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92-105 AMEND THE FAA ACT OF 1958

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HEARINGS

BEFORE THE

SUBCOMMITTEE ON AVIATION

OF THE

COMMITTEE ON COMMERCE

UNITED STATES SENATE

NINETY-SECOND CONGRESS

SECOND SESSION

S. 2548

TO AMEND THE FEDERAL AVIATION ACT OF 1958 TO AUTHORIZE THE CIVIL AERONAUTICS BOARD TO PERMIT AN AIR CARRIER TO HOLD BOTH SCHEDULED AND SUPPLEMENTAL CERTIFICATION

S. 2549

TO AMEND THE FEDERAL AVIATION ACT OF 1958 TO GIVE THE CIVIL AERONAUTICS BOARD THE FLEXIBILITY TO APPROVE AIR CARRIER-SURFACE CARRIER CONTROL RELATIONSHIPS WHEN SUCH RELATIONSHIPS ARE FOUND TO BE IN THE PUBLIC INTEREST

S. 3513

TO AMEND THE FEDERAL AVIATION ACT OF 1958 TO PROVIDE A DEFINITION FOR INCLUSIVE TOUR CHARTERS, AND FOR OTHER PURPOSES

MAY 9, AND 10, 1972

Serial No. 92-105

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AMEND THE FAA ACT OF 1958

TUESDAY, MAY 9, 1972

U.S. SENATE,
COMMITTEE ON COMMERCE,
SUBCOMMITTEE ON AVIATION,
Washington, D.C.

The subcommittee met at 10:15 a.m. in room 5110, New Senate Office Building, Hon. Howard W. Cannon (chairman of the subcommittee) presiding.

Present: Senators Cannon, Baker, and Stevens.

OPENING STATEMENT BY SENATOR CANNON

Senator CANNON. The committee will come to order. The hearings beginning today are on three legislative proposals introduced in the Senate at the request of the U.S. Supplemental Air Carriers. S. 2548 and S. 2549 were introduced by Senator Inouye at the request of World Airways; S. 3513 was introduced at the request of the National Air Carrier Association by Senator Moss.

Generally, these bills provide for broader operating authority and flexibility for the Nation's certificated supplemental air carriers. S. 2548 would permit, by law, scheduled carriers to obtain supplemental certification from the Civil Aeronautics Board and would permit supplemental carriers to obtain scheduled certification. In addition, the legislation would permit mergers and acquisitions between the two classes of carriers.

S. 2549 is similar in that it would permit air carrier/surface carrier control relationships and presumably would permit mergers between air carriers and surface carriers.

S. 3513 has a variety of provisions. The primary ones would liberalize, by law, current CAB restrictions on inclusive tour charters (ITC's), would provide air carriers the authority to directly or indirectly market such air transportation, would provide the board with retaliatory authority against foreign air carriers, scheduled and non-scheduled, in the event the governments of those carriers continue to restrict U.S. charter operations, and finally the bill would allow the supplemental air carriers to carry the mail and would change the definition of supplemental air transportation.

Needless to say, S. 3513, in particular, represents a sweeping change in U.S. aviation policy and is certain to cause great interest and controversy.

Contrary to published reports in the press, the establishment of these hearings indicates no predilection on the part of the chairman to support such changes nor does it indicate that the committee is certain to recommend legislation along the lines of the three bills. These hearings are being held at the request of the supplemental air carriers in

Staff member assigned to these hearings: Robert Ginther.

an effort to ascertain whether U.S. law and regulatory policy is meeting the public's needs for safe, efficient, and low cost air transportation. We simply wish to take a close look at the current situation in air transportation, both domestic and international, to see if any legislative changes are warranted or desirable.

During the course of our hearings we will hear from the Government agencies involved in air transportation, the CAB, the State Department and the Department of Transportation. We will also hear from both scheduled and supplemental airlines and from various travel agents, tour operators and consumer interest groups, all of whom have an interest in the continuing development of our air transportation system.

(The bills follow :)

92^D CONGRESS
1ST SESSION

S. 2548

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 20, 1971

Mr. INOUE (by request) introduced the following bill; which was read twice
and referred to the Committee on Commerce

A BILL

To amend the Federal Aviation Act of 1958 to authorize the Civil Aeronautics Board to permit an air carrier to hold both scheduled and supplemental certification.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 That paragraph (3) of subsection (d) of section 401 of
4 the Federal Aviation Act of 1958 is amended to read as
5 follows:

6 “(3) In the case of an application for a certificate to
7 engage in supplemental air transportation, the Board may
8 issue a certificate authorizing the whole or any part thereof,
9 and for such periods, as may be required by the public
10 convenience and necessity, if it finds that the applicant

1 is fit, willing, and able properly to conform to the pro-
2 visions of this Act and the rules, regulations, and require-
3 ments of the Board hereunder. Any certificate issued pur-
4 suant to this paragraph shall contain such limitations as
5 the Board shall find necessary to assure that the service
6 rendered pursuant thereto will be limited to supplemental
7 air transportation as defined in this Act."

92D CONGRESS
1ST SESSION

S. 2549

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 20, 1971

Mr. INOUE (by request) introduced the following bill; which was read twice
and referred to the Committee on Commerce

A BILL

To amend the Federal Aviation Act of 1958 to give the Civil
Aeronautics Board the flexibility to approve air carrier-sur-
face carrier control relationships when such relationships
are found to be in the public interest.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That subsection (b) of section 408 of the Federal Aviation
4 Act of 1958 is amended to read as follows:

5 “(b) Any person seeking approval of a consolidation,
6 merger, purchase, lease, operating contract, or acquisition of
7 control, specified in subsection (a) of this section, shall
8 present an application to the Board, and thereupon the Board
9 shall notify the persons involved in the consolidation, merger,

1 purchase, lease, operating contract, or acquisition of control,
2 and other persons known to have a substantial interest in
3 the proceeding, of the time and place of a public hearing.
4 Unless, after such hearing, the Board finds that the con-
5 solidation, merger, purchase, lease, operating contract, or ac-
6 quisition of control will not be consistent with the public
7 interest or that the conditions of this section will not be ful-
8 filled, it shall by order approve such consolidation, merger,
9 purchase, lease, operating contract, or acquisition of con-
10 trol, upon such terms and conditions as it shall find to be
11 just and reasonable and with such modifications as it may
12 prescribe: *Provided*, That the Board shall not approve any
13 consolidation, merger, purchase, lease, operating contract, or
14 acquisition of control which would result in creating a monop-
15 oly or monopolies and thereby restrain competition or
16 jeopardize another air carrier not a party to the consolida-
17 tion, merger, purchase, lease, operating contract, or acquisi-
18 tion of control: *Provided further*, That, in any case in which
19 the Board determines that the transaction which is the subject
20 of the application does not affect the control of an air car-
21 rier directly engaged in the operation of aircraft in air trans-
22 portation, does not result in creating a monopoly, and does
23 not tend to restrain competition, and determines that no per-
24 son disclosing a substantial interest then currently is request-
25 ing a hearing, the Board, after publication in the Federal

1 Register of notice of the Board's intention to dispose of such
2 application without a hearing (a copy of which notice shall
3 be furnished by the Board to the Attorney General not later
4 than the day following the date of such publication), may
5 determine that the public interest does not require a hearing
6 and by order approve or disapprove such transaction."

92D CONGRESS
2D SESSION

S. 3513

IN THE SENATE OF THE UNITED STATES

APRIL 19, 1972

Mr. Moss (by request) introduced the following bill; which was read twice and referred to the Committee on Commerce

A BILL

To amend the Federal Aviation Act of 1958 to provide a definition for inclusive tour charters 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 the Federal Aviation Act of 1958, as amended, is
4 further amended as follows:

5 (1) Paragraphs (20) through (36) of section 101 are
6 renumbered as paragraphs (21) through (37), respectively,
7 and a new paragraph (20) is added to read as follows:

8 “(20) ‘Inclusive tour charter trip’ means a charter trip
9 which combines air transportation, pursuant to a contract be-
10 tween an air carrier or foreign air carrier and a person
11 authorized by the Board to sell inclusive tours, and land ar-

1 rangements at one or more points of destination, sold to mem-
2 bers of the public at a price which is no less than the just and
3 reasonable fare for charter air transportation plus a compen-
4 satory charge for land arrangements, and subject to such
5 other requirements not inconsistent herewith as the Board
6 shall by regulation prescribe: *Provided*, That nothing in this
7 Act shall be construed to prohibit an air carrier from con-
8 trolling, being controlled by, or being under common control
9 with a person authorized by the Board to sell inclusive tours.”

10 (2) Renumbered paragraph (35) of section 101 is re-
11 vised to read as follows:

12 “(35) ‘Supplemental air transportation’ means charter
13 trips, including inclusive tour charter trips, in air transporta-
14 tion rendered pursuant to a certificate of public convenience
15 and necessity issued pursuant to section 401 (d) (3) of this
16 Act.”

17 (3) Section 402 (f) is amended to read as follows:

18 “(f) Any permit issued under the provisions of this sec-
19 tion may, after notice and hearing, be altered, modified,
20 amended, suspended, canceled, or revoked by the Board
21 whenever it finds such action to be in the public interest. Any
22 interested person may file with the Board a protest or memo-
23 randum in support of or in opposition to the alteration, modi-
24 fication, amendment, suspension, cancellation or revocation of
25 a permit. Whenever the Board finds that the government or

1 aeronautical authorities of any foreign country have refused
2 to permit, or have imposed arbitrary or unreasonable restric-
3 tions or limitations upon, the performance of foreign air trans-
4 portation by an air carrier pursuant to its certificate, or have
5 discriminated between classes of air carriers, the Board may,
6 with or without prior notice and without hearing, suspend or
7 modify any permit issued under this section to any foreign air
8 carrier authorizing foreign air transportation between such
9 foreign country and the United States for the period that such
10 prohibition or restrictions by the foreign country remain in
11 effect.”

12 (4) Section 1102 is amended by deleting the period at
13 the end thereof and adding the following: “: *Provided*
14 *further*, That no new or amended agreement between the
15 United States and any foreign country relating to air trans-
16 port rights shall be concluded by the Government of the
17 United States which is inconsistent with, or would restrict
18 the exercise of, the authority of the Board under section
19 402 (f) of this Act.”

Senator CANNON. Our first witness this morning is the Chairman of the CAB, the Honorable Secor Browne.

Mr. Chairman, we are happy to have you here with your associates.

STATEMENT OF HON. SECOR D. BROWNE, CHAIRMAN, CIVIL AERONAUTICS BOARD; ACCOMPANIED BY R. TENNEY JOHNSON, GENERAL COUNSEL; ALPHONSE M. ANDREWS, DIRECTOR, BUREAU OF OPERATING RIGHTS; AND CHARLES F. BUTLER, DIRECTOR, BUREAU OF INTERNATIONAL AFFAIRS

Mr. BROWNE. Thank you, Mr. Chairman.

I have with me today Mr. R. Tenney Johnson, who is our General Counsel; Mr. A. M. Andrews, head of the Bureau of Operating Rights; and Mr. Charles Butler, head of the Bureau of International Affairs.

I am sorry to have this big a team, but the subject is quite complex. With your permission I would like to read my statement.

Senator CANNON. Very well.

Mr. BROWNE. Mr. Chairman and members of the subcommittee, I appreciate the opportunity to appear today to present the Board's views on S. 2548, S. 2549, and S. 3513.

The bills deal with a fair percentage of the most difficult questions of economic aviation policy that the Board has been wrestling with for years.

In the case of two of the bills, S. 2548 and S. 3513, those questions revolve around the relationship between supplemental carriers, on the one hand, and scheduled carriers, on the other.

I would like to focus for the moment on that relationship.

The public wants low-cost air transportation, whether by charters or by group rates. It wants more of it than it has available now. That is the message of the marketplace, and that is the message which we as regulators must heed.

We think that, to insure that the public gets what it wants in this respect, supplementals should remain as a class of carriers specializing in charters.

Because the supplemental carriers' authority is limited to charter transportation, they have the maximum possible incentive to develop the charter market.

This very specialization has also increased the efficiency of their operations. That in turn means the lowest possible transportation costs to charter passengers as long as vigorous competition for charter traffic is maintained.

The scheduled carriers, too, have broad charter authority. Moreover, they can cater to many of the needs of the mass air transportation market in their scheduled service fare structure.

More and more they are using that authority. Some of the scheduled carriers are among the largest charter operators. Millions of passengers are traveling on scheduled flights at low group rates.

But the question is whether the scheduled carriers would vigorously develop the expanding market for low-cost transportation if charter-only carriers weren't around to provide the competitive spur.

One of these days scheduled carriers may have the know-how, interest, and organization to develop effectively both charter and scheduled markets. At that point in time, there may be less need for main-

taining the distinction between scheduled carriers and charter-only carriers.

But right now the evidence indicates that without the supplementals, charter markets simply would not attract the effort they deserve from scheduled carriers.

Just look at the record. Despite the scheduled carriers' broad charter authority, transatlantic charter travel was insignificant until the supplementals entered the market.

In comparison, in 1971, 2½ million passengers crossed the Atlantic on charter flights: paying far less than the price of a normal economy-class ticket. Even now there are few charters across the Pacific, where the supplementals are restricted by foreign governments.

Scheduled carriers have been slow to recognize the advantages to themselves and the traveling public from development of the charter markets. They have vigorously fought each Board proposal to ease charter restrictions, even though in most cases those changes applied to their charters, too.

Even now the scheduled carriers have taken a stand in opposition to the Board's proposed travel group charter regulations, which would apply to charters by scheduled carriers as well as by the supplementals.

In fact, despite the advent of low-cost mass air transportation, the scheduled carriers have continued to restrict themselves in the kinds of charter service they can provide over international routes.

All in all, on the basis of this record we are reluctant to assume that the low-cost charter market would get the attention it deserves without the existence of a vigorous group of carriers holding charter-only authority.

But that's only one side of the coin. Sudden and uncontrolled expansion of the supplemental carrier authority would almost certainly cause a variety of serious problems.

The foremost would be the impact on scheduled service. I won't belabor the obvious by dwelling on the fact that scheduled service is essential. The point is that the Board's goal is to foster the development of both classes of service, charter and scheduled.

We think that is the way to meet both the public interest and Congress' command that the Board "maintain the distinctions between the supplemental air carriers and the scheduled air carriers."

To the Board, those considerations point only one way: Toward a careful, step-by-step movement in the direction of broadening the availability of charter transportation, with each step designed to build upon the last.

For instance, the Board began to grant individual flight exemptions to supplementals in 1955. In 1961, the Board established a procedure for granting blanket seasonal exemptions; and in the early 1960's granted certificates to supplemental air carriers.

In the area of charter rules, they originally limited the size of the charter groups to 5,000-10,000 members, depending on the geographical extent of the membership. The allowable size of the group was raised to a flat 15,000 in 1960.

In 1961, the group size was raised to 20,000. And finally in 1964, all numerical limitations were removed.

Split charters were originally authorized in 1964 but limited to two groups on any given flight. Later in the 1960's, the Board authorized

split charters for three groups. And, finally, in 1971, the Board removed the limitation on the number of groups, provided that each group purchase at least 40 seats.

For inclusive tour charters, the Board began in 1966 with an individual exemption process, and in January 1969, the Board granted blanket exemption authority for ITC tour operations by regulation after legislation was enacted.

The Board's proposed travel group charter regulations were put out for public comment in 1971. Oral argument was held on them a short time ago.

In March of this year the Board announced its tentative disapproval, effective June 30, of an International Air Transportation Association resolution that limits scheduled carrier international charter activity.

As far as the future is concerned, we have already said that if a travel group charter rule were adopted, we would stand ready to adjust it to take account of the reaction to it in the marketplace.

And the Board's staff for some time has been actively considering putting aspects of the ITC rules up for public comment. In other words, we are going to continue the step-by-step development in the charter field.

All of which brings up S. 3513 and S. 2548.

The remarkable thing about S. 3513 is that one three-page bill could make so many major changes in the Federal Aviation Act and such a transformation in the air transportation system.

The foremost change relates to inclusive tour charters. The Board authorized the supplementals to operate ITC's as early as 1966. When the courts split on whether the Board had statutory authority to do that, the Board supported clarifying legislation.

Congress enacted that legislation, but in doing so explicitly advised the Board that it was not the intent of Congress "to permit individually ticketed service to be offered to the general public under the guise of 'charter.'"

At the time, Congress noted with approval the Board's existing ITC regulations, among other things, provided for a three-stop ITC requirement.

That doesn't mean there is anything magical about a three-stop requirement. The Board can change it, as long as the change is consistent with the statutory requirement to keep charters distinct from individually ticketed service.

But the question is, How far and in what direction the Board can and should go in easing present ITC restrictions.

Right now, for instance, one question is, Whether the travel group charter concept in one form or another could obviate the need for ITC's?

Another question is, Whether one-stop ITC's can be authorized in selected markets—for example, in markets which are not now receiving scheduled service?

We are aware of recent studies by interested groups purporting to show what effect one-stop ITC's would have both on lower air fares and on scheduled services.

We simply have not had time in preparing this testimony to determine the validity of these studies, which are in the form of advocates' briefs. But we will, of course, consider them carefully.

The Board can change its ITC rules, and if the change is deemed desirable and is beyond the Board's authority, the Board will be back here seeking legislation on the specific problems. In this way we will be able to continue our step-by-step approach in the charter area.

S. 3513, on the other hand, has none of these attributes. It fails to take account of what the Board is doing elsewhere in the charter area. It would result in an abrupt and drastic change in the supplementals' authority and it would greatly reduce the Board's flexibility in regard to ITC regulation.

Coupled with authorizing supplementals to carry mail and to sell individual tickets, its net effect would be a sudden and damaging end to the distinction between individually ticketed service and charter transportation.

S. 3513 would also add a retaliation clause to the foreign air carrier permit section of the act. Arbitrary or unreasonable restrictions by foreign governments all too often hamper or prevent U.S. air carrier operations.

When other means fail to effect change, retaliation may be in the public interest. When our scheduled services are restricted, part 213 of the Board's economic regulations is available and has been used to control the schedules of foreign carriers.

When U.S. charter flights are so restricted, the Board has exercised its powers to deny approval of individual charter flights by foreign carriers. Although there is a gap in the Board's powers when "on route" charters are involved, a rule change to rectify this is now pending.

The proposed amendments would add a new dimension. The bill's thrust is to empower the Board to retaliate against foreign scheduled services when a foreign country restricts the operations of U.S. supplementals.

The problem with this proposal is that if that country restricts our supplementals only, the bilateral agreements in force with most countries would prevent us from retaliating against that country's scheduled services.

The section 1102 amendment as proposed seems to recognize that the Board must act consistently with existing bilateral agreements.

It would therefore require new or amended agreements to be consistent with the new retaliatory powers.

At first blush that sounds like a good idea. But in fact the bill's effect would almost surely make it impossible in many cases for the United States to negotiate new bilateral agreements for either charter or scheduled services, or even to effect minor amendments.

The bill is inconsistent with our international negotiating philosophy of trying to curb unilateral restriction in favor of bilateral agreement.

In sum, we already have useful retaliatory powers in each field of air service. We have an existing international system for scheduled services regulation which discourages unilateral restrictions.

We are working hard to bring about a comparable system for bilateral agreements for charter air services. We have formally proposed to the Department of State a comprehensive program for bilateral negotiation on charter services.

S. 3513 would raise serious international problems, which in our opinion would act contrary to the interests of the traveling public.

It could change the relationship between scheduled and supplemental carriers—and between scheduled and charter services—all too suddenly and sweepingly.

For these reasons, the Board opposes enactment of S. 3513.

The Board's reaction to the other two bills, S. 2548 and S. 2549, is somewhat different. They would not necessarily be harmful, as would be the case with S. 3513. However, they both could present problems, depending on the interpretation the Courts give them, and we do not see any present need for either bill.

S. 2548 would amend section 401(d)(3) of the Federal Aviation Act. That section by its terms presently precludes scheduled carriers from holding supplemental certificates.

S. 2548 would delete the language containing that restriction. In the Board's view, to the extent that the bill would enable scheduled carriers to obtain supplemental authority there is no need for the bill at all.

Scheduled carriers already have broad charter authority by virtue of their certificates and the Federal Aviation Act.

The real thrust of S. 2548 seems to be in two other directions. One is to enable supplemental carriers to obtain scheduled authority. The other is to permit mergers between scheduled carriers and supplementals.

It's widely assumed that the Board reads section 401(d)(3) as precluding the grant of a scheduled route to a supplemental carrier, and as prohibiting mergers between supplemental and scheduled carriers. The Board hasn't passed on these issues but for purposes of this testimony, I'll make those assumptions too.

As far as the grant of scheduled routes to supplemental carriers is concerned, the question is why a prohibition against such grants should be eliminated at this point in time.

For one thing, the present route pattern provides multiple-scheduled competition in most substantial markets. Hence for some time to come it is unlikely that there will be widespread opportunities for certificating new scheduled competition.

Further, the grant of a scheduled route to a supplemental carrier could dilute that carrier's energies to the detriment of charter transportation.

In the merger area, passage of this bill would inevitably be followed by pressures for mergers between supplementals and scheduled carriers.

It should be recognized that some would argue that enactment of the bill indicates a congressional policy favoring mergers of this type.

We might agree that the distinction between scheduled carrier and charter carrier may not be valid for all time. But right now giving scheduled carriers the ability to buy up charter competitors or vice versa, could endanger the competitive spur that is proving beneficial to the public interest.

Having two classes of carriers makes our life difficult, but that is what we think the air transportation system now requires.

The last of the three bills, S. 2549, would amend section 408(b) of the Federal Aviation Act, which deals with mergers.

The second proviso of that section restricts in various respects mergers between surface carriers on the one hand, and direct air carriers, on the other.

S. 2549 would delete that proviso. The Board is not aware of any need for the bill. In fact, the performance of conglomerates in the transportation industry suggests that proposals which would ease the way toward diversification ought to be viewed with considerable caution.

Insofar as facilitating intermodal operations is concerned, the Board has long been on record as favoring steps that will bring it about. But allowing mergers between surface carriers and direct air carriers would have a marginal effect at best on easing air-surface movements.

Perhaps the problem here, too, is one of timeliness. It may be that one of these days the public will be benefited by granting both surface and direct air carrier authority to one company.

But, under present circumstances there has been no showing that that's in fact the case.

All these bills present basic questions of policy for the Congress.

We stand ready to carry out the decision of the Congress whatever it may be.

Thank you, Mr. Chairman.

My companions and I would be glad to answer any questions you may have.

Senator CANNON. Thank you, Mr. Browne. Isn't it likely subsidiaries of foreign-scheduled carriers set up specifically to operate charters will put U.S.-scheduled carriers at a disadvantage in that our carriers do not have supplemental certificates, and they are bound by the IATA charter rules that severely limit charter operations?

Mr. JOHNSON. That is a question that has been presented to the Board, Mr. Chairman, on several occasions, and there are several cases pending. And thinking along that line, that is one of the reasons the Board tentatively disapproved the IATA resolution 045, which is the resolution that puts restrictions on our scheduled carriers.

So I think your comment is exactly in point.

Senator CANNON. What is the legal effect of the Board's disapproval of that resolution?

Mr. JOHNSON. Well, there are a number of effects of it. First, it would remove from U.S. carriers the restriction that they have voluntarily agreed to against their carrying certain kinds of charter operations, particularly ITC's.

It would also remove the limitation on the size of the charter groups that the carriers may carry. Mr. Andrews can provide more detail.

Senator CANNON. Let me ask you one other thing on that. Even though you say it would remove that limitation that is placed by the IATA resolution, would the legal effect still be that the carriers themselves would not want to take that kind of action in the face of the resolution, IATA resolution?

Mr. JOHNSON. Well, the IATA resolution is something the carriers have placed upon themselves. If the Board disapproves it, it would give the carriers the opportunity to expand their chartering organizations and their chartering capability. It wouldn't require that they do so. And if they don't choose to do so, the Board's disapproval won't force them to enlarge charter opportunities.

Senator CANNON. In other words, they themselves could still comply with all of the provisions of the IATA resolution?

Mr. JOHNSON. Well, yes, they could, except—that is an interesting legal question—if the Board has disapproved the participation of U.S.

carriers in an antitrust agreement, and the carriers proceed to act in accordance with that agreement anyway, there is set up the question of whether the carriers have consciously acted in parallel with the agreement.

If so, that is an antitrust violation. I don't believe the carriers would expose themselves to that.

Senator CANNON. In other words, in light of the Board's disapproval, then the antitrust exemption in the act would not apply to that course of action.

Mr. JOHNSON. Exactly.

Senator CANNON. So long as the Board disapproved it; is that correct?

Mr. JOHNSON. Exactly right, sir.

Senator CANNON. Mr. Andrews?

Mr. ANDREWS. I don't believe I have anything to add, Mr. Chairman, other than to say the scheduled carriers, of course, have broad charter authority in their own right. And if the IATA 045 were disapproved, they would have little incentive in restricting their own marketing abilities because they would be seeking, I would think, to expand their charter business as much as they could.

Senator CANNON. But would the possibility of supplemental certificates for the scheduled carriers make it easier for them to compete with subsidiaries of BOAC, Lufthansa, et cetera?

Mr. BROWNE. I don't believe so.

Mr. JOHNSON. There is no need for them to have supplemental authority. They already have very broad charter authority now.

Senator CANNON. What you are really saying is they can do anything now that they could do if they had specific supplemental authority?

Mr. JOHNSON. Yes, sir; that is our belief, certainly with regard to on-route charters. Off-route charters would be subject to Board regulations.

Senator CANNON. Now, Mr. Chairman, you indicate the Board's staff is considering putting some aspects of the ITC rules up for public comment. This morning the DOT will urge experimentation with more liberal ITC's in certain experimental markets. Will the CAB support such experimentation and announce new proposals in the near future?

Mr. BROWNE. I think we prefer to go the route of checking the views of all interested parties before I could really commit my four other colleagues to the course of action they may wish to undertake.

Senator CANNON. I realize that is sort of a question like when did you stop beating your wife. Your statement indicates that the CAB approval of the now pending travel group charter proposals might obviate the need for single center ITC's. Would you explain why that would be so.

Mr. BROWNE. I would like to ask Mr. Andrews to respond to that.

Mr. ANDREWS. Under the Board's proposed travel group charters, there is no limitation in terms of the number of points that could be served. The limitation is basically that the arrangements for charter have to be made sometime in advance. I think one of the primary problems that the supplemental carriers have suggested exist in inclusive tour charters has been the requirement to serve three points.

In addition, there is a requirement that the rates have to be a certain level above the lowest scheduled fare. Now, neither of these two restrictions would apply to travel group charters.

Senator CANNON. Neither of them would apply, you say?

Mr. ANDREWS. That is right.

Senator CANNON. Under the travel group charter, can they sell land arrangements such as in the ITC case?

Mr. ANDREWS. It would be permissible; yes, sir.

Senator CANNON. How soon do you expect you will have a decision on that particular point?

Mr. BROWNE. On the travel group charters?

Senator CANNON. Yes.

Mr. BROWNE. We did hear oral argument on that 2 weeks ago, as the Chairman may know, and it is before the Board for decision. We are anxious obviously to get it out, because we would like to capture some of the current season.

Again I am faced with not knowing how fast four other men will move in making up their minds.

Senator CANNON. Don't you have any kind of a forecast, sort of an iffy one? I mean is it likely to be a couple of weeks or a couple of months?

Mr. BROWNE. I am reluctant to guess, Mr. Chairman. I am personally very anxious and have been for a long time to get this out. I am leaning as hard as I can on my colleagues and the staff. But further than that, it is simply not possible to say.

Senator CANNON. You recognize that if that is going to take effect for much of the summer business, it will have to come out awfully fast?

Mr. BROWNE. That is right, sir; at best in view of planning, scheduling, and arrangements, what we do will capture only a very small part of the season. We are painfully aware of that.

Senator CANNON. Recently the Departments of State and Transportation have been discussing with certain foreign governments possible multilateral changes in charter policy. I note CAB has declined to participate in these discussions which have been initiated by the executive branch. Would you explain the reasons the Board has not taken part in these talks?

Mr. BROWNE. The Board has held out for bilateral negotiations rather than multilateral negotiations largely for the fear that such negotiations would reduce us to the lowest possible common denominator in our dealings with foreign countries. We feel that we would come off far worse in multilateral negotiations.

I would like to ask Mr. Johnson to elaborate on that.

Mr. JOHNSON. Mr. Chairman, the Board has been concerned that in dealing with many countries at one time, the more conservative elements in those countries would dominate and that if this were the case, efforts to secure more liberal treatment for charter opportunities in a bilateral agreement would be lost. We have formally proposed to the Department of State a program seeking bilateral negotiations. We think that the time is ripe for doing that. We think that multilateral negotiation at this stage makes it much more difficult to start any program of bilateral negotiations.

Senator CANNON. The DOT has recently petitioned the board to set down an investigation to determine the level of scheduled service

that should be protected from charter operation. What is the Board's view of that proposal? And do you think that such an investigation would be useful in future consideration of the changes in charter regulations?

Mr. BROWNE. What we are afraid of, Mr. Chairman, is winding up in a position where the United States accepts predetermination. That is something we have fought, as you know, for many, many years. Again, Mr. Johnson. . . .

Mr. JOHNSON. Mr. Chairman, the Board has considered the request several times, but has regularly declined to initiate an investigation of the level of scheduled service.

There are a number of reasons why the Board does not feel that it can undertake such an investigation.

In the first place, there is very little evidence that is really available that could be used to set such a level in any way that would be other than completely arbitrary, in the Board's view.

Secondly, if such a level could be established, the question would be what could be done to assure that that level was maintained. Could you regulate charter policies in such a way that it could reduce scheduled service to that particular level, but not to go further than that? We think that it is not possible to fine-tune charter policies to that degree of perfection.

Basically I think the view of the Board is that it is for the marketplace to decide these questions rather than government bureaucrats.

Lastly, there is a danger of international discussions on charter rules taking place between representatives of government, with no opportunity in the process for the public to be heard during the formulation of the rules.

Under the Administrative Procedure Act, the Board charter rules are developed under public procedure, which allows the public to comment and the board can take those comments and apply them.

If we find that we are negotiating charter rules with foreign governments, we may find ourselves extremely restricted in what we can do by way of improving charter opportunities.

So those are the reasons that the Board has had in mind.

Senator CANNON. Thank you very much, Mr. Chairman. We appreciate your being here.

The next witness is Mr. Bert W. Rein, Deputy Assistant Secretary for Transportation and Telecommunications, Department of State.

STATEMENT OF BERT W. REIN, DEPUTY ASSISTANT SECRETARY FOR TRANSPORTATION AND TELECOMMUNICATIONS, DEPARTMENT OF STATE; ACCOMPANIED BY JOSEPH SILBERSTEIN, CHIEF, AVIATION POLICIES AND PROGRAMS, OFFICE OF AVIATION; AND FRANKLIN WILLIS, OFFICE OF THE LEGAL ADVISER

Mr. REIN. Thank you, Mr. Chairman.

Mr. Chairman, I am accompanied today by Mr. Joseph Silberstein, Chief of the Aviation Policies and Programs Division of the Office of Aviation of the Department of State, and Mr. Franklin Willis, of the Office of the Legal Adviser, Department of State.

Mr. Chairman, I appreciate your invitation to present the views of the Department of State on the three important bills your committee

has under consideration. We are particularly pleased that the Congress has elected at this time to address itself to some fundamental features of our air transport system. We believe that the time is indeed propitious for such an examination by the Congress.

The remarkable growth of air charters in recent years, reflecting new and increasing public demand for international air travel suggests that there may be need for the Congress to review the legal structure it has created over the years. There may indeed be a need for the Congress to give legal direction to the regulators to construct the new air transport system that may be necessary to provide appropriately for the public convenience and necessity, as these might now be assessed.

I would say, Mr. Chairman, that we have noted that, in large measure, the Board is attempting, at one and the same time to solve difficult economic problems in charter regulation and to deal with legal constraints imposed by legislation which limit the range of solutions that might be available from the Board's economic point of view.

In commenting on the bills before the committee, I would like, if I may, to address myself first to S. 3513, particularly to section 2 of that bill.

As we read section 2, it would eliminate the distinction the Congress has heretofore indicated should be maintained between charter services and the sale of individual tickets directly to the members of the general public. Unless we are to infer that the Congress wishes to eliminate that distinction wholly, we would suppose that the Congress would wish to provide replacement distinctions to separate charters, organized so as to assure the economic benefits from full plane-load utilization and, therefore, the pricing justification for charters, from the on-demand scheduled services deemed essential to maintain. These might include, as the Board is now considering in connection with its group travel charter, such considerations as advance purchase and 80 percent load requirement. It is our view that if the old distinctions are not proving useful, new distinctions must be found. The essence of charter policy, as indicated in the President's statement on international air transportation, is full plane-load utilization and consequent economies. We would hope that the Congress would look toward preserving these special attributes of charter transportation and their special benefits to the public.

We see some need for caution to insure that we are not simply introducing a duplication of existing service patterns through the guise of ITCs, or any other measure, through which we would lose the advantages of full plane-load utilization and high load factors.

Let me turn now to section I of S. 3513. The main effect of section I, as we see it, would be to eliminate the Civil Aeronautics Board's power to impose, by regulation, the three stops it now requires on inclusive tour charters. We in the Department of State for some time have tended to believe that one-stop ITCs could be a very important tool in promoting mass tourism to the United States, with obvious potential beneficial effects for our balance of payments. European travelers, for instance, who we believe are ripe for attracting to the United States in large numbers, are accustomed to the one-stop IT. In 1969, over 10 million Europeans traveled on such IT's; it has been

estimated that by 1975 the number of intra-European ITC's may reach as much as 25 million.

A one-stop IT, moreover, would be quite similar in effect to the travel group charter the CAB has under consideration, since both relieve the public from the principal requirement of affinity.

It might very well be that adoption of the travel group charter might moot the whole question of whether a one-stop IT is necessary, or vice versa, although we would point out, as Mr. Johnson did, that the travel group charter would present the public with a choice of whether to buy the land arrangements or simply to purchase the transportation on a charter basis.

On the other hand, we noted, and others have criticized that, in proposing its travel group charters, the Board has included several restrictive elements. We suppose these were included, at least partly, to maintain the distinction, between charter services and the sale of individual tickets directly to the public, which the Congress has, so far, through its enactments, indicated it wishes maintained. The Board's three-stop requirement on ITs may have had the same purpose; after all, there is little economic difference between a one-stop and a three-stop IT, although their impact in marketing and in the marketplace is obviously quite different. Nevertheless, I realize, as previously indicated, that if section 2 of this bill is enacted, the Congress will have expressed its belief that this distinction should no longer be maintained.

However, if the Congress deems it premature at this time to eliminate completely the legislative distinction between charter and individual ticket sales, it may wish to consider the desirability of a trial period—which I believe the Department of Transportation will be recommending—in which the one-stop IT is authorized experimentally for use domestically and also on inbound flights from countries whose governments authorize the use of one-stop IT's.

In approaching such an experiment the Congress might want to set down merely certain "core" distinctions while providing, as section I contemplates, that the Board may prescribe additional regulatory requirements consistent with the core for the purpose of controlling the effect of such charters on vitally scheduled service.

We recently recommended such an approach to the CAB in connection with the travel group charter. I have attached a copy of our presentation on that subject before the Board, which the committee may wish to include in the record.

I approach sections 3 and 4 of S. 3513, in the light of the status quo, that is, on the basis that some distinction between charter and scheduled services will be maintained. I infer from the drafting a feeling that our supplemental carriers are being given a difficult time abroad and the Congress should, therefore, arm the CAB with weapons to use in their support. Mr. Chairman, it has been and continues to be a matter of concern to us that our international air charter services are being operated without the stable foundation that international agreements have for years provided for scheduled services. I can understand that this instability is a matter of concern to charter operators and particularly to our supplemental carriers.

Nevertheless, I would observe that the current outlook is not completely gloomy. Although I regret to say that we have yet to negotiate

our first formal bilateral agreement on charters, there have been some quite promising developments. As you know, we have had some breakthroughs as regards authorization for our supplementals to fly charters to Australia and to New Zealand.

We came close to completing a bilateral agreement with Australia and I am still hopeful we will be successful in that regard before long.

We have just recently received a formal proposal from a European country that we enter into negotiation of a bilateral agreement on charters.

And, our discussions with members of the European Civil Aviation Conference on charter principles, which they view as a necessary preliminary to entering into bilateral negotiations on charters, have entered into a promising stage.

Finally, I am impressed with the fact that figures recently compiled on data available through IATA and CAB sources indicate that, over the transatlantic, the U.S. supplementals carriage of charter passengers has grown an average of some 44 percent annually since 1967. Moreover, after only modest growth in the recession year of 1970, our supplementals registered an increase of over 38 percent in charter passengers in the 12 months ending September 30, 1971, as compared with the previous 12 month period.

However, as I have stated, we are not at all complacent about the situation and we will continue our efforts to create the stable international legal regime we believe should underpin air charter services. We certainly see a basic anomaly in that some foreign governments deny our charter carriers rights on the grounds that they must do so to protect certain route rights their scheduled carriers enjoy from us because of commitments we have entered into in our bilateral air transport agreements. I would not want anyone to infer that this is a situation we propose to accept indefinitely.

With the foregoing in mind, I do wish to state that we are seriously concerned over the immediate implications for our foreign relations entailed in the proposals made in section 3. As we see it, any action by the Board to suspend or modify a permit, solely on the grounds stated in section 3 would put the United States in violation of any of the over 50 bilateral air transport agreements to which we are a party, where the permit has been issued in fulfillment of our obligations under a bilateral agreement. We understand this section might be read consistently with section 1102, to preclude such action. But, if this section does not permit action against scheduled carriers operating under the agreement, its effectiveness will be limited. Part 213 would allow retaliation against a carrier not operating under a bilateral agreement. But the operative effect, if any, of this provision would be only against those carriers operating under a bilateral agreement, and we feel the agreement would preclude such action. Such retaliatory actions indeed are not to be taken without the benefit of executive review, which is a position we have held consistently in all phases of retaliation, which is borne out under part 213 of the Board's regulations and which the Congress has endorsed with respect to the recent rate regulation.

We recognize that section 801 review of actions contemplated under section 3 may indeed be possible, because they are section 402 actions. But we would note our strong preference for executive review of any

retaliatory action. These are certainly not actions to be taken without the benefit of executive review.

It is easy to anticipate the consequent counteractions by the other government against our air carriers, or denunciation of the agreement, with the real prospect that civil air relations between our two countries could come to a grinding halt, if we attempted retaliatory action contrary to the provisions of the bilateral agreement.

A similar pattern could be expected to obtain in those cases where our carriers operate without the framework of a bilateral agreement, although part 213 would permit such action. I can only predict, Mr. Chairman, that enactment of section 3 at this time would not accomplish what I suspect to be the aims of the proposal. On the other hand, there would be a real risk of damage to the interest of our traveling public and of our carriers, and to the overall foreign relations interest of the United States. On these grounds, I would like to take this opportunity to express the Department of State's opposition to the enactment of section 3.

As regards section 4, this would, as we read it, require us henceforth to negotiate, or modify, our bilateral air transport agreements, so as to cover both scheduled and charter services. This would, of course, be a deviation from the position taken in the President's statement of air transportation policy.

That is not necessarily, per se, a fatal defect; policies may always be reviewed and new wisdom brought to bear. However, I would seriously question the desirability of legislatively mandating the requirement that we mix charter and scheduled flights in all of our new agreements.

As you know, Mr. Chairman, in negotiating a bilateral air transport agreement, we seek to provide for a balanced exchange of economic rights. Once we attempt to mix the apple of scheduled rights and the orange of charter rights in one equation, we are going to encounter very difficult problems of measurement. This will be particularly difficult in a period when charter regulatory concepts are very much in flux and the value of charter rights may be impossible to project.

I should also like to point out that there may be many occasions where we would be negotiating with countries in whose markets we might have no current charter interest. If the mandate contemplated in section 4 were enacted, we might be required to "pay" heavily for charter rights of no immediate value to the United States.

Or, we might find ourselves dealing with countries where we have a substantial interest in charters but where the other side has no particular interest in flying charters, to or from the United States. Under such circumstances, to attempt to construct a balance, we might either have to pay heavily in route rights for the other side or accept a very substantial cutback in scheduled route rights for our side.

We have a lot of experience in measuring scheduled route right values and we know how to construct quite fair balances in exchanging scheduled rights. However, until such time as we feel confident in our ability to measure the value of charter rights it will be difficult to add them to the equation.

On the other hand, even in the absence of an informed understanding of how to measure charter rights, as long as we are exchanging

just charter rights for charter rights, the chances are we will be conducting a fair exchange.

In view of the foregoing, Mr. Chairman, we believe it would be unwise and certainly premature to mandate the legislative requirement included in section 4 of S. 3513.

In considering S. 2548, which would authorize the CAB to permit an air carrier to hold both scheduled and supplemental certification, we believe the overriding issue the Congress will wish to address is whether such authorization will tend to strengthen or weaken competition in the provision of air services.

We in the Department of State strongly support the finding in the President's Statement of International Air Transportation Policy of June 22, 1970, that "It should recognize that the United States historically has believed that the economic and technological benefits we seek can best be achieved by encouraging competition * * *."

We realize that the CAB in the *Condor* case, and one or two other cases, has found it in the public interest to authorize the subsidiary of a foreign air carrier certificated to conduct scheduled air service to engage in charter air services.

However, the Board set down a series of conditions designed to provide reasonable assurance that the operations of Condor and its parent company are conducted independently of each other and that there shall be no holding out of the relationship between them.

The Board set these conditions, it stated, so that the relationship (between parent and subsidiary) shall not result in undue adverse impact upon U.S. carriers. We have further noted that the CAB examiner, considering the application of British Overseas Air Charter, Ltd., a subsidiary of British Overseas Airways Corporation, for a permit to engage in transatlantic air charter operations, has recommended against the issuance of the permit because, in this instance, the application made clear there were to be no arms-length Condor conditions.

In the absence of such conditions, the examiner found that the "small and independent supplementals would face a highly prestigious and limitless transatlantic route carrier and Pan American and TWA, because of the lack of similar authority, would be helpless to meet the challenge." Under these circumstances, the Examiner maintained, U.S. transatlantic route and supplemental carriers would be seriously disadvantaged.

As we read S. 2548, we do not find that an arms-length relationship would be required between the scheduled and the supplemental operations of an air carrier authorized to hold both certifications. Under these circumstances, and following the reasoning of the Board, which we are not disposed to challenge, the ultimate effects of S. 2548 might very well be not "to permit an air carrier to hold both scheduled and supplemental certification," but rather to force all our scheduled carriers and all our supplemental carriers to apply for dual certification.

For, the implications are that, without such dual certification, a carrier would be terribly disadvantaged in competing with carriers that enjoyed dual certification. Ultimately, we would be faced with many difficult questions, to which the answers might be unclear or

conflicting: Does the public interest require additional U.S. scheduled carriers? Or additional supplemental carriers?

I might observe at this point that the CAB has challenged the continuation of IATA Resolution 045. Were 045 eliminated, this might also eliminate any reason for a scheduled carrier to apply for supplemental certification.

This would then leave only the question of our supplemental carriers applying for scheduled certification. If all applications are approved, how do we convince all the countries we certify our carriers to serve to accept all these designations? Also, how do we defend before foreign governments the arm's-length conditions we insisted on in the Condor and similar cases?

Or, if the Board denies the application of a supplemental carrier for scheduled rights, is it placing that carrier at severe competitive disadvantage? Would the ultimate effect of S. 2548 be that of merely promoting mergers among our scheduled and supplemental carriers, and what implications would that have for competition in the market?

Mr. Chairman, obviously we in the Department of State do not yet have the answers to the questions I have raised, nor do I believe we are the ones best indicated to attempt to answer many of them. You would be very right, however, to infer that our position on S. 2548 is one of some doubt as to its desirability at this time or, at least, that it needs a lot of serious study before being enacted into law.

As regards S. 2549, which would give the CAB the flexibility to approve air carrier-surface carrier control relationships when such relationships are found to be in the public interest, we do not find any significant foreign policy implications, and we have no comment to offer.

These are our thoughts on the bills before you. I thank the committee for this opportunity to present our views, and I would be happy to attempt to answer any questions you may have.

Senator CANNON. Do you believe that if the Board adopted the travel group charter proposal it is now considering, that such action would obviate the need for changes in the ITC regulations?

Mr. REIN. I think what we have said is that the basic concept of travel groups, the nonaffinity concept, if offered to the public at large, might be interchangeable with certain other benefits of inclusive tour charters.

The travel group charter proposal, the last one published, now pending, has some very severe limitations which might mean that many members of the public would not be able to use it. So that, insofar as one set of regulations might be more liberal than the other and included different segments of the public, they obviously would not be interchangeable.

But, conceptually, it is quite possible to conduct almost the same kind of operation under a travel group concept as one could conduct under the inclusive tour concept.

Senator CANNON. Do you believe the travel group charter would lead to increase tourism to the United States, or are you thinking in terms of within the United States?

Mr. REIN. I think that charter transportation, by utilization of planeload load factors, can decrease the cost of an international voyage,

and might help us, together with the other efforts we are making, to stimulate foreign travel to the United States.

The travel group charter could be combined with a tour package and serve the same purpose as a one-stop ITC. I think, if such transportation were available to Europeans and well promoted, we could see a significant upturn in tourism to the United States.

Senator CANNON. You say, in authorizing the experimentation with single-stop ITC's, the Congress might want to set down merely certain core distinctions by providing that the Board may prescribe additional regulatory requirements, consistent with the core. What do you mean by core requirements?

Mr. REIN. As we have said in our testimony with respect to section 1, we believe that the Congress should focus, at this time, on the question of what economic factors distinguish planeload charters from the operations which we have classically called, on demand scheduled operations.

It may be that the Congress will decide that some period of advance planning and some minimum load factor limitation is required to maintain the essential economic distinction.

In our judgment, this would form the core. Ultimate regulatory limitations such as limitations on advertising, limitations on the group size, limitations on lengths of stay—all of these have been used by the Board in one connection and another—can be used to adjust, fine-tune, if you will, the relationship between the availability of this kind of advance booking service and the availability of on-demand, scheduled service. But our view is that these additional limitations should be directed toward a purpose and that purpose is the preservation of—a certain level of scheduled service.

Senator CANNON. The Department of State and DOT have been involved in multilateral discussions with various governments aimed at resolving international charter policy questions. As Mr. Brown testified this morning, these talks have been held over the objections of the CAB, which, of course, must determine charter policies for the United States.

Why has this activity been going on absent CAB support, and at a time when the Board is trying to develop new charter regulations?

Mr. REIN. Mr. Chairman, I think that is a very serious question. I would just like to spend a little time in answering it. The discussions which have been going on between the United States and various European countries have been mutual exchanges over the rather difficult issue of this role which charter transportation, advance booked transportation, is to play in international aviation.

The issues which we have been discussing are not the kind of issues which have classically been resolved in bilateral agreements; that is to say, the issues of where you land and how many carriers shall be certificated. Indeed, in charter transportation, these fundamental economic issues have not really caused us the kinds of problems to date which have been traditionally addressed in bilateral negotiations on scheduled matters.

The primary problem in charter transportation has been the relationship between charter service and scheduled service. It has been to determine what role each will play in the marketplace. The European governments use the forum of the European Conference on Civil Aviation for a mutual discussion of their problems on policies.

They have, from time to time, arrived at joint recommendations to their governments in that forum. And they have been quite effective in carrying them out. They have recently been using that forum to look at the future of charter transportation with a view toward arriving at an excursion travel concept which would be in many respects, as the chairman of the Board pointed out, similar to the travel group charter.

We have found that because of the internal dynamics of that organization, its members tend to adhere quite closely to its regulations, and indeed, to its recommendation that they not enter into bilateral negotiations over economic aspects of charters, the division of rights, and the balancing of such rights, until there is an understanding between the authorities on both sides as to the role of charter service in the market, and as to the outlines of international aviation policies.

Now, because it is just from the point of view of the public interest to insure not only that the regulations serve the public interest, but that such regulations can be executed and can be made into flights, we, of course, have been concerned with the kinds of regulations adopted by the countries, to which our citizens will wish to fly.

We have used every opportunity to discuss these matters with the authorities in those countries who can make these regulations, and to encourage them to look along the same lines that the CAB is looking. We think that, based on the discussions we have had, we have made a lot of progress in encouraging them to see the importance of such service and to try to harmonize their thinking, their approach to the problems, with ours.

We have not attempted in any way, to commit the CAB to a particular kind or class of regulation. And we have been similarly endeavoring to develop some common thinking on this very severe problem. We believe, as a diplomatic matter, our ability to negotiate bilateral agreements will be facilitated by these discussions, and indeed, the public interest will be served by trying to bring as many countries into harmony on their basic approach to the problem as we can possibly manage.

Senator CANNON. It seems to me that a lot of these things are really decisions that must be made by the CAB and it raises a question in my mind as to why the department enters into the multilateral discussions with ECAC when this agency has sought to stifle U.S. charter operations rather than holding bilateral discussions with the foreign governments aimed at achieving bilateral agreements.

Mr. REIN. Well, Mr. Chairman, first of all, I think it may be true that the past, members of the ECAC have adopted restrictive charter policies. I think through our discussions with them, both bilaterally and in the multilateral forum, they have moved some distance and have taken quite a new approach to the whole question of charter policy.

We can have any regulations we like in this country, but the ability of the public to fly under these regulations depends on compatible regulations on the other side, or agreements which enter into the question of what regulations will apply. This plain fact is that the members of the ECAC have decided that they will not enter into bilateral discussions until they have satisfactorily discussed with us, in a multilateral way—I do not mean to reach multilateral agreement, but simply to exchange ideas—the fundamental ideas we have on transportation.

I think when you consider that the questions of how the system will be run are very hard to answer—they are indeed the questions we are talking about today because we do not have the answers either—it is not unreasonable that these countries would want to know exactly what kind of air transportation system we want to establish before they sit down and write an agreement to provide the services.

Senator CANNON. That is the point I was trying to make, this is for the Board to decide, not for you people to decide. As to your multilateral discussions, I do not see that they are very meaningful under the circumstances.

Mr. REIN. I agree. We, of course, do not have authority to decide what regulations the United States will have in effect. We have sought in our discussions to adhere as closely as we could to the philosophy of the Board and we have sought advice from the Board as to the types of regulations they would like to see effective.

Senator CANNON. Their advice to you is to not conduct those discussions, is that not right?

Mr. REIN. But our mission, Mr. Chairman, is to make sure the public can take advantage of whatever regulations the Board has. The public interest requires that the regulations be available in terms of actual flights, not written down on paper.

Senator CANNON. But the Board has not come up with any regulations yet, have they?

Mr. REIN. They have a number of charter regulations now in existence, including affinity regulations which we have been anxious to defend and the Board is clearly moving toward new concepts.

It is our efforts to keep other people's thinking abreast of the motion of the Board. We are not trying to fix or negotiate or agree on any particular set of rules. What we are trying to do is just have available a forum to assure that the thinking abroad progresses as rapidly as the thinking at home. We would do the same if the Congress came up with new regulations on ITCs.

Our function would be then to serve that mandate, to try to persuade other nations of the reasonableness and the logic behind the actions taken by the Congress.

Senator CANNON. Well, it seems to me you are going to have a difficult problem of trying to get other nations to agree when you and the Board are not necessarily in accord on what you want to do yourselves, and particularly when the Board does not approve of the multilateral discussions for the reason the chairman stated this morning.

Mr. REIN. Mr. Chairman, I think that we would like to maintain our dialog with the Board and like to have a common approach to the members by which we persuaded other nations to go along with us.

Notice the Board stated it was not in favor of the multilateral discussion of basic policy and also not in favor of negotiating those bilaterally. This is awfully difficult when you know historically, the problem in charter policy has been differing approaches to the fundamental economic questions. I do not think it is possible for us as a government to impose on other governments our views. I think other governments have to take account of those and adjust to them.

I think we should try to maximize our persuasive ability and to narrow the differences between regulations as a precondition to negotiations or side-by-side, and simultaneously with them.

Senator CANNON. Has the Board officially recommended to the department that you hold bilateral discussions rather than unilateral?

Mr. REIN. The Board has recommended a program for requesting bilateral discussions with certain countries. We have responded by entering into a dialog with the Board on the particular means for that approach. We do not rule out bilateral approaches. We will use every available technique.

We think charter agreements at the present time, will best be served by bilateral agreements. But we consider it our duty to use every avenue to facilitate those agreements. Our multilateral discussions have been a step to facilitate bilateral agreements. We have not rejected that program. We are moving forward with it. But we are trying to use other avenues as well.

Senator CANNON. I made a mistake, I said unilateral, a moment ago, and I meant multilateral. You say you have not rejected it, but have you done anything about it since the Board made those recommendations?

Mr. REIN. Yes, we have; as soon as the Board made that recommendation, we drafted a proposed set of notes that would implement that recommendation. We transmitted that to the Board and they have returned those with some additional comments.

And we are now preparing to finalize those notes and to go forward with the program. At the same time, we have entered into bilateral discussions with a number of countries. We are engaged in bilateral discussions with Australia, Canada, and we have had other formal proposals.

We have had numerous, informal, bilateral interchanges with senior officials in European countries. We have made every effort to determine what is the best way to make them sit down at the bilateral negotiating table and that is what we are attempting to do.

Senator CANNON. Since the Board made that recommendation or request, has the department requested any foreign government for a bilateral discussion?

Mr. REIN. Pursuant to that request, we have not completed the final drafting of those approaches. We made an effort to do this, the Board has had some comments and we are finalizing that.

I would not hold out to the committee any extreme confidence that simply asking for these bilateral talks will result in their being commenced until governments have some further idea of the role to be played by charter services in international aviation.

Senator CANNON. I understand that. But I just asked you a question: Have you made any request? The answer can be either yes or no.

Mr. REIN. The answer is "no," not at this time.

Senator CANNON. Thank you very much, gentlemen.

(The following information was subsequently received for the record:)

ORAL STATEMENT BEFORE THE CAB ON TRAVEL GROUP CHARTERS

The Department of State appreciates the opportunity to comment on the travel group charters concept because, given the present international situation in regard to affinity charters, an acceptable and workable substitute would be a desirable step to accommodate the growing public demand for mass air transportation.

In analyzing the substance of the travel group charter concept, we see three elements of basic importance. First is the core of the concept itself; namely, a

new kind of charter in which the basic criterion would be some form of advance booking. We believe this would be a desirable step with sound economic justification. Second, in the establishment of this concept, certain legal problems which may affect the ability of carriers to operate this kind of charter must be resolved. These are legal matters within the special competence of the Board. Third, the basic concept may be supplemented by added restraints of a regulatory character designed to limit the impact of these charters on vital scheduled services. In our view, such additional restraints should be geared to the prevention of substantial impairment of vital scheduled services and for this and other reasons, should be applied with adequate flexibility.

For instance, the Board may find from time to time, as the relationship between scheduled and charter services differs from market to market, that a tighter or looser application of these regulatory tools may be required to accomplish the Board's public interest objectives. In addition, differing national viewpoints abroad may require a certain degree of flexibility to achieve acceptable bilateral regimes in which assured charter services on a reasonable basis can be provided in the future not only for US origin travel but also to attract growing numbers of foreign tourists to the United States. We would, therefore, suggest that the Board consider formulating the travel group rule as a core economic concept (e.g., a minimum advance purchase period with plane-load assurance) with the proviso that specified additional conditions could be imposed by the Board for particular needs and circumstances.

With respect to the international environmental aspects of the issue, the Department of State has for some time been engaged in efforts to carry out the direction in the President's Statement of International Air Transportation Policy that intergovernmental agreements covering the operation of charter services should be vigorously sought. We anticipate that the Board, in considering new regulatory concepts, will want to keep this goal in mind. While the negotiation of intergovernmental agreements of charter services will not necessarily require that regulations adopted by the United States must coincide exactly with the charter rules of other countries, it will require some degree of congruence. For, if regulations adopted by the United States for charter flights prove unacceptable to other nations, we might very well find American carriers effectively prevented from operating international charter flights.

Quite clearly, rule-making in international aviation cannot function in a vacuum and must take into account the aviation policies and regulations of other nations, since the flights, of necessity, operate between national jurisdictions. As noted in the President's Policy Statement, regard must be given to what other nations might view as acceptable or permissible under their own aviation regulations. Further, the Board is, of course, aware that Article Five of the Chicago Convention of 1944, speaking of non-schedule flights, states:

"* * * aircraft, if engaged in the carriage of passengers, cargo, or mail for remuneration or hire * * * (shall) have the privilege of taking on or discharging passengers, cargo or mail, *subject to the right of any state where such embarkation or discharge takes place to impose such regulations, conditions or limitations as it may consider desirable.*"

Accordingly, in considering the elements of this new concept and in arriving at its decision as to whether the Travel Group charter should be a substitute for, rather than an alternate to, the presently authorized affinity charters, we anticipate that the Board will wish to take into consideration what the plans and attitudes of other governments might be.

Thus, the Board may be interested to know that, as part of our efforts to facilitate the eventual negotiation of bilateral agreements on charter air services, representatives of the Department of State and of the Department of Transportation participated recently in a meeting in Paris to discuss charter concepts with representatives of Canada and of several European countries. European countries have under consideration an Excursion Travel Charter to replace affinities. The Excursion Travel Charter is in many ways similar to the Travel Group Charter the Board is considering. However, under proposed Excursion Travel rules, a charter organizer could utilize mass advertising to solicit the general public for such flights. Like the Group Travel Charter, there would be no affinity requirements to participate in such flights. The passenger list of at least 70 persons would close three months before the flights. A standby list, from which substitutes could be drawn, would be limited to 10 percent of the number on the main list. Such charters would be restricted to roundtrip flights on the same carrier, although in the case of split charters, different groups traveling outbound on the same flight could return on separate flights.

A stay of at least twenty days would be required of each group. A minimum charter price would be established and flights at prices below that minimum would not be permitted. There would be "capacity surveillance" to prevent dilution of scheduled services based on projections each European country would make of the expected growth of charter and scheduled traffic for the coming year.

These features are by no means fixed, and may be subject to some revision after further international discussions before adoption by European governments. It would, of course, be our aim, in any future discussions in which we participate, to promote an understanding and acceptance of regulatory concepts as consistent as possible with those the Board eventually decides to adopt.

With respect to affinity charters, some flexibility appears warranted. It is quite clear that a number of countries wish to discontinue the affinity charter concept. Canada is quite definite about this. Other countries appear willing to continue affinities through a transitional period during which new charter concepts would be introduced. Others may not accept the new charter concept, and will seek to retain affinities. Thus, the United States might well need to retain affinities, at least through a transition period, to permit American carriers to continue charter flights to such nations pending the establishment and general acceptance of any new charter concept.

Senator CANNON. The next witness is the Honorable Robert H. Binder, Deputy Assistant Secretary for Policy and International Affairs of the Department of Transportation.

STATEMENT OF HON. ROBERT H. BINDER, DEPUTY ASSISTANT SECRETARY FOR POLICY AND INTERNATIONAL AFFAIRS, DEPARTMENT OF TRANSPORTATION; ACCOMPANIED BY SAMUEL EASTMAN, DIRECTOR, OFFICE OF POLICY REVIEW; JOHN B. FLYNN, CHIEF, POLICY REVIEW DIVISION; AND FRANCIS J. BOHAN, STAFF MEMBER

Mr. BINDER. Good morning, Mr. Chairman. I appear here this morning with three members of my staff. On my left is Samuel E. Eastman, the Director of the Office of Policy Review, on my immediate right, Mr. John B. Flynn, Division Chief in that Office, and on his right, Mr. Francis J. Bohan, Jr., a member of his staff.

The prepared statement which I have submitted to the committee is fairly lengthy and if you please, Mr. Chairman, I will draw some highlights from it in an effort to conserve some time this morning.

Senator CANNON. Very good.

Mr. BINDER. I appreciate this opportunity to appear before you today to discuss, in general, the problems of the air charter industry and more particularly S. 2548, S. 2549 and S. 3513.

With respect to the latter bill, S. 3513, we support the amendment that the bill makes to section 101 of the Federal Aviation Act which defines inclusive tour charter trip except for the common control proviso in the bill. And except as the bill would authorize the Board to award a mail certificate to a supplemental carrier, we do not support the balance of S. 3513.

The Department's position with respect to liberalization of inclusive tour charter rules stems in large part from the views long held by the Department concerning the implementation of the President's statement on international air transportation policy. As the committee is aware, and as the chairman's questions have indicated this morning, the Department has repeatedly urged that the CAB identify the point at which scheduled service would suffer from substantial impairment

within the meaning of the President's policy statement which was approved on June 22, 1970.

In the course of these communications to the Board, we have suggested that a certain essential level of scheduled service be identified, so that the Government would have a benchmark against which to react when the level of scheduled service in a market fell to that benchmark or below it. These benchmarks that we have been proposing are not intended to serve as any indication of a ceiling or a floor for scheduled operations.

Instead, their purpose has been to serve as a flag for Government attention to prevent impairment of scheduled services that has been decided in advance would be undesirable and contrary to the public interest. We believe that once this benchmark were established, any restrictions on charter services should be the minimum necessary to avoid prejudice to that level of scheduled services, and further that if restrictions are imposed for that purpose, they should be imposed on all charter services, including those provided by scheduled carriers as well as by charter specialists whether our own or foreign.

I regret that the Board has not undertaken the kind of investigation which we have urged them to do. And in part because of this fact, we felt motivated recently to join with the State Department in meeting with Canada and certain members of the European and Civil Aviation Conference, ECAC, to better explore this question.

In part, we viewed this meeting as a way of urging the Europeans to delay adoption of a new European charter regulation that was feared to be more restrictive than some existing constraints on charter operations, and in part, we hoped that the Europeans would agree to work with us in identifying the essential levels of scheduled service that governments would be concerned about protecting from the inroads of charter competition, as a basis for constraints on charter operations where such constraints would be justified.

I am pleased to report that in my view, at least, our meeting with these representatives of ECAC was successful and plans have been laid for a further meeting of working groups next month in Washington. As part of the preparation for those meetings, I have asked representatives of both scheduled and charter carriers to furnish certain statistical information and if the committee pleases, I could make those requests available for inclusion in this record. I am optimistic that these exchanges of data and views with the Canadians and Europeans will serve to cast some light on the essential level of scheduled services which is of concern to governments on this and the other side of the Atlantic.

Naturally, the results of these discussions will be made available to the CAB for such use as they may choose in any formal investigation they may hold or in connection with participation in formal bilateral negotiations this country may wish to have with particular foreign countries.

Historically the use of inclusive tour charters by U.S. carriers has been subject to certain regulatory restrictions, most important of which are the 7-day minimum, the three-stop rule, and a minimum price not less than 110 percent of any fare charged by a scheduled carrier.

In marked contrast to the American experience, European countries have for some years permitted inclusive tour travel to take place free

from most of the regulatory restrictions imposed in America and against transatlantic trips. As a result, intra-European ITC traffic has increased nearly fourfold since mid 1960, to an estimated 8.5 million people taking such trips in Europe in 1972.

The comparison of the American and European experiences would suggest that a liberalization of the American regulatory restrictions is in order if the U.S. domestic traveling public and the tourist industry are to attain the benefits of the increased tourism that would flow from such relaxation. Since large numbers of potential domestic travelers are now being attracted to lower cost European vacations on scheduled and charter services, there is no question that a more competitive domestic tour package would accrue favorably to the U.S. balance of trade. To the extent that S. 3513 would lead to such a liberalization, we favor it in principle.

However, we would not favor a sudden termination of the existing restrictions on inclusive tour charter travel in this country because we cannot be certain that undesirable impacts will not be felt on our scheduled transportation system. I believe we should be cautious in using the European experience as the basis for predicting the likely outcome of liberalized ITC authority in the United States. Proponents of the European system refer to the fact that intra-European scheduled traffic has continued to grow at a 10 percent annual rate despite the phenomenal growth of ITCs. But it should be recalled that the U.S. and European scheduled carriers operate under different regulatory environments, one very liberal and the other quite restrictive.

As a result, the U.S. scheduled domestic network is, and I am proud to say it, the most advanced in the world with its frequent and modern services, and variety and number of competitive carriers. Indeed with its overall relatively low fare structure, it already carries large numbers of tourists on scheduled flights. It is not clear, therefore, that the European experience can be applied across the board to the American scene. We do not yet have an adequate basis to justify an immediate wholesale dismantling of the existing restrictions on inclusive tour charter travel in America.

However, we do propose an affirmative action program of liberalizing inclusive tour charter travel and I would suggest the following guidelines for such a program.

1. The Congress should endorse the concept of inclusive tour charter travel as free from regulatory restrictions as is consistent with the maintenance of an essential scheduled transportation system. Section 1 of S. 3513 (apart from the proviso) would constitute such an endorsement.

2. The CAB should have regulatory authority to impose restrictions on such inclusive tour charter travel. The Board has such authority now, and S. 3513 would not appear to change it.

3. The Board should be encouraged to undertake the determination of the essential scheduled operations which are entitled to protection from excessive charter competition, and urged to permit inclusive tour charter travel to grow so long as damage to that essential level of scheduled operations is not threatened.

4. The Board should be encouraged to reach its conclusions as to the regulatory framework promptly, and we recall that the Board completed the share level phase of the domestic passenger fare investigation in about 1 year.

5. In certain select markets where the risk of substantial impairment of scheduled service would be minimal, the Board should institute immediate relaxation of inclusive tour charter rules so as to measure the market impact of these regulations and provide the economic benefits of such a relaxation to both the traveling public and tour industries in these particular markets.

6. The Board should be asked to consider some immediate across-the-board easing of restrictions on ITC's, for example, by reducing the requirement from three to two overnight stops, or by reducing the price restrictions from 110 percent of the lowest scheduled fare to a lower percentage. If such easing is made, the Board should very carefully monitor the effects of these changes, particularly the effect on scheduled services.

This program of liberalizing inclusive tour charter travel in a controlled way with immediate experimental application, should provide the necessary factual basis and experience upon which the further development of U.S. domestic charter travel can be undertaken at minimum risk of impairing vital scheduled services.

Let me turn now to S. 2548, which amends section 402(d)(3) of the Federal Aviation Act to authorize the CAB to grant both route and supplement certificates to any individual airline.

In summary, our position on this is as follows: We can see a possible justification for CAB authority to grant a scheduled certificate to a supplemental carrier. However, we do not believe the CAB should have discretion to permit a merger between a supplemental and a scheduled carrier and we also do not believe the CAB needs to have authority to grant a supplemental certificate to a scheduled carrier.

As far as scheduled carriers are concerned, we see no real need for the bill, to either merge with a supplemental carrier or apply for a supplemental certificate, since they can potentially obtain broader charter rights under existing law, without the necessity of a supplemental carrier certificate.

On the other hand, we do see a strong potential for consequences adverse to the public interest. Passage of this bill could lead to acquisitions of supplementals by scheduled carriers which would remove from the market the competitive prod that the supplementals have represented.

As far as supplemental carriers are concerned, we have considered why they might want a scheduled certificate and the reasons are plain. It would offer them the broad flexibility that a scheduled certificate represents; namely, an ability to carry mail and property, either as an all-cargo service or in combination with passengers, as well as the ability to carry bulk passengers on both classes of service.

On balance, we have no objection to the Board acquiring authority to grant a supplemental carrier a scheduled certificate (directly, and not by merger). If a supplemental carrier were awarded such a certificate, the Board would have had before it the pros and cons of such action and it would have been able to weigh the potential benefits to the public interest of that type of scheduled operation, as well as the potential loss of the charter specialist's incentive to develop a charter only operation.

With respect to S. 2549, which amends section 408 of the Federal Aviation Act to give the Board the flexibility to approve air carrier/

surface carrier control relationships when such relationships are found to be in the public interest, we recommend that no action be taken on this bill at this time. It is possible that individual firms with authority to operate air service modes in addition to other transportation modes would develop substantial intermodal transport systems which could lead to a reduction in time in transit and possible reductions in the costs associated with intercarrier intermodal transfers at gateway or port cities.

We are not aware, unfortunately, of any studies which demonstrate in a real and factual way that such saving in time and money will result from intermodal ownership, and will not result in the absence of intermodal ownership.

We are inclined to believe that S. 2549 should be subjected to further study before it is determined whether it should be enacted. Among other things, further attention should be given to the question of which forum should deal with intermodal problems of this nature. We believe your hearings should develop a great deal of useful information in this regard and we would like to devote more time in the Department to a review of this matter.

Indeed, I fully expect the Department will be spending more time and effort on intermodal studies and analyses in the months to come than has been true in some quarters in the past. Therefore, we recommend the Committee take no action on S. 2549 at this time.

That concludes my prepared testimony, Mr. Chairman, as I have summarized it.

I will be happy to try to answer any questions you may have.

Senator CANNON. Do you have any studies underway at the present time on the intermodal problems?

Mr. BINDER. Not directly as they would relate to the multiownership question, Mr. Chairman. But Mr. Hazard, who has recently been sworn in as the new assistant Secretary for Policy and International Affairs of the Department has indicated to me his intention to get into this area with considerably more resources than in the past. That is the basis on which I make the statement.

Senator CANNON. Thank you very much. We appreciate your being here.

(The statement follows:)

PREPARED STATEMENT OF HON. ROBERT H. BINDER, DEPUTY ASSISTANT SECRETARY FOR POLICY AND INTERNATIONAL AFFAIRS, DEPARTMENT OF TRANSPORTATION

Mr. Chairman and members of the committee, I appreciate this opportunity to appear before you today to discuss, in general, the problems of the air charter industry, and more particularly, S. 2548, S. 2549, and S. 3513.

S. 2548 amends the Federal Aviation Act of 1958 to remove the prohibition against the issuance of a certificate to engage in supplemental air transportation to any applicant holding any other certificate issued by the CAB under section 401(d) of the Act. S. 2549 amends the Act to loosen the restrictions on the approval by the CAB of the merger of air carriers and non-air carriers. S. 3513 amends the definition section of the Act to include a definition of an inclusive tour charter trip in a way different from existing CAB regulations, to allow supplemental air carriers to expand their operations to include the carriage of mail, and to remove prohibitions against their selling an inclusive tour trip by selling individual tickets directly to members of the public, or through the control of a person authorized by the CAB to make such sales. The bill also amends the Act to allow the CAB to suspend permits of foreign air carriers whenever it finds that the aeronautical authorities of the foreign country from which they oper-

ate have refused to permit, or have imposed unreasonable restrictions on, the performance of foreign air transportation by a U.S. air carrier.

Before I discuss the specifics of these bills, I would like to make some general remarks about the air charter industry. Charter service, of course, is provided both by supplemental air carriers and foreign charter specialists and by scheduled air carriers. Briefly, the ground rules for the provision of charter service by scheduled air carriers are as follows: There are no restrictions on charters between points to which the carrier is certificated to provide scheduled service. Scheduled carriers currently are not authorized to perform inclusive tour charters, but they do have complete flexibility to sell inclusive tours on their scheduled services. These GIT fares, as now sold on an individually ticketed basis, are clearly competitive with existing supplemental ITC authority. Off-route charters, on the other hand, are restricted by CAB regulations.

Supplemental carriers are certificated to operate charters in broad geographical areas. As shown in Table 1, 13 U.S. supplemental carriers are currently certificated for U.S. domestic service, 7 for service in Canada, 4 for Mexico, 8 for Caribbean, 2 for Central and South America, 6 for transatlantic and 3 for transpacific. They may carry more than one group on each flight, however each group must be composed of a minimum of 40 persons.

The amendments to the Federal Aviation Act in 1962 which authorized the Board to grant certificates to engage in supplemental air transportation were adopted to assure the availability to the traveling public of low-cost transportation in the form of charter services and to develop charter service to provide an effective prod to keep scheduled fares as low as possible. But there are many restrictions on charter operations, some by our CAB (such as the affinity, ITC and off-route charter rules), some by IATA (which apply only to IATA carriers), and further ones by some foreign countries. For example, CAB regulations governing off-route charters provide that these charters may not exceed two percent of the total revenue plane-miles the carrier flew during the preceding fiscal year. Secondly, off-route charters between any two points are limited to eight flights in the same direction during any four-week period and cannot be performed on the same day of the week for two successive weeks. CAB rules preclude any arrangement of off-route charters which will result in a uniform pattern or normal consistency of operations. For carriers with many route points, their on-route charter opportunities between those points are many, and the off-route restrictions are not a significant constraint in those markets. For carriers without route points in certain areas, the off-route restrictions do hinder the development of charter services.

TABLE 1.—AREAS OF AUTHORITY¹ OF THE U.S. SUPPLEMENTAL CARRIERS, MAY 2, 1972

Carrier	Domestic/ Hawaii	Canada	Mexico	Caribbean	Central and South America	Trans- pacific	Trans- atlantic
Capitol.....	X			X			X
Interstate Airmotive.....	X ²	X					
Johnson.....	X	X					
McCulloch International.....	X	X	X				
Modern.....	X	X					
ONA.....	X			X			X
Purdue.....	X	X					
Saturn ³	X			X			X
Southern.....	X			X		X	
Standard.....	X	X	X	X			
TIA.....	X			X	X	X	X
Universal ³	X	X	X	X			X
World.....	X			X	X	X	X

¹ Persons and property except for the transatlantic which is limited to persons only.

² Excluding Alaska and Hawaii. Limited authority.

³ Suspended operations.

IATA does not permit split charters, i.e., carrying more than one group on a charter flight, nor do they permit chartering aircraft to groups which have more than 50,000 members. Restrictions on charter operations by foreign governments range from the prior approval of each supplemental or scheduled carrier charter, through the ban on ITC's between the U.S. and Denmark, Italy, Norway, Sweden, Finland, Japan or Bermuda to the total ban on charters between the United States and Israel. These varying foreign restrictions on charters are detailed further in Attachment 1.

Despite the restrictions placed on charter operations, there has been a significant growth of international charter operations. In fact, these operations are growing at a faster rate than scheduled operations. For example, the growth of transatlantic international passenger charter operations in 1971 over 1970 amounted to 33 percent. The growth of international scheduled operations over the same period, on the other hand, was 4 percent. Data for 1971 indicates that approximately 9.3 million passengers flew across the North Atlantic of which 2.5 million (or 27 percent) used charter services provided either by supplemental or scheduled carriers. The U.S. supplemental carriers carried 46 percent of this charter traffic.

These figures do not reflect the bulk traffic carried by scheduled carriers on scheduled flights, that is, those passengers moving on GIT, affinity and incentive group fares. Travel of this kind is akin to charter travel. For example, Pan American and TWA carried approximately 558,000 passengers at these group fares in 1971 which amounted to approximately 19% of their total scheduled traffic. This bulk traffic could also be carried on charter services.

The Statement of International Air Transportation Policy approved by the President in 1970 set forth the policy of the Administration vis-a-vis international air charter operations and the role of supplemental carriers in relation to scheduled services as follows:

"Scheduled services are of vital importance to air transportation and offer services to the public which, are not provided by charter services. * * * Accordingly, in any instances where a substantial impairment of scheduled services appears likely, it would be appropriate, where necessary to avoid prejudice to the public interest, to take steps to prevent such impairment.

"Charter services by scheduled and supplemental carriers have been useful in holding down fare and rate levels and expanding passenger and cargo markets. * * * Charter services are a most valuable component of the international air transportation system, and they should be encouraged. If it appears that there is likely to be a substantial impairment of charter services, it would be appropriate, where necessary to avoid prejudice to the public interest, to take steps to prevent such impairment."

It is our view that this policy also is appropriate for the domestic area. And this includes that part of the policy statement which observed that "regulatory and promotional policies should give greater recognition to the dimensions, characteristics and needs of the bulk transportation market, as such, and less emphasis to the type of carrier that is serving that market."

With this introduction, let me take up and comment upon the issues raised by the three bills before the Committee.

S. 3513

For the reasons explained below, we support the amendment S. 3513 makes to section 101 of the Federal Aviation Act which defines "inclusive tour charter trip" except for the common control proviso. And except as the bill would authorize the Board to award a mail certificate to a supplemental carrier, we do not support the balance of S. 3513.

The definition of inclusive tour charter trip contained in the bill would define the extent of the Board's authority in this area. The proponents of the bill apparently view this bill as a means of effecting an immediate liberalization in the rules governing the operation of inclusive tour charters. It is our understanding that under existing legislation the Board may now act by regulation to effect changes similar to those proposed in the Bill. But Board adoption of such changes could result in protracted litigation questioning the Board's authority in this area.

The bill before the committee would clarify the Board's statutory authority with respect to inclusive tour charters. We should note that even if S. 3513 is enacted the Board might decide to continue the existing, restrictive ITC regulations. As the Bill reads, the Board could impose "such other requirements not inconsistent herewith as the Board shall by regulation prescribe," and it is not clear what type of regulations would be allowed. We think that enactment of the Bill would, however, be interpreted by the Board as an expression of Congressional interest in more liberal ITC rules. Our comments are therefore directed to the reasons DOT favors liberalization of the ITC rules in principle.

The Department's position with respect to the liberalization of inclusive tour charter rules stems in large part from the views long held by the Department concerning the implementation of the President's Statement on International Air Transportation Policy.

As the Committee is aware, the Department has repeatedly urged that the CAB identify the point at which scheduled services would suffer from substantial impairment within the meaning of the President's policy statement which was approved on June 22, 1970. To this end we have asked the Board to conduct an investigation directed to this issue. On the day after the release of the President's statement, we urged the Board to address the question of impairment so that the Board would be in a position to assess the level of scheduled services that should be protected. (See *motion of the Department to Reopen the Record in the Transatlantic Supplemental Charter Authority Renewal Case, Docket 20569, filed June 23, 1970*). The Board denied this motion.

Subsequently, in comments filed with the Board in reaction to its advance notice of proposed rulemaking regarding Non-Affinity Charters (Docket 23055, SPDR-22, filed May 10, 1971), we suggested that a certain essential level of scheduled services be identified, so that the Government would have a bench mark against which to react when the level of scheduled service in a market fell to that bench mark or below it. At that time we suggested that the essential level be measured according to the number of passengers using certain normal fares. Using 1968 as an illustrative year, this approach would have identified 22 round trips a day as the essential level of U.S.-flag scheduled services across the North Atlantic. (In that year, Pan Am and TWA averaged 37 round trips a day). More recently we have suggested that the nature of scheduled traffic during the low traffic winter months may be some indication of this bench mark. I hasten to say now, as we did then, that neither of these bench marks is intended to serve as any indication of a ceiling or floor for scheduled operations, but its purpose is merely to serve as a flag for government attention to prevent the impairment of scheduled services that is considered to be undesirable.

Once this benchmark is established, any restrictions on charter services should be the minimum necessary to avoid prejudice to that level of scheduled services. And if restrictions are imposed, they should be placed on the charter services provided by scheduled carriers as well as charter specialists.

Of course, the Board could choose any number of ways to address the question of substantial impairment. For domestic application, the Board is now considering the renewal of the ITC authority of domestic supplemental carriers (Docket 23944), and this proceeding could serve as a forum. In a speech I made before the International Aviation Club on February 15, 1972, I suggested another way: that the Board institute a transatlantic route renewal investigation (the temporary authorizations of the scheduled carriers expires in April 1973) as a forum in which meaningful progress could be made in identifying the level of scheduled service that is entitled to protection from substantial impairment.

Unfortunately, the CAB has not undertaken the kind of investigation which we have urged upon them. And in great part because of this fact, we felt motivated recently to join with the State Department in meeting with Canada and certain members of the European Civil Aviation Conference (ECAC) to better explore this question. In part, this meeting was intended to urge the Europeans to delay adoption of a new charter regulation that was feared to be more restrictive than some existing constraints on charter operations. And in part it was hoped that the Europeans would agree to work with us in identifying the essential levels of scheduled services that governments would be concerned about protecting from the inroads of charter competition, as a basis for constraints on charter operations.

I am pleased to report that our meeting with these representatives of ECAC was successful, and that plans have been laid for a further meeting of working groups next month, in Washington. As a part of the preparation for these meetings, I have asked the representatives of both scheduled and charter carriers to furnish certain statistical information. If the Committee pleases, I will insert in the record at this point the request for information which I have made. I am optimistic that these exchanges of data and views with the Canadians and Europeans will serve to cast some light on the essential level of scheduled services which is of concern to governments on this and the other side of the Atlantic. Naturally, the results of these discussions will be made available to the CAB for such use as they may choose in any formal investigation they may hold, or in connection with participation in formal bilateral negotiations that this country may wish to have with particular foreign countries.

