate and have attached here a proposal that would empower the board to suspend rates in foreign air transportation but would not trigger the conditional provision in outstanding Bermuda rate articles. The proposal would extend to both U.S. flag and foreign air carriers and to scheduled as well as charter airlines. It would permit the board to take action on both proposed and existing rates.

The proposal would, in fact, achieve all of the advantages claimed for H.R. 11416 without this serious drawbacks inherent in the rate-fixing proposal. We continue to advance this proposal but recognize that features of the amended Senate bill and the administration proposal will serve the same objectives.

Let me turn first to the amended Senate Bill 2423. That bill would amend section 404(a) of the act to impose duty on air carriers and foreign air carriers to establish just and reasonable rates in foreign air transportation. There is no similar provision in the administration's proposal.

We, too, believe there should be no such amendment to section 404 of the act because there simply is no need for this provision. The existing section of 404, first enacted in 1938, imposes a duty on air carriers to provide and further interstate and overseas air transportation and to establish just and reasonable fares.

The act wisely, we think, did not impose a similar duty to provide service in foreign air transportation because of the impossibility of such requirements. In the domestic area, the U.S. sovereignty is complete. In foreign air transportation, it is not. And the U.S. consequently cannot impose a duty on an air carrier or a foreign air carrier to provide and further service in foreign air transportation. It may only authorize.

Without the predicate requirement to provide service, it is incongruous to impose a duty to provide just and reasonable rates for such service. Furthermore, since other sovereigns have equally as much say as to the rate to be charged in foreign air transportation, it may become impossible for an air carrier in a given situation to establish just and reasonable rates as those terms are understood in the act.

A further objection to the provision is that it is an attempt to impose on international air transportation the same rate regulatory requirements that are imposed on interstate and overseas rates. Since they are entirely different environments, we think the regulatory arrangements should reflect that difference. And lastly, this provision adds nothing to the board's power to deal with rates that are unreasonably

high or low that is not otherwise contained in the suspension or rejection provisions which follow.

With regard to the provision in S. 2423 providing for the suspension and rejection of rates in foreign air transportation, we continue to believe that the board would have all of the power it needs with the power to suspend. But since suspension is tantamount to rejection in practical effect, we can accept rejection provisions. The amended version of S. 2423 would authorize suspension and rejection of both proposed and existing tariffs. The administration's proposal would authorize rejection of both proposed and existing tariffs but would allow suspension of such tariffs only in the case of proposed tariffs. We would be inclined to favor the more limited regulatory features of the administration's proposal in this respect. We were concerned, however, that an open rate situation may be in effect over the Atlantic this summer and that this legislation would not be enacted in time and consequently supported the amended S. 2423 feature.

Both the amended version of S. 2423 and the administration's proposal authorized the board to suspend the tariff of a foreign air carrier when that carrier's government rejects a tariff of a U.S. carrier in the same market. We favor that provision with the understanding that the retaliation is limited to tariffs for similar services. We believe that to be the clear intent of the provision.

Finally, both the amended version of S. 2423 and the administration's proposal contains standards which the board is to employ in exercising its powers and duties with respect to suspension and rejection of rates. The amended version of S. 2423 merely adopts those standards which are now imposed for dealing with rates in interstate and overseas transportation. The administration's proposal would impose a new series of criteria, the foremost of which is that the reasonableness of a rate shall be determined in reference to its fully allocated cost of operations.

As to the general question of statutory guidelines, we find the adoption of domestic standards to the international situation to be most undesirable.

With respect to domestic rates where the board's jurisdiction is total, it is quite appropriate for the act to require the board to follow standards not uncommon to our public utility regulation generally. But in the international arena, other considerations must be given equal, if not greater weight, and the foremost of these is reaching accommodation with another sovereign power.

Consequently, we would favor standards which further accentuate the difference between domestic and international air transportation. The administration's proposal does this and to that extent it is preferable. However, we cannot overemphasize this, the reliance on fully allocated costs in determining the feasibility of a rate is totally unacceptable. In the first place it implies a regime of rate-fixing, the very thing we all oppose. Secondly, it implies a rigidity in result which would tend to preclude the U.S. Government from meaningful negotiations and accommodations with other sovereigns on a disputed rate. Third, it gives too much prominence to a feature which can only be one of many considerations in establishing rates. Fourth, it suggests that scheduled airlines may no longer continue the historic and desir-

able practice of extensive experimentation with promotional fares which now produces a major part of our international business.

Were the administration's provisions limited to the initial paragraph in section 1002(e), we would favor that prescription. As it stands we hope you will reject those standards.

Finally, Mr. Chairman, up to this point we have confined ourselves to the narrow issue of additional regulation of international rates. We have not and do not intend to address ourselves to other international air transport issues which are extraneous to the matter now being heard. Despite the fact that the airlines were able to reach agreement in Honolulu, it is still urgent for us to have a rate bill which arms the board with sufficient power in the event of further open rates. We presume that at such time as this committee may decide to focus on other issues, appropriate hearings will be called and we will be given the opportunity to discuss our views on such issues with the committee.

A matter of particular concern the supplemental carriers raised on the Senate side was strong urging that this bill carry with it a provision that amends section 402 of the act to authorize the board to suspend without hearing the operating permit of a scheduled foreign air carrier when that carrier's home government denies landing rights to a U.S. supplemental. Not only do we object to bringing such an issue into the narrow issue of rates; we oppose the substance of that proposal.

I can think of no way to more quickly jeopardize the equally hard won and delicately balanced landing rights of U.S. scheduled carriers. The proposal is in total conflict with U.S. policy. It is unsound and dangerous and it should be rejected out of hand.

This concludes my prepared statement.

Thank you very much, sir.

(Attachments A and B to Mr. Phillips' statement follow:)

ATTACHMENT A

TEXTS OF BERMUDA-TYPE BILATERAL AGREEMENT ALTERNATIVE RATE CLAUSES

"(e) In the event that power is conferred by law upon the aeronautical authorities of the United States to fix fair and economic rates for the transport of persons and property by air on international services and to suspend proposed rates in a manner comparable to that in which the Civil Aeronautics Board at present is empowered to act with respect to such rates for the transport of persons and property by air within the United States, each of the Contracting Parties shall thereafter exercise its authority in such manner as to prevent any rate or rates proposed by one of its carriers for services from the territory of one Contracting Party to a point or points in the territory of the other Contracting Party from becoming effective, if, in the judgment of the aeronautical authorities of the Contracting Party whose air carrier or carriers is or are proposing such rate, that rate is unfair or uneconomic. If one of the Contracting Parties on receipt of the notification referred to in paragraph (c) above is dissatisfied with the new rate proposed by the air carrier or carriers of the other Contracting Party, it shall so notify the other Contracting Party prior to the expiry of the first fifteen of the thirty days referred to, and the Contracting Parties shall endeavour to reach agreement on the appropriate rate. In the event that such agreement is reached each Contracting Party will exercise its statutory powers to give effect to such agreement. If agreement has not been reached at the end of the thirty day period referred to in paragraph (c) above, *the proposed rate may, unless the aeronautical authorities of the country of the air carrier concerned see fit to suspend its operation, go into effect provisionally pending the settlement of any dispute in accordance with the procedure outlined in paragraph (g) below.*

"(f) Prior to the time when such power may be conferred by law upon the aeronautical authorities of the United States, if one of the Contracting Parties

is dissatisfied with any new rate proposed by the air carrier or carriers of either Contracting Party for services from the territory of one Contracting Party to a point or points in the territory of the other Contracting Party, it shall so notify the other prior to the expiry of the first fifteen of the thirty-day period referred to in paragraph (c) above, and the Contracting Parties shall endeavor to reach agreement on the appropriate rate. In the event that such agreement is reached each Contracting Party will use its best efforts to cause such agreed rate to be put into effect by its air carrier or carriers. It is recognized that if no such agreement can be reached prior to the expiry of such thirty days, the Contracting Party raising the objection to the rate *may take such steps as it may consider necessary to prevent the inauguration or continuation of the service in question at the rate complained of.*"

ATTACHMENT B

ATA PROPOSED RATE SUSPENSION LEGISLATION—SECTION-BY-SECTION ANALYSIS

Section 1002 of the Federal Aviation Act of 1958 authorizes the Civil Aeronautics Board to prescribe rates and practices, and to suspend rates in certain cases, of air carriers engaged in interstate and overseas air transportation. No such specific rate authority has been given the Board in the case of carriers engaged in foreign air transportation. The purpose of the proposed bill is to empower the Board specifically to suspend rates relating to foreign air transportation when such rates appear to be unjust and unreasonable.

1. Subsection (d) of section 1002 of the act authorizes the Board to prescribe rates and practices of air carriers in interstate and overseas transportation, with a proviso that as to overseas air transportation the Board shall prescribe only a "just and reasonable maximum or minimum, or maximum and minimum rate, fare, or charge." Section 1 of the proposed bill would strike out the proviso with regard to overseas air transportation in order to give the Board the same authority to prescribe rates and practices of air carriers in overseas transportation as the Board now possesses with respect to interstate transportation. This change is necessary to standardize the Board's interstate and overseas rate authority and to necessarily distinguish between interstate and overseas transportation on the one hand and foreign air transportation on the other. This distinction is further necessary in view of the rate-suspension authority with regard to foreign air transportation given the board under section 4 of the proposed bill.

2. Section 2 of the proposed bill would change the heading of subsection (e) of section 1002 of the act to read: "Rule of Rate Making—Interstate and Overseas Air Transportation" in order to make clear that the Board's authority to prescribe rates applies to interstate and overseas transportation.

3. Section 3 of the proposed bill would change the heading of subsection (g) of section 1002 of the act to read: "Suspension of Rates—Interstate and Overseas Air Transportation" in order to make clear that the Board's authority to suspend rates under this subsection applies to interstate and overseas air transportation.

4. Section 4 of the proposed bill adds a new subsection (j) to section 1002 of the Act. The new subsection would empower the Board either upon a complaint or upon its own initiative to suspend in the public interest a proposed or an existing tariff relating to foreign air transportation for a period not exceeding 365 days in the aggregate. If and when the Board should suspend a proposed tariff, the rate, fare, or charge in effect immediately prior to the filing of the new tariff shall be maintained. In the case of an existing tariff, this section would empower the Board either upon a complaint or upon its own initiative to suspend any existing tariff relating to foreign air transportation which is not consistent with the public interest. Any such suspension would be for a period not exceeding 365 days in the aggregate. If and when the Board should suspend an existing tariff, the air carrier concerned may use the lowest or most advantageous tariff or tariffs currently in effect and applicable to services provided by other air carriers engaged in providing the same foreign air transportation.

5. Section 5 of the proposed bill would add a new subsection (k) to section 1002 of the act. New subsection (k) sets forth some of the factors or criteria which the Board shall take into account in exercising and performing its powers and duties under proposed subsection (j). These include:

1. The requirements of section 1102 of the act which relate to international agreements. This would insure that all actions, taken by the Board under

proposed subsection (j) would be full consistent " * * * with any obligation assumed by the United States in any treaty, convention, or agreement that may be in force between the United States and any foreign country or foreign countries, and shall take into consideration any applicable laws and requirements of foreign countries * * *";

ii. That all relevant factors, such as cost of operation, reasonable profit, the characteristics of each service, and the rates charged by other carriers and foreign air carriers shall be taken into consideration by the Board in order to properly ascertain just and reasonable levels of rates; and

iii. That the public interest requires adequate, efficient, and dependable transportation by U.S. and foreign air carriers at the lowest cost consistent with furnishing such transportation and that a need for sufficient revenue exists to enable air carriers to provide adequate, efficient, and dependable service under honest, economic, and efficient management.

A BILL

To amend the Federal Aviation Act of 1958 to provide for the suspension of rates in foreign air transportation

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (d) of Section 1002 of the Federal Aviation Act of 1958 is hereby amended by changing the heading to read "Power to Prescribe Rates and Practices of Air Carriers—Interstate and Overseas Transportation" and by changing the colon following the word "effective" to a period and striking out the following: "Provided, That as to rates, fares and charges for overseas air transportation, the Board shall determine and prescribe only a just and reasonable maximum or minimum or maximum and minimum rate, fare, or charge."

SEC. 2 Subsection (e) of section 1002 of the Federal Aviation Act of 1958 is hereby amended by changing the heading to read "Rule of Rate Making—Interstate and Overseas Air Transportation."

SEC. 3 Subsection (g) of section 1002 of the Federal Aviation Act of 1958 is hereby amended to change the heading to read "Suspension of Rates—Interstate and Overseas Air Transportation."

SEC. 4 Section 1002 of the Federal Aviation Act of 1958 is hereby amended by inserting a new subsection (j) to read as follows:

"SUSPENSION OF RATES—FOREIGN AIR TRANSPORTATION

"(j) (1) PROPOSED TARIFFS.—Whenever any air carrier or foreign air carrier shall file with the Board a tariff stating a new individual or joint (between air carriers, between foreign air carriers, or between air carriers and foreign air carriers) rate, fare, or charge for foreign air transportation or any classification, rule, regulation, or practice affecting such rate, fare, or charge, or the value of the service thereunder, which appears to the Board to be inconsistent with public interest, the Board is empowered, upon complaint or upon its own initiative, at once, and, if it so orders, without answer or other form of pleading by the air carrier, but upon reasonable notice, and by filing with such tariff and delivering to the air carrier or foreign air carrier affected thereby a statement in writing for such suspension, to suspend the operation of such tariff and defer the use of such rate, fare, or charge, or of any classification, rule, regulation, or practice affecting such rate, fare or charge, or the value of the service thereunder, for a period or periods not exceeding three hundred and sixty-five days in the aggregate beyond the time when such tariff would otherwise go into effect. During the period of such suspension or suspensions the air carrier or foreign air carrier affected thereby shall maintain in effect and use the rate, fare, or charge, or such classification, rule, regulation, or practice affecting such rate, fare, or charge, or the value of the service thereunder which was in effect immediately prior to the filing of the new tariff.

"(2) EXISTING TARIFFS.—With respect to any existing tariff on an air carrier or foreign air carrier stating rates, fares or charges for foreign air transportation or any classification, rule, regulation, or practice affecting such rate, fare, or charge, or the value of the service thereunder, the Board is empowered, upon complaint or upon its own initiative, at once and, if it so orders, without answer or other form of pleading by the air carrier or foreign air carrier, but upon reasonable notice, to suspend the operation of any such tariff which appears to be inconsistent with the public interest and to continue such suspension for a period

or periods not exceeding three hundred and sixty-five days in the aggregate from the date of such suspension. During the period of such suspension or suspensions, the air carrier or foreign air carrier may charge the lowest or the most advantageous to it of such rates, fares, or charges, or such classification, rule, regulation, or practice affecting such rate, fare, or charge, or the value of the service thereunder, as may be currently in effect for air carriers or foreign air carriers engaged in the same foreign air transportation."

SEC. 5. Section 1002 of the Federal Aviation Act of 1958 is hereby amended by adding a new subsection (k) to read as follows:

"PUBLIC INTEREST FACTORS—FOREIGN AIR TRANSPORTATION

"(k) In exercising and performing its powers and duties under section 1002(j), the Board shall take into consideration, among other factors—

"(1) the requirements of section 1102 of the Act;

"(2) the requirement that rates be established and maintained at just and reasonable levels, due regard being had for all relevant factors, such as costs of operation, reasonable profit, the characteristics of each service, and the rates charged by other air carriers and foreign air carriers;

"(3) the public interest requirement for adequate, efficient, and dependable transportation of persons and property by air carriers and foreign air carriers at the lowest cost consistent with the furnishing of such service;

"(4) the need of each air carrier or foreign air carrier for revenue sufficient to enable such carrier, under honest, economic, and efficient management, to provide adequate, efficient and dependable air carrier service."

Mr. JARMAN. Thank you, Mr. Phillips. That is a very good statement.

It occurs to me that it would be of interest and helpful to the subcommittee if you can furnish for the record a summary of how the agreement was reached in the IATA proceedings in Honolulu. We have been thinking with reference to these legislative proposals that the consideration of the need for this proposed legislation would be helpful in the negotiations underway over there. We have the press reports as of this morning.

I realize you would not be in a position to furnish us much of a background in your testimony this morning but if you could furnish for the record information on the meeting, negotiations and results, I think it would be helpful to the committee.

Mr. PHILLIPS. I will be happy to do so.

(The following letter was received for the record:)

AIR TRANSPORT ASSOCIATION,
Washington, D.C., December 1, 1971.

HON. JOHN JARMAN

Chairman, Subcommittee on Transportation and Aeronautics, Committee on Interstate and Foreign Commerce, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for a statement about the IATA Conference November 15-18, regarding international negotiations over air fares across the North Atlantic.

Obviously, since the Air Transport Association does not represent the U.S. scheduled air carriers in such negotiations, I was not a participant. However, representatives of U.S. carriers who were involved, have indicated that the Transportation and Aeronautics hearings on H.R. 11416 had a salutary effect on the achievement of the IATA agreement. There was much discussion and awareness that the U.S. Congress was deeply concerned about the potentially damaging effect of an "open-rate" situation and the apparent lack of authority for strong CAB action in such an instance. The fact that the Transportation and Aeronautics Subcommittee was holding hearings was widely discussed and this, along with the Senate action, was regarded by many representatives of foreign carriers as tacit evidence that the U.S. was determined to equip the CAB with sufficient regulatory power to deal with rates in foreign air transportation.

This IATA agreement was reached only after very arduous negotiations, and does not obviate the need for enactment of H.R. 11416. First of all, there is a serious danger that foreign countries and carriers would regard the hearings as an empty gesture, without final enactment of a bill. This could seriously weaken the position of U.S. carriers in future negotiations, and hinder the CAB from protecting the interests of the public in the establishment of rates in foreign air transportation. In addition, the problems which generated the confrontation over North Atlantic fares have not been abated. As you recall, ATA's testimony before the committee stressed three factors which underlie the controversy; and complicate the competitive situation across the North Atlantic:

- (a) A lag in expected traffic growth, due to the general economic downturn;
- (b) Introduction costs of greater capacity aircraft; and
- (c) The potential threat of more widespread and destructive competition from charter operations.

This latter problem has been particularly acute. There is widespread concern among foreign air carriers that the CAB will greatly ease restrictions on charter group travel, allowing U.S. supplementals and foreign charter operators to operate in a free-wheeling fashion which will significantly dilute the yield for scheduled carriers, and jeopardize the continued existence of a scheduled air transportation system. If the CAB promulgates a deleterious rule on group charter travel, it may well trigger a reaction on the part of foreign scheduled air carriers which will make another IATA agreement most difficult, or perhaps impossible, to achieve. Therefore we could be facing an impending "open-rate" war on the North Atlantic in the near future, inasmuch as the present IATA agreement is only for one year.

In closing, I express the appreciation of the U.S. scheduled air carriers for the responsive action of the Transportation and Aeronautics Subcommittee in holding hearings, and respectfully urge again that a bill confined to rate matters be enacted at the earliest opportunity.

Cordially,

S. G. TIPTON, *President.*

Mr. JARMAN. Mr. Adams?

Mr. ADAMS. No questions.

Mr. JARMAN. Mr. Harvey?

Mr. HARVEY. Thank you, Mr. Chairman.

Mr. Phillips, reading the morning paper, I see that one portion of the IATA agreement that was mentioned was the fare relative to the 22-to-45-day excursions. It said nothing about any of the other fare structures. The immediate question that comes to me is why should the cost of flying to Europe or to any foreign land depend on the number of days spent there?

Mr. PHILLIPS. I can only give you a general answer but it is the answer that is most applicable to most of these special conditions that are imposed in rates. The basic rate is a historic rate generally. It is one that a given number of passengers have moved on operations in a historical period. The airlines then seek to expand a market and capture a group of travelers who are not traveling at this given rate and so they create a lower fare. The thing they try to do is design a fare which will attract the new group of travelers at the given promotional fare without having the existing traveler move into that group of travelers.

The purpose of these conditions is to attract a special group of travelers that otherwise would not travel and would only find it desirable to use this fare at this given set of conditions. And that is the general rationale, as I understand it, that is used in deriving these special length of time fares.

Mr. HARVEY. I gather you would answer the question I asked Mr. Beyer in the affirmative. I asked him whether he thought there were

two markets on international routes, or whether there was only one group of international traveler.

Mr. PHILLIPS. I think I would answer the question this way, sir, there is one market in the international, the North Atlantic, as an example. That market consists of either generally a classification of two kinds or a classification of many kinds. You can either break it down as business travel which comprises about 20 percent of the scheduled carriers business and the discretionary traveler who comprises about 80 percent of our business.

Mr. HARVEY. Are regularly scheduled airlines permitted to own non-scheduled charter flights?

Mr. PHILLIPS. U.S. scheduled airlines are prohibited by the act from owning a supplemental airline.

