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REDUCED AIR RATES

GOVERNMENT

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HEARINGS

BEFORE THE

SUBCOMMITTEE ON AVIATION

OF THE

COMMITTEE ON COMMERCE

UNITED STATES SENATE

NINETY-SECOND CONGRESS

SECOND SESSION

ON

S. 1303, S. 1554, S. 1591, S. 1655, S. 1808,
S. 1942, S. 2055, and S. 2061

MISCELLANEOUS BILLS TO AUTHORIZE FREE OR REDUCED
AIR RATE TRANSPORTATION FOR THE ELDERLY, THE HANDI-
CAPPED, AND FOR CERTAIN FAMILY MEMBERS OF AIRLINE
EMPLOYEES

JUNE 13, 14, AND 15, 1972

Serial No. 92-99

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REDUCED AIR RATES

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UNITED STATES GOVERNMENT PRINTING OFFICE

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REDUCED AIR RATES

TUESDAY, JUNE 13, 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 of the subcommittee, presiding.

Present: Senators Cannon and Pearson.

OPENING STATEMENT BY SENATOR CANNON

Senator CANNON. The hearing will come to order. Today's hearing is on six bills which would amend the Federal Aviation Act, and, in three cases, the Interstate Commerce Act, by providing permissive authority for common carriers to offer free or reduced rate transportation to the elderly and the physically handicapped.

The seventh bill, S. 1655, would amend the Federal Aviation Act to authorize free or reduced rate air transportation for dependents of deceased airline employees provided the employee has been employed for 25 years or more by an air carrier or foreign air carrier.

The eighth bill, S. 1591, would amend a number of existing laws by providing numerous transportation and insurance benefits to the elderly, to youth, to handicapped persons and to members of the U.S. armed services.

The committee has been advised informally by the Civil Aeronautics Board that under present law and present Board policy, there does not appear to be any legal reason why reduced rate transportation could not be offered to the handicapped or the elderly by the air carriers on a space available basis. Under present law, most air carriers offer reduced rate transportation to youths and to members of the Armed Forces on a space available basis.

Nonetheless, many members of Congress have either introduced legislation or expressed the view that Congress should expressly encourage the air carriers, surface carriers and appropriate regulatory agencies, as a matter of social policy, to provide special transportation rates to the elderly and the handicapped. Therefore the committee has scheduled these hearings.

Unfortunately, at present the Civil Aeronautics Board is in the final process of deciding the discount fare phase of the domestic passenger fare investigation, the phase which deals with the matter of various discount fares such as those proposed by the legislation before us.

More than 6 weeks ago the Board was advised of our interest in hearing these bills but that we felt it appropriate to defer hearings until after the Board had reached a decision and an order in that phase of the investigation. The committee counsel was advised that Staff member assigned to these hearings: Robert E. Ginther.

the Board would complete this important undertaking no later than June 1 and that the decision could well have an impact on the questions raised by the legislation.

Unfortunately, the Board did not and has not completed that proceeding thus making our review of legislation at this time more complicated because of uncertainty as to what findings the Board will reach on discount fares.

Nonetheless, I elected to proceed with the hearings without postponement as the domestic passenger fare investigation has been pending for several years.

(The bills and agency comments follow:)

92^D CONGRESS
1ST SESSION

S. 1303

IN THE SENATE OF THE UNITED STATES

MARCH 19, 1971

Mr. STEVENSON 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 free or reduced rate transportation for severely handicapped persons and persons in attendance, when the severely handicapped person is traveling with such an attendant.

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

3 (a) That section 403 (b) of the Federal Aviation Act of
4 1958 be amended by inserting after "persons in connection
5 with such accident;" the following: "severely handicapped
6 persons and persons with sight attending such handicapped
7 persons, when the handicapped person is traveling with
8 such a person in attendance;"

9 (b) That section 403 (b) be further amended by adding

92^d CONGRESS
1ST SESSION

S. 1554

IN THE SENATE OF THE UNITED STATES

APRIL 15, 1971

Mr. HUMPHREY (for himself, Mr. BURDICK, Mr. HARRIS, Mr. INOUE, Mr. MCGOVERN, Mr. MONDALE, and Mr. PASTORE) 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 in order to authorize free or reduced rate transportation to handicapped persons and persons who are seventy years of age or older, and to amend the Interstate Commerce Act to authorize free or reduced rate transportation for persons who are seventy years of age or older.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 403 (b) of the Federal Aviation Act of 1958 is
4 amended (1) by inserting after "persons in connection with
5 such accident;" the following: "persons who are seventy
6 years of age or older, and handicapped persons and persons
7 traveling with and attending such handicapped persons when

2. 1591

82d CONGRESS
1st Session

1 the handicapped person requires such attendance;"; and (2)
 2 by inserting at the end thereof the following: "As used in this
 3 section the term 'handicapped persons' means the blind and
 4 other persons who are physically or mentally handicapped, as
 5 further defined by regulations of the Board.";

6 SEC. 2. Section 22 of the Interstate Commerce Act is
 7 amended by inserting after "or commutation passenger
 8 tickets;" the following: "nothing in this part shall be con-
 9 strued to prohibit the transportation of persons who are
 10 seventy years of age or older free or at reduced rates;".

1 Be it enacted by the Senate and House of Representa-
 2 tives of the United States of America in Congress assembled,
 3 That this Act may be cited as the "Senior Citizens' Trans-
 4 portation Services Act".

5 REDUCED RATE MASS TRANSIT

6 SEC. 2. Section 3 of the Transportation Act
 7 of 1964 is amended by adding at the end thereof the follow-
 8 ing new subsection:
 9 "(b) In providing financial assistance under this Act,

92^d CONGRESS
1st SESSION

S. 1591

IN THE SENATE OF THE UNITED STATES

APRIL 20, 1971

Mr. PERCY introduced the following bill; which was read twice and referred to the Committees on Commerce and Banking, Housing and Urban Affairs

A BILL

To provide certain new transportation services to elderly persons, to authorize studies and demonstration projects for the improvement of transportation services to the elderly, 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 this Act may be cited as the "Senior Citizens' Trans-
4 portation Services Act".

5 REDUCED RATE MASS TRANSIT

6 SEC. 2. Section 3 of the Urban Mass Transportation Act
7 of 1964 is amended by adding at the end thereof the follow-
8 ing new subsection:

9 "(d) In providing financial assistance under this Act,

1 the Secretary shall not approve any applications made by
2 States and local public bodies and agencies thereof unless
3 such application contains provisions which adopt (or re-
4 quire the adoption of) specially reduced rates during non-
5 rush hours for any elderly person in the operation of the
6 facilities and equipment financed with such assistance,
7 whether the operation of such facilities and equipment is by
8 the applicant or is by another entity under lease or other-
9 wise. As used in this subsection, the term 'elderly person'
10 means any individual sixty-five years of age or older."

11 REDUCED RATE AIR TRANSPORTATION

12 SEC. 3. (a) The last sentence of section 403 (b) of the
13 Federal Aviation Act of 1958 (49 U.S.C. 1373 (b)) is
14 amended by inserting a comma and "youths, elderly people,
15 handicapped persons, and military personnel" immediately
16 after "ministers of religion".

17 (b) Such section 403 (b) is amended by adding at the
18 end thereof the following new sentence: "As used in the pre-
19 ceding sentence, (1) the term 'youths' means individuals
20 over the age of twelve and under the age of twenty-two, (2)
21 the term 'elderly people' means individuals aged sixty-five
22 and older, (3) the term 'handicapped persons' means the
23 physically and mentally handicapped as defined by regula-
24 tions to be set forth by the Civil Aeronautics Board, and (4)
25 the term 'military personnel' means members of the United

1 States armed services traveling at their own expense, in uni-
2 form of those services, while on official leave, furlough, or
3 pass."

4 REDUCED RATE CARRIER TRANSPORTATION

5 SEC. 4. (a) Notwithstanding any other provision of law,
6 no common carrier for hire transporting persons in interstate
7 commerce shall, during nonpeak periods of travel, charge any
8 eligible elderly person more than half the published tariff
9 charged the general public in connection with any transpor-
10 tation which is requested by any such person.

11 (b) In any case in which a common carrier can show
12 that it incurred an economic loss during any calendar year
13 solely because of the requirement imposed by subsection
14 (a), such carrier may apply to the head of the Federal
15 agency having jurisdiction over the filing and publishing of
16 the tariffs of such carrier for Federal financial assistance with
17 respect to all or part of such economic loss. The head of any
18 such Federal agency is authorized to pay to any such carrier

19 (1) an amount not exceeding one-half the difference between
20 the published tariff and the tariff charged elderly persons dur-
21 ing the calendar year covered by the carrier's application, or
22 (2) an amount not exceeding the aggregate of the economic
23 loss of the carrier claimed under such application, whichever
24 is less.

25 (c) The head of each such Federal agency is authorized

1 to prescribe such regulations as he may deem necessary to
2 carry out the provisions of this section, including but not
3 limited to the defining of nonpeak periods of travel and
4 regulations requiring uniform accounting procedures.

5 (d) The head of each such Federal agency is authorized
6 to establish a commission of elderly persons to advise him in
7 carrying out the provisions of this section.

8 (e) As used in this section, the term "eligible elderly
9 person" means any individual sixty-five years of age or
10 older who is not employed full time.

11 INSURANCE COVERAGE

12 SEC. 5. (a) It shall be unlawful for any person engaged
13 in the business of insuring motor vehicles or selling motor
14 vehicle insurance to deny or refuse to sell insurance to any
15 individual on account of his age if that individual possesses
16 a valid driver's license.

17 (b) Any person who violates the provisions of this
18 section shall be subject to a civil penalty of not to exceed
19 \$10,000. Any such civil penalty may be compromised by
20 the Secretary. In determining the amount of such penalty,
21 or the amount agreed upon in compromise, the appropriate-
22 ness of such penalty to the size of the business of the person
23 charged and the gravity of the violation shall be considered.
24 The amount of such penalty, when finally determined, or the
25 amount agreed upon in compromise, may be deducted from

1 any sums owing by the United States to the person charged.
2 (c) As used in this section the term "motor vehicle"
3 means any vehicle, self-propelled or drawn by mechanical
4 power, designed for use on the highways principally for
5 the transportation of passengers except any vehicle designed
6 or used for military field training, combat, or tactical pur-
7 poses.

8 MASS TRANSPORTATION FACILITIES DESIGN

9 SEC. 6. (a) The first section of the Act entitled "An
10 Act to insure that certain buildings financed with Federal
11 funds are so designed and constructed as to be accessible to
12 the physically handicapped", approved August 12, 1968
13 (42 U.S.C. 4151), is amended—

14 (1) by striking out "or" at the end of paragraph
15 (3);

16 (2) by striking out the period at the end of para-
17 graph (4) and inserting in lieu thereof "; or"; and

18 (3) by adding at the end thereof the following:

19 "(5) to be constructed with financial assistance
20 provided under the Urban Mass Transportation Act of
21 1964."

22 (b) Such Act is further amended by redesignating sec-
23 tions 5 and 6 as sections 6 and 7, respectively, and by in-
24 serting after section 4 the following new section:

25 "SEC. 5. The Secretary of Transportation, in consulta-

1 tion with the Secretary of Health, Education, and Welfare,
2 is authorized to prescribe such standards for the design, con-
3 struction, and alteration of buildings, structures, and facilities
4 which are provided with financial assistance under the Ur-
5 ban Mass Transportation Act of 1964 and are subject to
6 this Act as may be necessary to insure that elderly and
7 physically and mentally handicapped persons will have ready
8 access to, and use of, such buildings."

9 (c) Section 7 of such Act (as redesignated by subsec-
10 tion (a) of this section) is amended by inserting immedi-
11 ately before "is authorized—" the following: "and the Sec-
12 retary of Transportation with respect to standards issued
13 under section 5 of this Act,".

14 TRANSPORTATION RESEARCH AND DEMONSTRATION
15 PROJECTS FOR THE ELDERLY

16 SEC. 7. Title IV of the Older Americans Act of 1965
17 (42 U.S.C. 3031) is hereby amended by adding at the end
18 thereof the following new section:

19 "SPECIAL EMPHASIS TRANSPORTATION RESEARCH AND
20 DEMONSTRATION PROJECTS.

21 "SEC. 403. (a) The Secretary, after consultation with
22 the Secretaries of Transportation and Housing and Urban
23 Development, is authorized to make grants to any public
24 or nonprofit private agency, organization, or institution and

1 to enter into contracts with any agency, organization, or in-
2 stitution, or with any individual—

3 “(1) to study the economic and service aspects of
4 transportation for elderly persons living in urban or rural
5 areas;

6 “(2) to conduct research and demonstration proj-
7 ects regarding the feasibility of special transportation
8 subsystems for use by elderly persons or similar groups
9 with similar mobility restrictions;

10 “(3) to conduct research and demonstration proj-
11 ects on portal to portal service and demand actuated
12 services;

13 “(4) to conduct research and demonstration proj-
14 ects concerning the impact of pricing structures on the
15 comfort, well-being, and morale of elderly persons;

16 “(5) to study transportation and social service de-
17 livery interface;

18 “(6) to conduct research and demonstration proj-
19 ects to coordinate and develop better transportation
20 services rendered by social service agencies;

21 “(7) to conduct research and demonstration proj-
22 ects concerning other relevant problems affecting the
23 mobility of elderly persons; or

24 “(8) to conduct research and demonstration proj-

1 ects concerning the use of transportation personnel to
2 assist elderly persons who use public transportation.

3 “(b) There are authorized to be appropriated to carry
4 out this section \$2,500,000 for the fiscal year ending June
5 30, 1972; and \$5,000,000 for the fiscal year ending June
6 30, 1973.”

A BILL

To amend the Federal Aviation Act of 1958 to authorize fees
or reduced rate transportation for certain widows and
minor children of employees who have died while em-
ployed by an air carrier or foreign air carrier after twenty-
five or more years of such employment.

Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,
That the second sentence of section 403(b) of the Federal
Aviation Act of 1958 is amended by inserting after “in the
service of such air carrier or foreign air carrier” the follow-
ing: “widows, widowers, and minor children of employ-
ees who have died while employed by such air carrier or foreign
air carrier after twenty-five or more years of such employ-

ment.”

S. 1655

IN THE SENATE OF THE UNITED STATES

APRIL 26, 1971

Mr. SPARKMAN introduced the following bill; which was read twice and referred to the Committee on Commerce

SEPTEMBER 15 (legislative day, SEPTEMBER 12), 1972

Reported by Mr. HARTKE, without amendment

A BILL

To amend the Federal Aviation Act of 1958 to authorize free or reduced rate transportation for widows, widowers, and minor children of employees who have died while employed by an air carrier or foreign air carrier after twenty-five or more years of such employment.