Finally, our reaction to the Board's proposed travel group charter rule led us very recently to urge the Board to defer adoption of their TGC proposal as far as it relates to international travel until the conclusion of these talks with the

Europeans; hopefully this fall. And insofar as the domestic application of the proposed rule is concerned, we urged the Board to institute TGC travel on an experimental basis in certain selected markets, while keeping in mind the question of identifying the level of scheduled service that should not be impaired in our domestic markets. This follows from my belief that the basic precepts of the President's Statement of International Air Transportation Policy should be applied to domestic air transportation in this regard, and therefore I believe that the Board should undertake to identify an essential level of domestic service as a bench mark for use in applying any desirable restrictions on domestic charter operations. (I think it fair to note here that in the CAB proceedings the Department of Justice's position differed from ours in that they favored immediate establishment of travel group charters and asserted that evidence before the Board supported a finding that such charters would not impair scheduled service.)

I have summarized and reviewed our views and action with respect to international air transportation because they lead me to make the following comments with respect to a liberalization of ITC rules as they would apply to domestic and international travel.

Historically, the use of inclusive tour charters by U.S. carriers has been subject to certain regulatory restrictions, most important of which are the seven-day minimum, the three-stop rule, and a minimum price not less than 110% of any fare charged by a scheduled carrier. That has been the pattern in the United States, and as a result of such regulatory restrictions, the growth of inclusive tour charter travel within the United States has been minimal. As for international ITC's, the program has been limited by the CAB restrictions as well as severe restrictions by most receiving foreign country landing and quota rules. As a result only an estimated 90,000 persons used the ITC program to foreign countries in 1971. In marked contrast to the American experience, European countries have for some years permitted inclusive tour travel to take place free from most of the regulatory restrictions imposed in America and against trans-Atlantic trips. For example, intra-European ITC's can go to a single destination and are governed by realistic pricing regulations which relate the price of the air trip and the ground arrangements to the cost of providing the service. As a result intra-European ITC traffic has increased nearly fourfold since mid-1960, to an estimated 8.5 million people taking such trips in 1972.

The comparison of the American and European experiences would suggest that a liberalization of the American regulatory restrictions is in order if the U.S. domestic traveling public and the tourist industry are to attain the benefits of the increased tourism that would flow from such relaxation. Since large numbers of potential domestic travelers are now being attracted to lower cost European vacations on scheduled and charter services, there is no question that a more competitive domestic tour package would accrue favorably to the United States' balance of trade. To the extent that S. 3513 would lead to such a liberalization, we favor it in principle.

However, we would not favor a sudden termination of the existing restrictions on inclusive tour charter travel in this country, because we cannot be certain that undesirable impacts will not be felt on our scheduled transportation system. We have, of course, reviewed studies that have been made of the potential impact of such a relaxation. From the standpoint of charter operators, the work recently done by the Transportation Analysis International Co. is quite detailed, and we are studying it carefully. The Study suggests that the growth of inclusive tour charter travel in the market can take place without discouraging the growth of scheduled travel, and sites particularly the experience in the intra-European German-Spanish markets for support.

On the other hand, we are also fully aware of the studies completed for the scheduled industry by Trendex, Oxtoby-Smith and the two National Economic Research Association reports. They generally conclude that the diversion of scheduled traffic would be so great as to reduce the profitability of the present vacation air markets which currently subsidize less dense traffic areas. They further conclude that the elimination of cross-subsidy will bring about increased payment by passengers on less profitable routes, and lead to either elimination of service or direct government subsidy.

I believe we should be cautious in using the European experience as the bases for predicting the likely outcome of liberalized ITC authority in the United States. Proponents of the European system refer to the fact that intra-European scheduled traffic has continued to grow at a 10 percent annual rate despite the phenomenal growth of ITC's. But it should be recalled that the U.S. and Eu-

European scheduled carriers operate under different regulatory environments—one very liberal and the other quite restrictive. As a result, the U.S. scheduled domestic network is the most advanced in the world with its frequent and modern services, variety and number of competitive carriers. With its overall relatively low fare structure, it already carries large numbers of tourists on their scheduled flights.

It is not clear, therefore, that the European experience can be applied across the board to the American scene. We do not have an adequate basis to justify an immediate wholesale dismantling of the existing restrictions on inclusive tour charter travel in America. What we do propose is an affirmative action program of liberalizing inclusive tour charter travel, and I would suggest the following guidelines for such a program:

1. The Congress should endorse the concept of inclusive tour charter travel as free from regulatory restrictions as is consistent with the maintenance of an essential scheduled transportation system. Section 1 of S. 3513 (apart from the proviso) would constitute such an endorsement.

2. The CAB should have regulatory authority to impose restrictions on such inclusive tour charter travel. The Board has such authority now, and S. 3513 would not appear to change it.

3. The Board should be encouraged to undertake the determination of the essential scheduled operations which are entitled to protection from excessive charter competition, and urged to permit inclusive tour charter travel to grow so long as damage to that essential level of scheduled operations is not threatened.

4. The Board should be encouraged to reach its conclusions as to the regulatory framework promptly, and we recall that the Board completed the share level phase of the domestic Passenger Fare Investigation in about one year.

5. In certain select markets where the risks of substantial impairment of scheduled service would be minimal, the Board should institute immediate relaxation of inclusive tour charter rules so as to measure the market impact of these regulations and provide the economic benefits of such a relaxation to both the traveling public and tour industries in these particular markets.

6. The Board should be asked to consider some immediate across-the-board easing of restrictions on ITC's, for example by reducing the requirement from three to two overnight stops, or by reducing the price restriction from 110% of the lowest scheduled fare to a lower percentage. If such easing is made, the Board should very carefully monitor the effects of these changes, particularly the effect on scheduled services.

This program of liberalizing inclusive tour charter travel in a controlled way with immediate experimental application, should provide the necessary factual basis and experience upon which the further development of U.S. domestic charter travel can be undertaken at minimum risk of impairing vital scheduled services.

Additional features of S. 3513 require further comment. The Department does not believe supplemental carriers should be permitted to control persons authorized by the CAB to sell inclusive tours. Nor do we believe scheduled carriers should be permitted to exercise such control. Control of tour agents by carriers would tend to reduce competition. Agents which presently arrange for tours are in a position to solicit various carriers to perform the tour operation, which keeps competitive pressure on the transportation cost. The bill would also move the supplemental carriers into the individually ticketed passenger activity, and thus closer to a scheduled carrier service.

S. 3513 proposes to redefine the definition of "supplemental air transportation." The new definition would permit the supplemental carriers to carry mail and would delete language which states that supplemental air transportation is to supplement the scheduled services authorized by the Board pursuant to section 401(d)(1). The existing law presently precludes the CAB from granting mail rights to supplemental carriers. We see no valid reason why the Board should be precluded from hearing this issue, and determining on the merits, after a hearing, that mail rights for supplemental carriers either are or are not required by the public convenience and necessity.

Historically, mail carriage has been awarded to scheduled passenger services as a matter of routine. The scheduled all-cargo specialists (like Seaboard), however, were initially certificated without mail rights, but were subsequently granted mail rights after a 401 proceeding which weighed the economic impact on competitive carriers as well as the public benefits accruing from the new certifications. The Department favors the use of this administrative procedure

and believes that the CAB should have authority to grant mail rights to supplemental carriers if such authority is found to be in the public interest.

As for deleting the language regarding supplemental carriers supplementing scheduled services, the Congress may wish to consider the implications of the existing statutory language, since supplemental carriers, in their charter operations, do not "supplement" the charter services of scheduled carriers, nor were they intended to occupy a subsidiary role vis-a-vis the charter operations of scheduled carriers. They perform a distinct role as pointed out in the President's Policy Statement. We favor the distinction between scheduled and charter services made in that Statement.

The amendment in S. 3513 to section 402 of the Act is intended to provide the Board retaliatory power when foreign governments impose arbitrary restrictions on U.S. carriers. We are opposed to this amendment. We believe the Board has sufficient powers now to take actions of this kind without amending the Act. We note that the Board has amended Part 213 of its Economic Regulations in order to place itself in a position to retaliate by limiting foreign carriers' scheduled services, and the Board now has before it amendments to Part 212 which would give it similar authority to retaliate against foreign carriers' charter services. In addition, the thrust of the amendment may be inconsistent with our bilateral air service agreements, and contrary to the Policy Statement which says that charter agreements should be distinct from scheduled agreements, and, "generally" there should be no trade-off between scheduled and charter rights.

S. 2548

S. 2548 amends section 401(d)(3) of the Federal Aviation Act to authorize the Civil Aeronautics Board to grant both route and supplemental certificates to any individual airlines. It appears that the Act presently prevents the CAB from issuing a supplemental certificate to a scheduled carrier, or from approving the merger of a supplemental and a scheduled carrier. There is an open question, however, as to whether a supplemental carrier could be granted scheduled route rights (a CAB Hearing Examiner once ruled this to be illegal, but the Board has never ruled on this issue).

Passage of S. 2548 would make supplemental carriers eligible to receive route awards in order to provide scheduled services, and would make route carriers eligible to receive supplemental awards to provide some charter services in addition to those charter services they are now authorized to provide.

The bill would also remove the legal bar to mergers between scheduled and supplemental carriers.

Our position, in summary, is as follows: We see a possible justification for CAB authority to grant a scheduled certificate to a supplemental carrier. However, we do not believe the CAB should have discretion to permit a merger between a supplemental and a scheduled carrier. We also do not believe the CAB needs to have discretion to grant a supplemental certificate to a scheduled carrier.

We have considered what scheduled carriers could obtain under S. 2548 that they do not now have or cannot obtain without new legislation. They already have the ability to provide unlimited on-route charters and limited off-route charters. They also can carry inclusive tour traffic on scheduled services, and could probably file an inclusive tour charter tariff with the CAB if they chose to operate such ITC charters. Consequently, under this bill their added rights would be limited to broader off-route charter rights, and an escape from the strictures of IATA 045. These added competitive rights could be granted today, however, under the existing regulatory process. Indeed, the CAB presently has under review a more liberal off-route charter rule for scheduled carriers, and the disapproval of 045.

Consequently, there appears to be no real need for the bill insofar as scheduled carriers are concerned (to either merge or apply for such authority) since they can potentially obtain broader charter rights under the existing rules without the necessity of a supplemental carrier certificate. On the other hand, there is a strong potentiality for consequences adverse to the public interest. Passage of this bill could lead to acquisitions of supplementals by scheduled carriers, which would remove from the market the competitive prod that the supplementals have represented. The significance of this would depend on CAB actions with regard to entry of new or additional supplemental carriers. If we could be assured that liberal entry for supplemental carriers would be a continuing policy of the CAB, we would have less concern about this aspect of this bill.

S. 2548 would also allow supplemental carriers to obtain scheduled operating rights. We have considered why a supplemental carrier might want a scheduled certificate. It would offer them the broad flexibility that a scheduled certificate offers: namely, an ability to carry mail and property (either as an all-cargo service or in combination with passengers), as well as the ability to carry bulk passengers on both classes of services. A major disadvantage of the dual authority, of course, as viewed from the standpoint of the public interest, could be a weakening of the competitive impact the charter services have as charter specialists.

On balance we have no objection to the Board acquiring authority to grant a supplemental carrier a scheduled certificate (directly, and not by merger). If a supplemental carrier were awarded a scheduled route certificate, it would be on the basis of a Board finding that such services were required by the public convenience and necessity. Such a carrier would still be required to provide adequate charter service under their charter certificate, and if they failed in this responsibility, their supplemental rights could either not be renewed or shifted to a new charter specialist.

S. 2549

S. 2549 amends section 408 of the Federal Aviation Act to give the Board the flexibility to approve air carrier/surface carrier control relationships when such relationships are found to be in the public interest. We recommend that no action be taken on this bill at this time.

The bill would do away with the language in section 408(b) which states:

"* * * if the applicant (for CAB approval of a merger, consolidation, etc.) is a carrier other than an air carrier, or a person controlled by a carrier, other than an air carrier or affiliated therewith within the meaning of section 5(8) of the Interstate Commerce Act, as amended, such applicant shall for the purposes of this section be considered an air carrier and the Board shall not enter such an order of approval unless it finds that the transaction proposed bill promote the public interest by enabling such carrier other than an air carrier to use aircraft to public advantage in its operation and will not restrain competition."

In effect, the purpose of this provision in the Act is similar to that underlying the provision in section 401 relating to the operation by one air carrier of both route and supplemental certificates. When Congress was developing the Civil Aeronautics Act of 1938, it was concerned that the financially strong surface carriers might dominate the fledgling air carriers to the detriment of the development of air transportation.

It is possible that individual firms with authority to operate air service modes in addition to other transportation modes would develop substantial intermodal transport systems which could lead to a reduction in time in transit and possible reductions in the costs associated with intercarrier, intermodal, transfers at gateway or port cities. We are not aware, unfortunately, of any studies which demonstrate in a real and factual way that such saving in time and money will result from intermodal ownership, and will not result in the absence of intermodal ownership. However, given the growth and maturation of the air carrier industry, it may be that the rationale for the safeguard contained in the Act seems to have disappeared.

We are inclined to believe that S. 2549 should be subjected to further study before it is determined whether it should be enacted. Among other things, further attention should be given to the question of which forum should deal with intermodal problems of this nature. We believe your hearings should develop a great deal of useful information in this regard and we would like to devote more time in the Department to a review of this matter. Therefore, we recommend that the Committee take no action on S. 2549 at this time.

Mr. Chairman, that concludes my prepared testimony. Now I will be happy to answer any questions the Committee may have.

ATTACHMENT 1

FOREIGN GOVERNMENT CHARTER RESTRICTIONS¹

1. *Ban on All Charters*—The Government of Israel, since 1963 has banned all charter flights between the United States and Israel. Belgium has banned U.S.

¹ Taken from NACA exhibits in Docket 22362.

Supplemental charters between points within a 300 mile radius of New York and Belgium.

2. *Ban on Inclusive Tour Charters*—Denmark, Italy, Norway, Sweden, Japan, Finland and Bermuda ban inclusive tour charters to and from the United States.

3. *Ban on Split Charters*—Denmark, Italy, Norway, Sweden, Japan, Bermuda, France, Spain and Germany ban split charters to and from the United States.

4. *Prior Approval*—Almost every foreign government, with the exception of Argentina and the Bahamas, require prior approval of each charter flight or series of charter flights by U.S. supplemental and scheduled carriers.

5. *Price Limitations on Inclusive Tour Charters*—Countries within Europe which permit inclusive tour charters have, in concert with the European Civil Aviation Conference, imposed minimum price requirements on inclusive tour charters. These price restrictions are tied to the minimum IATA tour-basing fare.

6. *Volume Limitations on Inclusive Tour Charters*—The United Kingdom, Germany and France have adopted volume limitations on inclusive tour charters. For 1971 these limitations were:

United Kingdom—90 total round trips.²

Germany—30 total round trips.

France—50 total round trips.

7. *Limitations on Split Charters*—The United Kingdom and Ireland allow only two groups on a charter flight.

8. *Volume Limitations on Affinity Charters*—Portugal, Japan and Tahiti have quotas on the number of affinity charters that may be operated. Bermuda bars all affinity charters during the Easter season.

9. *First Refusal Restrictions*—Ireland, Mexico, Brazil, Venezuela, Canada, Australia and Ethiopia have first refusal policies.

10. *Uplift Ratios*—Canada imposes a one-to-one uplift ratio for inclusive tour charters by U.S. supplemental carriers.

Senator CANNON. The next witness is Mr. Edward J. Driscoll, president, National Air Carriers Association.

STATEMENT OF EDWARD J. DRISCOLL, PRESIDENT, NATIONAL AIR CARRIERS ASSOCIATION; ACCOMPANIED BY JUAN O'CALLAHAN, TRANSPORTATION ANALYSIS INTERNATIONAL; JERROLD SCOUTT, JR., COUNSEL FOR AND DIRECTOR OF WORLD AIRWAYS, INC.; AND BRIAN COOKE, SENIOR VICE PRESIDENT, WORLD AIRWAYS, INC., ON BEHALF OF EDWARD J. DALY, CHAIRMAN OF THE BOARD AND CHIEF EXECUTIVE OFFICER

Mr. DRISCOLL. Mr. Chairman, I have with me this morning Mr. Juan O'Callahan on my left, who is an economic analyst, who has done many studies and he will follow me and my presentation and give the committee the benefit of some of the studies showing the benefits that will be derived through one stop inclusive tour charters. And on my right is Mr. Jerrold Scoutt, counsel for World Airways. On his right is Mr. Brian Cooke, senior vice president of World Airways who will be speaking on behalf of Mr. Daly, since he has been unable to appear before the committee this morning. Mr. Glen Cramer, chairman of the board and chief executive officer of Tran International Airlines who was to be with us today unfortunately has a conflict which I have discussed with committee counsel this morning. It is my understanding he will be permitted to appear tomorrow.

Mr. Chairman, we will address ourselves to the legislation before your committee. I will address my remarks primarily to the one

² Peak season.

stop ITC and to the landing and uplift rights area, touching very briefly on the other areas.

As I indicated, Mr. O'Callahan will buttress my remarks by his economic studies on the ITC. And Mr. Scoutt and Mr. Cooks will address S. 2548 and S. 2549.

We do appreciate this opportunity to appear before you. And I believe we should bring you up to date on the state of the supplemental industry as a prelude to our formal listed remarks. If I may, Mr. Chairman, rather than going through the very detailed statement I have, if I might have the committee's permission to summarize and file that for the record, I think it would expedite matters.

Senator CANNON. Very good.

Mr. DRISCOLL. Fifteen months ago this committee held a comprehensive oversight hearing concerning the economic problems of the air transportation industry. At that time we presented a rather detailed statement to the committee which was discussed in some depth, the economic crisis which was confronting the industry as a whole, and the supplemental carriers in particular. Instead of repeating here matters which have already been thoroughly covered in that prior statement, I ask that my prepared statement of February 4, 1971, before this committee be made part of the record of these hearings.

For the scheduled carrier industry, the economic picture has improved. Unfortunately, the same cannot be said for the supplemental carriers.

Indeed, the fact is that despite a slight increase in total revenues, the loss suffered by the supplemental carriers in 1971 were almost identical to those suffered in 1970, over \$7 million in each year. I have an exhibit to my statement which details carrier by carrier the comparison of 1970 and 1971.

As a result of these losses, several of our carriers have already fallen by the wayside. When I testified before you in February 1971, our association was composed of 10 supplemental carriers. Today four of these carriers are gone. These facts indicate that the supplemental problems are not caused solely or primarily by some transient economic condition such as inflation or the business cycle. The cause of the difficulty is much deeper. We believe it has to do with the structure of the air transportation system as presently constituted, and in particular the very severe restrictions which the law and CAB regulations have placed on supplemental operations.

In my testimony before the committee in February 1971, I said what was needed by the industry and the traveling public was a balanced air transportation system designed to serve the diverse needs of the business traveler, the vacation traveler, the traveler who demands maximum convenience and is willing to pay for it, and the traveler who wants to take advantage of the inherent economic savings associated with group travel.

The achievements in our judgment of such a balanced system requires legislation. And the bills which are now pending before you could constitute a giant step in the right direction. I would like to emphasize, Mr. Chairman, that in addressing these matters we think that the primary concern here should be the right of the traveler, the right of the consumer, and that the air transport system should be

designed to accommodate his needs. This is not what we have heard so far here this morning.

It seems to be looking at it from an industry standpoint. We are addressing it also from the industry standpoint. We are addressing it on the basis of the health of the industry, but also the right of the consumer and we believe that each consumer has the right to low-cost air travel.

One of the areas requiring immediate legislative action is the area of inclusive tour charters. S. 3513, would meet this need by adopting for the first time a statutory definition of inclusive tour charters. The definition would eliminate three restrictions which have stifled the developments of ITC's. These are the requirement that every ITC included at least three separate overnight stops at points 50 miles apart.

Two, that the requirement that the package price paid by ITC passengers be at least 110 percent of the applicable scheduled fare.

Three, that the rule which prohibits the carriers from marketing ITC services to the public, either directly or through their affiliated tour operators, be eliminated.

When Congress amended the Federal Aviation Act, in 1968, to clarify the right of the supplemental carriers to perform inclusive tour charters, everyone expected there would be a rapid expansion of this mode of travel. In its report on this legislation, the Senate Commerce Committee stated that it was "needed by the supplemental air carriers to maintain a viable and profitable enterprise and also to provide to the traveling public the type of low-cost vacation travel it desired." This promise unfortunately has never been fulfilled largely because of the restrictions I mentioned.

For example, in 1969, only 730 inclusive tour charter trips were performed and in 1970 the number dropped to 379. In the principal charter market, the transatlantic, out of a total of 10,450 charter flights performed in 1970, only 295 were inclusive tour charters. There is a chart in my testimony that breaks out the affinity single entity and ITC charters and shows the percentage relationship year by year.

One of the main reasons for the failure of the ITC experiment is the three-stop requirement. Potential ITC users do not want the three-stop requirement and the potential ITC destinations simply do not lend themselves to three-stop itineraries. The three-stop rule also makes it difficult for ITC's to compete with the group inclusive tours of the scheduled carriers, which is, in essence, a single stop ITC for them, although that is moved in their regular scheduled service.

Another restriction which has severely impeded the development of the ITC concept is the 110-percent rule. This restriction places the price of the transportation in excess of that actually required to fully compensate for the air portion and the land portion and places it as a price that constitutes a barrier to the sale of actual low-cost transportation to the users.

These restrictions have largely prevented the exploitation of the inherent economies of plane-load travel which are, of course, the principal justification of the entire ITC concept. Both the three-stop requirement and the minimum-price restriction were adopted in 1966 as part of the Board's original ITC regulations. At that time, rules were made deliberately restrictive, because the entire ITC concept was new and untested.

A great deal of experience has been accumulated since 1966 but unfortunately the Board has not seen fit to review and revise its rules in the light of that experience. I think today, Mr. Chairman, was the only time we have heard the fact that the Board was considering possibly at the staff level some revisions or some considerations, but yet in answer to your questions, no specifics as to what those changes might be or how far the Board was willing to go were given to the committee. We have had one market in which there has been substantial ITC travel, and that was the Hawaiian market. An examination of that Hawaiian market by a scheduled carrier indicated that the traffic that was moving there was traffic that would otherwise not have moved if the low-cost ITC's had not been available. That carrier then changed its pattern of service, introduced its low-cost ITC fares, group inclusive tours, into that market, and as a consequence of introducing them at much lower rates than ours, they did take that market away from us. It evaporated from a \$21 million market down to about a \$1 or \$2 million market. That was subsequently corrected, as far as the rate level was concerned by a Board decision.

Evidence that the present restrictions are unnecessary and the removal of these restrictions will lead to a vast expansion of the ITC market is provided by the European experience with ITCs. Inclusive tour charters have been enormously successful for intra-European vacation travel and have not had any adverse effect on scheduled service. Mr. O'Callahan will detail this for you.

In 1970, for example, approximately 13 million passengers traveled about 19 billion passenger kilometers on ITC flights in the Europe-Mediterranean region. In contrast in the United States only about 90,000 people take advantage of the ITC flights.

It is noteworthy that the success of the ITCs in Britain was one of the factors which influenced the CAB originally to authorize this type of service in the United States.

A different type of restriction which has also seriously impeded the developments of ITC travel in this country is the prohibition in section 10134 of the act against either direct marketing of ITCs by supplemental carriers or their control of ITC tour operators.

Unfortunately, experience has demonstrated that only very few companies in the travel field have the capital and expertise required to perform the tour operator functions. According to a recent CAB press release, April 26, 1971, three tour operators, ASTI, Royal/Colpitts and Golden Holidays accounted for 41 percent of all tours operated in 1971. Clearly, as long as there are so few companies with the capability of organizing and marketing ITCs, this mode of travel will be unable to develop and grow, and the traveling public will be the losers.

Here again the supplementals have been placed at a competitive disadvantage, vis-a-vis, the scheduled carriers, in the sale of bulk group transportation. The scheduled carriers market their GIT fares directly and through their own travel agents. And that is a competitive weapon or competitive system to the ITCs.

S. 3513 would solve this problem by permitting supplemental carriers to organize and market ITC's through tour operator subsidiaries. They could either operate it through their own subsidiaries, operate it in conjunction with other tour operators, or the independent tour

operator could still market it themselves. But it would give options. It would expand the base, and in our judgment make it more competitive, and enable the carrier to really assist in expanding the ITC market.

Mr. Glen Cramer, who will address you tomorrow, will go into this in more detail.

Mr. Chairman, in our judgment it is high time to free the ITC mode of travel from the regulatory shackles which have prevented it from realizing the potential and for fulfilling the expectations which Congress expressed in 1968. I would now like to deal with the restrictions on foreign landing rights for charters.

S. 3513 also seeks to provide a remedy for another major and perplexing problem which has contributed substantially not only to stifling the growth of international ITC traffic, but also to the overall crisis that the supplementals now face. I refer to the problem of obtaining assured landing and uplift rights in foreign countries for charter flights by supplemental carriers.

Last October when I appeared before you in connection with the international air fare legislation, I said that, "The matter of charter landing rights requires attention as urgently as does the current fare situation." Today, notwithstanding good faith efforts by the CAB and interested executive departments, this problem remains as critical as ever. Relief by way of legislation to strengthen the hand of the U.S. Government is urgently needed.

In seeking landing and uplift rights for international charter flights, the supplementals are subject to the unilateral policies of individual foreign governments. The result has been a hodge podge of restrictive charter landing rights which have not only seriously hamstrung the supplementals, but have also frustrated U.S. international aviation policies.

The 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. I might add here, Mr. Chairman, that there is a distinction. The scheduled carrier who operates a charter, although he is not covered under any bilateral, does not have to obtain that prior approval. He operates charters between United States and foreign countries with relative ease. But we are subject to the prior approval, we are subject to the quotas, or to other restrictions that the foreign government may wish to impose.

On at least two 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 policy, suddenly banned all charters by the U.S. supplemental. In connection with Japan, the supplementals are subject to a quota, and that quota inhibits the developments of charter travel to Japan.

While we have heard witnesses say that the President's policy requires a separation of charter and scheduled services in its negotiations, it does say that in the policies, but apparently foreign governments do not understand that and seek to merge the two in many of their discussions or in many of their actions.

I regret to say, Mr. Chairman, that there is a scheduled versus supplemental aspect even to the issue of foreign landing rights. The U.S. scheduled carriers are substantially untouched, as I said, by the various landing right requirements and restrictions I described. Their bulk transportation services on scheduled flights, such as GIT and affinity group are protected by international agreements. And their charter operations are relatively uninterrupted by foreign governments. It is somewhat ironic that the charters are scheduled carriers which derive their charter authority only as a subordinate part of a generalized grant should refuse favored treatment over charter of supplemental carriers which Congress expressly created as a class of charter specialists.

What is even worse in our view is that U.S. scheduled carriers have actively participated in the perpetuation of foreign government restrictions on charter flights. Earlier this year, representatives of Pan American and TWA participated with representatives of Pan American and TWA participated with representatives of European scheduled carriers in a so-called ad hoc charter working group within IATA which prepared recommendations concerning charter policies to be submitted by IATA to European governments. I think a fair summary of those ad hoc reports which we have seen would be they finally decided to say we have to admit that charters are in the public service.

Now let us take, and recognizing they are in the charter service, let's design the policies that will affect not only the supplementals and the independent charters, so as to contain the developments of charters, so it does not interfere with our scheduled carrier operations. So they have a policy of containments. Thus we are confronted with the spectacle of U.S. international route carriers being unsatisfied with the policies also of their own government concerning charters seeking to persuade foreign governments to frustrate these policies.

The international policies statement provides that the foreign landing rights for charter service should be regularized as free as possible from substantial restrictions. To achieve this goal, it calls for inter-governmental agreements concerning 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 had no real bargaining power, since it has nothing of importance which it can withhold when charter landing rights are denied.

I call to the committee's attention the speech of Chairman Magnuson before the Foreign Trade Club in New York City, in which the chairman there made very sterling remarks concerning the imposition of the foreign government restrictions on U.S. carrier rights. There is a summation of that in my testimony.

S. 3513 is designed to afford our Government the effective retaliatory tools it so clearly needs. Since the exercise of this power would in some cases be precluded or hampered by outstanding bilateral agreements, a further provision of 3513 is no new or amended bilateral agreements should be entered into which contain terms that restrict the board's retaliatory power.

The bill we believe would for the first time give the Board an effective weapon in dealing with unreasonable landing right restrictions on the charter services of U.S. carriers. At present, as the record pages

clear, the Board and the Department of State are essentially helpless in dealing with restrictions of this kind. The citizens who travel on charter flights, Mr. Chairman, whether they be on supplemental charter flights, scheduled charter flights, should be accorded the protection, so they can be assured that they can travel from the United States to foreign points.

The need for enactment of S. 3513 is not at all altered by the fact that the Board has under consideration a proposed rule which would enable it to retaliate against charter landing rights restrictions by requiring prior approval of individual on-route charter flights of foreign carriers.

There has been reference here to part 212 which has been under consideration for an extended period of time. But even if this rule is adopted, I should mention that the proposal seems to have disappeared from the administrative scene, only the charter services of foreign carriers would be affected. Many foreign governments care little or not about charter services. They would willingly accept curtailments of charters by their own carriers if they could in turn eliminate or severely restrict the charter operations of the U.S. carriers.

Moreover, these countries would not have to forgo all participation in the bulk transportation market if charters were eliminated, since a significant portion of the bulk market moves via group promotional fares on scheduled services. There have been, as mentioned this morning, discussions with ECAC in the hopes that something would be worked out. I don't think we share the optimistic views that have been expressed that things will be worked out. The history would seem to indicate no. There is one important aspect, however, of these talks, and that is, as we understand it, there would be some agreement among governments to attempt to identify the essential level of scheduled services that needs to be protected. We do think that has to be identified. Maybe it cannot be done through theoretical studies, maybe it has to be identified in the marketplace. But it should be identified so that the level that needs protection is specific and not that it is all the service that is performed by the scheduled carriers.

This we feel would help to clarify the picture and aid in developing a sound air transportation system. I would like to now move to another item and that is the right of the supplementals to carry the mail.

We cannot understand the objections to this basic authority request because what we are asking here is basically the right to transport the mail in charter service. We do have a right to conduct all charter services. We perform charter services for the DOD and other Government agencies. We provide them for private enterprise. Why there should be objection to the supplementals having authority to transport mail in charter service for the Post Office Department when it is needed by the Post Office Department, and if it is needed by the Post Office Department, we do not understand, Mr. Chairman, it seems everybody can transport the mail except the supplemental carriers. Even the air taxi operators are doing it by exemption granted by the Board.

The need for enactment of S. 2548 and S. 2549, which deals with the intercarrier relationships, I will leave that portion for Mr. Cooke and Mr. Scoutt. I would like to now summarize and provide conclusions, Mr. Chairman. I would like to address again that the legisla-

tion we seek is not special interest legislation, it is not designed to benefit our industry at the expense of the consumer or the taxpayer. On the contrary, the three bills pending before you are designed to benefit the consumer. Their purpose is to create a balanced air transportation system which would more adequately meet the needs of the traveling public. These bills, in other words, will help the industry by enabling it to provide better service to the public.

This bill, however, will not do the whole job. What is needed is a comprehensive program, of which the legislation now pending before you would constitute a major part. We presented such a program to the First World Congress of Air Transportation and Tourism, which was held a few weeks ago in Madrid. I would like to present for the record the conclusions and recommendations of that congress, which contain a complete blueprint for the establishment of the balanced air transportation system which we seek.

The key elements of the total program which we advocate are the following:

1. In accordance with the President's policy statement, determinations must be made as to all major air markets concerning the vital level of scheduled service which is required to meet the public need for this type of service. This can best be done in the marketplace, not by theoretical studies, and we do not believe you have to hold up the authorization of one-stop ITC's until you determine that level. We believe the authorization of the one-stop ITC's will not damage the scheduled market. But during the operation of it, the actual demand for scheduled service can be measured and a level established that will save that demand.

2. Bilateral agreements must be established to regulate international charter operations. These agreements must assure maximum freedom of competition in the bulk transportation market, subject only to the minimum restrictions necessary to protect the vital level of scheduled service.

3. The U.S. Government must be given adequate means of retaliation against those countries which continue to impose unreasonable restrictions on charter landing and uplift rights.

4. The Civil Aeronautics Board must adopt realistic and workable regulations governing travel group charters.

5. Single-stop ITC's should be authorized, free of artificial price restrictions, and the prohibition against carrier control of ITC tour operators should be eliminated.

Implementation of this total program will benefit both supplemental and scheduled carriers, and, most important of all, it will serve the interests of the traveling public. Moreover, the program will benefit the entire tourist industry. Consider, for example, the increased number of visitors that one-stop ITC's would bring to the ski resorts and beaches, the mountain resorts and great cities of America. Think of what these visitors would do for the economies of these areas, and for the hotels, restaurants, and other suppliers of tourist services.

We must begin to implement this program now. The American public has already had to wait too long to enjoy the full benefits of the low-cost air transportation which the jet age has made possible. And our carriers have already had to wait too long for the legal authority to provide this service to the public. Enactment of the

legislation now pending before you would constitute a major step toward the establishment of a truly balanced and consumer-oriented air transportation system.

Thank you, Mr. Chairman. That concludes my statement. I would be pleased to answer questions, or we could have Mr. O'Callahan summarize the benefits derived from ITC's.

Senator CANNON. I think I have a few questions of you before we go on.

Would it be reasonable for Congress to change the results regarding ITC's before the Board makes a determination of what level of scheduled service needs protection?

Mr. DRISCOLL. We believe it would, sir. I think the Board itself has indicated here this morning, and they have indicated in the transatlantic supplemental charter case that they just handed down the other day that they do not believe that you can establish that level by theoretical studies.

I think they believe, as we do, it has to be established in the marketplace, and that interaction of the marketplace will set the level for scheduled service.

It should be set based on the demand and the Board couldn't, once you cut loose the—and if you cut loose the ITC authority, adjust that to compensate so that it does protect whatever level of scheduled service it deems appropriate.

Senator CANNON. Well, once you make a wide open ITC, though, that is in competition with scheduled service, you are in effect going to do away with the scheduled service.

Mr. DRISCOLL. I don't believe you are going to that degree.

What we are talking about in ITC are those people who wish to go on a package tour, who are subject to the group movement, to go when the tour goes, return when the tour returns.

That still will not be in direct competition with the scheduled service. It will be in direct competition with that part of the scheduled service that is presently engaged in group movements, but not the true individually ticketed type of transportation.

Senator CANNON. Don't you think in light of the President's policy that they are going to have to make a finding of what scheduled service needs protection before they can open the ITC's up, change the rules?

Mr. DRISCOLL. The President's policy, sir, indicates that there should be the development of scheduled service and the protection of scheduled service.

I do not believe that they have to identify that level in advance of making the necessary adjustments.

You have an excess level of scheduled service in existence today in many markets.

Now, the experience in Europe has not indicated, as Mr. O'Callahan will go into, that scheduled service has been impaired at all by ITC operations, rather, both have flourished.

Senator CANNON. Is the European ITC example truly indicative of the U.S. situation.

The Europeans have two carrier pools serving most of the European market, and their fares are more than 20 percent higher than U.S. fares, freest flights, high load factors, and generally service inferior to that to which most Americans are accustomed.

Mr. DRISCOLL. As far as the pools, we certainly don't have those in this country and there is a distinction there. We do have a competitive system; usually we do have two-carrier competition in most routes.

Certainly their load factors in Europe are higher than ours, but I believe this is indicative of the excess capacity we may have in our scheduled system today, indicated by the fact that carriers, domestically, at least, have been meeting to try to eliminate to the degree they can some duplicative service and bring it more in line.

The fact that they are operating at high load factors in Europe and that they are still flourishing, and are satisfying the demand, Mr. Chairman, as far as we know—maybe it is not as convenient as the service here in the United States, but it does satisfy the demand.

We don't see that that should preclude adoption here in the United States; even though there is a distinction between the way the carriers operate, we see no difference. We think it is valid to consider that ITC's can operate without substantial harm to our scheduled system.

And we, Mr. Chairman, feel just as strongly, I think, as the CAB, the Congress, or anybody else, that the scheduled system must be protected, but it must be protected only to the degree of the vital level of scheduled service and not to all of the service they operate.

Senator CANNON. Wouldn't widespread ITC's whether operated by the supplementals or by the scheduled carriers, lead to uneconomic conditions in many markets, such as the one we have seen in the Hawaiian market?

Mr. DRISCOLL. Not if it is properly regulated, sir.

Senator CANNON. Sir, how would you regulate it?

Mr. DRISCOLL. The Board has control over fare levels, sir, and in that case, in Hawaii, where we had our ITC operation, they came in with low GIT fares; the Board subsequently determined those fares were too low and ordered the carrier to increase them. The Board had the power there, they could have suspended that fare, not permitted it to have gone into effect. They elected not to do that at that time, but the Board does have the reasonable safeguards where they can protect the system.

Senator CANNON. The Board has testified that it is amending its rules so as to permit it to retaliate against the charter operations of any carrier whose government restricts U.S. carrier operations.

Wouldn't this serve to assist the supplementals in gaining landing rights and removing the restrictions?

Mr. DRISCOLL. We believe it would assist, sir, but I must say that that rule has been on the back burner, or whatever burner it is on, for a considerable period of time. We had reference to that when I appeared here February 4, 1971. It still has not been enacted, and yet, I think, as I pointed out in my testimony, that that will deal only with on-route charters of the scheduled carriers, and, in the bulk-transportation market, charters aren't the only form of bulk transportation.

The scheduled carriers also perform a tremendous amount of group bulk transportation within the scheduled carriers system and they would gladly sacrifice, in some instances, their charter authority, as long as they can move the groups in individually ticketed service.

So I don't think it satisfies the entire matter, Mr. Chairman.

Senator CANNON. Well, if Congress granted the CAB the authority to retaliate, wouldn't this pose a problem in light of the bilaterals that

are now in existence? Wouldn't there have to be new bilaterals negotiated?

Mr. DRISCOLL. To the degree that the law would be inconsistent with the bilateral, there would have to be new bilaterals. Some bilaterals might not need new agreements.

But I would like to draw an analogy here, and that is to go back to the fare legislation. There were great fears expressed as to what the adoption of fare legislation might and might not do.

I think the adoption of the fare legislation speaks for itself. Rates were closed and the system is operating. The mere fact that you have the big stick or the tool to effectively deal with your problems eliminates many of your problems and they don't arise.

I think that would happen in this case. I think the foreign governments would for once find out that the U.S. Government is serious and maybe they would come to grips with the problem.

Senator CANNON. Now, is Mr. O'Callahan next?

Mr. DRISCOLL. Yes, sir.

Mr. O'CALLAHAN. Mr. Chairman, my name is Juan O'Callahan. I have been an independent aviation consultant for over 31½ years.

My purpose this morning is to briefly recap some of the studies I have been doing for at least 2½ years for the International Air Carrier Association and the National Air Carrier Association and to submit for the record a paper I produced for the recent Congress on Air Transportation and Tourism in Madrid, which summarizes some of the points of these studies, and tries to put into perspective what I call the practical starting point for the implementation of a balanced air transportation structure between scheduled and charter service.

I have been in the American aviation industry for 12 to 15 years with a major manufacturer, Boeing Co. for 8 years, and later with two airlines as director of marketing and vice president of economic planning.

I feel I am familiar with the U.S. aviation operations, their costs and their fares, and that I am able to draw realistic parallels between civil air operations in other world areas, such as in Europe.

I point this out because, as you mentioned already, it is important to know the difference between intra-Europe charter and scheduled operations and what is being operated and could potentially be operated in the United States under different rules.

These studies and my main points that I have been advocating to my clients and the charter industry, and to audiences I have presented these studies to, have been that the prime requirement and in fact I think it is a social need in the United States is the authorization of one-stop or what I call single-center inclusive tour authority.

Some 2 years ago I presented a study to the Department of Transportation called The Future of the U.S. Supplemental Industry, and at that time as part of overall steps that could be taken, realizing the requirement to maintain necessary scheduled service, and that the entire industry was in certain financial difficulties, charter as well as scheduled, that one of the main points I made was the proposals being sought by us involving changes in definitions of charter eligibility, authorization of single point ITC, and a regulated structured pricing on promotional fares, appear to comprise a calm and sensible approach to U.S. air transportation in "T" 708.

I said at that time that all of these changes we were recommending, especially the single-center inclusive tour, would benefit the scheduled industry as well as the charter industry, but the point that is continually forgotten is that the U.S. public or the consumer really needs this opportunity now and there is no reason why he should be denied it.

In doing the more recent study for the International Air Carrier Association, which represents almost all of the independent charter operators in Europe, as well as the U.S. supplemental airlines, my task was to try and identify the problems facing the aviation industry and to point out possible solutions on a worldwide basis, and how it would affect their position, these independent charter specialists.

The main point, even though this covered eight or nine definitive areas, is that the major change that was required came back to the United States and this regulation on ITC's, because it affects not only travel across the North Atlantic from America outbound, it affects travel inbound to the United States from European countries, and many Europeans, some 8½ million Europeans are taking typical intra-Europe tours and they are going farther and farther afield.

Some 10 percent of these are taking long-distance inclusive tours to East Africa, Southeast Asia, and to the Caribbean.

In fact, some of these approved inclusive tours, one-stop, are to the United States, to Miami, operated by Caledonian, and, of course, they cannot be operated the other way.

If the combined population of these countries that are providing intra-Europe ITC's is less than the population of the United States, and within a year or two, some 10 million of these Europeans will be taking these tours, it seems logical if the United States would offer similar regulation to the consumer here, some 10 million, before 1980, low-income consumers would be availing themselves of this type of holidays.

There is no question that many surveys will be made in the United States of both charter and decided travelers and that by far the majority are not low-income consumers. They are fairly affluent, relatively middle-aged people, who are able to avail themselves of air transportation, taking holidays.

In Europe, this is not so.

They are able to take typical packages, for instance in the summer of 1972, out of TOA's, Global, or Silver Wings brochures. There is availability of stacks of brochures that give them an opportunity to choose from many countries.

A typical 11-day all-inclusive tour to Spain, which means three meals a day, hotel room, double occupancy, shower, good conditions, transfers between the airport and the place where you stay, insurance for the entire package, in case something goes wrong, is on the order of 28 pounds or \$73 for 11 days in the summer.

They can go from United Kingdom to Morocco, 8 days for \$110, to Yugoslavia for 15 days, for \$144, all inclusive. To Greece, \$128.

These are packages which can be offered in the summer.

In the winter they are dramatically cheaper. They can be justified on an almost out-of-pocket basis in the winter, because the planes wouldn't be operated anyway.

In the United Kingdom, the winter tourist business is growing at over 100-percent a year. People are starting to take two holidays a year.

In Scandinavia, some 10 percent of the population goes on inclusive tours every year, and most of these people go twice a year.

I realize that costs in America, to American destinations, would be somewhat different from Europe, especially Spain. But in escalating the operating costs of charter airlines out to a 1973 or 1974 time period, and putting in what I consider to be realistic land package costs for the American gulf coast, Mexico, the Caribbean, wherever these likely destinations would be for similar type of regulations, I still maintain that by 1973-74 a typical low-income American consumer, people who aren't represented by massive lobbying agencies, secretaries, unmarrieds, young people who are not married, blacks, and blue collar workers, should be able to take two holidays a year, comprising some 3 weeks total, for less than \$330, all inclusive.

Typical packages would be from Washington or Atlanta, for 1 week in the interior for about \$108, to the gulf, New Orleans—and new destinations would be developed if you had the regulation, tour operators, hoteliers, and the airlines themselves, entrepreneurs in the business, perhaps people who are not in the transportation business; people would get into marketing and building the kind of facilities where you have long contract requirements.

You can book up a hotel in advance for 5 years; that would be able to offer these kind of packages.

New Orleans, 1 week, \$119 in the winter or \$150 in the summer.

To La Paz, Mexico, \$180 in the winter, or about \$220 to \$250 in the summer.

To Palma, Malaga, any place in Spain, 10 days in the winter for \$207.

These are prices which can be offered to the public at compensatory operations to the people who are operating them. These aren't economics which are in any way optimistic, but have escalated after the mid-1970 time period with the type of equipment, stretched DC-8, DC-10, 747, air bus, and so on.

In summary, then, I think that the regulations must be, can be changed and really must come from Congress and that the CAB, even though they might approve single point ITC application as has been submitted by my own clients, Overseas National Airways, it would be so argued about and tied up in the courts that again the consumer wouldn't have that opportunity for 2 to 4 years.

I don't think there should be a very slow step-by-step experimental approach in this particular area as has been suggested, because we will be back here again in 2 to 3 years discussing the same thing.

I think that it is not, should not be said that because this problem is slightly complex, and we must maintain the level of necessary scheduled service, which I am sure will be maintained, that therefore we should not do anything about it.

It almost seems as if we are admitting that here in America we can't do something that has been done over the past 15 years in Europe, in certain countries like United Kingdom.

There can be a monitoring body which can consider applications for ITC programs, single-center ITC's, from both supplemental and scheduled carriers.

In Europe, again, the very detailed study we did of the affect on scheduled service of this dramatic growth of 8.5 million people taking the tours proved conclusively to us that no deterioration of necessary scheduled service occurred.

Many of the statements that have been made in the past 3 or 4 years, such as scheduled service between Sandia via Spain have deteriorated to the point where you cannot take scheduled service, is absolutely untrue.

In all of those particular markets, if we take country by country, and this study was examined a period of 10 years, both summer and winter, over about 1,800 city pairs, it showed that all scheduled services have been improved from the 1962 level to the 1971-72 level, and at the same time the type of equipment has been improved from propellor aircraft or propjets to pure jets, seats have been increased, frequencies have been increased, and in fact, this is surprising, in view of the fact that scheduled services are more expensive in Europe, some 25 to 30 percent higher, as you pointed out, that load factors are higher, they are not as convenient as they are here in this country, and yet even with those conditions they have continued to grow and prosper.

Senator CANNON. What have driving those costs up in light of the higher load factor?

Mr. O'CALLAHAN. Excuse me?

Senator CANNON. What has driven the price up?

Mr. O'CALLAHAN. I don't think the costs are significantly higher.

Senator CANNON. You just said 20 to 25 percent.

Mr. O'CALLAHAN. The fares are up to 20 to 25 percent. They have been at that level for, well, since 1961-62, they have increased a few percent since then.

It seems to be the philosophy of the intra-European carriers to maintain very high tariff levels.

I think it would be to their advantage to drop fares a certain amount and capitalize on the elasticity that would accompany those reductions in scheduled fares.

But my point is even with those high fares and the inconveniences, scheduled services have continued to thrive and prosper.

Scheduled services which may not even be necessary scheduled services between United Kingdom and Majorca, the frequencies have doubled in the last decade at scheduled fares which are on the order of over \$150 roundtrip, when a typical Britisher could take an inclusive tour for 4 days in the winter with hotel and three meals a day for \$40.

So the fact is that the national demand of those people who require scheduled service, businessmen and the few people who want the convenience of booking next week or immediately, will insure that those scheduled services are maintained at the necessary level.

They have done so in Europe and I am sure with the conditions being that much better in America, they will continue to do so.

Certain people will ride scheduled services, no matter what the conditions, especially businessmen.

All of the regulations and proposals I have submitted try to insure that these people maintain the scheduled services that they so badly require and that there can be monitoring policies devised which create single-center ITCs solely for the people who want to take a holiday with a low fare, low total package. I am sure this can be done.

Senator CANNON. All right, who is next.

Mr. COOKE. Mr. Chairman, I would like first to extend Mr. Daly's personal apologies on not being able to appear. I accompanied him to Washington Sunday evening and he became ill yesterday with what appears to be the flu, and was not able to come this morning.

I would like to read his statement, if I may.

Mr. Chairman, Members of the Committee:

Thank you for granting me the privilege of appearing here today, and I will not impose on you for more than a few minutes.

Although I am the Chairman of the Board and Chief Executive Officer of the largest charter airline in the world, I am really in the same business as my distinguished colleagues in the railroad and bus, trucking, ocean shipping and even scheduled airline industries—that business is moving people and goods as quickly, efficiently and as safely as possible, and, at least in my corner of the business, at the lowest cost that I can justify to my shareholders.

This point may seem obvious today, but 50, 25, or even 10 years ago, these industries were viewed as being totally separate and distinct . . . in the last 10 years, however, there has been a transportation revolution, and I like to think that my company and the other supplemental airlines have taken the lead in that revolution.

For example, World recently purchased, for \$100 million, three Boeing 747-C aircraft to be delivered next spring, with an option for three additional aircraft in 1974.

These are the only convertible 747s on order, and they are a generation ahead of the standard 747 since they are capable of being quickly converted from a 450 seat passenger aircraft to a self-loading freighter capable of carrying a quarter of a million pounds of cargo.

Technological developments such as the 747-C have led to new concepts such as intermodal cooperation and bulk transportation, concepts which offer a potential for all transportation industries that sometimes seems to be almost without limit. Yet, the implementation of these concepts can be hampered by outdated provisions which are still found in some of our transportation laws.

Back again to my corner of the business, the Federal Aviation Act, although basically 34 years old, is a remarkably modern piece of legislation, yet some of these outdated provisions can still be found in it.

One such provision restricts the ability of an airline to hold both scheduled and supplemental authority. It was intended to protect the supplementals, and it did, although I might add that the scheduled airlines still found a way to become major charter operators.

Today, however its only effect on the transportation business is a negative one:

Another such provision was intended to protect the infant airline industry from domination by the then more powerful railroads. There is certainly no longer any need for such protection, so the end result is one more unnecessary restriction on the transportation business.

The bills before you would remove these outdated provisions from the act, nothing more and nothing less, and would leave the relationships covered by those provisions for the close scrutiny of the Civil Aeronautics Board.

The impact on the transportation business would, in my estimation, be felt in the long term rather than immediately. But it is precisely because of this, because of the stifling effect these provisions have on long-term transportation policy and planning, that they must be removed.

If you accept the fact that the transportation revolution is vital to the development of this country—and I for one have committed both myself and my company to this direction—then these bills are a small but logical steps.

If I may go back to what I said in the beginning, we are all of us in the same business—transportation—and we can no longer afford the luxury of artificial and unnecessary distinctions if that business is going to continue to prosper.

True to my word, I will not impose on you any longer but instead will leave the details to my legal counsel, Mr. Jerrold Scoutt.

To those of you that don't know Jerry, he is a senior partner in the Washington firm that has represented World for over 20 years, as well as a close personal friend and a director of the company.

Mr. Scoutt.

Mr. SCOUTT. Mr. Chairman, I have prepared written statements which consider in some detail the proposals that are contained in S. 2548 and 2549.

With your permission, I would like to submit those written statements for the record. I would like then briefly to present to you some interpretations of those written views in the light of the statements that were made this morning by the Government witnesses.

These two legislative proposals would enlarge the CAB's discretion to approve certain intercarrier relationships found to be in the public interest.

At the present time the Federal Aviation Act effectively precludes consideration of such relationships, regardless of whether they may be otherwise thought to be in the public interest.

Now, the enactment of these two bills, S. 2548 and 2549, would do nothing but remove legislative anachronisms. It would leave the Board with both the legislative power and the responsibility to determine the merits of intercarrier relationships on the basis of general public interest standards.

I am really perplexed that the representatives of the Department of Transportation and the CAB would seem to resist legislative changes which would increase their flexibility in regulating the transportation business which is at the same time beset with a lot of financial problems and anxious to experiment with new concepts.

After hearing the statements this morning, I am convinced we failed to make our position clear, and I would like to spend a few moments on each of these two proposals.

The first, S. 2548, which would remove a restriction contained in section 401-D-3 of the Federal Aviation Act, which precludes the common ownership of scheduled and supplemental carriers—it precludes in our view a scheduled carrier from getting into the supplemental business, and conversely, a supplemental carrier from getting route authority.

In response to this proposal, you were first of all told this morning that the scheduled carriers don't need the new authority, because they are—they already have broad charter rights. Now, that is true, of course, but these charter rights are not as broad as the charter rights held by the supplemental carriers.

Moreover, whether that is the reason or whether it is a conscious company policy, the route carriers very obviously have not become the kind of factor in the charter business that you would expect from corporations with massive resources.

Now, I think it is important for you to note at this point that almost every European route carrier has a charter subsidiary or a charter affiliate: Air France, Alitalia, Iberia, KLM, Sabena, SAS, and Swissair.

And the fact that these and other route carriers have seen fit to do their charter business through separate companies, I think, at least, raises the question as to the accuracy of the assumption that this ought to be of no interest to route airlines.

Now, it is true, as was observed this morning, that the elimination of IATA Resolution 045 would diminish to some extent the interest the route carriers would have in a separate charter operation.

But please remember this: 045 is still the applicable regulation as far as the IATA airlines are concerned.

The CAB's tentative order of disapproval has not been finalized, it has been strongly resisted by every one of the IATA carriers. We don't know whether the Board, incidentally, will disapprove that resolution, and if they should disapprove it, what will take its place.

Secondly, you were told today that this legislation is not needed because the supplemental carriers will have very few opportunities to seek route authority in their own name.

I would simply observe in connection with that comment that there have been such opportunities in the recent past. World Airways participated in the transpacific case on the assumption that if successful, for even a part of it, it would have to surrender its supplemental authority.

Moreover, I am not willing to assume that the present *de facto* moratorium on route cases at the CAB will continue indefinitely. As a matter of fact, most of the transatlantic authority of TWA, Pan American, and Seaboard, expires next year, and presumably there will be a proceeding to consider whether or not it should be renewed, or which carrier should operate those routes.

It is quite possible that one or more supplemental carriers would like to suggest to the Board that they are in a better position to provide that service than the incumbent carriers.

Finally, you were told that the merger of supplemental airlines with route carriers would tend to lessen competition, and that would be bad, and if that were true, it would indeed be bad, but I think that statement really assumes the conclusion that could only be arrived at after some kind of an inquiry into the particular case. It is equally imaginable that the merger of a supplemental with a route carrier would increase competition. It might be that new management, dedicated to the idea of promoting bulk transportation, might change the direction in which massive resources are used.

You will recall that it was just the management of small carriers like today's supplementals that promoted the air coach, the all-cargo, charter service for the military, in the transatlantic. These ideas were taken over by the route carriers and they did a great job with it, but they had to be prodded into that action.

Nevertheless, even the enactment of S. 2548 does not mean that there is going to be one supplemental and a trunkline. In order for that to take place, the CAB and probably the President of the United States will have to conclude it is a good idea, that it is justified by general considerations of public interest, and surely one of those very important considerations will be whether or not it will promote competition and better serve the public.

I don't think anyone is bright enough today to prejudge that question. All we are asking is that the Board be given the legislative authority to consider the question when and if it arises.

Now, the second piece of legislation, the second bill I would like to speak to briefly, S. 2549, which would eliminate the so-called second proviso of section 408-B.

Now, the Government representatives this morning, in commenting on this, seemed to be—perhaps I am being optimistic—lukewarm is perhaps the degree of enthusiasm, but none of them seemed to be op-

posed to the idea of facilitating intermodal operations. They simply told you that the problem needs to be further studied in further detail.

Again, I am afraid we haven't made our proposition very clear. All we are talking about is the elimination of a provision that was put in the act to meet a problem that no longer exists.

The airlines are no longer fearful of railroad domination, nor should you be. We are not suggesting that you direct the CAB to approve the merger of air carriers with trucks or railroads or steamship lines. We simply want you to let them consider it, let them study it, if they want to, let them measure these proposals against general public interest standards.

Now it is our view that we haven't even scratched the opportunities for intermodal operations. It is also my view that we are not likely to unless this law is changed.

At the present time the second proviso of 408-B that we are talking about for all practical purposes absolutely precludes the control of an air carrier by a surface carrier. It also very seriously restricts the relationship that can result when an air carrier seeks to control a surface carrier.

Let me illustrate the latter point with two examples: Fairly recently the CAB did approve the common control of a supplemental airline and a truck company and yet, in approving the relationship, they said, they imposed certain conditions. The first condition was that the air carrier and the truck line could not provide connecting or joint service nor hold out to the public that they would in any way solicit business for one another.

Secondly, that the Board's approval of the acquisition would be effective only so long as the truck company did not act as an agent for the airline.

Well, the only reason for the joint control was absolutely precluded by the conditions which the Board imposed. And they did that because they think you don't like the idea, that there is a congressional policy against this kind of cooperation. There was another case in which TWA sought approval of the acquisition of a steamship company, and it was approved by the Board, but in approving it, the Board imposed certain conditions, and the conditions made it impossible for the two types of transportation to cooperate in the very manner that led them to think that the common control was a good idea.

Now, all we are asking you to do is not prejudge the situation, but to give the Board the clue it needs that as far as the future of air transportation is concerned, greater flexibility is required.

Now, what they have done we don't think comes close to encouraging intermodal operations. We agree with the Chairman of the CAB that perhaps these measures, these moves ought to be viewed with caution.

But let the Board at least view them, because today these cases will no longer come before them for consideration.

Finally, Mr. Chairman, we think that S. 2548 and 2549, along with the other bill that Mr. Driscoll has spoken to, 3513, are efforts to modernize the Federal Aviation Act.

And we think that they reach this modernization by focusing on what is good for the user of air transportation and place secondary the impact on the carriers that are involved.

Thank you.

Senator CANNON. Given the CAB testimony that there are not likely to be any new route awards in the foreseeable future, what likelihood is there that the supplemental carriers could obtain scheduled routes?

Mr. SCOUTT. The only thing I can say on that, Mr. Chairman, is what I alluded to briefly, and that is that there will be, in 1973, the necessity for considering the renewal of most of the present transatlantic scheduled authority. When that case is set down as a matter of law, if World Airways wanted to apply for a route from New York to London, it would be free to do so and such application would have to be consolidated in that proceeding.

I don't know that we would, but that is an example.

Senator CANNON. Do you think it is very realistic that the Board would throw out an existing carrier on a route and install a new one?

Mr. SCOUTT. I think it would be an uphill fight, certainly, but possibly some of those carriers are not doing as good a job as might be done and we tried to present such a case in the transpacific proceeding, for example.

Senator CANNON. Thank you.

Do you have anything else, Mr. Driscoll?

Mr. DRISCOLL. No, sir.

Senator CANNON. Thank you very much, gentlemen. We appreciate your being here.

The committee will now stand in recess until 2:30 this afternoon.

(The statements follow:)

STATEMENT OF EDWARD J. DRISCOLL, PRESIDENT, NATIONAL AIR CARRIER ASSOCIATION

Mr. Chairman, it is always a pleasure to appear before this Committee. We are especially pleased to be here today, because the legislation which you are considering in these hearings has long been advocated by our Association. We consider this legislation to be absolutely essential to the economic viability of the supplemental airline industry. We also believe that it would be greatly beneficial both to the traveling public and to the entire air transport industry.

We have several witnesses to present today, each of whom will discuss a different aspect of the three bills under consideration. I will begin by giving you a brief report on the current status of our industry, and will discuss in some detail the need for legislation to authorize single-destination inclusive tour charters and to deal with the problem of foreign landing and uplift rights for charter flights. Both of these matters are dealt with in S. 3513. I will also summarize briefly the position of our Association on the other aspects of the pending bills.

My statement will be supplemented by Juan O'Callahan of Transportation Analysis International. Mr. O'Callahan is an independent economic consultant who has made a detailed study of the European experience with one-stop ITC service, which demonstrates their tremendous benefits to the consumer and the lack of any adverse effect on scheduled service.

After Mr. O'Callahan, Mr. Glenn Cramer, Chairman of the Board and Chief Executive Officer of Trans International Airlines, will discuss the need for legislation permitting supplemental carriers to establish or control tour operators who organize and market inclusive tour charters. This reform is also included in S. 3513.

Finally, Mr. Edward Daly, Chairman of the Board and Chief Executive Officer of World Airways, and Jerrold Scoutt, Jr., attorney for World, will discuss S. 2548 and S. 2549. These bills in substance would give the CAB discretion to approve certain types of inter-carrier and inter-modal relationships where the public interest warrants.

I. THE STATE OF THE SPECIAL SUPPLEMENTAL INDUSTRY

Fifteen months ago, this Committee held comprehensive oversight hearings concerning the economic problems of the air transport industry. At that time, we presented a rather detailed statement to the Committee, which discussed in some depth the economic crisis which was confronting the industry as a whole, and the supplemental carriers in particular. Instead of repeating here matters which have already been thoroughly covered in that prior statement, I ask that my prepared statement of February 4, 1971, before this Committee be made part of the record of these hearings. Today, I would simply like to bring you up to date on what has happened since that time.

For the scheduled carrier industry, the economic picture has improved. As a result of the fare increases authorized by the CAB and the general upturn in the economy, most of the scheduled carriers are again showing sizable traffic growth and increasingly healthy profits. Unfortunately, the same cannot be said for the supplemental carriers. Indeed, the fact is that despite a slight increase in total revenues, the losses suffered by the supplemental carriers in 1971 were almost identical to those suffered in 1970—over \$7 million in each year. (See Exhibit 1 to the Statement.)

As a result of these losses, several of our carriers have already fallen by the wayside. When I testified before you in February 1971, our Association was composed of 10 supplemental carriers. Today, four of those carriers are gone. Three have totally ceased operations—including Universal Airways, which was forced to close just last week—and the fourth is now operating only intra-European flights out of Berlin.

These facts indicate that the supplementals' problems are not caused solely or primarily by some transient economic condition, such as inflation or the business cycle. The cause of the difficulty is much deeper. We believe it has to do with the structure of the air transportation system as presently constituted, and, in particular, the very severe restrictions which the law and CAB regulations have placed on the supplementals' operations. For a number of years, the supplementals were able to survive and grow despite these restrictions, partly because of their substantial military charter business, and partly because of their ability to develop a substantial commercial charter market even within the limits imposed by legal restrictions. At the present time, however, military charter traffic is declining, and further expansion of the commercial charter market is almost impossible within the framework of existing rules and restrictions. The time has come, therefore, for major reform, if our industry which the Congress created in 1962 is to survive much longer and fulfill its public trust of providing low-cost air transportation. If we fail, the competitive spur which we represent will disappear, and low-cost transportation will disappear with it.

In my testimony before this Committee in February, 1971, I said that what was needed—both by the industry and by the traveling public—was a balanced air transport system, designed to serve the diverse needs of the business traveler, the vacation traveler, the traveler who demands maximum convenience and is willing to pay for it, and the traveler who wants to take advantage of the inherent economic savings associated with group travel. As I pointed out at that time, such a balanced system would necessarily expand the total market for air travel, and would therefore benefit the entire industry. The achievement of such a balanced system, of course, requires legislation. In my opinion, the need for such legislation is even more urgent today than it was 15 months ago. And the bills which are now pending before you would constitute a giant step in the right direction.

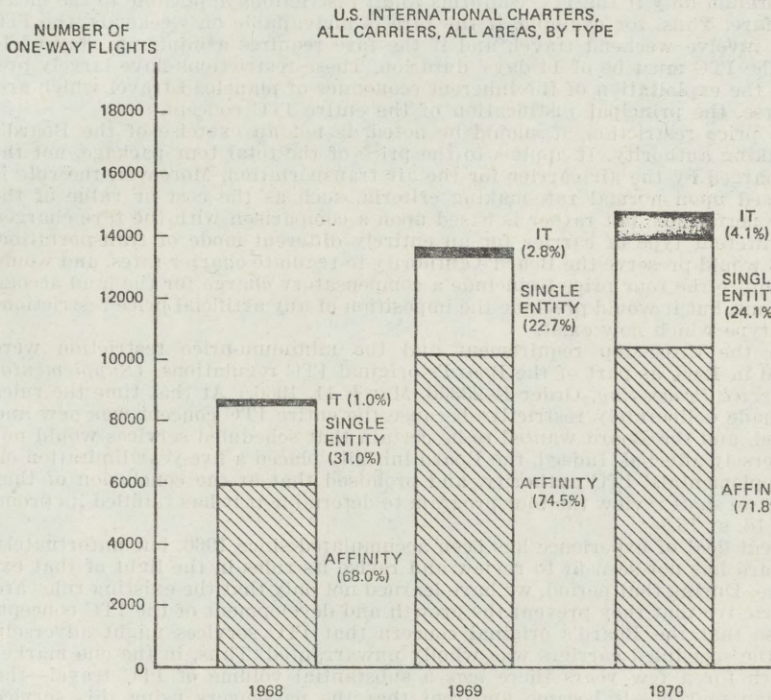
II. THE NEED FOR LEGISLATION AUTHORIZING SINGLE-DESTINATION INCLUSIVE TOUR CHARTERS WITHOUT ARTIFICIAL PRICE RESTRICTIONS

One of the main areas requiring immediate legislative action is the area of inclusive tour charters. S. 3513 would meet this need, by adopting for the first time a statutory definition of "inclusive tour character trip." This definition would eliminate three existing restrictions which have almost completely stifled the development of the ITC concept. These restrictions are (1) the requirement that every ITC include at least three separate overnight stops at points at least 50 miles apart; (2) the requirement that the package price paid by ITC passengers must be at least 110 percent of the applicable fare charged by a scheduled carrier for individually-ticketed transportation between the points involved; and (3) the rule which prohibits the carriers from marketing ITC services to the public, either directly or through their own affiliated tour operators. The first two of

these restrictions have been imposed by CAB regulations, and the third is presently contained in the Act itself.

When Congress amended the Federal Aviation Act in 1968 to clarify the right of the supplemental carriers to perform inclusive tour charters, everyone expected that there would be a rapid expansion of this mode of travel. In its Report on the legislation, the Senate Commerce Committee stated that it was "needed by the supplemental air carriers to maintain a viable and profitable enterprise and also to provide to the traveling public the type of low-cost vacation travel permitted by this bill." (S. Rep. No. 1354, 90th Congress, 2nd Sess. p. 4 (1968)).

This promise, unfortunately, has never been fulfilled. Largely because of the restrictions previously mentioned, the ITC concept has never really gotten off the ground. In 1969, only 730 inclusive tour charters were performed, and in 1970, the number dropped to 379. In the principal charter market, the transatlantic, out of a total of 10,450 charter flights performed in 1970 only 295 were inclusive tour charters. The following chart illustrates graphically the insignificant role that ITC's have played in the international field, and the situation today is no different domestically.



SOURCE:
"U.S. INTERNATIONAL AIR CHARTER PASSENGER MOVEMENTS,
1968-1970," CAB STAFF STUDY, OCTOBER 1971

It is obvious that ITC's today are neither making any significant contribution to the viability of the supplemental carriers nor providing low-cost travel opportunities to any significant portion of the public.

One of the main reasons for the failure of the ITC experiment is the three-stop requirement. This rule means that the tour group cannot simply travel to a vacation spot and remain there for the entire duration of the tour. As a practical matter, it effectively precludes short-duration ITC's of a week or 10 days, since it is almost impossible to plan a three-stop vacation of less than two weeks. Thus a sizable and growing market for low-cost, short-stay vacation trips is automatically eliminated. Also, the three-stop rule necessarily makes ITC's more expensive, thus eliminating the low-budget traveler.

Moreover, many potential ITC destinations simply do not lend themselves to three-stop itineraries. For example, most people traveling to the Caribbean do not want to go to three different spots within seven or ten or even fourteen days. They want to go to one island, or at most, two. The same applies to ski trips. And even for European tours, the three-stop rule is a serious impediment, 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 makes it difficult for ITC's to compete with the "group inclusive tour" (GIT) services of the scheduled carriers which are not subject to any similar restrictions. In fact, the GIT fares constitute a form of one-stop ITC which is exclusively reserved for the scheduled carriers.

Another restriction which has severely impeded the development of the ITC concept is the rule, also embodied in the CAB regulations, that the total tour price must not be less than 110 per cent of the scheduled carrier fare applicable between the points involved. In markets where no low promotional fare is offered by scheduled carriers, the price must be 110 per cent of the normal fare—which is usually too high to permit the development of a salable tour. And where promotional fares do exist, they can be used as a basis for applying the 110 per cent formula only if the ITC conforms to all restrictions applicable to the measuring fare. Thus, for example, if the fare is unavailable on weekends, the ITC cannot involve weekend travel, and if the fare requires a minimum stay of 14 days, the ITC must be of 14 days' duration. These restrictions have largely prevented the exploitation of the inherent economies of plane-load travel which are, of course, the principal justification of the entire ITC concept.

This price restriction, it should be noted, is not an exercise of the Board's ratemaking authority. It applies to the price of the total tour package, not the rate charged by the air carrier for the air transportation. Moreover, the rule is not based upon normal rate-making criteria, such as the cost or value of the service performed, but rather is based upon a comparison with the fare charged by a different type of carrier for an entirely different mode of transportation. S. 3513 would preserve the Board's authority to regulate charter rates, and would also require the tour price to include a compensatory charge for the land accommodations, but it would preclude the imposition of any artificial price restrictions of the type which now exist.

Both the three-stop requirement and the minimum-price restriction were adopted in 1966, as part of the Board's original ITC regulations. (*Supplemental Air Service Proceeding*, Order E-23350, March 11, 1966.) At that time the rules were made deliberately restrictive because the entire ITC concept was new and untested, and the Board wanted to be certain that scheduled services would not be adversely affected. Indeed, the Board initially placed a five-year limitation on the supplementals' ITC authority, and promised that at the conclusion of that period "we shall review the tour program to determine if it has fulfilled its promises." (Id. at 15.)

A great deal of experience has been accumulated since 1966, but unfortunately the Board has not seen fit to review and revise its rules in the light of that experience. During that period, we have learned not only that the existing rules are so restrictive that they prevent the growth and development of the ITC concept, but also that the Board's original concern that ITC services might adversely affect the scheduled carriers was wholly unwarranted. Thus, in the one market in which for a few years there was a substantial volume of ITC travel—the Hawaiian market—it became apparent that the passengers using this service come from a segment of the public which had previously not been using air transportation at all. This was revealed in a study conducted by the principal scheduled carrier serving Hawaii at that time—United Air Lines—which introduced its own GIT fare for the express purpose of capturing the new market which the supplementals' ITC services had first stimulated and developed. It is thus apparent that ITC services do not constitute any threat to the scheduled carriers, much less to the vital level of scheduled services, and that the restrictive regulations originally adopted to protect the scheduled carriers are wholly unnecessary for that purpose.

Further evidence that the present restrictions are unnecessary, and that the removal of these restrictions will lead to a vast expansion of the ITC market, is provided by the European experience with ITC's. Inclusive tour charters have been enormously successful for intra-European vacation travel, and have not had any adverse effect on scheduled service. In 1970, for example, approximately 13 million passengers traveled approximately 19.4 billion passenger-kilometers on ITC flights in the Europe-Mediterranean region. Between 1965 and 1970, the

average annual growth in ITC traffic in that area was 29.2 per cent in terms of passengers carried, and 30.5 per cent in terms of passenger-kilometers performed. In 1970 alone, nearly 500,000 Netherlands—3.5 per cent of that country's population—traveled to Spain by ITC's. Yet intra-European scheduled traffic has not only not declined, it has continued to grow at satisfactory rates. Indeed, a recent CAB staff study notes that "over the last two years, intra-Europe air travel has grown faster than domestic air travel of the domestic airlines." (*Recent Growth of Air Traffic, Intra-European Compared to U.S. Domestic*, September 1971, p. 1.) Mr. O'Callahan will discuss the European ITC experience in greater detail.

It is noteworthy that the success of ITC's in Britain was one of the factors which influenced the CAB to authorize this type of service in the United States. (See Recommended Decision of Examiner Robert L. Park in *Supplemental Air Service Proceeding*, Docket 13795, served August 27, 1965, pp. 56-65.) The Board, however, has failed to learn the key lesson of the British experience—which is that ITC's can only succeed under a favorable regulatory climate. Before 1960, ITC traffic in Great Britain was negligible, because ITC service was confined to situations in which there was no scheduled service, and British European Airways (BEA) had a virtual veto power over ITC operations. But with the creation of the new Air Transport Licensing Board (ATLB) in 1960, the rules governing ITC's have been steadily liberalized, and ITC traffic has grown accordingly. Great Britain permits one-stop ITC's, and its price restrictions are far less onerous and unreasonable than those imposed by the CAB.

A different type of restriction, which has also seriously impeded the development of ITC travel in this country, is the prohibition in Section 101(34) of the Act against either direct marketing of ITC's by supplemental carriers or their control of ITC tour operators. Unless these tour operators undertake to organize and market ITC programs, there simply are not ITC's; and the supplemental carriers must stand by helplessly while the ITC mode remains undeveloped.

Unfortunately, experience has demonstrated that only very few companies in the travel field have the capital and expertise required to perform the tour operator function. Under CAB regulations, tour operators must post enormous bonds or, in the alternative, must hold all advance payments received from tour participants in an escrow account until shortly before the tour actually departs. This means that the initial capital needed to organize the tour must be provided by the tour operator himself. Moreover, a viable ITC program rarely consists of only one or two flights. It is usually necessary to organize an entire series of back-to-back flights, so that the capacity of the aircraft can be used in both directions. This requires considerable advance planning, major initial outlays of capital, and a sizable marketing organization. Very few independent travel companies have this capability.

According to a recent CAB press release (CAB 71-76, April 26, 1971), three tour operators—ASTI, Rogal/Colpitts, and Golden Holidays—accounted for 41 percent of all tours operated in 1970. Clearly, as long as there are so few companies with the capability of organizing and marketing ITC's, this mode of travel will be unable to develop and grow, and the traveling public will be the losers.

Here again, the supplementals have been placed at a competitive disadvantage vis-a-vis the scheduled carriers in the sale of bulk or group transportation. The scheduled carriers market their GIT fares directly and through their own travel agents. Indeed, the low promotional fares that the airlines advertise on the radio or in full-page newspaper ads are, more likely than not, GIT fares. Moreover, the scheduled carriers and their agents are not subject to any of the burdensome bond and escrow requirements that are imposed by the CAB on ITC tour operators. Thus, unlike the supplementals, scheduled carriers do not have to wait around hoping that someone else will decide to assume a large financial burden and to market their bulk transportation services. They are free to get out and do the job themselves.

S. 3515 would solve this problem by permitting supplemental carriers to organize and market ITC's through tour operator subsidiaries. The carriers can provide the capital, the expertise, and the marketing facilities which are required, and they will have a built-in incentive to develop imaginative ITC programs, since by doing so they will be promoting their own services. This has proved to be the case in Europe, where common control of tour operators and charter airlines is an accepted practice.

The prohibition against the marketing of ITC's through carrier-controlled tour operators was originally enacted by Congress because it was thought, at the time, that this restriction was needed to preserve the distinction between charter

an individually-ticketed travel. But clearly that distinction is adequately preserved by the requirement that the tour group must travel together throughout the tour, and must purchase an entire package including ground accommodations as well as air transportation. Certainly it should make no difference whether the tour package is sold to the group through an independent tour operator or one controlled by a supplemental carrier. And, as a practical matter, the present prohibition has simply stifled the entire ITC concept.

Mr. Cramer will discuss this problem further in his testimony, but it is a central one and I did want to touch upon it.

Mr. Chairman, it is high time to free the ITC mode of travel from the regulatory shackles which have prevented it from realizing its potential and fulfilling the expectations which Congress expressed in 1968. There is no reason why the American traveler should not be given the same opportunity to take low-cost vacations by air as his European counterpart has enjoyed for many years. The ITC concept is still sound, but legislative reform is urgently needed to turn that concept into a reality. The enactment of S. 3513 which would eliminate the three-stop rule, the artificial price restrictions, and the prohibition against carrier control of tour operators, will achieve that goal.

III. THE NEED FOR LEGISLATION TO DEAL WITH RESTRICTIONS ON FOREIGN LANDING RIGHTS FOR CHARTERS

S. 3513 also seeks to provide a remedy for another major and perplexing problem, which has contributed substantially not only to stifling the growth of international ITC traffic, but also to the overall crisis that the supplementals now face. I refer, Mr. Chairman, to the problem of obtaining assured landing and uplift rights in foreign countries for charter flights by supplemental carriers. In my testimony before this Committee in February 1971, I described this situation as "becoming increasingly serious." Last October, when I appeared before you in connection with the international air fare legislation, I said that "the matter of charter landing rights requires attention as urgently as does the current fare situation." Today, notwithstanding good faith efforts by the CAB and interested executive departments, this problem remains as critical as ever, and relief by way of legislation to strengthen the hand of the U.S. Government is urgently needed.

As the Committee is aware, the international route operations of scheduled carriers are established and protected through a network of international agreements. However, 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 international agreement. Thus, in seeking landing and uplift rights for international charter flights, the supplementals are subject to the unilateral policies of individual 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. In contrast, the foreign charter airlines which operate into this country receive long-term permits (normally, five years) and do not have to obtain advance approval of their flights.

Apart from the almost uniform requirement of obtaining prior approval for each flight, U. S. supplemental charters are subject to a wide variety of substantive restrictions. Israel bars all passenger charter flights from the United States, while El Al carries large groups of Americans to Europe and Israel. Many other countries frustrate the policies which led the Congress to enact ITC legislation, either by banning ITC's outright—as in the case of Italy, the Scandinavian countries, Japan and Australia—or by imposing minimum price restrictions which make it difficult or impossible to market ITC's, as is true of virtually all European countries that do not have an absolute prohibition. Still other countries impose volume restrictions not only on ITC's but also on traditional *paneload* 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 impose first refusal restrictions which require that charters developed by the supplementals first be offered to flag carriers of the particular country or even, in some cases, U. S. scheduled carriers.

On at least two recent occasions, foreign government 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 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, the supplementals were not even involved in the situation, but we received the thrust of Belgium's action because we are completely vulnerable. 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.

I regret to say, Mr. Chairman, that there is a scheduled-versus-supplemental aspect even to the issue of foreign landing rights. The U.S. scheduled carriers are substantially untouched by the various landing-rights requirements and restrictions which I have described. Their bulk transportation services on scheduled flights (such as GIT and affinity group fares) are protected by international agreements, and their charter operations are, whether by formal or informal rule, seemingly immune from disruptive restrictions by foreign governments. It is somewhat ironic that the charters of scheduled carriers—which derive their charter authority only as a subordinate part of a generalized grant—should receive favored treatment over the charters of supplemental carriers—which Congress expressly created as a class of charter specialists. The net result is that the discriminatory policies of foreign governments afford an important competitive edge to U.S. scheduled carriers in their competition with U.S. supplemental carriers in the bulk transportation market.

What's even worse, in our view, is that U.S. scheduled carriers have actively participated in the perpetuation of foreign-government restrictions on charter flights. Earlier this year, representatives of Pan American and TWA participated with representatives of European scheduled carriers in a so-called "Ad Hoc Charter Working Group" within IATA, which prepared recommendations concerning charter policies to be submitted by IATA to *European* governments. Not surprisingly, these recommendations, which were submitted in February to the European Conference on Civil Aviation (ECAC)—a group composed of the directors general of civil aviation of virtually all European countries—proved to be highly restrictive and designed to contain charter services. Thus, we are confronted with the spectacle of U.S. international route carriers, being unsatisfied with the policies of their own government concerning charters, seeking to persuade foreign governments to frustrate those policies.

The President's 1970 Policy Statement emphasized not only that international charter services should generally be encouraged, but also that charter services should be afforded the protection of international agreements. The Policy Statement provides that "the foreign landing rights for charter services should be regularized, as free as possible from substantial restriction." To achieve this goal, it calls 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.

Chairman Magnuson summarized the situation most accurately in his speech on April 19 before the Foreign Trade Club of New York City. He stated:

"Governments acting individually and collectively in Europe have thrown quota restrictions on charter flights of our independent carriers and scheduled carriers have generally followed a program of containment. This, we cannot and will not tolerate. Unless foreign governments and our government enter into agreements that permit the free flow of tourists by whatever mode or class of transportation they use the United States will be forced to retaliate. We can no longer open our doors on an unlimited basis to European or foreign carriers for operations into the United States carrying United States citizens and building their profits on U.S. generated traffic without receiving full reciprocal treatment. Unless this system is rectified within the near future, legislation will no doubt result and I for one will demand that the United States retaliate against a foreign government if it restricts the free flow of tourists from the U.S."

S. 3513 is designed to afford our government the effective retaliatory tools it so clearly needs. It would apply in cases where the CAB finds that the authorities of a 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, or have discriminated between classes of air carriers. . . ." In such cases, the Board would be empowered—although certainly not required—to retaliate by modifying the operating permit of any airline of the foreign country in question. Since the exercise of this power would in some cases be precluded or hampered by outstanding bilateral agreements, a further provision of S. 3513 is that no new or amended bilateral agreements should be entered into which contain terms that restrict the Board's retaliatory power.

This bill, we believe, would for the first time give the Board an effective weapon in dealing with unreasonable landing-rights restrictions on the charter services of U.S. carriers. At present, as the record makes all too clear, the Board and the Department of State are essentially helpless in dealing with restrictions of this kind. Enactment of S. 3513 would serve notice on foreign countries that the United States will no longer acquiesce in the discriminatory treatment of its citizens who travel on charter flights. Enactment of this bill would doubtless persuade many foreign governments to remove existing restrictions on charters. And it would serve as a powerful inducement for those governments to enter into meaningful negotiations with the United States toward international agreements covering charter services. Indeed, the mere grant of this new retaliatory power to the CAB will in all likelihood make unnecessary its exercise.