Mr. HARVEY. You cannot participate in nonscheduled activities? You cannot become a charter company?

Mr. PHILLIPS. A U.S. scheduled airline can provide chartered services but it cannot own a charter airline.

Mr. HARVEY. I see. That answers my question.

Mr. PHILLIPS. They provide a great deal of charter services, Mr. Harvey.

Mr. HARVEY. I have no further questions. Thank you, Mr. Chairman.

Mr. JARMAN. Mr. Skubitz?

Mr. SKUBITZ. Mr. Phillips, I want to commend you on your statement.

On page 14, you state:

With respect to domestic rates, where the Board's jurisdiction is total, it is quite appropriate for the act to require the Board to follow standards not uncommon to our public utility regulation generally. But in the international arena, other considerations must be given equal if not greater weight and foremost of these is reaching accommodation with another sovereign power.

What are you saying that the public interest on the domestic lines should be related to the costs plus a reasonable profit, but on foreign traffic, the countries charge what the traffic will bear?

Mr. PHILLIPS. No, sir. I mean that on the foreign lines the rate should be sufficient to cover costs plus a reasonable profit but not in finite, absolute terms, and there must be some consideration to accommodating the legitimate interests of foreign governments or its airline.

Mr. SKUBITZ. What do you mean by the legitimate interest of a foreign airline?

Mr. PHILLIPS. The legitimate interest there, sir, refers to the fact that any international route which is a predicate for any rate to be charged, requires two terminals, one on either side, and both must agree to an arrangement before that route can be operative and for the rates to be charged over there to be agreed upon. If a U.S. traveler is taking off in the United States, they have nowhere to go on the other side, they don't become an international carrier.

Mr. SKUBITZ. Maybe you have answered my question.

Thank you, Mr. Chairman.

Mr. JARMAN. Mr. Dixon, counsel for the committee has a question, Mr. Phillips.

Mr. DIXON. Mr. Phillips, yesterday some questions were asked of Government witnesses concerning H.R. 8108. I don't know if you are familiar with that bill or not.

Mr. PHILLIPS. Is this an amendment to section 801?

Mr. DIXON. Yes. It was introduced by Chairman Staggers on May 5, and specifically the witnesses were asked to comment on that legislation. It occurs to me that your organization might want to consider that legislation, that bill, and comment either formally or informally on it because it may come into play with the legislation before us this morning.

Mr. PHILLIPS. We don't have a position now. I will attempt to have the airlines consider it and furnish you with whatever we can.

Mr. HARVEY. I have one further question, Mr. Chairman.

Mr. Phillips, how can the CAB truly protect the public interest with regard to rates that are set by IATA?

In other words, I gather that in the bill you favor, there would be authority for the CAB to suspend rates which they feel are not in the public interest. What happens when they suspend these rates? Are you going to sit down and renegotiate the rates? What happens then?

Mr. PHILLIPS. Well, if I may be a little expansive in answering your question, today historically the Civil Aeronautics Board has influenced IATA rates more than any other government. In some cases, it has rejected IATA agreements. It is reluctant to do so, but before that, it frequently instructs U.S. airlines prior to IATA agreement as to guidelines they should follow in reaching an agreement. The Board, up to now, has said it has a reluctance to disapprove an IATA agreement because in the absence of an agreement, then the carriers could file individually the same rate that IATA agreed on and then the Board could not take action against such rate. Now the Board, with this legislation we propose, the Board could continue to instruct U.S. carriers prior to IATA conference. If the results of that conference are not satisfactory to the Board, it can disapprove that agreement under powers it presently has and carriers then file individually or they would go back to the table and renegotiate another agreement.

If they renegotiate another agreement, the Board can still take the same action against that agreement as it did the first one if the results are not satisfactory. With respect to individual carrier filings, with appropriate legislation, it will be able to suspend or reject that tariff and force the airline individually to file one that is more acceptable.

Mr. HARVEY. You answered my question when you said that you do go into IATA conferences with instructions from the Board.

I thank you.

Mr. JARMAN. Are there further questions?

If not, gentlemen, we appreciate your being with us.

Our next witness is Mr. Edward J. Driscoll, president, National Air Carrier Association, with offices here in Washington, D.C.

Mr. Driscoll, it is good to have you with the subcommittee this morning.

STATEMENT OF EDWARD J. DRISCOLL, PRESIDENT, NATIONAL AIR CARRIER ASSOCIATION

Mr. DRISCOLL. Thank you, Mr. Chairman.

Mr. Chairman, I am president of the National Air Carriers Association, a trade association representing the eight leading U.S. supple-

mental carriers. As this committee knows, the supplementals are the charter specialists of the air transportation industry. Each of our carriers is certificated by the Civil Aeronautics Board to provide commercial charter service within designated areas as well as worldwide charter service for the Department of Defense.

We are pleased to have this opportunity to present our views on H.R. 11416. This bill, as you know, is identical to S. 2423, on which the Aviation Subcommittee of the Senate Commerce Committee held hearings last month. In order to save the time of this committee, I would like to submit for the record a copy of the statement which I presented at those hearings, and which sets forth in some detail our views on this legislation. In addition, I would like to summarize for you the principal points of that statement.

Mr. JARMAN. The committee will be glad to receive the statement.

(See statement dated October 20, 1971, p. 124, this hearing.)

Mr. DRISCOLL. We in the supplemental industry share the concern of other responsible observers over the rash of uneconomic and destructive transatlantic passenger fares which are being filed by one foreign airline after another. Not that we are opposed to low fares as such. On the contrary, low-cost air transportation is our specialty. But when fares are reduced to levels which are far below the cost of the service provided, they become uneconomic and destructive, and threaten the very survival of the industry. No one benefits from this type of competition, least of all the U.S. carriers, who—unlike their foreign competition—do not enjoy the luxury of government ownership and subsidy.

The supplementals, of course, have been experiencing destructive rate competition from the scheduled carriers for some time. When I appeared before this committee in September 1970, I described the array of discriminatory below-cost, loss leader fares which the International Air Transport Association (IATA) had adopted in an effort to capture the supplementals' charter market.

Mr. Chairman, subsequent to that appearance we appeared in overview hearings in the Senate in February of this year in which we submitted a very detailed statement on the status of the entire industry. That went into some of the very questions that were raised by some of the committee members here today with respect to the marginal pricing, and so forth, and with the Chairman's permission I would like to offer a copy of that for the record because it is quite a detailed analysis with economic data.

Mr. JARMAN. The committee will receive it for the record.

(See statement dated February 4, 1971, p. 131, this hearing.)

Mr. DRISCOLL. As I pointed out at that time, these fares—which include the so-called affinity group fares, incentive group fares, group inclusive tour (GIT) fares, and more recently the youth and student fares—are specifically aimed at groups which are eligible to use charter services, and are fixed at levels approximating planeload charter rates. To a larger degree, the present fare crisis on the North Atlantic was precipitated by the proliferation of fares of this type, which finally produced a fare structure which was so complex and irrational, and so unfair to the ordinary passenger who was forced to travel at normal individual rates, that it simply collapsed.

I would like to say, Mr. Chairman, I know several witnesses have tried to tie the current crisis to supplemental carriers and really we are not the cause of the present fare crisis. I think this is a movement with the schedule industry itself. It is a movement designed to try to get at the supplementals. But there are many causes of the problems affecting the entire industry and the rate issue is only a mere symptom of a much larger problem.

Since the supplementals have been principal victims of destructive fares in international markets, we would certainly welcome some effective remedial action in this area. Although one of our carriers, Capitol International Airways, believes that the existing law gives the Board adequate power in this area, the other members of our association believe the present law is deficient in two respects. First, the Board has no authority over the levels of international fares—unless those fares are established in an agreement which is subject to Board approval under section 412 of the act—and, second, the Board has no authority to suspend any international fares pending investigation. Although we do not think that the Board should have plenary authority to fix fares in foreign air transportation, we do believe that the act should be amended to prohibit any international fare which is so grossly unreasonable or destructively low that it constitutes a serious threat to U.S. carriers or air travelers. Moreover, we think the Board should have authority to suspend such a fare pending investigation, and that it should also have authority to suspend any fare which is unjustly discriminatory within the meaning of section 404(b) of the act.

H.R. 11416, in our view, goes too far, in that it would give the Board essentially the same kind of authority to fix fares in foreign air transportation which it now has to fix domestic rates. We believe it is neither realistic nor desirable to give the Board authority to fix the exact levels of international fares. All that is required, in our view, is authority to suspend international fares—and after investigation to order them discontinued—if they are unjustly discriminatory or if they are grossly unreasonable or destructively low.

As serious as the present fare crisis is, however, we consider it to be only a symptom of an even larger problem. In our view, predatory fares are just one aspect of an entire system of destructive competitive practices in the transatlantic market, all of which must be remedied if the needs of the traveling public are truly to be met. The restrictions on charter landing rights which many European governments impose to protect their scheduled carriers are another equally important part of the problem. So are the unrealistic price restrictions placed on inclusive tour charters (ITC's) which are permitted to land at all. And the CAB's own restrictive charter regulations, which were originally designed to protect an infant industry but have long since outlived their usefulness, have also prevented the development of fair competition in the transatlantic. Action on these problems, as well as the fare problem, is essential if we are truly to have an international air transport system capable of meeting the needs of the seventies.

In my Senate statement, I have outlined a program for dealing with all of these problems. In the interest of time, I will not attempt to restate that entire program here. I would, however, like to elaborate

somewhat on the landing-rights problem, both because it is of such critical importance and because it is so closely related to—indeed, inseparable from—the fare question. For the reasons which I am about to describe, we cannot support any fare legislation unless it includes a provision designed to deal effectively with the landing-rights problem.

Unlike the international route authorizations of scheduled carriers which are established and protected through international agreements, the supplementals' rights—although contained in certificates of public convenience and necessity duly issued by the Board and approved by the President—are entirely unprotected by treaty. Thus, in seeking landing and uplift rights for international charter flights, the supplementals are subject to the unilateral—and often arbitrary—policies of foreign governments. The result has been a hodgepodge of restrictive charter landing-rights policies, which have not only seriously hamstrung the supplementals, but also have frustrated U.S. international aviation policy.

The charter landing-rights restrictions of foreign countries have taken a wide variety of forms. On the simplest level, virtually all foreign governments require the supplementals to apply for advance approval of each individual charter flight. The application procedures are often burdensome, with extensive documentation required; and approvals—or disapprovals—are often not received until immediately prior to the flight, and in some cases not until the flight is in the air. By virtue of having to apply for permission to land on a flight-by-flight basis, the supplementals become subject to ad hoc requirements and to every manner of bureaucratic whim.

I might add here that the foreign independents who operate into this country under permits issued by CAB and approved by the President, do not have to at this point ask for an individual flight-by-flight approval. They are given up to a 5-year term permit which permits them to enter practically at will subject to only an uplift ratio.

Apart from the almost uniform requirement of obtaining advance approval, U.S. supplemental charter flights are subject to a wide variety of substantive restrictions. Israel bars all charter flights from the United States—while allowing charters from Europe, and while El Al carries large numbers of Americans to Europe and Israel. Many other countries frustrate the policies which led the Congress to enact inclusive tour charter legislation in 1968, either by banning ITC's outright—as in the case of Italy, the Scandinavian countries, Japan, Australia—or by imposing minimum price restrictions which make it difficult or impossible to market ITC's—as is true of the United Kingdom and all other European countries that do not have an absolute prohibition. Still other countries impose volume restrictions not only on ITC's but also on traditional planeload affinity charters. Some countries ban split charters, which are designed to enable smaller organizations to charter a portion—not less than 40 seats—of a large jet aircraft. And many foreign countries employ first refusal restrictions against U.S. supplementals, which require that charters developed by the supplementals first be offered to scheduled and charter carriers of the particular country.

On at least two recent occasions, foreign governments have used their power to deny supplemental landing rights as a retaliatory tactic against U.S. Government policies not related to the supplementals. In January 1970, Belgium, a country which had previously had a rather liberal charter policy, suddenly banned all charters by U.S. supplementals—but not U.S. scheduled carriers—from points on the U.S. east coast. Its stated goal was to bring pressure on the U.S. Government to grant Chicago-Belgium route authority to the Belgian scheduled carrier, Sabena.

Here we were not even involved in the situation, but we received the thrust of Belgium's retaliation, because Sabena did not get expanded scheduled carrier authority.

Similarly, Japan has imposed very severe volume limitations on U.S.-Japan charters as part of an effort to force the United States to grant improved scheduled route authority for Japan Air Lines.

The President's 1970 "Statement of International Air Transportation Policy" provided that "the foreign landing rights for charter services should be regularized, as free as possible from substantial restriction." To achieve this goal, the policy statement called for "intergovernmental agreements covering the operation of charter services. Yet our State Department has not yet succeeded in negotiating the first such charter agreement. The principal reason for this situation is that the United States has no real bargaining power, since it has nothing of importance which it can withhold if charter landing rights are denied.

We believe this situation requires immediate attention as urgently as does the current fare situation. If the U.S. scheduled carriers are entitled to added protection against the destructive fares of foreign carriers. U.S. supplemental carriers and their passengers are certainly entitled to added protection against the unfair and restrictive landing-rights policies which foreign governments have adopted.

H.R. 11416 would authorize the CAB to suspend the tariff of any foreign air carrier whose own government has suspended the tariff of a U.S. carrier. This approach, in our view, is equally adaptable to the landing-rights problem. When a foreign government refuses a U.S. carrier permission to operate in accordance with its certificate, applicable CAB regulations, and a lawfully filed tariff, the Board should have power to suspend, without hearing, the operating permits of some or all of that country's own carriers, or to make those permits subject to whatever conditions the Board deems appropriate in the circumstances. We have prepared a proposed amendment which would accomplish this, a copy of which is attached to my prepared text, along with an explanatory statement.

(See proposed amendments and explanatory statement, p. 189, this hearing.)

Mr. DRISCOLL. The mere existence of this type of authority, we believe, would probably make its exercise unnecessary. Up to now, foreign governments have been able to deny landing rights to U.S. charter carriers with virtual impunity, since the CAB has lacked any effective power to retaliate. Once such retaliatory power is granted, however, its existence should deter foreign governments from imposing arbitrary or restrictive conditions on charter operations. This

retaliatory authority would also give the State Department the bargaining power it needs to negotiate reasonable bilateral agreements with foreign governments on charter landing rights.

On the other hand, if H.R. 11416 or similar legislation were adopted without including a provision of the type we have proposed, it is very likely that it would exacerbate the landing-rights problems of the supplementals. The grant of broad new authority to the CAB to regulate fares in foreign air transportation would almost certainly lead some foreign countries to look for an avenue of retaliation, or at least a strong way of expressing their disapproval. And the supplementals, once again, would make a very inviting target, since they are not protected by treaty, and the U.S. Government, under existing law, lacks any other effective means of protecting them.

For this reason, the supplemental carriers—despite their strong opposition to destructive rates and their general desire to give the Board greater authority in this area—can only support rate legislation if it includes appropriate safeguards in the area of charter landing rights. In the absence of such safeguards, we fear that any benefits which such legislation would bring to the scheduled carriers could ultimately be at our expense—and, what's even more important, at the expense of thousands of Americans who utilize charter services.

In conclusion, Mr. Chairman, I want to make our position very clear. Although we agree that predatory and destructive international air fares are a serious problem, arbitrary restrictions on the foreign landing rights of supplemental carriers are a matter of equally serious concern. Because of their interrelationship, both problems must be dealt with at the same time. Adoption of H.R. 11416 or any similar fare legislation without provisions designed to deter charter landing rights restrictions would only worsen the existing predicament of the U.S. supplemental carriers. Accordingly, we have no alternative but to oppose any fare legislation unless it contains provisions which would empower the Board to retaliate effectively against unwarranted restrictions by foreign governments on the charter landing rights of U.S. carriers.

That concludes my statement, Mr. Chairman. Thank you very much. (The attachments to Mr. Driscoll's statement follow:)

STATEMENT OF EDWARD J. DRISCOLL, PRESIDENT, NATIONAL AIR CARRIER ASSOCIATION, BEFORE THE SUBCOMMITTEE ON AVIATION, COMMITTEE ON COMMERCE, UNITED STATES SENATE—OCTOBER 20, 1971

It is a pleasure to appear again before this Committee. My purpose today will be to present the views of the major U.S. supplemental air carriers which comprise the National Air Carrier Association concerning the present crisis in international air transportation.

The immediate occasion for this hearing, of course, is the rash of destructive fares which has broken out in the transatlantic market. There appears to be general agreement among the responsible representatives of both government and industry that if this situation is not promptly brought under control the U.S. carriers, as well as the entire international air transport system, will suffer serious and perhaps irreparable injury. We in the supplemental industry share this concern. We too are gravely threatened by the irrational, uneconomic, destructive fares which are being filed by one transatlantic airline after another. We also believe—as do most of the government and industry spokesmen who have testified before you—that immediate and effective governmental action is needed. However, our views as to the nature of the remedy required—and even

as to the nature of the problem itself—differ somewhat from those which have been previously expressed in these hearings. We believe the current state of destructive fares is merely the latest and most serious symptom of a larger problem which requires a much more comprehensive solution than simply giving the Civil Aeronautics Board greater authority over international air fares.

THE CAUSE OF THE CURRENT CRISIS

The immediate cause of the current fare crisis is not difficult to find. The transatlantic scheduled carriers engaged in a headlong rush to purchase large numbers of a huge new airplane, the B-747, and then discovered that traffic growth was not equal to the vast amount of capacity they had acquired. The 747's are two-and-one-half times the size of the B-707's and DC-8's which they replaced, and yet the carriers have in many cases continued to fly the same number of frequencies with 747's. In 1970, the whopping 20 per cent growth in scheduled transatlantic passenger traffic served to mask an almost equivalent increase in available seats. In 1971, however, transatlantic traffic growth leveled off sharply while the number of available seats continued to grow at a rapid rate—about 20 percent in the first five months of this year. The current fare crisis thus stems directly from the carriers' drastic efforts to find bodies to fill the excess numbers of seats which they had rushed to acquire.

The disagreement between Lufthansa and the other carriers in the International Air Transport Association (IATA) is in substance a disagreement over the best means of dealing with the excess capacity problem. Lufthansa's transatlantic fare package has the virtue of simplicity—eight fare levels as compared to the 52 now in effect and 69 under the proposed IATA Montreal package. But the Lufthansa fare levels are so destructively low as to threaten the economic welfare of the U.S. scheduled carriers as well as threatening substantial impairment of the charter services by U.S. supplemental carriers.

While the current crisis stems from these immediate causes, it is important to recognize that the use of uneconomic and destructive promotional fares against the supplementals is a phenomenon which has been going on for some time. When I appeared before this Committee last February in connection with your oversight hearings concerning air transportation, I discussed in some detail the array of "loss leader" fares which the IATA carriers had introduced in the transatlantic for the purpose of diverting charter passengers to scheduled service and driving the supplementals out of the market. The origins of this practice can be traced back to 1962, when the IATA carriers introduced the first "affinity group fares" in an effort to prevent the supplementals' affinity charter services from gaining a foothold in the transatlantic. In 1969, IATA increased normal economy fares, reduced affinity group fares, and introduced a new so-called "contract bulk inclusive tour" (CBIT) fare which was lower than any fare previously offered in the transatlantic market—and which was squarely aimed at the supplementals' charter traffic. The use of uneconomic fares was continued in 1970 when even lower affinity group fares were established. The introduction last Spring of the new youth and student fares, aimed at the large student charter market, represented a further intensification of this effort against the supplementals as well as an attempt to fill excess capacity. And many of the fares which were proposed at Montreal last summer—including the so-called "Advance Purchase" fare—were part of this continuing pattern.

I want to make it clear that when I use the terms "destructive," "loss leader," and "uneconomic" I am not talking about normal, healthy competition. Rather, I am talking about the concerted use by large route carriers of fares which are priced below cost and which are offered only in the most heavily traveled markets to a relatively narrow segment of the public which uses (or is eligible to use) charter services. It is the use of this kind of fare—subsidized, of course, by unnecessarily high normal fares—which has characterized the battle which the IATA carriers have been waging against the supplementals.

To illustrate my point, let me briefly describe the fare structure which was agreed upon by all IATA carriers except Lufthansa at Montreal last summer. Under that agreement, the first-class, economy, and excursion fares would have remained at present levels. However, the affinity group, incentive group, and group inclusive tour (GIT) fares—all of which are narrowly restricted fares aimed directly at the charter market—would have been substantially reduced.

In addition, a new "advance purchase excursion" (APEX) fare as well as the new youth fare would have been added to the IATA structure, both at unprecedented low levels. As a result, under the proposed Montreal fare agreement, passengers traveling under any of six different fares (affinity, GIT, incentive, APEX, youth or military) would have been charged *less than half* the normal economy fare.