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 second sentence of section 403 (b) of the Federal
4 Aviation Act of 1958 is amended by inserting after "in the
5 service of such air carrier or foreign air carrier;" the follow-
6 ing: "widows, widowers, and minor children of employees
7 who have died while employed by such air carrier or foreign
8 air carrier after twenty-five or more years of such employ-
9 ment;"

II

IN THE SENATE OF THE UNITED STATES

MAY 10, 1971

Mr. MOSS (for himself, Mr. BIBLE, Mr. CANNON, Mr. CHURCH, Mr. CRANSTON, Mr. FONG, Mr. HUGHES, Mr. MCGOVERN, Mr. METCALF, Mr. MONDALE, Mr. MONTOYA, Mr. PELL, Mr. THURMOND, and Mr. WILLIAMS) 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 in order to authorize certain reduced-rate transportation to individuals who are sixty-five years of age or older.

- 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 last sentence of section 403 (b) of the Federal Avi-
- 4 ation Act of 1958 is amended by inserting after "ministers of
- 5 religion" the following: "or individuals who are sixty-five
- 6 years of age or older".

II

S. 1942

IN THE SENATE OF THE UNITED STATES

MAY 25, 1971

Mr. PEARSON 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 and the Interstate Commerce Act in order to authorize free or reduced rate transportation for persons who are sixty-five years of age or older.

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

3 That section 403 (b) of the Federal Aviation Act of 1958 is
4 amended by inserting after "persons in connection with such
5 accident;" the following: "persons who are sixty-five years
6 of age or older;"

7 SEC. 2. Section 22 of the Interstate Commerce Act is
8 amended by inserting after "or commutation passenger tick-
9 ets;" the following: "nothing in this part shall be construed

- 1 to prohibit the transportation of persons who are sixty-five
- 2 years of age or older free or at reduced rates;”.

IN THE SENATE OF THE UNITED STATES

June 11, 1917

Mr. Graves introduced the following bill, which was read twice and referred to the Committee on Commerce

A BILL

To amend the Federal Aviation Act of 1908 and the Interstate Commerce Act to authorize reduced-rate transportation on a space-available basis for persons who are sixty-five years of age or older.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 403 (b) of the Federal Aviation Act of 1908 as amended is amended by inserting in the final sentence after "reduced-rate transportation" the words: "to persons who are sixty-five years of age or older on a space-available basis."

Sec. 2. Section 22 of the Interstate Commerce Act is amended by inserting after "or common-law passenger ticket"

S. 2055

IN THE SENATE OF THE UNITED STATES

JUNE 11, 1971

Mr. GRIFFIN 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 and the Interstate Commerce Act to authorize reduced-fare transportation on a space-available basis for persons who are sixty-five years of age or older.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 403 (b) of the Federal Aviation Act of 1958,
4 as amended, is amended by inserting in the final sentence
5 after "reduced-rate transportation" the words: "to persons
6 who are sixty-five years of age or older on a space-available
7 basis".

8 SEC. 2. Section 22 of the Interstate Commerce Act is
9 amended by inserting after "or commutation passenger tick-

1 ets;" the following: "nothing in this part shall be construed
2 to prohibit the transportation on a space-available basis of
3 persons who are sixty-five years of age or older free or at
4 reduced rates;".

92^d CONGRESS
1st SESSION

S. 2061

IN THE SENATE OF THE UNITED STATES

JUNE 14, 1971

Mr. ROTH 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 reduced rate transportation for elderly people on a space-available basis.

- 1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*
 3 That (a) the last sentence of section 403 (b) of the Federal
 4 Aviation Act of 1958 (49 U.S.C. 1373 (b)) is amended by
 5 inserting "and elderly people" immediately after "ministers
 6 of religion".
 7 (b) Such section 403 (b) is amended by adding at the
 8 end thereof the following new sentence: "As used in the
 9 preceding sentence, the term 'elderly people' means indi-
 10 viduals aged sixty-five and older."

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., April 7, 1971.

DEAR MR. CHAIRMAN: Reference is made to your letter of March 24, 1971, requesting comments on S. 1303, which would amend section 403(b) of the Federal Aviation Act of 1958, 49 U.S.C. 1373(b), so as to authorize any air carrier or foreign air carrier, under such regulations as the Civil Aeronautics Board may prescribe, to furnish free or reduced rate transportation for severely handicapped persons and sighted person in attendance, when the severely handicapped person is traveling with such an attendant. As used in the bill, the term "severely handicapped persons" means the blind, and physically and mentally handicapped as defined by regulations promulgated by the Civil Aeronautics Board.

The proposed amendment, permissive in nature and not mandatory, apparently is designed to permit airlines to grant fare concessions to severely handicapped persons, and persons with sight attending such handicapped person, similar to those currently granted by the railroads and buslines. These fare concessions generally permit the travel of a blind or disabled person with a sighted attendant for the usual and ordinary fare charged a single person.

In the interests of uniformity, we feel that the proposed amendment of section 403(b) of the act, 49 U.S.C. 1373(b), might well be revised to include authority equivalent to that contained in section 22 of the Interstate Commerce Act, 49 U.S.C. 22. Section 22 permits rail common carriers to transport blind or disabled persons attended by an attendant or guide at the ordinary and usual fare charged to one person. Such section also permits rail common carriers to transport property and persons for the United States Government, among others, "free or at reduced rates." Section 22 has been incorporated by reference into Parts II, III and IV of the Interstate Commerce Act, dealing respectively with motor carriers, water carriers, and freight forwarders. See 49 U.S.C. 317(b), 906(c), and 1005(c). Also, in the broader view, we favor the amendment of section 403(b) of the Federal Aviation Act of 1958, 49 U.S.C. 1373(b), to reflect similar authority in air carriers to transport persons or property for the United States free or at reduced rates.

We do not believe that the enactment of the bill in its present form would adversely affect the interest of the United States as a shipper or the functions of our Office, and subject to the above suggestion, we have no objection to its favorable consideration by your Committee.

Sincerely yours,

R. F. KELLER,

Assistant Comptroller General of the United States.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., May 13, 1971.

DEAR MR. CHAIRMAN: Reference is made to your letter of April 21, 1971, requesting our comments on S. 1554, which would amend section 403(b) of the Federal Aviation Act of 1958, 49 U.S.C. 1373(b), so as to authorize any air carrier or foreign air carrier, under such regulation as the Civil Aeronautics Board may prescribe, to furnish free or reduced rate transportation for handicapped persons and persons who are seventy years of age or older; the bill also would amend section 22 of the Interstate Commerce Act, 49 U.S.C. 22, to authorize free or reduced rate transportation for persons who are seventy years of age or older. As used in that part of the bill amending the Federal Aviation Act of 1958, the bill specifies that the term "handicapped persons" means the blind and other persons who are physically or mentally handicapped as defined by regulations of the Civil Aeronautics Board.

The proposed amendments, permissive in nature and not mandatory, apparently are designed to permit airlines to grant fare concessions to elderly persons, handicapped persons and persons traveling with and attending such handicapped persons when the handicapped persons require such attention; the proposed amendments also would permit railroads and bus lines to grant fare concessions for persons seventy years of age or older.

The fare concessions, which would be authorized in the case of air travel of blind and handicapped persons and their attendants, are similar to those currently authorized as to travel by railroads and bus lines which generally authorize those carriers to permit travel of a blind or disabled person with an attendant for the usual and ordinary fare charged a single person.

In the interests of uniformity, we feel that the proposed amendment of section 403(b) of the act, 49 U.S.C. 1373(b), might well be revised to include authority equivalent to that contained in section 22 of the Interstate Commerce Act, 49 U.S.C. 22 with the amendment proposed by section 2 of the instant bill as to persons seventy years of age or older. Section 22 presently permits rail common carriers to transport blind or disabled persons attended by an attendant or guide at the ordinary and usual fare charged to one person. Such section also permits rail common carriers to transport property and persons for the United States Government, among others, "free or at reduced rates." Section 22 has been incorporated by reference into Parts II, III and IV of the Interstate Commerce Act, dealing respectively with motor carriers, water carriers, and freight forwarders. See 49 U.S.C. 317(b), 906(c), and 1005(c). Also, in the broader view, we favor the amendment of section 403(b) of the Federal Aviation Act of 1958, 49 U.S.C. 1373(b), to reflect similar authority in air carriers to transport persons or property for the United States free or at reduced rates.

We do not believe that the enactment of the bill in its present form would adversely affect the interest of the United States as a shipper or the functions of our Office, and subject to the above suggestions, we have no objection to its favorable consideration by your Committee.

Sincerely yours,

R. F. KELLER,
Acting Comptroller General of the United States.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., June 22, 1971.

DEAR MR. CHAIRMAN: Further reference is made to your letter of April 28, 1971, requesting our comments on S. 1591, which if enacted, would be cited as the "Senior Citizens Transportation Services Act."

Section 7 of the bill would amend title IV of the Older Americans Act of 1965, 42 U.S.C. 3031, by authorizing the Secretary of Health, Education, and Welfare to award grants and contracts for research and demonstration projects to improve transportation for elderly people. The Department of Transportation, under sections 6(a) and 11(a) of the Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. 1605(a) and 1607c(a), is already funding research and demonstration projects which consider the transportation problems of the elderly.

Since the Department of Transportation is already engaged in studying the transportation problems of the elderly and has the expertise in the transportation field, we suggest that your committee consider having the Secretary of Transportation carry out the objectives of section 7 of the bill, rather than the Secretary of Health, Education, and Welfare. We believe this would avoid the possibility of duplication that arises with two agencies conducting similar work and would provide a more coordinated approach to solving the transportation problems of the elderly.

We have, however, no special knowledge of the need for or the desirability of the legislation proposed by this bill, and subject to the above suggestion, we have no recommendation to make as to whether or not the bill should be given favorable consideration by your committee.

Sincerely yours,

R. F. KELLER,
Assistant Comptroller General of the United States.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., May 13, 1971.

DEAR MR. CHAIRMAN: Reference is made to your letter of April 28, 1971, requesting our comments on S. 1655, which would amend section 403(b) of the Federal Aviation Act of 1958, 49 U.S.C. 1373(b), so as to authorize any air carrier or foreign air carrier, under such regulations as the Civil Aeronautics Board may prescribe, to furnish free or reduced rate transportation for widows, widowers, and minor children of employees who have died while employed by an air carrier or foreign air carrier after 25 or more years of such employment.

The proposed amendment, permissive in nature and not mandatory, apparently is designed to benefit widows, widowers, and minor children of deceased employees who died while in the employ of an air carrier or foreign air carrier after having been so employed for 25 or more years. Such benefits are presently provided by the Act for widows, widowers and minor children of employees who die as a direct result of personal injury sustained while in the performance of duty in the service of such air carrier or foreign air carrier. However, we have no special knowledge of the need for or the desirability of legislation proposed by this bill.

In the interests of uniformity, we feel that the proposed amendment of section 403(b) of the act, 49 U.S.C. 1373(b), might well be revised to include authority equivalent to that contained in section 22 of the Interstate Commerce Act, 49 U.S.C. 22, which permits rail common carriers to transport property and persons for the United States Government, among others, "free or at reduced rates."

Such authority has been incorporated by reference into Parts II, III and IV of the Interstate Commerce Act, dealing respectively with motor carriers, water carriers, and freight forwarders. See 49 U.S.C. 317(b), 906(c), and 1005(c). Also, in the broader view, we favor the amendment of section 403(b) of the Federal Aviation Act of 1958, 49 U.S.C. 1873(b) to reflect similar authority in air carriers to transport persons or property for the United States free or at reduced rates.

We do not believe that the enactment of the bill in its present form would adversely affect the interest of the United States in its procurement of air transportation for Government business, or the functions of our Office, and subject to the above suggestion, we have no objection to its favorable consideration by your Committee.

Sincerely yours,

R. F. KELLER,
Acting Comptroller General of the United States.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., June 7, 1971.

Dear Mr. CHAIRMAN: Reference is made to your letter of May 12, 1971, requesting our comments on S. 1808, which would amend section 403(b) of the Federal Aviation Act of 1958, 49 U.S.C. 1373(b), so as to authorize any air carrier or foreign air carrier, under such regulations as the Civil Aeronautics Board may prescribe, to grant reduced rate transportation for individuals who are 65 years of age or older.

The proposed amendment, permissive in nature and not mandatory, apparently is designed to benefit our senior citizens and also as a means of promoting passenger service on airline flights in situations where an uneconomic situation develops or may exist such as during offpeak hours and days which are unpopular with the general public. However, we have no special knowledge of the need for or the desirability of the legislation proposed by this bill.

In the interests of uniformity, we feel that the proposed amendment of section 403(b) of the act, 49 U.S.C. 1373(b), might well be revised to include authority equivalent to that contained in section 22 of the Interstate Commerce Act, 49 U.S.C. 22, which permits rail common carriers to transport property and persons for the United States Government, among others, "free or at reduced rates."

Such authority has been incorporated by reference into Parts II, III and IV of the Interstate Commerce Act, dealing respectively with motor carriers, water carriers, and freight forwarders. See 49 U.S.C. 317(b), 906(c), and 1005(c). Also, in the broader view, we favor the amendment of section 403(b) of the Federal Aviation Act of 1958, 49 U.S.C. 1373(b) to reflect similar authority in air carriers to transport persons or property for the United States free or at reduced rates.

We do not believe that the enactment of the bill in its present form would adversely affect the interest of the United States as a shipper or the functions of our Office, and subject to the above suggestion, we have no objection to its favorable consideration by your committee.

Sincerely yours,

PAUL G. DEWBLING,
(For the Comptroller General of the United States).

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., June 22, 1971.

DEAR MR. CHAIRMAN: Reference is made to your letter of May 26, 1971, requesting our comments on S. 1942, which would amend section 403(b) of the Federal Aviation Act of 1958, 49 U.S.C. 1373(b), and section 22 of the Interstate Commerce Act, 49 U.S.C. 22, so as to authorize any air carrier, foreign air carrier or interstate rail common carrier to grant free or reduced rate transportation for persons who are 65 years of age or older. Since 49 U.S.C. 22 is made applicable to interstate motor carriers by 49 U.S.C. 317(b) and interstate water carriers by 49 U.S.C. 906(c), the bill would also authorize interstate bus and water carriers to grant such free or reduced rates to persons 65 years of age or older.

The proposed amendments, permissive in nature and not mandatory, apparently are designed to benefit our senior citizens as well as the transportation industry.

In the interests of uniformity, we feel that the proposed amendment of section 403(b) of the act, 49 U.S.C. 1373(b), might well be revised to include authority equivalent to that contained in section 22 of the Interstate Commerce Act, 49 U.S.C. 22, which permits rail common carriers to transport property and persons for the United States Government, among others, "free or at reduced rates."

Such authority has been incorporated by reference into Parts II, III, and IV of the Interstate Commerce Act, dealing respectively with motor carriers, water carriers, and freight forwarders. See 49 U.S.C. 317(b), 906(c), and 1005(c). Also, in the broader view, we favor the amendment of section 403(b) of the Federal Aviation Act of 1958, 49 U.S.C. 1373(b) to reflect similar authority in air carriers to transport persons or property for the United States free or at reduced rates.