The need for enactment of S. 3513 is not at all altered by the fact that the Board has under consideration a proposed rule which would enable it to retaliate against charter landing-rights restrictions by requiring prior approval of individual on-route charter flights of foreign scheduled carriers. Even if this rule is adopted—and I should mention that the proposal seems to have disappeared from the administrative scene—only the *charter* services of the foreign carriers would be affected. Many foreign governments care little or not at all about charter services. They would willingly accept curtailment of charters by their own carriers if they could in turn eliminate or severely restrict the charter operations of U.S. carriers. Moreover, these countries would not have to forego all participation in the bulk transportation market if charters were eliminated, since a significant portion of the bulk market moves via group promotional fares on scheduled flights.

It is simply unrealistic to regard international air transportation as anything but a *single* package of rights. Belgium and Japan took this view when they restricted supplemental charter services in order to obtain improved scheduled routes. The CAB and other agencies of our government must have a wide range of retaliatory weapons if they are to be effective in overcoming foreign restrictionism. If restrictions on U.S. charter services cannot be effectively deterred by restrictions upon charter operations by airlines of the foreign country in question, then restrictions on the scheduled operations of those airlines are called for—and vice versa.

One final point on the subject of landing rights. As the Committee knows, representatives of the U.S. Government have recently engaged in discussions on charter policies with representatives of ECAC, and evidently plan to continue the discussions. One important aspect of these talks, as we understand it, is an effort to determine the vital or essential level of scheduled services in the transatlantic market. In accordance with the 1970 Policy Statement, a determination of this kind is a fundamental prerequisite to the imposition of any restrictions on charter services. We fully recognize the need to protect the essential level of scheduled services against impairment by charter services. But that is by no means the same thing as assuring the profitability of scheduled services at whatever levels of capacity the scheduled carriers may choose to operate. As DOT stated in a recent CAB filing:

"Where scheduled operators operate capacity substantially greater than existing demand, it is neither in their interest nor in the interest of the public to maintain that condition, much less to protect it against charter operators." (Comments of the Department of Transportation, CAB Docket 23055, May 6, 1971, p. 6)

We hope, therefore, that the talks between the ECAC countries and the United States are successful in defining realistically the essential level of transatlantic scheduled services and in reaching some agreement on charter policies.

It does not follow, however, that enactment of the provisions of S. 3513 concerning landing rights should await the outcome of these talks. Quite the contrary, ECAC's record on the subject of transatlantic charters is an unbroken one: it has consistently pursued policies of restriction and containment of transatlantic charters. There is no reason whatever to believe that ECAC's underlying views have changed, and the current negotiations are thus likely to be both prolonged and difficult. What is required in these negotiations is that the U.S. Government be able to bargain from a position of strength. Unfortunately, for the reasons I have outlined, that is not presently the case. Prompt enactment of S. 3513 would, we believe, give the U.S. representatives the "big stick" they need in order to achieve a successful outcome in their charter discussions with the ECAC countries. In view of the conspicuous lack of success which the U.S. Government has had in obtaining agreements covering charters, it is perfectly clear that this added weapon is sorely needed.

IV. THE NEED TO GRANT THE SUPPLEMENTALS THE RIGHT TO CARRY MAIL

There is one other aspect of S. 3513 which I want to touch on briefly, and that is the provision of the bill which would revise the definition of "supplemental air transportation." Under the Act as it now stands, the definition of that term, which is found in Section 101(33), excludes the "transportation of mail by aircraft." This provision was enacted in 1962, at a time when trunk carriers were still receiving federal subsidy. At that time, the Congress no doubt felt that the scheduled carriers should have the exclusive right to carry the mail, in order to minimize their need for subsidy. However, since the trunk carriers are no longer receiving subsidy, there is no longer any justification for this legal monopoly. Accordingly, S. 3513 would eliminate the prohibition against the carriage of mail by the supplementals.

We believe this amendment is long overdue. There is no reason why the U.S. Postal Service should be denied access to the kind of low-cost charter service which is available to all other cargo shippers. We do not know to what extent the supplementals' charter services can meet the needs of the Postal Service, but it should surely have the same access to the supplemental charter service as do the Department of Defense, Department of State and all other Government agencies.

V. THE NEED FOR ENACTMENT OF S. 2548 AND 2549

Finally, I want to express our support for S. 2548 and S. 2549. These bills would grant discretion to the CAB (which it now lacks) to approve certain types of inter-carrier relationships—between scheduled and supplemental air carriers in the one case, and surface and air carriers in the other—where the Board finds the relationship in question to be consistent with the public interest.

Mr. Daly and Mr. Scoutt will discuss these bills in some detail, and it is unnecessary for me to do so. But I do want to say that meeting the crisis which the supplementals face today will require highly creative thought and action. No potential course of action consistent with the public interest ought to be foreclosed in advance. S. 2548 would eliminate from Section 401(d)(3) of the Act a phrase which prevents affiliation between scheduled and supplemental carriers without regard to whether they are useful or in the public interest. The same phrase also prevents a supplemental carrier from receiving a certificate to perform any type of non-charter transportation, regardless of the public interest considerations. S. 2549 would eliminate the so-called "second proviso" of Section 408(b), which has served as a major obstacle to affiliations between air and surface carriers. This proviso is a relic of the days when commercial aviation was in its infancy and the fear of domination by railroads or steamship lines was a real one. Today, the second proviso to Section 408(b) stands in the way of inter-modal relationships which would benefit both the carriers and the traveling public.

We therefore urge the enactment of S. 2548 and S. 2549—both of which, we emphasize, would simply increase the discretion of the CAB to approve inter-carrier relationships or issue authorizations which it deems to be in the public interest.

CONCLUSIONS

In conclusion, Mr. Chairman, I want to stress again that the legislation we seek is not special interest legislation. It is not designed to benefit our industry at the expense of the consumer or the taxpayer. On the contrary, the three bills which are pending before you are designed to benefit the consumer. Their pur-

pose is to create a balanced air transportation system, which will more adequately meet the needs of the traveling public. These bills, in other words, will help the industry by enabling it to provide better service to the public.

These bills, however, will not do the whole job. What is needed is a comprehensive program, of which the legislation now pending before you would constitute a major part. We presented such a program to the First World Congress on Air Transportation and Tourism, which was held a few weeks ago in Madrid. I would like to present for the record the Conclusions and Recommendations of that Congress, which contain a complete blueprint for the establishment of the balanced air transportation system which we seek.

The key elements of the total program which we advocate are the following:

1. In accordance with the President's Policy Statement, determinations must be made as to all major air markets concerning the vital level of scheduled service which is required to meet the public needs for this type of service.
2. Bilateral agreements must be established to regulate international charter operations. These agreements must assure maximum freedom of competition in the bulk transportation market, subject only to the minimum restrictions necessary to protect the vital level of scheduled service.
3. The U.S. Government must be given adequate means of retaliation against those countries which continue to impose unreasonable restrictions on charter landing and uplift rights.
4. The Civil Aeronautics Board must adopt realistic and workable regulations governing travel group charters.
5. Single-stop ITC's should be authorized, free of artificial price restrictions and the prohibition against carrier control of ITC tour operators should be eliminated.

Implementation of this total program will benefit both supplemental and scheduled carriers, and most important of all, it will serve the interests of the traveling public. Moreover, this program will benefit the entire tourist industry. Consider, for example, the increased number of visitors that one-stop ITC's would bring to the ski resorts and beaches, the mountain resorts and great cities of America. Think of what these visitors would do for the economies of these areas, and for the hotels, restaurants, and other suppliers of tourist services.

We must begin to implement this program now. The American public has already had to wait too long to enjoy the full benefits of the low-cost air transportation which the jet age has made possible. And our carriers have already had to wait too long for the legal authority to provide this service to the public. Enactment of the legislation now pending before you would constitute a major step toward the establishment of a truly balanced and consumer-oriented air transportation system.

SUPPLEMENTAL AIR CARRIERS, COMPARATIVE FINANCIAL RESULTS

	Net profit (loss) calendar year	
	1971	1970
American Flyers ¹	(\$1,430,917)	(\$5,079,280)
Capitol International	(2,588,186)	(1,193,449)
Johnson Flying Service	(301,450)	33,679
McCulloch International	677,057	(51,616)
Modern Air Transport	(7,584,191)	(879,544)
Overseas National	² 141,642	² (389,000)
Purdue Airlines	(2,008,090)	(1,555,983)
Saturn Airways	3,965	555,066
Southern Air Transport	248,852	113,039
Trans International	4,350,000	2,388,000
Universal Airlines	(3,180,744)	(297,471)
World Airways	³ 4,086,000	³ (970,030)
Total	(7,056,062)	(7,326,589)

¹ Acquired by Universal Airlines, May 27, 1971.

² Preliminary published data for 12 months ended Dec. 31, 1971. Net profit for the 1971 period excludes a loss of \$337,000 on the disposition of a subsidiary. Net profit for 1970 period excludes a gain of \$5,364,000 on the sale of a cruise ship.

³ Excludes net earnings of \$4,091,000 from World's bank subsidiary for both 1971 and 1970.

Source: CAB Form 41 reports and published financial data for Capitol, Overseas National, Saturn, Trans International, Universal, and World.

STATEMENT OF EDWARD J. DRISCOLL, PRESIDENT, NATIONAL AIR CARRIER
ASSOCIATION

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 chapter 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 crisis 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 by 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 not 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 postwar 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 military. 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. 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.

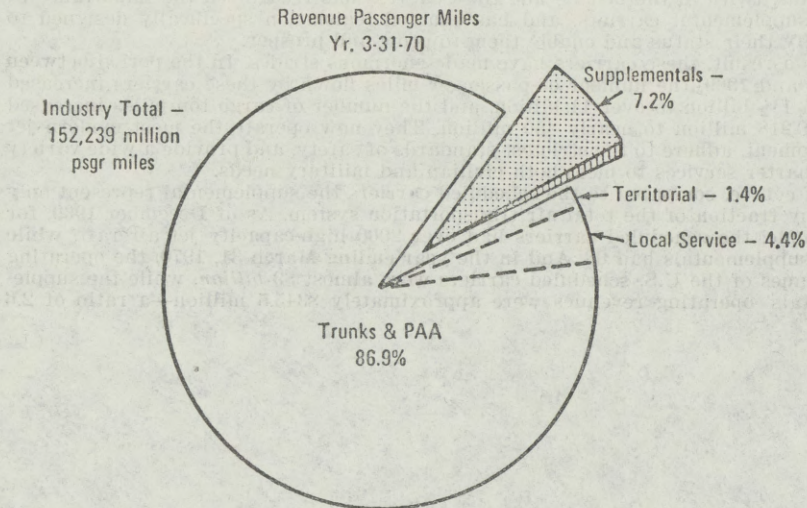
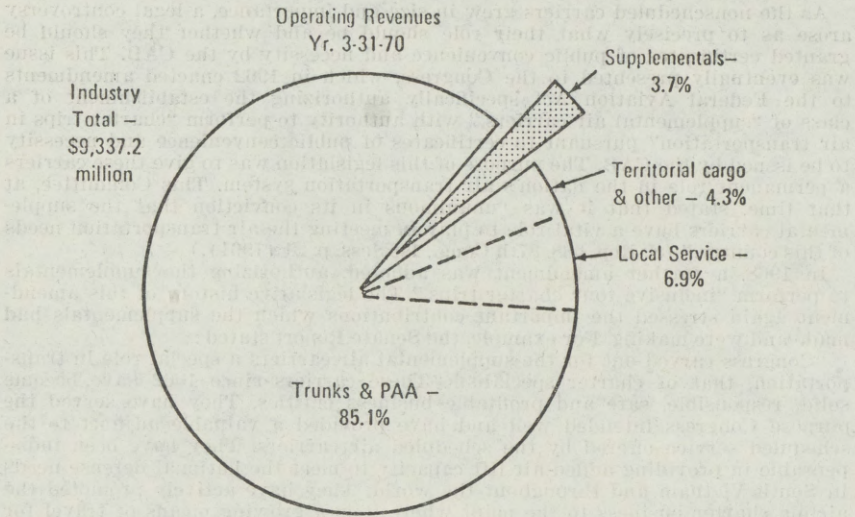
"Supplementals are a permanent and integral part of the national air transportation system. . . ." (S. Rep. No. 1354, 90th Cong., 2d Sess. p. 4 (1968).)

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 1½ 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 supplemental 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 2.6 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 planeload 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:

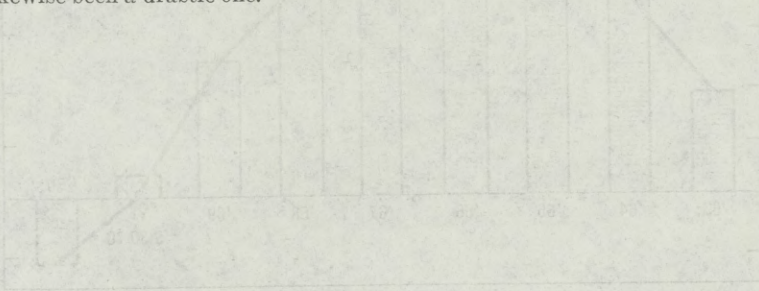
"These carriers have proved to be an essential factor in our national defense civil augmentation airlift system, making substantial contributions in time of national crisis. The United States thus has a sizable stake in their continued survival and viability." *Supplemental Air Service Proceeding*, Order 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.

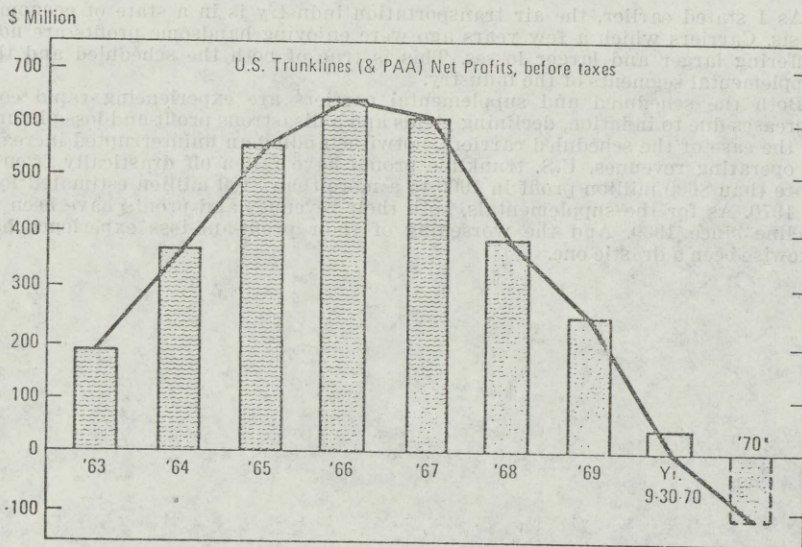
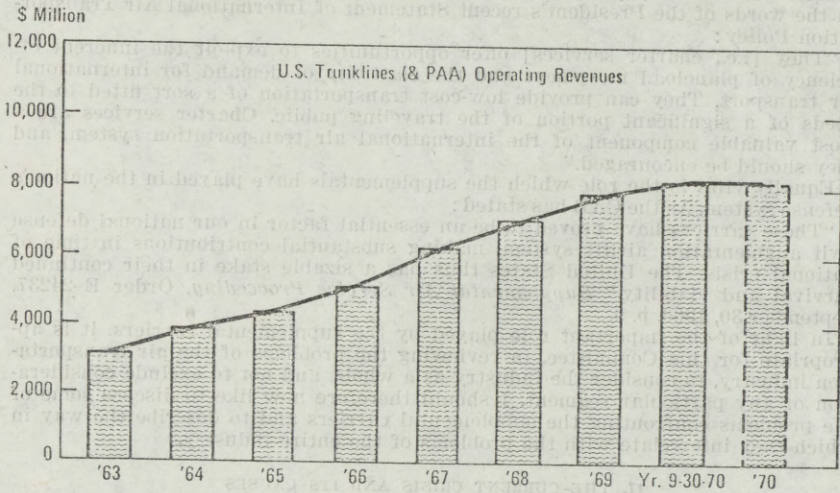
Both the scheduled and supplemental carriers are experiencing rapid cost increases due to inflation, declining yields and a disastrous profit-and-loss picture. In the case of the scheduled carriers, notwithstanding an uninterrupted increase in operating revenues, U.S. trunkline profits have fallen off 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.



The following table shows the operating revenues and profits of the supplemental carriers for the first nine months of 1969 and 1970. The operating revenues for the first nine months of 1969 were \$7,111 million and for the first nine months of 1970 were \$6,111 million. The profits for the first nine months of 1969 were \$111 million and for the first nine months of 1970 were \$111 million.

Month	Operating Revenues (\$ millions)	Profits (\$ millions)
Jan 69	711	11
Feb 69	700	10
Mar 69	690	9
Apr 69	680	8
May 69	670	7
Jun 69	660	6
Jul 69	650	5
Aug 69	640	4
Sep 69	630	3
Oct 69	620	2
Nov 69	610	1
Dec 69	600	0
Jan 70	590	-1
Feb 70	580	-2
Mar 70	570	-3
Apr 70	560	-4
May 70	550	-5
Jun 70	540	-6
Jul 70	530	-7
Aug 70	520	-8
Sep 70	510	-9
Oct 70	500	-10
Nov 70	490	-11
Dec 70	480	-12

SCHEDULED AIRLINES REVENUES HAVE BEEN ON THE RISE, BUT PROFITS ARE DISAPPEARING



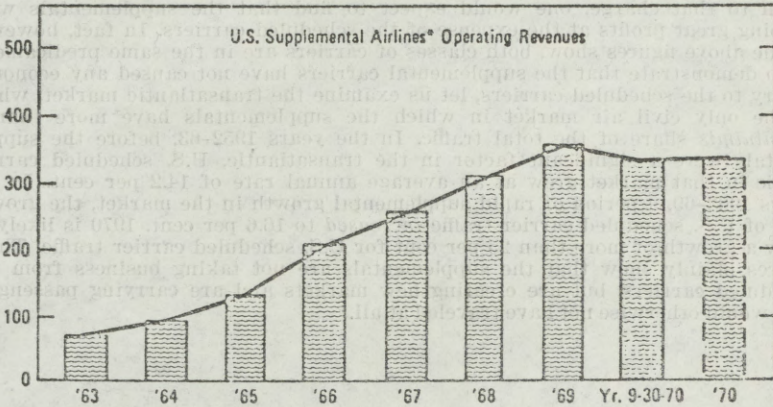
*Est. by ATA Dec. 1970

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	Profit (loss) before taxes
1967	\$252,268,000	\$32,817,000
1968	336,925,000	36,806,000
1969	368,510,000	(1,729,000)
1970 (estimate)	338,027,000	(7,112,000)

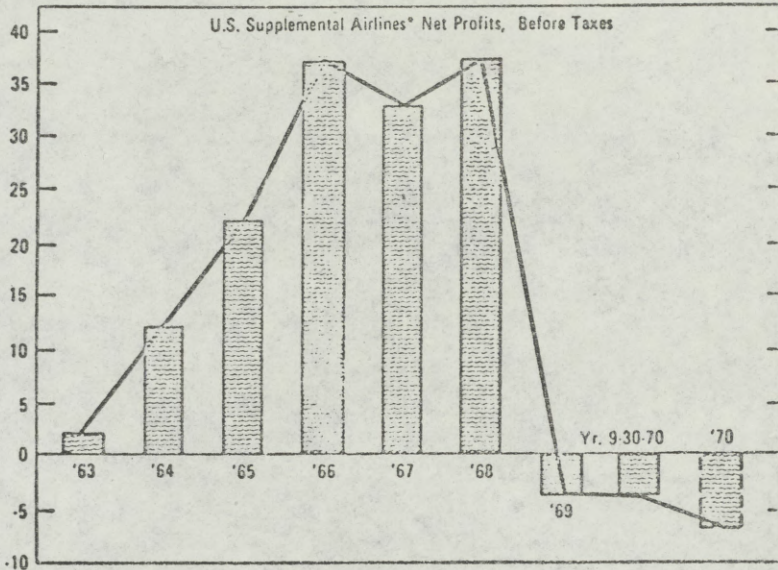
SUPPLEMENTAL AIRLINES' REVENUES HAVE BEGUN TO WANE AND THEIR LOSSES ARE MOUNTING

\$ Million



*Ten Supplemental Carriers (excludes Johnson & Vance)

\$ Million



*Ten Supplemental Carriers (excludes Johnson & Vance)

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

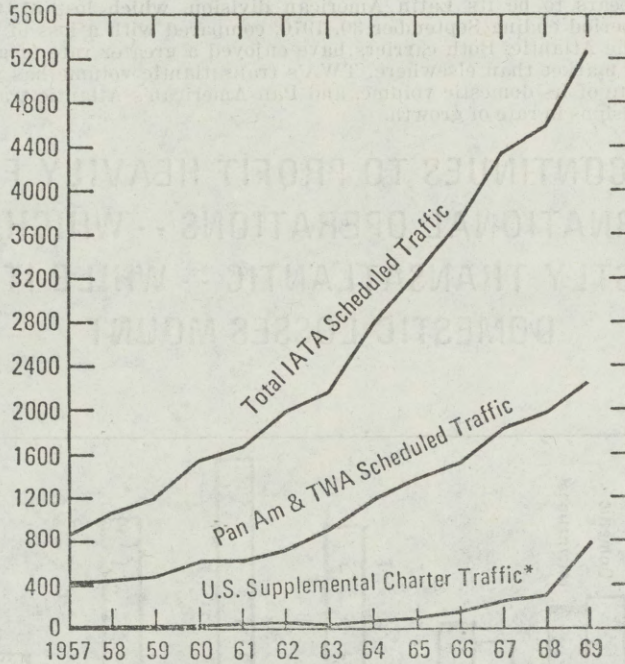
commercial business due to restrictive charter regulations, and the adverse impact of scheduled carrier loss-leader fares.

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

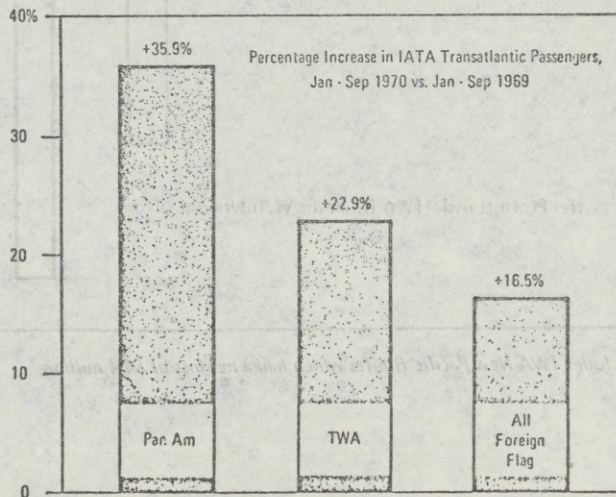
Thousands of passengers



Source: CAB Docket 20569 and IATA Reports

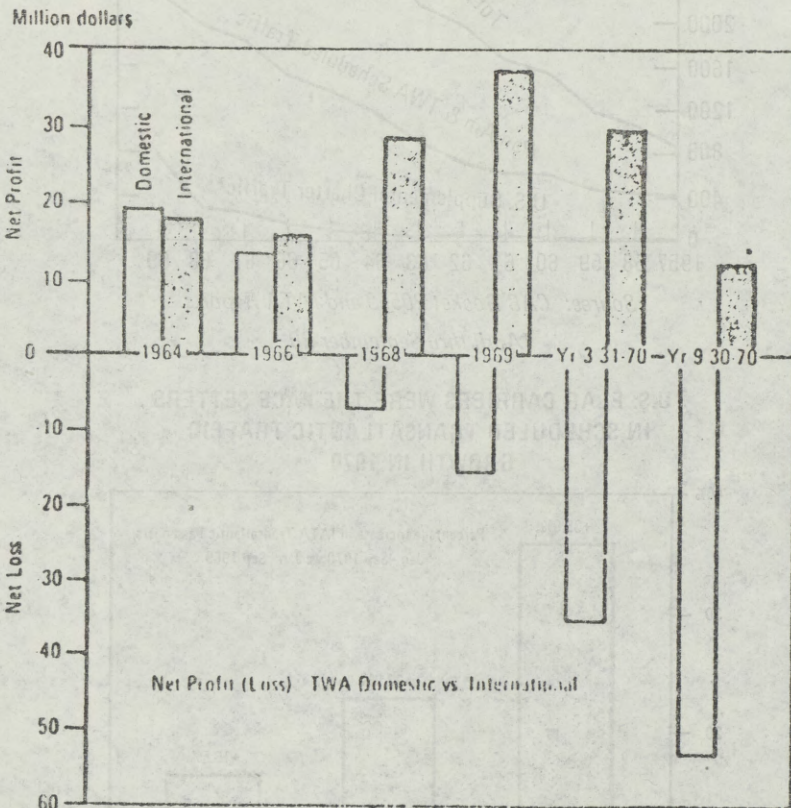
*April thru September 30

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.

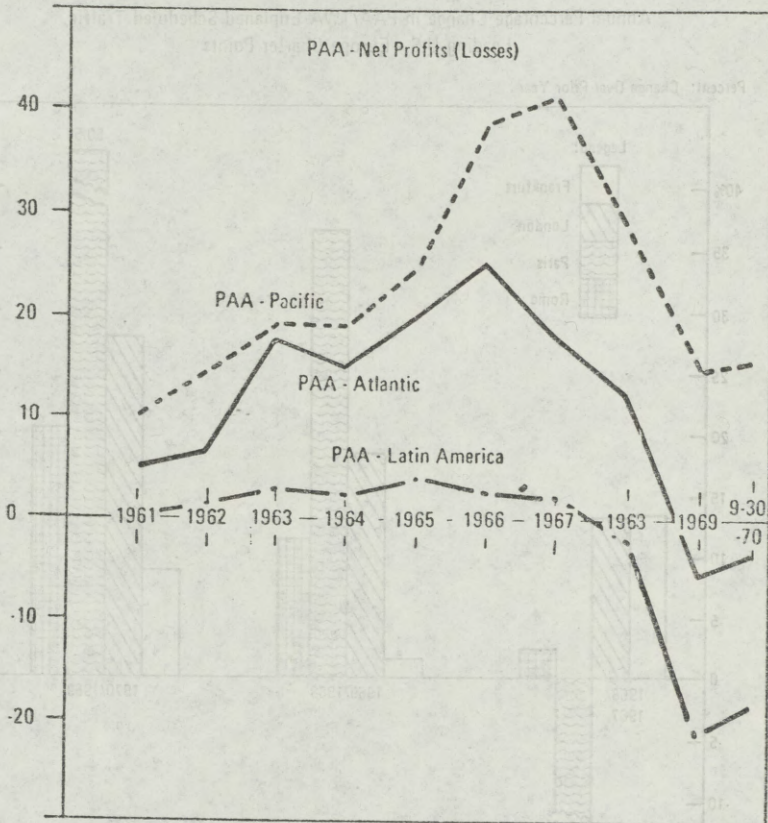
TWA CONTINUES TO PROFIT HEAVILY FROM INTERNATIONAL OPERATIONS -- WHICH ARE MOSTLY TRANSATLANTIC -- WHILE ITS DOMESTIC LOSSES MOUNT



* 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

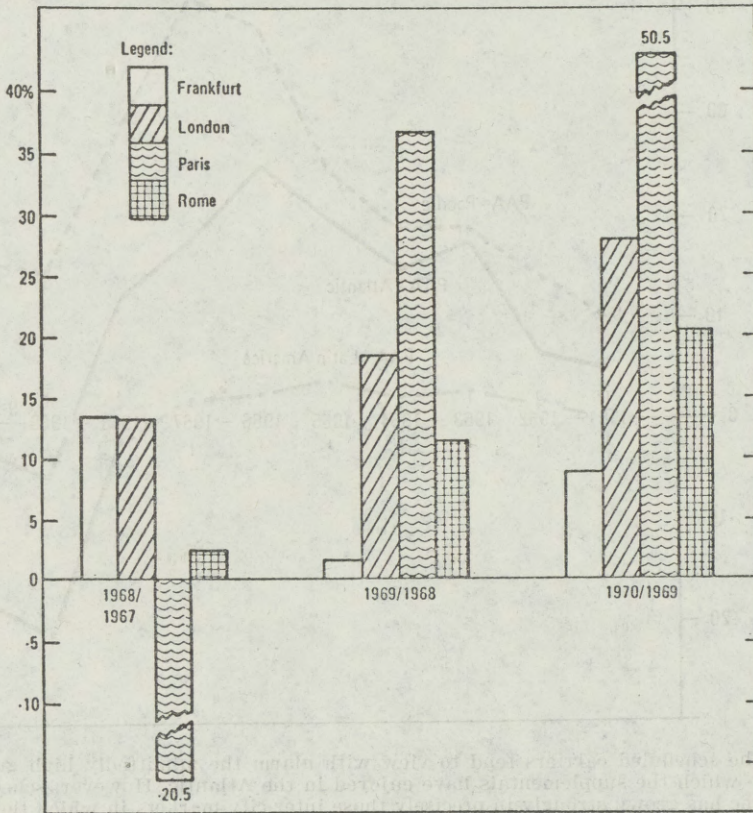


The scheduled carriers tend to view with alarm the admittedly high growth rate which the supplementals have enjoyed in the Atlantic. However, scheduled traffic has grown strongly in precisely those inter-city markets in which the supplementals have scored their greatest penetration.

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



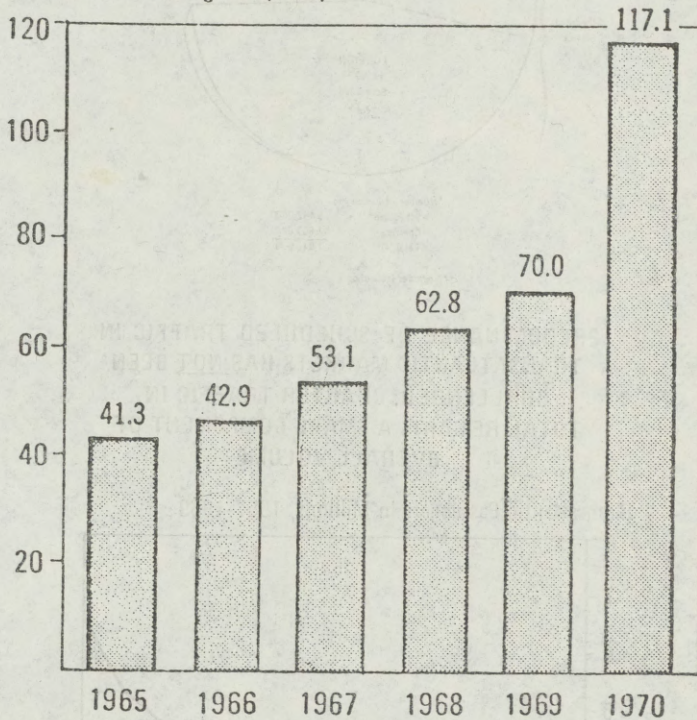
Note: Enplaned traffic in all periods covered above includes Intra-European traffic as well as trans-atlantic. Trans-atlantic boardings, although preponderant, cannot be isolated.

IN THE U.S. WEST COAST-EUROPE MARKET IN
WHICH CHARTER TRAFFIC IS HIGH, SCHEDULED
TRAFFIC SURGED IN 1970

JANUARY-MAY

1965-1970

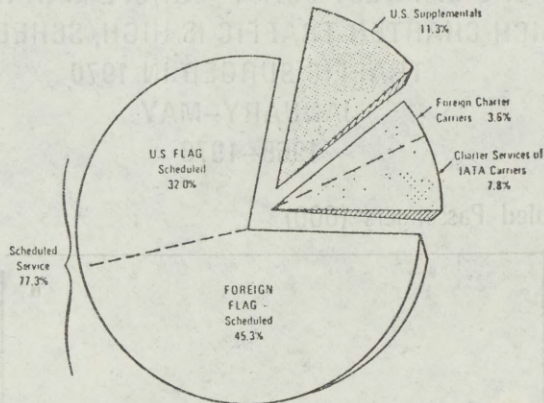
Scheduled Passengers (000)



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*

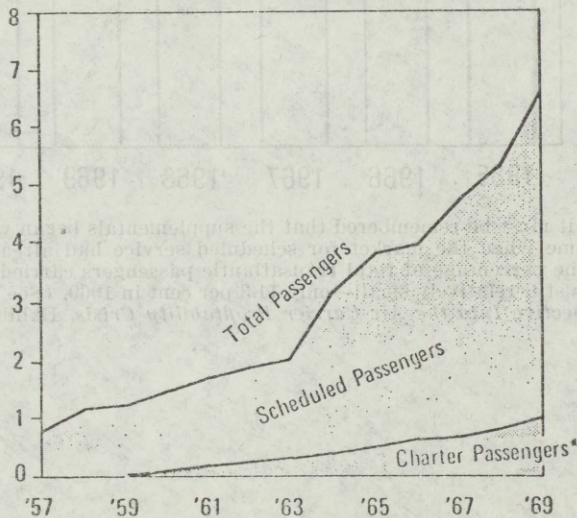


*Number of Passengers:
Scheduled** 5,442,000
Charter - 1,601,000
Total - 7,043,000

**includes Icelandic

PREDOMINANCE OF SCHEDULED TRAFFIC IN
TRANSATLANTIC MARKETS HAS NOT BEEN
CHALLENGED; CHARTER TRAFFIC IN
TOTAL REMAINS A SMALL COMPONENT OF
OVERALL VOLUME

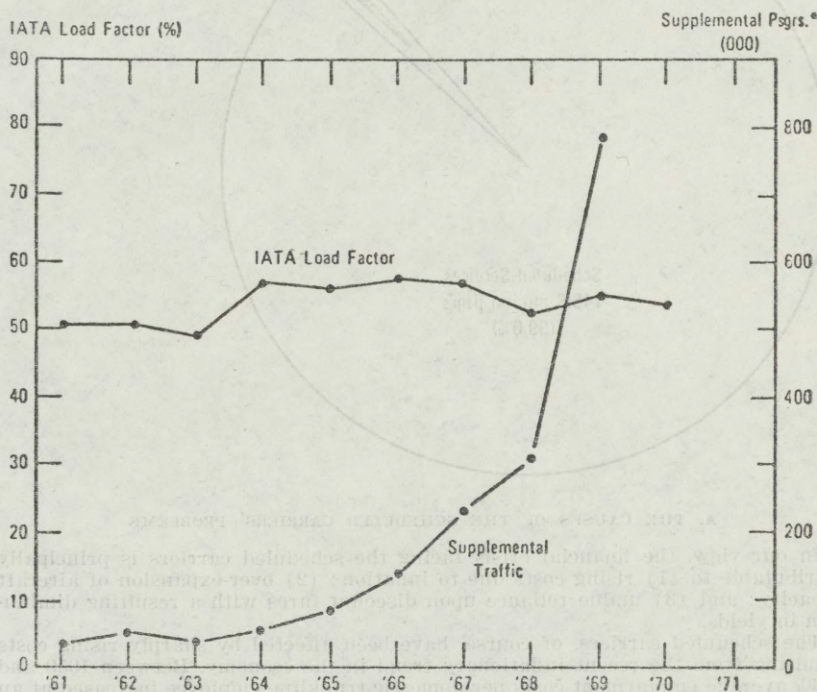
Transatlantic Passengers in Millions, 1957-1969



* 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

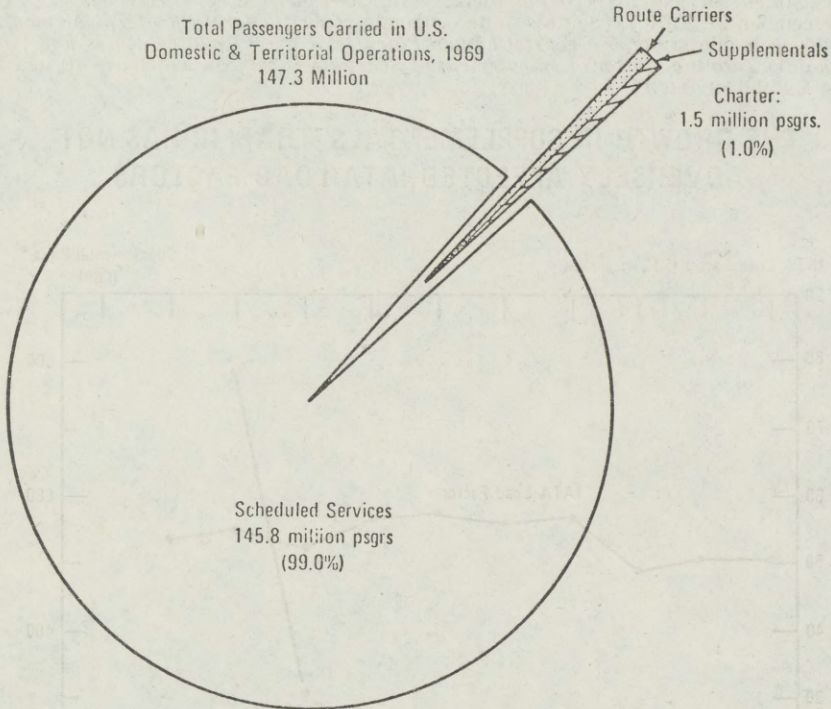
NOTE

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.

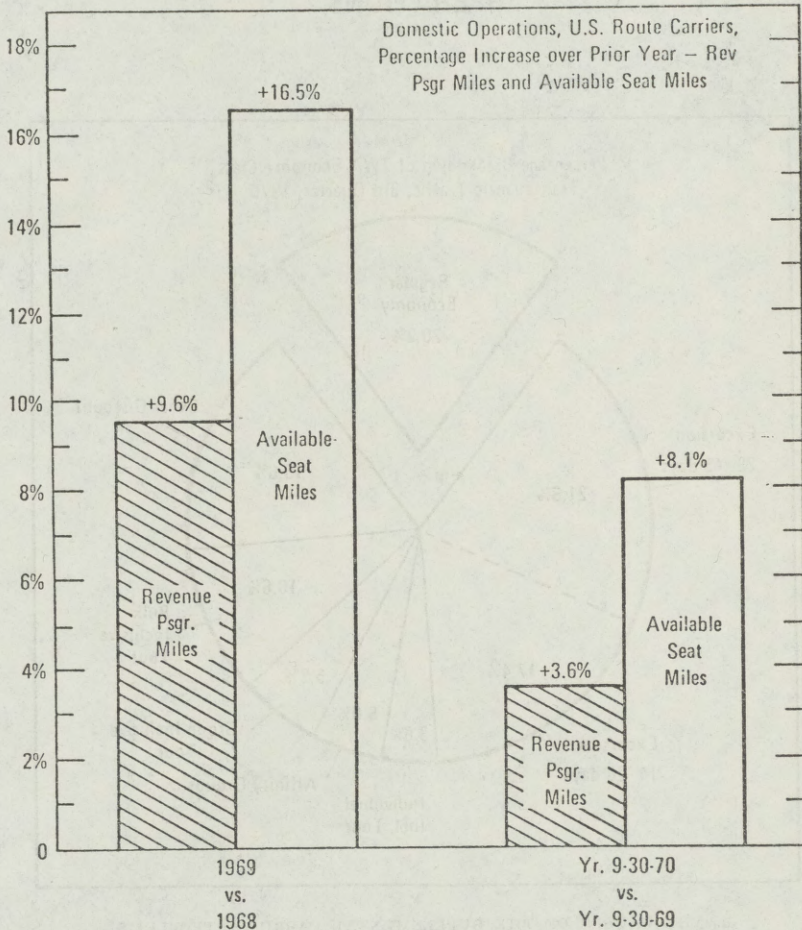
The scheduled carriers, of course, have been affected by sharply rising costs resulting from the recent inflationary trend in the economy. Between 1959 and 1966, average employment costs per domestic trunkline employee increased at an average annual rate of 5 per cent; in 1967, the rate increased to 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 2½ 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 results, of course, is declining load factors, rising costs per passenger mile, and therefore declining profits.

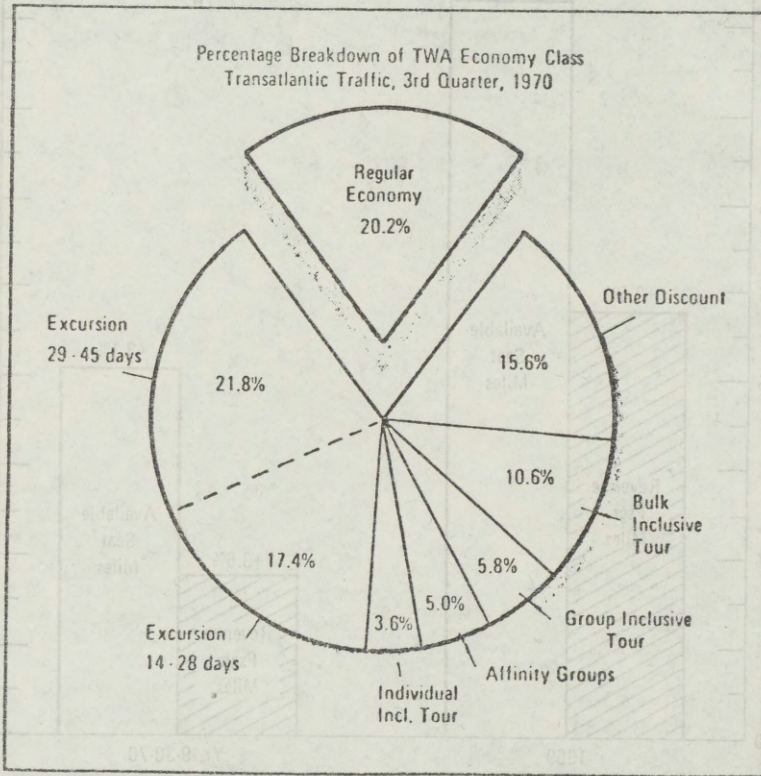
**CAPACITY ON DOMESTIC ROUTES HAS BEEN INCREASING
AT ABOUT DOUBLE THE RATE OF GROWTH
IN TRAFFIC VOLUME**



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 number 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 similar

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 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

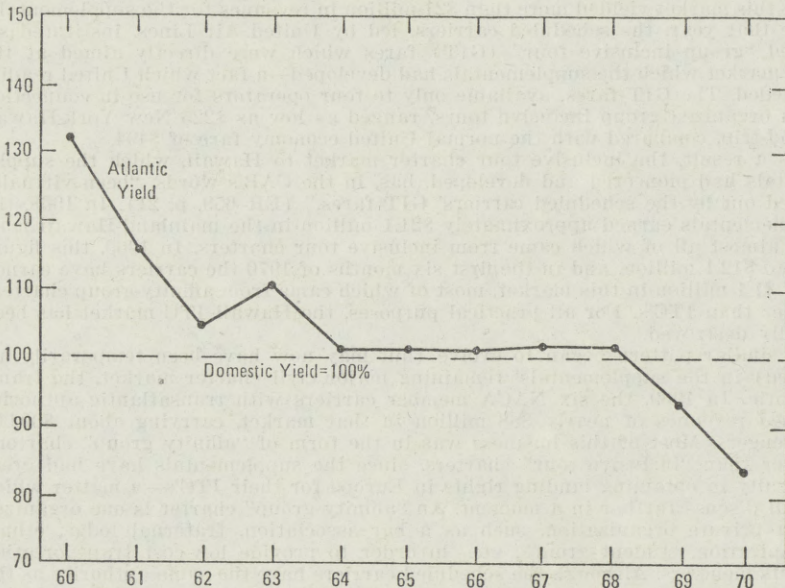
normally carried on the supplementals' inclusive tour charters, and (3) a so-called "incentive group" fare available solely to corporations or other entities purchasing transportation for a large group. Each of these group fares is aimed directly at a specific charter market of the supplementals and 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 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 char-

ters 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 plane-load 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 schedule 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. It 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-offs 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 up in the testimony of Mr. Smalley of Trans International Airlines (Exhibit 89 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. Chartworthy 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, ITCs 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 establish-

ing 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.

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 2½ 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

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.

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.

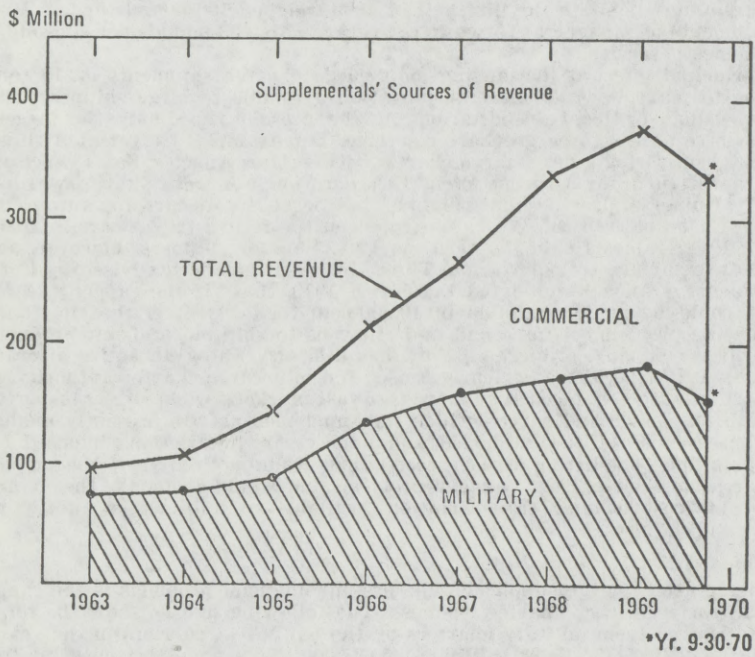
The principal effect of permitting split cargo charter shipments of 10 tons would be to make low-cost air transportation available to large shippers who are now using surface transportation. At the present time, only the largest shippers have access to cargo charter service. For example, Universal Airlines 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

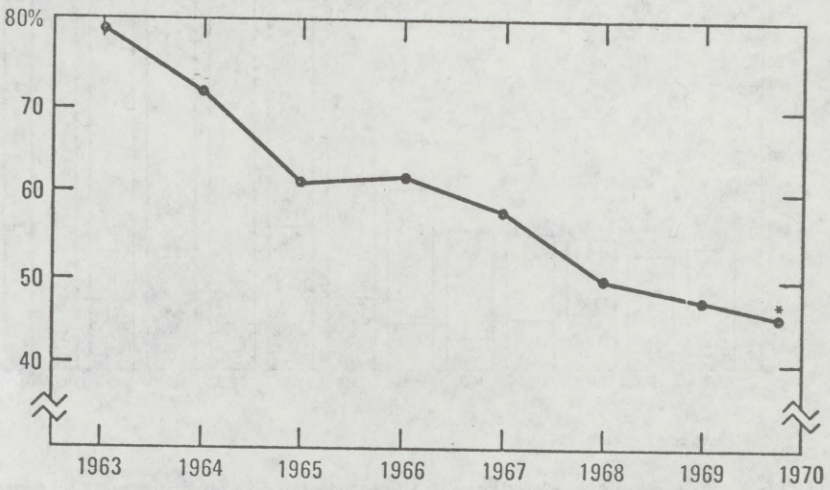
Another reason for the supplementals' present financial problems is the rapid decline in their military charter business. The following figures show the total revenues derived from military charters by the ten NACA carriers in the years 1969-1970: 1969, \$175,245,000; 1970, \$145,667,000. This trend 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



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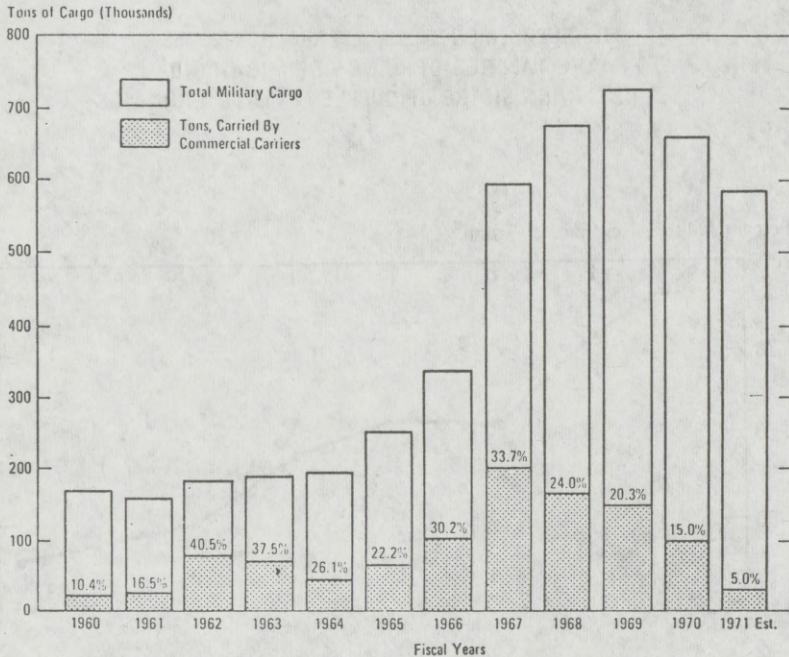
Percent Military Revenues of Total



*Yr. 9-30-70

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 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 II 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

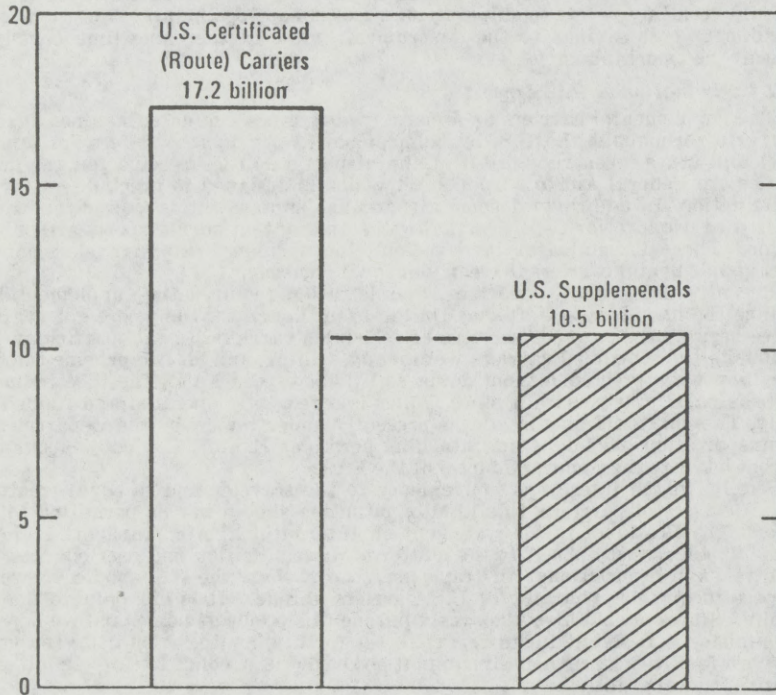
Now that I have reviewed the problems facing the air transport industry, let me turn to the question of solutions. In my view, what the industry needs—and here I refer to both the scheduled and the supplemental carriers—is a vast expansion of the market for air transportation. The scheduled carriers 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.

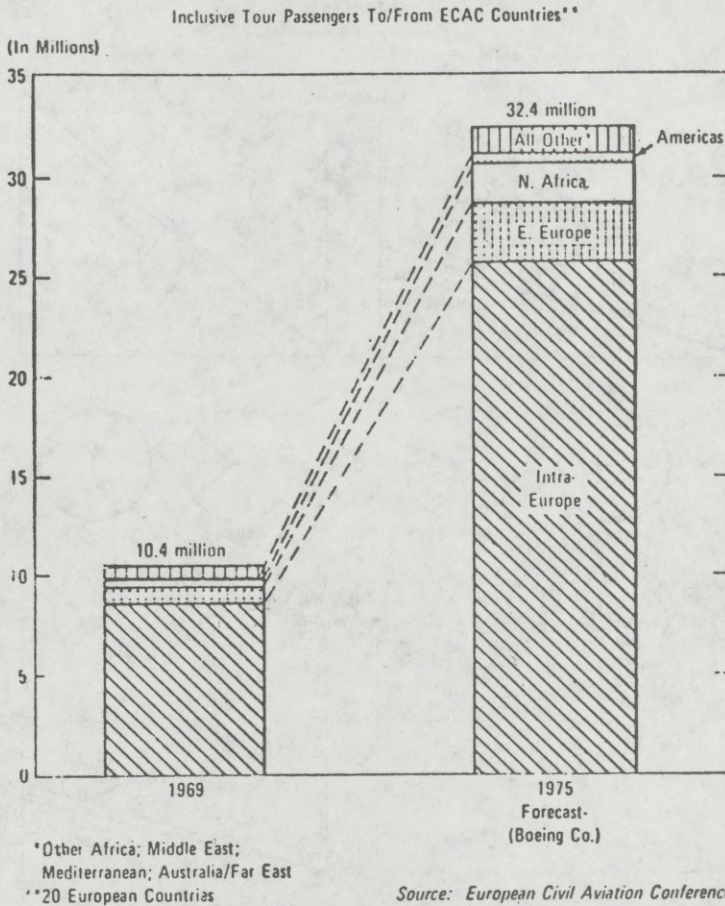
**THE U.S. ROUTE CARRIERS HAVE A GREATER VOLUME OF COMMERCIAL
AND MILITARY CHARTER TRAFFIC THAN THE SUPPLEMENTALS**

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.

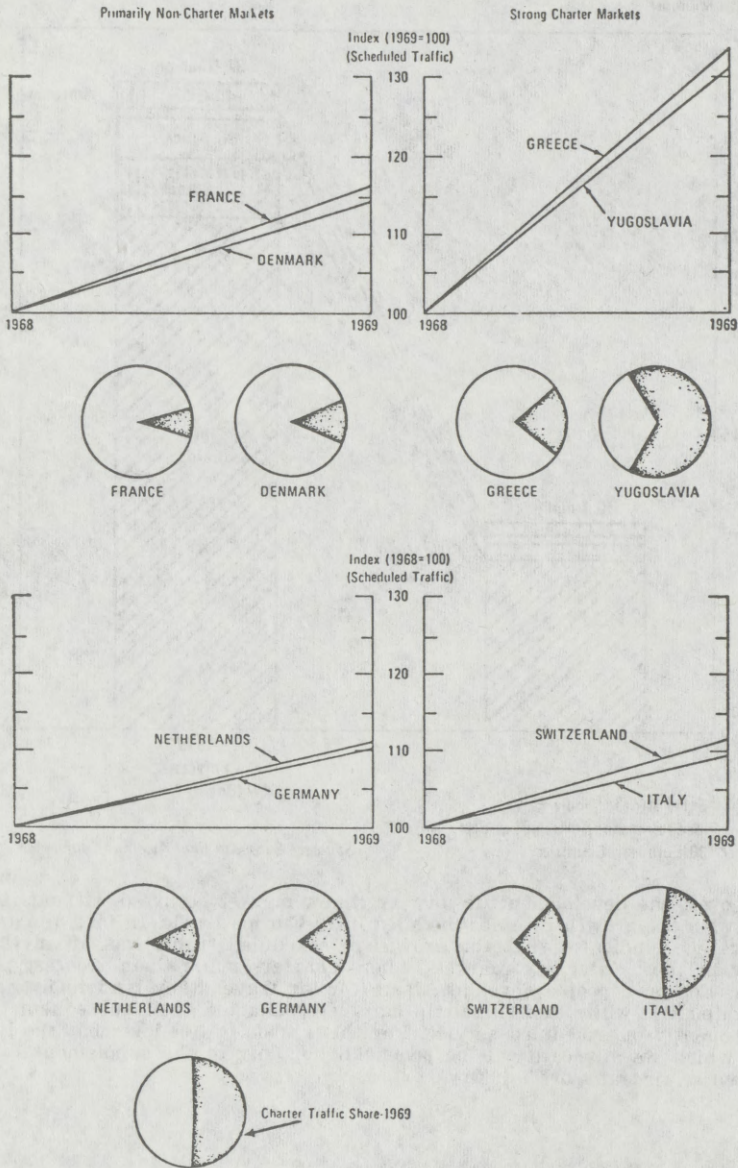
EUROPEAN INCLUSIVE TOUR TRAFFIC IS EXPECTED TO TRIPLE BY 1975



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-



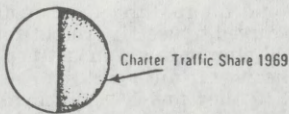
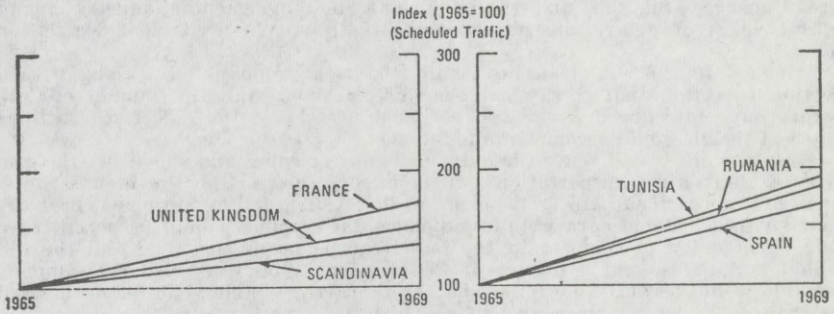
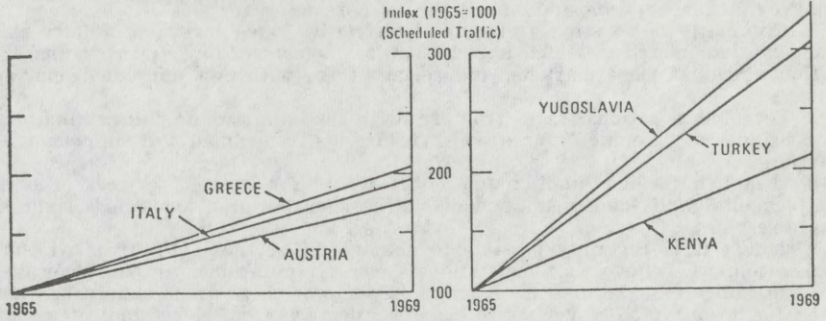
SCHEDULED TRAFFIC HAS GROWN AS MUCH IN STRONG
CHARTER MARKETS AS IN NON-CHARTER MARKETS

II. GERMAN EXPERIENCE

From Germany to-

Primary Non Charter Markets

Strong Charter Markets



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, 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-paneload shipment 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-paneload) 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.

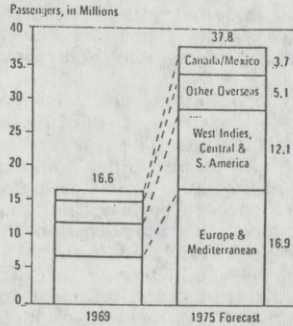
Third, the bill would make clear the intent of Congress that charter services of U.S. carriers (both supplemental and scheduled) receive assured landing and uplift rights in foreign countries under conditions of full reciprocity. It would declare as being in the public interest the "[c]onclusion of international 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.

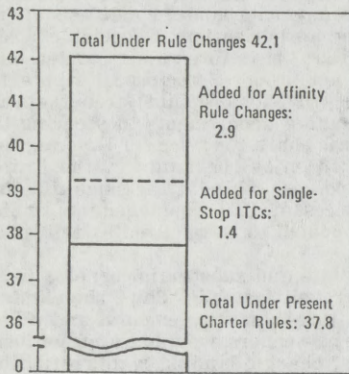
**U.S. INTERNATIONAL AIR TRAFFIC IS
EXPECTED TO MORE THAN DOUBLE BETWEEN
1969 AND 1975; TRANSATLANTIC TRAFFIC
IN 1975 WILL BE EQUAL TO TOTAL
INTERNATIONAL VOLUME IN 1969**

Forecast: U.S. International Air Traffic
(arrivals & departures at U.S. airports)



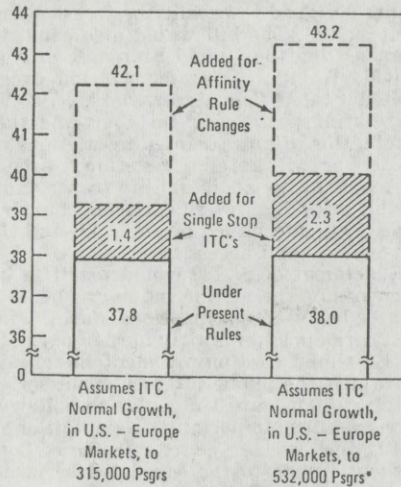
**CHANGES IN CHARTER RULES COULD
GENERATE AS MUCH AS 4.3 MILLION
NEW U.S. - INTERNATIONAL AIR
TRAVELERS IN 1975 -- AN 11% INCREASE
OVER "NORMAL" FORECAST**

(In Millions of Passengers)



**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**

(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 consumer's 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.

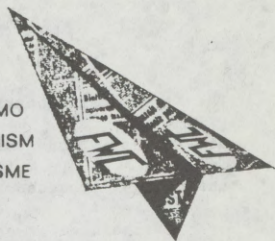
FIRST WORLD CONGRESS ON AIR TRANSPORTATION AND TOURISM

CONCLUSIONS AND RECOMMENDATIONS
OF THE CONGRESS

April 20, 1972

Madrid, Spain

PRIMER CONGRESO MUNDIAL DE TRANSPORTE AEREO Y TURISMO
FIRST WORLD CONGRESS ON AIR TRANSPORTATION AND TOURISM
PREMIER CONGRES MONDIAL DE TRANSPORT AERIEN ET TOURISME
ERSTER WELTKONGRESS FÜR LUFTVERKEHR UND TOURISTIK



April 20, 1972

D. Alfredo Sánchez-Bella
Ministro de Información y Turismo

My dear Mr. Minister:

I have the honour to transmit to you the recommendations of the First World Congress on Air Transportation and Tourism. Within a short time I will transmit to you an official report of the Congress.

Recognizing the rapid changes taking place in tourism and air transportation and the increasing complexity of decision-making in these years, I believe it essential that these recommendations be made public at the earliest possible date and not await the full report. I therefore respectfully suggest that these recommendations be transmitted forthwith to all Governments world-wide urging their most careful consideration of these in any present and future deliberations affecting air transportation and tourism.

Victor Tarruella

PREAMBLE

The First World Congress on Air Transportation and Tourism was convened in Madrid, Spain, on April 17, 1972. The purpose of the Congress was to assess the changes produced since the 1944 Chicago Convention, and to define the role of non-scheduled or charter air transportation in international travel and tourism. All elements of the air transport industry, the tourism infrastructure, and the consumer spectrum were invited to attend and to participate in the Congress.

Over 60 nations, 50 airlines, aircraft manufacturers and numerous consumers and tourism organizations attended. Dignitaries from countries throughout the world actively participated in the Congress and in the decision making process leading to the recommendations set forth herein. Regrettably, IATA refused to participate actively in the decision making process. However, the Director General set forth its views when he addressed the Congress. Many IATA carriers also attended. Because of the representation at the Congress, the results reflect the views of the users, developers and operators of air transportation, and the tourism infrastructure, as well as those of government. These recommendations, in our view, reflect a balanced judgment.

Because of the great amount of written materials presented at the Congress and because of the long hours of debate and discussion, a complete report of the proceedings of the Congress will not be available immediately. The history making nature of the conclusions and recommendations unanimously adopted by the Congress requires the immediate dissemination of this report. It is hoped the national governments will consider these recommendations on an expedited basis in an effort to produce, at the earliest possible date, policies designed to meet the needs of consumers, to produce balance in world-wide air transportation systems and to provide a framework for expanding and effectively developing tourism facilities throughout the world.

PANEL I

LEGAL AND REGULATORY ASPECTS OF AIR TRANSPORTATION

W H E R E A S the Convention on International Civil Aviation has provided a framework for the development of a system of intergovernmental agreements governing scheduled air services but has proved to be inadequate in providing for the assured legal status necessary for the continued growth and development of international charter air services, and

W H E R E A S the uncertainty and lack of consistency regarding the legal status and regulation of international charter services is adversely affecting the growth of these services and of international tourism, as well as the interests of the travelling public, and

W H E R E A S regularization of the legal status of international air charter services via intergovernmental agreements is to be desired, recognizing at the same time that essential scheduled air services must be maintained.

T H E C O N G R E S S T H E R E F O R E R E C O M M E N D S :

- 1) that the nations should immediately commence negotiations towards the adoption of bilateral agreements which would provide an assured legal status for international charter air services,
- 2) that such bilateral agreements should be designed to maximize development of charter air services without restrictions hampering the availability of those services to the world travelling public, such as restrictions requiring prior approval of individual charter flights, limiting capacity, controlling rates, or discriminating between geographical areas, and
- 3) that once experience has been gained under such charter bilateral agreements, the nations should meet in an International Conference for the purpose of entering into a multilateral agreement guaranteeing "freedom of the skies" for international charter services.

PANEL II

CREATION OF A BALANCED AIR TRANSPORTATION SYSTEM:

ROLE OF SCHEDULED AND CHARTER SERVICES

W H E R E A S the aspirations of ordinary citizens to travel at the low prices offered by charter services should not in any way be hindered or made impossible, and

W H E R E A S there is offered on many routes scheduled capacity substantially in excess of that required to maintain essential levels of service, and scheduled fares in many cases are not fully cost-oriented, and

W H E R E A S a balanced air transportation system meeting all aspects of consumer demand is necessary not only for the consumer but also for the best interests of the air transport companies and international tourism, and

W H E R E A S within Europe the development of extensive inclusive tour charter air transport services under responsible regulations has resulted in a tremendous increase in potential tourism without causing injury to scheduled air transport services, and

W H E R E A S there is an imbalance in international air transportation in many other parts of the world, including air transportation into and out of Europe, and

W H E R E A S there does not now exist a world-wide organization concerned with international aviation policy in which tourism and consumer interests are represented,

T H E C O N G R E S S T H E R E F O R E R E C O M M E N D S:

- 1) that each nation establish the essential level of scheduled air transport services, over particular routes, to meet the demand for necessary individually ticketed travel and take necessary steps to preserve that level; these essential levels should not be interpreted as the maximum permitted under bilateral agreements,

- 2) that charter air transport services as a general rule be permitted to operate freely in response to market demand without undue restraint,
- 3) that restrictions be imposed on charter air transport services when, and only when, it is clearly demonstrated that those services are impairing the maintenance of the level of essential scheduled air transport services,
- 4) that essential scheduled services not be impaired by the operation of unnecessary scheduled service capacity in excess of the essential level,
- 5) that the rates for scheduled services be related to the full economic costs of performing those services,
- 6) that the operators of charter services should establish fares related to the full economic costs of providing the services,
- 7) that, consistent with the foregoing, the development of charter air transport be promoted and encouraged by the nations of the world, in the following manner:
 - a. by adopting single center (one-stop) inclusive tour charters on a world-wide basis.
 - b. by developing regulatory policies which permit non-affinity or travel group charters with minimum advance booking requirements.
 - c. by continuing to permit the development of all other types of charter traffic, particularly valid pro rata charters.
- 8) that nations should agree to permit entry into the airline business by only those private companies which can clearly demonstrate their financial and technical fitness to provide safe and dependable air transportation, according to the standards of the International Civil Aviation Organization when applicable, and monitor the continued adherence of these companies to those standards.

- 9) that a permanent World-Wide Conference on Civil Aviation and Tourism be established through national initiatives for the purpose of co-ordinating and implementing the resolutions set forth above and such additional resolutions as may be agreed upon among such nations in furtherance of a balanced air transportation system and the fullest possible development of tourism.
- a. that each nation participating in the World Conference shall be represented by two individuals, one each from the aviation and tourism departments at the highest possible level, and
- b. that there shall also be an Advisory Committee composed of consumer representatives, airline industry representatives (scheduled and charter) and representatives of other segments of the tourism infrastructure.

PANEL III

PRESENT DEVELOPMENT AND FUTURE PROSPECTS FOR TOURISM

W H E R E A S international tourism is now a significant industry, and

W H E R E A S the greatest growth of international tourism is yet to come,

T H E C O N G R E S S T H E R E F O R E R E C O M M E N D S :

- 1) that Governments interested in developing tourism as major economic enterprises adopt policies which encourage and promote all aspects of the tourism infrastructure, including air transport,
- 2) that the benefits to be derived from tourism both financially and socially be given the highest priority in the application of these policies to decision-making at all levels.
- 3) that the various elements of this infrastructure, including air transport, be given a voice in the formulation of tourism policy.

PANEL IV

CONSUMER REQUIREMENTS FOR AIR TRANSPORTATION

W H E R E A S the interests of the consumer are an extremely important, but but so often overlooked, element in the foundation of air transportation policy,

THE CONGRESS THEREFORE RECOMMENDS:

- 1) that international organizations, national governments and the air transportation and tourism interests of the world guarantee the following rights to all people who wish to travel by air across national frontiers and within the boundaries of any country, as set forth in the "Bill of Rights for Air Passengers."

BILL OF RIGHTS FOR AIR PASSENGERS

- I Freedom to travel without arbitrary and discriminatory barriers.
- II Continuation of high standards of air safety by all air carriers which carry passengers.
- III Availability for all people of charter and other low-cost air services which will attract a mass consumer demand and ensure economic operation of airlines whether scheduled or charter.
- IV Equal treatment in landing and uplift facilities at airports regardless of the type of air transport.
- V Truth in advertising by airlines and travel companies and the full utilization of the mass media about every type of air travel.
- VI Proper medical facilities in international airports throughout the world.
- VII Proper information services at airports by national and regional tourist offices.
- VIII Representation of consumer interests in all national aviation and tourism organizations, in intergovernmental bodies such as ICAC and IUOTO, and in such industry groups as IATA and IACA.

PANEL V

THE INFRASTRUCTURE OF TOURISM - PRESENT AND FUTURE

W H E R E A S the spectacular growth of world tourism implies the absolute necessity of a harmonious and orderly infrastructure, and

W H E R E A S the transport industry is one of the most basic elements of any touristic infrastructure, and

W H E R E A S restrictions operating in certain sectors of the field of transport hinder and disturb the progressive and harmonious development that will benefit the citizens of both those nations who send and those which receive tourists.

This Panel after due deliberation and open and democratic discussion unanimously resolved upon the following conclusions and recommendations:

- 1) The necessity for equality of conditions for all sectors operating within the framework of tourism,
- 2) The planned use of tourism as a means of aiding undeveloped countries to finance their infrastructure on a long-term and secure basis,
- 3) The provision of transport services at economic tariffs determined by the interplay of supply and demand on a free market economy,
- 4) The need for Governments to introduce and sponsor legislation leading to freedom to travel, which implies the freedom to select the means of transport best suited to the needs of their citizens, and,
- 5) The removal of irksome restrictions that are an outworn heritage of monopolies that have ceased to have any meaning in the world of today other than that of hindering the choice of the many, in favour of benefits for the few.

PANEL VI

TOURISM AND ITS EFFECT ON THE NATIONAL ECONOMY

W H E R E A S world-wide tourism has excellent growth prospects and may significantly contribute to national economies, and

W H E R E A S air transportation availability and pricing are major factors in the realization of the potential offered by international tourism,

T H E C O N G R E S S T H E R E F O R E R E C O M M E N D S :

- 1) that all nations recognize and encourage the tremendous potential of international tourism for social and economic improvements,
- 2) that priorities be established in individual economies based on cost/benefit analyses of alternative use of resources to evaluate relative expectations from tourism and that development of tourism in a given country or region be proceeded by adequate planning,
- 3) that there be greater international co-operation in research into the economic, social and cultural ramifications of tourism, and
- 4) that unwarranted restrictions to air transportation - as well as other artificial barriers which now exist - should be removed or modified.

PANEL VII

TOURISM AND THE AIR TRANSPORT SYSTEMS OF THE FUTURE

W H E R E A S advances in aviation technology have made possible the growth of international air transportation and international tourism, and

W H E R E A S the future generations of air transport vehicles will primarily serve international tourism by air, and

W H E R E A S the comfort and convenience of the air traveler must remain the primary consideration of the aircraft manufacturer,

T H E C O N G R E S S T H E R E F O R E R E C O M M E N D S :

- 1) that future generations of air transport vehicles take account of the special needs of bulk markets as well as traditional scheduled markets,
- 2) that regulatory authorities remove unnecessary restrictions on bulk transportation which impede and discourage the development of more economic air transport vehicles,
- 3) that future aircraft types be developed not in isolation but as components of an intricate tourism system, particularly in developing countries,
- 4) that future air transport systems recognize the essential individuality of the air traveller and pay more attention to his needs as a human being,
- 5) that there should be closer consultation in the future between aircraft manufacturers on the one hand and on the other hand, tourism authorities, the travel trade, and the consumer,
- 6) that aircraft manufacturers and airlines pay more heed to the disruptive effect on tourism of the erratic cycle of airliner procurement,
- 7) that more encouragement be given to action aimed at reducing the extreme seasonal variations which are typical of air travel, particularly in the bulk market, and
- 8) that more attention generally be given to the improvement of passenger handling and processing at airports (including officila formalities) and in particular to the special needs of elderly, infirm and inexperienced passengers for help and information.

FIRST WORLD CONGRESS ON AIR TRANSPORTATION AND TOURISM

CONCLUSIONS AND SUGGESTIONS

Considering the present and future needs of tourist development throughout the world,

Conscious of the basic role which Air Transportation is playing and is destined to play in the future as a result of this development,

Noting that in no case is charter air transportation contrary to the interests of tourism, either in relation to the economy of the State or in relation to the interests of the public in general,

Considering it essential that basic harmony be established between all carriers by air, whether scheduled or charter, through a fundamental revision of the Chicago Conference, the Congress

Calls the attention of the Government of all the countries concerned to the need to undertake such a revision as soon as possible. The Congress also notes that the harmonious development of tourism and of the industries which constitute its infrastructure will not be achieved unless the various relevant factors are taken into account and unless the greatest possible harmony is established between all these sectors, and

Invites governments and organizations representing the various sectors of which tourism is composed, and in particular the users, to design and carry into effect an overall tourist policy, by appropriate means, and bearing in mind the specific spheres of competence of the existing international mechanisms, in the service of the economic, social, cultural and spiritual interests of the human community.

Considering that the First World Congress on Air Transportation and Tourism has likewise provided the first opportunity in 28 years to revise the structure of international air transportation, and also that the agreements reached at this First Congress demand action in the future, the Congress therefore recommends:

- 1) That successive World Congresses on Air Transportation and Tourism be held in the future at intervals of not more than two years.
- 2) That the organizers and Directors of this First World Congress continue their work as a permanent Secretariat.
 - a) by preparing and distributing the final documents of the Congress
 - b) by encouraging the fulfillment of the Conclusions and Recommendations of the Congress, and
 - c) by co-ordinating the work of preparing the Second World Congress on Air Transportation and Tourism.

STATEMENT OF JERROLD SCOUTT, JR., COUNSEL FOR, AND DIRECTOR OF, WORLD AIRWAYS, INC.

Mr. Chairman, members of the committee, I have prepared written statements going into some detail on the history behind, and the justifications for, the proposed amendments to section 401(d)(3) and 408(b), and I would like to submit those statements for the record. In the few minutes that I have before you, I will attempt to flesh in some of the details of the general picture that Ed Daly has outlined for you.

Our basic concern, and the concern of these bills, is the relationship between: first, classes of air carriers; and secondly, between air carriers and other transportation industries. Congress has, of course, given jurisdiction in this area to the civil aeronautics board and the overriding policy is one of controlled entry. Controlled in the sense of the public convenience and necessity and public interest standards of section 401; and controlled in the sense of the public interest and anti-monopoly standards of section 408. One look at any certification or merger case before the civil aeronautics board will give you an idea of the extreme vigor with which it applies these standards and honors its congressional mandate.

SECTION 401 (D) (3)

But there are two exceptions to this policy, exceptions which effectively serve as a flat prohibition to entry. The first such exception is the language in section 401(d)(3) which succinctly states that a certificate for supplemental air transportation cannot be awarded to a scheduled carrier. It is hardly a secret that you put this provision in ten years ago to assure that a unique place would be carved out for the supplementals, and to that extent the provision has been an unqualified success. The supplementals have vigorously prosecuted their mission and have developed charters, and bulk transportation in general, to the point where they may well hold the key to the future development of air transportation; and as Ed pointed out, the scheduled carriers have also managed to get into the charter business on the basis of their existing authority. This, of itself, would justify the termination of this protection, but unfortunately the civil aeronautics board has apparently interpreted section 401(d)(3) as also prohibiting: first, a supplemental carrier from acquiring scheduled authority; and secondly, any common control relationship between a scheduled and supplemental carrier. Thus, cooperation or coordination between scheduled and supplemental carriers is automatically ruled out regardless of whether it might meet the other standards of the act.

The problem is far from academic. While the U.S. supplemental carriers are now restricted by the very provision intended to protect them, scheduled and foreign charter airlines have found convenient loopholes in the act which free them from similar restrictions. The scheduled airlines, both U.S. and foreign, have become massive charter operators and last year they carried approximately one out of every three transatlantic charter passengers. Moreover, in at least seventeen instances, scheduled and charter services are performed by foreign companies that are theoretically separate but that are actually under common control.

The only way to correct this inequity is to eliminate the offending language in section 401(d)(3). This would not result in congressional approval of relationships between scheduled and supplemental air carriers, and I must emphasize that point. All it would do is permit the possibility of such relationships and leave the rest up to the civil aeronautics board and the other standards you have set down. I would also agree with Ed that the impact would probably be more long-range than immediate since it would permit these possibilities to be considered in the future planning of the carriers.

SECTION 408 (B)

The other exception to the general policy is the second proviso of section 408(b) which prohibits the board from approving the acquisition of an air carrier by a surface carrier unless it can find that the merger will enable the surface carrier "to use aircraft to public advantage in its operation and will not restrain competition." Although at first blush this embellishment on the public interest and anti-monopoly standards might not appear significant, the Civil Aeronautics Board has again interpreted this provision in such a way that, with one limited exception, it effectively bars surface carrier and air carrier relationships.

At this stage in the development of transportation, it seems rather obvious that the days of separate but equal treatment are over and that intermodal cooperation has become a necessity. One of the strongest statements that I have seen in this regard was in the joint DOT/NASA civil aviation research and policy development study prepared last year, and I quote:

"The Government should examine carefully its regulatory role in several areas to be certain that regulatory policies are not inhibiting innovation by industry. One example of such a problem is the current policy opposing multi-modal mergers including air carriers. This policy was originally established to protect civil aviation from the then financially stronger ground modes, but today it represents a barrier to realizing the full potential of air cargo and impedes the incentive that R & D needed to improve intermodal cargo shipment."

While this is true of cargo, it is equally true of passengers, particularly in the bulk transportation era that has now begun. Again, no one is asking that Congress approve, or even favor, any form of intermodal cooperation. The elimination of the second proviso of section 408(b) would simply make such cooperation a possibility subject to the other standards of the act being met.

CONCLUSION

In conclusion, if we have devoted a great deal of our attention to what would seem to be two rather minor amendments to the act, it is because we believe that these amendments are absolutely essential to the proper development of this country's transportation system. It might be appropriate at this point to compare these amendments to those amendments contemplated by the proposed surface transportation act. Those amendments do appear to be necessary if railroad transportation is to survive and prosper, but they would also require major policy and substantive changes. That results of the same magnitude can be achieved for aviation with only a few technical adjustments to an otherwise smoothly functioning regulatory machine is a tribute both to this committee as well as to the entire Congress.

Thank you for your consideration, and I would be delighted to answer any questions you might have.

STATEMENT OF WORLD AIRWAYS, INC., IN SUPPORT OF S. 2549

HISTORY BEHIND THE SECOND PROVISO TO SECTION 408(b)

For many years federal legislation has effectively precluded the common ownership of air carriers and other modes of transportation. The restrictive policy towards the control of one form of transportation by another originated in 1912 with the enactment of the Panama Canal Act. Fearing that railroads would acquire control of water carriers and operate them in "mock competition" with rail carriers,¹ Congress generally prohibited the railroads from acquiring any interest in water carriers unless the ICC found, among other things, that competition would not be diminished on the route under consideration.²

Later, when it was feared that the railroads would gain control of the fledgling motor carriers, Congress precluded rail carriers from acquiring control of motor carriers except in very limited circumstances.³ The legislative history illuminates the Congressional intent behind this prohibitive:

"... it is important ... that the acquisition of control of the carriers be regulated by the Commission so that the control does not get into the hands of other competing forms of transportation, who might use the control ... to strangle ... progress in highway transportation. ..."⁴

So too, when the airline industry was in its infancy, Congress wanted to permit the full development of air transportation by protecting air carriers from the risk of economic domination and unfair competition by the established, financially stronger modes of transportation. Consequently, in the Civil Aeronautics Act of 1938, Congress substantially prohibited the control of air carriers by any carrier which was not itself an air carrier. The second proviso of Section 408(b), patterned after Section 213(a) (1) of the Motor Carrier Act, provides that the Board shall not approve the control of an air carrier by a surface carrier

¹ H.R. Rep. No. 423, 62d Cong., 2d sess. (1912), 12; *American Export Lines, Inc.*, 3 C.A.B. 619, 627 (1942).