In my opinion, the collapse of this chaotic fare structure was inevitable. It had finally become so complex, irrational and inequitable that it was simply unworkable. The immediate cause of the collapse may have been Lufthansa's refusal to accept the Montreal agreement, but I believe the transatlantic fare structure was bound to collapse anyway, sooner or later.

II

THE NEED FOR BROAD REMEDIAL ACTION

Since the supplementals have been principal victims of destructive promotional fares in international markets—and now both U.S. scheduled and supplemental carriers are effected—we would certainly welcome some effective remedial action in this area. We believe, however, that it would be a serious mistake for this Committee to limit its interest, or its recommendations, solely to the matter of fares.

This Committee, after all—and, indeed the government as a whole—must be concerned not only with protecting the economic interests of the carriers and their stockholders, but also with promoting the interests of the traveling public. And the public interest requires not merely an economically strong and stable air transport *industry*, but also a balanced and efficient air transport *system* which is capable of providing the public with the range of services it wants at the lowest possible cost consistent with sound economic principles. The elimination of the present fare crisis, or even granting the CAB increased authority over international fares, will not alone meet that need.

The use of destructive fares in the transatlantic market is, in fact, just one aspect of an entire system of destructive competitive practices in that market which is contrary to the public interest, and which must be reformed if the needs of the traveling public are truly to be met. The restrictions on charter landing rights which many European governments impose to protect their scheduled carriers are another equally important part of the problem. So are the unrealistic minimum price restrictions placed on inclusive tour charters (ITC's) when they are allowed to land at all. And the CAB's own restrictive charter regulations, which were originally designed to protect an infant scheduled airline industry but have long since outlived their usefulness, have also prevented the development of fair competition in the transatlantic. Action on these and related problems is essential if we are truly to have an international air transport system capable of serving the needs of the Seventies.

Certainly the matter of charter landing rights requires immediate attention as urgently as does the current fare situation. In my testimony before you in February, I described in considerable detail the enormous difficulties which the supplemental carriers have experienced in obtaining foreign landing and uplift rights. Since then, very little progress has been made toward implementation of the goal, expressed in the President's Statement of International Air Policy, that "foreign landing rights for charter services should be regularized, as free as possible from substantial restriction." The first bilateral agreement with respect to charter landing rights has still to be negotiated. Each charter carrier is still required to fend for itself among the incredible hodgepodge of national regulations, most of which are highly restrictive. The Board's proposal in July 1970, which would allow it in cases of charter landing rights restrictions to retaliate against on-route charter services of route carriers of the countries in question, has yet to be adopted—and would in any event be a most limited remedy. Surely, then, it would not be in the public interest to enact legislation to deal with the fare crisis and to ignore completely the equally important and equally destructive landing-rights crisis. If the U.S. airlines are entitled to added protection against the destructive fares of foreign carriers, U.S. charter travelers are certainly also entitled to added protection against the unfair and restrictive landing-rights policies which foreign governments have adopted at the behest of their government-owned scheduled carriers.

The public interest also urgently requires basic reform of the rules and regulations governing charter travel. We are still living under archaic and restrictive rules which were developed in a bygone era, and which were designed to limit rather than encourage charter travel. The Civil Aeronautics Board appears to have recognized the need to give the traveling public greater access to charter services, but its proposed non-affinity charter regulations—which were first announced early this year and which have received widespread public support—have still not been finally adopted. Moreover, the Board has yet to take any action to liberalize its highly restrictive inclusive tour charter regulations, which have substantially impeded the development of this mode of travel. If we are to have a truly competitive air transport system, and one which serves the varied needs of all types of travelers, the carriers should be permitted a full opportunity to develop the potentialities and exploit the economies of charter travel without being artificially hampered by complex, outmoded and unnecessarily restrictive regulations.

It is no answer to say that these problems can be solved administratively without the benefit of additional legislation. The fact is that they have not been solved administratively. And unless the CAB is given a clear and specific mandate by Congress, any meaningful changes in the charter regulations which the Board would adopt would inevitably be challenged in the courts—thus causing prolonged delay and uncertainty.

Parenthetically, Mr. Chairman, your direction to the Executive Departments to improve relationships between the United States and foreign countries with respect to charter operations has been very effective so far as the Department of State is concerned, and it is our understanding that a number of countries are now interested in discussing with the U.S. charter arrangements including the nonaffinity charter concept. However, the U.S. position on nonaffinity charters has not been established by the CAB thus precluding the Department of State from negotiating realistic arrangements.

For these reasons, we urge this Committee to direct its attention not merely to the present fare crisis, but rather to the entire range of problems which have prevented the development of a sound, stable, truly competitive and consumer-oriented international air travel system.

III

RECOMMENDATIONS

Let me turn now to the specific legislation which we believe is required. First, on the matter of fares, the NACA carriers—with the exception of Capitol International Airways—agree with the view that the Civil Aeronautics Board should be given additional authority to regulate international fares. It is our opinion, however, that S. 2423, which would give the Board essentially the same kind of authority to fix fares in foreign air transportation which it now has to fix domestic fares, goes too far. We believe it is neither realistic nor desirable to give the Board jurisdiction to fix the exact levels of international fares. We therefore favor legislation which would give the Board authority to suspend international fares—and after investigation to order them discontinued—only if they are unjustly discriminatory or if they are grossly unreasonable or destructively low.

It is important to bear in mind that there are significant differences between domestic and international air transportation. Although every government has full authority to regulate domestic transportation within its own borders, in the case of international transportation there are always at least two governments with coequal jurisdiction involved. The United States, therefore, cannot expect and should not attempt to exercise complete control over international fares.

On the other hand, the United States clearly has a legitimate interest in international fares, not only because its own carriers are affected but also because U.S. citizens constitute a very large percentage of all international air travelers. Thus, while the United States should not attempt to dictate international fare policy, it should exercise sufficient control to protect the vital interests of its own citizens and its own carriers.

It is also important to recognize that the CAB already has considerable power with respect to international fares, but it has historically been reluctant to exercise that power. For example, no IATA fare agreement can be imple-

mented until it is approved by the Board under Section 412 of the Federal Aviation Act. The Board could, if it wished, exert considerable control over IATA fares through the use of this power to disapprove, or condition its approval of, fare agreements. Not only could it block the implementation of any fare agreement which it finds not to be in the public interest, but it could also announce minimum standards or guidelines in advance of IATA fare conferences and thereby put the carriers on notice that any agreement they make must conform to those guidelines in order to obtain CAB approval. The Board, however, has infrequently taken any public position in advance of IATA fare conferences, and on those few occasions when it has, its statements have been so vague and general as to be of limited value. Moreover, once an IATA agreement has been reached, the Board has tended to rubber-stamp it after only the most cursory kind of consideration. To our knowledge, the very first time that the Board held an evidentiary hearing to consider an IATA fare agreement—a procedure followed in the most routine domestic fare case—was in 1969 (23 years after the IATA mechanism was instituted) when the introduction of unprecedented, low transatlantic CBIT fares was accompanied by an increase in normal fares. And that hearing dealt with only two of the many fares in issue, and thus precluded a thorough study of the entire transatlantic fare structure. Moreover, the Board has consistently refused to utilize its power to impose conditions on the approval of IATA fare agreements to induce home governments of IATA carriers to abandon restrictive landing rights practices directed at U.S. carriers.

On several occasions, we have urged upon the Board to make more vigorous use of its authority over IATA fare agreements in order to achieve a simpler, more rational, cost-oriented transatlantic fare structure. Prior to the 1970 IATA meeting at Honolulu (at which the now-expiring transatlantic fare agreement was adopted), we requested the Board "to take a greater role than in the past in seeking an equitable IATA fare structure." After the Honolulu agreement was filed with the Board, we filed an extensive and documented critique of the agreement in which we recommended that the Board institute an evidentiary investigation of transatlantic fares which would "lead to the development of guidelines by which future IATA fare agreements could be judged." Our recommendations, however, have received short shrift.

In these and other filings with the Board we have urged the adoption of a simple, balanced fare structure in which normal, promotional and charter fares would bear a rational relationship to one another grounded in the actual costs of service.

In addition to its authority to disapprove IATA fare agreements, the Board also has jurisdiction under Sections 404(b) and 1002(f) of the Federal Aviation Act to require, after an evidentiary investigation, the alteration or discontinuance of any fare—whether it has been established by agreement of unilaterally—if the fare is unjustly discriminatory, unduly preferential, or unduly prejudicial. The Board has also shown considerable reluctance to exercise this authority with respect to international fares. For example, when the foreign carriers first began to file their student and youth fare tariffs last Spring, NACA filed complaints alleging that these fares were all unjustly discriminatory. In these complaints, which were filed on June 10 and June 21, respectively, we urged the Board to hold an expedited investigation of the fares involved. The Department of Transportation, in a letter dated June 25, also urged the Board to investigate the lawfulness of these fares. Yet it was not until September 1 that the Board finally issued an order *instituting* an investigation of the youth and student fares, and the Board has yet to appoint a hearing examiner or otherwise put this proceeding into motion. Thus, four months after the complaints were filed, the Board's investigation of these fares has not even gotten off the ground.

Finally, the Board has jurisdiction under Section 411 of the Act to prohibit, after investigation, fares and fare practices which constitute an "unfair method of competition." But this authority also has never been used as a basis for eliminating destructive international fares.

One of our carriers, Capitol International Airways, believes that the Board's present power over international air fares is all that is needed, and that no further legislation in this area is required. The remaining carriers, however, believe that the Board's present authority is deficient in two respects. First, the Board has no authority over the levels of international fares (unless of course those fares are established in an agreement which is subject to Board approval) and, second, the Board has no authority to suspend any international fares pending investigation.

Although we do not think that the Board should have plenary authority to fix fares in foreign air transportation, we do believe that the Act should prohibit any international fare which is so grossly unreasonable or destructively low that it constitutes a serious threat to U.S. carriers or air travelers. Moreover, we think the Board should have authority to suspend such a fare pending investigation, and that it should also have authority to suspend any fare which is unjustly discriminatory within the meaning of Section 404 (b) of the Act.

Further, we believe that the suspension period should be longer than would be permitted by S. 2423. Under that bill, if the Board considers a particular fare to be unlawful it could suspend it pending investigation for a period of no more than 180 days. (§1002(g)(1).) On the other hand, the bill would permit a suspension of up to 365 days in retaliation against the fare action of another government. (§1002(g)(2).) We believe that in both situations the Board should have discretion to extend the period of suspension for a maximum of 365 days.

If the Board is given the additional authority which we advocate—and if it has the determination to exercise that authority—it will be fully capable of dealing not only with the present fare crisis but also with any similar situation which may arise in the future. The very existence of this authority should serve as a deterrent to destructive fare practices.

For the reasons which I have already discussed, however, we believe the bill should not deal solely with the fare problem, but should also cover other equally pressing issues relating to foreign air transportation. In particular, the matter of foreign landing rights for charter flights should also be covered. We note that S. 2423 would authorize the Board to suspend the tariff of any foreign air carrier whose own government has suspended the tariff of a U.S. carrier. This approach, in our view, is equally adaptable to the landing rights problem. When a foreign government refuses a U.S. carrier permission to operate in accordance with its certificate, applicable CAB regulations and a lawfully-filed tariff, the Board should have the power to suspend, without hearing, the operating permits of some or all of that country's own carriers, or to make those permits subject to whatever conditions the Board deems appropriate in the circumstances. We are presently preparing a proposed amendment to S. 2423 along these lines, which we will submit for the record.

The mere existence of this type of authority, we believe, would probably make its exercise unnecessary. Up to now, foreign governments have been able to deny landing rights to U.S. charter carriers with virtual impunity, since the CAB has lacked any effective power to retaliate. Once such retaliatory power is granted, however, its existence should deter foreign governments from imposing arbitrary or restrictive conditions on charter operations. This retaliatory authority will also give the State Department the bargaining power it needs to negotiate reasonable bilateral agreements with foreign governments on charter landing rights.

We also urge that any legislation include provisions which will scrap the out-moded charter regulations and permit the full development of the bulk transportation concept. From the point of view of the traveling public, nothing is more important than the development of modes of low-cost air transportation by both scheduled and supplemental carriers on a permanent and economically sound basis. This country is already far behind Europe in this respect, where sensible charter rules have stimulated the development of an enormous volume of intra-Europe vacation charter travel. The removal of the artificial affinity restriction, and the liberalization of the ITC regulations, would make the same kind of travel opportunities available to U.S. citizens.

This goal can be achieved by legislation authorizing any group of forty or more persons traveling pursuant to a single contract to use charter transportation, subject to implementing regulations to be adopted by the CAB. Legislation to this effect is already contained in S. 289, which is pending before this Committee and which I discussed in detail in my testimony before you last February. The enactment of this type of legislation, in my opinion, would usher in a whole new era of air transportation, and would give millions of Americans their first opportunity to experience the pleasure of air travel.

There are two related areas which also require legislative reform. First, under existing law a supplemental carrier is prohibited from marketing inclusive tour charters to the general public, either directly or through a tour operator which is affiliated with the carrier. This restriction, which is contained in Section 101 (34) of the Act, was adopted in 1968 as part of the original legislation authorizing the supplementals to perform inclusive tour charters. Experience since that time

has shown that this restriction is unwise, and serves merely to impede the development of ITC travel. The effort, expense and financial risk of organizing large inclusive tour programs is so great that very few independent companies are capable of performing this task. In our view, there is no reason why the carriers should not be permitted to market their own ITC's, or to help organize or finance tour operators, so long as the tours themselves conform to all applicable CAB regulations. Accordingly, we believe the restrictive language of Section 101(34) should be removed and replaced with a provision which would expressly permit the carriers to sell inclusive tours either directly or indirectly through controlled or affiliated tour operators. This same result, we believe, could also be accomplished via adoption of S. 289.

Second, the Board should be given discretion to permit air carriers to hold both scheduled and supplemental authority or to permit affiliations between scheduled and supplemental carriers when the Board concludes that either of these actions is in the public interest. Under present law, such discretion appears to be denied to the Board of Section 401(d)(3), which by its terms prohibits a scheduled carrier from obtaining a supplemental certificate, and which has been construed by a CAB examiner as also prohibiting a supplemental carrier from obtaining scheduled authority.

As this Committee is no doubt aware, a number of major foreign scheduled carriers have recently established charter subsidiaries. It is too early to determine just what the long-term effect of this action will be, or how the U.S. carriers will or should respond to this new situation. But it is at least conceivable that this new turn of events—or some other unforeseen situation which may arise in the future—may warrant the creation of some new relationship between U.S. scheduled and supplemental carriers. It seems to me both unnecessary and unwise to retain restrictive statutory language which denies the Board all discretion and flexibility in this area. The removal of this language would still leave the "public convenience and necessity" standard applicable to the issuance of all certificates, and would still require all inter-carrier agreements or control relationships to meet the public interest standard of Sections 408, 409 and 412 of the Act. These safeguards are entirely adequate, and the restrictive language of Section 401(d)(3) can only serve to prevent the Board from taking action which is in the public interest. We therefore urge the adoption of S. 2548, now pending before this Committee, which would eliminate this restriction.

CONCLUSION

Mr. Chairman, I have tried to sketch out a legislative program which will not only deal with the present fare situation in the North Atlantic, but will also equip the international air transport system to meet the present and future needs of the traveling public. We recommend:

A. That the Board be granted legislative authority to suspend fares which it determines to be grossly unreasonable, destructively low or unjustly discriminatory;

B. That the Board be given authority to suspend without hearing the operating permits of foreign air carriers whose governments refuse a U.S. carrier permission to operate in accordance with its certificate;

C. That legislation be enacted implementing the bulk transportation concept, which would eliminate outmoded charter regulations and permit the carriers to market bulk transportation services to all consumers rather than only those few who are eligible under existing regulations.

D. That supplement carriers be authorized to market inclusive tour charters directly to the public rather than exclusively through independent tour operators; and

E. That affiliations between scheduled carriers and supplemental carriers be permitted if the Board determines that such an affiliation is in the public interest.

For the reasons which I have discussed, we believe the fare crisis should not be considered in isolation. Rather, we believe this Committee and the Congress should consider the entire range of closely inter-connected problems affecting international air transportation, and should deal with them in one comprehensive legislative package. Only in this way will the interests of both the air transport industry and the traveling public be truly served.

STATEMENT OF EDWARD J. DRISCOLL, PRESIDENT, NATIONAL AIR
CARRIER ASSOCIATION, BEFORE THE SUBCOMMITTEE ON AVIATION,
COMMITTEE ON COMMERCE, UNITED STATES SENATE—FEBRUARY
4, 1971

My name is Edward J. Driscoll. I am president of the National Air Carrier Association (NACA), the trade association which represents the ten major supplemental air carriers — the charter specialists in the field of air transportation. Each of our carriers holds a certificate of public convenience and necessity, granted by the Civil Aeronautics Board, authorizing it to provide commercial charter services within designated geographic areas and military charter service anywhere in the world.

We are very pleased that this Committee has decided to take a comprehensive look at the air transportation industry, and we are grateful for this opportunity to present our views.

These hearings are being held at a critical time in the history of air transportation. The air transport industry today faces one of its most severe tests. Its very survival hangs in the balance.

Other modes of transportation have faced similar crises in the recent past. As you know, ocean shipping, which was once dominated by the United States, is today largely controlled by vessels under foreign registry. Our rail transport system has been declining for decades, with passenger rail service

deteriorating steadily. Last year, a major railroad, the Penn Central, went bankrupt. Only recently have steps been taken to revive rail transportation as a viable mode of passenger travel.

Fortunately, the crisis in air transportation has not gone as far as it has in the shipping and railroad industries. But I regret to say that, at this moment, we are heading in the same direction.

We believe the present trend can be reversed, but it will take more than mere words and mere hoping. The entire system must be improved and updated, so that it can meet the changing needs of the entire public.

What we have today is a system with too much competition in some markets, and too little in others; a system that expands capacity without regard to traffic volume; a system in which carriers try to outdo each other in terms of the luxuriousness of cabin service, instead of efficient and low-priced transportation.

What we need is what I call a balanced system of air transportation. A balanced system is one that meets the needs of the entire public — the business traveler and the vacation traveler, the person who wants the convenience and flexibility of individual travel as well as the person who wants the economic advantages of group travel. A balanced system, by meeting the needs of the public, would necessarily expand the market for air travel and thus alleviate the economic problems which now plague the industry.

The achievement of such a system requires legislation. Specifically, we believe that it requires enactment of Senate Bill 289, which was introduced at the request of the National Air Carrier Association by Senators Moss of Utah and Tunney of California, and which is now before this Committee. This bill will broaden the air transportation market, eliminate loss-leader fares and

strengthen the position of the United States in dealing with the arbitrary landing rights restrictions of some foreign governments. I will deal with the specifics of the bill later on in my testimony.

S.289, however, will not do the whole job. Other reforms, not covered in that bill, are also essential. For example, we believe that the Federal Aviation Act should be amended to give the Civil Aeronautics Board greater discretion to permit the establishment of intermodal systems of transportation. Our complex economy needs an integrated and efficient network of rail-ship-air transportation. The development of such a network is presently impeded by an obscure provision in Section 408 (b) of the Act, which unduly inhibits mergers or consolidations between surface and air carriers. This restriction originated when air transportation was an infant industry and was designed to protect it from domination by surface carriers. Since this danger no longer exists, the CAB should now be given maximum flexibility to approve common control of air and surface carriers when it finds such intermodal relationships to be in the public interest.

Another technical provision of the Act which requires modification is Section 401 (d) (3), which was designed to prohibit scheduled carriers from obtaining a supplemental certificate. A CAB hearing examiner recently construed this section as precluding the Board from granting a supplemental carrier a certificate to operate scheduled service. Although the Board itself has never passed on the issue, the examiner's decision stands as a precedent which might prevent the Board from making such a grant, although it may in certain situations be in the public interest. Again, we support the philosophy of giving the CAB full flexibility and discretion in this area.

I have attached to my statement as Exhibits 1 and 2 some elaboration of both of these matters and suggestions as to how they might be dealt with.

In addition, the supplemental carriers are also presently precluded, by Section 101 (33) of the Act, from controlling or being under common control with inclusive tour operators, which means that the carriers cannot participate in the sale of their own services to the public. We believe that consideration should be given to modifying this restrictive provision of the law, so that the CAB would have full discretion to authorize carrier-tour operator relationships which it finds to be in the public interest. Lastly, we believe that action should be taken either by the Congress or the Executive Branch to assure that scheduled and supplemental carriers which assign aircraft to the Civil Reserve Air Fleet are allocated a fair portion of military airlift requirements.