We do not believe that the enactment of the bill in its present form would adversely affect the interest of the United States as a shipper or the functions of our Office, and subject to the above suggestion, we have no objection to its favorable consideration by your committee.

Sincerely yours,

R. F. KELLER,
Assistant Comptroller General of the United States.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., July 7, 1971.

DEAR MR. CHAIRMAN: Reference is made to your letter of June 15, 1971, requesting our comments on S. 2055, which would amend section 403(b) of the Federal Aviation Act of 1958, 49 U.S.C. 1373(b), so as to authorize any air carrier or foreign air carrier, under such regulations as the Civil Aeronautics Board may prescribe, to furnish free or reduced-rate transportation to persons who are 65 years of age or older on a space-available basis; the bill would also amend section 22 of the Interstate Commerce Act, 49 U.S.C. 22, to authorize rail and bus lines to furnish free or reduced-rate transportation for persons who are 65 years of age or older on a space-available basis.

The proposed amendments, permissive in nature and not mandatory, apparently are designed to permit airlines, railroads, and bus lines to grant fare concessions for persons 65 years of age or older.

The wording of the first section of the bill, if passed in its present form, however, might have the apparently unintended effect of repealing the authorization in the present law which permits air carriers or foreign air carriers to grant reduced-rate transportation to ministers of religion on a space-available basis. One way this could be obviated would be by inserting in the proposed language on page 1, line 6, of the bill after the word "older" the words "or ministers of religion."

In the interests of uniformity, we feel that the proposed amendment of section 403(b) of the act, 49 U.S.C. 1373(b), might well be revised to include authority equivalent to that contained in section 22 of the Interstate Commerce Act, 49 U.S.C. 22, which permits rail common carriers to transport property and persons for the United States Government, among others, "free or at reduced rates."

Such authority has been incorporated by reference into Parts II, III, and IV of the Interstate Commerce Act, dealing respectively with motor carriers, water carriers, and freight forwarders. See 49 U.S.C. 317(b), 906(c), and 1005(c). Also, in the broader view, we favor the amendment of section 403(b) of the Federal Aviation Act of 1958, 49 U.S.C. 1373(b) to reflect similar authority in air carriers to transport persons or property for the United States free or at reduced rates.

We do not believe that the enactment of the bill in its present form would adversely affect the interest of the United States in its procurement of air transportation for Government business, or the functions of our Office, and subject to the above suggestions, we have no objection to its favorable consideration by your committee.

Sincerely yours,

PAUL G. DEMBLING,
(For the Comptroller General of the United States).

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., July 8, 1971.

DEAR MR. CHAIRMAN: Reference is made to your letter of June 15, 1971, requesting our comments on S. 2061, which would amend section 403(b) of the Federal Aviation Act of 1958, 49 U.S.C. 1373(b), so as to authorize any air carrier or foreign air carrier, under such regulations as the Civil Aeronautics Board may prescribe, to grant reduced-rate transportation for elderly people on a space-available basis. The bill specifies that the term "elderly people" means individuals aged 65 and older.

The proposed amendment, permissive in nature and not mandatory, apparently is designed to benefit our senior citizens as well as the airline transportation industry. However, we have no special knowledge of the need for or the desirability of the legislation proposed by this bill.

In the interests of uniformity, we feel that the proposed amendment of section 403(b) of the act, 49 U.S.C. 1373(b), might well be revised to include authority equivalent to that contained in section 22 of the Interstate Commerce Act, 49 U.S.C. 22, which permits rail common carriers to transport property and persons for the United States Government, among others, "free or at reduced rates."

Such authority has been incorporated by reference into Parts II, III, and IV of the Interstate Commerce Act, dealing respectively with motor carriers, water carriers, and freight forwarders. See 49 U.S.C. 317(b), 906(c), and 1005(c). Also, in the broader view, we favor the amendment of section 403(b) of the Federal Aviation Act of 1958, 49 U.S.C. 1373(b), to reflect similar authority in air carriers to transport persons or property for the United States free or at reduced rates.

We do not believe that the enactment of the bill in its present form would adversely affect the interest of the United States in its procurement of air transportation for Government business, or the functions of our Office, and subject to the above suggestion, we have no objection to its favorable consideration by your committee.

Sincerely yours,

PAUL G. DEMBLING,
(For the Comptroller General of the United States).

Senator CANNON. Senator Pearson do you wish to make a statement?

Senator PEARSON. I have no statement.

Senator CANNON. Our first witness today is the Honorable Charles H. Percy, Senator from Illinois.

STATEMENT OF HON. CHARLES H. PERCY, U.S. SENATOR FROM ILLINOIS

Senator CANNON. We are very happy to have you here with us.

Senator PERCY. Mr. Chairman, and Senator Pearson, I am delighted to be with you this morning on a very important subject. I am submitting for the record a complete testimony on the bill that I have introduced with the cosponsorship of Senators Humphrey, Mondale, Pell, Nelson, and Saxbe, but I will only read those portions that are pertinent to the work of this particular subcommittee; other portions of the bill relate to other committees of the Senate.

Senator CANNON. Your statement will be made a part of the record in full and you may proceed as you have indicated.

Senator PERCY. I have introduced S. 1591; though it is called the "Senior Citizens Transportation Services Act," it does modify the Federal Aviation Act of 1958 by including the youth, handicapped persons, and military personnel as well, along with the provision already provided for reduced fares for ministers of religion.

This bill forms part of a comprehensive legislative program I introduced over a year ago to improve conditions generally for our retired citizens, and I view it as one of the most important components of this program.

S. 1591 seeks to alleviate one of the major problems confronting today's senior citizens: Inadequate, inaccessible, prohibitively expensive transportation.

In its 1972 annual report, the Senate Special Committee on Aging characterized transportation as a "pervasive and complex" problem for the elderly. That description is explained in a statement issued on this problem by the delegates to the 1971 White House Conference on Aging:

"For many of the elderly the lack of transportation itself is the problem; for others, it is the lack of money for bus fares; the lack of available services to places they want and need to reach; the design and service features of our transportation systems.

"These problems interact with one another and in doing so further augment the transportation difficulties of the elderly."

When I was running for the Senate in 1966, and doing a lot of riding on the mass transit systems at that time and testing various ideas, I advocated then that we try reduced fares in Chicago. We now have the benefit of 5 years' experience with those fares. It has been a remarkable program for that city. It has filled empty seats, it has taken elderly people off the cars at rush hours and given them the incentive to ride when the cars are essentially empty.

As the ranking Republican on the District of Columbia Appropriations Committee, I took a very strong position on reduced fares for senior citizens in Washington, D.C. The program was introduced about 2 years ago. I think it is a very, very popular program. It has helped immeasurably. I think it has added revenue to the transit system, and of course the elderly feel that this is a very valuable program for them and they go on a nonrush hour basis, so that it fits in with the convenience of the transportation system.

I believe all mass transit systems, and most especially those receiving Federal funds, should offer such fares now.

Although cost-benefit analyses on those programs now operating are incomplete and inconclusive, many of them have shown great promise in terms of increasing the number of transit passengers, and, in turn, revenues.

One survey of the program operating in New York City revealed that the bus ridership under the reduced fare plan increased by 26.7 percent over what it had been previously.

Another study conducted on the subject by the YMCA of Chicago concluded that:

(a) When inexpensive or free and accessible transportation is provided, older people will take advantage of it.

(b) Mobility itself, and the social experience of traveling with other older persons, has a therapeutic effect. Through traveling, older people form new friendships, feel more independent, less isolated and lonely.

Although many mass transit systems have experimented with reduced fares for senior citizens, few railroads, interstate buses, and airlines have done so.

As we all know, the job of providing rail passenger service has been taken out of the hands of the individual railroads and into the hands of Amtrak, the year-old, quasi-government corporation.

By law, Amtrak is required to continue operating the routes it designated on May 1, 1971, for another year. So far, only the eastern corridor routes have actually succeeded in making profits; most of the long-haul routes are losing money, partly because the long-haul trains are not carrying full passenger loads.

If the trains must operate for another year, but are now losing money, partially because they are running at below-capacity levels, I believe we can only gain from having Amtrak offer reduced fares for senior citizens on some of these routes. Even if the elderly only pay half fares, they cannot help but increase the revenues of Amtrak.

The elderly want to travel. They have the time. What they lack is the money. Furthermore, many people who grew up with the trains—which includes all elderly citizens—actually prefer them to other modes of transportation. Unlike many of us, retired citizens are less interested in getting from one point to another in the shortest possible time.

Mr. Chairman, I considered offering that provision in S. 1591, concerning reduced railroad fares as a floor amendment to the Amtrak funding bill, but decided against this course of action in view of Amtrak's present difficulties and its need to retain flexibility in major policies.

I remain convinced, however, that we could benefit from such an experiment, and I hope that Amtrak will adopt this policy.

The airlines, of course, have engaged in all kinds of promotional practices—including the offering of specially reduced youth fares—in their effort to attract passengers and enhance revenues.

The airlines have been particularly aggressive in their appeal to young people, on the premise that encouraging young people to fly now and to develop the "aviation habit" will result in an expanded and permanent market.

I believe the airlines stand to benefit by looking more seriously at the travel habits and desires of older people. In an interview with the New York Times on this very point, Najeeb Halaby, former chairman and president of Pan American Airways, suggested that the half-empty flights now going to Europe could be filled with older people at reduced fares:

"Why not fill those flights with oldsters as well?"

They are seeking bargains and are willing to contract for a ticket three to six months in advance."

Two American airlines, Hawaii Airlines and Aloha Airlines, now offer reduced fares for older people. I certainly believe that other airlines could do the same.

Mr. Chairman, in closing, I wish to state that the proposals I am advocating today are directly in line with the major transportation recommendations issued at the 1971 White House Conference on Aging.

If they cost money, I believe we must recognize the strong possibility that there also exists a dollar social cost on not spending money on transportation for the aging.

I hope the committee will consider carefully those provisions in S. 1591 which come under its jurisdiction and act favorably upon them.

I feel very strongly about this issue, Mr. Chairman. As a member of the Senate Committee on Aging, I probably spend 25 percent of my time on the problems of aging. It is impossible to be experts on everything. We have to concentrate on certain areas in the Senate. I have tried to concentrate on issues affecting the elderly. I have spent many hours on weekends in nursing homes back in my own State, as well as time visiting the elderly right here in Washington, D.C.

I have met and talked with many, many elderly individuals in recent years, in small groups of anywhere from 30 to 40—as we did at three nursing homes with my wife this weekend—or in large groups—such as the National Council of Senior Citizens Conference held in Washington, D.C., last week.

Next to increasing their gross incomes, I think there is no action on our part that would be more appreciated by elderly people than this assistance in transportation. It is one of the few areas where we can do something without saying we have to have more money to do it. It is conceivable that it would not take a penny of appropriations.

Reduced fares it will, I think, increase the revenues of airlines. I believe many airline executives in this country and in international markets would say one of the finest things the airlines have done is to offer the youth fares and their only concern is that such fares are discriminatory.

Well, we have discriminatory fares on a lot of things: tickets to the theaters for children, movies have always been lower priced. We offer reductions to the military and the ministry, and so forth.

Senator CANNON. If you say it would not cost any additional money, why do you have a provision in your bill to provide for a subsidy?

Senator PERCY. I have no actual subsidy for this particular provision.

Senator CANNON. You have a provision that says in any case a common carrier can show it incurred an economic loss in any year solely because of the provisions here, the carrier may apply for Federal financial assistance with respect to all or part of such economic loss.

The head of any such Federal agency is authorized to pay any such carrier an amount not exceeding one-half the difference between the published tariff and the tariff charged elderly persons, or an amount not exceeding the aggregate of the economic loss of the carrier claimed under such application whichever is less.

Senator PERCY. Well, if there is a proven loss, certainly application could be made. My own contention is that I have yet to see proof that these fares cause revenue losses. Now, as we well know, claims have been made in Washington, D.C. that it actually costs money to carry senior citizens at reduced fares.

I have seen no proof to that effect whatsoever. I simply don't believe it. So far as I know, there has been no solid basis for an application for reimbursement. For other reasons we have had mass transit shutdowns, and systems which have gone bankrupt in certain cities,

Rockford, Peoria and Joliet in the State of Illinois. But I have seen no proof or even substantial evidence that reduced fares for senior citizens cause revenue losses.

Some of our cities have a high preponderance of elderly people. They may be concentrated in certain areas, and now they have no transportation whatever. They may lose their automobile licenses or their ability to drive a car. They can't afford taxicabs.

There may be certain unusual cases where applications for financial assistance are warranted.

But for the most part, I would say that when we are talking about Amtrak or large domestic lines—or about airlines which, of their own free will as in Hawaii, have offered these fares simply because it is good business and have apparently had a fine result for several years—I would think that no subsidy whatsoever would be required.

Senator CANNON. If you feel that none would be required, why don't you just strike that from your bill and eliminate it? That gives me some concern, because my next question was going to be to ask you, based on the traffic in 1970 and 1971, on the airline traffic, what do you estimate that the cost of the subsidy would have been?

That is, had we had this provision in effect?

Senator PERCY. I don't feel there would be any justification for a subsidy for half fares. We all know the young military fellows standing by out there on a seat availability basis incur no costs to the airlines. But they are filling seats that are empty otherwise.

Senator CANNON. Are you envisioning that this reduced fare would apply only on a space available basis?

Senator PERCY. That is right, except mass transit.

Senator CANNON. Let's not get into mass transit here.

Senator PERCY. I know you don't deal with that.

Senator CANNON. Even though I am on that committee—

Senator PERCY. It is on a seat availability basis. In other words, if the seats are empty, fine.

Senator CANNON. You say that you have discussed this with a lot of the people in the nursing homes. You are not envisioning that this is going to take nursing home people and have them traveling about on a space available basis, do you?

Senator PERCY. Obviously, the "market" for these fares will not come from nursing home residents, although I will say there are people confined in nursing homes who need not be there and who are capable of traveling. We are talking mainly about physically fit people, but there are people in nursing homes today who are able to move about, who can go out and who have traveled.

I am mainly talking, however, about people 65 and over who generally simply feel that immobility, because of restrictions on their income, is one of the biggest problems they have.

They have grandchildren someplace, or children someplace, and they can't go visit them. They may want to go see friends. Just as young people today, because of the bargain rates they have, are the most mobile group that we have other than businessmen, I would think that we can get older people to feel that there is not that "barrier." And, you know, Mr. Chairman, the one thing older people have to look for is a bargain.

They are living now mainly on fixed incomes, or they might have income from an estate. And they love a bargain, and just that feeling that "what is good for the goose is good for the gander." If you are younger you get a break and if you are older you get a break.

Senator CANNON. I am very sympathetic to that, but let's get back to the other problem. I think it is impractical to consider that people who are in nursing homes are people who are going to go out on a standby basis to get on an airplane and go someplace. I just don't think that that is a very practical outlook, and I am a little concerned about the fact that you are basing a lot of your argument on the fact that you have discussed it with a lot of people in nursing homes.