² 49 U.S.C. sec. 5(14), 5(16).

³ Sec. 213(a) (1) of the Motor Carrier Act (49 U.S.C. § 5(2) (b)).

⁴ Congressman Sadowski, 79 Cong. Record 12206 (1935).

unless "... the transaction proposed will promote the public interest by enabling such carrier other than an air carrier to use aircraft to public advantage in its operation and will not restrain competition."⁵

CAB INTERPRETATION OF THE SECOND PROVISO TO SECTION 408(b)

In applying the proviso, the Civil Aeronautics Board has read in Section 408(b) and its background a strong federal policy against the common control of the different modes of transportation. As a result, early in the implementation of the second proviso, the Board prescribed a very restrictive standard under which a surface carrier could satisfy the second proviso and acquire control of an existing air carrier. In the *American Export Lines*⁶ decision, the Board, following ICC precedent, held that it would not approve the acquisition of an air carrier by a surface carrier unless the surface carrier's air transport services would be merely "auxiliary and supplementary to other transport operations, and . . . therefore incidental thereto. . . ."⁷ Further, the Board extended the restrictive policy of the second proviso to instances not involving the acquisition of an existing air carrier by a surface carrier. In *American President Lines, Ltd.*,⁸ the Board held that the federal policy favoring the independence of the different modes of transportation, as expressed in the second proviso, constituted a factor which the Board must consider in passing on surface carrier applications for authority to initiate new air transportation. The combined effect of the Board's extension of the second proviso criteria to applications for certificates under § 401 was to prohibit substantially the common ownership of surface and air carriers, no matter how that ownership came into being.

Recently, the Board modified, to a limited extent, its reading of the second proviso. In the *Transamerica-Lyon Van*⁹ and the *TWA-Sun Line*¹⁰ cases, the Board held that the precise terms of the proviso merely restrict the acquisition of control of an air carrier by a surface carrier, not the acquisition of control of a surface carrier by an air carrier. Accordingly, the Board approved Transamerica's¹¹ proposed control of Lyon Van, a motor carrier, and TWA's acquisition of control in Sun Line, a sea cruise line. However, the Board made its approval of the control relationships subject to severe restrictions on the operations of the different modes.¹² Consequently, the operations of the air and surface carriers still cannot be integrated sufficiently to realize the benefits of common ownership. And there are no prospects for relaxation of this strict view.¹³

THE NEED TO RELAX THE RIGID POLICY OF SECTION 408

In contrast to 60 years of a rigid policy against the common ownership of air and surface transportation, the nature and technology of our transportation system has changed drastically. In 1940, when the Transportation Act reaffirmed the policy of the Panama Canal Act, the Motor Carrier Act, and the Civil Aeronautics

⁵ 49 U.S.C. 3178(b).

⁶ N. 1 *supra*.

⁷ *Ibid.* at p. 624; the I.C.C. has applied an almost identical test of when a railroad may acquire control of a motor carrier. See *Pennsylvania Truck Lines, Inc.*, 1 M.C.C. 101, 113 (1936), 5 M.C.C. 9, 11-12 (1937).

⁸ 7 C.A.B. 799 (1947).

⁹ Order No. 70-9-54 (1970).

¹⁰ Order No. 71-1-4 (1971).

¹¹ The Board treated Transamerica's application as though it were prosecuted by Trans International Airlines, its air carrier subsidiary.

¹² In the *Transamerica-Lyon Van* case, these conditions included, among others: (1) that Trans International Airlines and Lyon Van would not provide connecting or joint service, nor hold out to the public that they would do so nor in any way solicit business for each other; and (2) that the Board's approval of the acquisition would be effective only so long as Lyon Van and its wholly-owned subsidiaries do not engage in or act as agents for any freight forwarding business. At p. 11. In the *TWA-Sun Line* case, the Board prohibited Sun Line from: (1) giving preferences in price or availability of passage to Sun Line passengers who had been or would be TWA passengers or Hilton Hotel guests (Hilton Hotel is a TWA subsidiary); and (2) providing regular scheduled cruise service between any two points on TWA's authorized scheduled passenger route, even though TWA argued that that restriction would interfere with Sun Line's ability to tailor its cruise operations to changes in consumer demand. At p. 10. In both cases, the Board also retained jurisdiction over the proceeding to impose additional conditions that it deems in the public interest. Order No. 70-9-54 at p. 12 (1970); order No. 71-1-4 at p. 10 (1971).

¹³ The Board's policies towards indirect air carriers have always been different so that the slightly relaxed policy with respect to the second proviso (in the *Motor Carrier-Air Freight Forwarder Investigation*, order No. 69-4-100 (1969) and the *Southern Pacific-Santa Fe Air Freight Forwarder Case*, order No. 70-10-100 (1970) offers no precedent for relaxation of that proviso as applied to direct air carriers.

Act, substantially precluding intermodal transportation companies, the railroads were still a comparatively strong force in relation to the airline industry. Railroads realized approximately \$4.5 billion in operating revenues as compared to approximately \$104 million in operating revenues for the air carriers. In 1940, there may well have been economic justification for the protection afforded the "weaker" modes of transportation from control by the more established modes.

But today the realities of our transportation industry are quite different. In 1968, railroads realized about \$11 billion in operating revenues and air carriers about \$8 billion.¹⁴ These statistics merely confirm our everyday sense that the air carriers are no longer struggling against economic domination by surface carriers. The tables contained in the appendix make it clear that the statistics cited here do not represent isolated phenomena but, rather, a clear, 30-year trend in the transportation industry.

With the maturity and economic independence of the transportation modes now realized, Congressional committees, federal agencies and responsible students of transportation have advocated better coordination of our independent transportation operations.¹⁵ Some have suggested that relaxation of the prohibitive restrictions on the common ownership of different transportation modes may promote a more coordinated national transportation system. In the "National Transportation Policy," a study issued by the Senate Commerce Committee in 1961, the salutary effect of permitting development towards intermodal transportation companies was described :

"Such a company would be able to offer choice of transportation by each of its several modes, by combinations thereof and by interchange with other similar companies and with independent carriers to best suit the requirements of the user as to service and cost. Interested in the best possible corporate showing, the management, competing with similar managements, would be forced by circumstances to employ its resources as an integrated whole and to develop each of its modes toward maximum contribution to the whole."¹⁶

The C.A.B. itself has recognized that the economic incentive created by the common ownership of surface and air carriers can work to the benefit of the transportation industry and the public as a whole. In approving the common ownership of a long-haul motor carrier and an indirect air carrier (air freight forwarder), the Board reasoned that the economic incentives arising from the joint ownership of surface and air transportation would stimulate air cargo traffic.

"Strictly speaking, of course, the licensing of a trucker or its affiliate as an air forwarder will not reduce the trucker's potential conflicts of interest about shipments which can be carried profitably by surface. But it *will* reduce the trucker's incentives to thwart the diversion of that traffic to air. Without air forwarding authority, a trucker can earn nothing by turning shipments over to air carriers and, hence, has no reason to do so. If the trucker or its affiliate is awarded air freight forwarder authority, however, the trucker will have incentives to permit air traffic to grow. As an air freight forwarder or its affiliate, the trucker will have a stake in the air forwarding business; the corporate system can consolidate shipments and realize earnings from the spread between the air carrier rates for small and large shipments. It is clear that these truckers can do much for air transport if they cooperate with their air arms' activities, instead of battling against any diversion of their surface traffic to air. . . ."¹⁷

Permitting some common ownership of different transportation modes may also produce the following benefits :

- (1) With an intermodal transportation company able to provide the shipper with a choice of transportation means, the transportation company would promote those means that would be most efficient, the least costly, and tailored to the shipper's needs;¹⁸

¹⁴ U.S. Statistical Abstract (1971) table No. 830 "Operating Revenues, by Type of Transport : 1940-1969" at p. 524; Civil Aeronautics Board, *Handbook of Airline Statistics* (1969), table No. 61 "Overall Operating Revenues, All Services" at p. 69; See app. A for copies of these tables.

¹⁵ Department of Transportation Act, 49 U.S.C. 1651; statement by Rear Admiral John Harlee, Chairman, Federal Maritime Commission, hearings on S. 3010 before the U.S. Senate Committee on Government Operations, 89th Cong., 2d sess. at p. 401 (1966) (hereinafter cited Senate Hearings on S. 3010).

¹⁶ U.S. Senate Committee on Commerce, report No. 445, 87th Cong., 1st sess., 1961, at p. 221.

¹⁷ *Motor Carrier-Air Freight Forwarder Investigation*, n. 13, *supra*, at pp. 21-22.

¹⁸ George F. Mott, ed. *Transportation Century*, Baton Rouge : Louisiana State University, 1966 at pp. 189-190.

(2) Greater operational efficiencies through the combining of sales and advertising operations and management efficiencies;¹⁹

(3) Better service to shippers and passengers as a result of more through-routes making handling and interruptions in services, with their consequent risks of damage and loss, less frequent; and

(4) New forms of service, such as package air and sea transportation trips, that might stimulate traffic volume.²⁰

If the transportation system today were healthy and were successfully serving the needs of shippers and passengers, these improvements might be considered marginal. But we know this is not true. Carriers are beset with losses; services are being withdrawn; and, in many areas of surface transportation, private initiative has not produced needed innovations. Under these circumstances federal policy ought to encourage, not stifle, experiments which may improve our transportation system.

THE PROPOSAL

Our proposal is a very limited one but one which, if successful, could produce substantial rewards. The bill would grant the C.A.B. the flexibility it now lacks to approve intermodal acquisitions which appear likely to insure better services. A few such approvals also should enable Congress to obtain the specific information it now lacks about the long-run validity of intermodal transportation companies as well as future steps that may need to be taken by Congress in regulating these companies to obtain maximum benefits from intermodel services.

Under the bill, the Board would evaluate proposals for the common ownership of different transportation modes by the same "public interest" standards presently applied to other control relationships.²¹ Elimination of the second proviso would by no means permit free and unlimited entry of surface carriers into the airline industry or vice versa. Rather, it would permit monitored entry under which the Board would retain jurisdiction to scrutinize the operations of Board-approved, intermodal transportation companies and to impose conditions needed to protect the public. This approach would be not unlike the procedures recently adopted by the Board in approving long-haul surface carrier ownership of indirect air carriers. See *Motors Carrier-Air Freight Forwarder Investigation*²² and succeeding cases.²³ The Board approved the common ownership of surface and indirect air carriers, expressing the need to permit experiments in these intermodel arrangements in order to provide experience which will illuminate the benefits and costs of intermodel transportation companies.²⁴ At the same time, the Board explicitly stated its intention to closely monitor these operations for violations of the antitrust laws and for the need to take action that will prevent any such violation.²⁵

CONCLUSION

Our air and surface carriers are in need of help. Financially troubled and inadequately coordinated, they are operating under many regulations that were designed to meet conditions that no longer exist. The bill presently under consideration is directed at these problems. It affords Congress an opportunity to update one aspect of airline regulation and, at the same time, to test in a C.A.B.-controlled way the benefits which we expect but have yet to realize from intermodal transportation companies.

¹⁹ Senate Hearings on S. 3010 at p. 401; G. E. Hale and Rosemary D. Hale, "Competition on Control IV: Air Carriers," 109 Pa. Law Review 311, 336 (1961); *American President Lines Petition*, 7 C.A.B. 799, 808 (1947).

²⁰ *American President Lines*, n. 19, *supra*.

²¹ The concept of "public interest" includes the factors listed in the Declaration of Policy of the Federal Aviation Act of 1958, 49 U.S.C. § 1302. The Board also gives due consideration to the antitrust laws. *Western-Pacific Northern Merger*, E-25240 at pp. 1-2 (1967).

²² Order No. 69-4-100 (1969).

²³ Recently-adopted C.A.B. regulations prescribe the following as criteria for obtaining Board approval of a control relationship between a surface carrier and an indirect air carrier:

(a) "The applicant is capable of performing proposed air transportation and of conforming to the provisions of Act and all rules and requirements thereunder;

(b) the applicant will conscientiously promote air cargo and will benefit air transportation; and

(c) the applicant's operations, alone or together with those of other similar carriers granted air forwarding authority, will not create a monopoly or monopolies and thereby restrain competition or jeopardize another air carrier, or otherwise be inconsistent with the public interest." § 296.86 of the Board's Economic Regulations. See also *Southern Pacific-Santa Fe Air Freight Forwarder*, order No. 70-10-100 (1970).

²⁴ N. 22, *supra*, at p. 23.

²⁵ *Ibid.* at pp. 29-30.

STATEMENT OF WORLD AIRWAYS, INC., IN SUPPORT OF S. 2548

During the past 30 years, the supplemental airlines have played an active and key role in the development of air transportation in the United States. At critical stages in this development, Congress has recognized the contributions made by supplementals to air transportation and, in response, has carved out areas in which the supplementals could further apply their experience to the benefit of the public. In 1962, following several years of litigation in which some scheduled airlines resisted further Board authorization of operations by the supplementals,¹ Congress enacted Section 401(d)(3) of the Federal Aviation Act of 1958. That section authorized the Board to grant to qualified air carriers permanent certificates to engage in supplemental air transportation. Congress also provided in Section 401(d)(3) that no air carrier holding a certificate to engage in other forms of air transportation could obtain a Section 401(d)(3) certificate to provide supplemental air transportation.²

The legislative history suggests that, in prohibiting a route carrier from holding a certificate to engage in supplemental air transportation, Congress intended to specify a sector of the air transportation industry which the supplemental carriers alone would have authority to develop.³ Congress hoped that by granting some exclusive authority to supplemental carriers, it would provide these hitherto impermanent carriers⁴ with a viable economic base which, in turn, would enable these carriers to continue to provide valuable services such as emergency airlift and low-cost group air transportation.⁵

In expressly prohibiting the Board from issuing a certificate for supplemental air transportation to another certificated airline, Section 401(d)(3) clearly indicates Congress' intention to encourage the aggressive development of charter transportation. Despite the clarity of the original purpose, the meaning of Section 401(d)(3), has become unclear in the course of the last decade. The supplemental industry has, of course, grown markedly in the last 10 years.⁶ This, combined with CAB interpretations of the provisions, has led to a situation today where Section 401(d)(3) may actually be effectuating a result contrary to its original purpose.

¹ Briefly, the history of Board orders and Court decisions leading up to 1962 enactment of sec. 401(d)(3) demonstrates the legally-clouded, and with it economically unstable, existence of the supplemental carriers that prompted Congress to take action in 1962. Beginning in 1955 with the Board's authorization of charter transportation and limited, individually-ticketed service by the irregular carriers (now known as supplementals), the certificated route carriers challenged the Board's decision in the Circuit Court and obtained a reversal on the ground of insufficient findings by the Board. Again, in 1969, the certificated route carriers obtained a Circuit Court reversal of the 1959 Board decision granting the irregular carriers certificates to engage in charter and limited, individually-ticketed service. Recognizing the need for legislation to permit the continuation of supplemental air transportation, but unable to fully explore the problem in the short time remaining before adjournment of Congress in 1960, Congress enacted legislation giving supplementals authority to operate until the matter could be more thoroughly examined in 1962. See H.R. 1177, 87th Cong., 1st sess., at pp. 8-9 (1961); *Large Irregular Air Carrier Investigation*, 22 C.A.B. 853 (1955); *American Airlines v. C.A.B.*, 235 F. 2d 845 (1956); *United Air Lines v. C.A.B.*, 278 F. 2d 446 (1960).

² Section 401(d)(3) of the Act states in part:

"In the case of an application for a certificate to engage in supplemental air transportation, the Board may issue a certificate, to any applicant not holding a certificate under paragraph (1) or (2) of this subsection . . . if it finds that the applicant is fit, willing, and able properly to perform the transportation covered by the application. . . ." (emphasis added)

³ In the Senate hearings on S. 1969, the bill to establish permanent certificate authority for the supplementals, Senator Sparkman stated, ". . . this committee should make every effort to protect the supplemental airlines, the true small businesses of civil aviation. . . ." Hearings before Aviation Subcommittee of Senate Committee on Commerce, 87th Cong., 1st sess. on S. 1969 at p. 123; See Senate Report No. 1554 to accompany S. 3566, 90th Cong., 2d sess. (1968) where it was stated that the 1962 legislation creating permanent status for supplemental carriers was designed to carve out a special role for supplementals in air transportation (at pp. 3-4); See H.R. 1177, 87th Cong., 1st sess., at p. 17 (1961).

⁴ N. 1, *supra*.

⁵ See testimony of Senator Howard W. Cannon at the Hearings before Aviation Subcommittee of the Senate Committee on Commerce, 87th Cong., 1st sess. on S. 1969 at pp. 119, 120. At the time of the Congressional hearings on sec. 401(d)(3), some of the benefits provided by the supplementals included: (1) the pioneering of air coach travel and military contract business; (2) development of charter travel; and (3) the provision of valuable military airlift services. Senate Report No. 688, Senate Committee on Commerce, 87th Cong., 1st sess. (1961) at p. 21.

⁶ The supplementals have increased their assets from \$93,560,000 in 1963 to \$587,034,000 in 1970. During the same period supplementals experienced considerable growth in the transportation of passengers and cargo. The supplementals operated 1,547,400 passenger miles and 218,700,000 cargo ton miles in 1963 as compared to 10,295,200 passenger miles and 390,700,000 cargo ton miles in 1970. National Air Carrier Association, *Report On The Supplemental Airline Industry*, 1971, at pp. 8-9.

The apparent interpretation of the Act today is reflected in two CAB cases. In the *Miami-London Route Investigation*,⁷ an examiner concluded that the Section 401(d) (3) prohibition was meant to preclude the Board from issuing a certificate to a supplemental carrier to engage in scheduled air transportation. And in the *Condor-Flugdienst G.m.b.H.* case,⁸ the Board adopted the examiner's view that the policy expressed in Section 401(d) (3) presumably would preclude a certificated scheduled airline from acquiring control of a supplemental carrier pursuant to Section 408 because the scheduled airline would thereby acquire the supplemental's certificate.⁹

These decisions, taken together with the Board's established practice of treating the policies of Sections 401 and 408 interchangeably,¹⁰ indicate that all relationships involving common control of a supplemental certificate with another certificate, whether or not involving separate corporate entities, would be barred by the Board on threshold legal grounds—without analysis of the merits.

Such an interpretation, in our opinion, goes beyond the original intent of Congress and would frustrate, rather than advance, the development of supplemental air transportation. This is particularly true with respect to the Board's refusal to differentiate between the common ownership of separate certificates acquired pursuant to Section 408, as distinguished from Section 401. While there is little justification today for the restriction in Section 401 itself, there is even less for the policy under Section 408, where certificates might be combined by merger or might be owned or managed by separate corporate entities even though under common control. The validity of a distinction between ownership of a certificate directly and through a corporate subsidiary is illustrated by specific provisions of the Interstate Commerce Act with respect to air freight forwarders.¹¹ A similar distinction with respect to motor carriers has been made by the ICC and sustained by the Supreme Court.¹²

The following illustrates how relationships which are not literally prohibited by the statute but rather by the Board's interpretation of it might well advance, rather than detract from, the basic objective of encouraging the aggressive development of supplemental air transportation.

Section 401 prohibits issuance of a certificate for supplemental air transportation to a scheduled airline but not vice versa. As you noted, the purpose was to prohibit the intrusion into supplemental air transportation of carriers who were avowedly hostile to the entire concept. Those carriers had an obvious incentive to throttle rather than promote supplemental service. In that case, the prohibition was appropriate.

When a supplemental seeks a scheduled certificate, the same effects cannot be predicted. Any supplemental well developed enough to earn serious consideration for a scheduled certificate will, of necessity, have proven, by its success, a commitment to the supplemental service. Such a carrier could well have something useful to offer to scheduled transportation. Fresh ideas, innovative techniques, and aggressive promotional concepts¹³ have been characteristic of the supplemental industry, but are not uniformly present in the scheduled industry. Indeed, the mainstay of the scheduled industry today—coach service—was an idea pioneered by what is now the supplemental industry.

It is difficult to see how scheduled transportation could fail to benefit from stimulus of supplemental carrier participation, and from the yardstick that such

⁷ Docket No. 19856, order No. 69-7-90 (1969).

⁸ Docket No. 17233, E-26147 (1967).

⁹ *Ibid.* at p. 4; at p. 23 of Examiner's Recommended Decision as adopted by the Board.

¹⁰ E.g., *American President Lines*, 7 C.A.B. 799 (1947).

¹¹ For example, 49 U.S.C. 1010(c), which deals with issuance of permits to freight forwarders states:

"No such permit shall be issued to any common carrier subject to chapters 1, 8, or 12 of this title; but no application made under this section by a corporation controlled by, or under common control with, a common carrier subject to chapters 1, 8, or 12 of this title, shall be denied because of the relationship between such corporation and such common carrier."

¹² *American Trucking Association v. United States*, 355 U.S. 141 (1957).

¹³ Informed observers in both camps and the Executive Branch have frequently commented on the pioneering efforts of supplementals toward low cost group travel and similar innovations benefitting the consumer. See n. 5, *supra*; Statement of U.S. Sen. A. S. Mike Monroney, Hearings before Aviation Subcommittee of U.S. Senate Committee on Commerce on S. 3566, 90th Cong., 2d Sess., 1968 at p. 5; Statement of John H. Crooker, Jr., Chairman, Civil Aeronautics Board, Hearings before Aviation Subcommittee, U.S. Senate Committee on Commerce on S. 3566, 90th Cong., 2d sess., 1968 at pp. 11-12. Statement of Leslie Dix, Director, Legislative Affairs, Presidential Commission on Consumer Interests, Hearings before House Subcommittee on Transportation and Aeronautics, U.S. House of Representatives Committee on Interstate and Foreign Commerce on H.R. 17685, 90th Cong., 2d sess., 1968 at pp. 127-128.

participation might give the Board in assessing the performance of other scheduled carriers. Indeed, serious consideration by the Board of a supplemental's application for a scheduled certificate could, by itself, have a useful stimulative effect on other scheduled carriers. Yet, Board policy now bars even such consideration.

It is important to emphasize that the proposed legislation would not require the CAB to admit a single supplemental carrier to the ranks of the scheduled industry. Considering the very few instances of new carriers entering the scheduled industry since the 1938 Act was passed, it is probably unlikely that such an award would be made. But there is no reason for imposing a bar at the outset. If an award were to be made to a supplemental airline, it would undoubtedly be a situation where the applicant had made out an unusually compelling case in terms of its past performance and projected benefits. If such a presentation could be made, the bill would at least allow it to be considered.

Section 408. The common control of separate corporate entities holding supplemental and non-supplemental authority respectively is nowhere prohibited by Section 408. Nevertheless, judging from the *Condor* decision and other Board policies, it appears that the Board would refuse to consider an application to merge, or place under common control entities holding different types of certificates. This interpretation precludes, in the same way as the Board's interpretation of Section 401(d)(3), possible benefits from the cross utilization of skills, ideas, and resources between supplemental and regular services. The effect is actually more restrictive because it bars proposals where two certificates might be operated independently even though being under common control. The advantages of such affiliate status are being demonstrated every day by carriers of other countries with whom U.S. carriers compete, where, in at least 17 instances, the scheduled and charter services are performed by separate corporate entities under common control.¹⁴

For purposes of the proposed legislation, it is not necessary to determine whether similar relationships would be unwise in all cases for U.S. carriers. As things now stand, because of the Board's broad interpretation of the Act, the question may not even be considered.

In directing the Board to at least open its processes to proposals of this nature, the Congress would not be directing the Board to do anything except pass upon proposals involving ownership or control of both types of certificates in accordance with the same detailed statutory standard applied to situations involving two like certificates. The policies of Section 102 of the Act are strongly directed toward protection of the public. Under Section 408, further requirements and safeguards are imposed. All that Congress would be doing is to end the artificial blockage which now stands in the way of cross stimulation between scheduled and supplemental services—a condition which may well inhibit lower cost air service for the consumer.

CLARIFICATION OF SECTION 101(34)

Section 101(34) of the Federal Aviation Act defines "supplemental air transportation" as follows:

"(34) 'Supplemental air transportation' means charter trips, including inclusive tour charter trips, in air transportation, other than the transportation of mail by aircraft, rendered pursuant to a certificate of public convenience and necessity issued pursuant to section 401(d)(3) of this Act to supplement the scheduled service authorized by certificates of public convenience and necessity issued pursuant to sections 401(d)(1) and (2) of this Act. *Nothing in this paragraph shall permit a supplemental air carrier to sell or offer for sale an inclusive tour in air transportation by selling or offering for sale individual tickets directly to members of the general public, or to do so indirectly by controlling, being controlled by, or under common control with, a person authorized by the Board to make such sales.*" (emphasis added)

It is possible that, even with the proposed amendment of Section 401(d)(3), the underscored language may be interpreted as prohibiting common control of a supplemental air carrier and a scheduled air carrier. It is evident from the

¹⁴ See app. A: see also *Condor-Flugdienst G.m.b.H.*, E-26147 (1967); *Martin's Luchtvervoer Maatschappij N.V.*, E-26146 (1967); *Aero O/h (Finnair)* and *KAR-Air oy*, 68-10-107 (1968); and the examiner's recommended decisions in *Balair Ltd. Air Charter Company of Switzerland*, docket 23766 (1972) and in *British Overseas Air Charter Limited*, docket 23424 (1972) for cases involving the issuance of a foreign air carrier permit to non-IATA charter airlines controlled by scheduled European air carriers.

legislative history that such a broad interpretation is not necessary to achieve the Congressional intent. The language in question was added in 1968 (82 Stat. 867) in connection with an enactment clarifying the right of supplemental air carriers to handle inclusive tour charters. The House committee, in adding the language, stated as follows:

"The last sentence of the revised definition of 'supplemental air transportation' was added by the committee to assure that supplemental air carriers could not directly sell or offer for sale tickets for an inclusive tour to individual members of the general public. In other words, it keeps such carriers out of the business of offering individually ticketed services in competition with the scheduled carriers. It also prohibits such carriers from making such sales indirectly through a tour operator authorized by the Board to organize and sell an inclusive tour if such tour operator has any interlocking relationship with the carrier or if both the carrier and the tour operator are under common control by any other person. In short, no supplemental air carrier will be permitted to do indirectly what it is prohibited from doing directly." (H. Rept. 1639, 90th Cong. 1968)

The simplest method of resolving any possible conflict occasioned by Section 101(34) would be to amend or eliminate the language in question. At minimum, however, committee reports in connection with amendment of Section 401(d)(3) should clarify Congress' intention that Section 101(34) is not to be interpreted as banning common control of supplemental and other carriers where it is otherwise found to be in the public interest.

APPENDIX A

Charter subsidiaries of foreign scheduled carriers

	<i>Percent owned by scheduled air carrier</i>
Foreign scheduled carrier and subsidiary:	
Air France: Air Charter International	100
Alitalia: Societa Aerea Mediterranea	100
Austrian Airlines: Austrian Airtransport	40
BEA: BEA Airtours Ltd	100
Finnair: Kar-Air	29
Iberia: Aviaco	67
Jugoslav Air Transport: Air Jugoslavia	100
KLM: Martins Air Charter	25
Lufthansa: Condor	100
Sabena: Sobelair	100
SAS: Scanair	100
Swissair: Balair	36
UTA: Compagnie Aeromaritime d'Affretement	(1)
Air Trans Africa: Afro-Continental Airways	(1)
Balkan Bulgarian Air Transport: Bulair	(1)
Icelandic: Cargolux	33
Luxair: Cargolux	33
Out Island Airways Ltd.: Island Flying Services	(1)

¹ Not available.

AFTERNOON SESSION

Senator CANNON. The hearing will come to order.

The next witness is Mr. Morten Beyer, president of Capitol International Airways.

STATEMENT OF MORTEN S. BEYER, PRESIDENT, CAPITOL INTERNATIONAL AIRWAYS, INC., SMYRNA AIRPORT, SMYRNA, TENN.

Mr. BEYER. Senator Cannon, my name is Morton S. Beyer, and I am president of Capitol Airways.

I appreciate the opportunity to appear before you today. It is indeed timely that the Senate has at least come to grips with the question of

what to do about the highly discriminatory and arbitrary restrictions imposed by the CAB on charter flights in general and on the supplemental airlines as a group.

Sitting here this morning and listening to the statements of the Board and the State Department, quite frankly I have received no encouragement or comfort.

Ten years ago, Congress created the supplemental airlines and designated them to provide low cost transportation to the American people by supplementing scheduled services.

Four years ago, Congress specifically considered, and passed, legislation authorizing the supplemental air carriers to engage in so-called inclusive tour charters.

The CAB, through a series of arbitrary restrictions, has frustrated the will of Congress, and kept the supplementals hog tied and muzzled in a regulatory ghetto, unable to fulfill the role which Congress intended them to fill.

I think it is fair to say that the American CAB is the only aviation regulatory agency in the world which apparently acts primarily to protect the interests of a handful of entrenched and inefficient scheduled airlines at the expense of the ordinary citizens of the country.

We saw this in the testimony of the chairman this morning I think, who stated in effect that all was well with the world, and all the Congress needs to do is leave matters in the hands of the enlightened CAB, who would ask for timely legislation needed as they move forward with all the deliberate alacrity of a mud turtle.

We have only to look abroad to see how badly the American people are being cheated by the CAB's regulations—cheated and denied the opportunity to enjoy the low cost travel benefits which the technology and economy of the jet aircraft has made possible.

Senator Magnuson, in his recent speech, asked why the European system of one-stop IT charters is not available to the American people. Let me see if I can shed a little light on "why."

The deliberations of our Government in this matter have been confused by a series of self-serving half-truths and untruths repeated so often that they have been accepted by everyone as gospel, but so becloud the issues as to make rational judgments impossible. Let me lay a few of these to rest.

The first precept sanctified by endless repetition, is that the experience of Europe is inapplicable to the United States because scheduled airline fares in Europe are twice as high as in the United States.

This is patent nonsense.

Domestic fares within Europe are generally lower than within the United States. International fares between two countries are comparable to international flights between this country and its neighbors.

Let me give you a few examples and refer you to the table, exhibit I, which is attached to my testimony and which compares typical American and Intra-European fares.

For example, the fare Boston-New York is \$24 or 12.90 cents per mile and Belgrade, Yugoslavia to Dubrovnik, the same distance, is \$11.60 or 6.28 cents per passenger mile.

Los Angeles to Las Vegas is \$27 or 11.44 cents a mile, which is a restore destination, while Madrid-Malaga, a further distance, is only \$21 or 7.83 cents per mile.

Hilo-Honolulu—216 miles—is \$26 or 12.04 cents per mile. The comparisons could go on ad infinitum.

The average fare per mile in the United States is lower than in Europe because of the much longer stage length of flights here. But over equivalent stage lengths of flights, rates are more than comparable.

Another canard is that European airlines are somehow more efficient than American carriers.

This also is nonsense, and the DOT testified before the House Interstate and Foreign Commerce Committee that the contrary was true—American carriers are more efficient.

Lower unit labor costs in Europe are more than offset by lower productivity, more personnel, higher social costs, less efficient operating procedures, and higher financial costs.

Another myth is that charters will destroy the scheduled airline system which provides frequent, convenient departures, but will be supposedly forced into bankruptcy if the barriers to one-stop IT charter competition are lowered.

I think it has been stated here before today the growth rate of both scheduled and chartered services in Europe is higher than it is in the United States.

In Europe, where the public enjoys IT charter competition, the scheduled airline system has not deteriorated but continues to expand.

European charter passengers increased from 3.5 million in 1965 to more than 13 million in 1970, exhibit II.

At the same time, scheduled service passengers increased from 16.5 million in 1965 to 27.5 million in 1970.

Presently, charter passengers represent one-third of Europe's total air passenger market, exhibit III.

In contrast, stultifying charter restrictions in the United States have resulted in only 2 million charter passengers per year which represents but 2 percent of the U.S. market total.

Europe's charter passenger market is eight times larger and is growing 28 percent faster than in the United States. Overall European air traffic is growing 50 percent faster than U.S. traffic.

Now, let me ask you, does the public interest require the 35 non-stop flights which will be flown this summer every day each way from New York to Miami?

Does it require seven flights which depart simultaneously at 9 p.m. to Miami from the New York airports?

Does it require 15 nonstop flights between New York and London every day—eight of them by Pan Am and TWA alone?

In 1971, there were 7.5 million passengers using scheduled service in the North Atlantic. However, there were 7.4 million empty seats on these flights or over 20,000 empty seats per day.

Does the public interest require the passenger to subsidize the equivalent of 57 empty 747's spanning the Atlantic every day?

I think not.

A final piece of nonsense is that the European airlines, many of which are partially or wholly government owned, are somehow eleemosynary enterprises and immune from the workings of ordinary economics.

Nothing could be further from the truth, and I think any objective analysis of European carriers—both scheduled and charter—will show

that their managements are under as much—if not more—pressure to make money than their average American counterparts.

Let us turn now to the experience of Europe, which I particularly feel is worthy of our consideration.

In Europe, the scheduled and the charter airlines both enjoy a far greater freedom of opportunity than here in America.

Parenthetically, I would say that all of the airline regulatory bodies of Europe combined do not have a fraction of the total employees of the CAB, and yet the European results appear so much more healthy, and the service to the people is better.

The CAB's Bureau of Enforcement alone has more employees than the entire airline regulatory bodies of England or Germany.

And in spite of this plethora of staff, the head of this office was recently quoted by the Washington Post as stating that his office was so busy stamping out charter flights that it could not police the schedule reliability of the trunk airlines.

What a mixed up sense of priorities and values.

Unfortunately, it seems far more important in the minds of the CAB staff to keep Americans off of charter flights than to see that the scheduled airlines keep their timetables with a reasonable degree of reliability.

You all know what an inclusive tour charter is: A flight contracted by a tour operator, who offers to the general public a low-cost package vacation consisting of both air transportation and the minimum necessary ground arrangements at the destination, such as transport to and from the airport, hotel room, and usually breakfast.

This was covered very eloquently by Mr. O'Callahan, and the advantages this insures to the public in terms of low-cost vacations I know were made obvious.

The great advantage of the inclusive tour charter is that the tour operator can offer both the advantages of low-cost air transportation, and more importantly, the economies of wholesale purchase of hotel rooms.

The result is a vacation by air within the reach of the average blue- or white-collar worker and his family. A modern-day charter jet can fly people 2,000 miles each way for less than \$100, and minimum cost for bed and breakfast for a week is another \$50.

The tour operator's cost of sales, profit, and commission may consume an additional \$30 to \$40, making an entire week's vacation possible at less than \$200, well within the reach of the average person.

A comparable vacation using scheduled airline excursion fares and retail ground arrangements could be two to three times as expensive. A comparison of current charter and various scheduled fares in the New York-Hawaii market is shown as an illustration in exhibit IV.

Congress authorized the inclusive tour charter.

The CAB shackled its development with a series of restrictions having one purpose, and one purpose only—"protecting" the supposedly competitive scheduled air services—thus making the cost of an IT charter so exorbitant, and operation so difficult, that few can afford to take advantage of it, or enjoy it if they did.

The CAB imposed a three-stop restriction; the vacationer has to pack up and move three times during his holiday.

They imposed a 110-percent price rule—the passenger pays 110 percent of the scheduled airline fare, irrespective of the true economics of operating the flight.

They imposed a 1-week minimum stay rule—no quickie long weekend vacation except for the jet set. This prevents American people from really benefiting from the new 3-day weekends recently established by Congress when you adjusted the national holidays.

Prospective tour operators are forced to meet bureaucratic filing requirements, bonding arrangements, and are required to absorb the entire financial risk of empty seats.

Airlines and tour operators must treat each other as lepers, and are forbidden by CAB regulation from any form of cooperation, joint venture, or common ownership or control.

No wonder only 68,000 Americans took IT charters last year, and some 70 percent of all ITC's scheduled have failed to get off the ground at all.

And now the CAB comes today and proposes a still further abomination in the name of "liberalizing" charter regulations: the nonaffinity or travel group charter.

Here again, a newborn worthy concept will be suffocated in its crib by bureaucratic restrictions proposed. Prospective passengers are treated like common criminals; their names, addresses, and phone numbers must be filed with the CAB 6 months in advance of their flight.

The travel industry is prohibited from promotion or development of these charters. The public must make 25-percent nonrefundable deposits 6 months in advance. If insufficient people show up for the flight, it is supposed to be canceled unless the other passengers pony up for the no-shows' share.

The proposed regulation contains some 50 rules with 105 separate regulatory statements, standards, definitions, and reporting requirements.

How much bureaucratic redtape can the Congress and the American people tolerate on their right to travel?

Why should the hapless American holiday traveler have to pay the exorbitant schedule airline fares?

Why should he have to pay not only for his own seat, but the two and three empty seats beside him?

Why should he pay the jet set gimmicks of "a seat-and-a-half," luxury lounges, and piano bars?

And all this in the name of protecting the great scheduled airline industry.

I submit that the industry does not need this kind of protection, and the American people can't afford it and are entitled to a better deal. Far better to free the scheduled airlines and the supplementals both to compete freely in the marketplace and serve the American people with genuinely low-cost air transportation.

Let's look at the experience of Europe, where generally the following conditions prevail:

1. Scheduled airlines can have charter subsidiaries, and charter airlines often run scheduled routes.

2. Charter and other airlines can own their own tour operators, and vice versa.

3. Airlines and tour operators can share the risks of their tour programs.

4. Charter rates are fixed by competitive forces, and by the costs of the services—not by government fiat or IATA cartel.

5. Restrictions on length of stay are minimal, and people can sign up whenever they want—you don't have to join a phony club, make your plans 6 months in advance, or have your flight canceled because it is only partly full.

Based on historic trends, some 21 million Europeans will fly on IT charters from their homes in northern countries to the beaches of Spain and the Mediterranean in 1972.

Another 6.5 million will utilize other than IT charters, and 7.8 million the BIT fares of the scheduled airlines within Europe.

Contrast this to the 68,000 (34,000 round trip) people who used IT charters in the United States last year.

Compare it to the 440,000 people who used charters to the Caribbean and Mexico last year from the United States.

ITC passengers are approaching 50 percent of the total intra-European air traffic—as opposed to only 2 percent of U.S. domestic traffic going on all charters.

Only 2,400,000 charter passengers flew the Atlantic last year—less than half of them on U.S. supplementals, I may add, while more than six times as many people flew on charter flights within Europe.

Let me give you a more pointed example of the contrast of operations here and in Europe.

Last year, Modern Air Transport, which I used to head, carried 125,000 ITC passengers round trip from a single city in West Germany—Berlin to southern Europe.

This was about four times as many as the entire U.S. charter industry carried elsewhere in the entire world.

And, as a matter of fact, the ITC business from Berlin appeared to provide the only hope for Modern, and it closed its entire U.S. domestic operation, and moved all its aircraft to Berlin.

Can one imagine anything more ridiculous than an American company being driven to move its entire operations to a foreign country in order to survive?

I would like to present the committee with copies of the brochure issued by one Berlin tour operator to the people of that city. It is a veritable Sears, Roebuck catalog of bargain vacations—Greece, Yugoslavia, Spain, Tunisia, Sardinia—you name it.

Look at the prices, making a quick conversion at the rate of three deutsche marks to the dollar:

Two weeks in Palma de Mallorca for \$167, that includes hotel, meals, ground and air transportation over a distance of some 1,100 miles.

Three weeks on the Isle of Rhodes for \$200.

A vacation in Dubrovnik at \$145.

These are vacations that the average family man can afford. Last year over 200,000 West Berliners took advantage of such inexpensive trips utilizing Modern Air and their British competitors.

Look at the record for market growth between the U.S. domestic market and Europe.

Between 1965 and 1970, U.S. domestic scheduled traffic grew 10.5 percent per annum without ITC competition. In Europe where ITC's exist, scheduled traffic grew 10.9 percent per year in the same period.

With the stimulus of the ITC's, total European traffic grew 15.1 percent, compared to a 10.7 percent U.S. growth—a 50 percent greater growth in Europe.

The record does not show that the ITC's have diverged from the growth of European scheduled traffic, but rather that it has accelerated it.

How big is the potential U.S. IT charter traffic market?

With a higher standard of living generally prevailing in the United States, it is reasonable that it could grow to 15 percent or more of total population in a year.

In Europe, the percentages of people taking IT charters range between 8 percent of all Germans to 14 percent of all Scandinavians, with the United Kingdom at 13 percent.

A 15 percent U.S. market is about 32,500,000 annual roundtrip passengers. At a \$100 fare, it is a three and a quarter billion dollar market. At 2 cents a passenger-mile, it is a 162 billion passenger-mile operation, requiring the equivalent of some 180 Boeing 747's or 360 stretched DC-8's to handle.

Senator Magnuson has stressed the importance of stimulating tourism to the United States in order to redress the adverse balance of payments.

The lack of low fares which the ITC makes possible is the greatest barrier to European tourism to the United States.

As long ago as 1962 and 1963, the United States Travel Service showed that America was by far the preferred destination of European tourists.

In a comprehensive survey, they asked typical European families, "If money played no role, where would you prefer to travel on your vacation?" 60 percent of all Frenchmen, 59 percent of all Swedes and Englishmen, 53 percent of the Hollanders, 39 percent of all Danes, 39 percent of Italians and 21 percent of all Germans indicated that the United States was their most-preferred vacation destination.

The conclusion of a new survey made by USTS of the British travel market sums it up very well: "Perhaps the key finding of the present preliminary study is that the determining factor in the full exploitation of the British travel potential to the United States is the amount of the air fare ***"

Based on the propensity of the Europeans to travel, and their improved financial status versus the United States caused by dollar devaluation, I do not think it is unreasonable to expect up to 2 million Europeans to visit the United States on IT charters annually within a few years.

This would create a \$300 million air transport market, with at least twice this much more being spent by European tourists within the United States—a possible billion dollar annual contribution to our sagging balance of payments. And this is only a European contribution. Tourists all over the world want to visit the United States.

It is obvious that the creation of this IT market will be a boon to our aircraft manufacturers as well as to the air transport and tourism industries generally.

The IT market is big enough for all.

We therefore urge the Congress to open ITC's to all carriers.

Scheduled airlines in our view should be permitted to operate ITC's between points on their certificated routes.

Care should be taken that the big scheduled airlines do not simply gobble up all the supplementals, and thus choke the stimulus which the independent charter airlines now provide.

Consideration might well be given to permitting only the regional carriers presently on subsidy to own supplemental certificates and operate on a worldwide basis.

Certainly the concept of a large U.S. domestic airline—such as Eastern or United suddenly buying a large supplemental and obtaining unlimited worldwide charter rights should be somewhat frightening to both the remaining supplementals as well as Pan Am and TWA.

But a combination of regional airlines and supplementals could well solve three thorny problems for our industry—the elimination of the excessive subsidies being paid the regional carriers, the precarious economic health of most supplementals and the development of direct charter services from the hinterlands and smaller cities of middle America which are served by the regionals.

A final benefit would be the bypassing of congested operationally expensive major gateway cities such as New York, Chicago, and Los Angeles.

There might well be merit in following the pattern of Europe by maintaining the distinction between charter and scheduled airlines, requiring that all charter operations, whether by a scheduled or supplemental airline, be provided by a separate corporate entity.

One of the evils of the present situation is that the large scheduled airlines obviously subsidize their charter and discount fare (GIT, CBIT, etc.) operations out of the profits of their high-yield business.

As long as they can do this, the regular passengers pay too much, and discount operations are offered at below cost—with resultant injury to the industry. Exhibit V attached shows that the total operating costs of the scheduled carriers per revenue ton-mile are more than twice those of the supplementals—47.8 cents as contrasted to 22.6 cents—due largely to the fact that charters normally operate at full capacity.

On an available ton-mile basis, the comparison is closer, with the supplementals having the edge only because of their lower overhead and indirect costs.

The supplemental's direct costs would be lower than the scheduled carriers too, were it not for the discrimination practiced by airports and services against our group of carriers.

A comparison at Detroit's Wayne County Airport is typical:

Scheduled carriers pay a \$29.17 landing fee for a DC-8. A supplemental pays \$157.50.

A scheduled carrier pays \$1.21 per passenger for use of the international arrivals area. We pay \$2.10—\$227.50 more for a stretched DC-8 arrival.

Supplementals pay a 3-cent per gallon fuel flowage fee—the schedules pay none. This costs \$600 on an international fuel load of 20,000 gallons.

The charter flights of the scheduled carriers pay no such charges, but are treated the same as scheduled operations.

The CAB is quite rightly recognizing the growing demand for low cost group travel, but unfortunately is responding to it primarily by permitting or encouraging the scheduled airlines to make even greater incursions into this market through the devices of bulk and group fares known variously as GIT, CBIT, group affinity, and other discount fares applicable on regularly scheduled flights.

In this regard, let me say the scheduled airlines are permitted to sell their GIT's, group fares, and their own inclusive tour charters which in fact these are, in the marketplace, while we are prohibited from doing this by the legislation which says we cannot sell individually ticketed services and the restrictions which the Board has conceived to implement this.

We feel it is extremely important that the charter airlines be given the same right to market their product to be American people as the scheduled airlines are given.

At the same time, however, that the scheduled airlines are getting further and further into the charter business, the supplementals are finding the noose being drawn more and more tightly around our necks as the Board proliferates the restrictions applicable to our charter flights.

We do not object to any group or individual fares which reduce the cost of transportation to the average citizen.

We do object to being tethered by arbitrary restrictions, and prevented from developing the low-cost market to its fullest.

The distinction between individual ticketed and charter traffic is being blurred by the flood of discount fares, and at the same time the scheduled international airlines are engaging in a tremendous effort to compete directly in the charter market as well as through the carriage of groups on regular flights.

This year, TWA is touting 52-percent growth in charter traffic over last year.

Pan Am has an entire fleet of Boeing 707 aircraft allocated to charter operations and, for example, last year operated more charters to Italy than the entire supplemental industry combined, according to records of the Italian Air Ministry.

Now they are proposing repeal of IATA Resolution 045 and the 2-percent off-route charter restriction which has been on the books for a decade.

We have seen the ultimate consequence of the ever-narrowing market in which we can compete. In the last 3 years, the supplemental industry has been cut in half.

Standard went bankrupt. Purdue ceased operations. Modern fled to Berlin. American Flyers merged with Universal, which itself ceased operations last week.

What more evidence does the Congress and the CAB need before the supplementals—most of us small businesses—are allowed to compete with sufficient freedom in a broad enough market to survive?

The American public deserves a break.

The proposals now before this committee permitting one-stop ITC's permitting airlines and tour operators to share common ownership and control, allowing scheduled and supplemental airlines to share in both markets, are far-reaching and long overdue.

We hope that this committee will go forward to redress the ills of the present regulations, and direct the CAB to the creation of a truly viable air transportation system which services the interests of the people of the United States.

Senator CANNON. Thank you, Mr. Beyer.
(The exhibits follow.)

EXHIBIT 1

COMPARISON OF TYPICAL UNITED STATES AND EUROPEAN SCHEDULED AIRLINE FARES

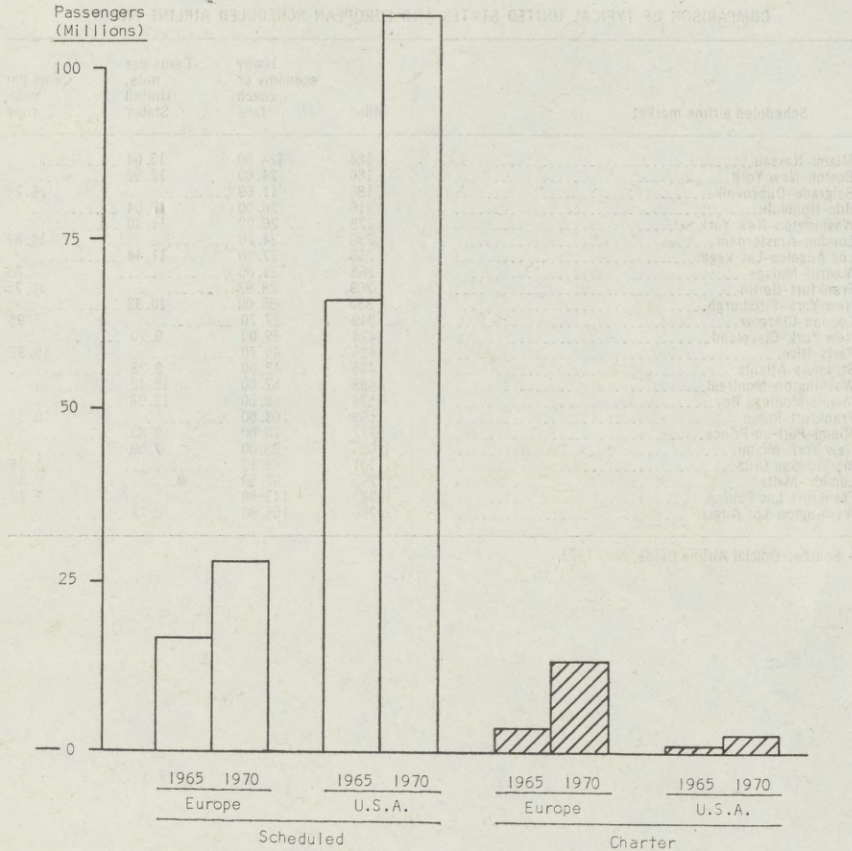
Scheduled airline market	Miles	1-way economy or coach fare	Cents per mile, United States	Cents per mile, Europe
Miami-Nassau.....	184	\$24.00	13.04	
Boston-New York.....	186	24.00	12.90	
Belgrade-Dubrovnik.....	186	11.60		6.24
Hilo-Honolulu.....	216	26.00	12.04	
Washington-New York.....	228	26.00	11.40	
London-Amsterdam.....	230	34.20		14.87
Los Angeles-Las Vegas.....	236	27.00	11.44	
Madrid-Malaga.....	268	21.00		7.83
Frankfurt-Berlin.....	269	28.92		10.75
New York-Pittsburgh.....	330	35.00	10.32	
London-Glasgow.....	349	27.70		7.93
New York-Cleveland.....	424	39.00	9.20	
Paris-Nice.....	426	46.70		10.96
St. Louis-Atlanta.....	485	43.00	9.28	
Washington-Montreal.....	499	52.00	10.42	
Miami-Montego Bay.....	524	68.00	12.98	
Frankfurt-Rome.....	598	63.00		10.53
Miami-Port-au-Prince.....	712	70.00	9.83	
New York-Miami.....	1,093	83.00	7.59	
Madrid-San Cruz.....	1,101	48.10		5.28
London-Malta.....	1,295	97.50		7.49
Frankfurt-Las Palmas.....	1,980	143.00		7.22
Washington-Los Angeles.....	2,286	155.00	6.78	

Source: Official Airline Guide, May 1972.

EXHIBIT II

THE DEVELOPMENT OF CHARTER TRAFFIC IN EUROPE HAS BEEN PROFOUND
AND HAS NOT IMPAIRED SCHEDULED PASSENGER GROWTH

Intra-European vs. Domestic U.S.A.



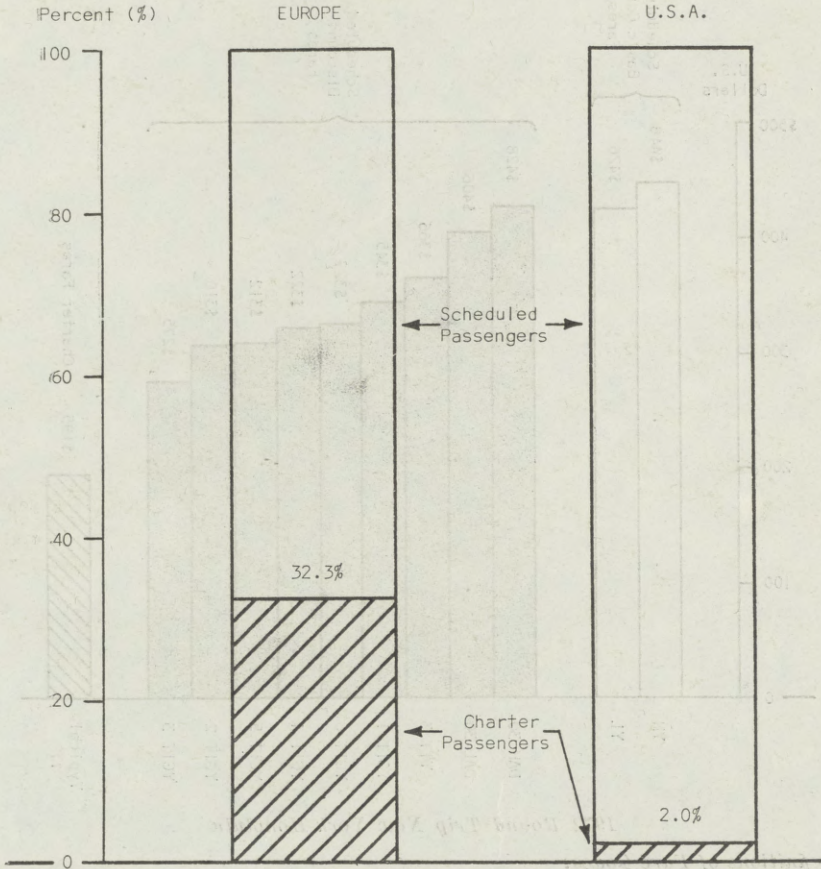
	Passengers (thousands)		Percent average annual increase
	1965	1970	
Europe:			
Scheduled service.....	16,472	27,592	10.9
I.T. charters.....	3,650	13,134	29.2
Total.....	20,122	40,726	15.1
United States:			
Scheduled service.....	65,584	107,952	10.5
All charters.....	809	2,268	22.9
Total.....	66,393	110,220	10.7

Source: CAB O. & D. Survey Air Carrier Traffic Statistics, EARB and ECAC Statistics.

EXHIBIT III

CHARTER PASSENGERS REPRESENT 32% OF THE EUROPEAN AIR PASSENGER TOTAL
BUT ONLY 2% OF THE U.S. AIR PASSENGER TOTAL

1970 Scheduled and Charter Passengers

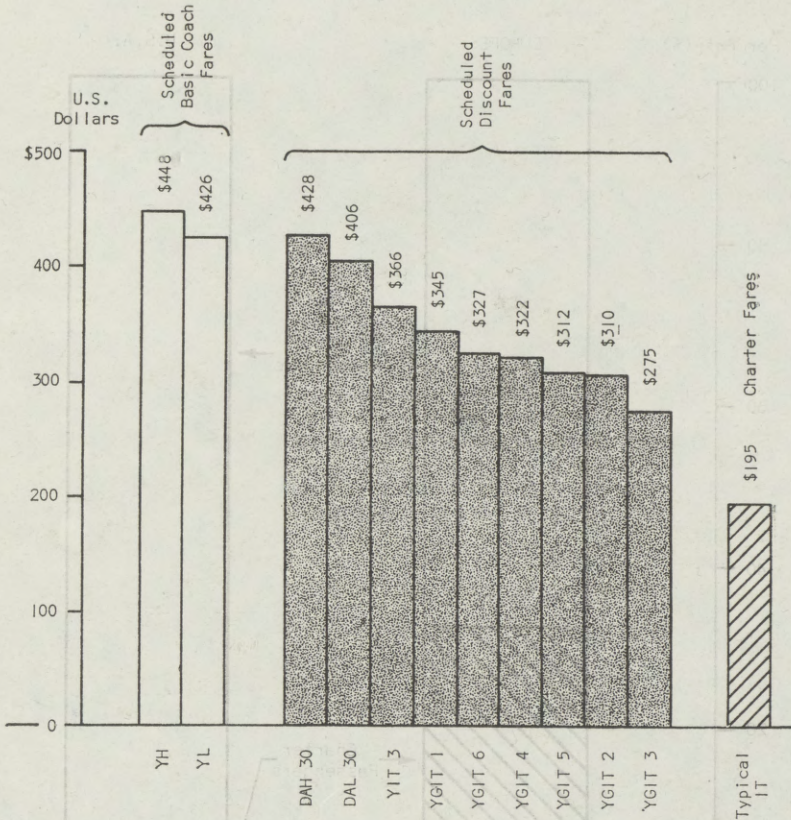


Source: Exhibit II

EXHIBIT IV

INCLUSIVE TOUR CHARTER AIR FARES
WILL BE SUBSTANTIALLY BELOW ANY PRESENTLY PUBLISHED DISCOUNT FARE
OFFERED BY THE SCHEDULED CARRIERS

1972 Round Trip New York - Honolulu



1972 Round Trip New York-Honolulu

Definitions of Fare Codes:

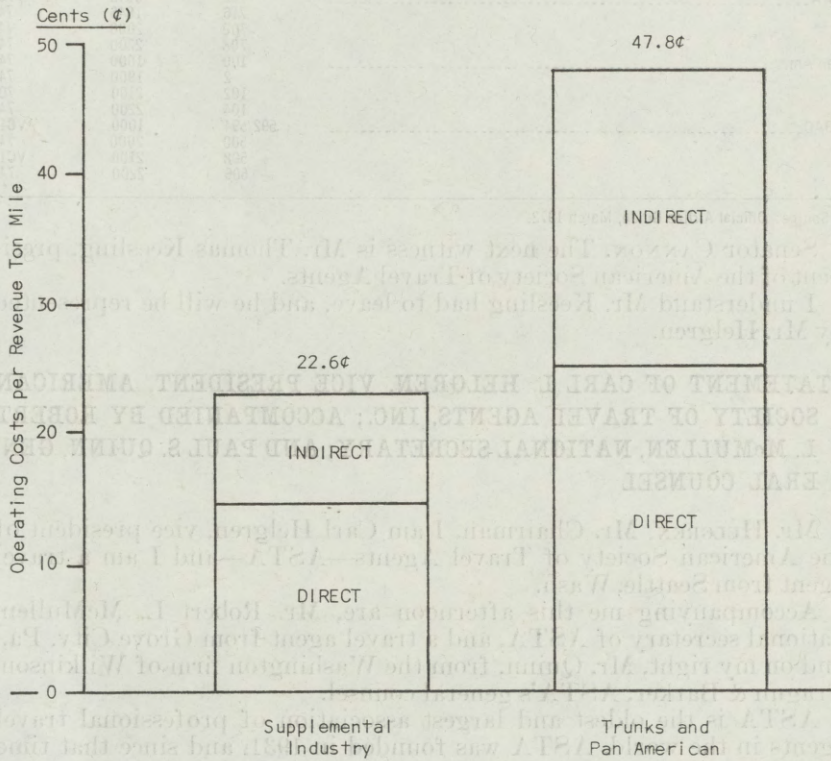
- YH Basic Coach Fare—Peak period
- YL Basic Coach Fare—Off-peak period
- DAH 30 Discover America Excursion Fare—Peak period
- DAL 30 Discover America Excursion Fare—Off-peak period
- YGIT-1 Group Inclusive Tour Basing Fare—88-95 passengers
- YGIT-2 Group Inclusive Tour Basing Fare—105-133 passengers
- YGIT-3 Group Inclusive Tour Basing Fare—154 or more passengers
- YGIT-4 Group Inclusive Tour Basing Fare—88-95 passengers
- YGIT-5 Group Inclusive Tour Basing Fare—105-133 passengers
- YGIT-6 Group Inclusive Tour Basing Fare—154 or more passengers
- YIT-3 Individual Tour Basing Fare

Source: Local Passenger Fares Tariff of United (PF-10).

EXHIBIT V

COMPARISON OF SUPPLEMENTAL UNIT COSTS
WITH THAT OF U.S. TRUNK CARRIERS AND PAN AMERICAN

Operating Costs - System Operations, 12 months ended June 30, 1971



The Supplementals Can Provide Charter Service
At Less Than Half The Cost Of That Incurred
In Providing Scheduled Service

Source: CAB Form 41 Reports

EXHIBIT VI

1972 NEW YORK TO LONDON SUMMER SCHEDULE

Airline	Trip number	Departure time	Equipment
TWA.....	702	0945	707
	716	1845	747
	700	2000	747
	708	2200	747
Pan Am.....	100	1000	747
	2	1900	747
	102	2100	707
	104	2200	747
BOAC.....	592/594	1000	VC10
	500	2000	747
	508	2100	VC10
	506	2200	747

Source: Official Airline Guide, March 1972.

Senator CANNON. The next witness is Mr. Thomas Keesling, president of the American Society of Travel Agents.

I understand Mr. Keesling had to leave, and he will be represented by Mr. Helgren.

STATEMENT OF CARL L. HELGREN, VICE PRESIDENT, AMERICAN SOCIETY OF TRAVEL AGENTS, INC.; ACCOMPANIED BY ROBERT L. McMULLEN, NATIONAL SECRETARY; AND PAUL S. QUINN, GENERAL COUNSEL

Mr. HELGREN. Mr. Chairman, I am Carl Helgren, vice president of the American Society of Travel Agents—ASTA—and I am a travel agent from Seattle, Wash.

Accompanying me this afternoon are, Mr. Robert L. McMullen, national secretary of ASTA, and a travel agent from Grove City, Pa., and on my right, Mr. Quinn, from the Washington firm of Wilkinson, Cragun & Barker, ASTA's general counsel.

ASTA is the oldest and largest association of professional travel agents in the world. ASTA was founded in 1931, and since that time ASTA and its members have been actively engaged in the promotion of safe, economical, and efficient travel and related travel services.

ASTA members operate more than 5,000 of the 8,000 approved travel agency locations in the United States and Canada. In 1970, U.S. travel agents sold over \$5 billion worth of travel and related services, about half of it directly related to international travel by U.S. residents.

The travel agent is a most important element in the promotion and sale of travel and tourism. Conversely, the travel agent depends for his livelihood on the availability of a marketable travel product in both domestic and international travel.

The sale of travel does not merely involve gross sales figures. As President Nixon pointed out in his message to the ASTA World Travel Congress held last November in Sydney, Australia, travel agents are "a strong force in building the closer ties of understanding that are so vital to the prosperity and progress of all men."

The professional travel agent, through his training and years of experience with the traveling public, has developed an understanding

of the needs and wishes of the American traveler. I appear before you, then, as a representative of those people who deal on a daily basis with the public and who rely for their prosperity on the marketability of the kind of travel services which you have under discussion here today.

ASTA has long been concerned with the provision of low-cost, safe, and efficient travel and related services to the American public. Its members realize that it is only through the marketing of attractive travel programs that the public will be served and travel agents will be professionally successful. For these reasons, ASTA has supported Inclusive Tour Charters (ITC's) and has worked for the elimination of the discriminatory affinity charters. ASTA has strongly supported efforts to bring about the simplification and stability of the IATA fare structure which would provide to all travelers low-cost, safe, and efficient air transportation without discrimination.

But in spite of the best efforts of ASTA, the Civil Aeronautics Board, the carriers, and others, travel agents have seen conditions, particularly in the North Atlantic air market, disintegrate into chaos.

In the New York Times of February 20, 1972, the North Atlantic air corridor is described as a wild, cutthroat and increasingly dishonest competitive jungle.

Member Robert Murphy of the CAB in a recent speech stated:

Unfortunately, it appears that despite unrelenting enforcement efforts, there continues to be a great deal of illegal charter operation. We have issued many cease-and-desist orders, and have imposed a large number of fines, but apparently the open flouting of applicable regulations is being carried out in the back alleys of the travel world by unscrupulous and unprincipled promoters.

Senator Warren Magnuson, chairman of this committee, in referring to the North Atlantic, spoke of near chaotic conditions in the field of international air transportation and listed, as the symptoms of this chaos, mass violation of U.S. laws and regulations, stranding of thousands of American tourists, proliferation of quotas and restrictions by foreign governments, and a near-open rate structure in the North Atlantic market.

Many of the problems facing the public and the abuses and inequities facing the industry were documented on November 17 and 18 when the Subcommittee on Foreign Commerce and Tourism held hearings on S. 2577, which would provide for Federal regulation of the travel agency industry.

ASTA believes enactment of S. 2577 would solve a number of the problems that will be detailed here today and tomorrow. However, more needs to be done and, with certain exceptions and qualifications which we will indicate in our statement, we urge that the legislation you are considering be enacted.

ASTA has for many years urged the elimination of the affinity charter concept since it is clearly discriminatory and has proved largely unenforceable.

The discriminatory aspect is especially true of residents of small cities who do not have access to organizations which are able or willing to sponsor charter programs.

The deteriorating situation in the North Atlantic market in recent years has caused ASTA to actively support modification of the current charter regulations and more effective enforcement in order to bring a degree of stability and honesty into that market.

However, ASTA strongly believes that as long as carriers are allowed to conduct affinity charters, the carriers, chartering organizations, charter organizers, and the public must be required to live by the rules.

Travel agents are convinced that it is the affinity charter concept itself and those unscrupulous few travel promoters who openly flout its regulation that have contributed most significantly to the chaotic situation we have described.

ASTA has spent considerable sums of money and a great deal of time and effort in aiding the CAB Bureau of Enforcement in collecting information about such abuses and has instituted litigation on the west coast which will provide the cornerstone for future enforcement activity.

However, as CAB member Murphy indicated in his address from which I have already quoted, "there continues to be a great deal of illegal charter operation."

The CAB itself noted, in proposing the new, nonaffinity travel group charter, that affinity discriminates against those members of the traveling public who do not happen to belong to an organization eligible for such travel.

Furthermore, by its very nature the concept presents serious enforcement problems.

The chaos resulting from the current affinity regulations and their enforcement problems has, however, indicated one important fact.

The American tourist is vitally interested in low-cost bulk transportation, and it is up to the Congress, the CAB, and the various organizations serving that public to develop a low-cost travel concept that will answer those needs.

It is for these reasons that ASTA could support a modified travel group charter concept. As we outlined in our comments to the CAB in connection with the Board's current rule-making proceeding on travel group charters, EDR-218, ASTA believes that the CAB's proposal is too restrictive and urges certain modifications in it.

More importantly, however, EDR-218 prohibits the payment of commissions by carriers to travel agents.

ASTA and the carrier parties commenting on EDR-218 urged the CAB to recognize that the concept of travel group charters will be successful only if the travel agent is fully involved in distribution. In commenting on this issue, the U.S. supplemental air carriers, through the National Air Carrier Association, stated:

The success or failure of the non-affinity concept will depend in large measure on the extent to which established legitimate travel agents around the country will be willing to expend their time and energy marketing such charters. * * * Commissions should be payable to bona fide travel agents, and service charges should be limited in much the same way as they are for affinity charters. * * * The commission system is the established and accepted method by which other modes of air transportation—both affinity charter and individually ticketed—are marketed in this country.

In addition, the CAB's travel group charter proposal failed to provide that the package must be sold by experienced, qualified personnel. As is quite evident from these hearings and from the hearings held on S. 2577, one of the principal difficulties faced by the traveling public is the activities of the small percentage of unscrupulous travel promoters.

ASTA urged that the regulations implementing the travel group charters restrict their sales to qualified travel agents. Hopefully, action will soon be taken on S. 2577 that would solve many of the problems which were outlined during the hearings on that legislation.

ASTA cannot emphasize strongly enough the seriousness of the problem confronting the public and the travel industry as a result of ineffective enforcement of charter regulations. The total deterioration of enforcement of charter rules—despite the greatly stepped-up efforts of the CAB's Bureau of Enforcement—has brought chaos, particularly to the west coast, where violations of charter rules are so widespread as to be commonplace. The Congress, and in particular this committee, must actively concern itself to assure that as long as charter regulations are in effect, they should be observed.

I can speak with personal knowledge that affinity rules have become a public disgrace. Honest travel agents and honest travelers are deprived of low-cost travel. Congress should support the efforts of the Bureau of Enforcement and give added manpower and facilities to assure effective enforcement.

At this time I would like to have my colleague, Bob McMullen, discuss ASTA's position on the legislation pending before this committee. Thank you very much.

Mr. McMULLEN. The first bill, S. 2348, would authorize the CAB to permit an air carrier to hold both a scheduled and supplemental certificate. It is ASTA's view that although such a provision may provide short range advantages to certain scheduled and/or supplemental carriers, in the long run, the granting of such authorization for U.S. carriers is not in the public interest.

The Congress has evolved a policy which attempts to distinguish between the appropriate roles to be played by scheduled carriers on the one hand and supplemental carriers on the other.

Although there is often controversy on the degree of precision with which the Congress and the Board attempts to distinguish the two areas of operating authority, ASTA believes, that on balance, the efforts of the Congress and the Board have been quite successful and the meaningful distinction does, in fact, exist.

Enactment of S. 2548 while merely giving the Board authority to authorize dual ownership of scheduled and supplemental certificates by single carriers would be an expression of congressional intent that such dual ownership is desirable and should be encouraged.

We believe that this would be an unfortunate development since it would tend to obliterate any meaningful distinction which now exists between scheduled carriers and supplemental carriers.

Furthermore, the trend in certain European countries to allow dual certification of carriers is presenting serious problems and makes it increasingly difficult to create a rational charter or supplemental air carrier policy among the Governments whose carriers serve the North Atlantic.

It also creates a conflict-of-interest situation and makes it even more difficult to establish a sound IATA fare structure. For these reasons, we urge the committee not to consider favorably S. 2548.

The second bill, S. 2549, would give the CAB increased flexibility to approve, under some conditions, control relationships between air carriers and surface carriers.

It is clear that the transportation industry in general, and in particular that segment of it concerned with the development of the tourism potential both in the United States and abroad, is going to require a continual influx of working capital, and sophisticated management techniques.

It would seem sensible, then, that companies which have developed a good reputation and valuable experience in the air transportation industry could well transmit such experience into other fields of tourism by making capital investments and establishing control relationships under certain circumstances with surface carriers. This would be in the public interest. However, it is not without some serious risks.

Enactment of this legislation would encourage the expansion of such relationships and could tend to further centralize or concentrate control of the transportation industry in the hands of a few large, dominant entities.

Although the traditional antitrust laws as enforced by the Department of Justice provide a degree of protection against overconcentration of power and could be used to prevent control relationships which would create a monopoly or which would have more antitrust overtones, ASTA is concerned that this protection is not enough.

The possibility of a monopoly with resulting deterioration of service, increased prices, and forced tie-in sales pose grave threats to the traveling public.

A year ago, I served on the United Nations Survey Team of Tourism in India. In our report to the Indian Government, we criticized the extent of these intermodal tie-ins, where the public arriving in India were not being handled, we felt, with the care and attention they could have if private enterprise might have been handling them upon arrival and the various modes of transportation were independent and free to compete with each other. Therefore, ASTA is opposed to enactment of S. 2459 at this time, since there has been no showing that the existing law is inadequate or that a change in CAB policy in this area would be in the public interest.

The third bill, S. 3513, proposes several changes in the nature of inclusive tour charters, the restrictions on the sale of such charters, and the authority of the CAB to act against a foreign carrier whose country discriminates against U.S. supplemental carriers.

While ASTA has not had an opportunity to carefully study all of the implications of this important proposal, we have reached tentative conclusions on some of the issues which are raised by it.

Before stating ASTA's position on those issues, however, I would like to make it clear for the record that ASTA has been an early and consistent supporter of the ITC concept.

We participated in proceedings at the CAB, and in the litigation which followed the award by the Board of ITC operating authority to certain supplemental air carriers.

It is ASTA's view that ITC's, which have proved themselves effective and successful in the European market, offer a workable device through which supplemental air carriers can make available to the traveling public on a nondiscriminatory basis low-cost, group air fare transportation. This can be done provided that the rules and regulations surrounding ITC's are sufficiently flexible and practical to allow adequate promotion and sale to the public while, at the same time, dis-

tinguishing this type of travel from individually ticketed transportation so they will not create undue diversion from scheduled services.

ASTA successfully urged the CAB to make more liberal its regulations governing ITC's when they were first introduced in 1965 by arguing that the minimum price of this form of charter should be set at not more than 110 percent of the lowest available individual fare including promotional fares.

The Board had proposed that the level be 120 percent of the lowest regular fare.

Second, ASTA urged that only three stops on the itinerary should be required rather than the four originally proposed by the Board.

The fears of substantial diversion from the scheduled traffic predicted by the scheduled carriers in the midsixties when ITC's were first authorized have proved to be unfounded.

The time has come for a more flexible and imaginative use of the ITC concept. Therefore, although ASTA believes that the CAB already has the authority to permit ITC's of a less rigid nature than those currently allowed, it would appear beneficial for the Congress to enact that provision of S. 3513 which would explicitly authorize the Board to permit supplemental carriers to conduct one-stop ITC's.

ASTA takes this position with the understanding that the Board is not required to amend its ITC regulations, to permit one-stop ITC's, but rather would have the authority to do so if, after an adequate study and sufficient findings that no undue diversion will result, such authority appears warranted.

ASTA would urge the Board to experiment carefully with one-stop ITC's should it decide to move in this direction and perhaps limit their use to specific markets where there would not likely be substantial diversion and where the development of additional personal or pleasure travel would lend itself to one-stop ITC's.

The second feature of the bill provides that the act should not be construed to prohibit an air carrier or an entity controlled by an air carrier from selling ITC's.

The enactment of this provision is not desirable in ASTA's view, since it would be contrary to the basic concept of ITC's as it has evolved in Europe and elsewhere.

Traditionally, ITC's require that the space of an aircraft must be sold through a tour operator or travel agent who then resells the space to the traveling public as part of an all-inclusive tour, and as the gentleman who spoke here today, Britain, which has been discussed many times, theirs are sold only through recognized travel agents.

Enactment of this provision would tend to eliminate any effective distinction between ITC's and individually ticketed transportation, since the supplemental carrier would be selling space directly to the public rather than through the charter concept as embodied in the ITC proposal currently in effect at the Board.

A third provision of the act would authorize the Board to retaliate against countries who discriminate against U.S. supplementals. While we believe the Board should have such basic authority, we do not feel that retaliation is the best way to resolve the basic differences which currently exist among the governments serving the United States or being served by U.S. carriers.

We believe much greater efforts should be made to develop on a bilateral and multilateral basis reasonable agreements governing both scheduled and supplemental air transportation.

In conclusion, we note that Senators Moss and Inouye, in introducing the bills which the subcommittee is considering, did so by request to assist in examining the issues which the proposals raise.

In short, ASTA believes that there is a better way for the Congress, the CAB, and the industry to pool their ingenuity and efforts to assure that the demand of the traveling public for low-cost, nondiscriminatory transportation is met, while, at the same time, assuring that historic distinction between scheduled, individually ticketed transportation and supplemental transportation remains intact.

While these issues are important, they do not really get to the basic problems confronting the public and the transportation industry resulting from discriminatory and unworkable affinity charter rules.

These charters are causing massive diversion from scheduled service with two out of three passengers from Los Angeles to Europe traveling on affinity charters with an estimated 80 percent of them illegal.

They have caused the stranding of thousands of passengers, loss of millions of dollars, and the placing of huge segments of the travel industry into the hands of what CAB member Robert Murphy described as unscrupulous and unprincipled promoters.

The CAB must provide an alternative to affinity charters through the adoption of travel group charters and more flexible ITC's. ASTA is convinced that this can be done within the framework of a stable and viable scheduled airline service backed up by the supplemental carriers who would in fact supplement the scheduled carriers. Most importantly, this can be done in such a way as to insure that the public's demand is met for safe, efficient, low-cost transportation on a nondiscriminatory basis sold to all members of the traveling public through responsible, professional travel agents. Thank you.

Senator CANNON. Thank you very much, gentlemen. We appreciate your being here.

The committee will now recess until 10 o'clock tomorrow morning.

(Whereupon, at 3:25 p.m., the hearing was recessed, to reconvene at 10 a.m., on Wednesday, May 10, 1972.)

AMEND THE FAA ACT OF 1958

WEDNESDAY, MAY 10, 1972

U.S. SENATE,
COMMITTEE ON COMMERCE,
SUBCOMMITTEE ON AVIATION,
Washington, D.C.

The subcommittee met at 10:05 a.m. in room 5110, New Senate Office Building, Hon. Howard W. Cannon (chairman) presiding.

Present: Senators Cannon and Cook.

Senator CANNON. The hearings will come to order. The hearings will continue this morning on bills to amend the Federal Aviation Act to provide greater operating authority and flexibility, particularly for the supplemental air carriers.

Our first witness this morning is the president of the ATA, Mr. Stuart Tipton.

STATEMENT OF STUART G. TIPTON, PRESIDENT, AIR TRANSPORT ASSOCIATION; ACCOMPANIED BY PAUL IGNATIUS, EXECUTIVE VICE PRESIDENT; AND JAMES LANDRY, CHIEF COUNSEL

Mr. TIPTON. Mr. Chairman, my name is Stuart G. Tipton. I am president of the Air Transport Association which is composed of virtually all of the certificated scheduled airlines in the United States. With me are Paul R. Ignatius, executive vice president, and James E. Landry, general counsel, of the association.

Before proceeding with my statement, Mr. Chairman, let me explain that I do not propose to read this thick document. I would request that the entire statement be made a part of the record and I will read only parts of the statement to the committee which I think will give the highlights of our position in this hearing.

Senator CANNON. The statement will be made a part of the record and you may summarize it.

Mr. TIPTON. Thank you. I appear today as the representative of an industry which is vitally interested in the promotion of mass transportation and other matters that are the subjects of these hearings. Last year, 170 million people flew on the scheduled airlines of the United States and this year we expect almost 190 million. An increasing number is taking advantage of the special fares that the scheduled airlines have pioneered for students, military personnel, family travel, vacation travel, and the like. Today, despite the general inflation that has occurred throughout the economy, scheduled air fares on the average are lower than they were 10 years ago.

In addition to these innovations in low-cost scheduled travel, the scheduled airlines are serving the charter market with increasing

vigor. In the 12-month period ending September 30, 1971, the scheduled airlines' rate of growth in transatlantic charter passengers—54.2 percent—exceeded the rate of growth—38.4 percent—of the U.S. supplementals. Indeed, Pan American and TWA are among the biggest U.S. charter operators on the transatlantic route.

The public has made clear its interest in low-cost air transportation. The scheduled airlines can take justifiable pride, I believe, in the effective manner with which they have met this demand. It is perfectly apparent to any fairminded person that the U.S. supplemental carriers have also responded effectively. We expect that the demand for low-cost air transportation in scheduled and charter flights will continue and we intend to serve it to the best of our ability.

We have then, all of us, I believe—the Congress, the public, the CAB, and scheduled and supplemental air carriers—a common desire to provide low-cost air transportation. But the bills before you today, if enacted, would produce changes in the air transportation system that would exact a price far greater than any savings they might bring to a segment of the traveling public.

In particular, S. 3513 would change the air transportation system from essentially a scheduled system to essentially a charter system. Although the scheduled airlines are heavily involved in charter services—with some \$200 million in commercial charter passenger revenues in 1971—we nevertheless believe that a fundamental shift in the nature of the system would be bad for the public, bad for both scheduled and supplemental air carriers, harmful to shippers, and detrimental to the smooth working of the American economy.

The proponents of this legislation certainly do not intend that this will happen, but it would be the inevitable outcome if the legislation is passed.

The scheduled airlines of the United States have an enormous investment in the plant and equipment necessary to provide scheduled service, and they will oppose any effort they believe will harm the system not only because of this investment but also because they sincerely believe that scheduled air service is an essential requirement. Clearly, the scheduled airlines have the ability and the resources to provide whatever type of air transportation the Congress ordains. We have the aircraft the management, and the marketing organizations to operate an air transportation system based essentially on charter services. But is this the type of system that the Congress wants and the people need? We believe it is not.

In addition to changing the basic nature of the air transportation system, the bills before you would produce a condition of chaos in air transportation that we have not experienced since the 1930's. Individual carriers, already hard-pressed to earn a reasonable return on their invested capital, would encounter serious financial difficulties and some would probably not survive. Those supplemental carriers that are part of large, well-financed conglomerates—and there are several of them—could withstand the pressure better than the smaller independents. But even when they are part of conglomerate corporations—as in the case of the recent collapse of Universal Airlines—there is no guarantee that the parent companies will keep them going forever. Within the scheduled segment of the industry, the present value of individual companies which derive in substantial measure from

their route structures, would be greatly diminished as a result of the freedom to fly any and all routes, domestic and international, that S. 3513 would allow. In effect, these hard-won route certificates would be expropriated and rendered valueless.

These are profound concerns and we owe it to the committee to explain the basis for the judgments we have reached. To do so, it is necessary first to review briefly some air transportation history.

Let us begin with a basic chapter in our air transportation history—the period leading up to the passage of the Civil Aeronautics Act of 1938. As this committee will recall, the act was adopted to deal with a situation which one of the congressional committees recommending the legislation described as chaotic. Of the \$120 million invested in the industry to that date, half had been lost. The excesses of unregulated competition and lack of route security jeopardized the ability to attract private investors and to build the kind of air transport system the public interest demanded.