My testimony today will deal mainly with the problems facing the supplemental carriers. But I want to make it very clear that it is not our objective to advance the interests of the supplementals at the expense of the scheduled carriers. On the contrary, our aim is to promote the growth and vitality of the entire industry, so that all carriers will prosper and the American public will continue to enjoy the kind of efficient and economical air transportation to which it has become accustomed and to which it is entitled. The traveling public needs air transportation services designed for both individuals and groups, for both business and vacation travel. In short, it needs a balanced system of air transportation including both scheduled and supplemental carriers.

I

THE ROLE OF THE SUPPLEMENTAL CARRIERS

At the outset, let me briefly explain what the supplemental carriers are and the role they have played in the total air transport system.

Today's supplementals are the direct descendants of the old "nonscheduled carriers" or "nonskeds," which sprang up after World War II. In the early post-war years, these carriers made a number of important and lasting contributions to air transportation. At a time when scheduled air transportation was a high-priced luxury available only to the affluent, the "nonskeds" introduced low-cost "air coach" service, which enabled many people of modest means to travel by air for the first time. Today's economy or tourist class service, which is used by the vast majority of air travelers, is a direct outgrowth of the non-scheduled air coach service. The "nonskeds" also pioneered and developed commercial passenger charter service, at a time when the charter market was virtually ignored by the scheduled carriers. They were also the first air carriers to provide air freight service at reasonable rates and the first to operate commercial all-cargo aircraft. All of these things were accomplished, it should be noted, without one penny of government subsidy — at a time when the scheduled carriers were all heavily subsidized.

These carriers also provided vital transportation services to the defense establishment. During the Berlin Airlift, for example, they carried some 25 per cent of the passengers and 57 per cent of the cargo tons transported by commercial air carriers in charter operations. In the Korean War, they provided approximately half of the total commercial airlift required by the mili-

tary. This tradition of service to the military, which began in those postwar years, has continued to the present day.

As the nonscheduled carriers grew in size and importance, a legal controversy arose as to precisely what their role should be and whether they should be granted certificates of public convenience and necessity by the CAB. This issue was eventually presented to the Congress, which in 1962 enacted amendments to the Federal Aviation Act specifically authorizing the establishment of a class of "supplemental air carriers," with authority to perform "charter trips in air transportation" pursuant to certificates of public convenience and necessity to be issued by the CAB. The purpose of this legislation was to give these carriers a permanent role in the nation's air transportation system. This Committee, at that time, stated that it was "unanimous in its conviction that the supplemental carriers have a vital role to play in meeting the air transportation needs of this country." (S. Rep No. 688, 87th Cong., 1st Sess. p. 21 (1961).)

In 1968, a further amendment was adopted, authorizing the supplementals to perform "inclusive tour charter trips." The legislative history of this amendment again stressed the important contributions which the supplementals had made and were making. For example, the Senate Report stated:

"Congress carved out for the supplemental air carriers a special role in transportation, that of charter specialists. These carriers since 1962 have become solid, responsible, safe and profitable business entities. They have served the purpose Congress intended well and have provided a valuable adjunct to the scheduled service offered by the scheduled air carriers. They have been indispensable in providing added air lift capacity to meet the national defense needs in South Vietnam and throughout the world. They have actively promoted the airline charter business to the point where it is a growing means of travel for American citizens, who otherwise would have been denied an opportunity to take low cost vacations by air.

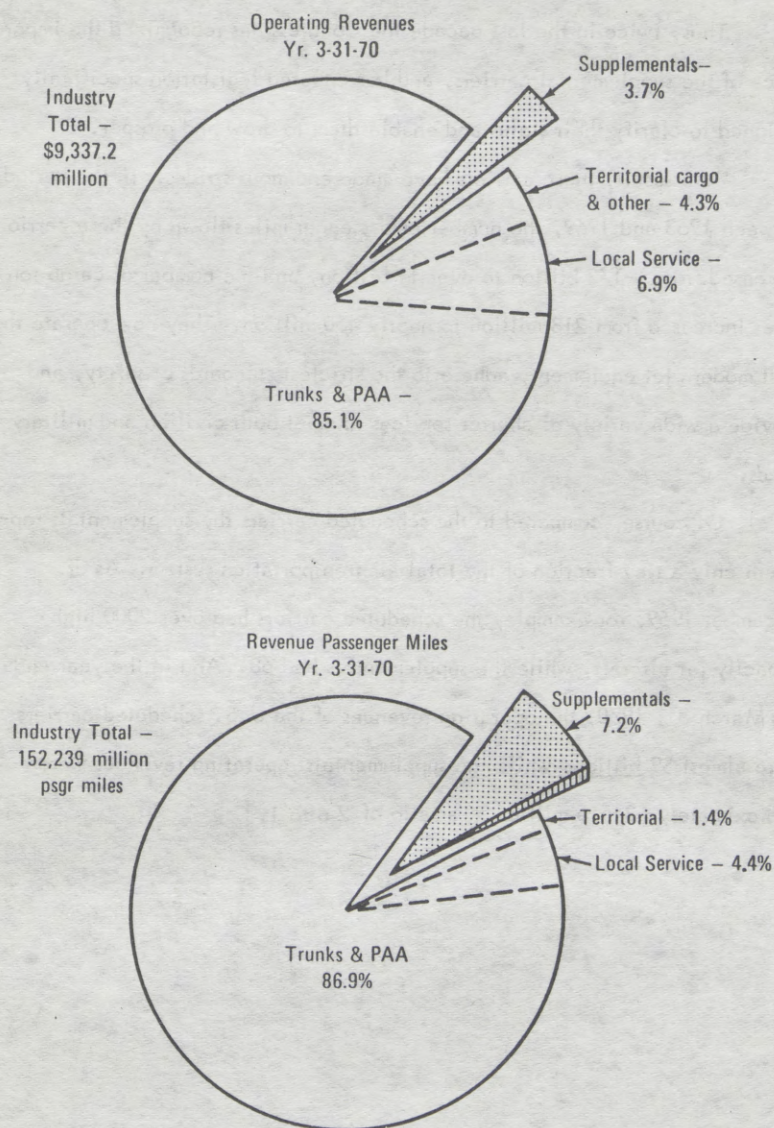
"Supplementals are a permanent and integral part of the national air transportation system"
(S. Rep. No. 1354, 90th Cong., 2d Sess. p. 4 (1968).)

Thus, twice in the last decade the Congress has recognized the importance of the supplemental carriers, and has enacted legislation specifically designed to clarify their status and enable them to grow and prosper.

As a result, these carriers have made enormous strides. In the period between 1963 and 1969, the number of passenger miles flown by these carriers increased from 1-1/2 billion to over 11 billion, and the number of cargo ton miles increased from 218 million to nearly 450 million. They now operate the most modern jet equipment, adhere to the strictest standards of safety, and provide a wide variety of charter services to meet both civilian and military needs.

Of course, compared to the scheduled carriers the supplementals represent only a tiny fraction of the total air transportation system. As of December 1969, for example, the scheduled carriers had over 2000 high-capacity jet aircraft, while the supplementals had 68. And in the year ending March 31, 1970, the operating revenues of the U.S. scheduled carriers were almost \$9 billion, while the supplementals' operating revenues were approximately \$345.5 million — a ratio of 26 to 1.

THE SUPPLEMENTALS ACCOUNT FOR ONLY A SMALL
FRACTION OF AIR TRANSPORT REVENUES AND TRAFFIC



Yet while the supplementals are only a small part of the total picture, the charter services they provide are a very important part of air transportation. In the words of the President's recent Statement of International Air Transportation Policy:

"They [i.e., charter services] offer opportunities to exploit the inherent efficiency of payload movement and the elasticity of demand for international air transport. They can provide low-cost transportation of a sort fitted to the needs of a significant portion of the traveling public. Charter services are a most valuable component of the international air transportation system, and they should be encouraged."

Equally vital is the role which the supplementals have played in the nation's defense system. As the CAB has stated:

"These 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."
Supplemental Air Service Proceeding, Order E-24237, September 30, 1966, p. 9.

In light of the important role played by the supplemental carriers, it is appropriate for this Committee, in reviewing the problems of the air transportation industry, to consider the industry as a whole, and not to exclude consideration of any particular segment. I should therefore now like to discuss some of the problems confronting the supplemental carriers and to describe the way in which they interrelate with the problems of the entire industry.

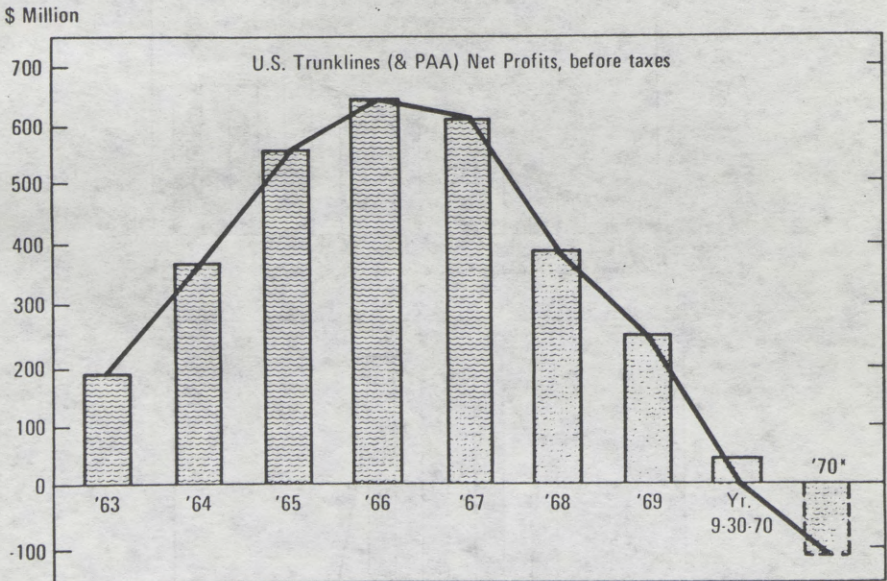
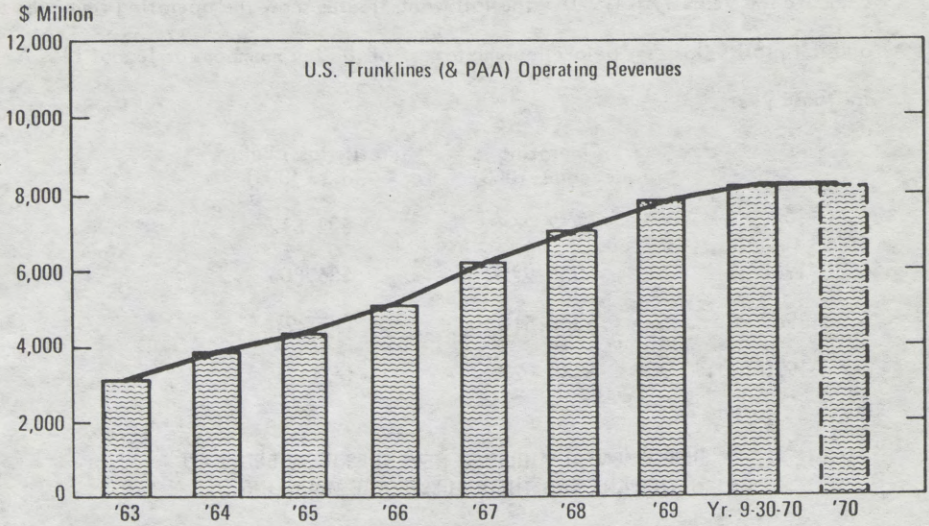
II.

THE CURRENT CRISIS AND ITS CAUSES

As I stated earlier, the air transportation industry is in a state of economic crisis. Carriers which a few years ago were enjoying handsome profits are now suffering larger and larger losses. This is true of both the scheduled and the supplemental segments of the industry.

Both the scheduled and supplemental carriers are experiencing rapid cost increases due to inflation, declining yields and a disastrous profit-and-loss picture. In the case of the scheduled carriers, notwithstanding an uninterrupted increase in operating revenues, U.S. trunkline profits have fallen off drastically from a more than \$600 million profit in 1966 to a more than \$100 million estimated loss in 1970. As for the supplementals, both their revenues and profits have been in decline since 1969. And the worsening of their profit-and-loss experience has likewise been a drastic one.

SCHEDULED AIRLINES REVENUES HAVE BEEN ON
THE RISE, BUT PROFITS ARE DISAPPEARING

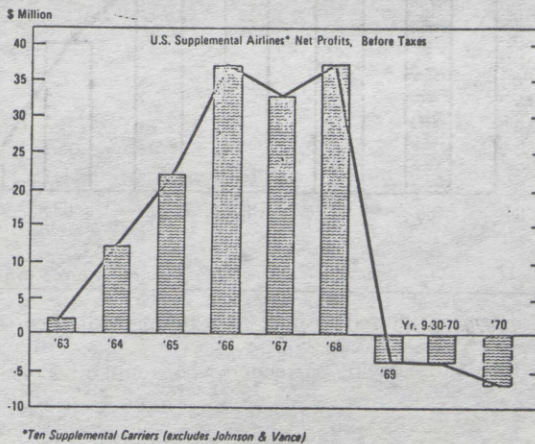
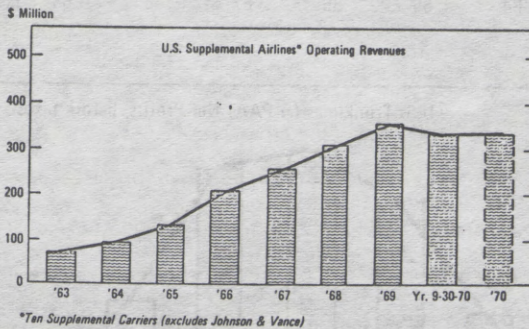


*Est. by ATA Dec. 1970

To illustrate what has happened to the profits of the supplementals, let us compare the years 1967-1970. The following figures show the operating revenues and net profits (losses), before income taxes, of the ten member carriers of NACA for those years:

	Operating Revenues (000)	Profit (loss) Before Taxes (000)
1967	\$252,268	\$32,817
1968	\$336,925	\$36,806
1969	\$368,510	(1,729)
1970 (est)	\$338,027	(7,112)

**SUPPLEMENTAL AIRLINES' REVENUES HAVE BEGUN
TO WANE AND THEIR LOSSES ARE MOUNTING**



In examining these figures, it is important to bear in mind that the supplemental industry represents less than 4 per cent of the total air transport industry revenues, and that the individual supplemental carriers are only a fraction the size of the major scheduled carriers. Viewed in that perspective, the above figures clearly show that the supplemental carriers are in at least as great economic distress as the scheduled carriers.

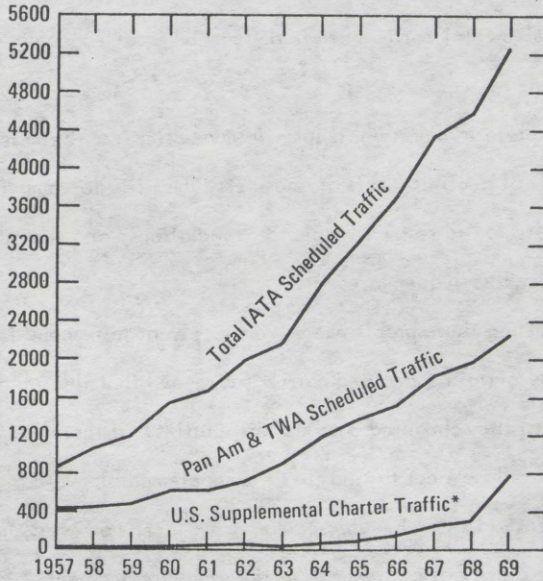
As I will explain in more detail later in my testimony, the dramatic drop in profits is the result of declining military business, inability to compensate with commercial business due to restrictive charter regulations, and the adverse impact of scheduled carrier loss-leader fares.

Before discussing these problems, however, I want to respond to the charge frequently made by certain scheduled carrier spokesmen that the supplementals are the cause of most of the scheduled carriers' difficulties. If there were any truth to that charge, one would expect to find that the supplementals were reaping great profits at the expense of the scheduled carriers. In fact, however, as the above figures show, both classes of carriers are in the same predicament.

To demonstrate that the supplemental carriers have not caused any economic injury to the scheduled carriers, let us examine the transatlantic market, which is the only civil air market in which the supplementals have more than a de minimis share of the total traffic. In the years 1952-63, before the supplementals were a significant factor in the transatlantic, U.S. scheduled carrier traffic in that market grew at an average annual rate of 14.2 per cent. In the years 1963-69, a period of rapid supplemental growth in the market, the growth rate of U.S. scheduled carrier traffic increased to 16.6 per cent. 1970 is likely to show a growth of more than 25 per cent for U.S. scheduled carrier traffic. These figures plainly show that the supplementals are not taking business from the scheduled carriers, but are creating new markets and are carrying passengers who would otherwise not have traveled at all.

THE GROWTH OF SCHEDULED TRANSATLANTIC
TRAFFIC HAS NOT BEEN INHIBITED BY THE
GROWTH OF CHARTER TRAFFIC

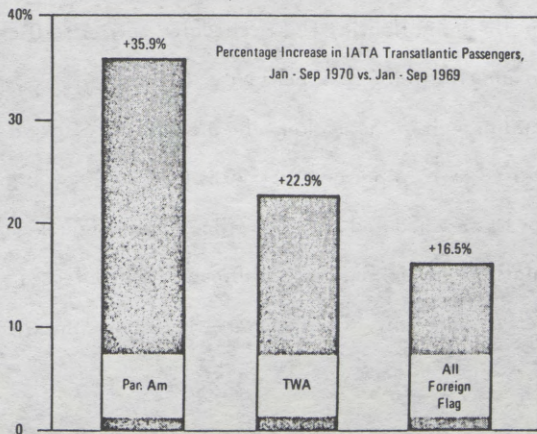
Thousands of
passengers



Source: CAB Docket 20569 and IATA Reports

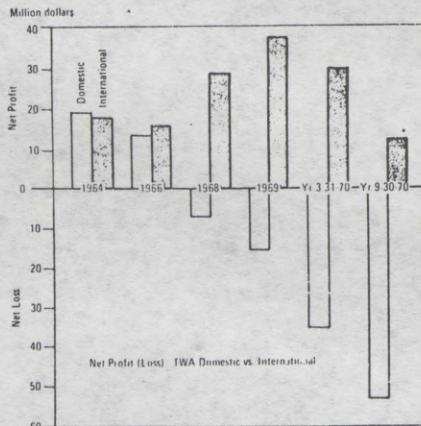
*April thru September 30

U.S. FLAG CARRIERS WERE THE PACE SETTERS
IN SCHEDULED TRANSATLANTIC TRAFFIC
GROWTH IN 1970



Moreover, despite the growth of the supplementals, the scheduled carriers have continued to show better financial results in the Atlantic than in any other market. TWA, for example, earned a net profit of \$16.8 million from its transatlantic operations in the year ended September 30, 1970, compared with a loss of \$50 million in its domestic operations — where competition from the supplementals is virtually nonexistent. TWA's return on investment in the Atlantic for the year ended June 30, 1970 was 11.7 per cent — a figure above the CAB's norm. Pan American also earned high profits in the Atlantic through 1968, when it began to experience a decline in all of its areas of operation. Its chief problem appears to be its Latin American division, which lost \$18.9 million during the period ending September 30, 1970, compared with a loss of only \$5.8 million on the Atlantic. Both carriers have enjoyed a greater rate of growth in the Atlantic market than elsewhere. TWA's transatlantic volume has grown at twice the rate of its domestic volume, and Pan American's Atlantic traffic leads its other divisions in rate of growth.