Senator PERCY. I mentioned that I have visited nursing homes. I have certainly made other visits, and just left the UAW headquarters, where they have retirees visiting out there. There were about 400 retirees out there, to whom I talked. In the past month I went and attended meetings of retirees at the UAW plant, at the International Harvester plant, at the Belvedere Chrysler plant. I just happened to have been in three or four nursing homes this weekend. But I don't think those people are unable to translate what would have been good for them *before* they got to the nursing home.

Maybe if they had had the therapeutics of a little more mobility, they might not be in the depressed condition that they are in. And many of them are there because of absolute mental depression. I just think we have to, as a society, start giving the elderly some breaks.

We have poured billions of dollars into housing for our young people on campuses. The housing for the elderly is in deplorable condition. The breaks all seem to go toward the youth culture. That is why I think, along with youth power, now, we are beginning all these signs "Senior Power." Older people want to get some of the breaks of society, and see that some sensible things are done for them. And it has just not been sensible to have empty cars going from 9:30 in the morning until 3:30 in the afternoon on mass transit while young people can ride freely on youth tickets or whatever it might be. It does not make sense *not* to use those same cars to have people come downtown, into shopping centers, and have a little mobility.

Senator CANNON. Let's restrict this to the airlines if we may. We are not going to be flying them into shopping centers very soon, and I would like to ask you one further question.

As you note in my opening statement, I said that the Board under present law and present policy said that there is no legal reason why the airlines could not put this into effect without legislation.

Now, that being the case, don't you think that this might well be taken up with the representatives of the airlines to see if it could not be worked out rather than have Congress legislate in all of these matters that are relating to the internal affairs of the operation of the airline?

Senator PERCY. I would always prefer voluntary action, but as we all know, some things can be done voluntarily and some things can be done uniformly by legislation.

Senator CANNON. Have you discussed this with the ATA?

Senator PERCY. I have discussed it with executives of American Airlines. They have been very sympathetic to the idea. I have not had an antagonistic letter from an airline yet on this legislation.

Senator CANNON. Have you been able to induce any of them to try it, as long as the Board said they could do it if they are willing to do it?

Have you gone to ATA to see if they would take it up with their carriers and determine a policy on it?

Senator PERCY. I am a legislator. I have not gone to ATA per se, but I have gone to enough airlines, such as United and American. I have not discussed it with Pan Am or TWA, because I knew that former Pan Am president Halaby's attitude, from his own public statements, were favorable. But having determined that it makes a great deal of sense—and we are legislators, and our job is drafting laws to bring the public interest into play—I think this proposal would be the swiftest and easiest way to do it.

I cannot see any economic harm to the airlines. I can only see benefit. I would much prefer that this be done voluntarily. But I have been talking about it now for a year and a half and do not see movement in that direction. There is inertia there that I hope would be stimulated by legislation.

Senator CANNON. Have you taken this up with any of the members of the CAB, to suggest that they might act in this area?

Senator PERCY. I have discussed it with Amtrak, with David Bradshaw, a Board director, and have written to him suggesting that this be done by Amtrak.

Senator CANNON. Senator Pearson?

Senator PEARSON. I am confused, because the Chairman said that the CAB had already—did I understand you to say that the CAB had already indicated that the airlines have the authority to make reduced rates for elderly people?

Senator CANNON. The committee has been advised by the Board that under present law and under present Board policy, there does not appear to be any legal reason why reduced rates transportation could not be offered to the handicapped or the elderly by the air carriers on a space available basis. That is the same as they do the youth fare.

I introduced a bill very much like Senator Percy's, and I did it on the basis of amending section 22 of the Interstate Commerce Act, and when applications have come to the CAB for reduced rates, they have filed them and put them down for investigation, and so it seems to me that in spite of what they may have said to us, we have got a fuzzy question here on this.

I just say to the Senator that I want to commend him for carrying out and allocating a part of his time to this problem of dealing with the aged, and I think what really most of us are trying to do is to recognize that elderly people are on reduced incomes in terms of inflation, and many of them have infirmities, and we want to help them.

One way to help them is to provide not only housing but transportation, and I was terribly interested in the real hard experience and facts that have been acquired out of mass transit.

I guess we just don't have that yet on the airlines. I don't think we have any kind of statistical information that answers these

arguments as to whether or not it is going to cost money or whether it is not going to cost money, but we ought to be able to get that.

We ought to have that someplace, and I guess that is what these hearings are all about. At any rate, I commend the Senator for his work in this field and for the introduction of this legislation.

I was just reading the applicable provision of the law, and there is no prohibition against it. They could file that on their tariff.

Senator PERCY. Mr. Chairman, I think it really gets down to what our responsibility is. I am quite sure that I could say to the elderly people who attended the White House Conference on the Aging—and I did talk to them—when they reach a conclusion and they try to go through the procedures for implementing these conclusions, I could say, "Well, I have discussed it with the CAB, I have discussed it with Amtrak, I have discussed it with Greyhound, and I have done the best I can," but I don't have that authority, alone, to implement the conclusion.

All I can do is urge. What I do have is the authority to put legislation in. What this committee has is authority to take action. That is where we differ, I should think, from a regulatory agency. We can encourage the agencies. If we decide this should be a matter of public policy, we can then pass a law. And if we have not passed the law, we can be criticized.

We can certainly not be criticized if we attempt in every way we can to encourage it and to cause the airlines or agencies to do it voluntarily. But we think it is in the public interest to do this, and I think it is about time we start doing something for the elderly.

Senator CANNON. As I said, I introduced legislation of a similar sort as well, but in reviewing the law, as long as they have the authority to do it, I am wondering myself if maybe my proper action was not to try to urge the Board to do it.

I don't want to see this book on aeronautical statutes and related material be multiplied to four or five times the size because every time we think something ought to be done we pass a law on it.

There are only two provisions in the law that I see that specifically say that the carriers have the authority to grant reduced rate transportation, and one of them is on ministers of religion, and the other is to the employees and family members of the airline employees, and so it does appear to me, and Mr. Tipton is going to be our next witness, and I am going to ask him questions on it when he gets here, and it appears to me they have, and the Board has said they have the authority, and so perhaps they are amenable to this.

If they are, I would prefer to see that they do it in that fashion, rather than have us legislate every time we want to see a change in the Federal Aviation Act.

Senator PERCY. May I say this, Mr. Chairman? I would be very delighted if this legislation would become quickly obsolete by the fact that the airlines have taken action themselves.

The whole theme of the new politics is "Do they get the message?" And certainly when I introduced 12 bills for the elderly and discussed them with the President, and he directed Arthur Flemming to put in by Executive order the regulation and uniform standards to be maintained in nursing homes, and that was done, when the President accomplished through Executive order the substance of several of

my bills relating to nursing homes. I could not have been more pleased and the White House by Executive order last week put in some regulations that Senator Metcalf and I had put into law.

We could not care less if they take it up and put it in, but I think we can encourage them and try to send a message as to what we think as legislators public policy should be by at least introducing the laws and moving toward them, hopefully, and they will get the message then, and this will help them move in this direction.

That is all I am trying to accomplish.

Senator CANNON. If you have been so successful in other areas with the executive branch, perhaps you could urge them on in this area. As of 5 o'clock last night, they had not taken a position on this, and that is why they are not before us today.

Senator PERCY. I hope they have observers in the room today.

Thank you, Mr. Chairman.

Senator CANNON. Thank you very much.
(The statement follows:)

STATEMENT OF HON. CHARLES H. PERCY, U.S. SENATOR FROM ILLINOIS

Mr. Chairman and members of the Committee, I am pleased to come before you today to testify on S. 1591, a bill entitled the "Senior Citizens Transportation Act." This bill forms part of a comprehensive legislative program I introduced over a year ago to improve conditions generally for our retired citizens, and I view it as one of the most important components of this program.

S. 1591 seeks to alleviate one of the major problems confronting today's senior citizens: inadequate, inaccessible, prohibitively expensive transportation.

In its 1972 Annual Report, the Senate Special Committee on Aging characterized transportation as a "pervasive and complex" problem for the elderly. That description is explained in a statement issued on this problem by the delegates to the 1971 White House Conference on Aging:

For many of the elderly the lack of transportation itself is the problem; for others, it is the lack of money for bus fares; the lack of available services to places they want and need to reach; the design and service features of our transportation systems.

These problems interact with one another and in doing so further augment the transportation difficulties of the elderly.

Like everyone else in society, the elderly must depend upon the ability to travel for acquiring the basic necessities of food, clothing, and shelter as well as employment and medical care. The ability to travel is also necessary for their participation in spiritual, cultural, recreational and other social activities.

To the extent the aged are denied transportation services they are denied full participation in meaningful community life.

To some extent all Americans suffer from the lack of a balanced, efficient national transportation system. There are certain factors which characterize the elderly population in particular, however, and which serve to make transportation a uniquely difficult problem for them.

Older persons have less than half the income of their younger counterparts. While the incidence of poverty is decreasing among the younger population, it is increasing among the elderly. Because of their income problems, the elderly are less able than other segments of the population to purchase transportation services.

Only 14 percent of the elderly are completely free from chronic ailments, diseases, and other impairments. A serious case of arthritis can severely inhibit an elderly person's ability to climb high bus steps—and consequently, the person may avoid taking buses altogether. Poor eyesight or hearing may prevent an older person from being able to drive. And a perfectly healthy, alert senior citizen may find it extremely difficult to obtain automobile insurance because of the various health problems and disabilities associated with aging, even though he himself may suffer from none of them. It is estimated that only between 14 and 24 percent of the elderly possess drivers' licenses. Automobile insurance companies can and

do cancel the policies of older people solely because of their age, regardless of their driving history or current physical condition.

Isolation of the elderly from the rest of society—brought about by the loss of their jobs, the death of family and friends, or society's general uncaring attitude toward their lot—is already recognized as being a serious problem. This isolation affects their spiritual and physical well-being. Just as good transportation can serve to mitigate this isolation, so, too, can poor or inadequate transportation heighten the sense of isolation and loneliness felt by many elderly people.

Even the placement and existence of roads and bus routes tend to favor other segments of the population at the expense of the elderly. Roads and bus routes generally reflect the placement and existence of schools and businesses. Because the elderly usually do not have direct ties with the working and educational worlds, they do not benefit so directly from the establishment of transportation networks as do other groups.

I am here today, therefore, to ask first that we recognize the unique aspects of the elderly population's transportation problems, and secondly, to urge that we act to alleviate these problems, if we cannot eliminate them altogether.

My bill, S. 1591, seeks to alleviate these transportation problems in the following ways:

(1) It calls for specially reduced fares for senior citizens on trains, planes, and buses. Each of these modes of transportation would be required to offer such fares if it receives Federal financial assistance or crosses state lines.

(2) It makes it unlawful, under the penalty of a \$10,000 fine, for an insurance company to deny automobile insurance to an individual solely on the basis of age.

(3) It amends the Architectural Barriers Act of 1968 to include buildings and facilities built with assistance from the Urban Mass Transportation Act. Thus, all mass transit facilities, including buses and subway cars, would be made more readily accessible to the elderly and the handicapped.

(4) It authorizes \$7,500,000 over the next two years in grants to conduct research and demonstration projects to increase the mobility of the elderly in rural as well as urban areas.

REDUCED FARE PROGRAMS

The mass transit systems of over 50 American cities, including Chicago, now offer specially reduced fares for senior citizens. I believe all mass transit systems—most especially those receiving Federal funds—should offer such fares.

Although cost-benefit analyses on those programs now operating are incomplete and inconclusive, many of them have shown great promise in terms of increasing the number of transit passengers, and in turn, revenues. One survey of the program operating in New York City revealed that bus ridership under the reduced fare plan increased by 26.7 percent over what it had been previously. Another study conducted on the subject by the YMCA of Chicago concluded that:

(a) When inexpensive or free and accessible transportation is provided, older people will take advantage of it.

(b) Mobility itself, and the social experiences of traveling with other older persons, has a therapeutic effect. Through traveling, older people form new friendships, feel more independent, less isolated and lonely.

Although many mass transit systems have experimented with reduced fares for senior citizens, few railroads, interstate buses, and airlines have done so.

As we all know, the job of providing rail passenger service has been taken out of the hands of the individual railroads and into the hands of Amtrak, the year-old quasi-government corporation. By law, Amtrak is required to continue operating the routes it designated on May 1, 1971, for another year. So far, only the Eastern Corridor routes have actually succeeded in making profits; most of the long-haul routes are losing money, partly because the long-haul trains are not carrying full passenger loads.

If the trains must operate for another year, but are now losing money partially because they are running at below-capacity levels, I believe we can only gain from having Amtrak offer reduced fares for senior citizens on some of these routes. Even if the elderly only pay half fares, they cannot help but increase the revenues of Amtrak.

The elderly want to travel. They have the time. What they lack is the money. Furthermore, many people who grew up with the trains—which includes all elderly citizens—actually prefer them to other modes of transportation. Unlike many of us, retired citizens are less interested in getting from one point to another in the shortest possible time.

Mr. Chairman, I considered offering that provision in S. 1591 concerning reduced railroad fares as a floor amendment to the Amtrak funding bill, but decided against this course of action in view of Amtrak's present difficulties and its need to retain flexibility in major policies. I remain convinced, however, we could benefit from such an experiment, and I hope Amtrak will adopt this policy.

The airlines, of course, have engaged in all kinds of promotional practices—including the offering of specially reduced youth fares—in their effort to attract passengers and enhance revenues. The airlines have been particularly aggressive in their appeal to young people, on the premise that encouraging young people to fly now and to develop the "aviation habit" will result in an expanded and permanent market.

I believe the airlines stand to benefit by looking more seriously at the travel habits and desires of older people. In an interview with the New York Times on this very point, Najeeb Halaby, former chairman and president of Pan American Airways, suggested that the half-empty flights now going to Europe could be filled with older people at reduced fares.

"Why not fill those flights with oldsters as well? They are seeking bargains and are willing to contract for a ticket three to six months in advance."

Two American airlines, Hawaii Airlines and Aloha Airlines, now offer reduced fares for older people. I certainly believe that other airlines could do the same.

AUTOMOBILE INSURANCE FOR THE ELDERLY

Although many elderly people prefer not to drive, and many others, because of physical impairments should not be encouraged to do so, there are a substantial number who are perfectly capable of driving and who suffer greatly when denied automobile insurance. An excerpt from a letter I received from one elderly man explains the problem:

"I have been a teacher for forty years and have driven for as many years, with no collisions with other cars. Two years ago I moved to the State of Florida. Now I have received notice from my long-term insurance company saying that my insurance will not be renewed when my present policy expires, on October 1. I am at my wit's end as to what to do without insurance. I understand that this company is eliminating all insurance for those over age 65, of which I am one. Paying insurance premiums over 25 years, and never causing an accident, is just not fair to a driver with a fine driving record that I have."