To correct the situation, Congress established a policy of regulated competition, controlling the entry of air carriers into specified markets as required. The keystone of this regulatory plan is the certificate of public convenience and necessity. The Congress has carefully defined the terms and content of such a certificate, and the conditions upon which it can be issued, so as to insure that it not only will give the holder a measure of security of route, but also will assure that his operations will serve the public interest.

Thus, a certificate for scheduled service prescribes the points to be served, and the service to be rendered. The certificate is issued only after the applicant has proved that the particular service authorized by this certificate is required by the public convenience and necessity, and has also proved that he is fit, willing, and able to perform that service properly and lawfully. Once the certificate for scheduled service is issued, the holder is obligated to provide safe and adequate service, at just and reasonable rates, under honest, economical, and efficient management. No route can be suspended or abandoned without CAB permission.

The statutory requirement that certificates authorizing scheduled service designate the points to be served is, we believe, important to the sound implementation of the regulatory plan. A carrier could scarcely be expected—much less required—to provide adequate service, absent a designation of points. The purpose of requiring the Board to find a need for service would be neglected if the carrier could then fly anywhere. There could be neither security of route, nor regulatory control of competition if carriers were free to pick and choose, start up and abandon, routes at will.

On the other hand, a specification-of-points was not considered important for charter service. Thus, the successor to the Civil Aeronautics Act, the Federal Aviation Act of 1958, provides that a scheduled air carrier may perform charter trips without regard to the points named in its certificate, or the type of service provided therein, under regulations prescribed by the board. That provision echoed a similar provision of the 1938 act.

Why the distinction? The Congress recognized that ability to conduct charter trips, without being rigidly tied by the particular combination of points set forth in the route certificate, was an essential ad-

junct to the route service. Where the customer's requirement is for a planeload service, it frequently embraces a combination of points not wholly on the carrier's routes, perhaps not covered by any combination of certificated routes. Moreover, since the demand for planeload service between any given pair of points is likely to be sporadic, it does not always readily lend itself to advance specification of points in the certificate.

As you can see, the Congress in enacting this regulatory framework deliberately maintained a careful line of distinction between individually ticketed and charter services. Unfortunately, the line has been blurred through the years, even though the basic congressional intent to maintain the distinction has been reiterated time and again. I am submitting for the record and for your careful consideration a summary review of actions taken during the 1962-72 time period which have resulted in that blurring.

The supplemental carriers moved quickly to take advantage of the opportunities that the liberalization of rules provided. In those markets where they chose to operate in strength, the supplemental achieved immense growth in traffic. To maintain a reasonable level of participation, the scheduled carriers found it necessary to offer competitive prices. This has led to a serious erosion of yields and uneconomical operations in certain critical markets. For example, I understand that only two scheduled airlines realized a profit across the Atlantic last year—TWA and El Al. A study made public in January by Burnham & Co. estimated that the transatlantic scheduled carriers lost \$300 million in 1971 and will lose another \$400 million in 1972.

Senator CANNON. Aren't you really here crediting the cause to something that is really not the cause? I think everyone would agree that there were so many excessive seats across the Atlantic, so much excess capacity that this as much as anything else was the loss factor, wouldn't you agree with that?

Mr. TIPTON. I would agree that a part of the cause of the difficulty in the North Atlantic is excess capacity. But the difficulty results from a combination of factors, basically one of really very excessive competition in that field, furnished not only by the scheduled carriers but by foreign and U.S. supplementals. The market was hit by so much competition that no one could make a living out of it. The existence of that competition, as I said, drove the price levels down to the point where the system could not sustain it, even though it has substantially increased in traffic.

Senator CANNON. Then, of course, you had the added factor of discount fares that were actually uneconomic, were not even able to pay their way.

Mr. TIPTON. The fare structure, generally, I think, in the North Atlantic, by reason of the high level of competition there, was depressed to the point where very few, as I pointed out, either supplementals or scheduled carriers, were able to make a reasonable profit on that operation. That operation, of course, being a high volume market, is one on which a carrier should rely for substantial profits in order to sustain the rest of the system.

A copy of the Burnham study is attached as appendix B. The situation was dramatically brought home recently by the president of a traditionally profitable transatlantic carrier, Irish Air Lines—whose

average year-round transatlantic load factor was long the envy of our industry—when he revealed that his carrier was losing money on its North Atlantic operations and in fact was quoted as saying “everyone is losing on the Atlantic.” S. 3513 would worsen the North Atlantic situation and produce the same unfortunate results on all key domestic and international routes.

Let us turn our attention now to the bills before this subcommittee. At first glance, the appropriateness of hearing the bills at one time—two introduced by Senator Inouye by request in September of last year, and one introduced by Senator Moss by request some 7 months later—dealing with widely disparate issues is not evident.

On further thought, however, it seems entirely appropriate. S. 3513 would return us to a regime of virtually unregulated competition, with no security of route, such as existed during the 1930's. That experience surely demonstrated that such a path would be strewn with failing carriers. In that light, S. 2548 and S. 2549 could perhaps be construed as holding out the wistful hope of a salvage operation amidst the destruction, by providing a complete flexibility of merger opportunities to help repair the damage.

I would like to begin the discussion of S. 3513 with some observations on a related issue now before the Civil Aeronautics Board. The Board is currently considering a new regulation that would authorize travel group charters. Under this new arrangement, a charter organizer—who could be a travel agent or anyone else—could solicit the general public to travel on charters in point-to-point air transportation. Such a regulation would further undermine the distinction between charter and individually ticketed service.

At the time the Board first expressed interest in this matter, we commissioned an independent, nationally known firm of consulting economists, the National Economic Research Associates, Inc. (NERA), to conduct an objective, in-depth study of the impact of the proposed rule on the scheduled air system. NERA concluded that the proposed rule could result in a heavy diversion of scheduled service traffic and a significant contraction of the scheduled system. I am attaching copies of NERA's two reports, and a summary of them, as appendix B.

Ironically, in its explanation of the proposed travel group charters, the Board discusses the importance of maintaining the distinction between individually ticketed and charter services. In furtherance of this objective, it relies upon a number of restrictions designed to prevent diversion of regularly ticketed traffic from scheduled service. Such restrictions have not been particularly useful in the past and we do not believe they will be any more effective in the present circumstance.

S. 3513 makes this all academic, however. Like the man in the television commercial who can't believe he ate the whole thing, S. 3513 would change the air transportation system—the whole thing—from an essentially scheduled to an essentially charter system. S. 3513 would accomplish this through the seemingly innocent device of the so-called inclusive tour charter trip.

Section (1) of the bill would add a new definition to the list in section 101 of the act: namely “inclusive tour charter trip.” That definition, which embodies as a key element the undefined terms “charter air transportation,” “charter trip,” and “land arrangements,” is the

launching platform to a return to the free-entry policy that produced the chaos in air transportation in the 1930's. The section would remove restrictions upon inclusive tour charter operations now imposed by part 378 of the Board's regulations. These include the requirements that the land portion of a tour include a minimum of three overnight stops at three different places at least 50 miles apart, and that the charge to the passengers for the tour be not less than 110 percent of any available fare or fares charged by a certificated scheduled carrier or carriers for individually ticketed service covering the same points, including stopover charges.

For the latter, this section would suggest a price standard of "no less than the just and reasonable fare for charter air transportation plus a compensatory charge for land arrangements." As I mentioned, "land arrangements" is undefined and could entail as little as a bus ride from the airport to the city terminal. The transportation would not necessarily be either inclusive, or a tour.

Senator CANNON. Aren't you sort of ignoring that part of this bill that says—this is line 4, page 2—"and subject to such other requirements not inconsistent here with that the Board shall, by regulation, prescribe."

Mr. TIPTON. No; I don't think I am ignoring that. What the bill provides is this wide-open unlimited inclusive tour. Now the Board can limit it all right, but as far as the Congress is concerned, what the Congress is saying here is that the Board has the authority to open the so-called inclusive tour to an unrestricted situation of a kind that I have described here. Now, in commenting on this, I think it is necessary for us, in making our recommendation to you, to assume that the Board could, if it so desired, expand the definition or expand the type of so-called inclusive tour to the point I have suggested. We have no reason to approach it in any other way.

Senator CANNON. Well, do not you think the Board has some responsibility with respect to their regulatory authority to make sure that the type of chaotic condition would not exist that you describe?

Mr. TIPTON. I think they—

Senator CANNON. It seems to me the legislation is directed toward giving the Board authority to do these things, but still they have the regulatory authority and they have the responsibility to see it isn't a dog-eat-dog situation, I think.

Mr. TIPTON. I think that that is possible. But in analyzing and in seeing what the policy laid down is, I think that one has to consider these possibilities in determining whether the legislation goes too far or not.

Senator COOK. Mr. Tipton, I know that under S. 2423 which has been passed and signed by the President, that the CAB has new supervisory controls over these things and can exercise them if they want to. But it seems to me that if you are looking at international carriers, which are losing \$300 or \$400 million a year, what would be wrong with this committee considering a joint resolution of the Congress to set up an international conference of international carriers to sit down and work on this problem? If the chairman doesn't mind, this reminds me of when we had ABC, CBS, and NBC here, and we were talking about violence on television. Obviously they couldn't get together to do something about it, because they would be guilty of anti-

trust action. Obviously, the American carriers can't do it because they would be guilty of antitrust action. But what would be wrong with us suggesting to the Congress, and suggesting to the air carriers throughout the world that we have an international conference, because I don't know how long the carriers other than TWA and El Al are going to be able to sustain the \$300 or \$400 million loss a year.

But it seems to me that if we try to continue to legislate at our end, I am not sure what effect it is going to have on everybody else, other than the fact that if they want to land here, they have to live by what we do. But it seems to me if we could be the initiator, so no one would be guilty of antitrust action, and let an international panel moderate this thing, it would be to your advantage and to the passengers best advantage.

Mr. TIPTON. I think the committee moved in that direction in the passage of the international rate bill, which as you point out, is now in effect. I think the Board has in hand the power to study these rate levels—

Senator COOK. Don't forget, there are a lot of carriers that will think the Board's action is arbitrary. There has never really been an opportunity for somebody to say, "All right, you all sit down and talk, and you won't be guilty of violating the law, because we want you to sit down and talk, and we will be the initiator of it." That is all I am asking.

Mr. TIPTON. That idea never occurred to me, I must say. I shouldn't comment on it offhand. But I think it is something that should be considered. We have gone part way with that, of course, in the approval of IATA discussions. That is the process for international scheduled carriers.

Senator COOK. My only point is that as soon as the CAB arbitrarily rules against a foreign carrier, whatever air facilities they have in that country will arbitrarily do the same thing to our carriers, and it will continue to go back and forth, and you will compound the felony.

Mr. TIPTON. A little further on this, we have intragovernmental machinery for considering these problems established by our bilateral structure so that the governments could consider it. We have the IATA machinery to consider rate levels as well. To the extent to which supplemental carriers will proceed in that direction, I don't know. But we do have at least that partial structure already. I would like very much to comment on the idea in writing after I have had an opportunity to think about it.

Senator COOK. Let me write a letter to you.

Mr. TIPTON. Good.

Senator COOK. The only time any of us go overseas is to go to an air show. It would seem to me if we could facilitate a cooperative movement with other agencies in other countries, we would come closer to solving this.

Mr. TIPTON. I would like to think about it. It is an intriguing idea.

Senator CANNON. I don't want my silence to indicate acquiescence. I don't know that I agree with all that. I think the Board has quite a bit of authority now and I think that a lot of the difficulty has been because of these uneconomic fares that have been put into effect by a lot of people. If I remember correctly, I think—you mentioned TWA

as being profitable on the route. But 46 percent of TWA's traffic over the North Atlantic was on discount fares. So I think that this is a real serious problem was that I think that the Board has a lot of authority in this area and I don't know that I would want to suggest that we ought to let everybody get together for a price fixing arrangement.

Mr. TIPTON. I think that consideration surely should be given to the level of charter rates. We have recommended this in the past, that while the scheduled rates get a very careful examination, no matter how they turn up before regulatory agencies, charter rates have never been examined very carefully, either domestically or internationally. The Board, of course, has the same power over the charter rates as they have over rates on the scheduled airlines.

Senator CANNON. Well, we gave the Board the authority last year.

Mr. TIPTON. You did.

Senator CANNON. To do just that, to suspend those rates and this applies to charters as well as the scheduled carriers, I would hope that they would certainly be willing to use the authority we gave them.

Senator Cook. I don't want to acquiesce in the fact of a price fixing either, because I had in mind all of the problems we face, and they are not just all who charges what and who discounts what. Don't talk to me about price fixing if you are going to tell everybody exactly how they have to do it, where they have to land, how far apart they have to land, and exactly how long somebody has to stay there. Because if that isn't fixing something, it may not be fixing the price, but it is sure fixing what the passenger has to do if he wants to take advantage of it.

Mr. TIPTON. To proceed with my statement, as I said, this could be used by both the business traveler and the vacationer. The net result would be that the inclusive tour charter trip contemplated by S. 3515 would be the functional equivalent of individually ticketed, point-to-point service.

The restrictions of part 378 were imposed by the Board, and endorsed by the Congress, to insure the distinction between individually ticketed and charter services. That, in turn, was done because the Congress created supplemental air carriers for the mission of supplementing the scheduled service. And the scheduled service network was cautiously built upon a concept of controlled entry meeting the requirements of the public convenience and necessity, the cornerstone of all our transportation law.

Section 1 of S. 3513 contemplates a blanket authorization, not only to supplemental airlines, but to all certificated airlines, to compete for individual passengers in any market at any time or place they choose under the guise of "inclusive tour charters." It would substitute a totally free exploitation of any point-to-point market of their selection, domestic or international, for the present system of regulation. It would obviate the need for any more route or merger cases, for an airline's route structure would no longer be an asset.

Senator CANNON. Do you not think the President's policy statement would provide protection there, so that the Board would take the necessary action to be sure that this type or result did not occur?

Mr. TIPTON. I think that one cannot assume that. The Congress has—

Senator CANNON. You can assume they will carry out the President's instructions or we will get a new Board when their appointments come up. He appoints them.

Mr. TIPTON. This legislation, if passed, would be on the books for a long time. For that reason, I think that we would not be in a position to assume that those extremes would not be covered.

For example, we have the example right now where the Board, in order to avoid having point-to-point, individually ticketed service under the guise of an inclusive tour, has laid down a regulation which is designed to distinguish that inclusive tour operation from point-to-point service, by saying that you must have three stops, 50 miles apart, and makes the provisions I described with respect to rates.

Now, their objective in laying down that regulation, which sounds arbitrary, is to make the distinction between charter and scheduled service and between point-to-point service and a tour. And, of course, the Board's regulation has been subject to great criticism as interfering with the traveler, the vacationer, who would like to go to one place rather than three. So that when you provide the opportunity, as this bill does, to go directly to a point-to-point service, then one worries as to whether the Board ultimately will not wind up by doing precisely that, because the statute permits them to.

Senator CANNON. Well, I do not, I must say I do not agree with you in that necessarily, because my own view is that the Board is not going to take action that would destroy the scheduled service.

I think they are charged with that responsibility. And I would expect that the Board would act responsibly. On the other hand, I do think that there are unreasonable restrictions for example, on this ITC three-stop sort of thing. I am impressed by some of the European experiences, which just on the face of it, appear that they have worked out some kind of a reasonable solution.

And I certainly would not—if this were enacted, and I do not know it ever will be, and I do not know I will support it. I do not want to be misunderstood. I am just trying to be the devil's advocate here—I certainly would not want this action, if it were passed, to be interpreted as making it a free-entry type thing that you referred to earlier, because we have seen that experience and we know that that is not good.

But, on the other hand, we cannot just shut our eyes to change and say that we want to preserve the status quo. We want to promote travel and make it easier for the American public and foreigners to travel as well and to help all segments of the air carrier industry participate in this type of activity.

Mr. TIPTON. We have very quickly gotten to the really difficult issue you presented by this legislation in trying to maintain a scheduled service and at the same time, to meet the objectives of low cost travel. That is a hard problem to solve.

I am glad we have hit into this problem right at the outset. We have given a lot of thought to the experience in Europe, because obviously there have been differences in the development of the business in Europe and here. I would like to have Paul Ignatius discuss that issue a little bit, in order that we can see how this issue shapes up.

As far as the scheduled carriers are concerned, we are in the business to move people, we are in business to meet the requirement for low cost

air transportation. And we are surely not afraid of change, because that has been the characteristic of our business from the beginning.

Senator CANNON. We will be glad to hear from you on it. I would just say one further word, that I am glad to hear your comments along that line, because I think that traditionally, we have had a battle between the scheduled carriers and the supplementals. And I think if we could get both of them working together to try to promote air transportation, and realize that they are both going to live in the system of air transportation, what we want to do is get more people traveling by air, make it easier for them to travel by air, and reduce the cost as much as we can, to provide them safe and efficient transportation.

Mr. IGNATIUS. Mr. Chairman, I do not know that I can add very much to what was said yesterday about the European system, by yourself, by Mr. Binder, and Mr. O'Callahan, and others who testified.

Clearly their system is different than ours. It is thinner, ours is more pervasive, it has higher costs, its frequencies are not as great as ours. One of the interesting things that came out yesterday, and data I have support it, is that although there has been this enormous growth in the ITC's, there, nevertheless, has been a gain in scheduled service. Mr. Binder testified that the figure was about a 10-percent gain; our data show between 1965 and 1969, about 10.9-percent gain, so we are substantially in agreement.

We have not had a chance to look at Mr. O'Callahan's data. I have seen the material he presented at Madrid, which was an excellent talk. It was an advocacy kind of presentation, but apparently behind it is an extensive study. I think he said yesterday, he looked at 1,800 city pairs, in connection with this study, and this is material we would want to get and look at.

But as I say, I think one point ought to be made, and I will make it quickly: The question is whether the European experience is relevant experience in terms of the impact of this change on the scheduled system of the United States. I have some questions about how relevant it is for purposes of comparison. I noted Mr. Binder did, also.

So, while I think we ought to study it, because we have actual experience to look at there, I think we have to use good commonsense in determining how exactly the situation would pertain here.

Mr. TIPTON. Somewhat further on this fundamental issue that we keep getting into is the extent to which you can maintain a scheduled system with the inevitable cross-subsidization that goes with it, the cross-subsidization between the revenue from high-volume points which permits you to serve lower ones.

That is the economic character of our system now. And I guess it is not surprising to anyone to find that the scheduled airlines get a little bit up tight when they see the fundamental base of their total system being opened to, if not free entry, very wide entry, with them left to maintain the part of the system that has never been very profitable.

I am reminded of a discussion by Floyd Hall, the president of Eastern, who discussed this not long ago. He pointed out that 20 percent of Eastern routes are consistently profitable, 40 percent run close to break-even, and the remaining 40 percent are consistent losers. So that 80 percent of Eastern's route structure, according to Mr. Hall, is supported by 20 percent of the route structure.

Now Mr. Hall was not complaining about that; he was just pointing out one of the characteristics of the scheduled system. Now that is true internationally and it is true domestically. And, as far as airlines have been concerned, no one has ever objected to that economic base on which our industry sits. It is a fact of life.

And it is an economic balance that is a delicate balance. So we always have to proceed in this direction with great care. And there is a lot of competition in the system, it is measured with some care by the CAB, and the worry we have consistently, is are we going to slip over the edge to the point where there would not be anything on which the total system can sit?

That is an economic problem that the Congress has tackled, and the Board has tackled, and the airlines have tackled; and it is hard.

I think the point we emphasize with you, is let us continue to examine with great care this economic balance, because we do not want to slip into the situation where, in order to support this 90 percent of marginal operations we have to come to the Congress for a subsidy at a later time.

Now, I have heard some considerable criticism of this whole process of cross-subsidization, in which it has been said if a route does not pay for itself, then it should be subsidized by the Government, not by operations on other routes.

Well, that is a very fine theory, but I think the Congress faced with requirements from other quarters, would not accept it with great enthusiasm. Now, we have the same problem, possibly accentuated, in the provision of S. 3513 which deals with mail.

It provides that the supplementals may haul mail. At the present time, they do not have that authority. Again, we are presented with precisely the same problem. The reason they do not have that authority is for the reason that I have already stated, a charter or an operation by supplementals between major points, hauling large volumes, which is the role they would inevitably play, does take out the support from this vast complex of mail handling that goes on all over the country.

Actually, the average weight of a mail shipment is 23 pounds, as contrasted with freight, at 250 pounds, on the average. Now, if the high-volume movements are to be distributed to supplementals and others, then you cut the ground out from under these 5- or 10-pound pouches and packages that arrive out of the smaller cities. It has been that problem that has kept the supplementals from having the right to carry mail up to now.

And we suggest that be continued in the absence of a very careful inquiry as to how the payment for the transportation of mail will be carried on, after that takes place. Because inevitably we would have to change our charges for the smaller packages. The way we do it in the freight system is put on minimums, a \$10 minimum on any package handled.

One would have to inquire carefully as to whether a change to that system would actually net the Government out very well. The House considered this in 1970 and came to the conclusion that they should not change it.

We suggest that this matter be examined very carefully for the reasons we stated.

Now, section 1 is a deliberate switch from controlled to virtually

free entry. And, we urge you to contemplate the lesson of the thirties and reject it.

There is a tendency sometimes to believe that the scheduled service system is a hardy perennial that is bound to survive. Actually, it is far more vulnerable than most people imagine because its pervasiveness, in both its domestic and international aspects, is dependent on profits from a relatively few routes.

As a case in point, I would invite your attention to an article which appeared in the April 26, 1972, issue of the Wall Street Journal. Mr. Floyd Hall, chairman of the board of Eastern Air Lines, was quoted as saying that only about 20 percent of Eastern's routes are profitable on a consistent basis; about 40 percent run close to a breakeven level and the remaining 40 percent are consistent losers.

Thus, 80 percent of the routes are dependent on 20 percent of them, and if the profitability of the 20 percent were jeopardized by free entry or unrestricted competition, most of the cities on the carrier's present route system could not be provided with scheduled service without massive subsidy.

While the scheduled system benefits from competition, it is vulnerable to an undue amount of competition. That is why the Board in its route cases and merger proceedings takes such pains to insure that the level of competition is sufficient without being overburdening.

If inclusive tour charter authority without restrictions is enacted here, and implemented abroad, 50 carriers will be able to operate legally in competition for the transatlantic market. Fifty carriers of all flags in hopelessly excess competition for one individually-ticketed market. Something will have to give.

The same holds true domestically. I can recall the great controversy of a few years back over the entrance of a third nonstop trunkline carrier in the New York-San Francisco market.

Yet, if S. 3513 becomes law, you will immediately give statutory authority to every carrier presently holding a certificate of public convenience and necessity to fly the New York-San Francisco route. And the same holds true for New York-Los Angeles, Boston-Miami, Washington-San Juan, Chicago-Las Vegas, and other attractive city-pairs in the country.

There will no longer be any need to conduct route case hearings because everybody will be able to fly every route. The result is not difficult to perceive: you will see abandoned services, rebates and corner cutting—you will see the destruction of a magnificent system carefully put together over the past 34 years. I say this advisedly, because once you start to eliminate some of the threads which make up the fabric of that system, the entire fabric will ultimately disintegrate.

The consumer has much more at stake than the question of whether the product will be available temporarily at a lower price. The real question in many cities around this country is whether the product will be available at all.

New York and the other metropolitan centers will continue to have an abundance of service—indeed, until the realities of excess competition take hold, an overabundance of service. But, the Salem's and the Syracuse's, the Reno's, and Roanoke's will have to look to dramatically increased subsidy support or, eventually, no scheduled service whatsoever.

Section 1 of S. 3513 would also permit interlocking relationships between air carriers and tour operators or their common control.

In amending the definition of "supplemental air transportation" to incorporate limited inclusive tour charter authority in 1968, the Congress took great pains to assure that supplemental air carriers could not directly or indirectly sell or offer for sale tickets for an inclusive tour to individual member of the general public.

As the full House committee stated, the definition as then revised:

Keeps such carriers out of the business of offering individually-ticketed services in competition with the scheduled carriers.

It also prohibits such carriers from making such sales indirectly through a tour operator authorized by the Board to organize and sell an inclusive tour if such tour operator has any interlocking relationship with the carrier or if both the carrier and the tour operator are under common control by any other person. In short, no supplemental air carrier will be permitted to do indirectly what it is prohibited from doing directly. (House Report No. 1639, 90th Congress, second session.)

The Senate concurred in the House action.

That prohibition makes every bit as much sense today—if the Congress still deplores the excesses of unregulated competition and its companion lack of route security—as it did 4 years ago. And, for that matter, as much good sense as the underlying philosophy of the act passed 34 years ago.

Removal of the prohibition against such interlocking relationships and common controls requires not only the addition of new language as in section 1 of S. 3513, but also a deletion from section 101-34 of the present act.

That is accomplished in section 2 of S. 3513. But this amendment does much more than make a deletion for consistency's sake. It also deletes the heart of the definition of supplemental air transportation—the phrase "to supplement the scheduled service * * *." with all that it implies.

Nor does section 2 stop there. It also eliminates the purposeful limitation on the authority of supplemental carriers to transport mail. There is not time in this hearing to explore this issue in detail—as it was in 1962 and again in 1970—each time with the conclusion that the authority should not be granted. I would simply note in passing that if there is any one thing that would seem to require scheduled air service, it is the mail.

In summary, sections 1 and 2 of S. 3513 would emasculate the entry provisions of the act. Their passage would be equivalent to repealing section 401 and 402 of the act.

Without burdening the record with a lengthy chapter-and-verse recitation, let me simply say that the Congress, the White House, the courts and, yes, even the supplementals, have routinely and resolutely recognized that regularly scheduled, individually-ticketed service remains the backbone of the air industry and the basis of our national leadership in the air. Its continuation would be placed in serious jeopardy if the free entry scheme contemplated by these sections were allowed to happen.

I would like to turn now to still another unwise feature of S. 3513, in this case set forth in section 3. This proposal would grant the CAB sweeping retaliatory powers in the area of landing rights, through an amendment of section 402(f) of the act.

For example, the Board would have the power to suspend, without hearing, the operating permit of a scheduled foreign flag air carrier when that carrier's home government denied landing rights to a U.S. supplemental carrier.

This is not a new notion. It was considered and rejected by the CAB during the later stages of its deliberations over part 213 of its economic regulations. It was considered and rejected by President Nixon's International Air Transportation Policy Review Committee during its deliberations in 1969 and 1970.

Ultimately, it was rejected in the President's Statement of International Air Transportation Policy in June of 1970 when he said:

Intergovernmental agreements covering the operation of charter services should be vigorously sought, distinct, however, from agreements covering scheduled services. In general, there should be no tradeoff as between scheduled service rights and charter service rights. In negotiating charter agreements, the continuation of and the nature of the charter rights of foreign carriers will be at issue.

Again, one is reminded of the maxim that one should not do indirectly what one cannot do directly. That is precisely the effect of section of 3 of S. 3513.

Let me explain why this suggestion has been rejected time and again. At present, landing rights for scheduled service are exchanged between governments on the basis of hard bargaining that seeks to achieve an economic balance.

In these discussions, the United States has negotiated, in general quite ably, but it has been hard pressed to make deals which give the U.S. flag carriers an equivalent value with respect to their foreign flag counterparts.

Such equivalence must continue to be the goal of our negotiators.

Obviously, the goal cannot be achieved if the United States, in any negotiations, is to take on a new and extraneous burden of assuring nonscheduled service rights by making the foreign government's scheduled service rights hostage for them.

The U.S. scheduled carriers' interests would be sacrificed, either initially or—as retaliation begets retaliation, ultimately. But whatever the final balance, the pattern of scheduled service would be eroded, since that pattern would be the target for retaliation. The public would be the loser.

There would also be an ethical issue. If the arrangement proposed in the bill were enacted, we could have many cases where the parties to the bilateral agreement—the United States and other country—lived up to the letter and spirit of the agreement only to have one country, the United States, take punitive action against the other country for failure to agree with the U.S. position on a matter outside the agreement.

This is not to say that the U.S. Government is powerless to deal effectively with a denial of landing rights, be they scheduled or supplemental.

I have already alluded to part 213 of the Board's Economic Regulations, which contemplates retaliation within the scheduled service field—if a foreign government breaches scheduled service landing

rights, we may retaliate. This provision required no change in the law, the Board and the President properly decreed it within the conditioning power of section 402(e) of the act.

The same could be accomplished within the charter service field by Board regulation—there is no need to legislate a retaliatory power, charters for charters.

Indeed, there is no need for a new part 213—such retaliatory measures as are needed are being taken pursuant to part 212, which currently permits complete control over the foreign carrier off-route charter operations.

The Board has effectively used this power in dealing with charter landing rights problems with Ireland, Australia, and Belgium.

Moreover, as further evidence of its interpretation of the scope of its existing regulatory power, the Board is currently considering an amendment of part 212 to give it the same degree of control over foreign carrier on-route charters in retaliatory situations.

In short, to the degree that retaliatory power can and should be exercised, the statutory authority exists today. And, to the degree that section 3 of S. 3513 would expand that power, it is in conflict with a wisely conceived, recently reaffirmed international aviation policy of many years standing.

That brings me to a fifth and final undesirable features of S. 3513; namely, section 4 thereof. This provision contemplates amending section 1102 of the act to direct that no new or amended international agreement relating to air transport rights be concluded by our Government inconsistent with or restricting the retaliatory authority contemplated by the amendment in section 3 of S. 3513.

As you know, scheduled service landing rights are exchanged between the United States and sovereign foreign countries on a bilateral basis, in executive agreements.

This amendment of section 1102 thus seeks to direct the President in one area of the negotiation of such agreements. It would, of course, be necessary to have future bilateral agreements so conditioned, if the true purpose of the amendment of section 3 of S. 3513 is to authorize retaliation in the scheduled service field for a denial of landing rights in the charter service field.

Otherwise, other sovereign governments could not look to international commitments by the United States as being worth the paper they were written on.

Of all the reasons which I gave for rejecting the proposed retaliatory power, the authorization of such retaliatory power across the two classes of services would be a most unwise reversal of policy. Accordingly, section 4 of S. 3513 should be rejected.

The next bill which I should like to discuss with you is S. 2548, the so-called dual certification bill.

At the present time, an air carrier certificated to provide scheduled air transportation is prohibited from obtaining a certificate to engage in supplemental air transportation.

This is a necessary restriction if the distinction between supplemental air carriers and scheduled air carriers is to be maintained. The prohibition has generally been construed as meaning not only that a scheduled carrier cannot secure supplemental authority, but, conversely, that a supplemental carrier cannot secure scheduled authority.

The reciprocal prohibition against dual certification has the additional effect of preventing the Board from approving a common control relationship involving a scheduled and a supplemental air carrier.

This too is consistent with the original intent of Congress, reaffirmed through the years by the Congress, the CAB, and the courts, to establish the supplementals as a new class of carrier specializing in a type of service which the Congress thought should be made available and sold, in the public interest.

It was the belief of Congress that if the scheduled airlines quickly digested the supplementals via the merger route, this objective would not be achieved. I know of no reason to conclude that this congressional reasoning is no longer valid. There is obviously room for economically healthy, supplemental service by specialists in the expanding charter field.

This brings me to the last of the bills being considered by this committee today, S. 2549. This bill would delete the so-called second proviso from section 408(b) of the act.

That proviso requires the Board to determine, in considering air-surface control relationships, that a surface carrier applicant will use the aircraft involved to public advantage in its operation and will not restrain competition.

I understand that the proponents argue that this provision was born in the infant days of the airline industry and was designed to prevent its domination or control by other, more established modes of transportation. The proponents suggest that the provision is now outmoded. We disagree.

First of all, CAB decisions in the last 2 years have indicated that the Board does not find the second proviso of section 408(b) to be an impossible bar to surface-air control relationships. In Transamerica Corp., and others. Docket 21413, order 70-9-54, September 19, 1970, the Board held that section 408(b) of the act was not technically applicable to and constituted no bar to the acquisition of control by Transamerica Corp. of Lyon Van & Storage Co. and its subsidiaries.

In TWA. acquisition of Sun Line. docket 22136, order 71-1-4, January 4, 1971, the Board in effect reaffirmed the view that the second proviso was not an absolute bar where an air carrier is the acquiring entity.

However, one of the several conditions imposed upon that approval required that Sun Line not maintain regular scheduled liner service between any two points on TWA's route system if TWA was then authorized to carry passengers on scheduled service between such points.

That condition imposed by the Board in the TWA case points to the real basis for the second proviso of section 408(b), and its continuing wisdom. I believe the reasoning was most aptly expressed by Examiner Park of the Board in his initial decision in Overseas National Airways, Inc., Application for Approval for Passenger Cruise Vessel Operations, Docket 21047, served April 22, 1970.

I am submitting excerpts from that initial decision for the record here. Appendix C: I should note that the case did not go to the Board decision, since ONA sold its interest in the operation to the Cunard Steamship Co. Ltd. and the Board dismissed the application without prejudice, Order 71-1-91, January 19, 1971.

Examiner Park based his decision on the plain congressional policy embodied in section 408(a)5 and did not reach or consider the question of whether the second proviso of section 408(b) might operate as a legal barrier to approval of the proposed transaction.

But the underlying philosophy of the two provisions is the same. The Congress saw grave problems in the unified control of certain types of enterprises which may have conflicting interests.

Essentially, a surface-air control relationship could present a substantial danger of conflicts of interest which might adversely affect air transportation and thwart its development.

The second proviso of section 408(b) represents an extra admonition against such conflicting interests. That admonition, which does not constitute an absolute bar, remains sound today.

Therefore, whether or not you consider our industry to be of such maturity and financial health at the present time to withstand digestion by surface modes, the proviso should stand.

I would like now to summarize the testimony I have presented. It seems to me that the members of this subcommittee and other policymakers in the aviation field, as well as responsible officials of the airline industry, have arrived at a crossroads.

What is involved is the type of air transportation system the United States needs for the future. It seems to me that the United States, more than most other countries and indeed more than the continent of Europe, has a particular need for an extensive network of scheduled air transportation.

This is true not only because of the country's size, but also because of our travel and commercial needs.

The general lack of passenger rail service in the United States thrusts the domestic scheduled airlines into an intercity common-carrier role much more important than the role now played by their counterparts in Europe.

A long bus ride or a use of the scheduled airlines are the only practical common carrier alternatives for reaching most U.S. cities.

Commercial patterns have developed requiring an extensive scheduled network for the movement of air cargo. Checks must be cleared by banks at widely separated points.

Most intercity letter mail now moves by air. Airfreight is used to ship parts needed to keep production lines moving. New consumer demands for a greater variety of colors and models of various merchandise create a reorder-delivery cycle that can be met only by air.

The situation in Europe, to which the proponents point as an example of the workability of their revolutionary inclusive tour concept for this country is markedly different.

The citizens of Europe have long been accustomed to pooled air services, producing schedules which would be considered inadequate and unresponsive to the public convenience and necessity in this country.

Their fares in comparable markets, on the average, are about 50 percent higher while the level of service is strikingly lower, according to a CAB study.

Whether it be the cause or the effect, passenger miles per capita in Europe are slightly over 7 percent of that measure in the United States.

And, intra-European air traffic is only one-seventh of U.S. domestic air traffic, although the gross national product per capita is 43 percent of that in the United States. Data comparing European schedules and fares with those in the United States are included in appendix D.

The passage of the bills we are considering today would inevitably lead to a contraction of the scheduled service system. It is possible, because of the free entry provisions, that the system would not survive.

At the very least, the scheduled carriers would have to seek relief from some of the obligations which the act presently imposes upon them for public service.

Many routes would have to be abandoned or supported by subsidy. And the financial health of the industry would be placed in jeopardy as a result of the excessive competition for the small number of profitable routes that support the scheduled system as a whole.

This Nation has been where these proposals would take us. It was a troubled chapter in our air transportation history. Should we return, it will be trouble again. It was a period marked by inadequate and unreliable air transportation, unresponsive to the requirements of the public convenience and necessity.

Should we return, it will be inadequate, unreliable, and unresponsive again. We ask you, therefore, to look beneath the superficial attractiveness of the proposals offered in these bills and contemplate what is really at stake—a fundamental change in a transportation system that has served the Nation with distinction and great effectiveness.

Senator CANNON. Now, in attacking the liberalization of the ITC rules, as I mentioned earlier, you assume no regulations will be made, thus resulting in point-to-point individually ticketed service. I am sure the Board or the Congress could not permit complete deregulation.

I want to ask you this: If the liberalization of the ITC were approved, either by the Board or legislatively, what would you want it regulated, what restrictions would you suggest should be imposed to keep it separate and apart from point-to-point individually-ticketed service?

Mr. TIPTON. I would suggest Mr. Landry respond to that.

Mr. LANDRY. Senator, I think a great deal of our position rests on the statutory guidance which the Congress would be delivering to the CAB in the form of this bill, and as we mentioned in the prepared testimony, that guidance would indicate that the rate restrictions which presently distinguish the two types of service, and the individual point-to-point restriction that is presently there would be taken out.

What sort of new restraints, perhaps alleged to be arbitrary restraints, could be induced, I think, would demand some thought from our carriers. The problem as we see this, is that in point of fact, the statute itself would then provide for all certificated air carriers entry into point-to-point markets. It would provide for full entry into the individually ticketed business in those markets. Whether there are new and rather ingenious new restrictions that could prevent a full exploitation of those markets, I do not know, we have not faced that at the present time.

Senator CANNON. Have you given any thought to, if this type of legislation were enacted, as to what types of restrictions should be kept on such as advance purchase, minimum lengths of stay, provisions

that a group must travel together, anything of this sort that would distinguish charter service from the regularly scheduled service?

Mr. TIPTON. Mr. Ignatius.

Mr. IGNATIUS. I think we and our carriers, this committee, the Board, the DOT, and others, Mr. Chairman, have got to give further thought to how to deal with the problems that could arise and which we have also mentioned in our statement. Your point was very well taken, I think, that the Board could be expected to impose certain restrictions in the implementation of this order to avoid the consequences that certainly they would not anticipate, and you would not want, none of us would.

But, with the blanket authorization that this bill, as drafted, would provide, it would seem to me it would be unwise to enact it at this time without some better feel as to what we have called the functional equivalent of point-to-point service which this ITC would, in fact, do to the scheduled system.

We can foresee serious problems, and we have tried to indicate what they are. I think all of us need to look at this in more detail before we can propose the restrictions that you ask for. On the one hand, it was pointed out yesterday that you want to avoid restrictions in order to make this more generally available. So that following that line—

Senator CANNON. I think the point is really excessive restrictions, to try to get a better balance. We have heard DOT, the Board, the State Department, call for a better balance in the service available. That, I think is what we are trying to get at.

Mr. IGNATIUS. I do not at this point, know how you would circumscribe this in such a way as to make the advantages of the ITC, as the proponents of it describe them, available on the one hand, without doing the kind of damage that we point out, on the other.

Until such time as we can see how that could be accomplished, I would not want to see this proposal enacted or these steps taken.

Senator CANNON. It sounds like we are getting into a chicken-and-egg situation, as to which comes first, the chicken or the egg.

I think if the Board has the authority, it would be up to them to work out the type of balance and work out the restrictive regulations to see that both sides were properly taken care of, or appropriately protected.

Let me ask you this: Are you opposed to any change in balance between the scheduled and nonscheduled carriers?

Mr. IGNATIUS. In balance, do you mean share of market?

Senator CANNON. Well, either in share—yes, in share of markets basically.

Mr. IGNATIUS. I think that there is an increasing amount of the revenue of the scheduled carriers that is deriving first from charter trips on the one hand, and promotional fares on the other.

We have pointed this out. So there is taking place, I think, some change right now within the scheduled field. So far as the supplemental carriers are concerned, their growth in those markets that they have gone into has been substantial. So that, if by balance, we mean a balancing of more group travel in the form of charters, as opposed to individually ticketed travel; and more special promotional fares, as opposed to regular fares, I think those processes are going on now.

Senator CANNON. Well, I think they are, to a degree. I think I noticed that one of the carriers had an increase of some 57 percent in

charter business, one of the scheduled carriers. But I was referring really to the problem of the availability of the ITC type operation vis-a-vis, the scheduled service. Now, it may be that we have got excessive scheduled service in some of these uneconomic locations.

I personally was a great believer in the Board's "Use it or lose it" rule. Although I realize from a political standpoint, that could not be followed out to a very extensive degree. But I do think that we have got to seriously look at this overall balance between the low-cost, group-type travel vis-a-vis, the regularly scheduled service.

Mr. IGNATIUS. Well, I think we need to look at it also. And I am sure the individual carriers within the scheduled air transportation industry are in fact, looking very carefully at all of these things today.

Senator CANNON. Do you have any suggestions to get at this problem of overscheduling of service that we have in existence today, the operating of excessive seat capacity on the scheduled routes that the scheduled carriers have?

Mr. IGNATIUS. Well, each individual carrier first needs to look at its own capacity in order to avoid bringing in undue additional capacity.

Secondly, I think, there was permission granted a year or so ago, for the carriers to look at their flights. Some 700 flights out of roughly 14,000 daily, I think, were terminated in order to bring supply and demand into better balance.

Senator CANNON. And that helped the profitability picture, did it not?

Mr. IGNATIUS. It did, it improved profitability by improving load factors.

Senator CANNON. Of course, I do not hold the board blameless in this situation, either. That South Pacific thing was a disaster, I think, for the additional capacity that was permitted to go in there by the Board, and then when the carriers tried to compete with each other, and put on a lot of additional runs as well—and you have much that same situation on the North Atlantic—this has to result in an unprofitable situation for the carriers.

It gets back to this 20 percent of the profitable routes subsidizing all of the rest of it, but the carriers better look to put their own house in order before they complain about that situation.

Mr. IGNATIUS. That is what concerns us about the ITC authority as proposed in this bill, Mr. Chairman.

We can foresee a situation where you would have a proliferation of Hawaiian and North Atlantic runs and that concerns us. We have seen the effects on the North Atlantic, and we can foresee similar effects in the event this kind of authority were granted as described here, and that concerns us.

Senator CANNON. Counsel has a question.

Mr. GINTHER. Mr. Ignatius, yesterday, the DOT suggested somewhat of a middle ground, perhaps, in which the CAB would authorize liberalized ITC's in certain experimental markets to test the impact on scheduled service and test the public acceptance. Would the scheduled airlines support that kind of experiment?

Mr. IGNATIUS. I listened to that suggestion of Mr. Binder, with interest, yesterday; and I would respond as follows: The Board has, as you know, under consideration, a proposed travel group charter

authorization. And that has been described in many quarters as an experiment. I think it is important in something that is an operating system, that requires careful scheduling and planning, and so forth, that you not do too much experimenting at one time.

And, also, if the travel group charter rule is put into effect, and an experiment with it is conducted, I would think one would learn some of the same kinds of things with respect to impact on scheduled service that one would learn from this.

So that, if that goes into effect, and if it is going to be used as an experiment, I would think one, at the same time, would not want to experiment with the ITC as well. I just think that is too much experimentation going on with the system while it is operating and trying to serve the public.

Mr. GINTHER. Is it your position the scheduled airlines do support the experimentation, if you want to call it that, with the travel group charter concept?

Mr. IGNATIUS. That is not my position. The scheduled airlines, as you know, have opposed the travel group charter in written material and in oral argument presented on April 27. And their reason for doing it was not unlike the reasons advanced here this morning with respect to ITC's. The concern was diversion from scheduled service to charter service. The airlines reached these conclusions, a study was commissioned by an economic research group that reached similar conclusions with respect to substantial diversion of traffic, either from scheduled to charter, or low-cost promotional fares that would erode yield.

So, we have opposed the travel group charter proposal as described by the CAB.

Mr. GINTHER. Would it be fair to say then, the position of the scheduled airlines is opposed to any experimentation whatsoever, in redressing this balance between charter type transportation and scheduled?

Mr. IGNATIUS. I would not want to say that. That would sound as though these carriers were closeminded and did not want to consider new ideas and I do not think that is the case, Mr. Ginther.

I have no authority this morning to answer either yes or no to the question, would they be willing to undertake an experiment, because quite frankly, we have not asked them.

But I would not want to give the impression, and I am sure I speak for all of the companies when I say this, that they are opposed to looking at new ideas. This industry was born on new ideas and will continue on new ones and I would hope there is no closemindedness on it. We certainly can look at the question of an experiment with either the travel group charter or the ITC.

We would want to make sure, were we to participate in such an experiment, that it was designed so as not to have a significant adverse impact on scheduled service. If we participated in the design of it, and saw that this consequence was not likely to ensue, perhaps the carriers would be for it.

But I have not solicited their views and I cannot tell you this morning we either would or would not want to participate in such an experiment.

Senator CANNON. Thank you very much, gentlemen, we appreciate it.

Mr. TIPTON. Thank you, Mr. Chairman.

(The appendixes follow.)

APPENDIX A

INDIVIDUALLY-TICKETED AND CHARTER SERVICES—A SUMMARY OF THE REGULATORY/LEGISLATIVE HISTORY, 1962-72

In 1962 the Congress adopted Public Law 87-528 in which, for the first time, it authorized the Civil Aeronautics Board to certificate supplemental air carriers as a part of the air transport system of the United States. This action followed a period of time, extending from the close of World War II, in which such carriers, then known as "non-scheds" had been operating air services without any—or with inadequate—regulation by the Board. Prior to the 1962 enactment, the Board had attempted to control the activities of the "non-scheds" through the exemption process, but this attempted method of control was found to be improper by the courts of the United States. Moreover, during this period of inadequate regulation, many of the "non-scheds" were found to be acting in violation of limitations placed on their operations by the Board, and some of them were found inadequate in terms of the safety and welfare of the passengers which used their services.

The 1962 legislation was designed to create a proper place for the supplemental carriers. It said that these carriers were to be limited to the performance of charter trips, and, moreover, only such charter trips as supplemented the scheduled services. Except for a short transitional period, which has long since expired, these carriers were to be forever barred from engaging in individually-ticketed services and from soliciting—either directly or indirectly—individual members of the general public for travel on charters.

When the Congress thus defined the role of the supplementals, the vast majority of the conferees believed that the word "charter" had a specific meaning which had been defined by prior judicial interpretations of that word and that it was settling the matter for the future. That has not proved to be the case. Under pressure from the supplemental carriers, the Board, in the last decade, has repeatedly redefined—or attempted to redefine—the meaning of the word "charter." With each step along this road, the Board has gradually eroded the distinction between scheduled service and charter service. The specifics of this erosion follow.

While the 1962 legislation was pending in the Congress, the first proceeding with regard to certification of supplemental carriers was also pending before the Civil Aeronautics Board. That proceeding was the *Transatlantic Charter Investigation*. After hearings in that case, and also after adoption of Public Law 87-528, Examiner James Keith of the Civil Aeronautics Board determined that certain of the supplemental carriers should be authorized to provide charter service in the transatlantic market. By his decision, Examiner Keith also affirmed the traditional definition of charter; the hiring of the entire capacity of an aircraft on a time, mileage, or trip basis by a specific person or group of persons who were distinguishable from the general public. When this case reached the Board, the first breach in the definition of charter was accomplished. The Board determined to allow "split charters", an arrangement under which two charter groups could be carried on any one aircraft.¹

This particular erosion did not stop there. Subsequently, in 1966, the scope of "split charters" was expanded to permit three groups to be transported aboard a single aircraft. Finally, in 1971, the Board abolished this type of restriction altogether. Under its present rules a supplemental carrier may carry any number of groups aboard a single aircraft, provided only that each group must contract for a minimum of 40 seats.²

In 1966 the limitations on the charter activity of the supplemental carriers were further diluted by decisions of the Board to permit the supplemental car-

¹ *Transatlantic Charter Investigation*, 40 C.A.B. 233, 252 (1963).

² CAB Regulation ER-659, Amendment No. 9 to Part 208, adopted January 29, 1971.

riers to engage in inclusive tour charters ("ITC's").³ These decisions were appealed to the courts, with mixed results. The Second Circuit, in finding the authorization of international ITC authority illegal, said: "To permit the selling of individual tickets to the general public in direct competition with the regularly scheduled airlines, regardless of whether such selling is done through the medium of a travel agent who has first 'chartered' the plane, does violate basic policies of the Act."⁴ The D.C. Circuit, on the other hand, upheld the Board's award of domestic ITC authority.⁵

In light of these court decisions, the Congress was asked again to consider the problem of the supplementals' authority and, in 1968, it adopted Public Law 90-514. Under that law the Board was permitted to authorize supplemental carriers, and scheduled carriers as well, to engage in ITC charters providing such charters were limited by very specific regulations such as those the Board had theretofore adopted in Part 378 of its Economic Regulations. Indeed, the Board was admonished to report to the appropriate committees of Congress any proposals it might have to change these restrictions—restrictions which would be lifted by the terms of S. 3513.

When the Board determined to permit ITC's, it decided that they should be on a plane-load basis and thus split ITC charters were not to be permitted. This stricture also has since been abandoned by the Board. In 1970, the Board proposed to amend the regulations so as to permit split charters in ITC's when the entire aircraft is used for this type of charter.⁶ Subsequently, in 1971, the Board went even further and now allows all types of charters to be mixed together as "splits" on a single aircraft.⁷

Originally, the Board accepted the concept that members of the chartering group must move together as a unit in both directions.⁸ Thus, intermingling of passengers was not to be permitted for the very good reason that intermingling would give charter participants a measure of the individual freedom enjoyed by passengers on scheduled services and thus blur the intended distinction between the two types of service. But last year this rule was also changed so that intermingling is now permitted for charter programs of up to three roundtrips.

APPENDIX B

A SUMMARY OF THE NERA STUDY

In December 1971, the Civil Aeronautics Board issued a proposed new economic regulation, looking to the establishment of a "travel group charter" rule. The groups contemplated would be drawn from the general public, without regard to the affinity requirement historically attached to pro rata charters.

The scheduled airline industry had recognized that this and an earlier proposal upon which it was based constituted a sharp departure from historic air transport policy in this country. Accordingly, the Air Transport Association of America commissioned an independent, nationally known firm of consulting economists, the National Economic Research Associates, Inc. (NERA), to conduct an objective, in-depth study of the impact of the proposed rules on today's pervasive system of scheduled air service.

The first of two NERA reports concentrated on the impact of such a concept in the transatlantic market. NERA therein concluded that the net result would be a reduction in total transatlantic traffic on scheduled service by approximately 51 per cent. Noting that the carriers could not support the present aggregate transatlantic scheduled system if such switching occurred, NERA foresaw the greatest and most immediate effect upon largely tourist-oriented markets and upon some lighter markets which the heavy routes help support. The end result would be the loss of United States flag service in many markets and a reduction of service in the remainder.

³ This was accomplished for ITC's within the 50 states and in all geographic areas of the world except the Atlantic by the Board's decisions in the *Supplemental Air Service Proceedings*, Orders E-23350 and E-24237, dated March 11, 1966; and for ITC's in the transatlantic area by the Board's decision in the *Reopened Transatlantic Charter Investigation (All-Expense Tour Phase)*, Order E-24240, also dated March 11, 1966.

⁴ *Pan American World Airways, Inc. v. CAB*, 380 F. 2d 770, 779 (1967), affirmed by the Supreme Court, 391 U.S. 461 (1968).

⁵ *American Airlines, Inc. v. CAB*, 365 F. 2d 939 (1966).

⁶ EDR-183, PSDR-24, dated May 8, 1970.

⁷ CAB Regulation ER-659, *supra*.

⁸ Section 208.32 (f), attached to decision in the *Supplemental Air Service Proceeding*, *supra*.

In a new study, a "Report on the Impact of Proposed Travel Group Charters on Scheduled Service in the U.S. Domestic Air Passenger Market," presented to the Civil Aeronautics Board in late February 1972, NERA concluded that the introduction of travel group charters domestically would result in significant diversion of air passengers to either charter flights or new low-fare excursion classes introduced by scheduled carriers due to competitive necessity.

Such an impact may place a significant burden on the scheduled system and its profitability, particularly in view of the historically marginal earnings of the scheduled airlines. These revenue losses of the magnitude envisioned could lead to a general contraction of the scheduled network and the actual withdrawal of scheduled service, in some cases eliminating presently served markets, and could lead to the elimination of one or more trunk airlines.

In reaching these conclusions, NERA found:

1. The introduction of a travel group charter rule in the U.S. domestic market would effectively enable charter service to be offered to the general public in point-to-point service. Certain inflexibilities might partially differentiate travel group charter service from scheduled service, and the choice between the two services would then depend upon whether price incentives of charter service outweigh flexibilities inherent in scheduled service. Noting that scheduled service flexibility also reflects certain limitations, NERA concluded that these price incentives would in fact prove to be the dominant factor in many markets.

2. The markets most susceptible to travel group charter operations would be markets with a heavy proportion of vacation travelers—i.e., to and from points in the South (especially Florida), the Southwest including southern California, the Caribbean, Mexico and Hawaii. Further, long-haul markets such as the transcontinental market and new markets in which charter operators could develop their own ground accommodation facilities represent apparent targets. Foreseeing a significant growth in charter traffic in these types of markets under a travel group charter program, NERA concluded that the impact of this growth on general scheduled service would be twofold. First, the transfer of traffic between points A and B from scheduled service to travel group charters. Second, the diversion of traffic moving on scheduled service between points A and B to point C, at least in some years. Thus, the adoption of travel group charters would represent a large-scale introduction of competition—both as to number of competitors and as to price—into certain markets, primarily those involving significant quantities of vacation travel. NERA pointed out one group of competitors, the supplemental carriers, would be free to choose in which markets it wished to compete and in which it did not care to operate, while the scheduled carriers' freedom of choice as to markets to serve or not to serve would be far more constrained—not only by route awards but also by present restrictions on their off-route charter frequencies.

3. Looking to the potential economic impact of travel group charters, NERA noted that the percentage breakdown of air passengers by trip purposes—for three major markets—New York, Detroit and Los Angeles, varied only slightly from region to region. Using a detailed survey for New York (the largest air hub in the United States) as representative of other domestic markets to travel group charter competition. Among the most vulnerable New York markets were Acapulco, Bermuda, Denver, Honolulu, Jacksonville, Las Vegas, Los Angeles, Miami, New Orleans, Phoenix, San Diego, San Francisco, San Juan, Tampa, Tucson and West Palm Beach. Similar analyses demonstrated the vulnerability of markets between Miami on the one hand, and Boston, Chicago, Philadelphia and Washington on the other hand; San Juan and Chicago, Miami and Philadelphia. Since it can be assumed that charters will focus their activities on vacation markets where absolute fare differentials have a significant impact, these long-haul markets—in which the share of passengers with pleasure as purpose of travel ranges from 33 to 69 per cent—are clearly the most vulnerable markets.

4. On the basis of the identified category of city-pair markets on which travel group charter operations would be likely to focus, and using experienced passenger mile yields for charter operations as the floor for the new type of operations, NERA noted that charter fares would be only 40 to 50 per cent of the current fares on scheduled service. The aggregate direct impact in dollars of these reduced fares in all domestic markets is estimated at a minimum of \$429 million (and a maximum of over \$1 billion). To place these figures in perspective, the losses before taxes for all domestic certificated route air carriers in 1970—including freight, mail and charter activities—were \$226 million. Indeed, the

largest net income before taxes for these carriers, achieved in 1966, was \$444 million.

5. Turning specifically to the U.S.-Caribbean market, excluding U.S.-Puerto Rico and U.S.-Virgin Islands, NERA estimated that at least 75 per cent of all travel to the Caribbean was for non-business purposes. The net direct revenue diversion here from the scheduled carriers as a result of the group charter rule would range from \$6 million to \$25 million per year. Conservative assumptions with regard to the U.S.-Puerto Rico market portend additional direct revenue diversion impact of some \$10 million to \$18 million.

6. The impact of the travel group charter concept would vary according to the response of the scheduled carriers. With no competitive response, scheduled carriers heavily committed to major tourist markets would experience significant diversion. On the other hand, should the scheduled carriers respond by offering competitively priced promotional fares on scheduled service (as in the transatlantic market where all competitors are reportedly suffering losses), revenues from newly generated traffic would have to offset revenues lost through diversion to the lower fare class. The existence of the necessary margin would be most doubtful and the resulting profit squeeze would be further intensified by the diversion of other traffic to travel group charters. Similarly, an increase in scheduled air carrier charter activities would result in heavy pressure on profits in vacation markets and also might see charter service replacing scheduled service in some instances.

7. The profitability of the present vacation air markets would be reduced by the introduction of the travel group charter rule. In some cases, these routes contribute significantly to the overall profitability of scheduled carriers—profits which in turn help support service to less dense traffic centers. NERA therefore believes that the most significant impact of travel group charters in specific markets might be a general contraction of the scheduled network. This contraction could take two forms—withdrawal of scheduled service, in some cases eliminating presently served markets, and/or eliminating one or more trunk airlines, so as to improve the profit potential of the survivors.

8. Noting that the Board's economic regulation of the air passenger market was designed, in part, to extend air service to communities for other than economic reasons, NERA reasons that the present scheduled system involves a significant amount of route cross-subsidization. These cross-subsidization payments, which may be necessary to support a desired scheduled network, are made by the air passengers on more profitable routes. Elimination of these payments by the introduction of travel group charters would require *either* full payment by passengers on less profitable routes (and elimination of service where revenues cannot meet costs for any fare level) or *direct* government subsidy for these routes. In this light, NERA ultimately concludes that the policy maker must recognize the consequence of his decision with regard to the travel group charter concept. The policy maker's problem is, in short, really one of balancing discordant objectives.

APPENDIX C

(Excerpt from Initial Decision of Examiner Robert L. Park, Overseas National Airways, CAB Docket 21047)

INTRODUCTION

Overseas National Airways, Inc. (ONA), a supplemental air carrier authorized to engage in supplemental air transportation domestically and in the Caribbean and transatlantic markets, plans to create a wholly-owned foreign subsidiary company (Subsidiary) which, in turn, will own and operate a passenger cruise vessel. By Order 69-9-133, September 24, 1969, the Board set down for hearing in this proceeding ONA's application seeking a disclaimer of jurisdiction over the proposed transaction or, alternatively, Board approval to the extent required under Section 408 of the Act.

Eastern Air Lines, Inc. (Eastern) and Pan American World Airways, Inc. (Pan American) were granted leave to intervene, and these carriers, together with the applicant and the Bureau of Operating Rights, took part in the public

hearing. Briefs to the examiner have been filed and the matters at issue are ripe for decision.¹

Section 408 of the Act deals with control relationships between air carriers and other common carriers which are unlawful, absent Board approval, and it does not literally cover the present situation in which an air carrier forms a subsidiary corporation that will become a common carrier by water. Jurisdiction here must stem, if at all, from Section 408(a) (5), which makes it unlawful without Board approval "For any air carrier or . . . any other common carrier . . . or any other person to acquire control of any air carrier in any manner whatsoever. . . ."

The standards for decision are contained in Section 408(b) and require that the Board shall approve an otherwise prohibited relationship unless it determines, after hearing, that said relationship "will not be consistent with the public interest or that the conditions of this section will not be fulfilled * * *." One of the conditions referred to is contained in the second proviso of Section 408(b), which states:

"That if the applicant is a carrier other than an air carrier, or a person controlled by a carrier other than an air carrier or affiliated therewith within the meaning of section 5 (8) of the Interstate Commerce Act, as amended, such applicant shall for the purposes of this section be considered an air carrier and the Board shall not enter such an order of approval unless it finds that the transaction proposed will promote the public interest by enabling such carrier other than an air carrier to use aircraft to public advantage in its operation and will not restrain competition."

THE PROPOSED TRANSACTION

ONA's cruise ship, of some 15,000 gross tons, is being constructed abroad by a Dutch company for delivery in April 1971 at a cost of about \$12.4 million. ONA has an option to purchase a second similar vessel exercisable by June 15, 1970.

The ship is of the modern luxury type designed to transport some 700 passengers in 350 cabins and it will meet the highest standards of safety established by U.S. authorities. Since, however, the vessel is not being built in the United States it cannot be registered in this country. The present plan is for the Subsidiary to be formed as a corporation of Bermuda, Panama, the Netherlands Antilles or some other favorable foreign jurisdiction and the vessel to obtain a foreign registry accordingly. The interlocking relationships that will exist between Subsidiary and ONA are presently uncertain, although it is anticipated that G. F. Steedman Hinckley, now president of ONA, will head both corporations. ONA is not sure at this point who will operate and manage the cruise vessel itself; the air carrier, however, expects to retain control of Subsidiary and is exploring the possibility of making a portion of the ownership available to the company that would perform the manager-ship operator functions. Initially at least, Subsidiary will have no assets other than the ship and a minimum amount of operating capital.

The operating plans for the future also are not definitive and are still being developed upon the assumption that Subsidiary will be subject to no geographical or operational restrictions. For illustrative purposes, however, ONA submitted an estimate of financial results for the future year predicated upon the operation of 47 seven-day cruises, 19 in the Caribbean during the winter months and 28 in the Mediterranean during the summer, and 2 fourteen-day positioning cruises (Caribbean to Mediterranean and return). On the basis of a 75% load factor for the seven-day cruises ONA expects 525 passengers per week or a total of 25,725 for the first year. At a daily average expenditure of \$45 per passenger, gross annual revenues for the cruise vessel would total \$8,457,750. Allowance of \$7,569,909 for the costs of vessel operation, commissions, administrative and marketing expenses, etc., leaves a net operating profit of \$887,841.

¹ Subsequent to the filing of briefs to the examiner ONA filed a motion to strike the portion of Pan American's brief (pp. 6-7) under the caption "This Application Should Not Be Granted in View of the Serious Questions Concerning ONA's Fitness" which makes reference to an enforcement proceeding involving ONA (Docket 21840) and the Transatlantic Supplemental Renewal Case (Docket 20569). The motion is denied. Pan American is really seeking deferral of decision herein until after decision in the two referenced proceedings, a request which can be evaluated on the present record and one which the examiner finds to be unwarranted. In any event, the issue is moot in the light of the disposition of the application made herein.

Of particular interest are some of the assumptions underlying the forecasts. ONA estimates that 80% of the 525 weekly passengers would be booked in connection with air/sea programs and the balance of 20% would be made up of land-based passengers embarking at various ports of call. ONA would hope to provide one charter for each seven-day cruise (37% of the air/sea passengers); the balance would travel to and from the ship by other airlines. The passengers supplied directly by ONA charters would account for \$1,345,000 in annual revenues to ONA and, after allowance of \$1,225,000 in expenditures, for an operating profit of \$120,000.

The Caribbean cruises probably would operate out of Miami or San Juan, most likely the latter. In the case of the Mediterranean, the present thought is to utilize the vessel to transport passengers from countries where ONA's aircraft are permitted to land to countries that are accessible by sea but because of restrictions on landing rights cannot be reached by air. Subsidiary plans to employ foreign crews because of the cost factor and their popularity with American travelers. Rates and fares for such a cruise vessel are not regulated by any governmental authority. However, the stated policy of Subsidiary would be to apply its rate scheduled on a non-discriminatory "first come, first served" basis without any preference for particular individuals and groups or for ONA, the parent company.

Both the Caribbean and the Mediterranean have been prime generators of business for ONA. In 1968 ONA had 26,372 passengers on its Caribbean air charters and serving the Mediterranean accounted for 16,433 passengers. For the first eleven months of 1969 the total for the Caribbean remained about the same (25,332) while Mediterranean charter passengers in the same period increased to 41,722.

A number of air/sea tours are now available through the combined efforts of the scheduled air carriers and the independent shipping companies. Eastern furnished brochures concerning six Caribbean air/sea tours it is presently promoting, five out of Miami and one out of San Juan. Similarly, Pan American has for 1969-1970 air/sea programs not only for the Caribbean but also the Mediterranean and virtually all other areas of the world in which it operates. In the case of both Eastern and Pan American, the arrangements between the air carriers and the shipping companies are informal and the air carriers receive their published air fares, less commissions in appropriate cases.

Both Eastern and Pan American attempted to measure potential diversion from them in the Caribbean market in the event ONA were to carry out the tentative plans for the cruise ship heretofore outlined. Assuming seven-day cruises out of Miami, the use of one cruise ship by ONA, and one ONA air charter for each cruise, Eastern set its potential revenue loss in the future year at \$324,376. Unlike Eastern, which made no allowance for newly generated traffic as the result of the cruise vessel, Pan American assumed that 50% of the air/sea passengers carried by ONA and 25% of those transported by other carriers would be newly generated. On this basis, and with other assumptions paralleling those made by ONA, Pan American estimated total passenger revenue diversion from scheduled air carriers for the first year of operations at \$142,800 (\$57,120, or 40%, from Pan American).

* * * * *

CONCLUSIONS

As interpreted by the Board, Section 408(a) (5) gives it jurisdiction over the transaction under consideration. The plain Congressional policy embodied in Section 408(a) (5) is to make unlawful, absent Board approval, "... the unified control of certain types of enterprises which may have conflicting interests."⁶ While this section mentions specifically only the acquisition of an air carrier by another common carrier, it encompasses the converse situation which "... is not in substance different from that where the surface carrier owns the air carrier."⁷ Because the basic purpose of this portion of the statute is to permit Board scrutiny of relationships that give rise to "... unified control involving possible conflicts of interest,"⁸ the Congress "... did not intend to include one relationship within the Board's jurisdiction and exclude the other."⁹

⁶ Air Freight Forwarder Case, C.A.B. 473, 504 (1948).

⁷ *Id.*

⁸ Modern Air Transport, 32 C.A.B. 137, 147 (1960).

⁹ Pacific Air Freight, 17 C.A.B. 561, 563 (1953).

Moreover, jurisdiction is not dependent upon legal niceties concerning the form of the transaction, for it is the substantial practical relationships involved that govern.¹⁰ Section 408(a) (5) "... clearly extends to common control of an air carrier and of another type of common carrier, however accomplished. . . ." ¹¹ And, since the time of the *American Export* cases, it has been evident that the strictures and policies of Section 408 are not to be avoided by forming rather than acquiring a corporation.¹²

The Board's decisions dealing with common ownership of an air carrier and a surface carrier make the one, pervasive test for approval whether the relationship presents a substantial danger of conflicts of interest which might adversely affect air transportation and thwart its development. Considered in this light, ONA's present application must be disapproved.

In evaluating the public interest implications of ONA's proposed transaction it is important to recognize the extreme breadth of the proposal. ONA is seeking *carte blanche* approval that would permit its cruise ship operation on a world-wide basis, either independent of or in conjunction with ONA's air carrier activities. Although ONA's air carrier certification is restricted to domestic, Caribbean and transatlantic markets, there would be no geographical or operational limitations applicable to the cruise ship and no inhibitions on direct surface carrier-air carrier competition, should ONA feel such competition was desirable. While the surface carrier is now committed only to the operation of one cruise ship, an outstanding option provides the means for the acquisition of a second vessel. Finally, ONA might or might not make available some portion of the equity ownership of Subsidiary to others whose identity and interests are presently unknown.

The very significant conflicts between the interests of the surface carrier and those of the air carrier than can flow from such a relationship need no detailed elaboration. ONA, the air carrier, and Subsidiary would be able to compete freely for vacation and tourist traffic destined to and from the same areas. If, as ONA believes to be the case, the cruise ship operation will prove profitable, and with the surface carrier's advantage of unregulated rates, it is not inconceivable that Subsidiary could become the dominant interest, all to the detriment of the proper development of ONA's air transportation services. It is no answer to say that such problems are not contemplated and will not in fact arise. There is no guarantee that they will not, and in the absence of effective restraints, the transaction is to be judged upon the basis of conflicts that are reasonably foreseeable as well as those that are demonstrably present.¹³

Even if ONA's proposal is viewed more narrowly in terms of the tentative operating plan for Subsidiary, there are ample opportunities for meaningful conflicts between the interests of the air and surface carriers. As the Bureau points out, since the cruise ship would not be limited to transporting ONA's charter traffic but would generally solicit and carry cruise business, it would be in direct competition with the parent company for tourist traffic to the Caribbean and the Mediterranean. Such competition could exist, for example, in varying degrees for traffic moving between an area of operation and an adjacent U.S. port (e.g., Miami-Caribbean); for United States-Caribbean or Mediterranean traffic, on the basis of air "all the way" versus a combination air/sea movement; or for the entire itinerary of the pleasure traveler should ONA elect to operate roundtrip cruises between New York or any other mainland port and the Caribbean and/or Mediterranean. Thus, depending upon the profitability of the cruise ship venture, ONA might well wish to divert some or all categories of traffic to the surface movement. Moreover, in the case of the air/sea tours, ONA might have an incentive to sell a joint cruise to passengers

¹⁰ Acquisition of Los Angeles Airways by Westgate-California, Order 69-1-41, January 10, 1969.

¹¹ Modern Air Transport, *supra*.

¹² See *Pan American Airways Co. v. C.A.B.*, 121 F. 2d 810 (C.A. 2, 1941); *American Export Lines-American Export Airlines*, 3 C.A.B. 619 (1942); 4 C.A.B. 104 (1943).

¹³ There is some suggestion in ONA's brief that water carriers no longer compete directly with air carriers for the same traffic. That has not been shown to be the situation with respect to the particular markets being emphasized in this case, the Mediterranean and Caribbean. In any event, as the Bureau notes on brief, the Board has held that ocean and air are competitive forms of transportation where, as here, pleasure or vacation is involved. *Lehman Bros. Interlocking Relationships*, 15 C.A.B. 656 (1952), *aff'd* 209 F. 2d 289 (1953), cert. denied 347 U.S. 916 (1954).

who, absent ONA's ownership of Subsidiary, it would attempt to carry all the way by air.

The competition implications of the air carrier-surface carrier relationship at issue are by no means inconsequential. For the first 11 months of 1969 ONA had 25,332 passengers on its Caribbean air charters and its charters serving the Mediterranean accounted for 41,722 passengers. ONA projects for Subsidiary some \$8.5 million in revenues from the operation of one cruise ship in the same areas, and the carrier may exercise its option to add still another vessel to the fleet. The pull and tug that could result between ONA and Subsidiary might be viewed, from the vantage point of the parent company, as merely a shift of revenues from one ONA pocket to another. However, in the course of the shift air transportation and its development could be adversely affected, and this is the crucial consideration from the standpoint of the Board and the public interest.

Over the years the Board has had occasion to consider cases involving applications for approval of unified control of air carriers and other common carriers in which it has either exercised initial jurisdiction but not final jurisdiction—and thereby effectively disclaimed jurisdiction—or exempted the particular transaction from the requirements of Sections 408 and 409. However, generally speaking, in these cases the air carrier and the surface carrier were engaged in different types of operations in distinctly separate geographic areas involving no competition between themselves for traffic, and thus the possibilities of conflicts of interest were very remote.¹⁴ Clearly, this line of cases has no applicability here.

It may be that in some situations conditions and restrictions could be devised to eliminate the basic conflict of interest problems involved in an air carrier-cruise ship operation. However, little attention was devoted on the record to that possibility here; indeed, ONA made clear that it was prosecuting its application on the theory that no conditions or restrictions would be imposed.¹⁵ Under the circumstances, while there are benefits that would flow from the proposed transaction, they are outweighed by the dangers inherent in the proposal and the application must therefore be disapproved as not consistent with the public interest. An appropriate order is attached.

¹⁴ Complaint of Pacific Northern Airlines, Order 5136, August 30, 1946 (Alaska Airlines and a railroad operating 50 miles of track in Kansas); Trans Caribbean Interlocks, 34 C.A.B. 777 (1961) (an air carrier and two mass transit bus companies, one in New York City and the other in Washington, D.C.); Studebaker-Trans International Airlines, Order E-19014, November 15, 1962 (a supplemental air carrier, a predominantly freight railroad between Twin Cities-Portland/Seattle, and a Kansas-South Dakota pipeline); Trans Caribbean Exemption, 37 C.A.B. 710 (1962) (an air carrier and a railroad operating 795 miles of track in Guatemala-El Salvador); T.C.A., Order E-20785, May 5, 1964 (the air carrier, D.C. Transit and the Central American railroad); RKO General, Order E-24296, October 17, 1966 (an air carrier and a barge operator between the Great Lakes and Texas/Florida); Puerto Rican Forwarding, Order E-24820, March 6, 1967 (a direct air carrier and a Massachusetts intrastate motor carrier); and ONA-Greene Line, Order 69-10-76, October 16, 1969 (a supplemental air carrier and a company operating a river paddle wheel boat which was itself a unique travel attraction).

¹⁵ On brief ONA stated, in opposing restrictions suggested by Pan American: "To impose restrictions of the type requested will depreciate the Subsidiary's ability to support itself and may result in making the proposal no longer feasible. The cruise ship must be able to compete on an equal basis with all other cruise ships if it is to survive. Limitations on its operations could well deprive it of sufficient sources of revenue available to other cruise ships that its prices could not be economically competitive with other cruise ships" (p. 18.)

Elsewhere in its brief (p. 5) ONA indicated its willingness to accept a condition limiting the cruise ship to two transatlantic voyages a year without prior Board approval. However, such a condition by itself would be plainly insufficient to overcome the various difficulties which have been outlined.

APPENDIX D

RELATIVE SCHEDULED AND CHARTER TRAFFIC GROWTH IN SELECTED UNITED KINGDOM-EUROPE MARKETS, 1965-70

	Weekly passengers each way			Percent charter	Weekly scheduled nonstop frequencies ¹
	Scheduled	rCharter	Total		
Major markets where scheduled traffic declined:					
London-Palma de Mallorca:					
1965	1,513	1,744	3,257	54	39
1970	1,005	7,196	8,201	88	24
Average annual growth (percent)	-8	+33	+20		
London-Nice:					
1965	1,048	85	1,132	8	37
1970	899	259	1,158	22	26
Average annual growth (percent)	-3	+25	(*)		
London-Barcelona:					
1965	878	896	1,774	51	27
1970	788	1,709	2,497	68	22
Average annual growth (percent)	-2	+14	+7		
London-Valencia:					
1965	206	429	635	68	7
1970	123	321	444	72	5
Average annual growth (percent)	-10	-6	-7		
Major markets where scheduled traffic growth was low:					
London-Venice:					
1965	377	745	1,122	66	14
1970	459	1,155	1,614	72	11
Average annual growth (percent)	+4	+9	+8		
London-Naples:					
1965	216	129	345	37	7
1970	236	406	642	63	8
Average annual growth (percent)	+2	+26	+13		
London-Pisa:					
1965	160	231	391	59	9
1970	188	407	595	68	13
Average annual growth (percent)	+30	+12	+9		
Major markets where scheduled traffic growth was moderate:					
London-Milan:					
1965	1,315	184	1,499	12	28
1970	2,159	944	3,103	30	46
Average annual growth (percent)	+10	+39	+16		
London-Madrid:					
1965	923	14	937	1	22
1970	1,674	270	1,944	14	28
Average annual growth (percent)	+13	+82	+16		

¹ August schedules.² Less than +0.5 percent.

Source: British Department of Trade and Industry, Official Airline Guide.

COMPARISON OF INTRAEUROPEAN AND UNITED STATES DOMESTIC PASSENGER FARES AND SCHEDULE FREQUENCIES FOR SELECTED SECTORS

	Nonstop sector mileage	Normal fares excluding taxes				Daily nonstop frequen- cies	Combined popula- tion base (millions)
		1st class	Percent European fare higher than United States	Economy or coach	Percent European fare higher than United States		
London-Athens	1,492	\$226.50		\$177.90		4	9.7
Las Vegas-Chicago	1,512	125.93	80	100.00	78	10	7.9
Denver-Washington and Baltimore	1,482	122.22	85	98.15	81	6	7.0
Copenhagen-Rome	955	179.20		128.00		1	4.1
Dallas and Fort Worth-Miami	1,114	100.00	79	77.78	65	4	3.4
Atlanta-Boston	946	87.96	104	68.52	87	5	4.6
Madrid-London	765	130.70		91.80		4	10.7
Chicago-Hartford	782	75.00	74	58.33	63	9	8.5
St. Louis-Washington and Baltimore	716	70.37	86	54.63	74	7	7.2
London-Munich	580	114.00		76.00		3	9.1
Wichita-Chicago	587	61.11	87	47.22	61	4	8.0
St. Louis-Pittsburgh	553	58.33	95	45.37	68	3	4.8
Paris-Milan	385	70.00		50.60		7	9.9
Chicago-Pittsburgh	413	47.22	49	36.11	40	25	10.0
Detroit-Washington and Baltimore	404	44.44	58	34.26	48	10	9.0
London-Brussels	211	56.70		38.20		8	8.9
Los Angeles-Las Vegas	237	31.48	80	25.00	53	30	8.7
Kansas City-St. Louis	229	31.48	80	25.00	53	15	3.7
London-Paris	209	49.80		33.70		27	16.0
Chicago-Detroit	230	32.41	54	25.00	35	26	11.8
New York-Boston ¹	191	28.70	74	22.22	52	42	15.1
Hamburg-Copenhagen	174	52.40		37.40		6	3.2
Wichita-Kansas City	184	28.70	83	22.22	68	9	1.7
Oklahoma City-Dallas and Fort Worth	181	28.70	83	22.22	68	13	2.8

¹ Excludes Newark flights and Eastern shuttle extra sections.² Excludes metropolitan New Jersey.

COMPARISON OF ECONOMY FARES AND DAILY NONSTOP FREQUENCIES IN SELECTED SPAIN-EUROPE AND UNITED STATES DOMESTIC MARKETS

Market	Sector mileage	Economy/ coach fare	Daily nonstop frequencies	Combined population base (millions)
Madrid-Stockholm	1,612	\$168.60	None	4.2
versus				
Portland-Dallas	1,621	104.63	2	3.2
Madrid-Copenhagen	1,281	134.20	4/7	4.3
versus				
Phoenix-St. Louis	1,261	86.11	4	3.3
Madrid-Munich	922	93.30	None	4.2
versus				
Cleveland-Tampa	931	67.59	2	3.1

APPENDIX E

BURNHAM AND COMPANY,
New York, N.Y., January 1972.

AIRLINE RESEARCH—THE NEW NORTH ATLANTIC FARES

POINT OF VIEW

The new fares on the North Atlantic will be, in our opinion, offset to some extent by an increase in dollar fares to reflect the devaluation of the U.S. dollar.

The North Atlantic is an area of "structural problems" for the scheduled airlines. We estimate losses in this market to amount to \$300 million in 1971 and another \$400 million in 1972.

We do not consider exposure to the North Atlantic to be a positive factor for the carriers involved: KLM (\$40), Pan American (\$16) and TWA (\$42).

I. SUMMARY AND CONCLUSION

The North Atlantic travel market—a highly-developed vacation and business market—is now facing serious structural problems: (a) excess capacity; (b) rising unit costs; (c) declining yields; and (d) competition from the U.S. supplemental carriers and foreign charter airlines.

The new fares agreed upon at the IATA conference in Geneva would have caused a further 8–10% reduction in the fare structure and assuming a shift from regular fares to promotional fares, the erosion in yield may be estimated at 12–15%.

The devaluation (8.57%) of the U.S. dollar gives the carriers an opportunity to raise fares by approximately an equal amount. We believe that the foreign and U.S. carriers are likely to agree on such an upward adjustment. The net effect of this would be to leave fares close to the levels that prevailed prior to the change with some reductions in the lower end of the range. This may cause a shift in the travel mix, eroding yields by about 4–5%.

The CAB proposal to liberalize charter rules, permitting the supplementals to offer transportation to individually-ticketed passengers, will have, if adopted, a further negative impact on the scheduled airlines, and may restrict the size of the fare increase resulting from devaluation.

We estimate the loss by IATA carriers on the North Atlantic at about \$300 million in 1971 and estimate another \$400 million loss in 1972, assuming the upward adjustment in air fares.

KLM's management has announced it will operate at a substantial loss in the current fiscal year to March, 1972, and the outlook is for another sizable loss in fiscal 1972/73.

Pan American's strengthened management team is expected to improve costs and hopefully market participation. It is too early, at this time, to assess the implications for 1972/73 of the policies to be adopted by Pan American.

While TWA's business benefits from military airlift, mail revenue and a sizable domestic route network, we expect the carrier's 1972 international earnings to be lower than the \$20 million estimated for 1971. This reflects the pressure on yields and the U.S. devaluation which increases the level, in dollar terms, of expenses incurred abroad.

Considering the structural problem on the North Atlantic, we suggest exposure to that market not be considered a positive factor.

II. INTRODUCTION

The IATA carriers serving the North Atlantic have reached agreement early in December on a package of lower fares, down by about 12–15%, higher than those proposed by Lufthansa, which may have reduced yields by an estimated 22–23%.

The devaluation of the U.S. dollar by 8.57% (effective December 20, 1971) permits the IATA carriers under their rules to seek an upward adjustment in worldwide IATA airline fares—generally denominated in dollars or Pounds Sterling—to reflect the change in values. A meeting to that effect has been set for January 5, 1972.