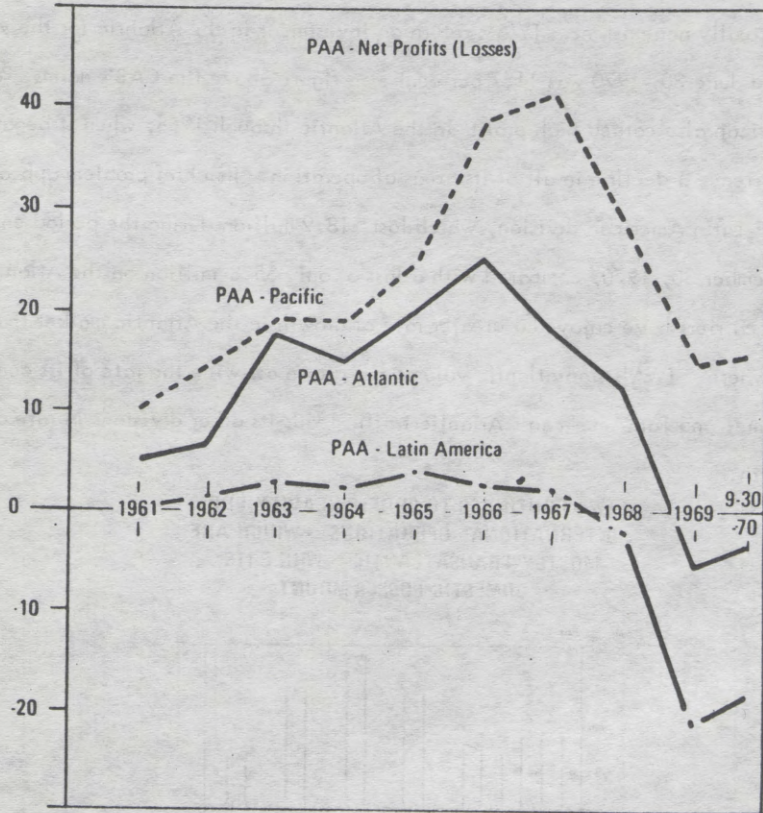
**TWA CONTINUES TO PROFIT HEAVILY FROM
INTERNATIONAL OPERATIONS -- WHICH ARE
MOSTLY TRANSATLANTIC -- WHILE ITS
DOMESTIC LOSSES MOUNT**



* Includes TWA New Pacific Routes which had a net loss of \$4.4 million

PAN AMERICAN'S ATLANTIC ROUTES EARNED
NOTABLE PROFITS THROUGH MOST OF THE
1960'S -- THE RECENT DECLINE IS OBVIOUSLY
SYMPTOMATIC OF SYSTEMWIDE PROBLEMS,
AS PROFITABILITY ON ALL ROUTES IS
DECLINING

Net Profits (Losses) in Millions of Dollars

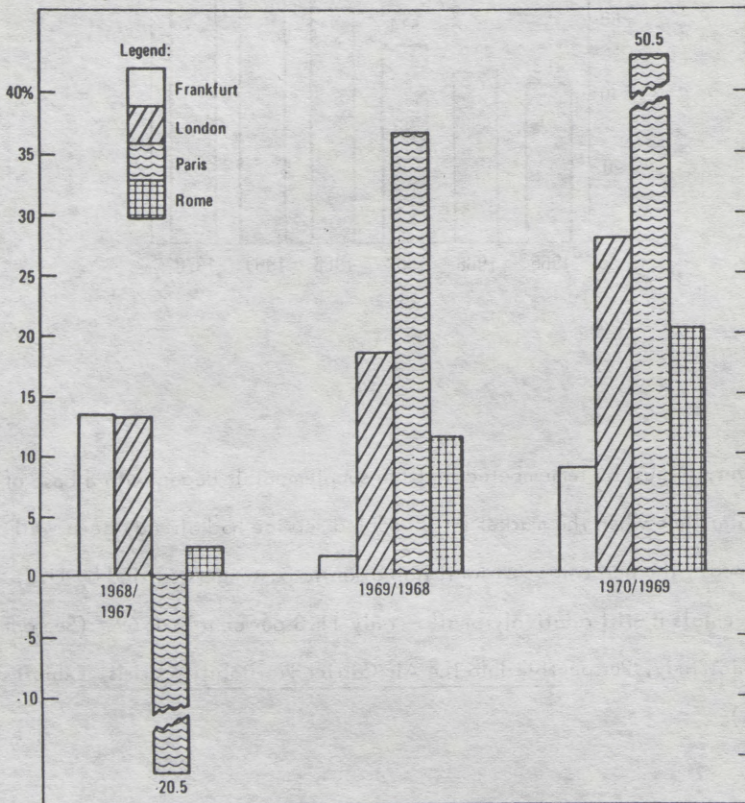


The scheduled carriers tend to view with alarm the admittedly high growth rate which the supplementals have enjoyed in the Atlantic. However, scheduled traffic has grown strongly in precisely those inter-city markets in which the supplementals have scored their greatest penetration.

SCHEDULED TRAFFIC HAS BEEN GROWING SHARPLY AT THE LEADING U.S.-EUROPE CHARTER TRAFFIC POINTS

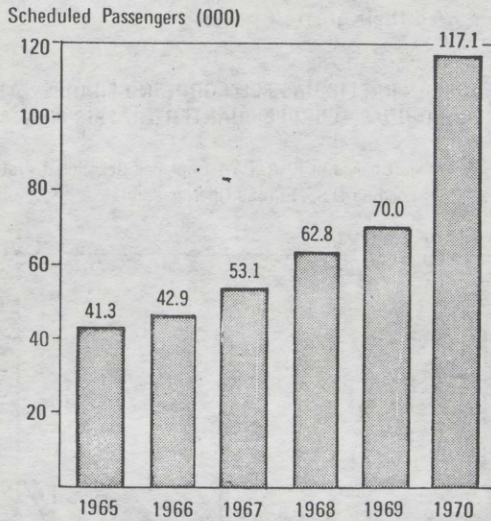
Annual Percentage Change in PAA/TWA Enplaned Scheduled Traffic,
Leading U.S.-Europe Charter Points

Percent: Change Over Prior Year



Note: Enplaned traffic in all periods covered above includes Intra-European traffic as well as trans-atlantic. Trans-atlantic boardings, although preponderant, cannot be isolated.

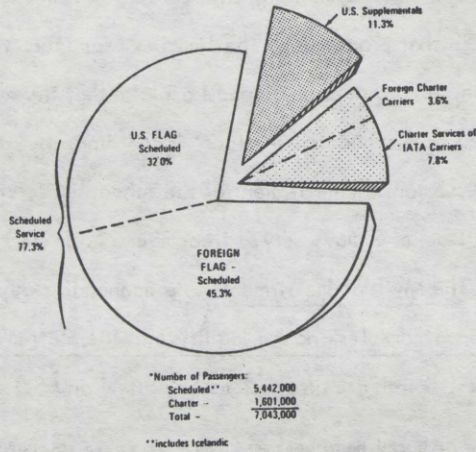
IN THE U.S. WEST COAST-EUROPE MARKET IN
WHICH CHARTER TRAFFIC IS HIGH, SCHEDULED
TRAFFIC SURGED IN 1970
JANUARY-MAY
1965-1970



Moreover, it must be remembered that the supplementals began with a base of zero, at a time when the market for scheduled service had already been well developed. The percentage of total transatlantic passengers carried by U.S. supplementals is still relatively small — only 11.3 per cent in 1969. (See our economic Study, Perspective Into the Air Carrier Profitability Crisis, Exhibit 3 hereto.)

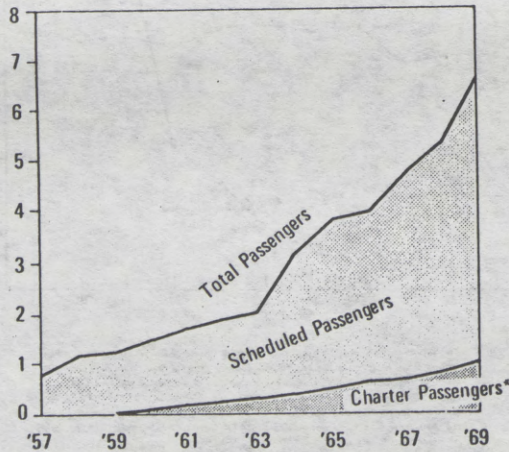
U.S. SUPPLEMENTALS ARE A SMALL FACTOR IN THE U.S.-NORTH ATLANTIC MARKET

Percentage Distribution of North Atlantic Passengers,
By Class of Carrier, 1969*



PREDOMINANCE OF SCHEDULED TRAFFIC IN
TRANSATLANTIC MARKETS HAS NOT BEEN
CHALLENGED; CHARTER TRAFFIC IN
TOTAL REMAINS A SMALL COMPONENT OF
OVERALL VOLUME

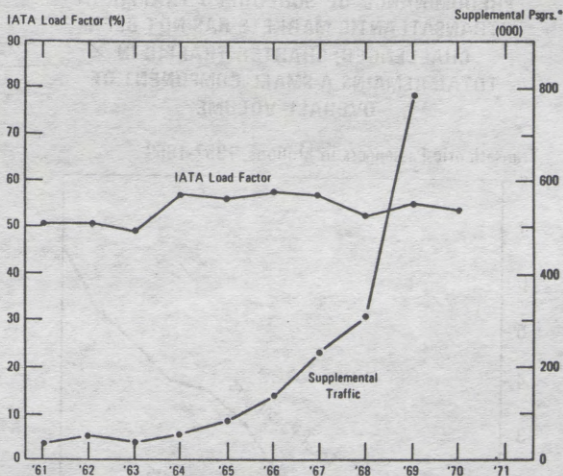
Transatlantic Passengers in Millions, 1957-1969



* Includes U.S. flag and foreign flag supplementals
plus charter traffic on IATA carriers

This entire question of the extent to which the supplementals divert traffic from scheduled services was the subject of an exhaustive evidentiary investigation by the CAB in the pending Transatlantic Supplemental Charter Authority Renewal Case, Docket 20569. After examining the reams of documentary evidence submitted by all the parties in that proceeding, the Hearing Examiner, William J. Madden, concluded that "the record does not support a claim that the number of supplemental passengers diverted from scheduled services is inordinately large, or at or approaching a point where substantial impairment of the scheduled services may be imminent." (Initial Decision, Docket 20569, served December 21, 1970.) (See also our economic report, The Myth of Impairment, and economic study, Forecast Charter Potential Under Updated Rules and An Inquiry Into the Matter of Impairment of Scheduled Services, which are attached as Exhibits 4 and 5.)

THE GROWTH IN SUPPLEMENTALS' TRAFFIC HAS NOT ADVERSELY AFFECTED IATA LOAD FACTORS

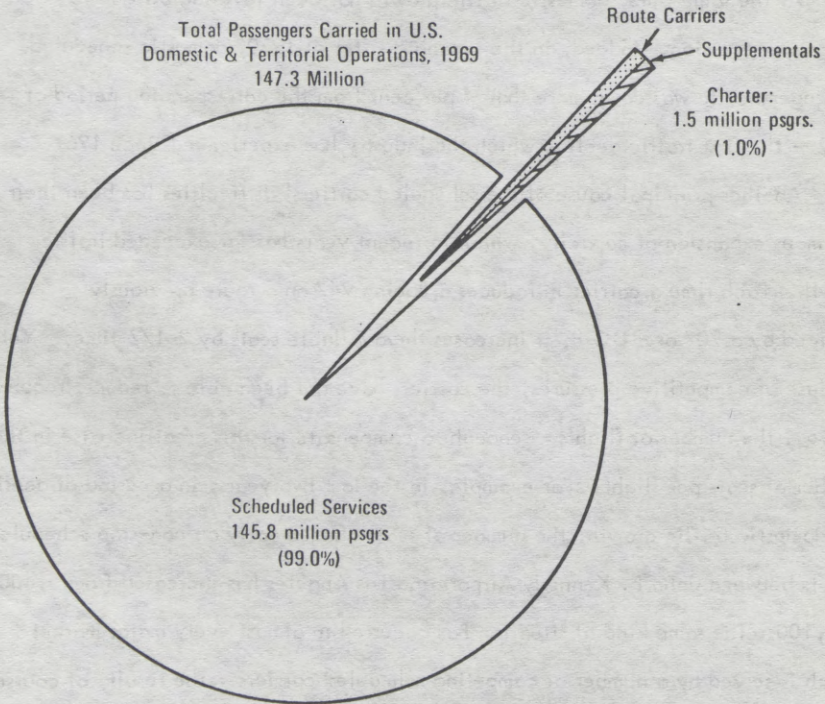


*April 1 - Sept. 30

NOTE The supplementals' growth has not historically impaired the IATA carriers' load factors (load factors are the key to profitability under a reasonable fare structure). Whether the future mirrors the past will depend upon whether the IATA carriers control the capacity brought on stream with the introduction of the B-747's, so as not to break their own load factors. The supplementals are now a static factor, for their growth in 1970 was curbed by IATA fares to a rate under 10%, probably no more than 5 or 6%.

The scheduled carrier financial crisis seems worst in the domestic U.S. market. Not only have TWA's huge losses been incurred in its domestic operations, but such large (and previously profitable) domestic trunk carriers as United and American have also posted sizable losses. Since the domestic traffic of the supplementals is miniscule — perhaps one-half of 1 per cent of the market — it is obvious that there is no basis for making the supplementals scapegoats for the scheduled carriers' current situation. The root causes, we believe, lie elsewhere.

**ONLY 1 OUT OF EVERY 100 U.S. DOMESTIC AND TERRITORIAL
PASSENGERS MOVE ON CHARTER FLIGHTS — ONLY 1 OUT OF
EVERY 200 USE SUPPLEMENTAL CARRIER SERVICE**



A. The Causes of the Scheduled Carriers' Problems.

In our view, the financial crisis facing the scheduled carriers is principally attributable to (1) rising costs due to inflation; (2) over-expansion of aircraft capacity; and (3) undue reliance upon discount fares with a resulting diminution in yields.

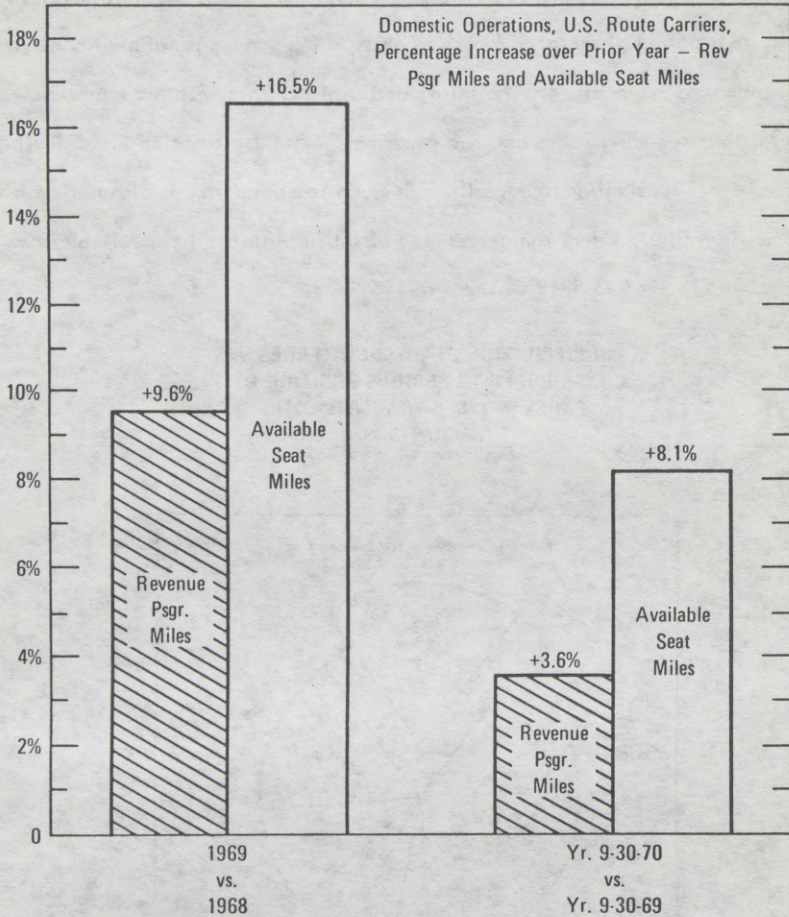
The scheduled carriers, of course, have been affected by sharply rising costs resulting from the recent inflationary trend in the economy. Between 1959 and 1966, average employment costs per domestic trunkline employee increased at an average annual rate of 5 per cent; in 1967, the rate increased to 7 per cent; and in 1969 it went to 9 per cent. Operating expenses, interest charges and other costs have also been rising rapidly.

At the same time, domestic traffic growth has been leveling off due to economic recession. Indeed, in the second quarter of 1970, domestic scheduled passenger traffic was down more than 4 per cent from the corresponding period of 1969 — the first traffic decline which the industry has experienced since 1961.

Another principal cause of the scheduled carriers' difficulties has been their enormous expansion of capacity, which in recent years has far exceeded traffic growth. Each time a carrier introduces a Boeing 747 on a route previously serviced by a 707 or a DC-8, it increases the available seats by 2-1/2 times. Yet because of competitive pressures, the carriers have not been able to reduce frequencies — i.e., the number of flights — enough to compensate for this great increase in the number of seats per flight. For example, in the last two years, in a period of declining domestic traffic growth, the number of seats offered daily on non-stop scheduled flights between John F. Kennedy Airport and Los Angeles has increased from 5,400 to 8,100. The same kind of situation has occurred in almost every major market which is served by a number of competing scheduled carriers. The result, of course,

is declining load factors, rising costs per passenger mile, and therefore declining profits.

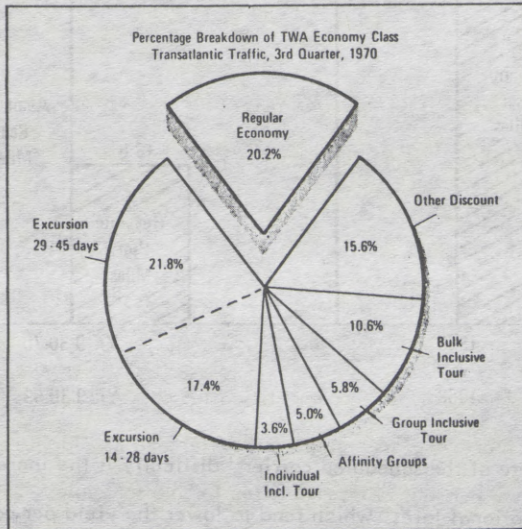
**CAPACITY ON DOMESTIC ROUTES HAS BEEN INCREASING
AT ABOUT DOUBLE THE RATE OF GROWTH
IN TRAFFIC VOLUME**



A further cause of the scheduled carriers' difficulty is the increasing utilization of discount or promotional fares, which tend to lower the yield per passenger mile. The problem is most extreme in the transatlantic market, as a result of the large num-

ber of very low promotional fares which the scheduled carriers have introduced in the past two years. For example, in the peak third quarter of 1970, only 20.2 per cent of TWA's and 24.5 per cent of Pan American's economy class passengers paid the full economy fare. The remaining passengers traveled at one of the so-called "promotional fares," which offer discounts of up to 60 per cent off normal fare levels. As a result, in a period of rapidly increasing costs, TWA's average international yield per revenue passenger-mile for the third quarter of 1970 was 7.8 per cent below the figure for the preceding year, and Pan American's Atlantic Division yield declined by 10 per cent. A similiar trend, although much less dramatic, is also noticeable in the domestic market, where the percentage of full fare traffic has declined from 66.7 per cent in 1966 to 53.9 per cent in 1969.

**A PROLIFERATION OF DISCOUNT FARES HAS
CONTRIBUTED TO SERIOUS DILUTION OF
FARES IN TWA'S TRANSATLANTIC
OPERATIONS**



B. The Causes of the Supplemental Carriers' Problems.

Although the supplementals have in many respects suffered from the same adverse economic trends as have the scheduled carriers, such as the inflationary cost squeeze, the causes of the supplementals' present financial crisis are in important respects different from those which affect scheduled carriers. They include the adverse impact of below-cost group fares of scheduled carriers in the supplementals' two large commercial markets; the severe restrictions imposed by foreign governments upon the grant of landing and uplift rights for supplemental charters; the restrictive charter regulations; and the serious decline in military charter traffic.

1. The Scheduled Carriers' "Loss Leader" Fares.

One of the major causes of the supplementals' dismal profit-and-loss picture is the loss of business caused by the scheduled carriers' below-cost group fares in the mainland-Hawaii and transatlantic markets, which have injured both scheduled carriers (by diluting their yields) and supplemental carriers (by diverting charter traffic to scheduled services). Any experienced economist could have foretold that neither class of carrier would gain from fares of this kind.

I want to emphasize that our complaint is not against low fares as such. What I am talking about here are "loss leader" fares, which are priced below cost, which can only be sustained by excessively high normal fares, and which are designed primarily to capture the supplementals' markets.

The supplementals have never objected to competition, so long as it is fair competition. For example, the supplementals have always held their own against the scheduled carriers in the head-on competition for charter business, even though the scheduled carriers have the advantages of greater size and highly advertised names. But we believe it is not fair competition for the scheduled carriers to burden their normal-fare passengers in order to offer transportation on scheduled services to selected groups at fares near or below charter rates.

The natural economic advantage of charter service is that charter flights operate only upon specific demand, at load factors approaching 100 per cent. Scheduled flights, on the other hand, operate at regular and predetermined intervals, irrespective of whether the flight is full or nearly empty. Scheduled service, therefore, is necessarily more expensive, and the scheduled passenger should expect to pay more for his transportation than a charter passenger. When the scheduled carriers offer group fares at levels approaching charter rates, it means that the passengers using those fares are not paying their proper share of the cost of the unused capacity which is an inherent part of scheduled service. This, in turn, means that other passengers who are traveling at normal individual fares are bearing a disproportionate share of this cost.