Under existing law, there is no guarantee that one's automobile insurance policy will not be arbitrarily cancelled on account of one's age. A survey conducted by the University of Denver Law School found that 31 percent of insurance companies refuse to write car insurance for those 65 or over, regardless of the applicants' driving records. William Hutton, Executive Director for the National Council for Senior Citizens, has said:

"Many companies cancel car insurance policies not for logical reasons but primarily on hunches rooted in prejudiced attitudes toward age."

In calling for a \$10,000 fine to be levied against insurance companies which discriminate solely on the basis of age, I would emphasize that I am not advocating that disabilities which might hinder one's driving ability be overlooked. Indeed, it is essential that an individual who drives be in good physical condition and be able to see and hear clearly. Insurance companies must be made more aware, however, of the unusually difficult problems which insurance cancellation presents for the elderly.

ARCHITECTURAL BARRIERS

During the course of special hearings conducted by the Senate Special Committee on Aging, we learned that many elderly people avoid using public transportation because of their difficulty in coping with the physical barriers placed in their way. An elderly person may choose to stay at home rather than suffer the embarrassment of keeping lines waiting while he takes an unusually long time to mount high bus steps. Or he may fear falling down on a fast escalator in an airline terminal. These are problems which able-bodied, younger people often overlook, but which can greatly affect the lives of elderly individuals with physical infirmities.

I have therefore proposed and urge today that the Architectural Barriers Act of 1968, be extended to require that mass transit buildings and equipment be built in such a way as to offer ready access to the elderly and the handicapped.

RESEARCH AND DEMONSTRATION PROJECTS

The final provision in S. 1591 authorizes \$7,500,000 for the Administration on Aging to step up its experimental program to alleviate transportation problems of the elderly, both rural and urban. There are many ideas in this area which show great promise: mini-buses which provide door-to-door service for the elderly; transportation stamps for the elderly, along the lines of our food stamp program; school buses when not in use.

With our highly advanced technology, we can surely demonstrate better ways of improving the mobility of our older citizens.

Mr. Chairman, in closing, I wish to state that the proposals I am advocating today are directly in line with the major transportation recommendations issued at the 1970 White House Conference on Aging.

If they cost money, I believe we must recognize the strong possibility that there also exists a dollar social cost on not spending money on transportation for the aging.

I hope the committee will consider carefully those provisions in S. 1591 which come under its jurisdiction and act favorably upon them. Thank you.

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

Senator PEARSON. I wonder if Mr. Tipton would address himself to the legal question off the bat with your permission, because I have a memorandum here.

Senator CANNON. I don't like to tell a witness how to proceed with his testimony, but we certainly will expect him to respond to that at some stage of the hearing.

STATEMENT OF STUART G. TIPTON, PRESIDENT, AIR TRANSPORT ASSOCIATION; ACCOMPANIED BY DONALD C. COMLISH, ASSISTANT GENERAL COUNSEL; AND GEORGE A. BUCHANAN, VICE PRESIDENT

Mr. TIPTON. I would be glad to proceed any way the committee likes and respond to the inquiry at the outset. My name is Stuart G. Tipton. I am president of the Air Transport Association, the trade and service organization representing virtually all of the scheduled airlines of the United States.

I am accompanied by, on my left, Mr. George Buchanan, vice president of the Air Transport Association in charge of traffic; and on my right, Mr. Donald Comlish, assistant general counsel of the Air Transport Association.

Prior to starting on my prepared statement, I will proceed to discuss the legal question for a moment and then ask Mr. Comlish to make any further comments that seem necessary.

As the chairman has pointed out, the matter of discount fares and their legality is now a part of an investigation being carried out by the Civil Aeronautics Board. It is a highly complex business, and a major consideration which any airline or ultimately the Civil Aeronautics Board is faced in looking at a discount fare is not only the question as to whether it is a fair and reasonable rate, but also, and probably more difficult, the question as to whether it is discriminatory, because the statute binds the airlines not to use rates which are unduly discriminatory.

So that issue is always before us. The statement referred to by the chairman relates to "space available" transportation which, of course, is an entirely different type of transportation, as anyone who

has tried to "standby" for flights will recognize. One may have to wait for two or three trips to go out before a seat is available on a flight. In the past, it has been concluded that special rates of 50 percent for youths and others are justified from the standpoint of discrimination because such rates provide a different and less attractive service for the passenger receiving the discount.

That is one part of the problem. The other part of the problem is where an airline gives reserved space, also at a discount. It is in that area where the question of discrimination becomes most difficult, and it is in that area that the Board's major consideration, I suspect, is being given. Hence, whether or not a special rate on a reserved space basis for the elderly, for example, or for the handicapped, would be legal under the statute is still in question.

Mr. COMLISH might want to add to that.

Mr. COMLISH. No, I think that answers the question and thoroughly states it.

Senator PEARSON. Do you think there is some question as to whether or not an airline now can lower rates for the elderly on space available basis?

Mr. TIPTON. No, I think the space available situation is probably reasonably clear, in that the service is so distinct.

The question of regular reserved seats on board the airplane at a discounted rate is the issue.

Senator PEARSON. It is an issue now by the two airlines that have sought to do it.

Mr. TIPTON. For the elderly?

Senator PEARSON. Yes.

Mr. COMLISH. Are you referring to the Hawaiian carriers?

Senator PEARSON. I am referring to Hawaiian and Aloha Airlines, and they have a space available basis reduced rates for persons 65 years of age. The Board has permitted these rates to go into effect, and has set down for investigation the appropriateness of such a pattern of discrimination in docket 19966.

It is on a space available basis, I am told.

Mr. TIPTON. I am not sufficiently familiar with those Hawaiian and Aloha rates to know whether they are in a space available basis or not, but I gather from the statement the Senator just made that they are space available. There still is an issue as to whether they are legal even on a space available basis, but I guess this is a matter of degree.

I personally think there is not much doubt of their legality on a space available basis. But there is more doubt in the case of reserved space on a reduced rate. None of us, I think, can be terribly positive about the situation until the Board concludes the investigation which has been referred to.

Senator PEARSON. I am not sure that the sponsors of the legislation for lower rates for elderly citizens really are thinking in terms of space available. Grandmother and grandfather go down there to sit. No one anticipates this sort of advantage to them is going to be on the basis that they may miss this flight, may catch the next one, may have to go back home again.

Mr. TIPTON. This has to be a personal opinion, because all airline ratemaking is, of course, done by the initiative of individual airlines who make up their own minds as to what they want to do.

As far as I am concerned, we should not put into effect space available rates for the elderly. It is quite all right for a young person to meet the vicissitudes of space available travel.

I don't think it is right for the elderly to try to do the same thing. Transportation might well get terribly difficult in some cases where the airlines are hard pressed to handle everybody turning up on a weekend or some other popular time.

I think that would not work well.

Senator CANNON. Let me ask you: What is the policy of your association, then?

Mr. TIPTON. May I proceed with my statement, which I think states that policy more succinctly than I would be likely to do if I teed off on it?

We welcome this opportunity to express the views of our member airlines on the eight bills under consideration concerning free or reduced rate air transportation for youths, the elderly, handicapped persons and their attendants, military personnel, and families of deceased airline employees.

Before discussing the matter of these special fares, I would like to cover briefly some of the dimensions of the air transport industry and a few of the services which the airlines make available to facilitate travel, particularly for the elderly, the handicapped, and anyone who needs assistance during his journey.

Understanding today's air transport system—even at the risk of repeating a few key facts the public tends to take for granted—is a very good and quick way of seeing its special benefit impact.

Here are a few of the key facts:

The jet airliner has compressed our traveltime dimensions to the point where the country is now about 4 hours and 45 minutes wide and some 2 hours deep. It has similarly compressed the time dimensions for world travel.

Some 400 U.S. cities are now served by the scheduled airlines.

These carriers operate about 14,000 flights per day.

And there is at least one customer-oriented airline service that is unique among all transport modes.

The traveler can contact a single office of any scheduled airline and obtain information, make reservations, and buy tickets for travel to any airline-served city in the country or throughout the world.

Additionally, there are over 8,000 airline-approved travel agents in the United States who are well equipped to take care of the passengers' entire travel needs. These important partners of the airlines are highly qualified to advise, guide, and execute their clients' travel plans.

Of course, assistance is available to the passenger when needed, to handle his baggage, to provide wheelchairs, and even to allow for special dietary meals through advance arrangements.

Consequently, as can be seen, the airlines are interested in and do serve the important markets covered by the legislation being studied today.

This brings us to the policy question raised by today's hearing. I use the term "policy question" because it is our view that the various bills before you are, in reality, attempts to shift ratemaking from the agency charged with this task, to the Congress.

In short, we oppose such a shift simply because we do not believe it is good policy at this time for the Congress of the United States to attempt to legislate categories of rates for travelers beyond the relationships presently covered by the Federal Aviation Act of 1958.

Thus, when one looks into the various fares offered today and the procedures already provided by the act, it becomes clear that flexibility through the regulatory process is much more desirable than the relative finality of statutory enactment.

Promotional, or discount, fares, such as round-trip excursion fares, family plan fares, group fares, et cetera, are an important part of the airlines' total sales program. Such fares are designed to stimulate people to fly who would not do so otherwise and to encourage air travel during slack or "nonpeak" periods.

The airlines now offer a broad range of promotional fares, not necessarily restricted to specific ages or designated groups. These fares have brought air travel to millions of Americans, and we hope to continue offering such bargains to the public whenever it is feasible.

The procedure for establishing any fare, including promotional or discount fares, begins with an individual airline marketing decision that some kind of special fare is needed and will produce added revenue. The airline then files a tariff with the Civil Aeronautics Board, in order to institute the fare. The Board is vested with the responsibility to examine the proposal and must consider the following among other factors:

1. The effect of such rates upon the movement of traffic;
2. The need in the public interest of adequate and efficient transportation of persons and property by air carriers at the lowest cost consistent with the furnishing of such service;
3. Such standards respecting the character and quality of service to be rendered by air carriers as may be prescribed by or pursuant to law;
4. The inherent advantages of transportation by aircraft; and
5. The need of each air carrier for revenue sufficient to enable such air carrier, under honest, economical, and efficient management, to provide adequate and efficient air carrier service.

These factors were originally written into the Civil Aeronautics Act of 1938 to assure the orderly development of the Nation's air transportation system.

The 1938 act also spelled out certain categories of traffic which would be allowed to travel at free and reduced rates. The need for such a section in the aeronautical statutes was based upon the problems encountered in the railroad industry where free and reduced rate transportation was not at the time regulated well and there were certain cases of unacceptable discriminatory practices.

With this background, the Congress wrote into the 1938 act, and repeated in sections 404 and 1002 of the Federal Aviation Act of 1958, the broad power of the Civil Aeronautics Board to examine tariffs filed by the carriers, overall or on a case-to-case basis, to determine whether the fares covered by such tariffs are or will be unjustly discriminatory, or unduly preferential, or unduly prejudicial, and then to take appropriate action.

It is in this context that the airlines favor continuation of the regulatory process for establishing fares as opposed to legislation which would compel or require them to give special fares to specific groups in society.

Accordingly, the decision to offer any special fare should arise from the individual airline, and be subject to the regulations of the Civil Aeronautics Board.

It would be most inadvisable in our opinion for Congress to allow itself to become the forum for determining what specific air fares are to be offered. If it did, you can well imagine that everyone who wants a special rate or free transportation will be knocking on your door.

If such special treatment were allowed to virtually everyone who desires it there would be an adverse effect on the airline industry's revenue posture, and, ultimately, its economic position would be endangered, for passengers who pay full fare.

As I mentioned earlier, the airlines do offer a number of promotional discounted fares. Among other fares, these include reduced rates for youth and for military personnel. In many cases, these fares do not permit the making of advance reservations. Instead, the person who wishes to avail himself of the reduced rate must wait at the airport and risk not being able to get on the flight on which he desires to travel. During peak traffic periods it is not uncommon for such a "standby" passenger to have to sit through several flight departures.

Obviously, such "standby" requirements would not be suitable, and here I repeat myself, for the elderly or handicapped. It is one thing for young students or military personnel to go out to an airport and wait, perhaps for many hours, in the hope of getting an empty seat on a plane that is going where they want.

There is another reason why airlines have not extended special fares to the elderly. Discount fares are designed to stimulate travel by people who would not do so otherwise. Many airline analysts believe that a discount fare for the elderly, per se, would not generate sufficient new revenue to offset losses from the lower ticket prices.

To the contrary, it is felt that a special fare of this nature would not cause more elderly people to fly, but would simply cause those now flying at existing fares to change over to discount fares.

I am aware that one of the bills before you today provides that a common carrier could recover losses directly attributable to such a fare by going to the appropriate federal agency for relief. That provision has already been discussed by the Chairman and Senator Percy.

Of course, if airlines were required to offer such fares, their stockholders would appreciate recovery of part of such losses, but payments of that nature run counter to the efforts of the government to reduce subsidy. If this were to be done for every special group that seeks free or reduced rate air transportation, the cost to the taxpayer could be enormous.

There is another matter which we believe the Committee should take into consideration, and here I refer to the fact that the discount fare proceeding is pending before the Board, and it provides some limitation in having a full discussion of this since that case has not been decided and the law of the subject has not been dealt with by the Civil Aeronautics Board.

For the above reasons, with one small exception, we are of the view that the proposals contained in the legislation being considered today are unnecessary. We do feel, however, that S. 1655 should be approved. This bill deals with employer-employee relationships as opposed to the relationship between an airline and its customers—the fare-paying passengers. This bill would make it clear that the families of deceased veteran airline employees are covered under the statute.

Mr. Chairman, we thank the Committee for allowing us to present the airlines' views today. We would be happy to answer any questions.

Senator CANNON. How many carriers now do offer the discount fares to the elderly—Aloha, and did you mention one other?

Mr. TIPTON. Mr. Buchanan can comment on that.

Mr. BUCHANAN. Mr. Chairman, it is my understanding that at the present time the Hawaiian carriers offer reduced rates for the elderly. Additionally, there are some Canadian flag airlines who similarly offer reduced rates. Air Canada and CP Air and perhaps some of the smaller lines in Canada do that.

Senator CANNON. Do you have any studies that would indicate the youth fares have truly stimulated additional travel and caused an increase in revenue to the airlines?

Mr. TIPTON. At the Air Transport Association we do not have such studies. The question as to whether they produce additional revenue we cannot answer. The fares have been continued with the support of the airlines and I tend to conclude from that that those fares have been successful.

Senator CANNON. Have you ever considered any studies as an organization as to whether a reduced fare for the elderly might stimulate additional traffic?

Mr. TIPTON. We have not considered such studies within the association, and let me explain that for a moment. As I have said, the responsibilities for coming forward with special fares was considered to be based upon airline marketing objectives. That is a responsibility of the individual airlines, and it probably would be inappropriate for us to involve ourselves in that.