An upward adjustment in airfares may apply to all IATA routes. However, it is possible that certain European carriers that have insisted on lower fares on the North Atlantic (to compete with the supplemental and other charter carriers) will not approve an upward adjustment to the extent of a full 8.6%. Changes in fares involving U.S. carriers must be approved by the CAB. The upward adjustment may exceed the "Phase II" parameters, but we believe that CAB approval may be granted, because fares would be, on average, below the base period level.

III. THE NORTH ATLANTIC TRAVEL MARKET

A. *The Growth of the Market*

This market has achieved dramatic growth in the Sixties, helped by the introduction of the jet aircraft, the higher level of personal income in the United States, the introduction of a large number of promotional and lower fares, and just as important, the development of the charter travel market. The following table attempts to show the number of North Atlantic travelers for the IATA carriers:

THE NORTH ATLANTIC TRAVEL MARKET TRAFFIC GROWTH ON SCHEDULED CARRIERS (IATA MEMBERS), 1961-70

	Number of passengers		Number of seats	Scheduled, L/F (percent)
	Charters	Scheduled		
1961.....	256,000	1,919,000	3,747,000	51.2
1962.....	315,000	2,272,000	4,407,000	51.6
1963.....	414,000	2,422,000	4,935,000	49.1
1964.....	482,000	3,069,000	5,339,000	57.5
1965.....	480,000	3,611,000	6,361,000	57.1
1966.....	503,000	4,198,000	7,141,000	58.8
1967.....	517,000	4,987,000	8,676,000	57.5
1968.....	495,000	5,258,000	9,861,000	53.3
1969.....	780,000	5,996,000	11,034,000	54.3
1970.....	816,000	7,201,000	13,029,000	55.3

Source: World Air Transport Statistics, International Air Transport Association, ed. No. 15, 1970.

For 1971, we estimate that the number of passengers carried may have increased by 3% versus a 10% increase in available seats.

In 1966, an estimated 593,000 transatlantic passengers were carried by charter operations *; and in 1970, the number increased to an estimated 1,855,000. Excluding the figures for IATA "scheduled airlines", the business handled by the U.S. supplementals and other charter airlines increased from an estimated 90,000 in 1966 to an estimated 1,039,000 in 1970.

GROWTH OF THE NORTH ATLANTIC MARKET, 1961, 1966, AND 1970

[In thousands]

	Scheduled carriers			Other carriers	
	Schedule		Charters	Charters	Total charters
	Seats	Passengers			
1961.....	3,747	1,919	256	(1)	(1)
1966.....	7,141	4,198	503	90	593
1970.....	13,029	7,201	816	1,036	1,855
Percent increase 1961-66.....	90.6	118.8	96.5		
Growth rate ²	13.8	17.0	14.4		
Percent increase 1961-70.....	247.7	275.2	218.8		
Growth rate ²	14.8	15.8	13.7		
Percent increase 1966-70.....	82.5	71.5	62.2	1,051.1	212.8
Growth rate ²	16.2	14.4	12.8	80.0	33.0

¹ Not available.

² Compounded (percent).

B. The Present Travel Mix

North Atlantic travel on the scheduled carriers is accounted for by a number of passenger fare categories. No breakdown is available; based on interviews we estimate the breakdown as follows:

	Percent of passengers	Percent of revenue
1. 1st class.....	5	10
2. Regular economy.....	25	30
3. Excursion and promotional fares.....	45	40
4. Charters, bulk fares, and other ¹	25	20

¹ Bulk fares have been eliminated in 1971. Later in the year, the youth fare was introduced.

The scheduled airlines appear to compete with charter airlines on the assumed price-sensitive segments (3) and (4) where lower prices may represent an important motivation to the traveler. Large differences in the level of fares between

*Of scheduled and non-scheduled carriers.

the categories (1), (2) and (3) are likely to cause a diversion of traffic from the more expensive to the least expensive. Certain segments of the mix, excursion 22/45 days, group inclusive travel and bulk fares, bear low yields and appear to be growing most rapidly.

C. Impact of the New Fares

We estimate that the new fares may cause an 8-10% yield erosion assuming no change in product mix, and a further 4-5% erosion as the mix turns in favor of the lower fares (See Appendix I for a comparison of the current fares with the new fares prior to adjustment for revaluation.)

To achieve the same level of revenue, the carriers may have to carry 9% more passengers (assuming an 8% yield erosion) and 18% more (assuming a 15% yield erosion) to offset the decline in yield.

The new fares do not provide for the extension of the youth fare. It is a good bet, however, to assume that in 1972 they will be introduced on a governmental basis.

The theory behind lower fares lies in their stimulative impact on the market. While we would have expected some stimulation of the market because of the lower fares, it is important to note that the devaluation of the dollar relative to foreign currencies (Example: German Mark—11.9%, £ Sterling and French Franc—7.9%, Dutch Guilder—10.4%) adds to the cost of land arrangements (hotels, meals and transport), which may offset the price advantage inherent in the new fares.

D. Revaluation of Fares

Airline fares within IATA are established in terms of U.S. dollars and £ Sterling. Under IATA rule 021 as amended, and under certain conditions, one of which is the change in the exchange parity between U.S. dollars and the Pound Sterling of 2% or more, IATA would be caused to call a meeting of the members (present or represented) upon a revision of fares in a manner "to increase the non-basic fares and/or rates existing at the date of devaluation by the percentage of the devaluation against the non-devaluing basic currency." On this basis, it appears reasonable to tentatively assume an increase in fares on the order of 8.6% (but possibly less) on the North Atlantic routes.

We believe and hope that the IATA carriers will agree on an 8.6% increase in fares *across the board*, and we believe it reasonable to expect the Civil Aeronautics Board to approve such an upward adjustment. It is also possible that the regular (first class and economy) fares will be increased while the "promotional fares" be kept at the new proposed levels, but the resulting erosion would be too large to justify the move. A lower rate of increase than 8.6% may be possible considering the pressures from supplemental competition.

In our opinion, the impact of the various possibilities (our estimates) are summarized below:

NORTH ATLANTIC TRAVEL MARKET ESTIMATED IMPACT OF NEW FARES ON YIELDS AND TRAFFIC

[In percent]

	Yield erosion		Traffic gain
	Range	Likely	
New fares.....	8-15	14	15-20
New fares increased by 8.6 percent.....	0-7	5	10
New fares with only regular 1st and economy raised by 8.6 percent.....	5-10	7.8	12.15

Airline traffic growth is a function of the economic conditions, employment, the mood of the nation, and the international political situation. While these are expected to improve, we do not look for a booming (+20-30%) North Atlantic travel market next summer. Reservations and arrangements for North Atlantic travel are believed to be generally made several months ahead (the summer months represent the peak travel period); as a result, the economic recovery in the U.S. may be a little late for the North Atlantic season.

IV. THE ECONOMICS OF THE NORTH ATLANTIC

This travel market has been one of the fastest growing and most profitable for the airlines in the Sixties, as illustrated by the development of TWA's international results:

NORTH ATLANTIC TWA'S INTERNATIONAL RESULTS ¹

	1970	1969	1968	1967	1966	1965	1964	1963	1962	1961
Revenue.....	\$381	\$338	\$281	\$257	\$196	\$192	\$155	\$133	\$102	\$83
Expenses.....	373	292	243	220	165	145	121	109	87	85
Operating profit.....	8	45	38	37	31	47	34	34	15	(2)
Charges.....	3	5	7	6	4	3	1	4	3	3
Pretax income.....	4	41	31	31	27	44	33	20	12	(5)

¹ Includes Pacific operations in most recent year. A change in accounting occurred in 1969.

The economics of travel in this market have deteriorated. In the early Sixties, a steep decline in unit costs was achieved, permitting the airline to reduce fares, stimulating traffic growth in an expanding economic environment. At present, unit costs are under pressure, rising at annual rates of 2-3%. The break-even load factor for the industry is estimated at 59%, while the actual load factor is at 50%.

To visualize the impact of the changing economics on the North Atlantic, we have summarized below *our guesses* of revenue and expense on this market. We estimate the IATA carriers to have generated about \$1.400 million in revenue with expenses running at about \$1.500 million before an estimated \$60 million in interest charters in 1970. Our estimates for 1971 and 1972 are also given in the following table.

THE NORTH ATLANTIC ESTIMATED OPERATING RESULTS—SCHEDULED CARRIERS 1970-72

[Dollar amounts in millions]

	1970	1971 estimate	Percent change	1972 estimate	Percent change
Estimated results:					
Passenger revenue.....	\$1,215	\$1,280		\$1,415	
Other.....	185	190		210	
Total.....	1,400	1,470	+5	1,625	¹ +11
Expenses.....	1,500	1,680	+12	1,915	² +14
Difference.....	(100)	(210)		(290)	
Interest charges.....	(60)	(70)		(80)	
Pretax results.....	(160)	(280)		(370)	
Operating data:					
Seats (thousands).....	13,029	14,723	+13	16,195	+10
ASM (million) ³	46,900	52,997		58,303	
Passengers (thousands).....	7,201	7,417	+3	8,530	+15
RPM (million).....	25,900	26,701		30,708	
Yield per r.p.m. (cents).....	4.70	4.80		4.60	-4

¹ Traffic up 15 percent; yield down 4 percent; revenue up 11 percent.

² Up 10 percent for operations and 4 percent effect of devaluation.

³ Assumed 3,600 miles per passenger trip.

1. We have assumed an upward revaluation of the fares to offset the dollar devaluation; the assumed 4% decline in yield reflects our assumption of diversion of traffic from high yield to lower yield categories. The following table compares the passenger load factors with the breakeven factor:

[In percent]

	1970	1971 estimate	1972 estimate
Actual passenger breakeven.....	62.4	61.3	66.6
versus			
Passenger load factor.....	55.2	50.4	52.7

2. Because it is difficult for the North Atlantic carriers, which carry a meaningful portion of their loads in the summer months, to add much above the estimated break-even to their actual passenger load factors, we believe that it is probable that a year or two out, (1) *fares may have to be increased by as much as 10-15% to offset the recent yield erosion*, or (2) *traffic would have to expand meaningfully*.

The impact of a 10-15% fare increase is shown below, when applied to the 1972 forecast:

	1972	
	Fares plus 10 percent	Fares plus 15 percent
R.p.m. (million).....	30,708	30,708
Yield (cents per r.p.m.).....	5.06	5.29
Revenue:		
Passenger.....	1,555	1,624
Other.....	210	210
Total.....	1,765	1,834
Operating expenses.....	1,915	1,915
Difference.....	(150)	(81)
Interest.....	(80)	(80)
Pretax.....	(230)	(161)
Breakeven land fee, passenger (percent).....	60.5	57.9
Actual land fee, passenger (percent).....	52.7	55.7

In our opinion, the problems faced by the North Atlantic carriers include:

1. *The recent erosion in the average yield* resulting from the introduction of many promotional fares to compete more effectively against the supplemental carriers.

2. *Unit costs are rising*, reflecting the inflationary pressures in the U.S. and in Europe, and the devaluation of the U.S. dollar will add to costs incurred in Europe.

3. *Substantial purchases of wide-bodied aircraft have been made*, the B-747 and DC-10 operate at higher plane/mile costs than the first-generation equipment they have replaced, adding to seating capacity and to costs.

4. *Inability to raise prices*: The U.S. supplementals and other charter carriers (17 non-U.S. charter airlines are permitted to serve this market) offering comparable equipment at much lower prices, reflecting a lower level of overhead and investment, make it difficult to raise prices without risking considerable traffic diversion.

5. *Capacity control*: A reduction in the capacity offered on scheduled services has been suggested and may result in improved profitability. This would involve a large increase in *unit costs* and breakeven, but higher, *load factors*, and *not necessarily higher profits*.

The IATA carriers may have to modify their charter rules to permit a more aggressive stance in the charter market. This may reduce yields, expand the market and allow them to compete more effectively with the charter airlines.

In the meantime, we consider the North Atlantic travel market an area of "structural problems" where the carriers may have realized a \$300 million loss in 1971 and about \$400 million may be lost in 1972. The supplementals and charter airlines with their present and proposed rights have a competitive edge in their method of operation: flying capacity when the passenger needs it.

We therefore do not consider exposure to the North Atlantic travel market to be a positive factor at this time.

THE NEW NORTH ATLANTIC FARES BEFORE ADJUSTMENT FOR DOLLAR DEVALUATION

Type of fare	Current fares	Proposed fares		
		Basic season	Middle season	Peak season ¹
1st class:				
New York/London.....	\$782	(²)	(²)	(²)
New York/Paris.....	826	(²)	(²)	(²)
New York/Frankfurt.....	866	(²)	(²)	(²)
Economy:				
New York/London.....	\$452-552	\$400	\$450	\$552
New York/Paris.....	496-596	420	470	596
New York/Frankfurt.....	512-636	460	500	636
Excursion 22/45: ³				
New York/London.....	272-332	200	220	290
New York/Paris.....	297-357	210	235	300
New York/Frankfurt.....	312-372	220	240	310
Affinity group:				
New York/London.....	217-277	180	200	270
New York/Paris.....	200-292	185	210	280
New York/Frankfurt.....	237-297	190	220	290
Excursion 14/21: ⁴				
New York/London.....	322-382	322	-----	382
New York/Paris.....	353-413	353	-----	413
New York/Frankfurt.....	382-442	382	-----	442
New 7/8-day winter GIT (+\$70 land fee):				
New York/London.....	-----	200	-----	-----
New York/Paris.....	-----	210	-----	-----
New York/Frankfurt.....	-----	215	-----	-----

¹ June, July, and August—eastbound; July, August, and September, westbound.

² No change.

³ Also youth fares with 7-day reservations.

⁴ Replaces 14/28 day.

Senator CANNON. The next witness is Mr. Harold Low, president, American International Travel Service.

STATEMENT OF HAROLD S. LOW, PRESIDENT, AMERICAN INTERNATIONAL TRAVEL SERVICE, CHESTNUT HILL, MASS.; ACCOMPANIED BY STEVE POTTS, COUNSEL

Mr. Low. Mr. Chairman, to my right is Steve Potts, counsel for AITS.

I am Harold S. Low, vice chairman of the board of AITS, Inc., a publicly held company whose primary business is the packaging and selling of tours throughout the United States.

Because of our wide experience in marketing packaged tours, both on supplemental and scheduled carriers, through affinity organizations and to the general public through thousands of travel agents, we feel uniquely qualified to present our views to this committee.

In previous testimony before this committee in the House and before the CAB, we have entered documented information and statistics which substantiated our recommendations on charter regulations and how they could be evaluated to the benefit of the American traveling public.

It is the purpose of our specific testimony here this morning to present our views as follows.

1. Our support of the concept of one-stop ITC's.

2. Our opposition to the concept of tour operators owning charter carriers or charter carriers owning tour operators. And then we have suggestions with a long range plan on implementation. Before I get into the specific points outlined, we believe it is most important that

this committee understand the basic industry and the primary obligation of the component parts. We have been involved in many hearings, including those conducted on inclusive tour charters, but in the never ending battle between the supplemental and the scheduled carriers, the tour operator and the travel agent have for all intent and purposes have been totally overlooked.

I suppose it would be only natural for our company to consider travel agents and tour operators to be the key components of any travel concept. However, I believe that we can justify this opinion and it is important that this committee understand this basic fact.

The only legislation that recognized their key contribution to marketing of travel was the ITC regulation. Ironically, this is the one piece of travel legislation that actually encouraged creative tour marketing, was completely nondiscriminatory, while completely protecting the American public.

Unfortunately, the combination of requiring three stops, which is in most cases artificial, and the competitive action of the scheduled carriers in introducing GIT's hampered its potential growth by removing the exclusivity.

Our company's experience is an example of this potential. In 1969, after the enactment of this legislation, and before the scheduled carriers introduced GIT's, we alone carried 59,000 persons to Hawaii on ITC's. Most importantly, many were from nongateway cities and our marketing surveys showed that they were a totally created public. As a matter of fact, a questionnaire that was handed out indicated that 95 percent of those people would never have gone to that destination or traveled at that time of year if that trip had not been offered.

Although the three stops required on present ITC's is usually impractical, Hawaii was the most unique and lent itself to this concept. The long haul made stops on the west coast en route and the return, a reasonable itinerary feature. If you would like me to explain how this works, I will be glad to.

Eventually, the unrealistic GIT fare structure introduced by the scheduled carriers removed the two key features necessary for the success of ITC's, their uniqueness to the consumer and the need for the operator to accept the risk of filling an entire aircraft.

However, the enactment of this legislation demonstrated the important role that the tour operator and travel agent play in creating new travelers from new gateways to new destinations. This law also proved that it was possible to pass charter legislation that was enforceable.

There has not been one instance of financial injury to the public or associated trade members by ITC operators. The reason for this was very simple. They were regulated by the CAB and had to meet financial and other criteria that guaranteed their ability to perform as promised. Therefore, it is our opinion that if any new travel marketing approach is to be truly successful, and of long-range benefit to the American public, it must make the tour operator and travel agents an integral and key part of the concept and it must be regulated by the Government.

The tour operator and the travel agent are the key localized marketing arms of both types of carriers. Because they assume the risk of ITC's as indirect carriers, they must expend the necessary marketing

dollars to assure a high enough load factor which makes it possible to offer the public these bargain vacations. If any travel concept is to be successfully introduced to all of the American public, the airlines must have this localized marketing arm at their disposal.

For instance, let us examine the role presently played by tour operators and travel agents under the existing charter regulations. In addition to the aforementioned inclusive tour charters, we have affinity charters. Unlike ITC's, nowhere in the affinity regulations does the role of the tour operator appear, yet they are the single biggest forces behind affinity movements.

Despite the integral and vital role the tour operator plays in the affinity business, they are virtually ignored even by the enforcement bureau of the CAB, who turn to the airlines for policing responsibilities. In most cases, the airline is not even in direct contact with the affinity group, but works through the operator who has the direct personal relationship. What is the reason for this exclusion? Frankly, we feel the continuing war between supplemental and scheduled carriers has always focused attention on the transportation aspects of the problem. NACA, IATA, ATA and the supplementals and scheduled carriers arguments all center around point-to-point transportation per se and never really get down to how the new customer is created. This is the key. The new publics to new destinations are created by all-inclusive tour packages. Except in the case of ethnics or student groups who are perhaps influenced to travel by low air fares, other publics need the security of knowing that all arrangements have been made for them.

The tour operator or travel agent has three major functions, all of which create travelers, not divert them. They are:

1. Creation of a salable, complete package.
2. The marketing techniques that will create the volume and the value.
3. And then the handling of the myriad details of reservations and operations of which the organization or individual is incapable from the standpoint of experience or time.

It is therefore our contention that in most instances, regulations are proposed with only the transportation factor considered and not the actual facts inherent in the industry with which you are dealing. When a complete vacation package is considered, the air transportation really is a minor part of the entire holiday. It is a part of the vacation that people are willing to accept but don't necessarily anticipate. It may be only a small phase of the overall vacation, but it can very well be the single most significant cost factor. If one-stop ITC's or, in fact, any set of charter regulations are to be nondiversionary, then the most important role of the tour operator has to be carefully defined, regulated, and included as part of any such regulation.

In this respect, there is no doubt in our mind that one stop ITC's with operators and agents as an integral part of the regulation could be one of the most beneficial acts ever passed by Congress or the CAB. Its benefit to the American traveling public and the entire travel industry could be monumental.

The eventual adoption of one-stop ITC's would make available the advantages of charter flights in a nondiscriminatory manner to all the American public. More Americans could enjoy vacations of short

or long duration to many new vacation areas. Presently undeveloped markets would benefit from this ability of the public to enjoy low-cost vacation.

For instance, resort areas which presently have a regional appeal such as our gulf coast, Virginia, Cape Cod, southern coast of California, Arizona, to name just a few, could find a vast new market through one-stop ITC's. An example of the growth potential possible can be found in Europe where the distances between countries would be comparable to our domestic travel. ITC's had a great deal to do with the tourism boom along the southern coast of Spain. This area played host to 8 million tourists in 1969 and is anticipating 15 million tourists annually by 1975. Other areas in Europe have also benefited from economy vacations. Majorca, which not to many years ago was the wealthy man's resort area now has over 100,000 first-class hotel rooms. Northern Tunisia, Morocco, Corfu, and Sardinia are other examples of areas which developed tourism through ITC's. It is easy to see how many areas of our country could find an untapped market from both international and domestic sources.

We feel new areas would spring up as resort destinations within this country that are unbelievable. If 10 years ago you were to say Orlando, Fla., would be a primary resort destination, people wouldn't believe it. But the advent of Disney World has sprung up a huge new resort area. We feel the advent of ITC's would cause new areas throughout this country to spring up as resort destinations. This would not only help our balances of payments by attracting many more foreign tourists, but could be a major factor in helping to keep American dollars in the United States.

With the inclusion of an indirect air carrier within the framework of one-stop ITC's, both types of airlines services would benefit. One-stop ITC's would mean a predetermined yield to the airline for each flight. It would also mean a predetermined volume of traffic to a specific destination whether on a year-round or seasonal basis. The enactment of this regulation could go far in solving the basic airline problem that exists today in having to base income revenue on a per passenger yield. With the vast number of fare structures available, complicated further by inconsistent load factors, scheduled carriers especially have a difficult time anticipating their income per flight.

The thrust here is that the real future of the airline industry, both supplemental and scheduled, could be in the words "revenue per aircraft" instead of "revenue per passenger."

European ITC's would also enjoy a rebirth. Under the present regulation of three stops, the transfer of passengers between the inter-European points in many cases equals or exceeds the cost of the transatlantic fare. This problem obviously would not exist on one-stop programs therefore creating the possibility of a flow of tour participants in both directions over the Atlantic.

However, for many reasons which we will outline, we believe that we should phase into one-stop ITC's with a carefully developed program with preconceived guidelines and timetables.

If in the future, there is to be any type of charter activity available to the American public, it will necessarily have to be one-stop ITC's. The affinity market as it stands today is rapidly depleting itself. We handle arrangements for some 1,000 bona fide affinity groups in the

United States. Our passenger surveys demonstrate that well over 80 percent of our passengers are 50 years of age or older. This contrasts drastically with Europe's figures, based on their one-stop ITC's, where 80 percent of their passengers are under 50 years of age.

I haven't footnoted the references but we got that from a survey of the ministry of information and tourism of Spain, entitled "A Roundtable of Air Transportation to Latin America." But those statistics are extremely interesting. Eighty percent of the people that travel in affinity groups are 50 and over here and in Europe 80 percent of the ITC's are 50 and under.

If the airline business and their allied industry members wish to reach the vast, ever-growing public of younger adults, it will have to be through a marketing approach other than what we know today to be the affinity market.

The traditional social and fraternal organizations do not have the appeal to young people in the mobile society that we enjoy today. There are many more diversions and entertainment sources today than existed just 10 years ago and we must accept the fact that there are huge numbers of our citizens who are being discriminated against by our present approach to the charter question.

Europe is far ahead of us in respect to this enlightened approach to vacation travel. Literally, millions of Europeans annually take advantage of one-stop ITC's to enjoy low-cost vacations at comparably exotic resort areas.

We feel our industry is faced with a different set of problems in respect to duplicating the European success in this area. The two greatest variances between Europe and the United States are in the areas of air transportation and in the tour operator field. Whereas in Europe there is often only one flag carrier flying a specific route, in the United States we have many competing airlines flying to the same destination. For instance, several airlines service major west coast destinations and Hawaii from the same departure points.

That really doesn't exist in Europe. In addition, in Europe in many instances, the supplemental carrier is owned and operated by that nation's flag carrier. It is obvious therefore that a much more complicated set of circumstances exist in this Nation to present a one-stop ITC regulation that would maintain a balance of service between scheduled and supplemental carriers.

One-stop ITC's would more than likely mean a fantastic increase in volume by tour operators involved in this marketing approach. As an example, we are probably the Nation's largest all-inclusive tour operator with a volume of approximately 100,000 persons. There are comparable operators in Europe who handle anywhere from 500,000 to over a million passengers annually. In our opinion, the introduction of one-stop ITC's calls for many operators with a capability of handling several hundreds of thousands of passengers annually.

At this time, however, I would like to discuss another phase of the proposed legislation which would permit tour operators to own aircraft, which would also therefore, permit airlines to own tour operators. We not only believe this would be disastrous from a marketing standpoint, but would also be completely illegal.

Senator CANNON. It wouldn't be illegal if Congress gave them that authority, would it?

Mr. Low. It is illegal as it stands now.

Senator CANNON. We know it is illegal now. That is why the request has been made for legislation to change it.

Mr. Low. All right, we have said it is illegal as of now, and now we explain why we think it wouldn't be workable.

Senator CANNON. All right.

Mr. Low. Because a charter, whether on a scheduled or supplemental airline, means just what it says. It is the leasing of a specified aircraft for a specified period of time. Therefore, there must be a third party that leases the entire aircraft and guarantees the airline payment in full for the use of this equipment. If the airline was to establish themselves in this role as a principal or through a subsidiary, it would be tantamount to individual ticketing which is forbidden under the regulations and which has always been the intent of keeping away individual ticketing from charters.

Let's examine what could possibly develop if an airline was its own tour operator and therefore could establish its own rates. Let us assume that an airline decides that they can expect 80-percent occupancy on a given flight and their fair return on the aircraft is \$5 a mile. As their own tour operator, they try their mightiest, yet their load factor on a given flight is 40 percent.

Regardless of what the entire package tour retails for—or what happens on paper—they have actually sold that flight for \$2.50 a mile. This is obviously far below what a third party on a guaranteed basis could buy the same aircraft.

More important, however, is the fact that for all intents and purposes they have engaged in reduced rate, individual ticketing. They actually would have set their own rates without CAB authority as a result of simply predetermining their load factor. If a charter is not involved, there is certainly nothing wrong with handicapping load factors and applying to the CAB for a rate that the airline predetermines to be a fair return. But obviously it is neither legal, fair, nor good business practice to so determine under the philosophy of charter regulations.

Senator CANNON. I don't quite follow you on that. The Board has the authority now to control the rates that are charged. We have given them that authority. I don't see how—you suggest they could change it contrary. I don't think that would necessarily take place. I don't see how substituting a middleman would change the picture one iota.

Mr. Low. What we are suggesting is the scheduled carriers currently have the flexibility of applying to the Board for a specific rate over a specific destination. What we are saying is whether the scheduled or supplemental airlines have the charter authority themselves, then what they are, in fact, doing is assuming a certain load factor on the aircraft.

Senator CANNON. But they have to file their rate with the Board.

Mr. Low. They file their aircraft per mile.

Senator CANNON. They have to file their rate for a particular flight, for a charter, with the Board and the Board can suspend that or it can let them put it into effect. So I don't see how that makes one particle of difference.

Mr. Low. But they apply for a rate and a charter on a per-mile basis. On a per-mile basis from New York to Hawaii you have 10,000 miles round trip. Now, they may apply for a rate of \$5 per mile, which

in essence would be \$50,000 round trip. If their load factor was 250 people, their rate per passenger pro rata would be \$200. But if their load factor was only 50 people, the rate per passenger, they would only be charging \$200 but the effective rate would be a lot higher and therefore, what they would be doing would be reducing the cost per individual on a pro rata basis.

Senator CANNON. I must say that I don't follow you completely on that. But why don't you go ahead with your statement.

Mr. Low. In addition to the illegality, it would be an unwise marketing tactic if an airline were to charter its own plane and therefore assume the risk. They are not in a position to assume the important roles the tour operator plays in creating new travelers. The crux of our comments are built around the importance of a complete product and service along with marketing techniques in creating new markets.

Not only are the airlines unable to offer these services, but their interest naturally lies in other directions. Their own interest is to benefit from a certain dollar yield per each flight they operate. I think it is clear to see that if the airline and operator were one and the same, we would simply end up in a price war and a complete diversionary marketing effort.

A completely independent operator, however, not only has the freedom to negotiate the best possible land and air costs, but spreads his investment in marketing and service personnel over a wide variety of destinations. He is also willing to base his price on the value received by the client and is not really concerned with making the sale at any price, just to make the sale.

It might interest this committee to know that our company spends millions of dollars a year on passenger acquisition costs. Our ability to act as an indirect air carrier with the potential of additional benefits by filling all the seats on the charter gives us the incentive to invest this type of promotional dollars and effort.

It is our opinion at this time that enough operators with this capability do not exist. However, the potential of the market to be developed is such that new substantial interests will be attracted to our industry. In addition, present operators and agents will develop their capabilities and thinking to take advantage of the opportunities presented by ITC's. Just as the airlines will greatly alleviate their risk factors by utilizing the indirect air carriers as middlemen, these principals will find that the potential profits inherent in one-stop ITC's will make their risk a worthwhile investment.

However, we do not feel that a viable industry built on a solid foundation can be accomplished overnight. Therefore, we would like to present our recommendations for a long-range plan of implementation. It is a plan we feel will benefit all segments of the travel industry especially both types of carriers and be of continuing and lasting benefit to the traveling public.

Although we have great faith in the concept and benefits of one-stop ITCs, we believe their ultimate success depends on a careful evaluation of the roles to be played by various principals and the manner in which they are exposed to the public. Although we lag far behind Europe in this area at the present, a misdirected start on these ITCs could result in chaotic conditions that could eventually set us even

further behind. With these conditions in mind, our recommendations are as follows:

1. All ITCs would be operated by indirect air carriers. If, in fact, we have proven to you the importance of the tour operator or travel agent to the successful marketing and operation of inclusive tour charters and as a necessary guarantor to the airline, we believe it should be clearly spelled out that only those qualified, clearly defined, third parties should be permitted this privilege.

2. Licensing of all indirect air carriers. Because of the potential volume which could be expected under the two-stop or one-stop ITC regulation only responsible parties who can prove their financial worth should be permitted to operate these programs. Specific regulations and proof of experience as well as seller's financial responsibility would be comparable to the present ITC regulations which have already proved to be more than adequate. If the Board does not already have the authority to license indirect air carriers, we suggest that this act be amended and so worded to license these operators in order to provide the consumer with the maximum protection possible.

3. Immediate adoption of two-stop ITCs. Although not offering as much flexibility as would be possible with one-stop ITCs, it would make available to the indirect carrier the following:

(a) Continuity of aircraft on a back-to-back basis because the success of these ITCs is determined by being able to operate on a continuity basis, to turn the benefit of low cost per passenger to the consumer. The two-stop or one-stop ITC offers that where the three-stop really never did.

(b) And also continuity of hotel accommodations utilization on a four-night three-night and three-night four-night, or seven-night seven-night patterns at each destination. This currently doesn't exist with the three stops except in the Hawaii market as I said before.

(c) The ability to offer either a 1-week or a 2-week program (which is not feasible under the three-stop regulation).

4. The institution of one-stop ITCs in 3 years. Although we share the ultimate goal of one-stop ITCs with many others, we feel this phase-in period of 3 years is necessary for those parties who desire to be indirect air carriers. During this period they can prepare their operations staff, reservations systems, et cetera, to handle the volume of business that would result. In addition, during the phase-in period through their performance they could earn the respect of the financial community which is most necessary if the individual members of our industry wish to grow into the volume operators necessary for one-stop ITCs.

5. The adoption of one-stop ITC's in 3 years. It would make unnecessary all other forms of charters. This would obviously relieve the Board's enforcement staff from a tremendous burden.

I have additional comment relative to the one-stop ITC's as compared to the travel group charter because yesterday that seemed to be a whole bone of contention as to whether or not travel group charters could make unnecessary one-stop ITC's.

It is our opinion that these are two entirely different concepts of charter travel, that serve entirely different markets.

There is no doubt in our minds that travel group charters will fulfill a need for some members of the traveling public. For instance, those segments of the traveling public who are able to plan ahead 6 months and do not require a tour package are a definite market for TGC's. Students and ethnic groups are a prime example of this type of public which make up this potential market.

However, as we pointed out in our testimony, ITC's are a truly creative travel concept. Because they feature a complete package and due to the value they offer the consumer, they create a desire to travel to the specific destination being offered.

In most cases an ITC is an impulse purchase where until the person opened his mail that morning, turned on his television set or opened the newspaper, he had no idea that he would be taking a trip to the specific place offered.

In addition, there are a great majority of our citizens who cannot plan on taking a trip 6 months in advance. Most of us not only don't know our exact vacation date a half a year in advance but probably aren't even sure where we want to go.

There is certainly room for both types of charter programs. From a business standpoint the supplementals need TGC's as part of their marketing approach.

However, I would like to emphasize that in no way are the two types of charter programs comparable. TGC's do not have the creative aspects of the complete package offered by ITC's. Although TGC's have a definite appeal to certain segments of our public, one-stop ITC's will benefit a much larger segment of our population.

Getting back to the two-stop and one-stop ITC's, we would base it on the following:

1. Include round trip flights.

2. Include a land package with hotel accommodations and transfers.

No. 3 is very interesting. We say it should be priced at 10 percent more than the lowest existing air fare to the destination. The reason we say existing as opposed to applicable and applicable is the wording today, is because ITC's again are built around a back-to-back concept. Therefore, they cannot be based on fares designed for other purposes. A back-to-back concept is 7 days or 14 days. Now, on the North Atlantic at the present time, IATA has a fare for 14 days, a special excursion fare, that is lower than the 7-day fare. Therefore, if you use the word applicable, in order to run a 7-day ITC to Europe, you would conceivably have to charge more than you would for a 14-day program. Because the 7-day fare is a regular coach fare, where the 14-day fare is a special reduced fare and if you use the word applicable instead of existing it defeats the purpose of the 110 percent which in our opinion eliminates the diversion that could be created if you don't have a price base from existing tariffs.

4. We also suggest that ITC's be available for sale on scheduled or supplemental service.

5. Media advertising would be permitted.

6. Any indirect air carrier must be licensed prior to offering the tour for sale.

Senator CANNON. On item 4, are you suggesting it be a mixed situation on a scheduled carrier or are you still talking about a charter?

Mr. Low. We are talking about a charter. The scheduled carriers, we feel, should be entitled to the same ITC authority as the supplements.

Senator CANNON. But, you wouldn't mix your ITC with scheduled carriers?

Mr. Low. We are not adverse to that either. Because if you were to take the scheduled carrier, and again revert to what we call a revenue percentage rather than revenue per passenger, and the scheduled carrier who has a predetermined analysis of the percentage of load factor over the period of the year, if he were to say, all right, we know we are going to operate at a 55-percent load factor, therefore, the remaining 40 percent of this aircraft is available to the charter.

Senator CANNON. That is the same as your GIT today, isn't it?

Mr. Low. No, it is not the same.

Senator CANNON. What is the difference?

Mr. Low. The difference is that myriad of air fares that exist on the GIT's, on the scheduled carriers, are supposedly to induce the consumer to travel at a specific time on those fares.

Again, they do not take into consideration the creative cost necessary to induce the passenger to participate in these flights. And when they make these fares available to the consumer, the necessary marketing dollars which the middleman, the tour operator who puts the package together, these necessary dollars do not exist in the straight percentage fare of the GIT.

Our suggestion, of course, would be that the carriers have two basic fares, first class and coach. And then if they want to have part of a split-charter authority on their scheduled flight, and offer the unused seats, the distress merchandise, the 45 percent of the seats that are never used, if they want to offer an inducement to the tour operator and say, OK, even though the published fare on this route is \$300, if in fact you charter half of the plane or the 45 percent of the aircraft that is available, your rate is \$100. The airline gets an additional revenue per aircraft, it increases their revenue per aircraft and allows the necessary marketing dollars that can create the new traveler.

Those marketing dollars do not presently exist under GIT regulations.

Senator CANNON. I am not sure I agree with you there.

The GIT's are sold by the airlines and they do it on just that basis, they sell it, give them a reduced package for a group inclusive tour charter and they use up excessive capacity that way.

Mr. Low. Again we stress this unknown unrecognized factor called the tour operator. He is really the one that creates these additional passengers. Unfortunately—

Senator CANNON. Well, the airlines do on the GIT's, don't they?

Mr. Low. The airlines do intuitionial advertising. It is truly the tour operator that creates the individual that must assemble this group under the GIT. It is the tour operator that must put a group together to be able to qualify for GIT first.

The GIT fares are based upon volume. Now, the dollars on the regular commission basis do not exist to really go out and spend the money creatively.

If I can give you a specific, on our affinity programs, and we have taken into the past 5 years a half million people, our cost per passenger

of acquisition over the entire 500,000 people was \$46 per passenger, to create this new market.

Not to divert, but to create a new market. We feel that there is a tremendous marketing cost in putting together the package and selling it to the public.

Senator CANNON. Well, you can pick up today's paper and you will see a group inclusive tour advertised by the air carriers to a number of different places in the United States here today.

And they are certainly spending marketing dollars for it, but they are trying to fill up excess capacities, but they are selling it on their scheduled airlines. I have seen it in almost every paper.

Mr. Low. In every paper, every paper has a series of advertisements by air carriers for GIT's. But again, it is this unrecognized entity called the tour operator that actually goes out and assembles. You have the intuitional advertising of the air carrier.

You then have the specific promotion which is directed at the consumer. And this is the function of the tour operator and the travel agent. This is not the function of the airline.

And I think that the airlines will roll in advertising and promotion is intuitional. They promote an overall package and intuitionalize it, and yet it is the tour operator and travel agent that must sit down head to head with the consumer and say to him, this is the package for your money.

Senator CANNON. Well, Pan American promoted a 7-day GIT to London entirely created and promoted by them. I think they did that—

Mr. Low. And this again is where I say that this is why Pan American comes in and complains about how much money they are losing, because I don't believe that they are truly creating new passengers with their marketing approach and technique.

I don't believe that the boondock passenger, Des Moines, Iowa, and Cincinnati, Ohio, and the inland points—

Senator CANNON. Of course, Cincinnati and those places are not served by Pan American, so they couldn't promote them from there anyway, on their carrier.

Mr. Low. And this is why we get to the point of the tour operator being able to go into an inland point on a back-to-back charter basis with the supplemental airline, on one-stop ITC's, and create this entirely untapped market. This is the market—the market or gateways, New York, Chicago, Los Angeles. I don't know if they are really going to be good gateways for ITC's, because the scheduled carriers that have those routes promote them, and by the use of superlatives, in numbers and mass-media advertising, anybody can make anything sound as good as the other.

As a matter of fact, to go back to the Hawaiian market, we inaugurated ITC's to Hawaii. We used three stops because it worked.

No. 1, we had aircraft based on the west coast, so that aircraft could come East, pick up people, take them to the west coast, give them 3 days in Las Vegas, pick them up and take them to Hawaii and bring back the group from the previous week to San Francisco, still maintaining the back-to-back concept.

And then the following 3 days later they could take the group from San Francisco back to the Midwest or East to pick up another group.

That is where the three stop ITC worked. And it worked because you have west coast destinations, you had three of them: Las Vegas, Los Angeles, and San Francisco. You had the aircraft based on the west coast and you had the back-to-back concept.

It worked and it worked very well. And it worked with us as a tour operator and many others were extremely successful.

You then had the scheduled carriers that came in, unfortunately simultaneously all of the new carriers were given the authority to Hawaii, the scheduled carriers and the new carriers, scheduled carriers that had the routes, spent advertising dollars completely unproportionate to the return they got or expected.

And that entire market to Hawaii was virtually destroyed by what they called the GIT fare.

We dropped out of it and so did every other tour operator. ITC's to Hawaii now are extinct because of the unrealistic GIT fare, that doesn't give them a return, and doesn't give the tour operator the necessary marketing dollars to create the number of passengers.

There were more passengers moved in 1968 and 1969, en masse, than there are today with all of the carriers, because the charter operators, the supplementals and the tour operators, pioneered that market and spent the marketing dollars to do it.

Mr. POTTS. Senator Cannon, let me just add one thing. On the distinction between the charter and the GIT, as I understand it, on the GIT, the risk of filling those seats, that 45 percent Mr. Low was referring to, remains the risk of the air carrier, whereas, under the concept Mr. Low is describing, if the tour operator charts that 45 percent, then it becomes the tour operator's risk to fill those seats.

In other words, the airline has negotiated a deal for a certain price for that 45 percent of the aircraft. It will get that if the tour operator gets one passenger or enough passengers to fill every seat.

Senator CANNON. What differences does it make who assumes that risk? What differences does it make to the traveling public as long as that risk can be assumed by a responsible party and he gets the transportation, whether the air carrier assumes the risk or the tour operator assumes it?

Mr. POTTS. One of the risks as a policy matter is the fact if a tour operator has put his money up and already paid that price, he has a tremendous economic incentive to go out and beat the bushes to get those passengers to fill it up.

Senator CANNON. Don't you think the air carrier has just as much an incentive to fill it up so they can operate at a profit?

Mr. POTTS. They certainly do have the incentive, but they don't have the same marketing organization out there with the consumers, the direct personal contact that the travel agents and tour operators have.

These are the people that are in the front trenches. That is what Mr. Low is talking about as far as the relationship of tour operators and travel agents with their customers and their contacts.

Senator CANNON. Is the basic difference the fact that the airlines use travel agents and the tour operators use tour operators?

Mr. POTTS. The tour operators use travel agents, too.

Mr. Low. But the travel agent is restricted by certain basic commissions that he may only get from the airlines. The tour operator assumes a risk of 100 seats on an aircraft, he knows damn well he

has paid for those 100 seats, whether 10 people go or 100 go, and he then goes out and makes arrangements with travel agents, makes arrangements with the consumer, and advertises as much as he can to get those 100 passengers, because he has paid for those 100 seats and assumed that risk.

The consumer then benefits by a lower cost package tour, and the airline benefits because the airline now gets revenue per aircraft instead of being concerned with revenue per seat.

Senator CANNON. Well, I think that the aircraft operator is basically concerned with his revenue per seat, whether you talk about it being per aircraft or not. He is concerned with his seat load factor, that is where he makes his money.

Mr. Low. No, he makes his money on revenue per aircraft.

The supplemental airline in the charter business earns his revenue on revenue per aircraft.

Senator CANNON. That that is based on so much per seat.

Mr. Low. So much per mile, not so much per seat.

Senator CANNON. I think we are talking about a difference with no distinction.

Mr. Low. It relates to so much per seat. But when he charters an aircraft to a third party, the charter airline knows he is getting \$50,000 for a round trip to Hawaii. The scheduled carrier does not know until the day that flight departs what his return on that particular aircraft is.

Senator CANNON. I don't find that to be a particularly convincing argument.

Mr. Low. It is not a convincing argument to the extent that it is going to change the industry.

What we are suggesting is that the industry go toward a point where they recognize the value of the person that can create these additional passengers, because there is no recovery for an empty seat.

We own a hotel. When that hotel has a room that is empty, we know the next night we can never recover that empty bed, nor can the airline ever recover an empty seat.

What we are suggesting is if scheduled airlines are to be a party to this, and you are to have regular carriage along with charter authority, whether it be full load or part load, depending upon the availability of the number of seats, the airline really shouldn't be concerned with how much they are being paid for the seat that would have been empty otherwise.

On charters, when we operate with the supplementals, we charter as an indirect air carrier on ITC's on a per-mile basis. We pay them. They don't care if we go out with 10 people or a full load. They have been paid their per mile, so it doesn't relate to them being paid per seat. They are being paid per aircraft.

They know the cost of the fuel, the cost of the crews, all of the other costs involved. They then sell it to us on a per-mile basis.

Under the existing affinity regulation, they sell through an organization, and again, on a per-mile basis. Unfortunately, the regulation, which I don't want to get into the existing affinity regulation, which we feel is antiquated on the pro rata, that is another issue in itself.

But the charter carrier gets his return regardless of what the load factor is. He gets his return.

The scheduled carrier only gets his return on the per-seat basis, on the fares he has predetermined.

Senator CANNON. There is no question about that.

You are just talking about who assumes the risk, that is the only difference I see.

Mr. Low. We are talking about a healthy airline industry.

Senator CANNON. You are talking about a healthy airline industry and an unhealthy group tour operator industry, then, if the group tour operators oversell, if he contracts for an aircraft and can't fill it, he is going to suffer a loss.

So the question is, Who stands the loss, does the air carrier stand it or does the group tour operator stand it, isn't that it basically?

Mr. Low. Basically what we are saying is if ITC's do come to pass, it is our belief that many, many millions of people will travel that have never traveled before by air.

If Europe is indicative of what will take place, I am thoroughly convinced that the Des Moines, Iowans and the Cincinnati, Ohioans, and the Little Rock, Ark., by themselves, can maintain a continuity of somewhat back-to-back charters to different areas.

Senator CANNON. I must say that I agree with you and I think you people have done a real good job of going into these back areas that don't have good scheduled carriers, good scheduled service, and developing a lot of tour business out there. I think that is a very lucrative, really untapped market in the United States today.

Mr. Low. This is where the future of this industry lies, not in the major gateways that are so highly competitive. The future of this industry lies in the boondocks, and the tour operator—

[Laughter.]

Mr. Low. What did I say wrong?

Well, let's call them the inland points.

[Laughter.]

Mr. Low. But wherever it may be, the future of this charter industry lies in the inland points, where the people are unaware of direct service, and are unaware of the real reduced rate transportation that can be offered to them.

And as part of the getting to this inland point I almost said boondocks again—as far as getting to these inland points, it is really the function of the tour operator and travel agents to get into these areas and create new markets.

And if he is willing to assume the risk, he is entitled to the lion's share, if he fills the plane. If not, he is entitled to pay the price.

At the present time, the tour operator industry is not in a position to do that, because they don't have the respect of the financial community, there are not enough major tour operators that really have the respect of Wall Street and the financial community that is necessary to be able to undertake a project of this size and scope that will really mean millions and millions of people.

And that is why we suggest a 3-year phase-in, because I believe that this whole new industry can spring up, and it is so essential to both the scheduled and the supplemental carriers to create these new travelers that currently do not exist.

I do not believe that the airlines in the past have proven that they can create these new travelers from the inland points, and I don't believe they have demonstrated it in the present.

And the tour operator and travel agents have.

I really do believe that the element that has been overlooked becomes essential to a healthy future of the one-stop ITC's.

The reason for the term existing as opposed to applicable is because ITC's are built around a back-to-back concept.

Therefore, they cannot be based on fares designed for other purposes. For instance, IATA could have a \$300, 14-day fare to a destination as an existing fare. On that basis, a 7-day ITC could be offered for \$330.

The applicable fare, however, for less than 14 days, could be \$400.

This would mean, under that terminology, that you would have to offer a 7-night ITC at \$440, or \$110 higher than you could offer a 14-day trip.

We respectfully submit that the aforementioned guidelines would not only protect the public, but also present the travel industry an opportunity to eventually fully capitalize on the potential offered by one-stop ITC's.

We believe it is a realistic approach which can only benefit both types of air service and increase the potential for domestic tourism as well as to afford persons from other countries an opportunity to visit America.

I appreciate the time you have given to our views and the opportunity of presenting them. Thank you.

Senator CANNON. Thank you very much.

The next witness is Mr. Paul Cherington, testifying on behalf of the National Air Carriers Association.

STATEMENT OF PAUL W. CHERINGTON, CHAIRMAN, TEMPLE, BARKER & SLOANE, AND PROFESSOR OF TRANSPORTATION, HARVARD BUSINESS SCHOOL

Mr. CHERINGTON. Mr. Chairman, it is a pleasure to appear before you again. My name is Paul Cherington; I live in Boston.

I am chairman of the board of Temple, Barker & Sloane, Inc., economic counsel of Wellesley Hills; and I am also the James J. Hill Professor of Transportation at the Harvard Business School.

In 1969-70, I was Assistant Secretary in the Department of Transportation for Policy and International Affairs.

I am appearing before the subcommittee at the request of the National Air Carriers Association to present my views on two of the bills which you are today considering; namely, S. 3513, a bill to amend the Federal Aviation Act of 1958 to provide a definition for inclusive tour charters and for other purposes; and S. 2549, a bill to amend the Federal Aviation Act of 1958 to give the Civil Aeronautics Board the flexibility to approve air carrier-surface carrier control relationships when such relationships are found to be in the public interest.

S. 3513

This subcommittee is well aware of the relatively recent rise in aviation of charter service; or to use a rather unlovely phrase, "bulk transportation."

This is a class of service which has existed for many years but which has really come into its own only in the last 6 or 8 years.

It has enjoyed a particularly spectacular rise within Europe in recently years and has gained steadily on the transatlantic routes. Originally, most charter trips were furnished to affinity groups—bona fide members of a club, association, or other institution. The inclusive tour charter is a more recent development.

The main secret of the attractiveness of charter air service is really no secret at all. It is simply price. By filling all or virtually all of the seats on an airplane, the airline can offer a more attractive, lower fare. There may be some difference in the underlying cost structure of supplemental and scheduled carriers, but the fundamental difference in cost of charter versus scheduled, individually ticketed service is in the seat-load factor. This has been especially true in recent years when there has been a downward drift in scheduled load factors.

The tour operator can probably also offer lower prices for ground accommodations for a group rather than for individuals because he can make a better deal with hotels, bus operators, and the like. But, in fact, he could do this for any group, regardless of how their air travel was conducted.

In order to protect the scheduled, individually ticketed services, the aviation authorities of this and other countries have surrounded charter service, whether rendered by scheduled or supplemental carriers, with a number of essentially artificial restrictions. The rules surrounding affinity charter travel are illustrative. The overall population of the group could not be larger than a certain size, say 20,000 to 25,000; the traveler had to have been a bona fide member for a specified period of time; say, 6 months.

In ITC charters, there were restrictions as to the number of spots which had to be visited on the tour—say, three—and they had to be more than a minimum distance apart, 50 miles.

The price of the inclusive tour had to be above the minimum published IATA fare by at least some stipulated percentage. These and other restrictions were designed to insure that charter service would not increasingly invade the domain of individually ticketed scheduled service.

If it did so, it might undermine the certificated rights of the scheduled carrier, and it might in time conceivably eliminate all or most scheduled service.

Being basically artificial, the restrictions placed on charter service have injected some measure of rigidity into the service, have been extremely difficult to enforce and police, and have invited a whole series of illegal or quasi-legal evasions or violations.

But the main question surrounding rules pertaining to ITC's would appear to be whether we can make available low-cost trips for vacationers which will not destroy the scheduled service and its flexibility, needed for businessmen, Government officials and personal, individual travel.

The European experience as recited by other witnesses at this hearing is such that it appears that U.S. citizens are now being needlessly deprived of access to low-cost vacation trips via ITC flights because of the artificial barriers erected with the objective of protecting scheduled service. Presumably if other protection can be devised for the

scheduled service, there would be a consensus that ITC's should be allowed to operate on a relatively unfettered and unrestricted basis.

It is perhaps useful to stress that what we are discussing here is scheduled service, not scheduled airlines on a particular scheduled airline. In short, this is the same distinction that is often used in considering antitrust problems—the preservation of competition as against the preservation of a particular competitor or class of competitors.

It is true that competition cannot prevail if there are no competitors. And scheduled service cannot exist if there are no scheduled carriers. But this is not the same as saying that scheduled service requires the presence of carrier X on a particular route.

It has been claimed that it would be a mistake to unshackle charter, including ITC, service before or until there was a clear perception of just what minimum-scheduled service over various routes was required.

I would not deny the desirability of having at least some general standards or yardsticks along this line. But a detailed route-by-route tabulation of the minimum-scheduled service required is probably neither possible nor desirable.

A more generalized approach might be to set as a minimum requirement the availability to individually ticketed passengers a number of seats equal to 160 percent of the individually ticketed passengers in the preceding year, handled by all scheduled carriers plus an allowance for growth. The number of passengers would exclude GIT and other low-fare excursion passengers handled on scheduled aircraft. Thus, if the number of individually ticketed passengers on a route had been 10,000 in the preceding year, the minimum required capacity would be 17,600—10,000 times the 160 percent plus 10 percent growth.

A further refinement in the standard might be some allowance for seasonality on the route.

Such a general standard could be readily calculated for any international route, or for any domestic route, for that matter. To the extent that constructive load factors for all carriers on a route dropped below 50 or 55 percent as related to the base requirements, the Civil Aeronautics Board could unilaterally cut back on permitted charter flights by U.S. supplementals affecting that route and by scheduled carriers, too, and if the reciprocal country did not take similar action with respect to its charters, the Board could, perhaps after consultation, also curb foreign-flag charters.

If during a period of 1 or 2 years of study of the minimal scheduled capacity requirements, it appeared necessary to provide a greater measure of protection for the scheduled service, the aforementioned minimum standards could be tightened somewhat to provide greater protection to the scheduled service.

But fundamentally if the President's statement of International Air Transportation Policy of June 22, 1970, is to be carried out, the scheduled service should not be allowed to hide behind an artificially high protective screen at the expense of charter services.

That statement said, in part:

We expect both scheduled services (individually ticketed and individually way-billed) and charter services (whether offered by supplemental or scheduled carriers) to have important roles throughout the coming decade.

Accordingly, in any instances where a substantial impairment of schedules service appears likely, it would be appropriate, where necessary, to avoid prejudice to the public interest, to take steps to prevent such impairment.

The foregoing minimum standards for scheduled service, which could be put into effect by the CAB without delay, would appear to meet both the spirit and the letter of the policy statement.

A good number of charter type or bulk passengers now travel abroad scheduled flights at substantial discounts; other passengers travel on individually issued tickets which are sold at substantial discounts.

Obviously, these passengers are more a part of the bulk or charter market than of the scheduled market, and they should not be included in the calculation of the minimum scheduled capacity requiring protection.

By the same token, there does not seem to be any reason why such passengers should not be accommodated on scheduled flights if the scheduled airline so elects and if they are carried at compensatory fares, so long as they do not preempt minimal scheduled space.

In general, such passengers can probably be handled more economically on charter flights but during some seasons smaller groups can be accommodated in excess seats of scheduled flights where full charters are probably not justified.

Uncontrolled carriage of GIT or low-excursion fare passengers on scheduled flights might, of course, be used by the scheduled carriers to drive charter operations of any type from the market except in the peak season.

Thus, the Board should have the authority to limit or curtail the amount of capacity offered to low-fare charter-type passengers on scheduled flights, both to preserve capacity for individually ticketed passengers and to prevent unfair competition with charter services.

Again, this would be in line with the spirit and letter of the President's policy statement which said, in part:

If it appears that there is likely to be a substantial impairment of charter services, it would be appropriate, where necessary to avoid prejudice to the public interest, to take steps to prevent such impairment.

It should be made perfectly clear that the full plane charter services referred to above could be offered by either the scheduled or supplemental carriers of either the United States or a foreign country with the proper rights. Competition should be the main determinant of which carrier would handle the traffic.

This leads naturally to a consideration of what uplift rights should be negotiated for our carriers with foreign countries and what rights for charter traffic we should grant to the scheduled and supplemental carriers of foreign countries. In the absence of a resolution of these issues, we are likely to end up with some supplemental carriers having adequate U.S. rights but with no place to set down or pick up traffic abroad.

Thus far we have more or less followed the policy of granting reciprocal charter rights to both foreign-flag scheduled and supplemental carriers regardless of whether the supplemental was independent or a subsidiary of the national flag carrier.

Nor have we taken a hard line on denying or restricting uplift rights for the carriers of countries which denied or restricted uplift rights to U.S.-scheduled or supplemental carriers.

Beyond this, we have taken the position that we would not trade away the traffic or rights of our scheduled carriers in order to secure charter rights.

Whatever the theoretical merits of this policy course—and I will confess that at one time I was one of its vigorous supporters—it appears no longer to be practical as a means of securing charter rights, especially for the supplementals.

An alternative policy would be immediate cancellation of all rights for foreign-flag charters, regardless of the operator, unless a suitable amendment to the appropriate bilateral agreement could be brought into force providing for the reasonable exchange of charter rights.

Again, if GIT or low-fare excursion traffic threatened to overwhelm the scheduled service, the CAB could take appropriate action with respect to the number of schedules permitted to operate.

S. 3513 appears to me to be an important step toward achieving the balance between scheduled and charter service which the President's policy statement called for.

ITC service has a demonstrated record in Europe of making available to large numbers of middle-income families low-priced vacation trips.

There is no reason why U.S. citizens should not have the same service, particularly since there is no reason to believe, given reasonable safeguards, that this expansion of the market will deprive us of required scheduled, individually ticketed service. The inclusive tour charter appears to be the best way in which to open up a large new market for air transport, something that the industry needs at the present time.

S. 2549

I should also like to say a few words in support of S. 2549 which would basically alter the second proviso of section 408 having to do with the ownership or control of air carriers by surface carriers, and as interpreted by the Board, vice versa. As a practical matter intermodal ownership is either banned or so restricted as to be virtually unworkable at the present time.

Whatever the validity of the reasons at the time of the passage of the Civil Aeronautics Act of 1938 for protecting the infant air transport industry from strangulation by surface carriers, the situation today is quite different. Indeed, we talk extensively about the benefits which may result from intermodalism and from a systems approach to door-to-door transportation.

The effective bar to intermodalism which the second proviso of section 408, as interpreted by the Board, provides is thus an anachronism. It not only precludes realistic intermodal ownership arrangements from being consummated, it probably stultifies a great deal of thinking and exploration of intermodal approaches.

Why should companies spend time in working on such ideas when they are almost certain to be rejected or so restricted as to be rendered impractical?

Thus the dearth of recent cases under the proviso is hardly a good test of whether it is doing harm. Since there is no shred of evidence that the proviso is still needed, it should be repealed so that experimentation with different patterns of intermodal ownership and control may proceed unfettered.

That concludes my statement, Mr. Chairman.

Senator CANNON. Thank you, very much, Mr. Cherington. We are glad to have you back here visiting us again.

Mr. CHERINGTON. I am very glad to be here.

Senator CANNON. The next witness is Mr. Glenn Cramer, president, TIA.

STATEMENT OF GLENN A. CRAMER, PRESIDENT, TRANS INTERNATIONAL AIRLINES, OAKLAND, CALIF.; ACCOMPANIED BY CLAYTON BURWELL, COUNSEL

Mr. CRAMER. Mr. Chairman, my name is Glenn Cramer. I am chairman of the board of Trans International Airlines.

I will be accompanied by Mr. Clayton Burwell, attorney for Trans International.

We are headquartered in Oakland, Calif., at the International Airport.

I have been in aviation for approximately 30 years. I appreciate the opportunity to appear before your committee today.

The Federal Aviation Act, as amended, contains a prohibition against a supplemental air carrier "controlling, being controlled by, or under common control with, * * *" a tour operator selling inclusive tour charters.

S. 3513 would remove this prohibition in order that both fully independent tour operators or those controlling, being controlled by, or under common control with an air carrier can sell inclusive tour charters.

The present prohibition was not contained in S. 3566 but was placed in H.R. 17685 in 1968 as a result of the fears expressed by potential tour operators that they would not have an opportunity to develop this market if the supplementals were permitted to gain any measure of control over them and the fear that this might amount to individually ticketed transportation.

Unhappily, the tour operators' fears were misplaced and the market has failed to develop, in large measure, because most of our tour operators have been unable to undertake the risks involved.

There have not been more than six substantial U.S. tour operators involved in this business.

Earlier in this hearing, Mr. Bender testified that in DOT's opinion control of tour operators by carriers would tend to reduce competition. On the contrary, I think that without a substantial number of vigorous tour operators, the public is denied access to inclusive tour charters.

Without a substantial number of vigorous tour operators the public is denied access to inclusive tour charters. Within the confines of the statute the supplemental industry has tried in every way possible to encourage the tour operators but without substantial success.

With regard to the fear that this would amount to individually ticketed transportation we need only look at the characteristics that surround the service to distinguish it:

(a) It is not point-to-point transportation. A purchaser must acquire the entire package—air and land arrangements.

(b) The traveler is subject to travel when the tour departs and return when the tour returns. He does not have freedom of choice as does an individually ticketed passenger.

There are many criteria that distinguish charter service from individually ticketed. Some of these I have just mentioned. Others are such things as advance purchase requirements or the entire plane under contract.

Not all criteria have to present in each case to distinguish one from the other. We believe that ITC's are adequately distinguished from individually ticketed transportation by conditions requiring the purchase of a package tour, and requiring that the entire tour group to travel as a unit.

Certainly, there is no confusion in Europe as to individually ticketed and ITC services.

The significance of direct carrier marketing is readily shown by comparing the development of affinity charters and inclusive tour charters, and noting the marked differences.

Affinity charters, where the carriers have the authority to market themselves or through travel agents, have been an expanding mode whether performed by scheduled carriers or charter carriers.

Inclusive tour charters, on the other hand, have served a relatively small segment of the public within the United States or from the United States to foreign points, as shown in Mr. Driscoll's testimony.

What is really happening here is the U.S. public is getting a very raw deal. They are not getting the same choice as the European consumer to take holidays at the lowest possible price.

In contrast, the development of inclusive tour charters in Europe has been dramatic. It is estimated that approximately 8.5 million Europeans will travel on inclusive tour charters during 1972 compared with only 90,000 to 100,000 in the United States.

Affinity charters within Europe are almost extinct since the inclusive tour charter serves the basic need of the traveling public for charter service.

In Europe, unlike the United States, there is no prohibition against the charterer or scheduled air carrier marketing its own inclusive tours or operating in conjunction with a tour operator or controlling or being controlled by a tour operator.

Thus, the air carriers involved have been able to market through whatever method has proved the most expedient in providing the public with inclusive tour holiday packages.

The question is who has benefited? First the traveling public, second the air carriers, due to the larger volume of business provided. Both classes of air carriers have thrived and grown under these conditions.

In the United States, however, the carriers have been at a distinct disadvantage by reason of the congressional proviso included in the 1968 legislation.

For example, when the scheduled carriers through IATA adopted contract bulk inclusive tour fares, tour operators responded to those fares rather than to ITC's. Their response was predicted upon risk involved, as under the contract bulk inclusive tour fares they merely had to contract for 40 seats, not an entire airplane.

During the period that contract bulk inclusive tour fares were in effect, supplemental carriers found it difficult if not impossible to encourage tour operators to market their product. The same is true today with respect to GIT fares.

Again, the loser here is the potential traveler, who should be afforded a freer and wider range of choice.

Within the United States, as contrasted with Europe, there have been a relatively small number of substantial tour operators.

A tour operator must have access to substantial amounts of capital to enable him to contract far in advance for hotels, ground accommodations and all of the necessary components that go to making up an attractive ground package.

The success of an inclusive tour charter program depends upon the overall price to the consumer.

The air transportation portion of the price is presently at the lowest possible level and, I might add, at rates that may be too low.

Consequently, any additional savings to the consumer will come from the bulk purchase far in advance, for entire seasons or years of the hotel and ground accommodations.

An aggressive and experienced tour operator is able to acquire hotel rooms at rates which are a fraction of what we know as their normal costs.

Mr. O'Callahan has depicted for you some of the prices of the tours. We know that hotel accommodations with three meals a day are being marketed as low as \$3.75 on the Costa de Sol in Spain and at similar rates in other areas.

Thus, the tour operator function is one that is so intimately interwoven with the air carrier function that it is difficult to draw a distinction.

Yet, as the U.S. experienced demonstrates, if the air carrier itself cannot market the product it sells, it is effectively stopped from performing inclusive tour charters on a large-scale basis.

This is certainly not in the interest of the consumer nor in the interest of the air carrier.

Like the Congress, we are interested in promoting a sound air transportation system which includes low-cost inclusive tour charters.

One does not promote a sound system of ITCs when the development of that system is left wholly to a third party tour operator, without giving the air carrier some reasonable opportunity to market himself or to market in conjunction with an independent tour operator.

The present system gives the tour operator unlimited control over the destiny of the air carrier. He can pick or choose at his whim. He has unnecessary leverage on price.

So long as this prohibition is in the statute, even the CAB cannot equalize the competition between the U.S. supplementals and other carriers either U.S. or foreign in the ITC market.

It should be recognized that the U.S. scheduled carriers in marketing group IT fares are not subject to this prohibition. GIT fares and similar tour-basing fares are of course bulk transportation.

As stated in the President's Statement of International Air Transportation Policy of the United States:

Both scheduled carriers and supplemental carriers should be permitted a fair opportunity to compete in the bulk transportation market. We consider passengers traveling at group rates on scheduled services to be part of that market. Regulatory and promotional policies should give greater recognition to the dimensions, characteristics and needs of the bulk transportation market, as such, and less emphasis to the type of carrier that is serving that market. However, the government should not allow enjoyment of the right to perform both scheduled service and charter service to result in decisive competitive advantages for scheduled carriers.

In addition, the inability of the U.S. charter airlines to maintain a cooperative or control relationship with a tour operator places us at a sharp disadvantage in generating European charter traffic to the United States, and one which has an adverse effect on the balance of payments.

I would like to emphasize that it is not our intent or desire to lessen the participation of the independent tour operator in the market.

More than 90 percent of the charter business of U.S. supplemental air carriers is done through travel agents, and we would have preferred to rely to the same degree on independent ITC tour operators.

During the House hearings, we expressed our concern that there would not be enough ITC tour operators with the existing prohibition in the ACT. Our worst fears have been realized.

The hard fact is that over a 4-year period there have not been enough substantial tour operators to give vitality to the inclusive tour concept. In any one year there has generally been only two or three significant tour operators working with six U.S. supplementals.

Mr. Chairman, the supplemental air carriers have come of age. They are able to muster the large financial requirements necessary to promote their inclusive tour programs.

They should not be disadvantaged in the bulk transportation business. They should have equal standing with the scheduled carriers.

The President's International Air Transportation Policy recognizes this.

It seems to me that since the CAB looks to the air carrier as being basically responsible for the performance of the program regardless of who else is involved, it is only appropriate that such an airline which is held responsible be given the authority to control its own destiny.

I would like to submit this brief additional statement in light of the testimony yesterday from the CAB chairman, Mr. Secor D. Browne before this committee on the subject of single-stop inclusive tour charters.

He said that the award of one-stop ITC authorizations would be "an abrupt and drastic change" and a "sudden and uncontrolled expansion" of supplemental carrier authority.

The fact is, Mr. Chairman, that the CAB has in effect already authorized one-stop ITC's to the United States from a number of foreign countries so long as those charters are performed by foreign charter airlines, and not U.S. supplementals.

Another pertinent fact, which Chairman Browne did not mention, is that the residents of one major U.S. city, Detroit, are now able to enjoy low-cost one-stop ITC's to the Caribbean sun spots so long as they take a short ride across the border and utilize Canadian carriers.

Let me briefly give the Committee the relevant facts.

For a number of years, the CAB has issued foreign aircarrier permits to charter airlines for the United Kingdom, Canada, and several other countries which provide that ITC's, which originate in the home country of the foreign carrier, are subject only to the terms and conditions imposed by the home country.

These ITC's are not subject at all to the Board's inclusive tour charter regulations.

For example, the following provision appears in the permits of more than a half dozen British charter airlines:

The authority of the holder to perform inclusive tour charters originating in the United Kingdom shall be subject to the terms, conditions, and limitations contained in licenses to be issued by the Air Transport Licensing Board of the United Kingdom authorizing the performance of such charters.

Similar provisions appear in the permits of many other foreign charter airlines. (See exhibit 1 to this statement.)

There are at least two from the Netherlands, one from Spain, and there are three that have been recommended by an Examiner that could perform one-stop ITC's from Germany to the United States.

The United Kingdom licensing authority has issued a number of authorizations to a British charter carrier, Caledonian/BUA, to perform one-stop ITC's to the United States.

And under its CAB-issued permit, Caledonian is fully authorized to perform these flights.

Thus, in 1970 and 1971, Caledonian was granted licenses to operate, at least seven different one-stop ITC programs, between the United Kingdom and the United States.

The points involved are London-Miami, Gatwick (London)-Boston, London-Baltimore, London-Los Angeles, Birmingham-St. Louis, and London-New York.

Several of these flights were so-called "special event" charters, which are simply one-stop ITC's that include a sports—or similar—event as part of the tour—that is, the International Horse Race at the Laurel Race Track in Maryland.

Not only are these ITC's free of the CAB's three-stop restrictions, Mr. Chairman, but also the 110 percent price restriction. The United Kingdom licensing board, as I understand it, permits ITC's at substantially lower percentages relative to scheduled fares.

This situation is not limited to the United Kingdom. To cite another example, Canadian charter airlines are authorized to perform Canada-originating one-stop ITC's to Hawaii, Puerto Rico, and the Virgin Islands.

I find it difficult to understand, Mr. Chairman, why the CAB would deny to U.S. citizens the benefits of low-cost ITC services which it allows to British and Canadian citizens.

Even if the Board is concerned about the balance of payments, I fail to understand why users of low-cost charter services, among all U.S. travelers, should be discriminated against.

What's equally hard to understand is why the CAB refuses to let U.S. supplementals participate in this one-stop ITC traffic originating in foreign countries.

Surely, our balance of payments is not helped by forcing this traffic to use foreign airlines. But that is exactly what the CAB is doing.

In November 1971, one of the U.S. supplementals, Overseas National Airways—ONA—asked the Board for a waiver of the three-stop and 110-percent price restrictions in order to perform a program of 14 ITC's originating in Basel, Switzerland, and Brussels, Belgium to Miami Beach, Fla.

ONA advised the Board that "No U.S.—scheduled—air carrier provides service between Basel/Brussels and Miami and no carrier, United

States or foreign, provides single-plane service between the points to be served."

ONA obtained permission from both the Swiss and Belgian authorities to perform the flights.

Yet, in March of this year, the CAB denied its request, without really giving any reasons at all. I want to submit for the Committee's record a copy of this waiver application and the CAB's letter of denial.

You heard testimony yesterday, Mr. Chairman, from the Government witnesses about how hard it is to obtain bilateral agreements covering charters.

It is little wonder that this is the case when our Government gives away to foreign charter airlines the right to perform one-stop ITC's from their home country to the United States; excludes U.S. supplementals from this traffic; and gets nothing in return.

The situation in Detroit, which I mentioned at the beginning of this statement, should also be brought to this committee's attention.

The fact is that residents of the Detroit area have available to them frequent and thriving one-stop ITC services to the Bahamas and other Caribbean points. They need only drive across the border to Windsor, Canada to catch their flights.

This poses no burden at all since the Windsor airport is substantially closer to downtown Detroit than is the Detroit Metropolitan Airport. From the Windsor Airport, they board jet aircraft operated by Air Canada or Nordair, a Canadian charter airline, destined for a vacation in Nassau or Freeport.

Let me emphasize, Mr. Chairman, that this is not a situation where Detroit residents are taking advantage of ITC programs designed for Canadians. These programs are intended to be utilized by residents of the Detroit area, who constitute 95 percent of the population in the combined Detroit/Windsor market.

The programs are largely organized by tour operators located in Detroit. And, they are advertised intensively in Detroit newspapers.

One-stop ITC services are offered by several tour operators in the Detroit area on a weekly basis, throughout substantial portions of the year.

Accommodations in first-class hotels, such as the new Sonesta Beach Hotel and Golf Club and the Sheraton British Colonial Hotel—both in Nassau—are offered.

One recent newspaper ad offers 7 nights at the Lucayan Harbour Inn in Freeport, including jet air fare, hotel, breakfasts and dinners, unlimited free golf, for a full price of \$188 including tax.

It is not surprising that many of these flights appear to be sold out.

I would like to know why, Mr. Chairman, Americans outside the Detroit area cannot have these kinds of ITC services available to them.

I heard Chairman Browne say that the CAB must proceed by a careful, step-by-step movement; in broadening the availability of charter transportation. But Canada and the European countries seem to have managed a faster pace, and surely the United States can do as well.

A second question is why Canadian airlines are allowed to transport residents of Detroit on one-stop ITC's, while the CAB denies that authority to U.S. supplementals.

In this connection, Mr. Chairman, one of our U.S. supplementals (again, Overseas National Airways) has within the past few days

asked the Board for a waiver of the three-stop restriction in order to perform a program of 17 single-stop ITC's between Detroit and Nassau during the 1972-73 winter season. And it says in its application, there already are one-stop ITC's from the Detroit area to the Bahamas, and the issue presented is whether this traffic is to be restricted to Canadian carriers.

ONA also points out that there is no single-plane scheduled service from Detroit to Nassau (or any other destination in the Bahamas). I would like to submit a copy of this application for the committee's record.

In sum, Mr. Chairman, single-stop ITC's are not the drastic reform which the CAB seems to fear.

Foreign charter airlines, as I have explained, perform such flights to the United States under permits issued by the CAB.

And, a comparative handful of lucky Americans can use single-stop ITC's simply by driving across a nearby border.

I hope that the day is not too far off when all Americans will be able to share these benefits.

Yesterday, there was a lot of discussion in this hearing about protecting scheduled services. I would like to go on the record that I feel that scheduled services are vital and that they must be maintained.

However, I would also point out that we can be so dedicated to protecting those services as we historically have known them that we lose sight of what the consumer really wants and needs.

Back in 1948, the old nonscheduled started air coach across-country from the west coast to Hawaii and into Las Vegas from cities in the east and west coast and the scheduled carriers complained bitterly, but finally joined the market and now air coach is the mainstay of the scheduled services.

In the early 1960's nonscheduled or supplemental carriers, as they became known, were carrying 57 percent of the military charter traffic.

Some of the larger scheduled carriers saw this as an opportunity to use some of their surplus capacity and have now flooded the market where in the last fiscal year the supplementals only carried 23 percent of that military charter traffic.

In 1962 Public Law 528 was passed that gave the supplemental carriers charter authority and the obligation to promote charters.

We have done that job very vigorously in spite of extremely rigid and outmoded governmental restrictions, and opposition from the scheduled carriers.

Finally, after seeing that the public wants and demands this form of transportation, the scheduled carriers of the United States have now gone into it in a very big way.

Thirty-seven jets will be used full-time in charter service in 1972 by U.S. scheduled carriers and by their own claims they have more than 50 percent of the charter business in the North Atlantic.

Now, why have I gone into all of this?

Only to make this one point: The United States is a decade behind Europe in the development and promotion of tourism due to the Europeans having an enlightened policy that benefits the consuming public, rather than thinking solely of protecting the airline that is supposed to serve that public.

The mass of the U.S. public is entitled to that same type of tourist development, and that need and demand can be met without fear of destroying the scheduled service, because with their larger fleets and their larger resources, they will command the larger share of the market, while the charter carriers will be able to only take the smaller portions. The customer will benefit and I think he should.

Senator CANNON. Thank you very much, Mr. Cramer, for your statement.

(The appendices follow:)

(Some of the exhibits were not reproducible and are in the Committee files:)

LIST OF FOREIGN CHARTER AIRLINES AUTHORIZED BY THE CAB TO PERFORM INCLUSIVE-TOUR CHARTERS TO THE UNITED STATES FROM THEIR HOME COUNTRY ACCORDING TO HOME COUNTRY-RULES

Country and carrier	CAB Order	Terms
United Kingdom:		
Caledonian.....	Order 68-9-62, approved Sept. 13, 1968.....	United Kingdom licenses govern United Kingdom-originating ITC's
British Midland.....	Order 70-6-3, approved May 28, 1970.....	Do.
Donaldson.....	Order 70-5-39, approved May 7, 1970.....	Do.
Laker.....	Order 69-12-60, approved Dec. 11, 1969.....	Do.
Lloyd.....	Order 69-7-44, approved July 7, 1969.....	Do.
Dan-Air.....	Order 70-10-137, approved Oct. 27, 1970.....	Do.
Brittania.....	Order 71-4-63, approved Apr. 8, 1971.....	Do.
Channel Airways.....	Order 71-1-6, approved Dec. 31, 1970.....	Do.
Netherlands:		
Transavia.....	Order E-26136, approved Dec. 16, 1967.....	Netherlands licenses govern Netherlands-originating ITC's.
Martin's Air Charter.....	Order 71-5-95, approved May 18, 1971.....	Do.
Yugoslavia:		
Inex Adria.....	Order 71-6-94, approved June 15, 1971.....	Yugoslav ITC rules apply to Yugoslav-originating ITC's.
Jugoslovenski Aerotransport.....	Order 70-6-118, approved June 19, 1970.....	Do.
Spain: Spantax.....	Order 70-1-138, approved Jan. 27, 1970.....	Spanish licenses govern Spain-originating ITC's.
Canada:		
Nordair.....	Order 68-12-124, approved Dec. 20, 1968.....	Canadian licenses govern Canada-originating ITC's.
Pacific Western.....	Order 69-4-84, approved Apr. 17, 1969.....	Do.
Quebecair.....	Order 70-8-67, approved Aug. 14, 1970.....	Do.
Wardair.....	Order E-26137, approved Dec. 16, 1967.....	Do.
Germany:		
Condor Flugdienst ¹	Recommended decision, docket 23404, Dec. 27, 1971.	German ITC rules apply to German-originating ITC's.
Atlantis ¹	Recommended decision, docket 23072, Nov. 11, 1971.	Do.
Air Commerz ¹	Recommended decision, docket 23693, Feb. 14, 1972.	Do.

¹ Not final authorization.

BEFORE THE CIVIL AERONAUTICS BOARD, WASHINGTON, D.C.

IN THE MATTER OF THE APPLICATION OF OVERSEAS NATIONAL AIRWAYS, INC. FOR A WAIVER FROM SECTION 378.2(B) (2) OF PART 378 OF THE BOARD'S SPECIAL REGULATIONS.

APPLICATION FOR WAIVER

Overseas National Airways, Inc. (ONA) hereby applies to the Board for a waiver of the provisions of Section 378.2(b) (2) of Part 378 of the Board's Special Regulations and from such other provisions of the Board's Special or Economic Regulations as may be necessary to permit ONA to engage in the air transportation hereinafter described.

The Flights

The purpose of this Application is to enable ONA to provide air transportation for seventeen inclusive tours sponsored by Book Couzins Travel Service, of Southfield, Michigan. The flights would operate between Detroit, Michigan and

Nassau, in the Bahama Islands, using a 105 passenger DC-9 aircraft. Passengers on the aircraft would be limited to those participating in the one week vacation tours. The proposed service would be confined to seventeen round-trip flights commencing December 2, 1972 and departing every week thereafter through March 23, 1973.

The Tour Operator and the Air Carrier

Book Couzins Travel Service is a well established United States tour operator. ONA is a United States supplemental air carrier certificated to provide, *inter alia*, passenger charter service to and from the Caribbean.¹ It may furnish passenger charter service between the United States, on the one hand, and the Bahama Islands, on the other hand, pursuant to the terms of that certificate.

The Tour Vacation

The tour vacations would include² seven nights at the Sonesta Beach Hotel and Golf Club in Nassau, plus round trip jet air transportation between Detroit and Nassau. The package would include breakfast on the outbound flight and cocktails and lunch on the inbound flight; round trip transfers between airport and hotel; twin-bedded air-conditioned room with private bath; welcome rum-swizzle party; one-hour cocktail party with hot and cold hors d'oeuvres; 7 full American breakfasts; 5 dinners, including barbeque with Bahamian show at hotel; coupon entitling participant to see night club show with no minimum Sunday-Thursday; free pool lounges, pads and towels; complimentary green fees on championship course; complimentary tennis, including night tennis; free miniature golf; nightly dancing with dinner; free round-trip mini-bus to town daily; and tours escort. The total price per person for the above package would be \$269 per person (on a basis of double occupancy) plus \$20 for taxes and gratuities, making a total of \$289.³

Available scheduled service

There is no single plane service from Detroit to Nassau (or any other destination in the Bahamas). Only connecting service is available, with a change of flights in Miami. (There is no direct service at all between Detroit and Freeport—either single plane or connecting.)

Available one-stop ITC's

There are four travel agencies (at least) that are currently advertising one-stop inclusive tours from the Detroit area to the Bahamas. All are advertising vigorously in the major Detroit newspapers (copies of their advertisements in the travel sections of the Sunday editions of the Detroit News and the Detroit Free Press are set forth at Exhibits A and E, respectively). An examination of these advertisements, as well as of some brochures distributed,⁴ plus confirming telephone calls to the agencies,⁵ reveals the following picture of one-stop Bahamas inclusive tours currently being offered to the Detroit public.

Elliott Tours, Inc., with two offices in Detroit and six offices in neighboring Michigan cities, offers one week vacations in Nassau as well as one week vacations in Freeport, both in the Bahamas. The trips depart and return on Sundays—every Sunday, 52 weeks per year.⁶ The trips include round trip non-stop jet air transportation by Nordair, on Boeing 737 aircraft equipped to carry 113 passengers. The trips depart and return from Windsor, Canada, across the river from Detroit.⁷

The trips, of course, also include hotel accommodations. Indeed, the trips to Nassau include accommodations at either the Sheraton British Colonial Hotel or the Sonesta Beach Hotel and Golf Club—the very same hotel that would be used by the tour operator herein if this application were to be granted.⁸ For obvious

¹ E-25928, November 4, 1967.

² Book Couzins Travel Service has not yet prepared a Tour Prospectus. If this application for waiver is approved, Book Couzins will, of course, prepare and file a Tour Prospectus as required by the Board's regulations. The charter contract, including schedule of flights, is attached to this Application as Exhibit G.

³ The Detroit/Nassau round trip excursion rate air fare by scheduled carrier for the comparable day and month is \$184.