In the past few years, scheduled carriers have employed these below-cost group fares in the supplementals' two principal civil charter markets. The first market to be affected was the mainland-Hawaii market, where the supplementals had developed a sizable volume of inclusive tour charter (ITC) business. In 1968 this market yielded more than \$21 million in revenues for the supplementals. Late that year, the scheduled carriers, led by United Air Lines, instituted so-called "group inclusive tour" (GIT) fares which were directly aimed at the new market which the supplementals had developed — a fact which United readily conceded. The GIT fares, available only to tour operators for use in connection with organized group inclusive tours, ranged as low as \$225 New York-Hawaii round-trip, compared with the normal United economy fare of \$494.

As a result, the inclusive tour charter market to Hawaii, which the supplementals had pioneered and developed, has, in the CAB's words, "been virtually wiped out by the scheduled carriers' GIT fares." (ER-659, p. 21). In 1968, the supplementals earned approximately \$21.1 million in the mainland-Hawaii market, almost

all of which came from inclusive tour charters. In 1969, this figure fell to \$12.1 million, and in the first six months of 1970 the carriers have earned only \$1.1 million in this market, most of which came from affinity-group charters rather than ITC's. For all practical purposes, the Hawaii ITC market has been totally destroyed.

A similar pattern began to evolve (but may now have been temporarily arrested) in the supplementals' remaining major civil charter market, the transatlantic. In 1969, the six NACA member carriers with transatlantic authority earned revenues of nearly \$88 million in that market, carrying about 800,000 passengers. Most of this business was in the form of "affinity group" charters, rather than "inclusive tour" charters, since the supplementals have had great difficulty in obtaining landing rights in Europe for their ITC's — a matter which I will discuss further in a moment. An "affinity group" charter is one organized by a private organization, such as a bar association, fraternal lodge, ethnic organization, student groups, etc., in order to provide low-cost transportation for its members. Although the scheduled carriers have the same authority as the supplementals to charter to affinity groups, they have not been satisfied to compete in this manner. Instead, acting in concert through the International Air Transport Association (IATA), they have adopted an array of below-cost group fares, available on their scheduled services, which are concededly designed to divert charter traffic from the supplementals.

In 1969, IATA adopted a new fare structure characterized by higher fares for individuals traveling at normal first-class or economy rates and far lower group fares. These group fares include among others, (1) a special fare available exclusively to "affinity" groups, (2) a so-called "contract bulk inclusive tour fare" available solely to tour operators marketing inclusive tours of the sort normally carried on the supplementals' inclusive tour charters, and (3) a so-called "incentive group" fare available solely to corporations or other entities purchasing transportation for a large group.

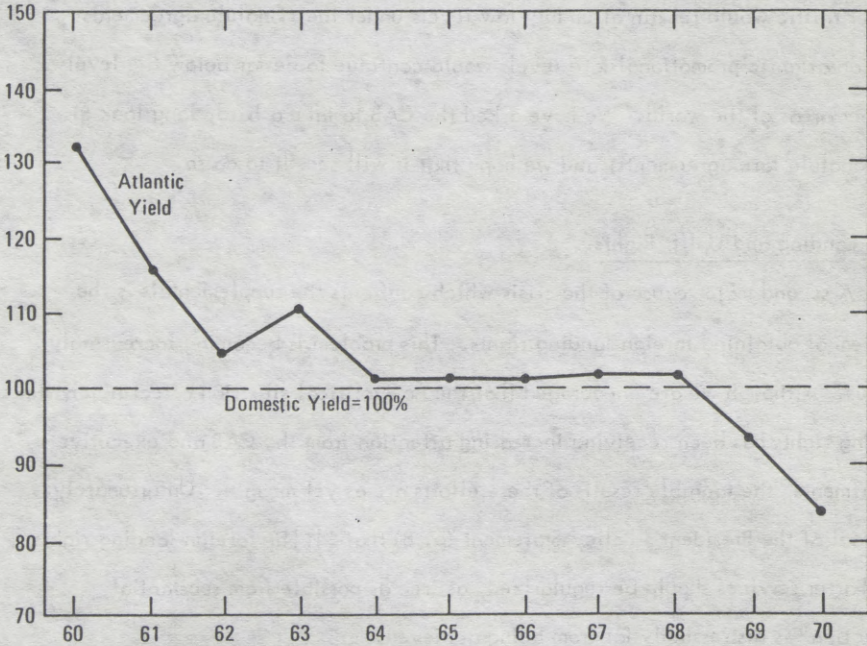
Each of these group fares is aimed directly at a specific charter market of the supplementals and each offers group transportation on scheduled flights at rates which approach, or in some cases are even lower than, charter rates. The fares have had a serious impact upon the supplementals in 1970 — both by sharply reducing the rate of their traffic growth and by forcing them to reduce charter prices to unsatisfactory levels.

These fares, we believe, are unfair not only to the supplementals but also to the large percentage of individually-ticketed passengers who must pay inflated individual fares to subsidize the below-cost group rates. For example, the normal round-trip economy fare between New York and London at the peak season is \$510. A passenger paying that fare may sit next to a person who is traveling at an "affinity group" fare of only \$235, or a member of an inclusive tour group who is paying only \$220 for his transportation. Plainly, this kind of fare structure blatantly discriminates against the normal fare passenger.

Moreover, the IATA group fares have injured, not benefitted, the scheduled carriers. Not only potential charter passengers have used them, but also large numbers of passengers who would otherwise have traveled on higher-level IATA fares. This type of "self-diversion" has reached the point where about 70 per cent of IATA transatlantic scheduled traffic is now traveling on some form of discount or promotional fare. Of course, a serious dilution in airline yields has ensued.

THE CHARTER CARRIERS ENCOURAGED IATA CARRIERS TO LOWER ATLANTIC
FARES, WHICH THEY DID PROFITABLY—BUT THE RECENT PLUNGE IN
YIELDS INDICATES UNECONOMIC COMPETITIVENESS

Atlantic as a % of Domestic Yield*—TWA



*Average revenue yield per passenger mile

Fortunately, there is some basis for optimism regarding the transatlantic market.

A new IATA transatlantic fare agreement was adopted at a conference in Honolulu this Fall, to be effective during the period April 1, 1971 - March 31, 1972. In advance of that meeting, the Chairman of the CAB released a letter setting forth the Board's views as to needed fare adjustments. (A copy of that letter is attached to my statement as Exhibit 6.) Among other things, Chairman Browne noted that the IATA group fares had unduly complicated the fare structure and had significantly reduced the carriers' yields. Accordingly, he recommended "a reduction in the number of discounted fare categories and an appropriate upward adjustment in the

level of those which remain." These recommendations were, to some extent, implemented by IATA, and two of the very lowest promotional fares were discontinued.

However, several other IATA transatlantic group fares aimed at diverting charter traffic would remain at unduly low levels under the Honolulu agreement, and transatlantic promotional fare levels would continue to be far below the levels in other areas of the world. We have asked the CAB to take a hard, long look at the Honolulu fare agreements, and we hope that it will see fit to do so.

2. Landing and Uplift Rights.

A second major cause of the crisis which confronts the supplementals is the problem of obtaining foreign landing rights. This problem is becoming increasingly serious. Although we are encouraged that the now-critical situation affecting charter landing rights has been receiving increasing attention from the CAB and executive departments, the tangible results of these efforts are as yet meagre. Unfortunately, the goal of the President's Policy Statement (p. 8) that "[t]he foreign landing rights for charter services should be regularized, as free as possible from substantial restriction" is distressingly far from being achieved.

While the international route authorizations of scheduled carriers are established and protected through international agreements, the supplementals' rights — although contained in certificates of public convenience and necessity duly issued by the Board and approved by the President — are entirely unprotected by treaty. Thus, in seeking landing and uplift rights for international charter flights, the supplementals are subject to the unilateral (and often arbitrary) policies of foreign governments. The result has been a hodgepodge of restrictive charter landing rights policies, which have not only seriously hamstrung the supplementals, but also have frustrated U.S. international aviation policy.

For example, at this very time, the supplementals have contracted for 94

charter flights to Japan in 1971 but as yet have no assurance that any of them will be allowed to operate. Our carriers have sold 118 ITC flights to the United Kingdom for the 1971 summer season, but the British authorities have at this point imposed a quota of 90 ITC's for all U.S. supplementals in the April-September 1971 period. Restrictions of this kind not only injure the supplementals, but also many thousands of passengers who are denied travel services of their choice, and whose vacation plans are disrupted.

In some cases, these restrictions are intended to obtain for foreign-flag carriers, and to deny to U.S. supplementals, group traffic largely or entirely originating in the United States. In other cases restrictions have been imposed on the supplementals by foreign governments as bargaining weapons aimed at securing from the U.S. government expanded scheduled routes. And a number of foreign government have taken it upon themselves to discriminate against U.S. supplementals in favor of U.S. scheduled carriers — in effect, to transfer to U.S. scheduled carriers passenger traffic developed by the supplementals — in a manner clearly contrary to U.S. aviation policy. We should also point out that virtually all of the European countries outside the Communist bloc have banded together, through the medium of the European Civil Aviation Conference (ECAC), to impose highly restrictive landing rights policies on charter flights of U.S. supplementals. The concerted action of these governments was fully confirmed by a study prepared by two executives of World Airways in 1970. (Exhibit 7 attached)

The charter landing rights restrictions of foreign countries have taken a wide variety of forms. On the simplest level, virtually all foreign governments require the supplementals to apply for advance approval of each individual charter flight. The application procedures are often burdensome, with extensive documentation required; and approvals (or disapprovals) are often not received until immediately prior to the flight — in some cases not until the flight is in the air. By virtue of

having to apply for permission to land on a flight-by-flight basis, the supplementals become subject to ad hoc requirements and to every manner of bureaucratic whim. (Some examples of this sort as experienced by a major U.S. supplemental are set forth in the testimony of a Senior Vice President of Trans International Airlines, filed in CAB Docket 22362, which is attached hereto as Exhibit 8.)

Apart from the almost uniform requirement of obtaining advance approval, U.S. supplemental charter flights are subject to a wide variety of substantive restrictions. Israel bars all charter flights from the U.S. — while allowing charters from Europe, and while El Al carries large numbers of Americans to Europe and Israel. Many other countries frustrate the policies which led the Congress to enact ITC legislation in 1968, either by banning ITC's outright (e.g., Italy, the Scandinavian countries, Japan, Australia), or by imposing minimum price restrictions which make it difficult or impossible to market ITC's (e.g., the U.K. and all other ECAC countries that do not have an absolute prohibition). Still other countries impose volume restrictions not only on ITC's (e.g., Germany will allow only 30 ITC's in 1971), but also on traditional planeload affinity charters (e.g., Japan, Portugal). Some countries ban split charters, which are designed to enable smaller organizations to charter a portion (not less than 40 seats) of a large jet aircraft.

Many foreign countries employ first refusal restrictions against U.S. supplementals, which require that charters developed by the supplementals first be offered to scheduled and charter carriers of the particular country. In some cases, the first refusal right also favors U.S. scheduled carriers. Thus, Australia and Canada, among others, discriminate against U.S. supplementals by requiring that supplemental charter flights must first be offered to authorized U.S. scheduled carriers. The motives which lead foreign countries to discriminate gratuitously against one class of U.S. carriers in favor of another are not entirely clear, but the adverse effect on the supplementals is all too plain.

Recent events involving Belgium and Japan demonstrate that the landing rights problems faced by U.S. supplementals are inextricably bound up with the total aviation relationship between the U.S. and the country in question. Since January 1970, Belgium has banned all charters by U.S. supplementals — but not U.S. scheduled carriers — between Eastern Seaboard points and Belgium. Its stated goal is to apply pressure to the U.S. government in order to obtain Chicago-Belgium scheduled route authority for SABENA. Similarly, Japan has imposed strict volume limitations on U.S.-Japan charters in order to obtain improved scheduled route authority for Japan Air Lines. We can only conclude that, however logical it may seem to keep separate the inter-governmental agreements concerning scheduled and charter services — the President's Policy Statement says that "[i]n general, there should be no trade-off as between scheduled service rights and charter service rights" — the foreign countries with which the U.S. must deal will often refuse to acquiesce in such tidy distinctions. Belgium and Japan, for example, evidently desire a single discussion of the total aviation picture. Failure to recognize this fact can only result in continued — and wholly unwarranted — injury to the supplementals and to the traveling public. Moreover, we may have to pay a far smaller price today for assured charter rights than in the future, when charter services are likely to assume more importance.

The overall impact of foreign landing rights restrictions upon the supplementals and their passengers is well summed up in the testimony of Mr. Smalley of Trans International Airlines (Exhibit 8 hereto):

"The effect of restrictive landing rights policies upon the international charter traffic of U.S. supplementals cannot be measured by actual denials of landing or uplift rights in specific cases. Although such cases do occur with unwanted frequency . . . the major impact is experienced in cases where an application for landing rights is never filed. Tour operators simply do not arrange or promote ITC programs involving countries which prohibit ITC's, or which impose

minimum price restrictions that make the programs unsalable. Charterworthy groups (and their travel agents) no longer even ask U.S. supplementals about charter service to Israel, Australia or Bermuda at Easter time. They know (or are quickly advised) that such charters simply cannot be performed due to the landing right policies of those countries. With respect to countries where first refusal policies are in effect, travel agents normally take their charter business not to U.S. supplementals but to carriers which are certain to be able to perform the flights. And, in a subtler fashion, the discriminatory attitudes of foreign governments toward U.S. supplemental carriers are inevitably communicated, expressly or implicitly, to other foreign governments as well as to travel agents and charter groups, with resulting injury to the supplementals."

The CAB has instituted a proceeding in which it proposes to amend its rules and also the permits of foreign scheduled carriers to enable the Board, if the situation warrants, to require advance approval of on-route charters by such carriers. While we welcome this proposal, it seems to us to be weak medicine indeed to deal with an already advanced illness. As of this moment, foreign governments are interfering at will with the conduct of U.S. aviation policy.

3. Restrictive Charter Regulations

Another major cause of the supplementals' current economic difficulty is the highly complex and restrictive character of the Civil Aeronautics Board's existing charter regulations which prevent the supplementals from expanding their commercial markets. While the CAB has this week issued new charter regulations which liberalize a few of the more restrictive provisions and has proposed additional reforms — all of which we welcome — we do not believe that the basic situation is changed. The rules, even as now amended, still place an arbitrary limit on the public's access to charter transportation. This arbitrary limitation applies to the charter services of both scheduled and supplemental carriers; but since the supplementals provide only charter services, they are most affected.

Let me discuss first the regulations governing "pro rata" charters — that is, those charters whose cost is simply apportioned among the passengers on the flight.

Under present regulations, a group of persons who merely want to travel to the same destination at the same time cannot charter an airplane. Only so-called "affinity" groups — that is, groups composed entirely of members of a bona fide organization formed for purposes other than travel — are permitted to travel by pro rata charter. Members may be accompanied by their immediate families, but not their friends or even their less immediate relatives. There are numerous other restrictions as well. Passengers must have been members of the chartering organization for at least six months; round-trip charters may not carry more than 5 per cent one-way passengers; intermingling of passengers among various flights of a multi-flight program is prohibited; there are severe restrictions on the chartering organization's spending for administrative costs; and there are stringent limitations on the manner in which charter passengers may be solicited, etc.

Chairman Secor Browne of the CAB, in recent testimony before the House Subcommittee on Transportation and Aeronautics, described these rules as "unclear, cumbersome and restrictive." The President's Statement on International Air Transportation Policy has called for "additional uniformity and simplification of charter rules." We wholeheartedly agree with both these statements. In our view, there is no reason why it should not be as easy for a group — any group of sufficient size — to charter a plane as it is to charter a boat or a bus. Admittedly, there must be some regulations to distinguish charter transportation from individually-ticketed transportation. But the "affinity" concept is wholly discriminatory, needlessly restrictive, and next to impossible to administer or enforce. And, most important of all, it deprives the traveling public of needed charter services, and prevents charter carriers from expanding their markets. Many of these points were recognized by the CAB in its recent proposal to create a class of non-affinity charters — but it is, of course, at this point only a proposal.

The regulations governing inclusive tour charters are also far too restrictive.

Under present rules, ITC's must involve three overnight stops, must be at least seven days in duration, and must cost at least 10 per cent more than the lowest scheduled carrier fare applicable between the various points included on the tour.

These rules were adopted in 1966, when the Board first authorized the supplementals to provide ITC service. At that time, the ITC concept was new and experimental, and the Board deliberately made the rules very restrictive in order to avoid injury to the scheduled carriers. Experience since that time, however, has shown that these restrictions are unnecessary. For example, in the mainland-Hawaii market — which is the only market in which the supplementals have ever been able to develop a substantial volume of ITC traffic under the existing rules — the passengers who were attracted to the ITC mode of travel were not diverted from scheduled service. In the CAB proceeding concerning United Air Lines GIT fares to Hawaii, United conceded that the supplementals had developed a new market, and had not diverted scheduled carrier traffic — a point which the Board confirmed in issuing revised charter rules this week.

The Board stated in the introduction to its new regulation (ER-659, pp. 21-22):

"[T]he industry as well as the Board, has drawn away from any notion that certain types of traffic were reserved for the special province of either scheduled or supplemental carriers. The scheduled carriers have invaded the charter market for carriage of ethnic, fraternal or social organizations through GIT's, CBIT's and group affinity fares. And the supplementals have every right to compete with scheduled carriers for "resort type traffic" which is the essence of ITC's. As the Board recently stated in approving the IATA Agreement establishing transatlantic affinity group fares, there is nothing improper in competition between supplemental and IATA carriers and neither is entitled to a given share of a competitive market over the other.⁴³ Further recognition of the view that supplemental carriers are entitled to a fair opportunity to compete in the bulk transportation market has been accorded by the Policy Statement, as just noted.

Accordingly, the fact that split ITC's may cause diversion from the scheduled carriers is not a persuasive reason for denying supplementals such authority. Nor is this conclusion altered by the severe financial losses and

declining load factors which Pan American and TWA in particular have been experiencing. The fact of the matter is that the supplemental carriers have also suffered severe financial losses. ^{44/} Under these circumstances, we cannot permit the current financial woes assailing the industry to govern our determinations herein, unless these determinations would impair either charter or scheduled services.

43/ Order 70-2-123, February 27, 1970

44/ According to the NACA carriers, the supplementals as a group lost \$7.7 million in 1969 and preliminary figures for the first six months of 1970 show a loss of \$9.4 million."

It is also noteworthy that in Europe, where the rules governing ITC's are much more liberal, the ITC mode has been much more successful than in the United States, and yet has not caused any injury to scheduled service. The City of West Berlin, for example, with a population of 2-1/2 million, generated 250,000 ITC passengers in 1969, and 4 million scheduled carrier passengers. In Great Britain, in the period between 1961 and 1968, ITC traffic grew from 295,000 to 1,533,000 passengers. The same pattern is repeated in many other European countries which maintain a liberal policy toward ITC services. Attached to my statement as Exhibits 9 and 10 are two reprints, prepared by the Boeing Company and McDonnell-Douglas, respectively, which describe in detail the burgeoning Intra-Europe ITC market.

The principal impediments to the development of ITC's in the United States are the three-stop requirement and the minimum price restriction. Many destinations simply do not lend themselves to a three-stop itinerary. For example, persons traveling to the Caribbean do not want to go to three different spots within seven or ten or even 14 days. They want to go to one island, or at most two. And even for European tours, the three-stop rule is restrictive, since it precludes the tour operator from offering a one-stop program at a low price, with additional stops being optional at extra cost. The three-stop rule also prevents the supplementals from competing effectively with the GIT services offered by the scheduled carriers, which

are not subject to any such restriction.

The price restriction is also a serious obstacle to the expansion of the ITC mode of travel. In those markets where no low promotional fare is offered by the scheduled carriers, the ITC price must be 110 per cent of the normal fare — which frequently is simply too high to permit the development of a salable tour. Moreover, even where promotional fares are available as a measuring rod, the ITC must conform with any restrictions which are applicable to that fare. Frequently, for example, scheduled promotional fares require a stay of at least 14 days. In those situations, a seven-day ITC cannot be priced at 110 per cent of the promotional fare — the tour operator must either lengthen the tour to 14 days or raise his price, neither of which may be economically feasible.

Furthermore, there appears to be no reason to require ITC's to be at least seven days' duration. There is a growing demand in this country for low-priced, three or four-day "long weekend" vacations. The scheduled carriers are not meeting this demand; why should the supplementals not be permitted to do so through short-stay ITC's.

The fact is that the ITC experiment has in large measure failed to live up to its early promise. As the Board put it only this week, "the supplementals have had great difficulty in developing a market for ITC's" (ER-659, p. 21). In our view, this failure is to a large extent attributable to the highly restrictive regulations which are applicable to this mode of travel.