It is our contention here that that issue should be left to the individual airlines. I am not saying here today that no airline should offer special rates to the elderly, but only that the Congress should not either order that or encourage it, but should leave these particular marketing decisions to the normal course of ratemaking within the airlines, recognizing that there are many reduced rates available on the basis of present tariffs which are particularly suitable to the elderly. Those rates are fixed in order to deal with peak periods and are beneficial to those who have a greater freedom of schedule than many do, and thus those are particularly available to retirees, which include the elderly.

Senator CANNON. One situation has recently been called to my attention which is a little beside the point, we are discussing now, except we did relate to employees of the airlines being able to travel at reduced fares. At some of the airports throughout the country the air carriers themselves employ the skycaps or porters as airline employees to handle the luggage.

On the other hand, in some instances the carrier schedule dovetails with other carriers so that several carriers will contract with the porters to provide the services, and therefore they are technically not listed as employees, and so you have a situation where certain porters at an airport are denied reduced fare transportation because they are not employees of an air carrier and yet they are contractors and right to the side of them are porters employed by another air carrier.

Mr. TIPTON. I have not encountered that problem specifically, but I am sure it exists, because the porter service is handled differently at different airports and, as a matter of fact, differently as among airlines.

In view of the fact that the statute specifically deals with employees of the airlines, if they are not employees of the airline they are not entitled to the free and reduced rate provisions under the statute.

I would think the problem would be very difficult for the airline to deal with, because you can't really expand the free and reduced rate transportation to outside corporations which you hire to do the work. That would expand the free and reduced rate transportation privilege greatly, of course, because airlines contract with thousands of concerns to do various types of work, fuel, maintenance, skycaps, and a variety of different things.

So while that particular situation sounds discriminatory, I would doubt if there is anything that one could do about it without carrying the free and reduced rate transportation privilege too far.

Senator CANNON. Senator Pearson?

Senator PEARSON. The bill I put in, Mr. Tipton, was permissive, and it came as an amendment to 403(b) at a place where it could either be, I guess, on a space available or on a reserved basis.

What is your attitude in relation to a bill which is permissive in nature:

Mr. TIPTON. I am firm in saying that the permissive legislation we regard as unwise, also, and, to a degree, an interference with the established process for making rates, because if the Congress comes forward and designates a group specifically that an airline may give special treatment to, that gives that group a particular status within the free and reduced rate transportation provisions. We think that the decisions of that sort should be made by the airlines and subject to regulation by the Civil Aeronautics Board.

Senator PEARSON. I think you draw a sharp distinction between classification of this group and the ones already named, employees of the airlines and the ministers, but that is just a matter of interpretation.

I don't have any further questions, but I want to tell you off the record, if I may—

(Discussion off the record.)

Senator CANNON. Thank you very much.

The hearings will now stand in recess until 10 o'clock tomorrow morning.

(Whereupon, at 11 a.m. the subcommittee recessed, to reconvene at 10 a.m., Wednesday, June 14, 1972.)

REDUCED AIR RATES

WEDNESDAY, JUNE 14, 1972

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

The subcommittee met at 10:07 a.m. in room 5110, New Senate Office Building, Hon. Howard W. Cannon, chairman of the subcommittee, presiding.

Present: Senators Cannon and Pearson.

Senator CANNON. Our hearings today continue on eight bills providing for free or reduced rate transportation for the elderly, handicapped, youth, military personnel, and certain dependents of deceased airline employees.

I have just been advised that Senator Stevenson was unable to be with us this morning. His statement will be submitted as part of the record.

(The statement follows:)

STATEMENT OF HON. ADLAI E. STEVENSON III, U.S. SENATOR FROM ILLINOIS

Mr. Chairman. I appreciate this opportunity to appear before the Aviation Subcommittee on behalf of S. 1303, a bill which permits commercial airlines to offer free or reduced fare concessions to blind or other severely handicapped passengers accompanied by an attendant.

The first point to be emphasized is that S. 1303 is permissive. It only permits commercial airlines to grant these free or reduced fares. It does not mandate them to do so.

Secondly, this bill merely grants the airlines the same authority which is presently available to bus companies and railroads under the Interstate Commerce Act and AMTRAK's authorizing legislation. Before AMTRAK was formed, virtually every railroad granted such reduced fares to the blind. AMTRAK has continued the pre-existing policies of the railroads in regard to the blind.

The situation is different with the airlines. Because of controversy over youth fares, group fares and other promotional fares, the airlines are wary of moving without specific statutory authority. The CAB has been in the throes of deciding whether such reduced promotional fares are allowable under present law and the matter is far from settled.

The Congress could act now to authorize concessions for the blind and the severely handicapped. Such action would encourage and permit greater travel by the blind and the severely handicapped without prejudicing any existing right of the carriers to grant fare concessions.

This legislation is designed to enable people to travel who have difficulty traveling alone and are discouraged by the high cost of traveling with a companion. From the airlines point of view, there is potentially a greater demand for travel and a smaller demand upon airlines personnel. If a handicapped person is to travel by airline, it is in the interest of the airline to encourage an attendant to travel

with the handicapped person. In many cases the attendant makes travel possible—and in all cases the attendant relieves stewardesses and other personnel of the attentions required by the severely handicapped.

S. 1303 does not attempt to define "severely handicapped persons", but leaves the definition to CAB regulation. I do not believe that there is a need for Congress to struggle over such a definition for the purposes of this legislation. The question—is a person so handicapped that in traveling he would be much aided by personal attention in the person of an attendant—lends itself to regulation and the administrative process.

The only other bill before this Subcommittee which proposes a similar kind of authorization is S. 1554. In addition, S. 1554 and other bills before the Subcommittee would extend the authorization to permit reduced fares for the elderly.

As for the two bills dealing with the handicapped, S. 1303 deals only with the handicapped who travel with an attendant, while S. 1554 refers to all handicapped who travel. Since the Subcommittee is considering a variety of bills, I certainly would look favorably on granting reduced fares for all the handicapped who travel—as is proposed in Senator Humphrey's bill—rather than only those who travel with an attendant. The need is certainly most acute for those who must travel with an attendant, because of the resultant double-fare, but the handicapped individual who is capable of traveling alone is usually of a low income bracket and also in great need. And so I support S. 1554, but short of the more permissive bill, my own—S. 1303.

As a footnote, I might add that I contemplate that these potential reduced fares would apply on a reserved-seat basis. Simply offering the reductions on a space-available basis would not be in the interests of the handicapped. Indeed, it would seem cruel and counterproductive—to lure the handicapped and in some cases an attendant to the airport perhaps for hours, and perhaps never to get a ticket.

I re-emphasize that this legislation is entirely permissive. Filling empty seats on an airplane is the name of the game. If those empty seats can be filled with a severely handicapped person and an attendant—even if filled at less than two full fares—then the airlines cannot but gain. Whether such gains from the offering of these reduced fares to the handicapped and their attendants is offset by the loss of revenue from full-fare passengers who would be displaced is a competitive economic decision that the airlines will have to make. This legislation merely provides the option.

This legislation would encourage the handicapped to travel. Travel has of course many purposes—to visit friends and relatives, to engage in business, to vacation, just to get away from it all. But travel is too often denied to the handicapped because he needs an attendant—either on the plane or after he gets to his destination—and the cost of two fares is prohibitive.

For all of these reasons, I urge the Subcommittee, and the full Committee in turn, to act favorably on S. 1303.

Senator CANNON. Is Senator Roth here? I presume he will be in a little later.

Mr. Tenney Johnson, General Counsel, the Civil Aeronautics Board? Have a seat, Mr. Johnson.

STATEMENT OF R. TENNEY JOHNSON, GENERAL COUNSEL, CIVIL AERONAUTICS BOARD; ACCOMPANIED BY ROBERT J. SHERER, DIRECTOR, BUREAU OF ECONOMICS

Mr. JOHNSON. Good morning, Mr. Chairman. With me is Mr. Robert Sherer, the Director of the Board's Bureau of Economics.

Senator CANNON. You may proceed.

Mr. JOHNSON. Mr. Chairman, the Board appreciates this opportunity to comment on the proposals for reduced rate air transportation now before you committee. Unfortunately today the members of the Board are engaged in hearing oral argument on the amendments to the Airlines' Mutual Aid Pact. With the committee's permission, I will testify for the Board.

Mr. Chairman, the Board regrets that it is not at present able to express a substantive position on the proposed legislation providing for reduced fares for the elderly, which is the subject of six of the bills now before you.

The reason is that the Board has not yet issued its decision in the discount fares phase of the domestic passenger fare investigation.

Because this phase deals with fares which discriminate on the basis of age—specifically youth fares—it has a direct bearing on the proposals for senior citizen fares, even though the senior citizen fares are not presently at issue before the Board.

The Board appreciates that the committee in scheduling these hearings has accommodated the Board. The Board hoped to have completed and published its decision by now, and all of us sincerely regret the inconvenience to the committee by our not having done so.

It may be helpful to the committee's deliberation on the bills at this time, however, to discuss the legal constraints under which the Board must operate in dealing with fares for special classes of persons. As I will indicate, the Board must consider such fares on the basis solely of transportation factors, rather than social policy considerations. Those considerations are reserved to the Congress.

The basic declaration of policy of the Federal Aviation Act of 1958 as amended includes as one of the factors which the Board must take into account as being in the public interest "the promotion of adequate, economical, and efficient service by air carriers at reasonable charges, without unjust discrimination, undue preference, or advantages."

Section 404(b) of the Act specifically prohibits any air carrier or foreign air carrier from providing "any undue or unreasonable preference or advantage" to any particular person or description of traffic, nor may any carrier "subject any particular person, port, locality, or description of traffic . . . to any unjust discrimination . . . in any respect whatsoever."

By "unjust discrimination," Congress was referring, in the Board's understanding, to different treatment of like traffic for like and contemporaneous service under substantially similar circumstances and conditions, as well as the offering of a service to one class of traffic which is not offered to others.

On its face, a reduced fare offered only to persons within a certain age group discriminates against all other persons not in that group. However, not all discriminatory treatment is prohibited by the statute. First, under section 403(b) of the act, the carriers are permitted to provide free or reduced rate transportation to persons falling within various specific classes specified in that section, without regard to the unjust discrimination prohibition.

These include the carrier's own personnel and immediate families, retired personnel, and widows, widowers, and minor children of employees who have been killed in the service of the carrier; persons injured in aircraft accidents and attending physicians and nurses; ministers of religion on a space available basis only, and a few others.

Section 403(b) does not, however, include either elderly persons or youths as classes to whom the carrier may provide reduced rate transportation.

Second, not all discriminations are outlawed, but only those which are unjust. While at one time it was thought that discriminations

could be justified only by conditions and circumstances directly affecting the transportation itself, it now appears that the Board, as well as other agencies operating under similar language, can consider a wide range of transportation related factors.

These would include the various criteria specified in the declaration of policy in section 102 of our act, including the promotion of adequate, economical, and efficient service (sec. 102(c)), and the encouragement and development of an air transportation system properly adapted to the present and future needs of the Nation's commerce, postal service, and national defense (sec. 102(a)).

The Board may also consider the factors set forth in the rule of ratemaking in section 1002(e), including the effect of the rates upon the movement of traffic and the need of adequate and efficient service at the lowest cost sufficient with the furnishing of such service.

On the other hand, the Board may not take into account social policy factors in considering whether discriminatory fares are justified. As the U.S. Court of Appeals for the Fifth Circuit put it, the Federal Aviation Act does not give the Board license to "resort to the full spectrum of broad social policy considerations which might necessarily bear on issues of whether circumstances and conditions of service are substantially similar . . . rather, the spectrum is limited to those factors which Congress by statute has deemed material and by those practices which the transportation industry has, by experience, found relevant."

Even here, the Board's discretion is circumscribed. As the same court has said, the statutory rule of equality of treatment is paramount, and, indeed, is the "very core and essence" of the transportation rate structure. Accordingly, factors allegedly justifying a discrimination must be weighed in light of the "pervasive requirement" of equal treatment.

Moreover, these factors are limited, so far as the Board is concerned, to transportation factors.

The court decision I've been referring to was handed down in 1967. At issue were youth fares, which in their present form were first instituted in the mid-1960's and military fares. One result of the decision was that the military discount fares were permitted to stand.

The court found that the Board based its decision to allow the airlines to offer reduced fares to military personnel on national defense considerations, and these considerations are specifically authorized by the Federal Aviation Act.

As to the youth fares, however, the Board was asked to reassess its view of their legality. The court found that the support cited by the Board both lacked an adequate factual basis, and was based on social policy considerations Congress had not given the Board the power to make.

The Board thereupon set the matter down for evidentiary hearings.

Senator CANNON. Let me ask you there, did the court say that the Board could not permit the youth fares, or simply required a review?

Mr. JOHNSON. It required the Board to consider whether there was a transportation basis in the act to support them. The Board had cited such nontransportation factors as the fact that youth in the age

12 to 20 bracket were likely to be not earning a lot of money but it was desirable that they be able to travel.

Senator CANNON. So, as a result, until the Board makes the decision, then, the youth fares are permitted to stand?

Mr. JOHNSON. Yes, sir; there is no question about that.

Senator CANNON. Is that the basis on which some of the carriers have filed, as I understand it in their rates, a proposal for reduced fare for the elderly and those rates were suspended pending this hearing?

Mr. JOHNSON. No, sir. The fares for the elderly that you refer to, I believe, are the ones filed by two foreign carriers for use over the North Atlantic, and those fares were never put into effect by the carriers.

The Board at the time they were submitted, did not have the power to suspend those fares, but only to investigate them. It did put them into an investigation status and the carriers then withdrew them. The carriers then withdrew them because they were replaced by the IATA fare package. There were two cases in 1965 where the Board considered senior citizen fares proposed by two local service carriers, and in one instance the Board permitted it, but the carrier shortly withdrew it, and in the other instance discrimination was so marked that the Board suspended the fare and did not permit it to go into effect.

Senator CANNON. What do you mean, "The discrimination was so obvious?"

Mr. JOHNSON. Well, the discounts were extremely steep and were available without limitation.

Senator CANNON. I see.

Senator PEARSON. What is the status of Hawaiian and Aloha Airlines? This is put down as a docket number.

Mr. JOHNSON. Yes, sir. That issue has been deferred by the agreement of all parties until the conclusion of the discount fare phase of our domestic fare investigation.

Senator PEARSON. So they are being effectively used on those two airlines today?

Mr. JOHNSON. They are in effect, yes, sir.

The question is whether they should be changed in any way by the Board. In other words, the Board will consider them, but it has not stopped their going into effect in those two instances. Technically speaking, they are under investigation, but the investigation is not proceeding pending the completion of the discount fare phase.

Mr. GINTHER. There was testimony yesterday indicating that in addition to the two tariffs on file with Aloha and Hawaii, that domestic carriers had filed senior citizen fares which were suspended by the Board. Is that correct?

Mr. JOHNSON. Yes, sir. They are the ones I referred to as being filed in 1965. Mohawk and Ozark Airlines were the ones that filed those. But they are not a current issue before the Board.