⁴ See Exhibits B, C and D.

⁵ See Affidavit of Barry Smoler, attached to this Application.

⁶ The Nassau and Freeport brochures all advertise 52 departures. The Nassau trips (2 brochures, for different hotels) are scheduled at weekly intervals from 7/11/71 to 7/2/72. The Freeport trips are scheduled at weekly intervals from 11/28/71 to 11/19/72. See Exhibits B, C and D.

⁷ See Affidavit of Barry Smoler, plus Exhibit A.

⁸ See Exhibits B, C and D.

reasons, therefore, the incidental tour package benefits offered by Elliott Tours and the tour operator herein are virtually identical.

American Travelers, Inc., also of Detroit, advertises similar one week vacations in Freeport, with non-stop round trip jet air transportation on DC-9 aircraft, and accommodations at the Lucayan Harbour Inn. These tours depart on Saturdays—every Saturday, 52 weeks per year. These trips also depart from Windsor, and are flown on Air Canada, the Canadian flag carrier.⁹

Miller Tours, Inc. offers weekly one-stop tours to Freeport, plus weekly two-stop tours to Freeport and Nassau. Although it is a Windsor travel agency, Miller Tours (like Elliott Travel Services and American Travelers, Inc.) also advertises in the Detroit press, and the telephone number it advertises is a Detroit number. The Miller trips (both to Freeport, and to Freeport and Nassau) depart on Saturdays, and both tours depart every week throughout the year. They include round trip jet air transportation non-stop between Windsor and the Bahamas, on DC-9 aircraft equipped to carry 94 passengers. Hotel accommodations are, of course, included in both tours. Like the American Travelers trips, the Miller Tours flights are on Air Canada—and like all the others, they depart from Windsor.¹⁰

Also, there is an organization in Detroit called Universal Overseas Service which also offers one week inclusive tours to Freeport. Those tours depart on Saturday nights, in April, May, and June. They are flown on Air Canada DC-9's, and like all the others they depart from Windsor.¹¹

Windsor and Detroit

The technical fact that the above described flights depart from an airport in Windsor instead of from an airport in Detroit should in no way be allowed to obscure the practical significance of what is actually happening. Windsor is immediately adjacent to Detroit—the two cities face each other across a river.¹² And the Windsor airport is actually *closer* to downtown Detroit than Detroit's own airport is, in both mileage and driving time. Windsor Airport is 7 miles from downtown Detroit, with a driving time of approximately 20 minutes; Detroit Metropolitan Airport, on the other hand, is 19 miles from downtown Detroit, with a driving time of approximately 35 minutes.

The population of the Detroit metropolitan area is 4,489,000, while the population of the Windsor metropolitan area is only 212,000.¹³ In other words, *the Detroit metropolitan area accounts for a full 95% of the population of the combined Detroit/Windsor market*, while the Windsor metropolitan area contributes only 5% of the total. And as mentioned previously, the above described Bahamas tours are all advertised in the Detroit newspapers; three of the four tour operators are Detroit travel agencies (one of which has eight offices in Detroit and neighboring Michigan cities); and even the Windsor based agency advertises a Detroit telephone number. Thus, it is unmistakably obvious that the great profusion of Bahamas ITC's departing from Windsor is not for the benefit of the comparatively few people living in Windsor—on the contrary, the market for the tours is overwhelmingly American, not Canadian.

The Public Interest

This application for a waiver does *not* pose the question of whether there should be one stop ITC's from the Detroit area to the Bahama Islands. That fundamental question has already been answered, and the answer will not be altered by either granting or denying this application. The simple fact is that *there already are* one stop ITC's from the Detroit area to the Bahamas. Indeed, not only do they exist but they appear to be saturating the market, with many tour operators to pick from, offering weekly departures on a choice of weekend departure days, which departures blanket the calendar on a year round basis.

Also essentially irrelevant is the question of whether a Detroit/Nassau one stop ITC would serve as a substitute for point-to-point scheduled transportation such as to cause "diversion" from U.S. scheduled carriers. The facts indicate that the Detroit market is already so rich in one-stop Bahamas ITC opportunities that

⁹ See Affidavit of Barry Smoler, plus Exhibit A.

¹⁰ *Id.*

¹¹ See Affidavit of Barry Smoler, plus Exhibit E.

¹² See map, at Exhibit F.

¹³ The population of the city of Detroit alone is 1,511,000; the population of the city of Windsor is 193,000. Source: Rand McNally Premier World Atlas, 1970 census edition. (All figures rounded off to nearest thousand.)

even if "diversion" were a valid theory elsewhere it could not possibly be a valid theory here—there could be nothing left to divert. The only scheduled carrier that could put up even a plausible argument of "diversion" of any kind, in fact, would be Air Canada—not because they would lose any point-to-point scheduled traffic, but because they might lose some of the Windsor/Nassau one-stop ITC traffic—they currently have the lion's share of it.

Thus, there is no issue as to whether the people of Detroit should have the opportunity to go on one stop ITC's to Nassau—they are already doing it. *The only real issue presented by this application is whether U.S. carriers should be permitted to compete for a share of that market.* The market already exists (indeed, it is thriving), it is perfectly legal, it will not go away, and it consists of U.S. citizens spending dollars for air transportation. The issue is not *whether* those dollars will be spent per se, but *where* they will be spent—in the U.S. or in Canada. Will American air carriers be permitted to compete for those American dollars, or are the Canadian air carriers to be given an exclusive monopoly over the right to earn them—a Canadian monopoly over an American market, which monopoly is inadvertently conferred on the Canadians by the U.S. government itself.

Thus, this application presents no real issue of U.S. carrier "charter" traffic versus U.S. carrier "scheduled" traffic. Neither the grant nor the denial of this application would have any significant effect on U.S. scheduled traffic between Detroit and the Bahamas. *The issue is purely one of U.S. air carriers versus Canadian air carriers.* As matters now stand, the Canadian carriers have total control of this market—not because they have earned it through competition, but because the U.S. carriers are forced to abstain from such competition. In light of the adverse gold flow this causes, we see no public interest that is served by such forced abstention from the market.

ONA seeks no restrictions on Canada's right to compete for this market—ONA merely seeks an equal right to pursue that competition. It is, after all, an American market, and it should not go to the Canadians by default.

Conclusion

In view of the foregoing, ONA requests the Board to grant a waiver of Section 378.2(b) (2) so as to authorize the proposed service.

Respectfully submitted,

STEPHEN D. POTTS,
Counsel for Overseas National Airways, Inc.

Dated: May 4, 1972.

AFFIDAVIT

I am an attorney employed by the law firm of Shaw, Pittman, Potts & Trowbridge, counsel for Overseas National Airways, Inc.

On March 31 and April 3, 1972, I telephoned (1) Elliott Travel Service, (2) American Travelers, Inc., and (3) Miller Tours Ltd., at the telephone numbers listed in their respective advertisements in the Entertainment and Travel Section of the Detroit Sunday News of March 26, 1972. (A copy of the advertisements is attached to this Affidavit as "Exhibit A.") All three telephone calls (including the call to Miller Tours, Ltd. of Windsor, Ontario) were dialed direct (from Washington, D.C.) using the Detroit area code (313). In each of the three calls I referred to the respective newspaper advertisement describing the particular travel agency's tours to the Bahamas, and posed questions regarding the flights involved, including the name of the air carrier, the aircraft used, and the points of origin and return of the flights, the days of departure, and the months in which the tours were offered.

In response to my questions, Elliott Travel Service (of Detroit, Michigan) advised me that their tours to the Bahamas included flights from Windsor, Ontario non-stop to both Nassau and Freeport, with non-stop return from those cities back to Windsor. The flights are operated by Nordair, a Canadian air carrier, using Boeing 737 aircraft that carry 113 passengers. Elliott Travel also sent me several brochures describing the tours, copies of which brochures are attached to this Affidavit as Exhibits "B, C, and D."

American Travelers, Inc. (of Detroit, Michigan) advised me that their tours to Freeport in the Bahamas include non-stop flights from Windsor to Freeport, with non-stop return to Windsor. The flights are operated by Air Canada, using DC-9 aircraft. The person at American Travelers with whom I spoke advised me that most of the April tours were already sold out, and that he could not send me a brochure because they were temporarily out of stock and were being

reprinted. However he stated that the tours depart every Saturday, and are being operated every week throughout the year, "52 weeks per year."

Miller Tours, Inc. (of Windsor, Ontario) advised me that their tours to Freeport, and to Freeport and Nassau, involve non-stop flights that depart from Windsor and return to Windsor. The flights are operated by Air Canada, using DC-9 aircraft that carry 94 persons. Both tours (to Freeport and to Freeport and Windsor), depart at 11:00 p.m. on Saturdays, and are operated every week throughout the year.

Finally, on April 6, 1972, I telephoned the number listed in the very brief advertisement that appeared in the travel section of the Detroit Free Press of Sunday, April 2, 1972. (See "Exhibit E.") (The advertisement consisted of the following: "Freeport, including round trip jet, 7 Full breakfasts, 7 Full dinners, 7 Nights hotel. Charter Flight Information Services. Call 345-5695.") The person who answered the telephone identified his organization as the Universal Overseas Service. He advised me that the trips are operated weekly in April, May and June, and depart at 11:00 p.m. on Saturday nights. They depart from Windsor, and are flown on Air Canada DC-9's, with hotel stay at the Lucayan Harbour Inn. The person I spoke with advised me to reserve quickly, because the April 15 and April 22 trips were already sold out.

BARRY SMOLER.

Subscribed and sworn to before me this 3d day of May 1972.

PATRICIA O. DEEVER,
Notary Public.

My Commission Expires Jan. 14, 1974.

EXHIBIT A

Flight No. and departure and return dates	City of departure and return	Arrival city	R/T contract price	R/T contract price, including U.S. departure and Nassau tax
69004-Dec. 2-9	Detroit	Nassau	\$7,800	\$8,430
69005-Dec. 9-16	do	do	7,800	8,430
69006-Dec. 16-23	do	do	7,800	8,430
69007-Dec. 23-30	do	do	7,800	8,430
69008-Dec. 30-Jan. 6	do	do	7,800	8,430
69009-Jan. 6-13	do	do	7,800	8,430
69010-Jan. 13-20	do	do	7,800	8,430
69011-Jan. 20-27	do	do	7,800	8,430
69012-Jan. 27-Feb. 3	do	do	7,800	8,430
69013-Feb. 3-10	do	do	7,800	8,430
69014-Feb. 10-17	do	do	7,800	8,430
69015-Feb. 17-24	do	do	7,800	8,430
69016-Feb. 24-Mar. 2	do	do	7,800	8,430
69017-Mar. 2-9	do	do	7,800	8,430
69018-Mar. 9-16	do	do	7,800	8,430
69019-Mar. 16-23	do	do	7,800	8,430
69020-Mar. 23-30	do	do	7,800	8,430
Total			132,600	143,310

CIVIL AERONAUTICS BOARD,
Washington, D.C., March 8, 1972.

Mr. STEPHEN D. POTTS,
Counsel for Overseas National Airways, Inc.,
Shaw, Pittman, Potts & Trowbridge,
Washington, D.C.

DEAR MR. POTTS: This is in reference to Tour Prospectus IT 71-105, involving a series of fourteen tours from Basel, Switzerland and Brussels, Belgium to Miami Beach, Florida, to be operated by INTUR GmbH (INTUR), a West German tour operator, and INTRA REISORGANISATION AG. (INTRA), a Swiss tour operator, during the period May 31 through December 13, 1972 on Overseas National Airways, Inc. (ONA).

INTUR, INTRA, and ONA seek waiver of sections 378.2(b)(2) of the Board's Special Regulations, which requires that an inclusive tour include overnight stops at three points, and 378.2(b)(4), which requires that the charge to passengers for the tour be not less than 110 percent of the lowest individually ticketed air fare available on a certificated route air carrier. In support of the re-

quest you allege, *inter alia*, that the proposed program would place the United States on a competitive basis with other inexpensive vacation settings for Europe-originating inclusive tours, perhaps easing the United States' trade deficit; that the tour operator will attempt to sell more expensive options to the prospective participants, which might then bring the tour price above 110 percent of the lowest available individually-ticketed air fare; that the member carriers of the National Air Carrier Association have petitioned the Board in Docket 22409 to amend Part 378 so as to permit one-stop ITC's; that the Board has granted a series of exemptions to Eastern Airlines and Crested Butte Development Corporation, authorizing them to operate single-stop inclusive ski tours, based on the inadequacy of scheduled service; that no United States air carrier provides service between Basel or Brussels and Miami; that no carrier, United States or foreign, provides single plane service between the points proposed to be served; that foreign air carriers whose CAB permits require that they conform to their countries' more lenient inclusive tour regulations dominate the in-bound ITC market; and that no United States air carrier would be harmed by grant of the instant request.

On January 17, 1972, Pan American World Airways, Inc. filed an objection to the instant request alleging, *inter alia*, that the applicants seek to hold out point-to-point transportation to the general public at air fares less than those on scheduled service, and in direct contravention of Part 378; that the competitive imbalance aspects of ONA's argument are irrelevant in that no Belgian or Swiss charter carriers hold ITC authority to the United States; and that those European charter carriers with fifth freedom in-bound ITC authority between Belgium or Switzerland and the United States are required to perform ITC's with overnight hotel accommodations at a minimum of three places, 50 air miles from each other.

Upon consideration of the waiver application, the objection, and related matters, the Board has decided to deny the waiver. INTUR, INTRA, and ONA have failed to establish that there are special or unusual circumstances justifying grant of the requested waiver or that its grant is in the public interest. Accordingly, the Board hereby denies the waiver request of INTUR, INTRA, and ONA for the inclusive tour program encompassed by IT 71-105.

For the Civil Aeronautics Board:

HARRY J. ZINK,
Secretary.

BEFORE THE CIVIL AERONAUTICS BOARD, WASHINGTON, D.C.

IN THE MATTER OF THE APPLICATION OF OVERSEAS NATIONAL AIRWAYS, INC., FOR A
WAIVER FROM SECTION 378.2(b) (2) AND 378.2(b) (4) OF PART 378 OF THE BOARD'S
SPECIAL REGULATIONS

APPLICATION FOR WAIVER

Communications with respect to this Application should be addressed to:
Stephen D. Potts, Shaw, Pittman, Potts & Trowbridge, 910 17th Street, N.W.,
Washington, D.C. 20006. Counsel for Overseas National Airways, Inc.

NOVEMBER 30, 1971.

BEFORE THE CIVIL AERONAUTICS BOARD, WASHINGTON, D.C.

IN THE MATTER OF APPLICATION OF OVERSEAS NATIONAL AIRWAYS, INC., FOR A
WAIVER FROM SECTION 378.2(b) (2) AND 378.2(b) (4) OF PART 378 OF THE BOARD'S
SPECIAL REGULATIONS.

APPLICATION FOR WAIVER

Overseas National Airways, Inc. (ONA) hereby applies to the Board for a waiver of the provisions of Section 378.2(b) (2) and 378.2(b) (4) of Part 378 of the Board's Special Regulations and from such other provisions of the Board's Special or Economic Regulations as may be necessary to permit ONA to engage in the air transportation hereinafter described.

I.

The purpose of this Application is to enable ONA to provide air transportation for fourteen European originating inclusive tours sponsored by a German and

a Swiss tour operator. The flights would operate between Basel, Switzerland/Brussels, Belgium and Miami, Florida, using a 250 passenger DC8-63 aircraft. Passengers on the aircraft would be limited to those participating in the two week holiday, more fully described in the attached Tour Prospectus. The proposed service would be confined to fourteen round-trip flights commencing May 31, 1972 and departing every two weeks thereafter through November 29, 1972.

II.

INTUR GmbH (INTUR) and INTRA REISEORGANISATION AG. (INTRA) are well established foreign tour operators. ONA is a United States supplemental air carrier certificated to provide, *inter alia*, transatlantic passenger charter service.¹ It may furnish passenger charter service between Switzerland and Belgium, on the one hand, and Miami, Florida, on the other hand, pursuant to the terms of its transatlantic certificate.

III.

The headline of the November 27, 1971 edition of *The Washington Post* reads, "Trade deficit \$821,000,000 for October". (See Appendix 1 hereto). The article goes on to state that the severe trade deficit in October virtually assures that the United States will run its first trade deficit since 1893. As is well known, one of the big contributors to our trade imbalance is the greater propensity of U.S. citizens to travel overseas as compared to the number of overseas residents who visit the United States. For 1971, the United States Travel Service (USTS) has projected a \$2.6 billion travel deficit, which is an increase over the \$2.5 billion deficit in 1970.² The principal purpose of the USTS is to try to encourage more overseas citizens to visit the United States and thereby reduce the deficit. One of the biggest impediments to the success of the efforts of USTS has been that the United States is considered to be extraordinarily expensive to visit. There is reason to believe that the recent realignment of currency values—making the dollar less valuable in relation to most foreign currencies—may offset this image.³ In short, ONA submits that the United States, as a destination, is now on a reasonably equal competitive footing.

In order to give the Board a firm idea about the competitive situation for the travel dollar in Europe, we have attached the brochures of three of the largest German travel organizations—Neckermann, Terramar and Dr. Tigges. (Appendices 1A, 1B and 1C). Neckermann's inclusive tours start at DM 220 (US \$67) for a one week holiday in Majorca. (See page 22 of Neckermann brochure). For those who wish to be guaranteed sunshine, they can spend two weeks in the Canary Islands for as little as DM 360 (US \$109). Those who wish a holiday in the Western Hemisphere may spend nine days in Barbados for DM 990 (US \$300). (See page 82 of Neckermann brochure). Or they can spend two weeks in Acapulco or Mexico City for DM 1099 (US \$333). (See last page of Terramar brochure). Similar values are available to these destinations from the Dr. Tigges organization. In addition, it offers a two week holiday in the Bahamas for DM 998. (See page 34 of Dr. Tigges brochure). Viewing the brochures together, a reader cannot help but be impressed by the variety of inexpensive holiday opportunities offered in the European market.

The foreign tour operators in conjunction with whom ONA is offering the holiday in Miami, propose a competitive price of DM 990 (US \$300). Examination of the itinerary and price list of the program makes it clear that the DM 990 price is an advertising leader. It is an extraordinarily low price designed to catch the eyes of the reader and to cause him to inquire about the program. It only takes a quick look at the Neckermann, Terramar and Dr. Tigges brochures to see that those organizations use the same practice in selling holidays in countries other than the United States. Once a prospective participant expresses interest in the Miami ITC the tour operator will try to sell him the more expensive packages ranging from DM 1500 (US \$455) to DM 1900 (US \$575). This is an accepted sales practice commonly used by tour operators the world over.

In addition, the tour operators will attempt to sell the prospective participant the sightseeing trip from Miami to New York at DM 400 and a meal plan ranging in price from DM 1260 (US \$382) to DM 2500 (US \$758). Obviously, it is to the advantage of the tour operators to sell these optional features and to upgrade a

¹ E-24242, served September 30, 1966.

² *The Travel Agent*, December 2, 1970, p. 4.

³ *Id.*

prospective participant as to hotel category. When these optional extras are added to the basic price, one or more of which most participants will purchase, the total price of the Miami holiday probably will exceed 110% of the lowest available airfare between the points served—thereby further assuring that this limited program will not in any way impair scheduled service. However, since the IATA carriers have not yet established their fares in the markets in question, it is impossible to make any representations as to prices with absolute certainty. In any event, a waiver is necessary to permit the tour operators to advertise a competitive price of DM 990.

Inclusive tour charters were first authorized as an experiment at the conclusion of the *Supplemental Air Service Proceeding*, Docket 13795, et al., in 1965. In September 1966, transatlantic ITC authority was authorized for an experimental period ending April 18, 1969. *Reopened Transatlantic Charter Investigation—(All-Expense Tour Phase)*. Orders E-24240 and E-24241, decided March 11, 1966, served September 30, 1966. Part 378 imposed strict requirements governing the operation of ITC's in order to prevent diversion from scheduled service. Moreover, the Board observed in the above-cited orders that if it became necessary to tighten the terms and conditions governing tour operations during the trial period, the Board's rulemaking powers would enable it to take necessary action. This has not been necessary, however, because the ITC as an experimental concept barely got off the ground. The main reason for this failure is obvious: the ITC experiment has been hamstrung by unnecessary restrictions.

Part 378 is not fitted to the needs of a significant portion of the leisure time travel market. The multi-stop requirement and the device of pegging the tour price to a percentage of the lowest *available* scheduled fare, including length-of-stay restrictions, has precluded the use of ITC's to develop short-stay, single-destination vacation traffic.

In deciding to grant experimental ITC authority, the Board relied heavily on British experience with such operations. Orders E-24240 and E-24241, p. 11, and Recommended Decision of Examiner Robert L. Park in the *Supplemental Air Service Proceeding*, Docket 13795, et al., served August 27, 1965, p. 57. A review of the British experience with ITC's shows tremendous utilization by the public.

Approximate figures provided by the Air Transport Licensing Board (ATLB) based upon Board of Trade airport statistics show that from 1961 to 1968 U.K. ITC traffic grew from 295,000 passengers to 1,533,000 passengers. What accounts for the staggering difference in development in the U.K. compared to the U.S.? The answer is to be found in the differences between United Kingdom ITC rules and Part 378.

As discussed by Examiner Park on page 56 of his Recommended Decision, ITC's were of little significance in the U.K. prior to 1960 because they were confined to situations where there was no existing scheduled service and British European Airways (BEA) had a virtual veto power over any operations. Since 1960, under the aegis of the newly-created ATLB, the growth of U.K.-originating ITC traffic has been spectacular. The ATLB's procedure was to hold a hearing on an application for approval of a program of ITC's.

After reviewing economic data bearing on market experience, need, duplication of service and financial fitness, the ATLB would grant a license if the proposed program passed muster in every respect. Since 1964, the ATLB has relaxed its restrictions on capacity. Applicants for ITC licenses have been granted as much capacity as they have requested.⁴ In 1968, the ATLB ameliorated the minimum price requirements for ITC's operated between mid-October and the end of April.⁵ For 1971, the British Board of Trade relaxed the minimum ITC price requirements. The guidelines provide that prices of 15-day or longer tours to points in Europe will be no less than 60 per cent of the existing economy return fare, 54 per cent for 11 or 12-day tours, and 50 per cent for 8-day tours. The minimum permissible prices are even somewhat lower for tours to Bulgaria, Greece, Romania and Turkey. *Travel Weekly*, June 12, 1970, p. 50.

The foreign air carrier permits issued by the CAB to the British supplementals provide that ITC's originating in the U.K. must only conform to the rules and regulations of the U.K. In other words, Part 378 is inapplicable to U.K. originating ITC's operated by British supplementals.⁷ These carriers have

⁴ *British Air Transport in the Seventies, Report of the Committee of Inquiry Into Civil Aviation*, Chairman Prof. Sir Ronald Edwards K.B.E. at 171.

⁵ *Id.* at 173.

⁷ See permits of British Midland (Order 70-6-3), Caledonian/BUA (Order 70-1-60), Dan Air (Order 70-10-137), Donaldson (Order 70-5-39), Laker (Order 69-12-60), and Lloyd International (Order 69-7-44).

been quick to exercise this competitive advantage they enjoy over the U.S. supplementals. For example, by decision dated August 23, 1971, a copy of which is attached hereto as Appendix 2, the ATLB granted Caledonian/British United Airways a license for service between London and Miami, in connection with which it may offer one and two center holidays in Florida and Jamaica. By decision dated November 30, 1970, a copy of which is attached hereto as Appendix 3, the ATLB granted Caledonian/British United Airways a license for service between Gatwick and Boston involving the offering of eleven inclusive tour charter flights. Finally, the ATLB has granted applications for "special event charters", which simply amount to one-stop ITC's between London and Baltimore, London and Los Angeles, London and Miami, Birmingham and St. Louis, and London and New York. (Copies of these decisions are attached hereto as Appendices 4, 5, 6, 7 and 8).

The U.K. experience is not an aberration. Evidence introduced in the *Transatlantic Supplemental Charter Authority Renewal Case*, Docket 20569, by Modern Air Transport dealt with its experience with ITC service from Berlin to vacation spots to the south. The traffic figures are impressive. During the first nine months of 1969, approximately 225,000 passengers were carried to and from West Berlin by supplemental carriers. (Exhibit MAT-557). In other words, the ITC traffic generated from West Berlin alone far exceeded the total ITC traffic between the United States and Europe for 1967, 1968 and 1969 combined. Again, the reason for this successful generation of new traffic is traceable to the absence of onerous price and length-of-stay requirements. Modern has been so successful in the market that it has announced its intention to concentrate on its European operations. (See Appendix 9).

The Board should also bear in mind that the British supplementals are not the only foreign air carriers which hold a competitive advantage over U.S. supplementals in not having to comply with Part 378 when operating inbound ITC's. Martin's Air Charter and Transavia of The Netherlands and Inex Adria Airways of Yugoslavia have provisions in their permits which merely require them to comply with their own countries' regulations for ITC's originating in their respective countries. (Orders No. 68-12-121, E-26136 and 71-6-94). Moreover, and particularly pertinent to this request for waiver, Pomair (Belgian carrier), Docket 23608, Atlantis and Condor (both German carriers), have requested amendment of their foreign air carrier permits so as to conform to the provisions contained in the certificates of the British supplementals, Martin's Air Charter, Transavia, and Inex Adria Airways. Bureau counsel has recommended favorable action on the request of the carriers.

ONA strongly urges the Board not to permit the foreign charter carriers to maintain this marketing advantage vis a vis the U.S. supplementals. These foreign air carriers have the authority to operate unrestricted in-bound ITC's and they are using that authority with increasing success to generate new European originating traffic. A first step in equalizing the competitive posture would be to approve this application for waiver. Approval could not impair scheduled services since the traffic is already moving by charter. The only question is whether the Board is going to continue to reserve this market as the special domain of the foreign supplementals or let the U.S. supplementals compete on an equal footing.

As the Board is aware, the member carriers of the National Air Carrier Association have petitioned the Board in Docket 22409 to amend Part 378 so as to permit one-stop ITC's. ONA suggests that it would be appropriate for the Board to grant this waiver so as to authorize ONA to operate, on an experimental basis, fourteen European originating one-stop ITC's. If the Board so desires, ONA will be happy to survey the passengers in whatever form the Board would feel helpful and supply those results to the Board's staff. This information would be useful to the Board in determining what action should be taken on the pending NACA petition.

Favorable action on this Application would be consistent with the Board's decision to grant a series of exemptions to Eastern Airlines, Inc. (Eastern) and Crested Butte Development Corporation (CBDC) for the operation of single stop inclusive ski charters in Orders 71-7-132, 70-9-126 and 69-10-120. In those Orders, the Board authorized Eastern and CBDC to operate thirteen single-stop inclusive ski tours during the 1969-70 season, eight during the 1970-71 season, twenty during the 1971-72 season, and twenty during the 1972-73 season. Only members of the CBDC package ski tours could be transported. CBDC was required to execute and post a surety bond in the form prescribed in Section 378.16 of the Board's Special Regulations and it was relieved of the requirements of

Title IV of the Act. In granting the application, the Board relied heavily on the inadequacy of existing service.

With reference to the pending matter, no U.S. air carrier provides service between Basel/Brussels and Miami and no carrier, U.S. or foreign, provides single plane service between the points to be served. Accordingly, it is clear that for these reasons and the limited extent of the service proposed, that no U.S. air carrier will be harmed by the Board's grant of ONA's application.

Undoubtedly, the Board is concerned whether, in the event it takes favorable action on this Application, the Swiss and Belgian governments will grant ONA the necessary authority to operate the inclusive tours. Attached hereto as Appendix 10 are copies of correspondence between ONA and the Swiss Air Ministry which indicates that the Swiss Air Ministry is prepared to approve this program of inclusive tours. Although the Belgian Air Ministry has not taken action as yet, counsel is advised that approval is anticipated.

In view of the foregoing, ONA submits that the Board must act favorably on ONA's request for waiver of Section 378.2(b) (2) and Section 378.2(b) (4) and other applicable provisions of the Board's Special Regulations so as to authorize the proposed service.

Respectfully submitted,

STEPHEN D. POTTS,

Counsel for Overseas National Airways, Inc.

APPENDIX I

TRADE DEFICIT \$821 MILLION FOR OCTOBER

(By James L. Rowe, Jr.)

The United States suffered a severe trade deficit in October, the government announced yesterday, but the domestic company showed an encouraging upsurge as The Commerce Department's composite index of leading indicators of business activity rose 1.2 per cent.

The trade imbalance—the excess of what the country imported over what it exported—reached \$821.4 million last month, virtually assuring that the U.S. will run its first trade deficit since 1893.

Government officials said that the sharp "deterioration" in the nation's trade in October (after a surplus of \$265 million in September) reflected to a strong degree the East and Gulf Coast dock strikes that began Oct. 1. The government moved in court yesterday to send 45,000 striking dock workers back to work.

In other news on the economy yesterday, the stock market showed a post-Thanksgiving rally with the Dow-Jones Industrial Average rising 17.96 points. The Price Commission, meanwhile, received a request for a 23.9 per cent increase in third class rates from the U.S. Postal Service. The commission turned down the request of a large Virginia furniture manufacturer, Basset Furniture Industries, Inc., for 1.8 per cent increase. [Details on Page D6].

Harold C. Passer, assistant secretary of commerce for economic affairs, said the East and Gulf Coast dock strikes hampered "analysis of the import surcharge and the upward float of other currencies relative to the dollar." On Aug. 15, President Nixon imposed a 10 per cent surcharge on all imports subject to tariffs, with certain exceptions.

Mr. Nixon said the surcharge was in attempt of offset the nation's declining position in world trade. Since Aug. 5, when the United States also stopped cashing in dollars or gold, a number of currencies have been appreciating in value in terms of the dollar—making U.S. exports cheaper and imports into the United States more expensive.

But October's decline in imports—about \$744 million—October were \$1.8 billion below September, which was the first month since March that the nation sold more goods abroad than foreign countries sold here.

Passer said the steeper decline in exports resulted from several factors:

- * In anticipation of the dock strike, shipments were accelerated in September "and consequently shipments declined in October; this affected exports more than imports."

- The end of the West Coast dock strike, in which the government got a back-to-work order early in October, "procured a greater surge of imports than of exports" because waiting ships had to be unloaded "before such vessels can be reloaded with exports."

- More of the nation's waterborne imports than exports go through West Coast ports.

- More U.S. imports are "bulk" items such as oil, natural gas and iron ore, which do not need the service of dockworkers.

A spokesman for the Council of Economic Advisers called the October trade showing "bizarre."

"The thing is that the dock strike really so distorts the figures that it just isn't possible to draw any firm conclusions," he said.

So far this year, the nation has run a deficit of nearly \$1.5 billion in its trade account with the world. After three surplus months—January, February, and March—the nation has run deficits in every month but September, when it had a \$265.4 million surplus.

Government officials, who had been talking in terms of a \$1 billion trade deficit a few months ago, now privately expect the deficit will end up closer to \$2 billion.

Since the dock strikes on the East and Gulf coasts continued through November, "we can expect a very distorted showing in November, too," the CEA spokesman said.

The deficit might not be as great, however, one economist noted, since some of the distortions which affected October—such as unloading imports before exports could be shipped out—will be gone. Nevertheless, most observers expect a sizeable deficit for November.

For the first 10 months of 1971, Passer noted, "the merchandise trade balance has recorded an adverse swing of \$4 billion from the same period a year ago—from a surplus of \$2.6 billion in 1970 to a deficit of \$1.5 billion in 1971. Exports have advanced by \$937 million, or less than 3 per cent, while imports have increased by \$5 billion, or more than 15 per cent."

Despite the surcharge, the volume of imports has increased each month since August. Passer said October collections of \$112 million "indicate that perhaps two-thirds of that month's dutiable imports were covered by the surcharge."

Not only are the trade figures difficult to interpret because of the dock strike distortion, the President's "sweeping change in government economic policy on Aug. 15 make the advances in the leading indicator index difficult to assess, Passer said.

"The indicators are still on a decisive uptrend, however," Passer said, "and this is consistent with private forecasts of a vigorous expansion of the economy in 1972."

The index often tends to foreshadow developments in the economy at large. When the preliminary September figures came out, the index recorded a 0.3 per cent decline, but when the full index was compiled, it showed an increase of 0.2 per cent.

In October, the preliminary index advanced from 127.1 per cent of the 1967 base to 126.6 per cent. Four of the eight indicators increased, one remained constant, while three declined.

The components which showed an "improved" rate over September included building permits, which increased from an annual rate of 1.9 million in the previous month to 2.22 million in October, and new orders for durable goods, which rose to an annual rate of \$31.06 billion in October compared with \$31.03 in September.

New claims for unemployment insurance fell to 310,000 in October compared with 324,000 in September (a decrease in this figure is treated as "improved") while the average workweek expanded to 39.7 hours from 39.6 hours in September.

The price-labor cost ratio was unchanged at 96.6. Industrial materials prices declined, as did stock prices, and contracts and orders for plant and equipment.

Since the low point of the automobile strike in late 1970, the leading indicators index has advanced 13 per cent.

BECAUSE OF THE BULK OF THE NECKERMANN, TERRAMAR AND DR. TIGGES BROCHURES, A COPY WAS PROVIDED WITH THE ORIGINAL FILING ONLY.

APPENDIX 2

AIR TRANSPORT LICENSING BOARD

DECISION ON APPLICATION NO. 7982 HEARD ON 28 JULY 1971
AT MEETING NO. 60/71

Particulars of application

1. From Caledonian/British United Airways (Charter) Ltd. and Caledonian/British United Airways (Services) Ltd. for a licence for a service between London and Miami.

Decision of the Board

2. The Board have decided to grant the application. The licence will come into effect on 15 January 1972.

3. The licence will be subject to the following Standard Condition and Tariff Provision as set out in ATLB Form 14, Seventh Revision, dated 1 December 1969:—

Condition F; Tariff Provision I

Reasons for Decision

4. This application was originally submitted with a preposed minimum charge lower than would result from the application of Tariff Provision I, and attracted an objection from B.O.A.C. It was amended shortly before the hearing to specify Provision I, and B.O.A.C. withdraw their objection.

5. Among the facilities to be provided in connection with the proposed service were one-and two-centre holidays in Florida and Jamaica. We are aware that the United Kingdom Government are signatories to a Resolution of the European Civil Aviation Conference that recommends the restriction of trans-Atlantic charter inclusive tour services to those offering tours at not fewer than three places situated at least 50 miles apart. We appreciate that the purpose of this Resolution is to prevent the use of inclusive tour services by businessmen making trans-Atlantic journeys, and we would certainly wish to take account of this consideration in reaching decisions to which it is relevant. But there is in our view a need for the exercise of some discretion in applying the rule. It would be unduly onerous to passengers to apply it to these Miami operations in view of the geographical situation of that city, and particularly so in relation to holidays to be spent in Jamaica to which the E.C.A.C. Resolution does not apply.

6. These holidays have already been advertised in the brochures of the tour operator, Horizon Holidays Ltd., and we were told that bookings had been taken. We were also told that the airline had known of the proposed flights for some three months, but had delayed submitting an application as "it was only for a C licence." We have several times expressed displeasure at the common practice of advertising, and taking bookings for, holidays before an air service licence has been granted, or even applied for. In possibly contentious cases this is especially likely to have unfortunate consequences.

By direction of the Board.

R. E. JOHNSON,
(For Secretary).

Date: 23 August 1971.

APPENDIX 3

AIR TRANSPORT LICENSING BOARD

DECISION ON APPLICATION NO. B10485 HEARD ON 3RD SEPT. AND 8TH OCT. 1970
AT MEETINGS NOS. 71/70 AND 81A/70.

Particulars of application

1. From BUA (Services) Ltd. for licence for a service between Gatwick and Boston.

Decision of the Board

2. The Board have decided to grant the application with the following modifications requested by the applicant at the hearing:

- (i) Yord Bros. (Travel) Ltd. to be an associated tour organizer;

- (ii) total number of return flights to be eleven ; and
 - (iii) the licence to come into effect on 15th May, 1971.
3. The licence will be subject to the following Standard Conditions and Tariff Provisions as set out in ATLB Form 14, Seventh Revision, dated 1st December, 1969 :—

Condition F; Provision I

Reasons for Decision

4. This application was for an inclusive tour service for UK-originating passengers based on a series of eleven flights between Gatwick and Boston. The tour organisers concerned were Horizon Holidays Ltd. (the charterers), Wings Ltd. and Lord Bros. (Travel) Ltd.

5. BOAC objected to the application on the grounds that there was no need for the proposed service, which would involve wasteful duplication of and material diversion from the Corporation's scheduled services between the UK and North America on which inclusive tour traffic was carried at suitable fares. BOAC's objection also pointed to the absence of costing information about the proposed service, and of details of the tours and prices thereof (this information was subsequently produced by the tour organisers) ; they also objected to the proposed tariffs but conceded at the hearing that these would accord with Provision I.

6. The hearing began on 3rd Sept. 1970, but was adjourned following a submission tendered by the applicants.

7. At the resumed hearing on 8th October 1970 the applicants completed their presentation, but a further adjournment proved necessary for the completion of BOAC's objection. Before the hearing could be resumed BOAC withdrew their objection. The Corporation indicated that, while their general attitude towards inclusive tour charters remained unchanged, they felt that they could no longer maintain their objection to this particular service in the light of the result of the recent IATA Conference at Honolulu (which affected the fares available for inclusive tours on the scheduled services).

8. We decided in the circumstances to grant the application. We shall watch with interest the results achieved on this series of tours.

By direction of the Board.

C. R. F. LARK,
Secretary.

Date : 30th November 1970.

APPENDIX 4

AIR TRANSPORT LICENSING BOARD

DECISION ON APPLICATION NO. C. 8147 HEARD ON 17 AUGUST 1971 AT MEETING
NO. 65/71

Particulars of application

1. From Calendonian-BUA (Charter) Ltd. and Calendonian-BUA (Services) Ltd. for a license for a service between London and Baltimore.

Decision of the Board

2. The Board have decided to grant the application. Subject to confirmation by the Department of Trade and Industry of the tariff provision, the licence will come into effect on 22nd October 1971.

3. The licence will be subject to the following Standard Conditions as set out in ATLB Form 14, Seventh Revision, dated 1st December, 1969 :—

Condition F

Reasons for Decision

4. This application was for one return flight on behalf of Davies. Turner & Co. Ltd. (outward on 22nd October 1971 and return on 26th October 1971) for the carriage of persons intending to watch the Laurel international horse race. The proposed tariff of 99 included transfers, hotel accommodations, ticket for the event, certain meals and one half-day sightseeing tour of Baltimore.

5. BOAC objected to the application on the grounds that what was proposed was more of an inclusive tour than a "special event" charter, and that neither the tariff nor the duration and content of the tour complied with the appropriate rules. The Corporation also maintained that the media proposed for

advertising the tour, which according to the application included the Times newspaper, were likely to attract passengers who would otherwise travel on the scheduled services.

6. At the hearing the charterers said that they had abandoned the idea of advertising in the Times or otherwise in the national press; publicity was being restricted to sporting journals and such publications as the "Horse and Hound" and "Field". Most of the bookings so far received had arisen from advertisements in the "Sporting Life" and "Sporting Chronicle". The charterers were insistent that they would not risk their reputation by including passengers other than those with a genuine intention to attend the "special event". If there were not sufficient such passengers the tour would not take place. It was also urged that the flight timings, in particular the arrival at Baltimore at 4 p.m. on a Friday, would not attract business travel.

7. BOAC argued that the charter should be treated as being for an inclusive tour. An attractive package holiday was being built round the so-called "special event". There must be a temptation to "fill up" if the response was insufficient, and in any event most of the journals being used for advertisements were available to the general public.

8. We commented in a recent decision (Decision dated 22nd June 1971 on Application No. 07997) on the special problems presented by "special event" charters, particularly those to more distant destinations. Some accommodations must be provided in connection with such excursion, and the dividing line between them and inclusive tours is inevitably somewhat blurred. To some extent particular cases must be considered on their merits.

9. In the present instance we feel able to rely on the reputation of the organizers, and we note with satisfaction that publicity is being restricted to journals having some relevance to the particular event. We have therefore decided to grant the application.

By direction of the Board.

C. R. F. LARK,
Secretary.

Date: 2 September 1971.

APPENDIX 5

AIR TRANSPORT LICENSING BOARD

DECISION ON APPLICATION NO. C. 8410 HEARD ON 9 SEPTEMBER 1971 AT MEETING NO. 72A/71

Particulars of application

1. From Caledonian-B.U.A. (Charter) Ltd. and Caledonian-B.U.A. (Services) Ltd. for a licence for a service between London and Los Angeles.

Decision of the Board

2. The Board have decided to grant the application. Subject to confirmation by the Department of Trade and Industry of the tariff provision, the licence will come into effect on 12 November 1971.

3. The licence will be subject to the following Standard Conditions as set out in ATLB Form 14, Seventh Revision, dated 1 December 1969:

Condition F

Reasons for Decision

4. This application was for one return flight on behalf of Page and Moy Ltd. for the carriage of passengers wishing to attend the Hotwheels Supernationals at the Ontario International Raceway. This "special event" was to take place between 19 and 21 November, but there were preliminary events starting on 12 November, the first of them being specially arranged for visitors from the U.K. The return flight was on 23 November, and the proposed tariff £148.

5. B.O.A.C. objected on the grounds that the proposed arrangements amounted to an inclusive tour, the so-called "special event" being incidental; that the tariff and other conditions normally applied to inclusive tours were not met; and that in consequence there would be diversion from the Corporation's services.

6. On the evidence we were satisfied that the arrangements were genuinely conceived and that, particularly in view of the limited publicity undertaken, the passengers would be enthusiasts for this kind of racing, and in a few instances members of their families, who would not otherwise travel on the scheduled

services. We accept, too, that the inclusion of the "warming-up" events in the particular programme is reasonable.

7. We were concerned however—and this was made clear to the charterers—that the tour was nevertheless of an unnecessarily long duration, in relation to the "special event". This was less so in the light of a revised itinerary submitted at the hearing, the B.O.A.C.'s objection to the application as submitted was not unreasonable.

8. The possibility of curtailing the tour was discussed at the hearing. We have decided not to impose any such modification in this instance, but we trust that the charterers will have this consideration in mind on any future occasion.

By direction of the Board.

C. R. F. LARK,
Secretary.

AIR TRANSPORT LICENSING BOARD

DECISION ON APPLICATION NO. C.7997 HEARD ON 15 JUNE 1971 AT MEETING NO. 47/71

Particulars of application

1. From Caledonian-British United Airways (Charter) Ltd. and Caledonian-British United Airways (Services) Ltd. for a licence for a service between London and Miami.

Decision of the Board

2. The Board has decided to grant the application with the modification, requested at the hearing, that two members of the British Interplanetary Society who will be acting as group leaders may participate in the tour free of charge.

Subject to confirmation by the Department of Trade and Industry of the tariff provision, the licence will come into effect on 20th July 1971.

3. The licence will be subject to the Standard Condition F as set out in ATLB Form 14, Seventh Revision, dated 1 December 1969.

Reasons for Decision

4. This application was for one return flight between London and Miami, on behalf of Transolar Travel Ltd., for the carriage of passengers taking part in an excursion to Cape Kennedy for a period of six nights expected to include the blast-off of Apollo 15. The proposed tariff was £126-00 (including meal vouchers to the value of £15-00) save that, as emerged at the hearing, two members of the British Interplanetary Society acting as group leaders would participate free of charge.

5. BOAC objected to the application on the grounds that, although the statutory requirements had been complied with in its submission, insufficient time had been allowed for the proper consideration of its special features, or for the orderly marketing of the tours; that the flight was designed to attract passengers who would not participate in the ground arrangements, to the detriment of BOAC's services; and that neither the tariff nor the proposed arrangements complied with the normal rules governing trans-Atlantic inclusive tours.

6. At the hearing Caledonian/BUA acknowledged that the application could have been submitted earlier, and that the responsibility for holding it up was theirs and not that of the charterers.

7. We were told by the charterers that this was an exceptional venture on their part. The tour had been advertised in "Spaceflight", the magazine of the British Interplanetary Society, in "Flight" and in other journals. 150 firm bookings have been received, two-thirds of them from members of the British Interplanetary Society, the British Astronomical Association or other such bodies. Most of the bookings were single ones from young people, but they included seven married couples. The advertising material had suggested that, as an alternative to studying the American space scene, visits to Miami or other excursions could be arranged; but we were told that the one-day trip to Miami that had been envisaged had not proved feasible, and that only local tours were now intended. The £15 vouchers represented a bare minimum for expenditure on meals; they were nonrefundable and exchangeable only in local catering establishments with which special arrangements had been made.

8. In making their objection, BOAC complained that they were once more faced, unnecessarily short notice, with a virtual fait accompli, most of the seats on flight having already been sold. In such situations they hesitated to enter objection, with the result that their views often went by default.

9. In BOAC's view, the charterers' proposal was in essence an inclusive tour, advertised in journals available to the public, and not meeting the normal requirements of the Department of Trade and Industry in respect of trans-Atlantic tours either in duration (being of less than 14 days) or in the tariff to be charged. Participation in the programme centred on Cape Kennedy was not obligatory, and the alternative arrangements included, for example, self-drive car hire. BOAC operated a daily service between London and Miami, which was particularly susceptible to competition by the U.S. carrier because of the latter's local feeder network. There was a stand-by fare of £117-80 available to persons under 26, including the add-on in respect of the New York-Miami sector.

10. In BOAC's submission even the Cape Kennedy arrangements, which were substantially similar to these organised on an hourly basis by the American Tourist Board, did not qualify as a "special event", charters for which were not normally opposed by the Corporation. The only special feature was the actual launching, which few would be able to see except at long distance.

11. We were satisfied on the evidence that the proposed arrangements were genuinely intended for, and the response substantially from, people with an interest in the Cape Kennedy scene. The timing of the excursion to correspond with the launching of Apollo 15, and the fact that the price includes coach tours of the Cape Kennedy complex, sufficiently qualify it as a "special event" to justify a charter venture on the modest scale proposed. We have therefore decided to grant the application.

12. In so doing, however, we wish to make a general observation. Charters for special events of one kind or another are licensed frequently and fairly liberally and, as indicated by BOAC, do not usually attract objections. The longer the distance involved, however, and the higher the cost of travel by ordinary means, the greater is the risk that passengers may be carried whose only interest is in a cheap fare. Trans-Atlantic charters are a particular example. It is therefore of the utmost importance that the arrangements should be such as to ensure that all passengers have a bona fide intention of attending or participating in the special event to which the license relates. "Alternative arrangements" are by definition excluded. The charterer's programme in this instance was in our judgment genuinely conceived, but the detailed arrangements insufficiently precise in this respect; the license could in consequence have been in jeopardy.

13. Similarly, although we have allowed the two free places included in the arrangements, we find it unsatisfactory that they were not specifically requested in the application.

By direction of the Board.

C.R.F. LARK,
Secretary.

22 June 1971.

APPENDIX 7

From CALEDONIAN-B.U.A. (CHARTER) LTD. AND CALEDONIAN-B.U.A. (SERVICES) LTD. in conjunction with Tabberer Travel Agency Ltd., 7 Poplar Road, Solihull, Warwickshire for not more than one journey in anyone direction between BIRMINGHAM AND ST. LOUIS (U.S.A.) with Boeing 707 aircraft.

The only passengers who may be carried are those who have a bona fide intention of attending and hold a valid ticket of admission to the Ryder Cup golf competition on 15-18 September 1971.

APPENDIX 8

From CALEDONIAN-B.U.A. (CHARTER) LTD. AND CALEDONIAN-B.U.A. (SERVICES) LTD. in conjunction with Page and Moy Ltd., 221-223 Belgrave Gate, Leicester for not more than one journey in any one direction between LONDON AND NEW YORK with Boeing 707 aircraft.

The only passengers who may be carried are those who have a bona fide intention of attending and hold a valid ticket of admission to the "American Grand Prix" motor race at the Watkins Glen Circuit.

The license to be effective 29 September-7 October 1971.

The tariff to be not less than £99.00 per passenger.

AILING AIRLINE WILL DISCHARGE 200, SEEK TO REGAIN HEALTH IN EUROPE

In an international quest for profit, Miami-based Modern Air Transport is laying off 200 U.S. employes and shifting most of its operations to Europe.

Modern Air already has slashed its 300-employe U.S. staff to 144 and has notified another 50 employes that they will be laid off before the change becomes effective Jan. 1.

Modern Air President Tom Ferguson said the surviving 100-man staff in Miami could be cut still further or it could be bolstered, depending on the success of Modern Air's remaining U.S. charter business.

The airline's headquarters will remain in Miami, its home since the Gulf American Land Corp. brought it here in 1966.

Miami serves as home base for GAC Corp., which became Modern Air's parent when it bought out Gulf American.

Tentatively, Modern Air plans to keep only two of its Convair 990 jetliners in Miami next year.

The other six will fly charters out of West Berlin's Tegel Airport.

The West Berlin operation has proved consistently more profitable than U.S. business, Ferguson said, although most of the aircraft have been based here.

The downgrading of Miami may become permanent unless Modern Air's U.S. business can get a revitalizing new route authority.

The Civil Aeronautics Board is weighing Modern Air's request for charter authority into the Caribbean and across the Atlantic.

"We're projecting a \$3-million loss this year," Ferguson said, "more than double last year.

"Worse, in analyzing our data, we didn't see anything else that we could do to reduce our costs or improve our profit situation in future years."

The shift to Germany, where Modern Air already flies Berliners through Europe and North Africa, "will increase our yield and minimize our exposure to loss," Ferguson said.

He was assigned to Modern Air by the worried GAC Corp. in August.

Ferguson said that half of those being laid off here are flight personnel, mostly stewardesses.

Thirty-five percent are maintenance workers, he said, and another 15 percent are administrative, including virtually all of the company's U.S. sales staff.

Pilots based in Miami generally have seniority, Ferguson said, so they can displace flight crewmen working in West Berlin.

The 263-man Berlin staff will be increased to 400, mostly by the addition of German stewardesses.

Modern Air's American Airmotive subsidiary will continue to provide overhaul support with its 70-man staff.

Ferguson named board chairman in August, was given the new title of president as Modern Air was made a direct subsidiary of GAC Corp.

Previously, it was a subsidiary of a GAC Corporation's of GAC Properties Inc., which just announced a 20-man layoff.

"It's just a case of a big corporation getting involved in a business that it doesn't understand," complained one unhappy former employe.

"Modern Air has enjoyed a tremendous expansion in commercial business, but GAC simply doesn't want to wait."

Ferguson announced in September that the airline's revenues doubled in the first eight months of the year, but he warned then that the airline would still lose money this year, because of rising costs.

Translation of our letter to :

Frankfurt, 03. June 1971.

EIDGENÖSSISCHES LUFTAMT,
Bundeshaus,
Inselgasse,
3003 Bern/Switzerland.
Attn. Mr. Sturzenegger.
Ref. ITC—Flights Basel/Zuerich—Miami V. V.

DEAR MR. STURZENEGGER: As you may probably remember, we intended to operate a chain of Inclusive Tour Charterflights in 1971 for a Swiss travel agency. Due to the lack of time that we had available to plan those flights, we had to postpone them for another year, but now intend to operate this chain of flights in 1972.

Before we go on with our planning, we would very much appreciate if you could let us know about the conditions which will be effective for the operation of Inclusive Tour Charter flights out of Switzerland to the USA in 1972. We are especially interested to know if a minimum selling price, a minimum stay or a minimum program will be required and if you limit the number of flights. At present we have projected a chain consisting of totally 15 flights with a Swiss organisation as tour operator, but passengers coming from various countries in Europe.

We would very much appreciate if you could answer our questions within the next days. I intend to be in Bern on June 15th or 16th and hope to meet with you in order to discuss all details and further questions with you.

Hoping to hear from you soon, I remain,

Sincerely yours,

N. FRANZ,

Regional Vice President, Marketing and Sales, Europe.

Translation of letter from Swiss Air Ministry dated June 8, 1971

Ref: ITC—Flights Switzerland/Miami 1972

DEAR SIRs: Regarding your request dated June 3, we would like to inform you that with reference to our quota of ITC—Flights for 1972 and under the provision of the American right of reciprocity, your requested 15 flights Switzerland-Miami V. V. will probably be approved.

For your information please find attached our "Conditions for the Operation of Chain-Flights".

EIDGENÖSSISCHES LUFTAMT,
W. H. FREL.

Senator CANNON. The committee will now stand in recess until 2:30 this afternoon.

AFTERNOON SESSION

Senator CANNON. The hearing will come to order.

The next witness is Mr. George Marucci, president, National Center for Educational Travel.

STATEMENT OF GEORGE MARUCCI, PRESIDENT, NATIONAL CENTER FOR EDUCATIONAL TRAVEL, INC., WASHINGTON, D.C.

Mr. MARUCCI. Mr. Chairman, thank you for the opportunity to appear here.

I am George Marucci, president of the National Center for Educational Travel. The National Center for Educational Travel is actively engaged in administering group affinity flights for the members and their families of the following national associations on scheduled airlines: American Association of University Professors, 93,000 members; Institute of Electrical and Electronics Engineers, 162,000 members; American Institute of Physics, 57,000 members.

Member societies: American Physical Society; Acoustical Society of America; Society of Rheology; American Association of Physics Teachers; American Crystallographic Association; American Astronomical Society.

American Historical Association, 17,000 members; Mathematical Association of America, 17,000 members; American Association of Teachers of Spanish and Portuguese, 15,000 members; Latin American Studies Association, 2,000 members; American Society for Quality Control, 23,000 members; American Bar Association, 155,000 members; Instrument Society of America, 17,000 members.

I appeared and testified at the CAB hearing on the proposed rule-making regarding the Travel Group Charter concept on April 27. At that time on behalf of the members of the associations, I asked that the affinity concept not be destroyed because affinity group flights serve a useful purpose for those that prefer them:

(1) Smaller affinity groups of 40 members serve people in small communities where charters are not available.

(2) Members are able to take their young children at half-fare on scheduled group affinity flights, whereas they pay a full pro rata seat on charters for their children.

(3) Members of organizations prefer to travel well known scheduled airlines because they read or hear that others get stranded overseas on charters or do not have their financial obligations fulfilled. The members using group flights know that they will get a round trip ticket issued on a group flight and that their ticket is endorsed by a well-known IATA scheduled carrier.

In addition, another reason for not destroying the affinity concept is that the charter airlines depend upon this type of traffic for 85 percent of their commercial passengers. These are passengers who belong to the 16,970 national associations in the United States, the 6,300 membership associations in Great Britain, and the 9,000 membership associations in Europe.

In listening to testimony at the CAB hearing on April 27, and realizing the hard and immovable positions taken by both the charter and scheduled airlines and noting the almost unanimous agreement that the Travel Group Charter rules as proposed are unworkable, I would like to propose an alternative concept at this time.

The public should have an airline that combines the best of both types of airline operation, a scheduled airline flying at a charter fare.

To some extent this is presently being done by foreign airlines: Icelandic Airlines, British Caledonian, and numerous airlines that fly within Europe. I believe that we Americans can do at least as well as these carriers by bringing inexpensive air transportation to large numbers of people.

I propose a new scheduled airline be inaugurated and designed specifically for the mass transportation market that would incorporate the following points:

(1) All economy configured jet aircraft with high seating density, no free meal or stewardness service. Passengers will pay only for seats from point to point, any other service like meals, drinks or movies would be bought separately.

(2) An increased commission structure to induce United States and foreign travel agents to supply passengers.

(3) That the new airline fly only to those places most desired by travelers, such destinations to be advised by U.S. Department of Commerce statistics.

(4) That the new airline not be a member of the International Air Transport Association, and thereby subject to the high fare levels of that airline association.

(5) That the new airline be empowered by Congress to fly on an experimental basis for a minimum of 3 years and subject to review thereafter.

(6) That the new airline be financed initially from private sources and not taxpayers' money.

(7) That the new airline be owned and operated by the travel agency industry both here and in Europe since the travel agents can be expected to supply the majority of passengers.

(8) It is expected that the new airline would materially assist in helping to redress the balance-of-payments travel deficit.

(9) That fare levels be increased toward departure time of a flight to prevent diversion of the business traveler from the present scheduled airlines. For instance, up to 90 days before departure, a passenger would pay \$200 round trip for a seat from the United States to Europe. From 90 to 60 days before departure, a passenger would pay \$300 round trip. From 60 to 30 days before departure, a passenger would pay \$400 round trip. Within 30 days of departure, a passenger would pay \$500 round trip.

(10) That passengers pay deposits in advance and be assessed cancellation fees, to prevent underutilization of flights.

(11) That flights not operate if passenger loads are too low.

(12) That the new airline be named United States Airlines.

(13) That the new airline be given domestic as well as international authority.

Why is another new airline necessary when there are 40 airlines flying the transatlantic route now?

Scheduled airlines must frequently fly uneconomic routes at uneconomic times to satisfy the public convenience and regulatory authorities. As a result of this, the airlines cannot plan on anything higher than a 50-percent load factor and must set the sale of seats at one filled and one empty, so that a passenger pays for two seats.

Due to economic pressures from charter airlines, the scheduled carriers have had to introduce a variety of special promotional fares that dilute revenues. With this dilution of revenue and the expensive costs of duplicating each other's reservation offices, ticket offices, sales offices, high-priced mass media advertising, landing fees, airport facilities, reequipping with new jet aircraft and all the ancillary services that go with these expenses, the scheduled airlines find themselves in financial difficulty and are forced to gradually raise fares every year, even though we are advised that with the advent of the Boeing 747s, the economy of the airplane could effect a 25-percent decrease in fares.

Without very basic changes in the operation of these carriers, this problem is almost bound to continue. In the final analysis, the traveling public will make the determination if it will pay higher fares to have airplanes standing by at any hour of the day or night ready to fly to any destination at the passengers' convenience.

Charter airlines do satisfy the fare problems of many passengers. The proof of this is in the large increases in traffic in recent years for the charter airlines. However cheap the fares are, traveling on the charters are inconvenient in that they may not depart on a date or destination the passengers chooses.

Therefore, the passenger must combine with others in legal or illegal clubs or organizations to get the benefit of close proximity of desired dates and destinations. This has given rise to the brand of operation known as the charter organizer, who is sometimes efficient and sometimes not, who is sometimes honest and sometimes not.

As a result there have been strandings of thousands of Americans overseas and highly irregular financial misdealings. The charter airlines take no responsibility for the handling of groups of passengers by these charter organizers.

Sometimes taking a charter flight can be quite an adventure.

Rules designed to protect the passenger and his money are often ignored. The charter airlines must be brought to task for not protecting the passengers. Charter airlines should be fined heavily or have their operating authority removed if they don't soon become more responsible to fulfilling their obligations to their passengers.

To combine the best features of both types of airline operations, designed for a specific purpose, seems to be the best idea. Below are figures advised to me but not committed.

Estimated cost, wet lease, DC-8 stretch jet at 250 seats. East Coast-London at \$2.50 per mile for 3,000 miles, daily operation. Rate—\$100 full fare one way, \$200 roundtrip all year.

In the interest of time I will omit this page and a half of figures, Senator.

Senator CANNON. All right.

It will be put in the record.

(The table follows:)

Example Number and type	DC-8 wet lease	Agent 15 percent commission	U.S. air expenses	Net expenses
1.—Full load: 250 passengers, full fare at \$100 1-way, \$25,000 sales	\$7,500	\$3,750.00	\$3,750	\$10,000
2.—175 passengers, full fare plus 75 passengers half-fare, \$21,250 sales	7,500	3,187.50	3,500	7,063
3.—75 percent load factor, full fares, 189 at \$100, \$18,900 sales	7,500	2,835.00	3,000	5,565
4.—75 percent load factor, plus 142 full fares plus 47 half- fares, \$16,550 sales	7,500	2,482.50	2,500	4,067

FOUR TIMES WEEKLY

Chicago-London, DC-8 stretch at 250 seats, at \$2.75 per mile, 4,500 miles.
Rate—\$125 full-fare one way, all year, \$250 roundtrip.

Example Number and type	DC-8 wet lease	Agent 15 percent commission	U.S. air expenses	Net expenses
1.—Full load: 250 passengers, full fare at \$125 1-way, \$31,250 sales	\$12,375	\$4,688	\$3,750	\$10,437
2.—175 passengers, full fare plus 75 half-fares, \$26,563 sales	12,375	3,984	3,500	6,704
3.—75 percent load factor, full fares, 189 at \$125, \$23,625 sales	12,375	3,544	3,000	4,706
4.—75 percent load factor, 142 full fares plus 47 half- fares, \$20,688	12,375	3,103	2,500	2,710

THREE TIMES WEEKLY

Estimated cost, wet lease, DC-8 stretch at 250 seats.
West Coast-London at \$3 per mile for 6,000 miles.
Rate—\$150, full-fare one way, all year \$300 roundtrip.

Example Number and type	DC-8 wet lease	Agent 15 percent commission	U.S. air expenses	Net expenses
1.—Full load: 250 passengers, full-fare at \$150 1-way \$37,500 sales.....	\$18,000	\$5,625	\$3,750	\$10,125
2.—175 passengers, full-fare plus 75 at half-fare, \$31,875 sales.....	18,000	4,781	3,500	5,594
3.—75 percent load factor, full fares, 189 at \$150, \$28,350 sales.....	18,000	4,253	3,000	3,097
4.—75 percent load factor, 142 full-fares plus 47 half- fares, \$24,825 sales.....	18,000	3,724	2,500	601

Mr. MARUCCI. The figures shown above indicate that a scheduled operation can make money operating at charter rates. At a 100-percent factor the lease of aircraft would take 30 percent, the travel agent commission would take 15 percent, the new airline expenses would take 11-15 percent, and the balance would be left over for contingencies and stock dividends.

It could be questioned, why should the travel agents get 15 percent under a new airline operation when they are now receiving a 7-percent commission on scheduled flights and 5 percent on charters?

It is planned that the 7,000 travel agents in the United States and the thousands of agents in Europe become the reservation, ticket, and sales offices for this new airline and that they do sales promotion and advertising with the additional commission. The travel agents in the United States sold close to \$3 billion worth of airline tickets in 1971, thus proving themselves professional, competent, and easily capable of handling an additional service, especially one geared at low fares. No airline could begin to duplicate this many sales outlets. Additionally, the travel agents are the ones closest to the public and can be the source of feedback information for future services desired by the public. I would expect that almost all bookings will come from travel agents. With low fares and a higher commission as incentives, the travel agents in major centers who have to compete with charters, would now be able to serve their passengers, who want to travel at charter rates, but are not eligible. The travel agents who serve small communities could now offer charter rates to their clients who now have no charter service. At a higher rate of commission it becomes profitable for the travel agent to go and seek this business.

In order to finance the startup costs of a new airline operation, I would suggest share ownership primarily by the travel agents. Since the travel agent can be expected to supply almost all the bookings, a further incentive to own an airline and make additional profit through stock dividends and resale of stock should prove enticing to profit-oriented agents. A financial consulting firm would have to be employed to work out the best method for financing the airline. It is to be hoped that the airline could stand on its financial feet in a comparatively short period of time. I have talked to some European agents especially those who move groups of foreign nationals to the United States, and have received enthusiastic support. After all, for Europeans traveling within Europe is old hat and an extremely large amount of interest exists among Europeans to visit the United States. As the latest U.S. Travel Service survey shows, Europeans in large numbers are highly interested in the United States and would like to visit with us. However, their greatest fear is that it is too expensive.

With a combination of a low-fare scheduled carrier and Amtrak these fears on the part of Europeans should be laid to rest. A new carrier would give the USTS something to sell in Europe. This is one definite way to assist in redressing the balance-of-payments travel deficit.

No new airline concept can operate efficiently unless it is planned and administered properly. One central reservation control office would be in the United States and a subsidiary one in Europe. There would be no need for expensive reservation and ticket offices and an army of salesmen. No mass media advertising would be employed, only weekly notification to travel agents of available seats and sold-out flights. The travel agents would perform the function of reservations, ticketing, and selling, for which they get paid a higher commission.

The new airline would contract with a major scheduled carrier, to keep availability and sell and record transactions in their computer. The local travel agent could contract for an agent set or telephone the airlines for availability and to sell or cancel seats as he does presently. Tickets issued by travel agents would be paid for on the Air Traffic Conference report as is due presently.

In order not to underutilize seats and to attempt to maintain a minimum of 75 percent load factor the travel agents will have to advise passengers that the passenger will have to make a deposit of \$100 for each full-fare and \$50 for each half-fare booking. This is for the period up to 90 days before departure. The agent would issue a five-part receipt, a copy for the passenger, a copy for the agent, and a copy to go to the new airline.

If this confirmation of deposit is not received within 15 days, the seats will automatically be canceled. When the control office receives a confirmation it will check the booking in the computer. The balance of payment must be made by the passengers by 30 days prior to departure.

A fourth and fifth copy of the receipt would then be issued by the travel agent; one part goes to the passenger and the other to the control office. If a reservation is made within 30 days of departure, the procedure is the same, except that the passenger must pay in full at that time and the receipt sent to the control office on the day of the reservation, the same as a credit-car transaction is handled under present Air Traffic Conference procedures. Bookings made within 5 days of departure entail a telephone call advising the seats desired and the payment received. The agent will be held responsible for collecting the fare and placing the sale on his next sales report.

If a passenger cancels his reservation before 90 days, prior to departure he will be charged a 15-percent cancel fee of the fare. This reservation may be canceled directly by computer, and a copy of the canceled reservation must be sent to the control office.

The 15-percent cancel fee will be retained by the travel agent to pay him for his time and trouble.

If a passenger cancels his reservation within 90 days of departure, the booking will be canceled in the computer, and a copy of the canceled reservation will go to the control office. The passenger will be charged a 30-percent-of-the-fare cancel fee. Fifteen percent of this cancel fee will be retained by the agent, and the other 15 percent will be sent to the control office for potential loss of revenue. Fare insurance should be offered by every agent to the passenger.

Preprinted forms spelling out the conditions of bookings and cancellations will be sent to all agents for distribution to their passengers. The exact conditions would apply to foreign agents and their passengers.

I think that a newly designed scheduled airline operating at charter rates should be given serious consideration. It need not be complicated as is the travel group charter concept, and it could have tours built around it by the travel agents without designing new inclusive tour concepts, all of which are basically restrictive and discriminatory. I think the public should be given a chance in the marketplace to accept or reject this type of service.

Senator CANNON. Thank you very much for an interesting statement.

I would simply point out to you that this committee is not in the business of organizing or sponsoring new air carriers.

I think that is more properly within the purview of the CAB, if someone is interested in applying for a certificate and proceed on that basis.

But we are more interested in working within the framework of the law as it is now structured. And if the Board should see fit to authorize certification of some carrier, along the lines of your suggestion, if they have that authorization, that would be for their determination.

Mr. MARUCCI. Yes, sir.

Senator CANNON. We appreciate your views. Thank you.

The next witness is Mr. K. G. J. Pillai, executive director, Aviation Consumer Action Project.

STATEMENT OF K. G. J. PILLAI, EXECUTIVE DIRECTOR, AVIATION CONSUMER ACTION PROJECT, WASHINGTON, D.C.; ACCOMPANIED BY NEAL McBRIDE, STAFF ATTORNEY

Mr. PILLAI. Thank you, Mr. Chairman. My name is K. G. J. Pillai, and with me is Neal McBride, a staff attorney for Aviation Consumer Action Project. I am the executive director of Aviation Consumer Action Project, a nonprofit corporation organized by consumer advocate Ralph Nader. The purpose of ACAP is to represent consumer views before decisionmaking bodies in the field of aviation. We appreciate this opportunity to present our views on the three bills, S. 2548, 2549, and S. 3513.

As this committee knows, the purpose of S. 2549 is to repeal the second proviso of section 408(b) of the Federal Aviation Act. This proviso prevents the CAB from approving acquisitions of air carriers by surface carriers unless it finds that such acquisitions will promote the public interest by enabling the surface carrier parties to the transaction to use aircraft to public advantage in their operations and will not restrain competition.

This important provision establishes a sound and time-honored public policy that air carriers holding valuable certificates of public convenience and necessity should assume the primary responsibility to utilize their resources and expertise to provide air transportation to the public without being unduly influenced by or subordinated to the interests of carriers engaged in competing modes of transportation. This policy has not imposed any economic burden on air carriers in the past, and there is no compelling reason to believe that its

continued existence will adversely affect the public interest, including the interests of air carriers.

The preface to S. 2549 states that the amendment to section 408(b) is meant to give the CAB the flexibility to approve air carrier-surface carrier relationships. We are not aware of any instance in which the Board felt constrained by the rigidity of section 408(b), or in which any air carrier suffered losses due to disapproval of acquisitions by the Board.

On the contrary, the CAB invariably approved all major acquisitions and interlocking relationships sought by air carriers in the past decade, sometimes even maintaining that the second proviso of section 408(b) is not applicable to acquisitions of surface carriers by air carriers. The Board's approval of TWA's acquisition of Sun Line Companies is an excellent illustration.

In 1970 TWA sought CAB approval of its acquisition of two ocean-cruise ship enterprises, Oceanic Shipping Co. and Sun Line Greece. The transaction involved \$10 million direct investment and an additional \$4.6 million in loans or guarantees by TWA, and these amounts were to be borrowed by TWA at 11-percent interest. The carrier decided to take up the new venture at a time when its air transport operations were showing heavy losses, and when it had an obligation to pay almost \$40 million as interest annually to its creditors. The CAB examiner disapproved the acquisition as inconsistent with the public interest. The CAB overturned the examiner's decision and approved the acquisition by holding that the second proviso of section 408(b) was inapplicable to the case.

The Federal Aviation Act, as interpreted and administered by the CAB, does not discourage air carriers from acquiring surface carriers. The dominant factor that discouraged air carriers from doing so is their own precarious and dependent financial status. In fact no major air carrier has unused capital or surplus resources that could be diverted to nonair transport enterprises.

As shown in attachment I, almost all the trunk air carriers maintain high debt-equity ratios, and as shown in attachment II, all these carriers are tied down to enormous nontrade debts payable to banks and insurance companies. It seems unwise to permit air carriers to invest borrowed money in nonair transport ventures, when these carriers admittedly experience difficulties in procuring finances on reasonable terms to meet their air transport commitments.

Despite the apparent failure of air carriers in acquiring surface carriers, many surface carriers have integrated themselves into the management of air carriers. As shown in attachment III, eight trunk carriers and Pan American have at least 16 directors who maintain directorship or other direct interests in railroads, steamships, trucking enterprises, and bus companies.

More specifically, Pan American, Delta Airlines, and United Air Lines have three directors each who maintain interlocking relationships with surface carriers. In certain cases the surface carriers which interlocked with air carriers render transportation services in direct competition with the air carriers in question.

For instance, TWA and two railroad companies, Rock Island and Frisco, which are interlocked with TWA, render services in seven common routes, namely Chicago-Denver, St. Louis-Kansas City,

Kansas City-Wichita, Oklahoma City-Kansas City, and St. Louis-Tulsa-Oklahoma City. Even though the CAB approved this interlocking relationship by "staff action," it does not keep surveillance over the competitive impact of these duplicative services on the operations of TWA. Mr. Chairman, we have not come across a single CAB decision which disapproved the interlocking relationship of any surface carrier with air carriers.

The history of CAB regulation demonstrates that the pertinent provisions of the Federal Aviation Act are flexible enough to permit the Board to approve any type of surface carrier-air carrier control relationship. In reality, these provisions are so flexible that many banking institutions, insurance companies, TV stations, and newspaper publishers have secured important roles in air carrier management and they directly and indirectly lay claim on substantial portions of air carrier revenues. Therefore, we urge this committee to take a deep look into the matrix of current air carrier control relationships as a whole, before taking any specific measures to repeal or modify the provisions of the Federal Aviation Act, including section 408(b).

We support S. 2548 which would permit an air carrier to hold both scheduled and supplemental certification. We support this bill for two reasons.

First, the award of scheduled route authority to supplemental carriers will enable them to utilize their equipment efficiently in off-seasons, and thus to increase their overall productivity.

Second, there is a clear public need to have airlines holding both types of certificates operate on certain important routes which are predominantly used by passengers traveling for vacations of other pleasure purposes. On such routes, such as Northeast-Florida routes, carriers holding only scheduled certificates can no longer provide scheduled services economically and profitably. Apparently for this reason, the trunk air carriers recently told the CAB that they "might well be forced to seek authority to abandon scheduled service entirely" in the New York-Bermuda route, if the Board expands the charter market by adopting the travel group charters.

The legislation provided in S. 2548 seems essential to avoid unnecessary disruption of scheduled services on several routes. The supplemental carriers who carry the bulk of traffic on charters in selected markets should also assume the responsibility to provide scheduled services in such markets.

Mr. Chairman, the traveling public and consumers are delighted by this committee's timely efforts to formulate a reasonable definition of inclusive tour charters. This type of charter has been mainly responsible for the phenomenal growth of low-cost air travel in intra-European and Europe-Mediterranean markets. This growth is solely attributable to conscious regulatory steps taken by European governments which abolished all major restrictions surrounding charter travel.

In contrast, the CAB has been inventing all conceivable restrictions and bureaucratic trappings to prevent the expansion of charter travel. The three-stop and minimum price requirements associated with inclusive tour charters have practically reduced such charters to dormancy. S. 3513 will effectively nullify these capricious restrictions, and therefore, we wholeheartedly support that bill.

However, we are unable to support the proviso contained in page 2

of the bill which permits tour operators and other organizers of inclusive tours to establish control relationships with air carriers. This specific provision will stifle competition and foster discriminatory practices in air transportation business.

Mr. Chairman, we were carefully listening to some of the testimony today and yesterday which emphasizes the need for giving control of the new business that might be created by this legislation to our operators. We emphasize that the tour operators, as indirect air carriers, are not regulated by CAB or any other governmental authority and so many passengers, thousands of Americans, have been stranded in foreign countries, and we would like to introduce for the record a petition filed by ACAP 2 months ago asking CAB to regulate tour operators.

Senator CANNON. We would be glad to have you submit that for our record.

You say the purpose of your organization is to represent consumer views before decisionmaking bodies in the field of aviation. Who does your organization consist of?

Mr. PILLAI. We are not a membership organization but we have thousands of supporters.

Senator CANNON. How do you undertake to determine what the consumers views are? Do you decide yourself?

Mr. PILLAI. We receive, not millions of complaints, but we get hundreds of complaints from consumers. Whenever we get a number of complaints on a particular issue, say on tour operators, we write a petition asking CAB to regulate them.

Senator CANNON. How do you determine what the consumers' views are, that you represent, with respect to this legislation?

Mr. PILLAI. As reflected in the various complaints we receive and also received by various organizations, including the CAB consumer affairs office.

Senator CANNON. Then you are just voluntarily representing these people, you don't know whether they want you to represent them or not, do you?

Mr. PILLAI. Practically, there is no means for all the consumers to be in one organization. As the chairman knows, it is an unheard and inchoate body and I think this committee or any other committee should be willing to receive consumer views presented by representative groups.

Senator CANNON. But in fact, you might be representing the views of only one one-hundredth of a percent of the consumers, not really the bulk of the consumers?

Mr. PILLAI. We don't claim we are the exclusive proponents of the consumers' views. We think there should be competing organizations, that may even have opposing views, regarding the consumers' views. I believe it is the function of this committee and the CAB to hear from all differing views of the consumer interests. We wanted to aid this committee and even the CAB, in their information-gathering function. We are in several proceedings before the CAB.

Senator CANNON. The point that concerns me is whether you are gratuitously trying to represent consumers when you, in fact, don't represent the consumers. Because you get a few letters of complaint, you try to act on that. I get hundreds of letters of complaints every

week that I try to help people on. But I don't think I represent a broad body of consumers outside of my own State.

Mr. PILLAI. When we receive 25 complaints, for instance, against tour operators, we think it is possibly a representative cross-section of the consumers' views on tour operators. And that is the only practical way to work for a consumer organization. It is impossible to go around and enlist all of the millions of the consumers, traveling public, and to say what each of them feel. We just formulate our opinions from many people.

Senator CANNON. Do you work with the White House office on consumer affairs?

Mr. PILLAI. Sometimes they ask us our views.

Senator CANNON. In your statement you say :

On such routes as Northeast-Florida routes, carriers holding only scheduled certificates can no longer provide scheduled services economically and profitably. Apparently for this reason, the trunk carriers recently told the CAB they might well be forced to seek authority to abandon scheduled service entirely on the New York-Bermuda route if the Board adopts the travel group charter.

I can't understand what activities in the Northeast-Florida market have to do with the New York-Bermuda market?

Mr. PILLAI. In the comments submitted by the aircarriers to the CAB, on the travel group charters, they said, they showed figures, that saying the vast majority of the traffic, a substantial portion of the traffic, I believe 75 percent, goes for pleasure and vacation purposes, so they say they cannot operate on those routes. And we checked and found only three of four carriers on these routes. There are not too many carriers competing for the traffic on those routes. And we think that either the scheduled carriers should be given authority to operate charter services, the supplemental service, or in the reverse, the supplemental carriers who carry the bulk of the traffic in those routes, according to the trunkline carriers allegations, the supplemental carriers should be asked to carry the rest of the scheduled service on a year round basis. I can get the statistics and provide it for the record.

Senator CANNON. How, as you say, would enactment of S. 2548 result in avoiding unnecessary disruption of scheduled services on several routes?

Mr. PILLAI. This New York-Bermuda route is an illustration. They tell the Board they will ask for abandoning this route and therefore, we think if something like that happens, it would be an unnecessary disruption of scheduled service.

Senator CANNON. Does the government of Bermuda permit any charters at all?

Mr. PILLAI. I think the government of Bermuda regulations are very liberal, that is my memory.

Senator CANNON. Very liberal?

Mr. PILLAI. Yes.

Senator CANNON. I thought they didn't permit any charters at all?

Mr. PILLAI. Then I should withdraw that statement. I am not sure. My statement relies on what was stated by carriers in context.

Senator CANNON. I am not sure. I just asked you.

Mr. PILLAI. I can check. I don't know. I am fairly familiar with the European countries and their charter regulations. I am not familiar with Bermuda's regulations. It is only a question of checking that.

Senator CANNON. Thank you very much. We appreciate your being here.
(The material referred to follows:)

ATTACHMENT I
DEBT-EQUITY RATIO OF TRUNK CARRIERS AND PAN AM

Carrier	Long term debt ¹	Stockholder equity, net ¹	Debt-equity ratio
American Airlines.....	\$626	\$578	1.08:1
Braniff Airways.....	180	90	2:1
Continental Airlines.....	264	106	2.49:1
Delta Air Lines.....	185	299	1:1.61
Eastern Air Lines.....	548	314	1.74:1
National Airlines.....	210	130	1.61:1
Northeast Airlines.....	35	46	1:1.31
Northwest Airlines.....	252	474	1:1.88
Pan American World Airways.....	993	443	2.24:1
Trans World Airlines.....	751	348	2.16:1
United Air Lines.....	676	531	1.27:1
Western Air Lines.....	152	86	1.76:1

¹ Figures shown in millions of dollars.

ATTACHMENT II
AIR CARRIER INDEBTEDNESS

Carrier	Long and short term non-trade debt outstanding at Dec. 31, 1971 ¹	Total assets ¹ as of Dec. 31, 1971	Nontrade debt as a percentage of assets
American Airlines.....	\$656	\$1,679	39.1
Braniff Airways.....	207	357	58.0
Continental Air Lines.....	501	301	60.0
Delta Air Lines.....	222	785	28.2
Eastern Air Lines.....	607	1,098	55.2
National Airlines.....	186	470	39.6
Northeast Airlines.....	38	62	61.2
Northwest Airlines.....	255	957	26.6
Pan American World Airways.....	1,017	1,857	54.7
Trans World Airlines.....	755	1,451	53.4
United Air Lines.....	703	2,057	34.1
Western Air Lines.....	173	346	50.0

¹ Figures shown in millions of dollars.