Also in need of reform are the rules governing cargo charters. At the present time, although the Board permits three groups of passengers to "split charter" an aircraft, a cargo charterer must contract for an entire plane. The result is that only air freight forwarders and the very largest shippers are permitted to take advantage of the economies of charter service. While this rule may have made sense in the propeller era, it does not make sense in the jet age, and particularly not in the age

of the 747's. We believe that split cargo charters and split passenger-cargo charters should be authorized, with a minimum cargo shipment of 10 tons. This reform would not significantly affect the cargo services of the scheduled carriers, since even shipments in the largest-type containers they carry now average only 4,000 pounds per container. The vast majority of air shipments are much smaller. For example, over 52 per cent of American Airlines' cargo movements in the first half of 1969 weighed 100 pounds or less, and even shipments of air freight forwarders average only 403 pounds per consolidation in domestic service.

The principal effect of permitting split cargo charter shipments of 10 tons would be to make low-cost air transportation available to large shippers who are now using surface transportation. At the present time, only the largest shippers have access to cargo charter service. For example, Universal Airlines is presently operating a daily cargo charter between Los Angeles, San Francisco, Seattle, and return, for Airborne Freight Corporation, a large freight forwarder. Similarly, Universal provides daily flights for General Motors, carrying auto parts from the East Coast to the West Coast, and on the return trip it carries fresh fruits and vegetables to the Eastern markets. Smaller shippers, however, are forced to use surface transportation. Thus, Universal has been advised by Ford Motor Company, in a letter dated October 1, 1970, that "if the capacity of an airplane could be made available in 10,000-pound lots, we feel that it would overcome the problem we have had and allow us to ship more of our products by air." If a company as large as Ford has difficulty filling an entire aircraft at a time with cargo, there is clearly a need for split cargo charter authority.

In short, we are convinced that there is a vast market for charter transportation — both passenger and cargo — which the supplementals are presently unable to develop because of the outmoded and unnecessary restrictions imposed by CAB

regulations. The lifting of these restrictions would not only help the supplementals resolve their present financial problems, but would also make the advantages of low-cost charter transportation available to millions of additional travelers and shippers.

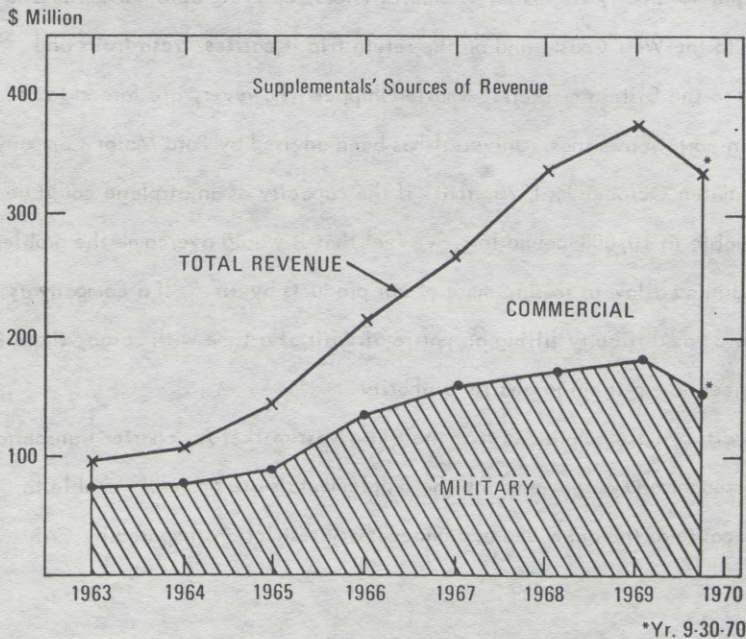
4. Declining Military Traffic.

Another reason for the supplementals' present financial problems is the rapid decline in their military charter business. The following figures show the total revenues derived from military charters by the ten NACA carriers in the years 1969-1970:

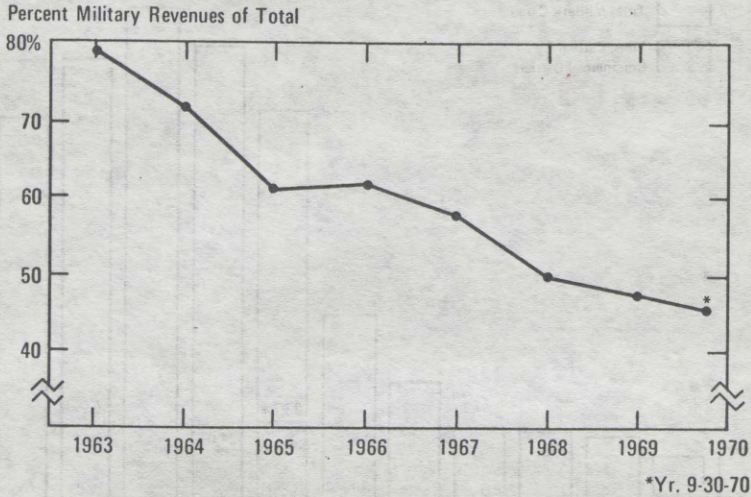
1969	-	\$175,245,000
1970	-	145,667,000

This trend becomes all the more striking when it is remembered that, during this period, the capacity of these carriers has been substantially expanded.

THE SUPPLEMENTALS MILITARY REVENUES
HAVE TAPERED OFF AND ARE PROVIDING
A DECLINING SHARE OF SUPPLEMENTALS' EARNINGS

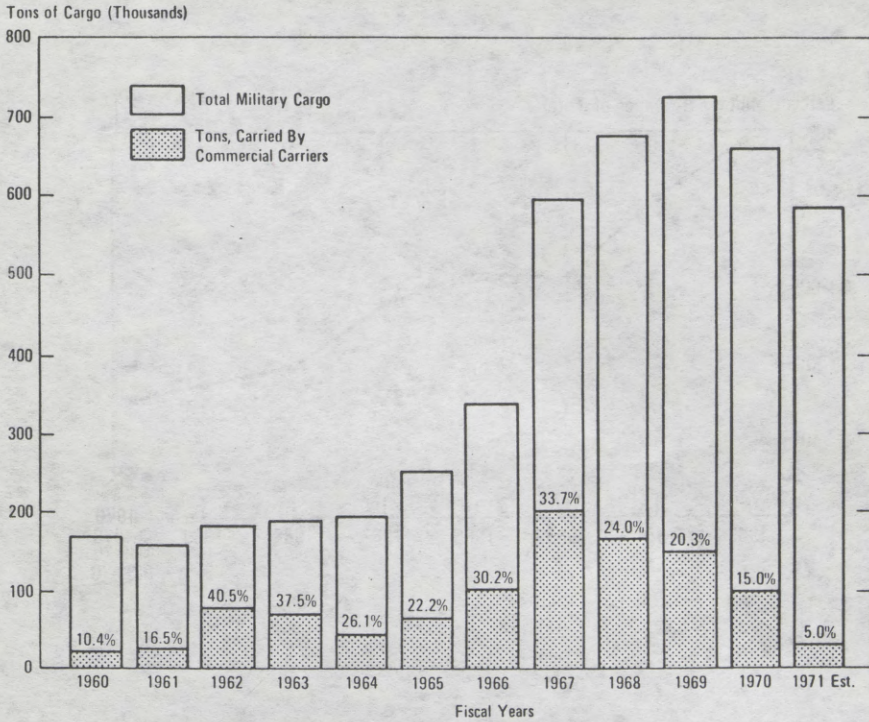


THE SUPPLEMENTALS MILITARY REVENUES
HAVE TAPERED OFF AND ARE PROVIDING
A DECLINING SHARE OF SUPPLEMENTALS' EARNINGS



This loss of military traffic results, in large part, from the fact that a greater and greater percentage of routine military cargo is being carried by military aircraft rather than civil carriers. In 1962, the civil carriers moved 40.5 per cent of all military cargo transported as channel traffic; in 1969, this percentage had fallen to 20.3 per cent. The projection for Fiscal 1971 is that only 5 per cent of military cargo will be handled by the Civil carriers. In other words, the Military Airlift Command (MAC) is functioning more and more like an airline, carrying an increasing amount of cargo of the sort which is eligible for civil carriage.

**THE PERCENTAGE OF MILITARY CARGO
TRAFFIC CARRIED BY COMMERCIAL CARRIERS
HAS FALLEN OFF SHARPLY**



**Civil aircraft, scheduled and supplemental.*

This trend, we believe is contrary to the interests of the military as well as the air transport industry. The original concept of the military airlift system, as expressed in a 1960 report entitled "The Role of Military Air Transport System in Peace and War," was that there should be a partnership between the military and the civil carriers, with each performing the role for which it was best suited. The idea was that military airlift, as well as the need for the military aircraft, would concentrate on so-called "hard core" military traffic, and the civil carriers would carry the routine channel traffic. This would permit the military to maintain a sizable reserve of airlift capacity — for immediate deployment in case of emergency — and

at the same time would encourage the development of a substantial civil fleet which would be available when needed to augment the military system. Indeed, this concept has been followed in the case of passenger traffic, which is largely carried by civil carriers. Today, however, MAC lacks sufficient reserve cargo capacity, and thus lacks the ability to respond to emergency increases in airlift requirements without disrupting other essential airlift missions. Moreover, the aggregate cargo capacity of the civil carriers has not been growing at the pace required to maintain maximum military preparedness.

This entire subject was reviewed in detail last year by the Subcommittee on Military Airlift of the House Committee on Armed Services, which issued its report on June 24, 1970. That report stressed the need for greater utilization of the civil carriers for military airlift, as well as the need for the development of additional civil cargo capacity. The implementation of that Committee's recommendations would, we believe, serve the interests of the nation's defense system and, at the same time, help alleviate the economic problems of the air transport industry. If those recommendations are not carried out administratively, this Committee may wish to consider legislation which would establish statutory guidelines governing the allocation of military airlift business between MAC and the civil carriers.

Another way in which the civil carriers' military traffic could be increased would be by designating as "air eligible" cargo which is now being transported by surface carriers. A recent study conducted for the Department of the Army by Research Analysis Corporation (RAC) revealed that there may be a number of types of cargo which heretofore have been ineligible for air transportation, but which in fact could be more efficiently and economically shipped by air. The thrust of that study should be pursued, and a further review should be made to determine whether any additional types of cargo should be classified as air eligible.

Finally, there is a substantial amount of military cargo in the Priority II

category which is eligible for air transportation, but which is now being carried by surface transportation. This policy dates back to 1965, when there was a shortage of airlift capacity. Since that shortage no longer exists — indeed, the airlines are suffering from an excess of capacity — the Department of Defense should certainly revert to shipping all air eligible cargo by air. This would yield significant cost savings to the government, while at the same time benefitting the air transport industry.

5. Discrimination at U.S. Airports.

The supplemental carriers as a class are being discriminated against at many airports throughout the U.S. by being made to pay increased fees for landing, fuel and taxes, even though all of the airport facilities receive federal grants under the Federal Aid to Airports Act which is designed to preclude unjust discrimination. In addition, at some airports the supplementals' passengers are required to use inferior facilities, notwithstanding that such airports are publicly owned. These discriminatory acts not only inconvenience many travelers but subject supplemental carriers to clearly unequal treatment.

Recently the Federal Aviation Administration required the supplementals to utilize the fixed-base operator at Dulles, even though for the past eight years we have been able to use the services of scheduled carriers. In this particular case, although the scheduled carriers were ready, willing, and able to provide the service they were precluded from doing so by fiat of the FAA. The discrimination here is particularly blatant since Dulles is a federally operated and funded airport. This matter, I should add, is presently under review by the Department of Transportation officials. I am attaching hereto as Exhibit 11 a copy of our most recent letter to the General Counsel of the FAA.

Surely, in the interest of convenience to the traveler and to equal treatment

to all classes of carriers, this kind of situation should not be permitted to continue.

The President in his statement on International Air Transport Policy on June 22

addressed himself to the matter of discrimination and user charges, fees and taxes

in international air transport, stating that "the U.S. should vigorously oppose

inequitable charging of U.S. carriers abroad." It is our opinion that the United

States should also vigorously pursue this policy at home, and we hope the Committee

will see fit in its report to set forth guidelines requiring the use of airport facilities

on a non-discriminatory basis as a condition of eligibility for future federal grants.

III.

THE SOLUTION: EXPANSION OF THE MARKET FOR
AIR TRANSPORTATION

Now that I have reviewed the problems facing the air transport industry, let me turn to the question of solutions. In my view, what the industry needs — and here I refer to both the scheduled and the supplemental carriers — is a vast expansion of the market for air transportation. The scheduled carriers need more individually-ticketed passengers to utilize their rapidly growing capacity, and the supplementals need more groups to utilize their charter services.

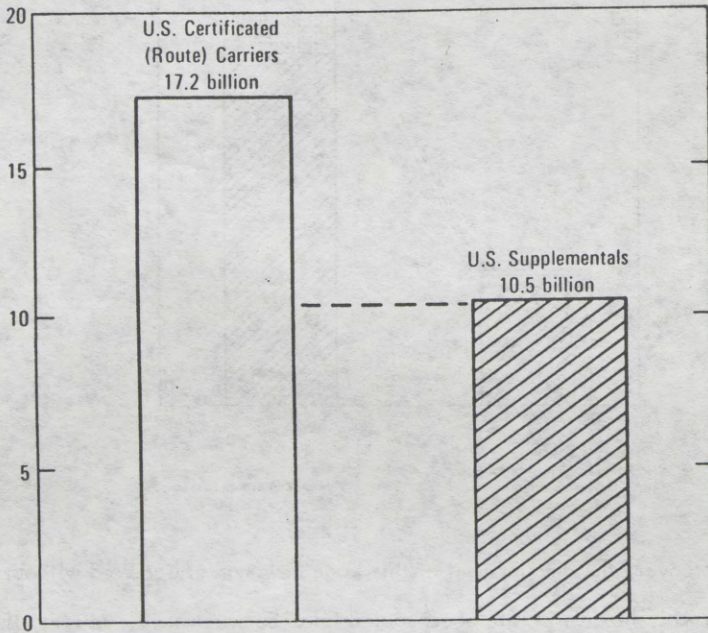
We believe the air travel market can be expanded, if the carriers are given the tools they need to do so. The potential is clearly there. Of the 131 million Americans over the age of 18, a full 50 million have never flown in an airplane. An additional 47 million have flown, but not within the last calendar year. This vast reservoir of passenger traffic is the real challenge to our industry.

Our experience has taught us that charter services are ideally suited to this task. Many people, particularly those of modest means, take their first flight on a low-priced charter trip. The fact that transatlantic charter services have grown rapidly without affecting the continued growth of scheduled transatlantic traffic clearly indicates that many people are going to Europe by charter who otherwise would not have gone at all. And when the supplementals introduced ITC service to Hawaii, they again developed an entirely new market — as even United Airlines has recognized. Moreover, since the scheduled route

carriers provide an even greater volume of charter services than do the supplementals, they would derive substantial benefits from the growth of charter services.

**THE U.S. ROUTE CARRIERS HAVE A GREATER VOLUME OF COMMERCIAL
AND MILITARY CHARTER TRAFFIC THAN THE SUPPLEMENTALS**

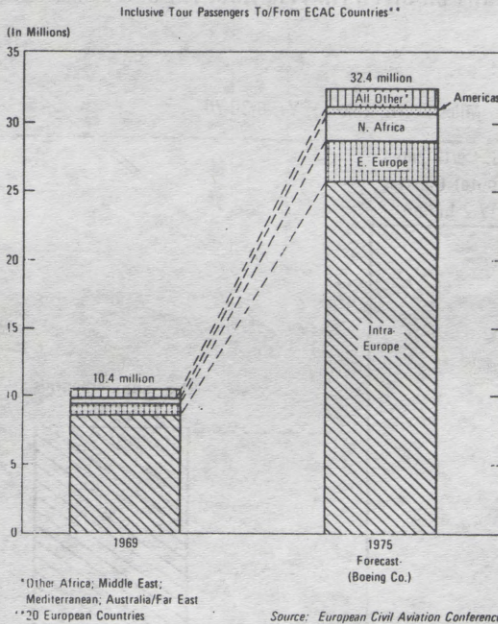
Non-Scheduled Psgr. Miles — (In billions), Yr. 6-30-70



The broad expansion of the base of air travel which we advocate is by no means pie-in-the-sky. The phenomenal growth of intra-Europe inclusive tour charter traffic, which I discussed briefly above, is a prime illustration of the

kind of transportation revolution which is capable of accomplishment. Intra-Europe ITC traffic rose from about 2 million passengers in 1963 to about 10 million in 1969. It is estimated that this figure will reach 32 million by 1975.

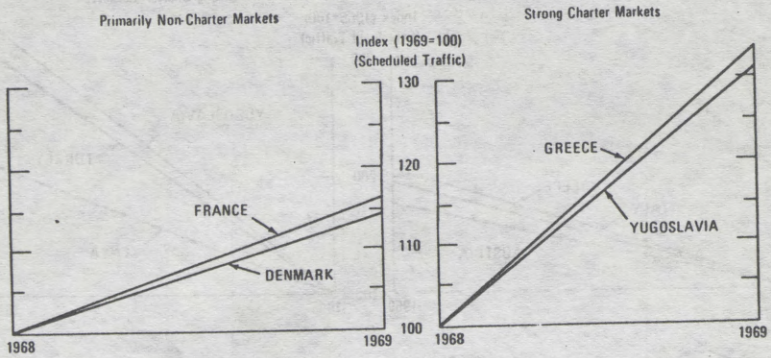
EUROPEAN INCLUSIVE TOUR TRAFFIC IS EXPECTED TO TRIPLE BY 1975



Moreover, the development of this large new market occurred without interfering with the growth rate of scheduled intra-Europe traffic. In fact, the available evidence indicates that the growth of scheduled traffic was, if anything, greater in those inter-city markets where charters made their greatest penetration. For once people develop a taste for air travel, they tend to fly again and again. And while their first trip may be by charter, their subsequent trips are frequently on scheduled service. For this reason, we believe that the legislation which we advocate will be beneficial not only to the supplementals but to the entire air transport industry.

SCHEDULED TRAFFIC HAS GROWN AS MUCH IN STRONG CHARTER MARKETS AS IN NON-CHARTER MARKETS

I. BRITISH EXPERIENCE Between the United Kingdom and



FRANCE



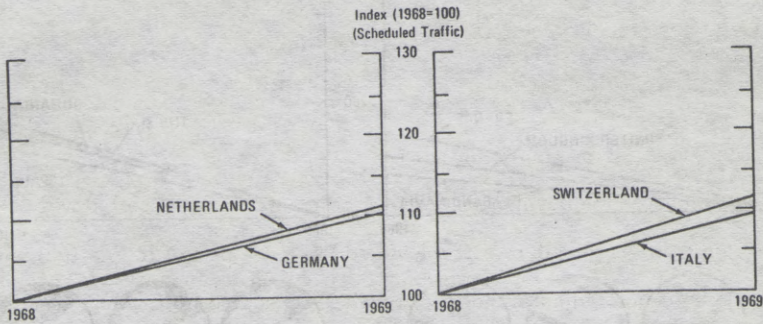
DENMARK



GREECE



YUGOSLAVIA



NETHERLANDS



GERMANY



SWITZERLAND



ITALY



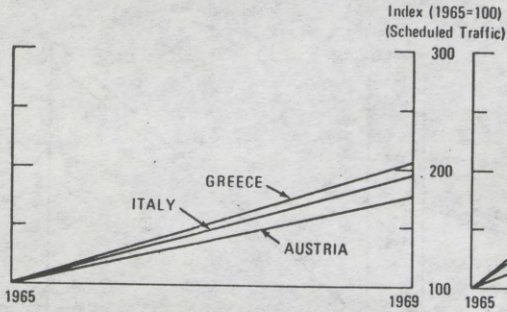
Charter Traffic Share-1969

SCHEDULED TRAFFIC HAS GROWN AS MUCH IN STRONG CHARTER MARKETS AS IN NON-CHARTER MARKETS

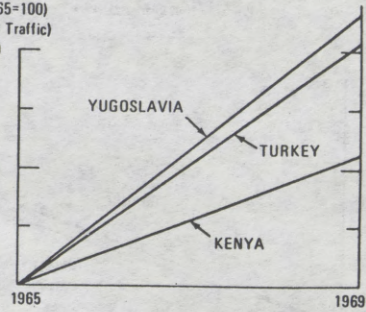
II. GERMAN EXPERIENCE

From Germany to-

Primary Non Charter Markets



Strong Charter Markets



GREECE



ITALY



AUSTRIA



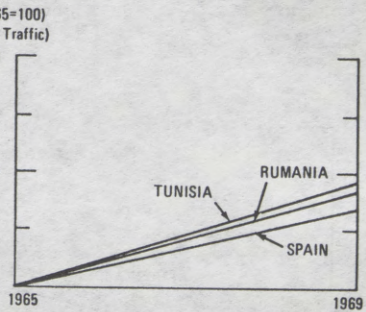
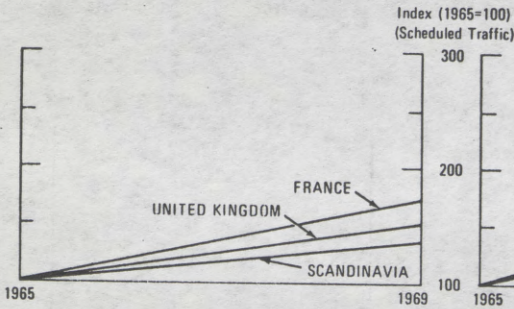
YUGOSLAVIA



TURKEY



KENYA



FRANCE



UNITED KINGDOM



SCANDINAVIA



TUNISIA



RUMANIA



SPAIN



Charter Traffic Share 1969

We believe, therefore, that the expansion of charter travel is the key to expansion of air travel.