Mr. GINTHER. Continental Airlines filed a senior citizen tariff in 1967.

Mr. JOHNSON. We will check the record on that.

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

The Board subsequently reported that the senior citizen tariff filed by Continental in 1967 was limited to a vacation excursion fare package which included family groups as well. The fare was available only if four separate flights were utilized and three stopovers of 48 hours' duration each were observed on a circle or open jaw trip extending from 10 to 90 days' duration. The Board suspended the senior citizen portion of this tariff, considering that it raised substantial questions of unjust discrimination. (This decision came after the Fifth Circuit's decision on youth fares.)

In addition to the Ozark senior citizen tariff which the Board suspended in 1965, similar tariffs filed by Texas International in 1970 and Eastern Airlines in 1971 were suspended.

Senator CANNON. Yesterday in our discussion we got in the question of whether the senior citizen discount fares could be permitted at the present time, and we have been advised by the Board that those were not prohibited.

Mr. JOHNSON. Yes, sir. If senior citizen fares were to be proposed by the carriers at the present time, the Board would probably investigate them, but as to whether to suspend them or not, the question would be as to the extent of the discrimination. There is no Board decision that expressly says that senior citizen fares are unjustly discriminatory at the present time.

Senator CANNON. In other words, the Board might set them down for the investigation. Is that what they did in those two cases, or did they actually suspend those fares?

Mr. JOHNSON. They suspended one fare and permitted the other one to go into effect.

Senator CANNON. What was the basis of the suspension on the one?

Mr. SHERER. The two fares that we were referring to, in one case Mohawk Airlines had one they called the "Golden Age Fare" which had an age requirement of somewhere around 65 or older, but it was only available during certain limited hours of the day and certain days of the week, mainly up until noon and not beyond noon, and then after some period in the evening, after 7 p.m., and it was considered to be somewhat confined in application and therefore considered to be less discriminatory toward the rest of the passengers.

On the other hand, the Ozark filing, which was suspended and an investigation ordered, did not have these kinds of restrictive conditions. It was available widely, and as such was deemed to be more discriminatory, and therefore suspended by the Board.

Senator CANNON. I see, because it did appear to be discriminatory because of that particular circumstance, or those circumstances, in that case, that it—

Mr. SHERER. Yes.

Senator CANNON. Was that on a space available only, or was that on a reservation basis?

Mr. SHERER. My recollection is that it was on a reservation basis, equal opportunity with every other fare-paying passenger.

Senator PEARSON. Let me try to define this a little sharper. Is it your opinion that an air carrier, certified air carrier, can offer a reduced rate for elderly persons on a space available basis and that that, in and of itself, is within its powers under the statute?

Mr. JOHNSON. Senator Pearson, they can propose such a fare, and unless the Board suspends it, it will go into effect.

Senator PEARSON. And the Board has taken a position that it is not going to suspend them unless the Board finds peculiar and unusual circumstances which raise the flag of discrimination. Is that right?

Mr. JOHNSON. Yes, sir. If the circumstances are such as to suggest discrimination, then the Board could very well suspend it.

Senator PEARSON. Let me take you one step further. In the past, on a space available basis, it does not appear that there would be objection. But on a reservation basis there possibly is one in relation to the Ozark case?

Mr. JOHNSON. Yes, sir. That is true. I would suggest that—

Senator PEARSON. I am not really trying to tie you down on these things; I am trying to understand.

Mr. JOHNSON. Yes, sir. I may speculate that one reason the airlines generally have not proposed standby fares for the elderly as opposed to standby fares for youth is the inconvenience of the standby procedure to elderly people.

Senator PEARSON. It is not practical.

Mr. JOHNSON. Yes, sir, that is correct.

Senator CANNON. What about the two Hawaiian cases? Are those on a standby basis, or reservation basis?

Mr. SHERER. I am not sure, Senator. We will have to supply that. They may very well be on standby, with their frequency of operations. I will have to check it.

Senator CANNON. Would you supply that for the record?

Mr. SHERER. Yes, sir.

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

The Board subsequently reported that the conditions in the senior citizen tariffs of Aloha and Hawaiian Airlines currently in effect are as follows:

Age eligibility: 65 years and over.

Identification: Card costing \$5.00.

Priority on boarding: Standby basis ranking below military standby passengers.

Discount: Approximately 40% with slight variation between markets.

In addition to the Mohawk, Aloha, and Hawaiian senior citizen fares, the Board permitted Trans Caribbean Airways tariffs for senior citizen groups (men 65 and over, women 62 and over) and individuals. The group tariffs were on a reserved seat basis for groups of 10, available from 12:01 a.m. Monday through 2:00 a.m. Friday. The tariffs were in effect from March 16, 1966, through January 19, 1968. The individual fares were on a standby basis and were in effect from July 6, 1966, through June 30, 1967. The carrier did not seek to renew these tariffs after they expired.

Senator CANNON. You may proceed.

Mr. JOHNSON. Unfortunately, the evaluation of youth fares in accordance with the court's standards turned out to be extraordinarily difficult, and despite the efforts of all concerned the hearing did not produce all the evidence the Board needed in order to dispose of the issues of the reasonableness of the fares.

As a result, in late 1969 the Board ruled that another hearing had to be held on the issue of the economic impact of the youth fares. However, the Board did tentatively rule that the airlines were not guilty of unjust discrimination in granting reduced rates to youths.

The most important basis of that ruling was the belief that many youths would not travel but for the lower fares, and that by attracting youths as passengers, all airline passengers would benefit since the increased traffic would bring improvements in air transportation, such as new large-capacity aircraft and more frequent flights.

But the Board said that even this ruling could change depending upon the facts in the further hearing.

In January 1970 the Board instituted the domestic passenger fare investigation, and ordered that the new hearing on youth fares be made part of the discount fares phase of the investigation. All procedural events in that phase were completed in July of last year, and the case stands ready for Board decision. The case would have been a difficult one in any event. But it became even more so because evidence in other phases of the fare investigation, and the Board's decisions in other phases, bore directly on the outcome of the discount fare proceeding.

The 10 phases of the fare investigation are an integrated whole. At this point we have issued a tentative decision in the fare level phase of the investigation. Final decisions have been handed down in the flight equipment depreciation, leased aircraft, rate treatment of deferred Federal income taxes, rate of return, load factor, joint fares, and seating configuration phases.

The Board has reached a decision in the discount fares phase as well, subject to final agreement on the text of the decision. However, until that opinion is issued, the Board is not in a position to comment on its decision or on the merits of the case.

Senator CANNON. Will the Board in that decision address the entire spectrum of discount fares, that is, discount fares to the elderly, to the handicapped, to the youth, to everyone involved in the discount fare situation? Will that entire spectrum be covered in the decision?

Mr. JOHNSON. Senator, I have to say the answer is, only inferentially. At issue in the discount fare phase are the principal discount fares now in effect; namely youth fares on both a reservation and a standby basis, "Discover America" fares, and family fares. Those are the principal ones.

Senator PEARSON. What was the decision that was handed down and reported in the morning paper?

Mr. JOHNSON. That was a decision to permit family fares on an experimental basis for a limited time this summer from Tuesday through Thursday of the week on long-haul flights, and the discounts in those family fares were only 5 percent below the current discount on family fares, and it was felt that this was a perfectly feasible experiment for the carriers.

But that is a very limited thing, Senator.

Senator CANNON. Do you want to finish your statement?

Mr. JOHNSON. Yes, sir. Inferentially, however, even though it does not concern senior citizen fares, the discount fares decision will have a direct bearing on senior citizen fares on such matters as whether discount fares place a burden on the normal farepaying passenger, or essentially whether, in fact, the ordinary traveler has to pay more because other travelers get substantial discounts.

Senator CANNON. In other words, we can expect the Board's decision to cover at least by language from the evidence presented and the

findings all of the spectrum that is going to be involved in this discount fare situation?

Mr. JOHNSON. Yes, sir.

Senator CANNON. To the point that we would then be in a position to say that if Congress wants to go beyond this point, we will have to do it by language by specifically amending the Federal Aviation Act; is that correct?

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

Senator CANNON. All right, you may proceed.

Mr. JOHNSON. All of this leads to the eight bills under consideration today. I would like to turn first to the six that would give the airlines authority to offer reduced fares to the elderly.

Our main point in respect to these bills is that if the Board's discount fares decision holds that the unjust discrimination prohibitions of the Federal Aviation Act do not bar offering special fares to youths, the criteria employed in that determination would be applicable to the reduced fares for the elderly.

That means that if the Board were to uphold youth fares, assuming that the senior citizen fares the airlines proposed were economically sound, it is likely that they would be permitted to be put into effect.

No change in the Federal Aviation Act would be needed. On the other hand, if the Board finds that youth fares are unjustly discriminatory, that might well moot one of the principal grounds for the proposed legislation; that is, the understandable reaction that it is unfair to allow a 21-year-old to travel at discount rates while the elderly pay full fares.

The Board's finding, of course, could lead the Congress to authorize special fares for both classes of passengers.

However, the Board's discount fares decision will shed some light on the vigorously contested issue of whether reduced fares available only to a limited class inevitably burden other passengers in terms of higher fares or less convenient service. It is true that even if reduced fares for the elderly did burden other passengers, that would not necessarily foreclose the Congress from providing for such fares anyway, as a matter of social policy.

But it seems likely that Congress would wish to know whether or not those fares in fact are a burden to normal fare passengers, and whether the general fare level could be reduced for everyone if there were no discount fares of this type.

For these reasons we urge the Congress to withhold action on the bills providing for reduced fares for senior citizens until the board issues its decision in the discount fares proceedings.

Senator CANNON. Now, tell us again when you expect that decision?

Mr. JOHNSON. Well, sir, the work on the decision is virtually complete, and we are now in the process of validating a number of tables that will be attached to the decision, and I think it is entirely possible for the decision to be out in the first week in July.

Senator CANNON. The first week in July? So would you assume that it would be not later than the end of July?

Mr. JOHNSON. Without any question.

Senator CANNON. All right.

Some time in July we are going to have the Board's decision on this issue. Is that right?

Mr. JOHNSON. Yes, sir.

In addition to the bills relating to reduced fares for senior citizens, various of the bills under consideration here would provide for reduced fares for military personnel, for youths, for handicapped persons, and their attendants, and for widows, widowers, and minor children of persons who had died after 25 years or more of employment with an airline.

In respect to military personnel, as the earlier discussion of the fifth circuit's decision indicates, the airlines already have the authority to offer reduced fare transportation to GI's, and all are doing so. Youth fares are a main subject of the discount fares proceeding of course, and the Board hopes that Congress will await action on this kind of fare until the Board's decision issues.

Insofar as the other proposed amendments to the Federal Aviation Act are concerned, over the years the Board has consistently urged caution in adding new categories to those groups of persons already specified as authorized to receive free or reduced fare air transportation.

We do so now. Categories as limited as handicapped persons and their attendants, or the families of deceased veteran airline employees, might not in themselves have any significant impact on the economics of the air transportation system.

But changes of this nature in the act can easily result in requests for further changes that, again, standing alone, seem both fair and economically unharmed. The cumulative impact of these changes, however, could turn out to be material, unfortunate, and very difficult to reverse.

Thank you, Mr. Chairman, for permitting me to testify on behalf of the Board.

Senator CANNON. You have covered the situation with respect to the court's decision as to military. Have there been any specific court interpretations as to how far the legislative branch of the Government can go as a matter of social policy in providing for discriminatory rates?

That is, we have already covered the military, but you have some other categories, you have employees in there, you have ministers of religion, and so on. Have the courts actually spoken on that particular point?

Mr. JOHNSON. They have not spoken on that particular point, but the clear inference in all the opinions that I have read is that there is no limit on the Congress' power to enact reasonable conditions of service in interstate commerce. However, I would add, if the Congress were to authorize free or reduced rates transportation, it would not necessarily mean that the carriers would offer it.

For example, the Congress has authorized free and reduced rate transportation for ministers of religion, but it is my understanding that very few carriers—I know of only one trunk carrier—actually offer such fares.

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

The Board subsequently reported that as of June 14, 1972, only one of the eleven domestic trunk carriers and five of the eight local service carriers offer discount fares to members of the clergy on a general basis. One other trunk carrier offers

reduced fares to missionaries, and another offers reduced fares for clergy in Alaskan service only. Three of the five Alaskan carriers offer such fares. In addition, one Caribbean carrier, one helicopter carrier, one certificated commuter airline, three noncertificated commuter carriers, and four foreign-flag airlines in the South American and Caribbean offer such fares.

Senator CANNON. So you are saying that this would still be an administrative decision of the carriers even if we did authorize it, unless we mandated it.

Mr. JOHNSON. Unless you mandated it, yes, sir; but if this did impose a burden on the carriers that could not be compensated from other sources, presumably the Congress would have to provide a means for making the carriers whole if they were to lose money on it.

Senator CANNON. In other words, we might have to subsidize it if we are going to require it?

Mr. JOHNSON. Yes, sir; depending on the size of the class.

Senator CANNON. The thing that is sort of lurking in the back of my mind is, let's suppose the Board should say that youth fares are not proper now under the law. You can see the pressures that Congress is going to be put under: One, to legislate authority for reduced youth fares; and secondly, to legislate authority for reduced elderly fares; thirdly, instead of making the age 65 for the elderly, reduce it to age 60, or to age 55, and the youth instead of limiting it to age 18 on the high point, to limit it to age 25, and pretty soon we are likely to be in the position that people my age are the only ones that are going to have to pay full fare.

I can well understand that that might be considered discriminatory. I am wondering if we have any language at this time now out of the courts that would be helpful as to how far we can go in that area.

Mr. JOHNSON. Well, I am unable to apply such language that I can recall from any court limiting the Congress' power.

I would say, as a member of the group between 21 and 65, that I would like to have a special reduced rate as well.

There are contentions before the Board, and they are among those that the Board is considering, that if there were no discount fares, there could be a general fare reduction for everyone. I don't want to indicate to you that that is the Board's decision. That is not my purpose in making that remark. I do want to say, however, that a number of the parties to the case have made a substantial showing that that result might obtain, and that is one thing the Board wants to shed light on.

Senator CANNON. If you have the same number of travelers, I think that is obviously true. If you had the same number of travelers that you had now and everybody were paying full fare, then everybody could benefit by a fare reduction, at least those paying full fare now. Is that what you are saying?

Mr. JOHNSON. That is what I am saying.

And there is a very difficult question involving how much discount fare traffic is actually generated by the lower fare and how much is a diversion from a full fare.

Technically, that is known as the generation diversion ratio, but the evidence that supports generation of traffic is very hard to come by, and from our standpoint in the Board with the court's injunction to consider transportation factors only, the question of how much traffic is generated by a discount fare is extremely important.

There is a transportation factor which we must take into account. The same thing would be true with senior citizen fares, how much traffic would actually be generated by offering reduced rates to senior citizens. The evidence that supports that is also very hard to come by.