ATTACHMENT III

INTERLOCKING RELATIONSHIPS BETWEEN TRUNK AIR CARRIERS AND SURFACE CARRIERS

Name	Air carrier	Surface carrier
Charles F. Adams, CAB order 1920	Pan American (director).....	Director, 5 railroad companies.
James Rockefeller, CAB order E-18558	do.....	Director, Hawaiian Steamship Co.; director, Northern Pacific RR. Co.
Otis Chandler, CAB order 71-3-31	do.....	Interlocking relationship with express Air Freight, a freight forwarder.
Vernon Stouffer, order E-9802	United Air Lines (director)....	Director, Pioneer Steamship Co.
Gen. Lauris Norstad, order E-26274	do.....	Director, Continental Oil Co., which holds interests in: Utility RR. Co., Meadow Steamship Lines Midwest Towing Co. (barges).
Thomas F. Glead, order E-9803	do.....	Chairman, American Mail Lines; director, American President Line.
Herman W. Lay, order 70-4-116	Braniff Airways (director)....	Director, Pepsi-Cola Co., which controls: National Trailer Convoy, Whitehouse Trucking, North American Van Lines, Beer Transport, and Relay Transport.
E. R. Quesada, order E-18089	American Airlines (director)...	Director, D.C. Transit System.
Richard W. Courts, order E-2240	Delta Air Lines (director)....	Director, Southeastern Greyhound Lines.
Winship Nunnally, order E-1007	do.....	Director, Columbus Transportation Co.
Edward H. Gerry	do.....	Interlock through his brother with: L. A. & Salt Lake RR., director; Oregon Short Line RR., director; Oregon-Washington RR. & Navigation, director; Union Pacific RR., chairman of executive committee and director.
Hugh Knowlton, order E-14982	Eastern Air Lines (director)...	L. A. & Salt Lake RR., director.
Curtis M. Hutchins, order E-24502	Northeast Airlines (director)...	Director of Putna Alegre Corp., which controls the Bangor & Aroostook RR. Co., a common carrier of truck, rail and bus lines.
John M. Wallace, order E-14646	Western Airlines (director)...	Director, Salt Lake City Union Depot and RR. Co.
A. G. McNeese, Jr., order E-14803	National Airlines (director)...	Director, Fort Worth & Denver Ry. Co., which is controlled by the Chicago, Burlington & Quincy RR. Co., which also controls the Colorado & Southern Ry. Co.
A. G. Redpath, order E-6950	Northwest Airlines (director)...	Trustee, Cornell Steamboat Co.
C. Frank Reavis, order E-6613 and order E-7046	do.....	Director, Baltimore Transit Co.; director, National City Lines; director, Philadelphia Transport Co.
Lester Crown, order E-26116	Trans World Airlines (director).	Partner, Henry Crown & Co., which controls: Rock Island & Pacific RR. Co., New Orleans Barge Lines, St. Louis-San Francisco Ry. Co.

BEFORE THE CIVIL AERONAUTICS BOARD, WASHINGTON, D.C., FEBRUARY 4, 1972

DOCKET 24204—PETITION OF AVIATION CONSUMER ACTION
PROJECT FOR RULEMAKING

Aviation Consumer Action Project (ACAP) hereby respectfully petitions the Civil Aeronautics Board, pursuant to the Board's Rules of Practice in economic proceedings, 49 CFR 302.38, to institute a rulemaking proceeding designed for comprehensive regulation and certification of indirect air carriers, including tour operators. Despite the fact that tour operators are a class of air carriers engaged in indirect air transportation, they are "relieved" of the various provisions of the Federal Aviation Act by virtue of blanket exemptions granted by the Board. As a result, the tour operators are free to engage in the furnishing of air transportation without specific authorization from the Board, to charge their customers arbitrary prices, to make unreasonable profits or even to abscond with monies collected from passengers. The Board has no information whatsoever concerning the number of tour operators engaged in indirect air transportation, their assets and liabilities or the identity of persons who own or control them. The Board and its Consumer Affairs Office are well aware of the frequent and recurring complaints of consumers against numerous tour operators. Most of these complaints evidence dishonesty, fraud or misrepresentation on the part of tour operators. However, the aggrieved passengers find no regulation to invoke against the tour operator, nor do they receive any help from the Consumer Affairs Office which habitually pleads regulatory incompetence on the matter.

The lawlessness promoted by nonregulation:

The failure of the Board to regulate tour operators has created a state of lawlessness and chaos in the air tour business, causing considerable hardship and agony to the tourists at large. This situation became manifest during recent years when thousands of passengers were stranded in foreign countries because

of the failure of tour operators to furnish the promised transportation and related services. Few such instances are listed in the statement recently submitted by the Board to the Subcommittee on Foreign Commerce and Tourism of the United States Senate.

In 1969 a California-based tour operator simply left the country after stranding hundreds of passengers in Hawaii who were not provided return transportation to the mainland, and after collecting nearly one million dollars from many other passengers in the form of deposits and other payments. In the same year about 900 passengers were stranded in Europe, but the Board does not seem to have the information to identify the persons responsible for such strandings.

In 1970, World Academy, a tour operator, went bankrupt after leaving 3371 tour participants in Europe. These passengers were not given the promised hotel accommodations and other land tour arrangements which they paid for in advance. Another 2000 passengers paid monies to World Academy for tours to Europe but received nothing in return.

About 2,000 passengers were stranded in Europe in 1971 by two charter consolidators, American Union of Students (A.U.S.), and University Students Association (U.S.A.). As soon as the strandings were publicized, AUS became bankrupt and the operators of USA absconded. Although these phony operators solicited the general public through large scale advertisements, the CAB was not even aware of their existence until the stranding incidents.

The routine stranding of individual tourists:

Ordinarily, only massive strandings which involve large groups of passengers attract the attention of the press and governmental authorities. Strandings of individual passengers seldom stir public concern, even though these incidents happen almost every day. The following painful and expensive experience of one of ACAP's supporters is set forth to illustrate the kind of mistreatment that individual tourists frequently encounter.

In February 1971, Dr. Charles Goldfarb of 43 King Street, New York, N.Y., arranged a two week air tour to Porlamar, Venezuela, for himself, his wife Dr. Susan Goldfarb, and daughters Sharon and Eve, aged five and three respectively. The tour was arranged by "Ask Mr. Foster Travel Service" of New York who guaranteed air transportation by Viasa Airline and accommodations in the Hotel Bahia at Porlamar. At 11:30 a.m. of February 19th, the Goldfarb family arrived at Hotel Bahia to find that no rooms were reserved for them by the airline or tour operator. Dr. Goldfarb made desperate attempts, without success, to find a place in the city to stay at least for a day, and the family had to sit in a hotel lounge until 5 p.m. "We had left Caracas too early to have had breakfast", says Dr. Susan Goldfarb, "and my children at this point had been without a meal since the previous evening."

At 5 p.m. the family decided to fly back to Caracas and find out a place to stay. They arrived at the Caracas airport at 7 p.m. and sought the assistance of an employee of Pan American who spoke the local language also. "He spent a considerable length of time on the phone and finally reported that there were absolutely no rooms available." Then the Goldfarb family tried to secure seats on a Pan Am flight to Miami scheduled to depart at 9 a.m. on February 20th. When the Pan Am representative informed them of the unavailability of seats on that flight, they reserved their tickets on the next available 5:40 P.M. Pan Am flight to Miami. The remaining problem was where to stay until the next evening. Dr. Susan Goldfarb describes the last phase of their trip as follows:

"We still had the problem of what to do with ourselves and our children on the night of February 19th. (Again, almost eight hours had passed since their last meal.) After more telephoning the PAA representative happily announced that he had found a hotel that could give us a room until noon the following day. . . . We spent the night in a dirty room in which the toilet overflowed, the air conditioning did not work, and the plate glass window seemed about to fall out of its frame only inches from my bed. . . . We estimate that our days in Venezuela cost us approximately \$1,200. The toll on our financial, physical and emotional resources cannot be ever estimated."

Dr. Susan Goldfarb wrote to ACAP on January 7, 1972: "At this time, neither Viasa nor Ask Mr. Foster has offered to make any restitution to us, and both have disclaimed any responsibility in the matter."

The stranding incident which caused so much suffering to the Goldfarb family is not an isolated one, nor is it peculiar to unknown tour operators. Even well known tour operators, such as American Express, do strand passengers in foreign countries and refuse to bear any responsibility in the matter.

Passengers have no recourse to change the arbitrary and unreasonable rules made and applied by tour operators:

Air tour passengers are subjected to numerous unfair rules and conditions which are arbitrarily formulated and whimsically applied by the tour operators. These rules and conditions—often couched as conditions of contract—are designed to exonerate tour operators from liability for their wrongs. A passenger who is required to abide by the tour operator's contract has no part in writing the contract or no means to change its terms. A few examples are cited below to show how the tour operators' law brings injustice and economic deprivations to innocent tourists.

(1) In May, 1971, Mrs. Betty McMoran of Palm Springs, California, paid \$2,195 to Unitours, Los Angeles, for a 35-day tour called "African Safari". The tour began on July 10th and Mrs. McMoran stayed 3 days in London, the first itinerary of the tour. The tour to Africa was to continue on July 14. On July 13, Mrs. McMoran suffered a hemorrhage of such seriousness that a local doctor wanted to hospitalize her. The "tour conductor" advised her to discontinue the tour, to return to the United States and to get better treatment from her personal doctor. However, the tour operator refused to make any arrangement for her travel from London to Los Angeles, and therefore, she had to spend an additional \$235.00 as air fare.

On November 2, 1971, Mrs. McMoran wrote to the CAB's Office of Consumer Affairs describing the circumstances which forced her to abandon the tour, and requesting the CAB's help in recovering at least a part of the money she paid to Unitour. She told the CAB: "I have saved for this trip for some time and can ill afford to lose this money."

On December 3, 1971, the Consumer Affairs Office wrote a regret letter to Mrs. McMoran which contained the following: "Organizations such as Unitours do not have to register with the Board. . . . Whether you are entitled to a refund under the conditions you describe would depend on the terms of the contract. Mrs. McMoran, we can understand your concern and are sorry we could not be of more assistance in this matter."

(2) Mr. and Mrs. Robert Bradley, Hatboro, Pennsylvania, paid \$670 for an "air-sea tour" sponsored by Talmage Tours, Inc., Philadelphia. Three weeks prior to the starting date, Mr. Bradley was affected by some serious illness, and the couple immediately cancelled the tour. The tour operator levied \$200 cancellation fee on the ground that the tour brochure permits the operator to do so.

(3) Mr. Stephen Baron, Hutton and Co., Washington, D.C., cancelled a tour arranged by Asti Tours. The tour operator retained \$200 as cancellation fee although the tour brochure provided for maximum cancellation fee of \$25 per passenger.

(4) Debbi Lo Cicero, Milwaukee, Wisconsin, deposited \$150 with a travel agent and reserved an American Express tour. At a later date American Express cancelled the tour program without compensation to Miss Cicero. However, the travel agent retained \$30 from the deposit in order to cover expenses incurred by him in the deal.

(5) American World Tours, California, sold a one week Hawaiian tour to Mr. Everett Jarrett, San Pablo, California. The tour operator did not make the promised hotel reservations in Hawaii, for which the passenger paid \$100. Mr. Jarrett filed a complaint with the CAB's Consumer Affairs Office, claiming appropriate refunds. When the Consumer Office wrote a letter to the tour operator asking more details, the letter returned with a marking: "moved, left no forwarding address". The Consumer Affairs Office simply closed the files concerning the complaint.

The foregoing complaints illustrate not only some of the devices commonly used by tour operators to harass and mistreat consumers, but also the non-availability of adequate regulatory protection against the continuance of the unworthy and unreasonable practices of tour operators in general. Tour operators invariably immunize themselves from their own actions against consumers by the simple expedient of printing a disclaimer clause in the tour folder. For instance, the tour folder issued by Hawaiian Holidays, Inc. "featuring American Airlines endless summer vacations" (supplement to Travel Trade, January 24, 1972) contains the following disclaimer of tour operator and airline responsibility:

"Hawaiian Holidays, Inc. in arranging travel accommodations or in rendering other services in connection therewith does so as agent for the individual desiring such travel accommodations upon the express condition and agreement that it

shall not be liable for any injury, loss, damage, accident, delay, irregularity or expense arising from the use of any travel facilities, accommodations or services. . . . Hawaiian Holidays, Inc. is not responsible for refunds which might be due to tour members from transportation companies and for unused travel facilities, accommodations and services. . . . Baggage and articles carried by individuals during the tours are 'at owner's risk'. All costs, rates, tariffs and other charges are subject to adjustment at any time without prior notice. . . ." (Attachment I).

The tour folder of Hawaiian Holidays is apparently printed with the consent of American Airlines, and the "escape" clause in various respects violates the carriers own tariff regulations. Passengers' luggage, for instance, is not carried by American Airlines at passengers' risk. Further, the tour folder raises the question whether the tour operator, being an indirect air carrier, is legally permitted to exculpate itself from the normal responsibilities and liabilities which are attributed to common carriers in general. In the past the Board has stated that the tour operator should bear the "primary responsibility" to tour participants in the event of an aborted tour and that the operator should not "insulate himself" against the carrier's failure to perform the tour (*Supplemental Air Service Proceeding*, Order E-23600, p. 10). The escape clause contained in the tour folder runs counter to the Board's own decisions.

Existing regulations protect only the interests of tour operators and direct air carriers:

When the Board adopted in June, 1956, specific regulations (Part 296) to classify indirect air carriers, tour operators were excluded from the purview of such regulations. The Board then defined "indirect air carrier" as citizens "which engage indirectly in interstate air transportation of property only . . ." Pursuant to this definition, air freight forwarders were required to obtain "operating authorization" from the Board, to file tariffs and to file reports concerning financial and other traffic information. In January, 1960, the Board adopted Part 297 to regulate international freight forwarders. While the Board found it desirable to regulate domestic and international freight forwarder obviously for the purpose of protecting the interests of big corporations who ship their goods by air, the Board neglected to afford the same protection to passengers by regulating tour operators who engage in indirect air transportation just as freight forwarders do. Whenever the Board mentioned tour operators in its regulations, it did so for the purpose of enabling direct air carriers to implement certain special fares and protecting the tour operators from the incidence of laws, rather than for regulating tour operators as indirect air carriers. Thus the Board issued Part 378 of its regulations to establish "terms and conditions governing the furnishing of inclusive tours . . . by supplemental air carriers, certain foreign air carriers and tour operators . . ." and to "relieve tour operators from various provisions of the Act . . ." Similarly, the Board issued Parts 378(a) and 373 to make it possible for direct air carriers to offer Bulk Inclusive Tours and Study Group charters respectively. Even though Parts 378, 378(a) and 373 provide for ancillary and *pro forma* regulation of tour operators involved in the types of fares mentioned therein, the primary emphasis of these regulations is on the fares and services of direct air carriers.

Tour operators are virtually exempted from all substantive provisions of the Federal Aviation Act which are designed to protect the traveling public. Parts 378, 378(a) and 373 of the Board's regulations generally exempt tour operators from Section 401 (certificate of public convenience and necessity), section 403 (filing of tariffs and notice of tariff change), section 407 (disclosure of stock ownership), and section 408 (consolidation, mergers and acquisition of control), section 409 (interlocking relationships of tour operators *inter se*) and section 412 (filing of agreements and contracts). The Board has never given adequate justification or made appropriate findings to rationalize these blanket and omnibus exemptions. There are ample reasons to believe that the Board deliberately extricated the tour operators from the various provisions of the Act only to safeguard the interests of tour operators and direct air carriers, rather than to protect the interest of the passengers. For instance, it is hard to believe that the Board exempted tour operators from the duty to establish, observe and enforce "just and reasonable" rates, fares and charges and "just and reasonable" rules, regulations and practices (section 404a) for the purpose of protecting the interests of the traveling public.

The Board's pro-forma regulation encourages monopoly in indirect air transportation of passengers:

Under Parts 378 and 378(a), a tour operator is prohibited from selling, soliciting or advertising inclusive tours or bulk inclusive tours, as the case may be, "unless there is on file with the Board a tour prospectus," which shall include a surety bond in a minimum amount of \$10,000 per flight. There is no means by which the public could ascertain whether a tour operator has filed a tour prospectus with the Board. We have not come across any Board action which involves the rejection of tour prospectus filed by tour operators or which indicates that the Board ever scrutinizes the contents of such prospectus. The required surety bond in the amount of \$10,000 per flight is not adequate to cover the amounts actually received by tour operators from tour participants. Further, the identity of the surety company is never disclosed by the tour operators to tour participants.

The Board has done nothing to ascertain the financial ability and economic soundness of tour operators before they engage in indirect air transportation. Because of the Board's inaction, many financially weak business entities make expeditions into the tour operators' market and then suddenly wind up their business after receiving deposits and payments from passengers. The victimized passengers often experience difficulty in locating the absconded tour operator.

The Board does not receive any financial information from the tour operators who continuously engage in indirect air transportation. Therefore, the Board has no idea about the profits the tour operators make, or the reasonableness of the prices they charge ordinary tourists. Because of the opportunity to make unlimited profits, many giant corporations, conglomerates and banking institutions have moved in to monopolize the tour operators' business in indirect air transportation. According to a general study conducted by the Bureau of Census in 1967 on travel agents and tour operators, out of a total 2617 agencies doing business in metropolitan areas having one million population, only 22 agencies reported gross sales exceeding \$1,000,000, and these 22 corporations invariably withheld their financial data from public disclosure. Some of these corporations seem to make more than one hundred percent return on their investment. The Board has a statutory responsibility to prevent the big tour operator-corporations from making monopoly profits and to regulate the prices charged by the tour operators in connection with an important public utility service.

Private trade associations of airlines regulate tour operators:

Two private trade associations of airlines, the International Air Transport Association (IATA) and Air Traffic Conference of America (ATC) exert relatively more control over tour operators than the CAB. These trade associations which effectively pre-empted the certification and regulation of travel agents selling air transportation, have also extended their control over tour operators on the incorrect assumption that tour operators are travel agents. Although tour operators partially undertake the functions of travel agents in the process of engaging in indirect air transportation, they are, nevertheless, indirect air carriers. However, the ATC, for instance, issues licenses to tour operators, and requires them to seek approval of air tour programs by submitting (a) "proofs or dummy layouts" of tour folders prior to printing, and (b) to submit "Form for Requesting Approval of an Advertised Air Tour" and at least 50 printed copies of the folder. Unless ATC approves the application, the tour producer will not be given commissions on the air fare portion of the tour price by the airlines participating in the ATC regulatory arrangement.

The regulation of trade associations is designed to protect the airlines' interest in the tour operators business, and it has nothing to do with the consumers' interest. The Board has no competence to delegate its regulatory authority over indirect air carriers to private associations of airlines. The Federal Aviation Act does not permit direct air carriers to regulate indirect air carriers under the pretext that the latter are travel agents. In the *Supplemental Air Service Proceeding*, the Board has already drawn a clear distinction between travel agents and tour operators as follows:

"There is no basis for the assumption that the typical travel agent will undertake tour operations for his own account. Organizing such tours will normally involve substantial commitments, as well as heavy marketing and promotional expenditures. Charter tour operations will be undertaken primarily by the larger and wholesale travel agents who possess the facilities and financial resources which are required in order to package and market the tours". (Order E-23350, page 14)

The Board's statement recognizes that wholesalers are tour operators. However, the Board does not require the wholesalers to file even tour prospectus or other information concerning their business. On the contrary, wholesalers regularly file reports with the airlines' trade associations.

The Board's long and continuing failure to regulate tour operators, and its unjustifiable acquiescence to regulation by direct air carriers do not seem to have been predicated on difficulties in categorizing tour operators as a separate class of indirect air carriers. In *Saturn Airways, Inc., Tour Excursion Fares* case the Board delineated the essential characteristics of tour operators and their relationship with tour participants thus:

"In its dealings with the carrier, the tour operator would lease a section of the aircraft in its own name and itself would pay the rental charge. The tour operator would resell the compartment to members of the general public on an individual seat basis as an element of tour package. This package would be offered in its own name and would include an undertaking to provide air transportation along with the other provisions of a tour. Subject to a minimum package price, the tour operator presumably would charge whatever price it believes would be salable and profitable. The profit margin which the tour operator might include in its package price would inure entirely to its own benefit and not to that of [direct air] carrier. It is thus clear that tour operator's undertaking to transport participants is as principal for its own account and not as agent for carrier." (Order E-23548, Page 3)

According to this description, not only the travel firms offering inclusive tours, but inclusive tours and study group charters, but also wholesalers and other travel dealers who lease blocks of seats for passengers, would come under the category of tour operators who engage in indirect air transportation. The Board's regulatory approach which lays emphasis on fare categories and the nature of tour participants is basically defective. The evasive character of the Board's regulation is apparent from the fact that the Board does not have even a list of the tour operators engaged in indirect air transportation, not to mention any information concerning their identity and financial interests and ownerships.

The exemption of tour operators from certification is adverse to the public interest:

Section 401 of the Federal Aviation Act stipulates that "No air carrier shall engage in any air transportation unless there is in force a certificate issued by the Board authorizing such air carrier to engage in such transportation" 49 U.S.C. 1371(a) (1970). However, the Board is empowered to exempt carriers from the above requirement "to the extent necessary" if it finds that the enforcement of the economic regulations of the Act "is or would be an undue burden [on such carriers] . . . and is not in the public interest." 49 U.S.C. 1386(b) (1) (1970).

Interpreting the above provisions of the Act, courts have repeatedly held that since "Congress has established certification as the heart of the regulatory scheme", the Board is forbidden from granting exemption from certification without making adequate findings on the statutory issues of (1) whether certification would be an undue burden on the carriers, and (2) why certification is not in the public interest (Judgment of the U.S. Court of Appeals for the D.C. Circuit, in *Air Line Pilots Associations v. Civil Aeronautics Board, et al.*, dated January 14, 1972; *American Airlines v. CAB*, 98 U.S. App. D.C. 348, 235 F.2d 845 (1956), cert. denied, 353 U.S. 905 (1957)).

Contrary to this clear statutory mandate, the CAB has exempted from certification certain tour operators and other indirect carriers who operate tours within the specifications of certain types of fares and services of direct air carriers, without any finding as to the necessity of such exemption. When the Board adopted Parts 378, 378(a) and 373, it either made no findings on the two statutory issues, or such findings were not supported by substantial evidence as required by the Administrative Procedure Act. The Board's records do not indicate that certification and regulation of tour operators and other indirect air carriers would impose undue burden on them or that such carriers have ever objected to certification on that basis. Moreover, certification is not likely to impose heavier burden on tour operators than the regulatory burden already imposed by the Board on freight forwarders who are indirect air carriers engaged in transportation of property. More seriously, the Board has no reason to find that certification of tour operators is adverse to the public interest. The Board's Consumer Affairs Office has on file hundreds of consumer complaints to demonstrate the need for certification of tour operators.

Most of the indirect air carriers engaged in the transportation of passengers violate the provisions of the Federal Aviation Act, Parts 378, 378(a) and 373 of the Board's regulations which grant exemption to the tour operators and other indirect air carriers, authorize such carriers only to perform inclusive tours, bulk inclusive tours and study group charters. Tour operators and wholesalers who engage in indirect air transportation by offering services in conjunction with other special and group fares are not exempted by the Board's regulations, and therefore these carriers' operations are not authorized by law.

The Board should institute appropriate proceedings to certificate and regulate indirect air carriers:

The ever increasing business of indirect air carriers engaged in transportation of passengers is no longer an insignificant matter to be left for self-regulation by the carriers themselves. The activities of these carriers affect the economic and mental well-being of millions of air travelers. These travelers are entitled to receive protection from the Board against unreasonable prices and arbitrary conditions of service of tour operators and wholesalers. The Board has the statutory responsibility to afford such protection. ACAP believes that the Board cannot discharge its responsibilities except by certificating and regulating the carriers on a continuing basis. The Board itself seems to have recognized the need for certification when it recently issued "foreign indirect air carrier permits" to two foreign tour operators. (Thomas Cook & Son, Great Britain, order 71-4-159, dated March 5, 1971; Kuoni Travel Inc., Switzerland, order 71-2-121, dated January 13, 1971). ACAP urges the Board to institute appropriate proceedings designed to certificate and regulate domestic indirect air carriers engaged in transportation of passengers. We suggest that any prospective regulation should include the following features:

- (1) Indirect air carrier shall be defined as a person engaged in indirect transportation of passengers by leasing, renting or purchasing a section, compartment or blocks of seats in aircraft for the purpose of resale to the members of the general public, or by arranging air tours by combining air transportation with land services on the basis of independently published tour prices, or by organizing passengers for charter transportation by air.
 - (2) Each indirect air carrier, domestic or foreign, shall be required to file an application for operating permit or authorization. The application should contain at least those financial and other information which the freight forwarders are required to include in their application for operating authorization.
 - (3) The Board should retain the authority to suspend or revoke the operating permit in the event of violation of the Act or the Board's regulations.
 - (4) A copy of the operating permit shall be displayed prominently at each office or business location of the indirect air carrier.
 - (5) The holder of the permit shall enter into a depository agreement with a bank, the terms of which shall provide that the permit holder and his retail travel agent shall deposit with the bank all amounts received by them from passengers and that the bank shall not pay such amounts to the permit holder until 60 days after the performance of the service contracted between the permit holder and passenger.
 - (6) The permit holder shall file with the Board for approval tariffs showing all rates, fares and charges for the services, and all classifications, rules, regulations and practices in connection with such services.
 - (7) The Board shall require quarterly and special reports concerning financial, traffic, stock ownership and other information.
 - (8) All agreements and contracts entered into by the permit holder with other indirect air carriers and direct air carriers shall be submitted to the Board for approval.
 - (9) The effectiveness of any agreement providing for consolidation, merger or acquisition of control of a permit holder by another direct or indirect air carrier shall be made subject to the approval of the Board.
 - (10) Permit holders shall be forbidden from discriminating against passengers and from engaging in unfair methods of competition.
 - (11) Permit holders shall be subject to section 404(a) of the Act insofar as it imposes the duty to establish just and reasonable prices, rules and regulations.
- WHEREFORE, for all the foregoing reasons Aviation Consumer Action Project requests that the Board institute a rule-making proceeding to formulate adequate regulations to certificate all indirect air carriers engaged in the transportation

of passengers and to subject them to the various provisions of the Federal Aviation Act which are designed to protect the interests of consumers and ensure orderly development of air transportation.

Respectfully submitted.

K. G. J. PILLAI

(For Aviation Consumer Action Project).

AMERICAN AIRLINES ENDLESS SUMMER VACATIONS—FEATURING THE HILTON
HOTELS IN HAWAII

GENERAL INFORMATION

Reservations and payment: A deposit of \$20.00 per person is required at time of booking and full payment must be sent 21 days prior to departure to your travel agent or American Airlines. For late bookings (less than 21 days prior to departure) please consult your travel agent or American Airlines.

Cancellation fees: Services cancelled within seven days prior to departure are subject to a cancellation fee of \$20.00 per person to cover administration and handling costs, plus any additional expenses incurred by hotels and suppliers.

Included in land arrangements: All ground transportation (as described in itinerary) via seat in an air-conditioned motorcoach with professional driver-guide. Standard accommodations with private bath and balcony in deluxe hotels throughout. Sightseeing and events as described in itinerary. (Right is reserved to substitute hotels of similar grade whenever hotels indicated in the itineraries are not available.)

Flexibility: Subject to hotel availability, tours may be modified or extended according to passenger's wishes.

Meals: Optional dining and entertainment plans available for most tours as shown.

Triple rooms: Same price per person as when sharing a twin bedded room on 7 and 8 day programs; \$15 reduction per person on 2-week programs. See special savings in Three Island Roomer (U-Drive) Program.

Children: Children under 12 receive 50% discount on applicable airfare on all tours. Children's land rates on Drive-O programs are quoted on the itinerary page. On all other programs, child under 18 sharing with two parents pays 50% of regular land rate. One parent with one child, each pay twin rate. Special quad rate on request.

Planning and operation charges: These are included in the tour price.

Unused services: Unused services are only refunded if operator obtains refund himself and will apply only for minimum of 2 hotel nights. There will be no refund for unused sightseeing tours or one hotel night.

Not included in land arrangements: Air transportation roundtrip to Honolulu and Neighbor Islands; Gratuities to porters, maids, guides, escorts, waiters or any other individual rendering personal service. Wines, liquors, laundry or other items of a personal nature.

Conditions and responsibilities: Hawaiian Holidays, Inc., in arranging travel accommodations or in rendering other service in connection therewith does so as agent for the individual desiring such travel accommodations upon the express condition and agreement that it shall not be liable for any injury, loss, damage, accident, delay, irregularity or expense arising from the use of any travel facilities accommodations or services provided in connection with such individual's travel plan, nor for any injury, loss, damage, accident, delay, irregularity or expense arising from strikes, war, weather, quarantines, sickness, government restrictions or regulations, or from any act or omission of any individual firm or corporation furnishing transportation, sightseeing, hotel accommodations or any other services in connection with such travel plan, or for any other cause whatsoever in connection therewith, nor for any additional cost or expense due to disruption or change of advertised schedules, rates or services, or for any other cause beyond its own control. The right is reserved to amend the advertised itinerary whenever transportation schedules or other factors make it this necessary or advisable. Hawaiian Holidays, Inc., is not responsible for refunds which might be due to tour members from transportation companies and for unused travel facilities, accommodations, and services. All such claims for refunds must be made by the individual for whom the travel plan is prepared in accordance with the rules and regulations of such transportation companies or company firm or corporation furnishing such travel facility, accommodation or service. Baggage and articles carried by individuals during the tours are "at owner's risk". All costs, rates,

tariffs and other charges are subject to adjustment at any time without prior notice. The airlines concerned are not to be held responsible for any act, omission, or event, during the time passengers are not on board their planes or conveyance. The passage contract in use by the airlines concerned, when issued, shall constitute the sole contract between the carrier and the purchaser of these tours and/or passenger. The acceptance of any travel plan or other service by an individual shall be deemed to constitute an acceptance of this limitation of liability or responsibility.

Senator CANNON. The next witness is Mr. Paul Albrecht, president of Golden Holiday Tours of California.

STATEMENT OF PAUL R. ALBRECHT, PRESIDENT OF GOLDEN HOLIDAY TOURS OF CALIFORNIA, INC.; ACCOMPANIED BY ROBERT HAUSMAN, COUNSEL

Mr. ALBRECHT. Mr. Chairman, I have with me Mr. Robert Hausman, our attorney in Washington.

My name is Paul Albrecht, president of Golden Holiday Tours in California. We are an international tour operator which conducts business under the trade names of Gateway Holidays and Globus Tours.

Golden Holiday Tours, Inc., began in 1962, and has been a tour operator from the beginning. It has moved from a 50-percent steamship business to, at present, almost entirely an airline business.

Golden Holiday has always represented IATA carriers, and continues to do so. As a tour operator, we have lived through the 23-day excursion fare, the individual inclusive tour basing fares, GIT's, CBIT's (contract bulk inclusive tours), and, presently the 22-to 45-day excursion fare.

In 1969 we began to package and market ITC's, side by side with GIT's. Our west coast volume of ITC's from 1969 through 1972 has increased from 1,600 to 9,000 passengers.

During the same period of time, our IATA GIT tour volume has also increased, from 2,500 passengers to 6,000 passengers.

The above figures represent only 20 percent of our national U.S. volume. That is because both the IATA fare structure and the restrictions encompassing ITC's discriminate against Californians and other residents of the west coast.

For years the IATA GIT add-on for the west coast was \$232, and it has only recently been reduced to \$149. In contrast, the add-on for charter transportation is approximately \$90.

In other words, if the minimum price restriction on ITC's were removed, a California or other west coast resident could go to Europe for the same price as, or less than, a New Yorker goes to Europe today on the GIT fare.

The real issue, today, is whether the American public is entitled to low-cost air transportation and whether we believe in a free enterprise system in which small businesses such as mine can survive.

We should be permitted to operate one-stop ITC tours.

I believe that the traveling public has the right to avail themselves of low-cost one-stop inclusive tour charters.

As Senator Magnuson points out in his address of April 19 to the Foreign Trade Club, one-stop ITS's allow the traveling public in Europe to take two low-cost trips per year. Exactly the same thing

would happen here which would encourage Americans and Europeans to travel more both abroad and within the United States.

On many occasions I am asked by European friends and travel agents why vacations in the United States are so costly compared to an equivalent vacation in Europe, where the per day cost for hotels and meals are identical.

A week's vacation in New York, for example, is a dream held by millions of Europeans but impossible due to the high regular air fare and the regulations currently restricting the operation of one-stop ITC's.

If a one-stop rule were adopted, it is likely that our company, with its European agents, will generate as many Europe-U.S. ITC passengers as we generate in the usual direction.

I believe that IATA carriers should be allowed to operate ITC's provided they confine their activities, as supplementals currently do, to the sale and operation of air transportation only.

Again, we can refer to the example of Europe where, for the past 18 years, supplemental and IATA carriers have been competing and making money in the flying of inclusive tour charters.

Here is what we could offer Californians on a one-stop ITC basis for a 2-week package in Europe:

London: The GIT fare now is \$390 between September and May, and \$453 between June and August. We can offer the air transportation portion of a one-stop ITC package at an average price of \$240 per seat, the year round.

Paris: The GIT fare now is \$411 between September and May, and \$474 between June and August. We can offer the air transportation portion of an ITC for \$250.

Rome: The GIT fare is \$495 from September to May, and \$558 from June to August. We can offer air transportation on a one-stop ITC for \$275.

The minimum price and tour-together requirements should be eliminated.

The minimum price at 110 percent of IATA fares is also a hardship, and probably adds, to some degree, to the dollar drain of foreign tourism.

If it were not for the 110-percent requirement, we would market an ITC package which combines a U.S. destination, such as New York City, with European destinations, for west coast originating passengers.

The 110-percent minimum price requirement now makes that kind of a package prohibitively expensive and impossible to market. Nor could we possibly give the public the value that such a price would require.

Even in some of our regular Europe packages, we are forced to build up the package in order to justify the artificially high price forced on us by the 110-percent requirement.

For example, the following is quoted from our west coast tour catalog:

This is the minimum tour price established by government regulations. Vouchers for 20 main meals (luncheons or dinners) in Europe are included in the price. Depending on new IATA air fares, this price may be reduced and fewer or no meal vouchers will be included.

The ITC restriction requiring tour groups to travel together on the ground, in group sizes of 40 or more, is also a severe burden on the traveler.

He cannot use a rental automobile, as the IATA traveler can. He is also prevented from following an individual itinerary, which could be packaged by the operator, for the traveler's special requirements, while the IATA traveler can on a FIT—Foreign Independent Tour. The ITC's in Europe have no such restriction, and participants may choose their own ground package at destination.

Supplemental and scheduled carriers should not be permitted to merge.

On the question of whether or not supplemental carriers should be allowed to merge with scheduled carriers, I would again refer to Senator Magnuson's speech in which he pointed out that the competition between the two has resulted in an increased number of Americans traveling at lower air fares.

If we allow the carriers to merge, we end up in the same situation we were in 10 years ago, when a small number of large carriers on the Atlantic and the Pacific could dictate the then existing high air fares.

There must be free competition, but the current bitter conflict between scheduled and supplemental carriers is really unnecessary and of no benefit to the potential traveler.

As a tour operator, I see a need for a competitor to the international cartel, operating under the name of IATA. By the same token, I can see that there is a need for the traveler who wants to go to one, or many specific destinations at a specific time, and is prepared to pay a higher air fare for this convenience.

On the other hand, there is an enormous untapped market prepared to travel if the total cost of the vacation is low enough.

The only way to reach this market is through the use of back-to-back charter aircraft.

Air carriers should not be permitted to package and sell charter-inclusive tours to the public.

Now, to the last point of air carriers being allowed to market and sell their own tour packages. This means virtual integration and runs contrary to the American principle of free enterprise.

It means that the carriers not only engage themselves in the tour operating business, but it puts a few large carriers into a position to dominate the vacation market.

They will not only be able to reduce competition and control of commission earnings of some 7,000 travel agents in the United States, but if they see fit, can literally subsidize the land cost at the expense of the legitimate air fare.

Once complete control has been achieved, prices can again be increased bringing us back to the stage where the traveler is paying an unnecessary high air fare.

If I may draw an analogy, what we have here is a situation similar to the company store.

ITC's are a safe and sound way to travel.

Indeed, more liberalized ITC rules and regulations seem to be the answer to many of the above complex questions. Our own company operates as many passengers on scheduled IATA tours, where flexibility of departure dates, times, destinations and multiple stops are available, as we do on inclusive tours.

Yet low-cost inclusive tour charters with lesser flexibility and convenience are vital to stimulate travel, especially for the first timer.

ITC's are also an entirely safe way to buy a packaged vacation, because of the security requirements. I have never heard of ITC passengers being stranded abroad, or otherwise being denied whatever they have paid for. Attesting to their satisfaction, a substantial number of participants on Gateway/Globus ITC's are repeat customers.

Thank you for permitting me to appear before you today.

If you have any questions, I would be glad to answer them.

Senator CANNON. Thank you very much, Mr. Albrecht, for a fine statement.

Shelby Southard, transportation chairman, Consumer Federation of America.

STATEMENT OF SHELBY SOUTHARD, CHAIRMAN, TRANSPORTATION COMMITTEE, CONSUMER FEDERATION OF AMERICA

Mr. SOUTHARD. Mr. Chairman, my name is Shelby Southard. I am here in the dual role of chairman of the transportation committee of the Consumer Federation of America, and also the spokesman for the Cooperative League of the United States, which, as you know, is a national federation of all kinds of customer-owned businesses.

I am pleased to have this opportunity on short notice to testify in support of S. 3513 because in my opinion it holds out the responsibility that millions of low and moderate-income Americans may expand their holiday horizons. This they would do not just in terms of overseas vacations, but also by expanding the vacation travel industry within the United States and elsewhere in this hemisphere.

Introduction of the one-stop Inclusive Tour Charter could provide an economic boost for existing resort areas, help to create new ones, and provide a badly needed economic transfusion for our ailing airline industry.

These predictions on my part do not come out of any suddenly acquired expertise in economics. It is just that this is what seems to have happened in Europe, where almost 9 million northern Europeans will vacation in Mediterranean sunspots this year.

This, quite simply, is thanks to the availability of low-cost, single-center, packaged vacations. I see no reason to suppose that something of a similar nature would not occur here—given the opportunity.

Of course, there is a difference in attitude. The European packaged vacation is very clearly geared to the needs of the average consumer. It also reflects the views of the British Government as expressed in the report of the U.K. Committee of Enquiry into Civil Air Transport, 1969, which says:

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 that each customer 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, 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 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.

With that special flair they have for using our common language, the English writers of this statement have said what I have long wanted to say about the realities of air travel.

It is high time we freed ourselves from the mystique of the subject and concerned ourselves with the bread and potato realities of what is possible in air travel. If we make the regulations realistic and consider the true needs of Americans, we can have a high revenue bulk air travel market like the one that has been developed in Europe.

S. 3513, by eliminating the present three-stop, minimum price provisions of the Current Inclusive Tour Charter regulations, would be an important first step in the development of such a travel market.

As they learn about the situation in Europe, many Americans are beginning to ask questions about low-cost air travel in this country. Many are beginning to wonder why they do not have the same opportunities as European vacationers.

They are beginning to wonder, too, why chartering a plane has to be such a complicated business, even for an organization that meets all the qualifications required under the affinity regulations set by the Civil Aeronautics Board.

As the transportation chairman of the Consumer Federation of America, I receive many letters from our member organizations concerning their problems with the existing affinity regulations. I should say many of the 200 organizations that belong to that federation are actively engaged in the chartering business and seeing that their members take tours, so they do have considerable experience in this area.

I would like to give you some examples of the major complaints I receive, and ask you to bear in mind that in many instances, the charter organizer is an unpaid volunteer—not a professional travel agent.

ELIGIBILITY REQUIREMENTS

CAB regulations differ from IATA rules governing scheduled carrier charter activity. For example, CAB permits travel by a member's parents, provided they live in the same house; IATA does not.

RESTRICTION ON ONE-WAY CHARTER PASSENGERS

One member writes:

If we operate three charter flights a year, we are allowed a 5 percent movement of passengers from one charter flight to another. This is beneficial since it allows members who wish to stay over for a longer period to return on a later flight. However, if we operate four charter flights or more, this suddenly becomes a sin. No one is allowed to travel one way. This is unconstitutional discrimination against certain chartering groups who meet all other requirement of eligibility. It accomplished only one thing: to restrict the development of chartering programs. It works against the interests of the consumer.

No one suggests complete freedom in this area, but I believe that my correspondent has a point and that there is room for more flexibility than currently exists. Now the subject that they are most bitter

about, unnecessary and excessive paperwork, almost everyone who writes to me is angry about this.

One member wrote, "Present regulations require a tremendous amount of documentation, charter applications, supporting information, manifests, copies of every advertisement, date of membership, certification of membership. Obviously this information would be helpful in determining that a given organization is violating regulations and would lead to their conviction. The problem is that the CAB seems to assume that every organization is a violator and subjects them to this same time-consuming barrage of paperwork. Some people are not entitled to hold a driver's license. But we do not require every citizen applying for one to submit his life history, document his financial worth, and submit notarized affidavits from references, attesting to his date of birth and so forth."

RESTRICTION ON SPLIT CHARTERS

This limits the ability of small organizations to offer charter programs to their members, since not all groups can put together full planeloads of 160 to 250 members. More freedom in the area of split charters requiring 40 or more members would permit many smaller chartering organizations to consolidate their efforts.

There is, of course, a difference between affinity charters and ITC's, but the principle is the same: In both cases, it seems to me, Americans are faced with restrictions that are unwarranted, unnecessary, and unfair.

I hesitate to tell the airlines how to run their business, but as a result of my experience in this field, I am convinced as a layman, that bulk air transportation is the wave of the future, for pleasure travel—both domestically, and in the international market.

The sooner the airlines start preparing for this market, the faster it will develop. I should point out, however, that there are signs that they have already seen the handwriting on the wall—and that, despite their protestations, they are beginning to change. Some foreign carriers have created charter subsidiaries. Others—like Pan American and TWA—have been quietly increasing their own charter activities.

I notice that during the past 4 years, Pan American's charter traffic increased from 100,472, in 1968, to 247,780 last year. TWA's charter traffic showed an even more dramatic jump—from 31,837 in 1968, to 151,612 last year.

As I say, perhaps they are getting the message.

In any event, it shows that they are not totally oblivious to the demands of the American consumer for low-cost charter travel. That's a good thing, Mr. Chairman, because I have a feeling that those demands will become more and more insistent as American consumers learn in detail about the European experience with low-cost package holidays.

I knew about the single-stop ITC's, of course, but I didn't really appreciate their full value, until I had the opportunity just 3 weeks ago, to attend the First World Congress on Air Transportation and Tourism in Madrid, and learn at first hand how they have affected the European market.

As spokesman for American consumers at the World Congress, where I discussed "The Consumer Stake In Low-Cost Air Travel," I would like this committee to consider two statements I have extracted from the report of our multinational panel of consumer representatives.

One, we affirmed our belief in the existence of a large mass consumer market for air transport services which has not been fully developed by the suppliers. We stated that promotion of low fares on a rational basis as regards, for example, destination and geographical area, would attract a far larger consumer demand for air travel than exists as present, bringing with it the economic advantage to the carriers of improved load factors.

Second, we stated that governments should play a more active part in removing regulations which discriminate between different types of air traveler. The panel did not request public subsidies for the mass consumer market. In the bill of rights for air passengers adopted at the World Congress, we specifically asked for, "The availability for all people, of charter or other low-cost air services, which will attract a mass consumer demand and insure economic operation of airlines, whether scheduled or charter."

Mr. Chairman, in closing, I would like to state that we Americans have been fairly passive on this issue in the past, perhaps too much so. As we learn more about how we have been discriminated against, I am confident that consumers will become increasingly vocal in their demands for vacation opportunities similar to those available to European travelers.

Liberalizing the ITC regulations is in the interest of the consumer. It is also in the interest of the carriers, both scheduled and supplemental. In my considered opinion, the question is not whether they are going to have these opportunities, but how soon.

Mr. Chairman, before leaving the table, I would like to say that Mr. Cass, who is the counsel for the group known as the Americans for Charter Travel, was originally scheduled to be a witness here today, and he asked if I would submit his statement for the record, with your permission.

Senator CANNON. We would be happy to receive his statement for the record.

Thank you, Mr. Southard.

Senator CANNON. We have one more witness, Mr. Theodore Harris.

STATEMENT OF THEODORE P. HARRIS, EXECUTIVE VICE PRESIDENT, CONSORTIUM INTERNATIONAL, INC.

Mr. HARRIS. Mr. Chairman, members of the subcommittee, it is a privilege to be here today.

My company—the largest independent student travel company in the United States—had not planned to testify on the matters now before this committee, but as these hearings progressed and the issues of regulatory compliance, affinity regulations, and travel group charters—among others—were raised in previous testimony, we feel it is imperative that this committee be given an accurate appraisal of the condition of our international air transportation system.

That condition, gentlemen, is not good. It is critical.

The CAB and other Government agencies are completely out of control of the predatory rate war being waged on the North Atlantic, for example.

The CAB is unable to enforce its own regulations.

Increasingly, carriers are not even bothering to pay even lip service to these regulations.

I would like to enter in the record at this time an article from the current edition of *Aviation Week and Space Technology* that details the blatant abuses now prevalent on the North Atlantic.

Payoffs, rebates, and grossly illegal discounts are but a few of the tactics now being used on a widespread basis by the scheduled international carriers. These carriers—some with the full support of their controlling governments—are wreaking havoc on the North Atlantic. They are forcing charter and supplemental carriers to look beyond regulatory compliance to their very survival.

And their survival is genuinely endangered as can readily be seen by the dilemma now facing Universal Airlines.

Gentlemen, a seemingly uncontrollable and ruinous competitive situation now exists in international air transportation. And while the CAB's Bureau of Enforcement pursues seemingly endless legal proceedings against illegal charter organizers in New York and other cities, these very organizers continue to operate in total disdain of the Board's efforts.

Only yesterday my company received a solicitation, which I would like to have inserted in the record, offering transatlantic fares as low as \$80 for literally hundreds of charter departures. This is a solicitation from one of the eight parties in New York that are a party to the injunctive proceeding by the CAB.

Outrageous? Yes; but the scheduled carriers are guilty of similar crimes for their widespread discounting and rebating tactics for tickets purchased en masse. And the International Air Transport Association, along with several foreign governments, seemingly has little control of the situation.

And where do the proceeds of this discounting and rebating end up? Very rarely in the pockets of the consumer, I can tell you that. They end up in the pockets of unscrupulous travel promoters who have little respect for the law or the stability of our international airline system.

And, yes, gentlemen, the discounting and rebating has even been extended to the international youth and student fare which by itself is so clearly discriminatory, noncompensatory, and predatory. Yet the CAB has not seen fit, to date, to suspend even this fare.

In addition to the supplemental airlines, who are the victims of these illegal practices?

They are legitimate travel agents and firms such as mine who insist on regulatory compliance, much to their dismay.

They are colleges and universities who evidence their high regard for the social and educational benefits of international student travel by sponsoring low-cost student charter-flight programs only to see such programs placed in dire jeopardy by illegal charter consolidators and the illegal pricing practices of the scheduled carriers.

And, to a large extent, they are the American public who will suffer the future absence of healthy competition in air transportation that is the inevitable result as unabated, predatory, and ruinous competi-

tive practices drive the weaker carriers and legitimate travel promoters from the marketplace.

Gentlemen, my company has worked for several years in helping the CAB enforce its regulations. We have become party to major proceedings within the CAB, including the presentation of a lengthy proposal to end the illegal charter situation.

I personally testified with Congressman Lionel Van Deerlin before the Senate Subcommittee on Foreign Commerce and Tourism last November, to detail the deteriorating situation on the North Atlantic.

We have vigorously supported legislation to end the illegal charter situation, legislation that would put an end, once and for all, to the deplorable student stranding situation.

We are not alone in this regard. Thousands of colleges and universities have made their feelings known to the CAB.

Prestigious organizations representing millions and millions of American and European students joined with me in a statement I delivered to the Board on April 27. I should like to have a copy of that statement inserted in the record.

Yet, against this backdrop of growing concern, the level of chaos continues to increase. And while we have great respect for the CAB and the genuineness of its enforcement efforts, that agency appears to be increasingly unable to cope with the magnitude of the problem.

Also, the CAB is becoming embroiled in a jurisdictional dispute involving other Government agencies as is evidenced by the Board's conspicuous absence during recent talks with European aviation officials.

Perhaps what is needed now, gentlemen, is not the philosophical and academic consideration of issues such as carrier integration, intermodal ownership, and the vital level of scheduled services. What may be needed is a sweeping review of the efficacy of the entire domestic and international regulatory mechanism.

Last year at this time we accurately predicted to Members of Congress the level of student strandings that was to occur in Europe last summer—as high as 11,000.

On March 12, 1972, I was quoted by the Washington Post as estimating that up to 25,000 would be stranded in 1972. I would like to insert in the record a copy of that article.

On April 28, in a comment filed with the Board, that estimate was upped to 50,000 because of the widespread discounting, rebating, and the loss of scheduled carrier control over their own ticketing procedures. This situation should become a matter of urgent concern to this subcommittee.

We strongly urge that this subcommittee begin an immediate investigation of not only the regulators, but also the regulated. It is the only way in which the obscenity of the strandings and defraudings which loom a few short months ahead can be curtailed and carrier and industry stability can be restored. Thank you.

Senator CANNON. Thank you, Mr. Harris.

(The articles follow:)

[From Aviation Week and Space Technology, May 8, 1972]

ILLICIT TICKET PRACTICES PROLIFERATE

INDUSTRY CONCERN MOUNTING OVER FRAUDULENT SALES, ILLEGAL ORGANIZATION OF TRAVEL GROUPS, REBATING TO TRAVEL AGENTS

(By Laurence Doty)

WASHINGTON—Fraudulent sales of passenger airline tickets, illegal organization of travel groups and illicit rebating to travel agents by airlines are now so widespread that many top industry leaders fear that only court actions will arrest the trend.

There is no way of estimating the volume of air travel business now being handled through under-the-table deals. But the practice is so deep-rooted that all but a few airlines are involved, scheduled or supplemental, large or small.

"You can be sure it's big business and it's getting bigger," one U. S. government official commented.

Travel agents are the chief beneficiaries of the rate discounting, with those operating world-wide branch offices gleaming the largest gains. Passengers are also profiting, and word of the availability of discounted fares has led many a new traveler into bargaining with travel agents for cut rates.

Travel markets

Violations are now committed in a majority of leading global travel markets, but the practice is most prevalent on the North Atlantic, where traffic so far this year has soared beyond the most optimistic expectations in terms of revenue passenger miles—an estimated 35% increase for April.

By contrast, initial reports indicate only slight improvements in operating revenues and, in some instances, a drop in yield per passenger mile. This is being attributed mainly to the popularity of the seven-eight-day excursion rate, which expired April 30.

But it is now evident that illegal rate cutting is contributing to the dilution of revenues.

Methods employed in committing the abuses are known to compliance and enforcement officials of the International Air Transport Assn. and the Civil Aeronautics Board, among others. But execution of the violations is so well concealed that specific proof to back up accusation is generally absent.

Officials thus are working in a vacuum. "We have brought court action in several instances," one CAB official said, "But where we strike at one offender there are innumerable others running free."

A special meeting of airline presidents has been called by IATA Director General Knut Hammarskjöld in Geneva May 25 to discuss the problem. Already, at last two European airline officers have sent letters to IATA airline presidents vigorously protesting unlawful discounting and rebating.

The effect has been negligible. In addition, because of the magnitude of the problem, there is little question in the view of many observers that the success of these improper practices must necessarily depend on the participation or at least the knowledge of some members of management, particularly in sales or marketing.

Rate-cutting was initially adopted as a competitive measure by scheduled airlines against charter operators. But as its use expanded, it ballooned into an indispensable device for survival in the competitive battle which is going on among all carriers.

The range of offenses is wide: from failure to collect for excess baggage to rebates on group travel up to 40%. Payments of commissions to travel agents up to 15%, compared with the standard 7%, is not uncommon.

The misconduct extends into the cargo area. In a sharp letter to presidents of IATA airlines serving West Germany, Dr. Herbert Culmann, chairman of the executive board of Lufthansa, criticized the proliferation of malpractices in the sale of passenger tickets and added:

"In the cargo field, there are a number of unauthorized facilities granted. The 'incentives' above regular commission given to forwarders and/or customers amount to 10-15%. Contracts on an annual basis with members' head office consent are being concluded with potential shippers and top agents. Furthermore, trucking charges to the gateway in excess of actual cost are refunded, as a rule."

In a similar letter, Dr. F. Thier, Austrian Airlines traffic manager, urged carriers to "review their sales policy and to adhere to rules binding upon all airlines in order not to force us to undertake any drastic steps." A copy of his letter went to the Austrian aviation authority.

IATA has adopted a self-policing system for enforcing IATA rules with respect to fares, conditions and tariff regulations. A single breach of IATA resolutions can result in fines as high as \$50,000.

But IATA's office of compliance is not adequately staffed to investigate and take action on breaches throughout the world. As one airline spokesman commented, "Even if caught, an airline isn't going to give up dozens of opportunities to attract business through discounting simply because it was found guilty in only one case."

IATA has no jurisdiction over fares established by government order, specifically the youth fare. As a result, there are now instances of passengers older than the youth fare age limitations traveling on such tickets. Governments can take action, but the ticket user is seldom reported by check-in ticket agents.

Most offenses occur in connection with charter or affinity group flights. But there are kickbacks on individual fares.

10% discount

For example, a travel agent might sell regular economy or first-class fares at a 10% discount. He inserts the proper fare on the ticket, pays the airline the correct amount so that bookkeeping recording the transaction reveals no misdeed.

Later the agent is rebated by the carrier for the difference between the regular fare and the selling price. "This is probably drawn from a special slush fund," one airline attorney here conjectured.

The passenger can benefit from the transaction if the travel agent learns that the sale depends on the lower price. In any event, he picks up his agent's commission on the full fare.

Recently, a travel agent reported that he had sold tickets from New York to Madrid to a family of five. He added that the head of the family later dropped in for a refund stating that another travel agent had offered him a much lower fare.

Another ruse involves issuance of tickets for group tours. A travel agent can make reservations for a group of 20 passengers, for example, if the list of passengers is presented to the airline 30 days in advance of the flight.

If any of the passengers cancel, and there are no replacements, the travel agent forfeits 25% of the ticket cost. One exception is that, if the cancellation is due to illness of the traveler, no forfeiture is required.

An unscrupulous travel agent may reserve space for as many as 400-500 scheduled departure of groups of 20 passengers each over an extended period of time. It is obviously difficult to sell such a large volume by filling every reserved seat.

Thus, a travel agent may submit a list of fictitious names to the airline involved. If he sells as many as 10 seats out of a given 20 reservations, he submits these names to the airline as replacements for supposedly cancelled passengers.

The remaining 10 passengers are reported as having canceled because of illness. To attest to the sicknesses, the agent must present supporting medical certificates under regulations governing group travel.

These forms are sometimes forged. Possibly no more than two medical certificates are needed since the fictitious names could include two families of five, with the sickness of one member of each family justification for the total cancellation. The travel agent then receives a refund on the unsold seats.

In some instances, airlines have offered rebates on group travel sales between 10 and 40% to lure traffic in their direction.

One common practice is absorption by airlines of the requisite ground costs passengers must pay in connection with the purchase of group inclusive tours. The passenger neither gains nor loses. But the travel agent profits financially and the airline fills seats.

The full amount, passage plus ground costs, is collected by the travel agent. He settles with the airline only for the ticket cost retaining the balance. The carrier pays the ground expenses to the land groups contracted for in the itinerary.

One-way transportation opens the way for swindles. Regulations require that charter trips must be roundtrip with charter members remaining with the same group on both outgoing and incoming legs of the charter.

Some passengers may wish to take advantage of charter rates but prefer to stay at the charter destination longer than the time allotted for the charter.

The travel agent then will sell the passenger a roundtrip at charter rates and give him only the going portion of the ticket for use on a charter flight instructing him to pick up the return portion at the agent's branch office abroad.

When the passenger is ready to return to the U.S., he is slipped into another charter flight with the necessary credentials, seldom checked by airport or airline agents, since as many as 250 people may be involved.

Meanwhile, his return portion has been sold as a standard one-way ticket to a passenger legitimately seeking one-way passage.

Valueless vouchers

Some travelers have been bilked by variations of this procedure. Last year, about 350 travelers were stranded in England and Europe, holding valueless vouchers that had been purported to be exchangeable for return passage (AW&ST Sept. 6, p. 26).

There was no travel agency at the European addresses where the charter members had been told return tickets would be available in exchange for the vouchers. Meanwhile, the two organizations which contracted for the charters closed their New York offices.

Such flagrant infringements of the law are now rare, particularly because of success the CAB's Bureau of Enforcement has had in cracking down on this type of operator.

[From the Washington Post, May 5, 1972]

BIG CHARTER AIRLINE SUSPENDS ALL FLIGHTS

(By Robert J. Samuelson)

Universal Airlines, one of the nation's largest charter airlines, announced yesterday that it has suspended all its flights indefinitely.

The announcement—one step short of formal bankruptcy—resulted from Universal's acute shortage of cash. The airline was unable to meet its bills and efforts to obtain new loans during the past few weeks were unsuccessful.

With the approval of the Civil Aeronautics Board, however, another charter airline—Trans International Airlines—has agreed to carry all of Universal's passengers on flights chartered before May 18. The agency said that similar arrangements are expected to be made for Universal's other summer flights.

Last year, Universal flew an estimated 165,000 passengers on transatlantic flights, a Universal spokesman said.

According to the spokesman, the airline had already contracted for \$14 million worth of charters this summer. The airline had received—but spent in its bid to stay afloat—more than \$1 million in deposits; Trans International will honor these deposits, CAB officials said.

Last year, Universal lost \$3.2 million, and the first quarter loss amounted to \$1.8 to \$2 million, usually reliable sources said.

Behind the continuing deficits were a multitude of problems: stiff competition for charter business, which caused Universal to offer low charter rates in order to win business; management troubles—and resulting high costs—that were caused by Universal's 1971 acquisition of another charter carrier, American Flyers; and the loss of private air cargo (primarily automobile parts) and military business that had provided a constant source of income.

But Universal officials were also bitter at the CAB, feeling that the agency may have—deliberately or not—aggravated the carrier's troubles.

In January, the agency sent to the White House a recommendation that only five of the six charter airlines with the authority to fly transatlantic flights have their "certificates" (i.e. the right to fly across the Atlantic) renewed. Universal was the excluded airline.

Ironically, the White House—apparently after an intense lobbying campaign from Universal—reversed the CAB, which issued its final decision yesterday. So Universal is now left with a mountain of debts.

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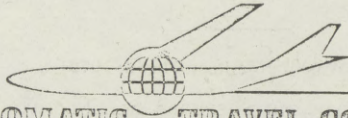
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<u>JUNE</u>	1 - 2 - 3 - 4 - 5 - 6 - 7 - 8 - 9 - 10 - 11 - 13 - 14 - 15 - 16 - 17 - 18 - 19 - 20 - 21 - 22 - 23 - 24 - 25 - 26 - 27 - 28 - 29 - 30	<u>JUNE</u>	1 - 2 - 4 - 8 - 9 - 10 - 11 - 15 - 16 - 18 - 20 - 22 - 23 - 25 - 26 - 28 - 29 - 30
<u>JULY</u>	1 - 2 - 3 - 4 - 5 - 6 - 7 - 8 - 9 - 10 - 12 - 14 - 15 - 16 - 19 - 20 - 22 - 23 - 26 - 28 - 29 - 30	<u>JULY</u>	1 - 2 - 6 - 7 - 9 - 10 - 14 - 15 - 16 - 20 - 21 - 23 - 24 - 28 - 30
<u>AUGUST</u>	1 - 2 - 4 - 5 - 6 - 9 - 11 - 13 - 16 - 18 - 20 - 23 - 25 - 27 - 30	<u>AUGUST</u>	2 - 4 - 5 - 7 - 9 - 10 - 11 - 12 - 13 - 14 - 15 - 16 - 17 - 18 - 19 - 20 - 23 - 24 - 25 - 27 - 29 - 30 - 31
<u>SEPTEMBER</u>	1 - 2 - 3 - 6 - 8 - 10 - 13 - 15 - 17 - 20 - 22 - 24 - 27 - 29	<u>SEPTEMBER</u>	1 - 2 - 3 - 4 - 5 - 6 - 7 - 8 - 9 - 10 - 11 - 13 - 14 - 15 - 16 - 17 - 21 - 22 - 23 - 24 - 27 - 29

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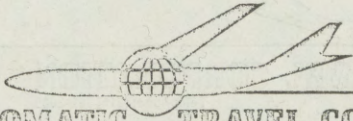
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OCT. 1 - DEC. 31	\$ 80

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SEPTEMBER 3 - 10

PARIS/NEW YORK

JULY 4 - 15 - 21 - 30
AUGUST 3 - 10 - 15 - 20
SEPTEMBER 3 - 10 - 15
OCTOBER 1

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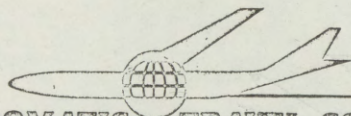
JUNE 1 - 15 - 18 1 23 - 25 - 30
JULY 7 - 13 - 20
AUGUST 6

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JUNE 20
JUNE 23
JUNE 24
JUNE 24
JUNE 26
JUNE 26
JUNE 27
JULY 1
JULY 1
JULY 3
JULY 7
JULY 8
JULY 11
JULY 14
AUG. 3
AUG. 1
AUG. 9
AUG. 10

ROME/NEW YORK

AUGUST 31
SEPT. 8
SEPT. 1
SEPT. 17
AUG. 31
JULY 8
JULY 15
SEPT. 6
AUG. 27
SEPT. 3
JULY 15
SEPT. 4
JULY 22
SEPT. 9
JULY 22
AUG. 8
SEPT. 15
AUG. 18
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AEROMATIC TRAVEL CORP.

STATEMENT OF THEODORE P. HARRIS, EXECUTIVE VICE PRESIDENT, CONSORTIUM INTERNATIONAL, INC.

We are all in favor of facilitated low cost student travel. It has long been our contention that few things hold such immense social and educational potential as student travel. Consortium has been very active within the academic community, with the Board, and with the Congress in seeking to promote legitimate student travel. Thus, with respect to Travel Group Charters we make the following comments:

ITEM I

Students should be exempted from any advance purchase requirement for Travel Group Charters. Precedent for such exemption already exists in the exemption of students from the six month membership requirement under the current affinity regulations and in the Board's approval of an IATA youth fare that exempts students from the time restrictions of the excursion fare. This exemption would put U.S. students in a parity position with their European counterparts. It would serve to greatly increase both European student travel to and within the United States and U.S. student travel both domestically and internationally.

ITEM II

Indirect Air Carriers who organize both Travel Group and affinity charters should be licensed by the Board and be required to post a sufficient financial bond.

For years illegal charter operators have preyed upon unsuspecting students and their universities. The result has been massive stranding and defrauding and the undermining of official university-sponsored flight programs. This, in turn, has resulted in increased pro rata costs for participants in official programs and lessened public confidence in charter travel.

Federal licensing of qualified indirect air carriers would introduce a high degree of professionalism to the organization of student flight programs. It would relieve universities of inhibiting legal and financial responsibility which they must now assume.

Importantly, licensing would give the Board a powerful three-pronged tool to enforce its charter rules, which it now enforces only on a *post facto* basis. First, a licensing procedure would screen out unfit and unqualified operators, and the Board's license revocation powers would go a long way toward assuring regulatory compliance. Second, compliance responsibility would be shared by both the direct and indirect carriers thus giving the Board greater enforcement capability. And, third, licensed Indirect Air Carriers would be self-policing among themselves and with respect to unlicensed, and thus illegal, Indirect Air Carriers. In this latter instance citizens and carriers alike could seek enforcement assistance not only from the CAB but also from local policing agencies.

ITEM III

Only if students are exempted from any advance purchase requirement of Travel Group Charter rules, and only if such requirement is substantially reduced for the population at large, should the Board consider the modification or elimination of the affinity charter concept.

Moreso than any other population category, students constitute a class of traffic that is extremely price-sensitive and nondiversionary from scheduled services in a balanced economic sense, given the absence of predatory pricing practices. Moreover, students, as inexperienced international travellers, prefer to travel in groups. These are both classic characteristics of charter travel and may provide the Board with the answer to the chaotic youth fare dilemma and an unprecedented level of student strandings this summer.

In summary, we pray that the Board recognize the tremendous traffic potential of student travel and its immense impact on international relations and understanding. We believe that what we propose is consistent with both national transportation policy and U.S. foreign policy.

Thank you.

BRIEF BIOGRAPHY

Mr. Harris, 29, is one of the founding principals of Consortium International, Inc. which, through its Michigan-based student travel division, is the largest independent student travel company in the United States. Consortium was founded in early 1970.

From 1967 to 1970, Mr. Harris served on the faculty of the University of Maryland lecturing in the fields of Commercial Air Transportation, Transportation Economics and Public Policy. He has also served as a consultant to the Department of Transportation and as a contributing editor to *Air Transport World* magazine.

The following United States university associations concur with the statement:

1. National Entertainment Conference, Columbia, South Carolina.¹
2. Association of College Unions International, Washington, D.C.¹

The following foreign government approved student travel bureaus have subscribed to this statement:

1. Scandinavian Student Travel Service, Sweden, Norway, Finland
2. Student Air Travel Association, London, England
3. Association of Student Council, Canada

¹ These two Associations cumulatively represent almost 1,500 major colleges and universities in the United States with a total enrollment close to eight million, they each have a representative at these hearings today.

4. Hellenic Organization for Student Travel, Athens, Greece
5. "VIAJESEU", Barcelona, Spain
6. "SSR", Berna, Switzerland
7. "ARTU", Berlin, Germany
8. German Student Travel Service, Bonn, West Germany
9. Caravanes De Jeunesse Belge, Brussels
10. "TEJ", Brussels
11. National Union Student Travel Service, Cambridge and London, England
12. Danish International Students, Copenhagen, Denmark
13. Irish Student Travel Service, Dublin, Ireland
14. "SFS-RESOR", Gothenberg, Sweden
15. "OKISTA", Austria
16. "ISSTA", Israel
17. "FSTS", Finland
18. "YUS", Yugoslavia
19. Holland Netherlands Office for Foreign Student Relations
20. "SIAEIST", Lisbon, Portugal
21. "VPG", Milan, Italy
22. "SPUTNIK", Russia
23. "OTU", France
24. "CKM", Prague, Czechoslovakia
25. "ATTJ", Tunis, Tunisia
26. "ALMATUR", Warsaw, Poland

NATIONAL ENTERTAINMENT CONFERENCE

COMMENT ON PROPOSED TRAVEL GROUP CHARTERS, APRIL 26, 1972

The National Entertainment Conference, an organization of approximately 575 colleges and universities, became concerned with student travel because it was aware of the violations and illegalities which were occurring in the field. NEC is interested in encouraging and supporting programs whereby students may secure low-cost, low-risk, legal travel by the easiest possible means, NEC would therefore, be in favor of any changes in the existing regulations which it feels would facilitate the realization of this goal.

In accordance with this position, the National Entertainment Conference believes that travel group charter organizers, whom the Board has deemed indirect air carriers, should be licensed by the Board and required to observe bonding and escrow provisions similar to those applicable to tour operators. The NEC also favors the exemption of students from the six-month advance purchase requirements of the proposed travel group charter plan. In addition, the National Entertainment Conference believes that the affinity charter concept should be maintained as an alternate means of charter travel.

[From the Washington Post, Mar. 12, 1972]

THE QUEST TO REGULATE CHARTER FLIGHTS

(By Robert Samuelson)

The date is Aug. 10, 1970. The place is a House hearing room, where Secor D. Browne, chairman of the Civil Aeronautics Board, is delivering a public confessional about his agency's frustrations in regulating charter flights. His message is full of gloom.

"The existing regulations are unclear, cumbersome and restrictive," Browne tells the Congressmen. "The overall situation is chaotic."

But, he adds on a more hopeful note, the CAB is considering new regulations that will be both fairer and clearer. "We must act promptly because the 1971 charter seasons will be upon us."

More than 18 months later, there are no new regulations. The CAB's staff is still trying to enforce the rules that Browne decried as "unclear, cumbersome, and restrictive." And even if the agency issues new guidelines within the next few months, they may be only slight improvements on the old.

Seldom has the CAB spent so much time doing so much wrong as it has in its quest to regulate charter flights. And seldom has an issue it faced been more important: Charter flights represent the only clearly identifiable way to lower air fares in the foreseeable future.

There is no magic to charter economics. The planes fly full, and, therefore, they can afford to carry passengers at substantial discounts from the fares of regularly scheduled airlines, which last year had an average of 51 per cent of their seats empty. On a roundtrip New York-to-London flight, the typical charter price remains below \$200—a fare which scheduled airlines match only with special promotional rates available only during dull traveling periods.

CHARTER TRAFFIC TRIPLES

Blessed with this staggering price advantage, charter traffic between the United States and Europe has exploded. Between 1966 and 1970, it more than tripled, increasing from 600,000 passengers to 2 million.

Yet, there are disquieting and disturbing aspects to the charter boom.

More than most airline activities, charter flights have proved an increasingly fertile source of consumer suspicions and complaints. In fiscal 1970, 36 per cent of the complaints received by the CAB concerned charter flights. Thousands of students were stranded abroad last year by aborted charters; in 1972, Theodore Harris, a specialist in student travel, estimates that the number of stranded passengers could rise to 25,000.

Against this background, the government's role in charter regulation would seem clear: Encourage the availability of the low-cost flights, but eliminate the fraud.

It hasn't worked that way. Perversely, the government has done just about the opposite. It has tried to restrict charter flights by its inscrutable rules. And, in the process, it has shrouded charter travel in a cloud of legal uncertainty that has encouraged the deceit, evasion and fraud that everyone at the CAB condemns.

The breakdown of regulation demonstrates what happens when an agency allows itself to become immobilized by a bitterly divided industry.

For nearly a decade, the scheduled airlines and the charter carriers have been waging a financial, legal and lobbying war of growing ferocity. The scheduled airlines seem to regard the charter's low fares as a form of airborne sulphuric acid, that will slowly, but surely inevitably destroy the TWAs, Pan Ams, and BOAC's of the world. The charter airlines are nearly schizophrenic, thinking that they have been marked for extinction by the much bigger scheduled carriers.

Behind the viciousness lies a struggle to control the fastest-growing segment of air travel: vacation—as opposed to business—flying. On the trans-Atlantic, scheduled airlines already estimate that 70 to 80 per cent of their traffic are vacationers. Within the United States, pleasure travel is now reckoned to be more than 50 per cent of the total, though much of this is short-range and short term travel that wouldn't be susceptible to charter flying.

AGE OF MASS TRAVEL

Like it or not, this is an age of mass travel, jammed airports, and carbon-copy vacation plans. It is axiomatic that most vacation travelers are "price sensitive"—they go where they can find the lowest fares, and the lower the fares, the more people are likely to fly.

Not that the arrival of charter airlines (which must meet the same safety standards as scheduled carriers) means the end of scheduled service entirely. More than three-quarters of the trans-Atlantic traffic still is on scheduled flights, and charter carriers could probably never make any serious inroads on shorter domestic routes, where regularity and frequency of service is the overpowering need. But when low-charter fares exist, scheduled airlines have been forced to lower their own prices and they don't like it.

Anyone who follows airline propaganda knows that the scheduled airlines like to boast that air fares have generally declined over the last 15 years, so that, even with recent price increases, average fares are really no higher today than they were in 1960.

True. But, unfortunately, the credit for this good fortune belongs less to the acumen of airline management than to the arrival of bigger, faster planes, whose much lower operating costs permitted—in fact, virtually demanded, lower fares.

That pleasant era now appears to have run its course. The jumbo jets offer

some additional economies, but these are fast being consumed by rising labor costs. U.S. domestic fares may be about the same today as they were in 1960, but they are higher than they were in 1965. If there is any other possible way of achieving spectacular fare reductions besides filling planes to their full capacity, the scheduled airlines have yet to find it.

The CAB has chosen to see this issue primarily as a game to keep both charter and scheduled airlines happy. "Let us get to the heart of the problem before us—the dichotomy of interest that exists between the various classes of carriers, both foreign and domestic, and their competitive search for the business of air travelers." Browne told that House committee in August, 1970.

"That is, in my opinion, the real subject: How can the delicate balance between the scheduled services and the charter services be maintained to the benefit of both," and only then did he add, "While at the same time protecting the interest of the traveling public and providing the maximum benefit to the passengers?"

"AFFINITY" STIPULATION

Generally the CAB's charter rules make charter flights available only to bona fide "affinity groups"—those with a legitimate purpose aside from gaining travel discounts, such as a union, fraternal organization, alumni group, or church.

Sadly for the CAB, experience here and abroad has proved that the "affinity" requirement is a cinch to circumvent; tour organizers simply invent fictitious groups—the names, such as "Friends for Instant Environmental Growth Action," attest to their ingenuity—and enroll prospective passengers.

The CAB (and most foreign government agencies) haven't been able to police these regulations. The expense is too high, and, even if it weren't, a massive crackdown would present the embarrassing spectacle of a federal agency preventing people from trying to beat inflation by flying more cheaply. And sometimes no one wants to enforce the rules anyway, even when the flights are known to be technically illegal.

"Anything (a charter flight) coming from Europe we just wink at three times," says one government official, "because we're so anxious for the tourism." Presumably, many of the European enforcement officials often feel the same way.

The violations are likely to increase. "As people get more and more educated about getting cheaper charters to Europe, they're going to abuse the regulations," says Juan O'Callahan, an economic consultant for many charter carriers. "After all, is there anything immoral about someone wanting to fly cheaply?"

Most of the charter irregularities are basically harmless—passengers get the tickets and the flights that they otherwise would have been denied—but the massive violations has also screened truly dishonest travel organizers from detection. Confronted with dozens of technically illegal operators, the CAB has been unable to separate the fraudulent schemes—which may simply run away with prospective clients' money from the rest of the field.

For proof that this state of anarchy is hardly preordained, one need take only a casual look at the European experience with charter flights between the Continent's chilly northern countries—primarily Britain, Scandinavia, and Germany—and its sunny Mediterranean resorts. In 1972, an estimated 8.5 million Europeans will fly on inexpensive charters to the Mediterranean, about four times as many as 1965.

This astonishing growth is built on a highly competitive travel industry, which, using charter flights, has been able to achieve large savings for vacationers. In Britain, major tour operators offer two weeks in Ibiza (the Spanish home of Clifford Irving) for less than \$100, including air fares and hotel. Two weeks in Majorca come for less than \$90 in the low season, again air fare and hotel.

These prices reflect more than Europe's lower cost-of-living, and there is no secret how the reductions are accomplished. The tour organizers often have their own planes, sometimes have helped build hotels in resort spots (making them comfortable, but skimming on the luxuries), and organize their tour schedules and pricing to minimize the single greatest problem of both airlines and hotel operators—empty seats or beds in a nominally "off" season.

It would be wrong to blame the Civil Aeronautics Board entirely for the absence of these inexpensive holiday "packages" in the United States. The scheduled domestic airlines here have more assiduously cultivated the vacation traveler than the scheduled European carriers; scheduled air fares are about half the level in Europe, and U.S. airlines offer more frequent service to more places than scheduled European airlines.

Even so, given freedom by the CAB, charter airlines could probably develop a flourishing traffic between the North and many existing resort spots—and possibly many, in Mexico or along the Gulf of Mexico, that haven't been developed yet. Fares might be cut by as much as 50 per cent, a fact that even the scheduled airlines concede.

By government fiat, however, the European-type holiday packages simply can't be offered in the United States. In Europe, the charter operators can offer so-called "inclusive tour charters" (known as ITCs), including both air fare and hotel accommodations, between any two points.

In the United States, the Civil Aeronautics Board says that any ITC package must include at least three stops, 50 miles from each other. As a practical matter, this requirement squanders the potential savings of charters and makes it all but impossible to organize simple, short ITC charters in the United States.

AN UNCHARITABLE IMAGE

Anyone who has survived the journey through this labyrinth of twisting charter rules has probably formed an uncharitable image of the five members of the Civil Aeronautics Board as a bunch of mean, unlikeable characters, who conspire day in and day out to prop up airline profits while depriving the public of low fares.

The reality is much less sinister. Time and time again, the CAB has stood up to the airlines—which, despite all the cant about "consumerism," are really the only consistently interested observers in what happens at the CAB—and forced changes that the industry has found distasteful, including occasional fare reductions. Moreover, the agency is slowing readjusting its thinking about charters. It now admits, for example, that the "affinity" rules make little sense by themselves.

The CAB has proposed new rules, but though the scheduled airlines see ruin in the tentative regulations, many charter experts don't think that they will work at all. Basically, the new rules would allow any group of 50 or more to charter a plane six months in advance, as long as their names are filed with the CAB, and the prospective passengers advance a 25 per cent nonrefundable deposit.

In practice, groups do not form spontaneously; they have to be solicited by tour organizers, who, say the charter experts, will have to begin their selling campaigns seven or eight months before the planned departure date to meet the CAB's six month deadline. Who, they ask, will commit themselves for a vacation seven months ahead of time, with the possibility of losing the 25 per cent deposit?

The CAB's tortoise-like pace illustrates vividly how government agencies yield ground only grudgingly to anything that disrupts the well-conceived pattern of regulation they think they have constructed.

The scheduled airlines are outraged at any suggestion that charter rules might be liberalized. Only last month, Trans World Airlines predicted that any relaxation of the rules would spell financial ruin for the scheduled air lines, requiring \$100 to \$200 million in government subsidies on trans-Atlantic routes or the end of many flights. Aligned with the scheduled carriers are many foreign governments which own their airlines and frequently try to restrict inward bound charter flights.

SPECTER OF DISASTER

It is the specter of financial disaster that has consistently intimidated the CAB, for almost everything the CAB has done since its creation in 1938 has involved scheduled airline service.

At stake, say the scheduled carriers, is one of the CAB's guiding principles—the idea that the airlines can make enough profits on lucrative, long-distance routes to support an elaborate network of regularly scheduled service linking many secondary cities. Relatively high fares during peak travel seasons along popular routes are needed, by this theory, to support continued service during slack periods and along more lightly traveled routes.

Says TWA's chairman, Charles W. Tillinghast, "Skimming the cream by (charters)—that is, the ability to fly where and when it is convenient and to set prices without regulation destroys this balance and will prevent economic survival of dependable, regular air services on a subsidy-free basis."

And that prospect must chill members of the CAB, who are thoroughly familiar with two immutable laws of regulatory politics—first, agencies whose

regulated industries get into serious financial trouble are subjected to a public flogging (the Interstate Commerce Commission learned this lesson when the Penn-Central Railroad went bankrupt); and second, Congressmen, Senators, mayors, and chambers of commerce never believe their own cities have enough scheduled air service—and they scream ceaselessly at any suggestion that service should be curtailed or eliminated.

Confronted with these conflicting pressures, almost every level of government has waffled about charter flights. From the Department of Transportation come ambiguous, contradictory policy statements; Congress carefully shies away from revising a Federal Aviation Act that does not have very much to say about charter flights. And the CAB is left to take the heat.

Just how real a prospect is Tillinghast's vision of the future? No one can really tell, but—even if events vindicated him—it is now clear that many government officials have tired of the scheduled airlines' forecasts of doom. Among the reasons:

Air travel, for both scheduled and charter airlines, has grown at a rapid rate. Although trans-Atlantic charter traffic more than tripled between 1966 and 1970, scheduled traffic nearly doubled—and the absolute growth was bigger (2.8 million passengers against 1.3 million), because scheduled traffic started from a larger base. In the United States, air travel grew at nearly a 15 per cent rate in the sixties.

Despite the airlines complaints, charter competition contributed only slightly to the airlines' financial problem of the last three years. For domestic U.S. carriers, charters couldn't be blamed at all—because charter competition was virtually non-existent. And for overseas carriers, many analysts believe the airlines simply ordered too many 747s too soon. Even so, TWA, for one, has consistently made a marginal operating profit on the Atlantic: for the 12 months ending in September, it was \$29 million.

A growing number of officials think that the scheduled airlines are simply trying to protect themselves from their own excesses. For example, in January, there were 86 roundtrip flights between New York and London; it is a month when carriers typically fly with more than 60 per cent of their seats empty. Using 1968 as a base year, the Department of Transportation believes that Pan Am and TWA were flying nearly twice as many flights to Europe as could be legitimately defended in the "public interest."

While scheduled airlines harp on the idea that profits on long-distance routes are needed to maintain service on shorter routes, they neglect to state the converse—that the higher fares discourage people from flying on the longer routes. And if some fares need to be raised sharply on the shorter routes, why shouldn't they be? It is these routes, after all, that are most heavily used by business travelers, and just why they should be spared from paying full costs is unclear. Moreover, scheduled airlines aren't prohibited from competing for charter business, and, many airline experts believe that the large scheduled carriers will have no trouble at all winning a large and profitable part of charter business.

"In the United States," says one government official, "we normally start with the idea that if someone wants to buy something and someone wants to sell it, you've got to have a pretty good reason to stop them."

The CAB has yet to settle upon that simple notion, but it is learning one lesson slowly and painfully. The trend toward charter flights can be resisted, but it cannot be reversed.

Senator CANNON. The hearings are adjourned at this time, subject to the call of the Chair.

(Whereupon, at 3:40 p.m., the hearing was adjourned, subject to the call of the Chair.)