IV.

THE NEED FOR BENEFITS OF
LEGISLATION

In order to achieve the "soundly balanced policy for the future," of which the President's Policy Statement speaks, and to broaden the base of air transportation so that both supplemental and scheduled carriers may benefit, we believe that three specific and immediate steps are necessary:

1. Eliminate the existing archaic and restrictive rules governing affinity and inclusive tour charters, which impede the development of low-cost air transportation aimed at mass markets, and replace them with new simplified charter rules.
2. Establish a rational fare structure, with the elimination of discriminatory and below-cost "gimmick" fares which injure both scheduled and supplemental carriers.
3. Establish foreign landing and uplift rights for charter services of both supplemental and scheduled carriers on the same assured basis as scheduled route services.

Although it is certainly possible to achieve all of these objectives without legislation, we believe that legislation is clearly preferable. As our prior discussion indicates, administrative action in some of these areas simply has not been forthcoming. Moreover, as to charter rules, past experience indicates that any administrative effort to change these rules inevitably leads to endless litigation. This is what happened when the Board first began to grant certificates of public convenience and necessity to the supplementals, and in the end Congress had to adopt legislation in 1962 to resolve the problem. The same pattern was repeated

when the Board first authorized inclusive tour charters, and Congress had to step in again with legislation in 1968. And the Board's proposal this week to create a class of non-affinity charters, if adopted, is likely to be challenged in the courts. Even though this challenge would, we believe, ultimately prove unsuccessful, this time the public and the supplemental industry cannot afford years of delay, uncertainty and litigation. We need clear legislation now.

Attached to this statement as Exhibit 12 is a proposed bill (along with a section-by-section analysis), which Senators Moss of Utah and Tunney of California have introduced as S.289, designed to achieve the objectives outlined above. This bill would accomplish the following:

First, the bill would scrap the outmoded charter rules, and substitute the concept of "bulk air transportation" which is contained in the President's Statement of International Air Transportation Policy. The Policy Statement provides that "both scheduled carriers and supplemental carriers should be permitted a fair opportunity to compete in the bulk transportation market," and the bill would make this goal a matter of Congressional policy as well. The supplementals would become known as "charter air carriers" and would be authorized to perform "bulk air transportation."

Under the bill "bulk air transportation" is defined as the transportation of 40 or more passengers or ten or more tons of cargo pursuant to a single contract, or the transportation of mail pursuant to contract. The 40-passenger minimum accords with present regulatory practice, which permits split charters to affinity groups of 40 or more persons and allows ITC tour operators to carry separate tour groups of 40 or more persons. Also, many group fares on scheduled services have a 40-passenger minimum. The 10-ton cargo minimum would permit charter carriers to handle less-than-planeload shipments of cargo while, at the same time, preclude them from carrying the type of small shipment that is the bread-and-butter of scheduled cargo

services. Under this provision shippers of large (but less-than-planeload) cargo lots would for the first time be able to obtain low charter rates directly, without being forced to use air freight forwarders. And the authorization to transport mail would eliminate an unjustified discrimination in the 1962 legislation and permit the postal authorities to use supplemental carriers to transport mail when, and if, they find it economical to do so.

Although the new definitions would be intended to eliminate the present restrictive charter regulations which impede the development of new air transportation markets, the CAB would nonetheless adopt implementing regulations designed to preserve the distinction between bulk and individually-ticketed (or individually-waybilled) transportation. For example, the Board could require that chartering groups be formed at least 6 months prior to the flight date much as it has proposed in its notice of rulemaking issued this week. Also, the Board would retain its long-standing authority to regulate so-called indirect air carriers, such as air freight forwarders and inclusive tour operators. However, in formulating regulations to implement the provisions of the bill, the CAB would be under a new Congressional mandate to do so with the goal of broadening the base of air transportation. The Board would have to find a nondiscriminatory method of distinguishing bulk and individually-ticketed transportation. And it would have to eliminate unnecessarily restrictive rules — such as the three-stop limitation on ITC's — which stand in the way of a broadly-based system of air transportation.

Second, the bill would seek to eliminate the below-cost "loss leader" promotional fares which have debased the yields of scheduled carriers and also caused substantial injury to the supplementals. These fares have in the past been justified — most incorrectly, we think — on an "added" or incremental cost basis. The bill, however, would declare unjust and unreasonable any rate, fare or charge "which is determined by the Board to be less than the fully allocated cost to

the air carrier of providing such air transportation . . . if such rate, fare or charge adversely affects any air carrier." Although the Board does not have the authority to determine the reasonableness of fares in foreign air transportation, as it does in interstate air transportation, most fares in international air markets are determined under IATA agreements, which must be filed with the Board pursuant to Section 412 of the Aviation Act. The provisions of the bill would bind the Board in its determination under Section 412 whether an IATA fare agreement is in the public interest.

Third, the bill would make clear the intent of Congress that charter services of U.S. carriers (both supplemental and scheduled) receive assured landing and uplift rights in foreign countries under conditions of full reciprocity. It would declare as being in the public interest the "[c]onclusion of international agreements designed to permit the freest possible competition under conditions of full reciprocity." The bill would also condition the authorization of foreign air carriers serving the United States by providing that "[n]o foreign air carrier shall provide foreign air transportation except upon proof of reciprocal rights for United States flag air carriers" These provisions should strengthen the negotiating position of the CAB and the executive departments in securing the elimination of unwarranted restrictions upon the charter services of U.S. carriers. No longer will foreign governments be able to enjoy the fruits of the United States' traditional liberal air transportation policies while at the same time imposing crippling restrictions on charter services of U.S. supplementals, which have been determined by the CAB and the President to be required by the public convenience and necessity.

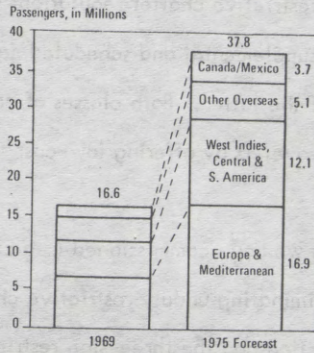
Enactment of S.289 would result in immediate and substantial benefits to all segments of the airline industry and to the traveling public. Thus, the elimination of below-cost promotional fares, which injure both supplemental and scheduled carriers and unfairly burden normal-fare passengers, would be a major benefit. So

would the improvement in the existing charter landing rights situation. Certainly, the public interest is not served if foreign governments are permitted openly to frustrate U.S. aviation policy and to deny reciprocal treatment to U.S. carriers. Most importantly, elimination of restrictive charter regulations would vastly increase the charter traffic of both supplemental and scheduled carriers, without injury to the scheduled services of the latter. Both classes of carriers would be able to tap the huge reservoir of non-travelers by offering low-cost services within the reach of all consumers.

Based on economic studies we have commissioned (see Exhibits 3, 4, 5 hereto), it is estimated that by eliminating unduly restrictive charter rules (principally, "the affinity" restriction and the three-stop restriction on ITC's) as many as 4.3 million new U.S.-international air travelers would be generated in the year 1975 — an 11 per cent increase over the total U.S. international air market otherwise forecast. Transatlantic traffic would account for more than 60 per cent of this increase. Domestic markets would also grow markedly if one-stop ITC packages could be offered to such vacation areas as Florida, Las Vegas/Reno, California and many ski resorts. And the seasonal imbalance which presently plagues supplemental carriers would also be eased under simplified charter rules which would make winter vacation packages more salable.

**U.S. INTERNATIONAL AIR TRAFFIC IS
EXPECTED TO MORE THAN DOUBLE BETWEEN
1969 AND 1975; TRANSATLANTIC TRAFFIC
IN 1975 WILL BE EQUAL TO TOTAL
INTERNATIONAL VOLUME IN 1969**

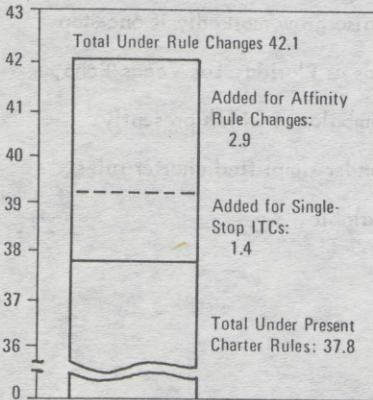
Forecast: U.S. - International Air Traffic
(arrivals & departures at U.S. airports)



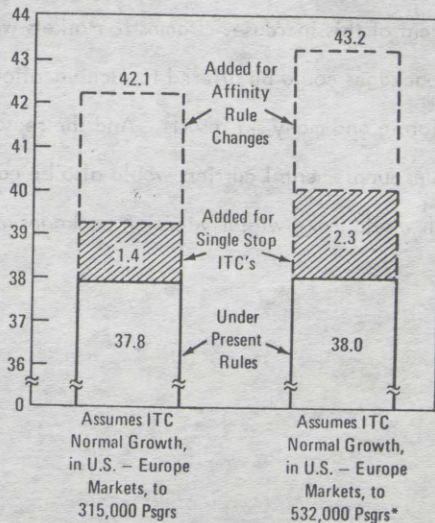
**CHANGES IN CHARTER RULES COULD
GENERATE AS MUCH AS 4.3 MILLION
NEW U.S. - INTERNATIONAL AIR
TRAVELERS IN 1975 -- AN 11% INCREASE
OVER "NORMAL" FORECAST**

**A RECENT BOEING FORECAST OF CHARTER TRAFFIC
INDICATES THAT STIMULATION FOR U.S. - INTERNATIONAL
SINGLE STOP ITC'S WOULD BE CONSIDERABLY HIGHER
THAN ANTICIPATED BY NACA**

(In Millions of Passengers)



(Million Psgrs.)



**Boeing foresees a great expansion of destination areas for European originated traffic, as European economies thrive and incomes rise.*

CONCLUSION

We believe we have demonstrated that what is needed to improve the economic state of the air transport industry is a broadened market for air travel. We have proposed amendments to the Federal Aviation Act which, according to our estimates, will achieve this result. But that alone is not enough. We must insure that future regulation of our air carrier system is conducted in such manner as to produce what we term "a balanced air transport system." Our existing system, while nearly 40 years old, has grown haphazardly during the past decade. Non-stop service has been added to and from numerous points in the United States. Competition in air transportation has been increased and has created a situation in certain markets where carriers vie for one another's traffic upon the basis of quality of cabin service, meals, seating space, etc. We do not believe that we have evaluated whether the interests of the air travel consumer are served by this type of competition, or whether the consumers' need for bulk air transportation is being met. Bulk transportation has not, for the most part, been fostered by regulatory policies. Rather, it has grown despite the lack of official encouragement, basically because of consumer demand. We constantly hear that the scheduled carrier system is the backbone of our air transportation system, and we substantially agree. But we believe that there must be a scheduled carrier system coupled with a charter or bulk transportation system, properly designed to meet the needs of the traveling public.

As we have stated, our air transportation system must satisfy the needs of the vacation traveler and the traveler of limited means, as well as the

business traveler. This was recognized in international air transportation by the recent Policy Statement of the President in which, for the first time in such a statement, full recognition was given to the need for and the value of charter air transportation. We can no longer be satisfied with an air transport system merely for the convenience of the airlines themselves and a small class of regular travelers. Instead, we must have a system that satisfies the entire range of public needs. In our judgment, such a system requires a combination of scheduled and charter services. Our proposed legislation would insure that consumers who are willing to travel in groups and suffer the rigidity of traveling with a group, when the group wants to travel, will be able to do so. Under our legislation, scheduled carriers as well as supplemental carriers will be able to participate in that market.

We have submitted concrete proposals. We believe it is the duty of the scheduled industry to submit their own proposals, as they know their own situation better than we do. We trust that their proposals will be constructive and not merely another attack on competition or competitors. That theme has already been overplayed, and not enough attention has been paid to the basic issue of how to promote a more efficient, well balanced, scheduled service.

No doubt you will hear statements of opposition to our proposal, but we trust that on balance you will find that it is designed to promote air travel and satisfy the needs of the consumer, and that it is at least one step in the direction of providing a balanced air transport service to satisfy consumer needs.

PROPOSED ADDITIONS TO H.R. 11416, A BILL TO AMEND THE FEDERAL AVIATION ACT OF 1958

1. Section 402(f) of such Act is amended to read as follows:

"(f) Any permit issued under the provisions of this section may, after notice and hearing, be altered, modified, amended, suspended, cancelled, or revoked by the Board whenever it finds such action to be in the public interest. Any interested person may file with the Board a protest or memorandum in support of or in opposition to the alteration, modification, amendment, suspension, cancellation or revocation of a permit. Whenever the Board finds that the government or aeronautical authorities of any foreign country have refused to permit, or have imposed arbitrary or unreasonable restrictions or limitations upon, the performance of foreign air transportation by an air carrier pursuant to its certificate, the Board may, with or without prior notice and without hearing, suspend or modify any permit issued under this section to any foreign air carrier authorizing foreign air transportation between such foreign country and the United States for the period that such prohibition or restrictions by the foreign country remain in effect."

2. Section 1102 of such Act is amended by deleting the period at the end thereof and adding the following:

"*Provided further*, that no new or amended agreement between the United States and any foreign country relating to air transport rights shall be concluded by the Government of the United States which is inconsistent with, or would restrict the exercise of, the authority of the Board under Section 402(f) of this Act."

* * *

EXPLANATORY STATEMENT

The proposed additions to H.R. 11416 would amend the Federal Aviation Act to deal with the lack of adequate remedies on the part of the Board in responding to a variety of arbitrary limitations imposed by foreign governments upon the operations of United States air carriers.

Although the Federal Aviation Act provides for the issuance of licenses to foreign air carriers and affords them many procedural safeguards, U.S. carriers have often experienced arbitrary treatment at the hands of the aviation authorities of foreign countries. The charter operation of U.S. carriers, which are not protected by bilateral agreements, have been special targets for foreign restrictionism. The unwarranted restrictions imposed by foreign governments upon the operations of U.S. carriers have caused injury and inconvenience to thousands of American travelers. While the CAB has recently sought to adopt regulations designed to strengthen its hand in such situations, it is desirable to amend the Act to enable the Board to respond more quickly and forcefully against the flag carriers of foreign governments which unreasonably restrict U.S. carrier operations conducted in accordance with the terms of certificates of public convenience and necessity granted by the CAB and the President.

The proposed changes would amend Section 402(f) of the Act, which defines the CAB's authority to modify, suspend or revoke the operating permits of foreign air carriers. In its present form, those permits can be suspended or modified by the Board only after full notice and hearing—a procedure which takes many months or even years to complete.

A new sentence would be added to apply in cases where the Board finds that the government or aeronautical authorities of a foreign country have refused to permit, or have imposed arbitrary or unreasonable restrictions upon, the performance of foreign air transportation by a U.S. carrier pursuant to its certificate. In such cases, the Board would be empowered, with or without prior notice and without hearing, to suspend or modify the permits of foreign air carriers which conduct air transportation between the foreign country in question and the United States for the period that the prohibition or restrictions by the foreign country remain in effect.

The authority granted the Board by the amendment to Section 402(f) would, however, be subject to the terms of outstanding international agreements, in accordance with Section 1102 of the Act. These agreements cover scheduled services, but do not at present relate to charter services. In many cases the provisions of bilateral agreements relating to air transport rights would serve as an

obstacle to the kind of prompt and summary Board action against the scheduled operations of foreign air carriers which is contemplated by the amendment to Section 402(f). Such action would be appropriate in the event of unreasonable restrictions against either the scheduled or charter services of United States carriers. While it is extremely difficult to alter the terms of existing bilateral agreements, there is no valid reason why new or amended agreements relating to air transport rights should limit the Board's options under Section 402(f). Accordingly, the proposed amendments would add a proviso to Section 1102 precluding the adoption of any new or amended bilateral agreement which is inconsistent with, or would restrict the exercise of, the authority of the Board under Section 402(f). With respect to charter services of foreign scheduled and charter carriers, which services are not covered by existing bilateral agreements, the Board would be entirely free (and would be expected) to take prompt and vigorous action in response to foreign restrictionism.

The mere existence of the broad power which would be granted the Board by these amendments should serve to deter arbitrary action by foreign governments against U.S. airlines and thus make it unnecessary for the Board to exercise this power with any frequency.

Mr. JARMAN. Thank you, Mr. Driscoll.

It does appear from the press coverage that a solution has been found by IATA at the meeting in Honolulu to the potential fare crisis. Would you comment on whether you feel that this eliminates the need for the legislative proposal before us?

Mr. DRISCOLL. I don't believe it does, sir. I think Mr. Harvey's comment this morning that the agreement probably was reached only because of the pressure or the thought that legislation might be enacted is the key.

In addition to having this power in the Board, for the purpose of trying to get the carriers to eliminate an open rate, I think it equally important to look at what happens to the agreement now. The package agreement that the carriers agree upon has to be filed with the Civil Aeronautics Board for its consideration under section 412 of the act. The Board has power to approve or disapprove. The Board has always had that power but the Board has been reluctant to exercise its power to disapprove, knowing that if they do disapprove, the carriers will immediately break the agreement creating an open rate and some of the same rates will be filed unilaterally by those carriers. And there the Board is faced with the same problem that they have been faced with currently, namely, unilaterally filed fares that they would be unable to do anything with. So, therefore, in order to enable the Board to exercise even its existing power of approval or disapproval under section 412, to give them some assurance they have authority to deal with that, we feel that the legislation is still necessary.

Mr. JARMAN. What has been the Board's action in connection with IATA agreements? I know they have the power to approve or disapprove. From your own experience and observation, what comment would you like to make on what action they have taken in the past?

Mr. DRISCOLL. In my statement that I submitted for the record that was delivered in the Senate, there were quite a few examples set forth, but to summarize, the Board, in our judgment, has not exercised all of the power it should have in connection with the review and approval or disapproval of IATA agreements. We have pleaded with the Board, by petition, by letter, et cetera, to have them issue in advance of the IATA conferences specific instructions as to what the policies of the U.S. Government are and what the carriers should be governed by

when they get together in IATA conferences. To the degree any instructions have been issued, they have been very general.

The Department of Transportation came forward to the Board here only recently in connection with the youth and student fares and said:

Look, would you put out some instructions to guide the carriers who are going to be meeting in the Montreal meeting considering these so they will know what the policy of the United States is with regard to the student and youth fares?

And in that connection the Department of Transportation had taken a definite view against those fares except upon a standby basis. So that even with the power of approval or disapproval, the Board has been reluctant to disapprove. They have merely in our judgment been rubber stamping the agreements once they are presented to them.

So they need some new authority that will enable them to exercise the real power that should be and is inherent under 412.

Mr. JARMAN. Mr. Skubitz?

Mr. SKUBITZ. No questions.

Mr. JARMAN. I think I will ask for another comment, Mr. Driscoll.

What in your judgment is necessary to enable the U.S. Government to negotiate satisfactory bilateral agreements governing charters?

Mr. DRISCOLL. I think there are several things, Mr. Chairman. One is the authority in the Board to be able to deal with the denial of our rights overseas.

Second, realistic rules and regulations on which to negotiate. For example, we understand now that the United Kingdom and other European countries are willing to engage in discussions with the United States on bilateral charters affecting nonaffinity charter operations and yet our Government is unable to enter into these discussions because we have not yet come out with nonaffinity charter rules and regulations which the Board indicated in January of this year they would be coming forward with.

These two things, I think, Mr. Chairman, would enable at least our Government to get to the conference table with an effort to conclude satisfactory bilaterals.

Mr. JARMAN. Mr. Driscoll, the subcommittee will certainly study the more complete statement that you have made to the committee of the Senate and which has been incorporated in the record. We thank you for being with us and for adding to the record on this subject.

Mr. DRISCOLL. Thank you, sir.

Mr. JARMAN. Let the chair announce that this will conclude the subcommittees scheduled hearings on this subject and the committee will stand adjourned.

(Whereupon, at 11:50 a.m., the subcommittee adjourned.)