Senator PEARSON. The evidence is hard to come by, but do you have any evidence? What kind of statistical data do you have in relation to discounts first with these various classifications? That is, with the youth and with the elderly.

Mr. JOHNSON. Among the data we have are income availability of the various age groups, surveys of passenger preferences, whether passengers would have traveled but for the discount fare, and so on.

Senator PEARSON. Let me ask you this: To the extent you have any such statistical data, where did it come from?

Did it come from your prior hearings, or from airline surveys, from market surveys?

Mr. JOHNSON. It came from market surveys conducted by the airlines. It has come from our own researches. It certainly is true that the volume of data on the discount fare is unparalleled in the passenger fare investigation, and there is a tremendous amount of data from which we can derive reasonable inferences.

Over the years, the inferences derived from this data have been fairly proven out. There have been a few cases where the Board's predictions did not come to pass, but in general the data sources that we have, have proven themselves.

But even so, at the present time, it is hard to say that there is a lot of data available, specifically bearing on senior citizens, showing how many people would travel if the fare were reduced. We know that an assertion has been made that many would, but the statistical proof for it is hard to find.

Senator PEARSON. I have no further questions.

Senator CANNON. Thank you very much, Mr. Johnson and Mr. Sherer.

I see that Senator Roth is here now. We will hear from him next.

STATEMENT OF HON. WILLIAM V. ROTH, JR., U.S. SENATOR FROM DELAWARE

Senator ROTH. Mr. Chairman, rather than read my prepared remarks, I would ask with your permission they be incorporated in their entirety. I will very briefly summarize them to tell you why I became interested in this matter.

Essentially, the question of reduced rates for elderly came to my attention when I was in the U.S. House of Representatives. At that time, I received a number of inquiries from constituents back home, who were concerned and interested in getting somewhat similar treatment to that which was being given our young people.

For that reason, I introduced a bill on the House side proposing that our senior citizens be given special discounts. I think it was at that time Senator Moss was good enough to introduce the same legislation on the Senate side.

Basically, the reason I introduced the legislation was that it seemed to me we do have a number of special fares for the youth, which I

strongly support, but I also believed that it was only fair that equal treatment be given to our senior citizens.

As you know, I think today there are standby youth fares of approximately 50 percent, which means that in some cases, and I think this is true last year, that you could travel from coast to coast for something like \$104.

The reason I felt that equity demanded that we give special consideration to our senior citizens, are four: In the first place, our senior citizens, as you well know, suffer a severe cut in pay when they retire, and as a result they are a group that are less able to pay the high rates of air transportation.

I think it was last year that there was something like a 6 percent increase in air rates. It is much more difficult, of course, for the senior citizens to meet that increase than probably any other group in our society.

You are aware as well as I am that the ravages of inflation are more difficult for the senior citizens to offset than any other group.

Tragically, it is at that very time that people begin to have the time to travel. As you are well aware, when you work your vacation periods are limited. The senior citizens have ample time, in fact, time becomes a problem to them. They have the time to do things they would like to do, but not the wherewithal.

Of course, one of the basic facts of life today in America is that families are split up throughout the country. Grandparents like to visit their children and grandchildren, and too often they can't afford to do so, so this proposed legislation seems to me to be a step to try to help more of our senior citizens become more mobile.

The third factor that I think is worth mentioning is that other types of transportation becomes less useful the older one becomes. When one becomes 65 years and older, he, of course, may lose his driver's license so that he can't drive, and use that mode of transportation.

As we get older, people have arteries and other infirmities, and it becomes difficult for them to travel by train. It just takes too long. The plane does offer them a means of going to see their loved ones or to travel generally.

Finally, when I introduced the legislation, I also based it upon the guidelines which I know you are familiar with which in essence says that you can help offset costs by having a full plane rather than a number of empty seats.

It was in 1964 that the Civil Aeronautics Board issued its criteria which stated that discount fares are generally offered for basic service to improve a carrier's net income by filling seats that would not otherwise be occupied.

The economic justification is that when they are not fully self-supporting, they can improve net earnings by reducing costs through a more even distribution of traffic and/or generating traffic, provided the diversion of revenues from existing basic-fares traffic is more than offset by the cost savings and additional revenues.

Thus, discount fares should meet direct costs and make contributions to overhead expenses, maximize revenues, enhance the carrier's profit positions and ultimately afford a basis for reductions in the general fare level.

So an economic argument can be made that by filling the plane, particularly with the new jumbo planes, discount rates can help offset overall costs.

My amendment is, as you know, permissive. It gives authority to the Board to control. I recognize that in many ways, and I heard this point being made earlier, that standby is not nearly as appealing to the senior citizens as it is to the youth.

I don't think that is 100-percent true. I would say there are people 65 years old and older who would be willing to go and standby. I think it is also possible, or consideration might be given that by standby we don't mean the minute the plane takes off, but perhaps a few hours before, so that the senior citizen would not be required to go out unless he knew he could board a plane.

Senator CANNON. Of course, if you do that, that is on a reservation basis and poses some different problems, because your bill does provide for standby, and if you get into a reservation basis then you truly raise the specter of whether it is discriminatory.

Senator ROTH. I just throw this out as a suggestion, Mr. Chairman, that a cut-off could be, instead of immediately before the plane takes off, could be 4 hours or 2 hours ahead of departure. This practice does have certain ramifications that need be carefully amended and I don't have any special expertise in this area.

Perhaps standby should be limited to when the planes take off, but I'd throw out the suggestion that it might be worth considering whether standby could be moved back an hour or so to prevent senior citizens from having to come out and wait until actual departure.

In any event, it did seem to me that there was merit to giving special consideration to the senior citizens because if it is economically justifiable to do it for the young, the same opportunity at least ought to be given to our senior citizens.

Senator CANNON. Let me ask you this: As you heard from the earlier witness, the Board is now considering the general question of fares and discount fares and whether they are discriminatory. If the Board should come out with a decision that says the youth fares are discriminatory, then of course that would immediately follow that the elderly fares would likewise be discriminatory.

Would you then be in favor of Congress taking action to provide for a discriminatory fare in favor of those, and possibly other groups even though it required a subsidy to the airlines to take care of that?

Senator ROTH. It seems to me you have three options. I am not an expert in the area. One is to say no. Two, you could provide language that follow the guidelines that I have just quoted, that is, that there could be discrimination so long as the economic effect was to help over-all costs, and that is, as I understand it, the basis of the special youth fares.

A third possibility would be to go a step further and subsidize such fare.

I would have some reservations on the last possibility. I would not want to give my answer on that, as I am not sure this is the area with which we ought to subsidize transportation for the senior citizens. Maybe there are other and greater needs than this.

But I would urge you, if they rule that the special treatment given under the quoted guidelines as being illegal, then legislation should be adopted to permit it to the extent that it can be shown such discount fares help offset fixed costs and overhead.

Senator CANNON. Yesterday, the committee heard testimony supported by informed legal opinion that at the present time the airlines do have the authority to offer reduced rate transportation to the elderly on a space available basis.

Now if that is the case, do you believe that there is any need to legislate in this area?

Senator ROTH. Well, one of my purposes in putting the bill in was to show a congressional intent that we would hope that the airlines would act affirmatively in this area.

Senator CANNON. But your bill would not require that, it would purely make it permissive.

Senator ROTH. It would be permissive, and subject to the control of the Board itself.

Senator CANNON. As we heard earlier from the earlier witness, they have authority now for the ministers of religion and not many of the airlines put that into effect.

Senator ROTH. May I make one comment?

The thing that concerns me is that they did move with respect to the young. I think that is fine. I am not critical of it. In fact, I strongly support that.

Somehow I would like to have this committee or the Board—I don't care how it is done, I am not particularly interested in legislation or having my bill adopted—I would just like to see equal treatment for the senior citizens.

Senator CANNON. The question it seems to me from what we have heard, one of the questions the Board will be deciding is, is there in fact discrimination in permitting it for the young, and it is my understanding that the theory there was that this has the opportunities for promotion of travel, whereas with the elderly the question is whether or not it is an opportunity to generate new traffic or whether it is just diverting travel from fare-paying passengers now to discount fare passengers.

In other words, is it really a new market, or is it the market that has been in existence for a long time?

Senator ROTH. It would seem to me, at least hopefully, that it would partially open up new markets, because I think if you are paying 50 percent less, there are going to be those who can travel by air who could not at the higher rates.

Senator CANNON. That is apparently one of the questions that will be resolved by the Board by studies rather than by us guessing as to what it is likely to do.

Now, presently the elderly are eligible for a variety of discount fares particularly suited to their circumstances, because most of the discounts apply only during non-peak travel.

For example, the carriers offer "Discover America" excursions, night coach and family fares, all of which offer discounts of 20 to 30 percent. Aren't these fares helpful in meeting the needs of the elderly for lower cost air transportation?

Senator ROTH. I think they do, yes. At the same time, it is my understanding for the young that many of the reductions are 50 percent, which is substantially more.

Senator CANNON. That is true, and they run not only the question of standby initially, but where it is not a nonstop flight to their ultimate destination, they run the possibility of being bumped en route, and many of them actually are bumped en route.

Senator Percy raised the question of the fact that he had talked to a number of people in nursing homes who favor this sort of thing. I would shudder at the thought of people coming out of nursing homes to go out and engage in a standby operation at the airport and then not being able to go nonstop to their destination, run the risk of being bumped someplace en route.

It seems to me it could raise grave problems.

Senator ROTH. I don't think that would be helpful.

Senator CANNON. All of these discount fares that I referred to here, even though they are not 50 percent discount, provide for a positive reservation. In other words, they are reservation-type discounts, rather than standby-type discounts.

Senator Pearson?

Senator PEARSON. I don't think I have any questions. The Senator makes a very excellent statement. We get hungup, really, on this discriminatory issue, on whether or not it is on a space-available basis or whether or not it is on a reservation basis.

But the section that deals with this has it both ways. For directors, officers and personnel, they can be free or discount on a reservation basis, and the act says so.

The only other reference is to ministers. They are on space available. I think we are really going to take this by the horns. If it is the judgment of the Congress to do this, we are going to have to do it for the elderly, permit it, permit a discount, and do it on a reservation basis.

Senator ROTH. You could do that within the general guideline that it had to contribute to the overall costs. It does not necessarily require a subsidy.

Senator PEARSON. Thank you very much.

Senator CANNON. It is true that may be discriminatory, and that is why I asked the counsel of the Board if there had been any decisions as to how far Congress can go as a matter of social policy in discriminating, and I think it does pose a real problem as to how far we can discriminate.

Let me ask you one question: Does your bill set an age limit, or does it just say—I see that it does—65 and over. I might say I like the idea of pushing young up further. I hope that will apply politically as well as otherwise.

Thank you very much.

Senator ROTH. Thank you, Mr. Chairman.

(The statement follows:)

STATEMENT OF HON. WILLIAM V. ROTH, JR., U.S. SENATOR FROM DELAWARE

Mr. Chairman, I appreciate this opportunity to appear before the Senate Commerce Committee and to present my views on S. 2061 which I introduced on November 16, 1971.

My bill would amend the Federal Aviation Act of 1958 by authorizing reduced rate transportation for elderly people on a space-available basis.

The Federal Aviation Act of 1958 would be amended by inserting "and elderly people" immediately after "ministers of religion" of section 403(b) of the Act.

Section 403(b) would be amended by adding a new sentence: As used in the preceding sentence, the term elderly people means individuals aged sixty-five and older.

As a member of the House of Representatives, I originally introduced this bill as H.R. 17606, May 23, 1970. I assure the Committee that I have lost none of my enthusiasm for this issue, and I hope you will interpret my presence here today as ample evidence of that.

The basic meaning included in my bill is quite simple—the senior citizen needs assistance in transportation, particularly by air.

The first problem area is that present air fares are higher than the average elderly person can afford.

A second factor is that air fare increases push the possibility of air travel even further away from these people. An example of rising air costs would be 6 percent air passenger fare increase in 1971. This increase may be of little significance to the average citizen, but on the other hand, the average senior citizen pays out one-seventh of his income for transportation. This is enhanced further by their inadequate retirement income with the constantly rising fares which leaves the elderly with a devaluing income. Thus, a fare increase has a significant impact on the older citizen's fixed income. A third factor concerns alternate modes of passenger transport.

The automobile is tedious and physically demanding of the driver, especially on medium and long trips. Thus, when an individual reaches the senior citizen age level, driving demands more than is physically possible for a lot of older persons. Many of the elderly do not have a license to drive, and many cannot afford an automobile, in any event.

Some railroads and buses should be given credit for initiating discount fares years ago for the blind and handicapped. This has given these citizens opportunity for greater mobility.

On longer trips, an airplane transports the senior citizen to his destination in a short time, permitting him to arrive rested and physically and mentally alert.

Another factor is that reduced rates would enable many older persons to visit members of their family who reside at some distant point. This puts a definite hardship on the elderly when the most logical mode of travel for long distances would be the airlines. But, unfortunately the airlines' prices are too high for the average senior citizen's pocketbook.

This is rather ironical in that airlines have promoted youth fares for the ages of 12 to 21 years, while completely omitting the elderly in these reduced fares. On this point, I would like to repeat what I said on the Senate floor in introducing this legislation:

"A young person wishing to take advantage of this special rate need only show proof of his age and purchase a youth-fare card for a nominal fee from most of the major airlines. Then he checks with the airline to determine when there will be an extra seat available on the flight he wishes to take. The savings for the youth on a round trip from Washington to San Francisco will be approximately \$104.

"While I am firmly in favor of extending special air fare rates to youth, I can also understand what an enormous benefit this type of reduction could be to our elderly. Although many elderly Americans will still not be able to afford air fares even at these reduced rates, many others, with the advantage of reduced rates, would be able to afford the convenience of flying.

"Furthermore, the airlines would stand to gain by this action. It is very unlikely that there would be any considerable transfer of present passengers from a higher to a lower fare category, since older people, with limited means, generally cannot afford air travel at standard-fare levels. Any such shift which might occur would be more than offset by the increased numbers of older people who would subsequently decide to fly."

Finally, these elderly Americans have worked and earned their retirement. They now have leisure time available, probably for the first time in their lives and should be given the benefit of reduced rates on a standby basis.

There are some 20 million people over the age of 65 with a substantial increase in numbers every year. Moreover, in 1970, only one out of 20 air passengers flying interstate was 65 years of age or older. It is imperative that we initiate a program which takes into account such a large number of citizens.

Even with a reduced rate—standby basis, many of the elderly would still remain unable to purchase an airline ticket. But on the other hand, many senior citizens who are unable to afford to fly now, would be able to, given the privilege of reduced fares.

If for no other reason, the elderly reduced rates on a standby basis is economically sound.

The airplanes are larger than ever with the era of jumbo jets.

This means more surplus seats than ever before—space which flies unoccupied and therefore making no return to the airline, farewise. With unused space available, it stands to reason that the sale of additional seats, even at reduced fares, makes the particular flight more profitable. The few additional passengers add nothing to the fixed costs of the plane movement, and very little, if anything, to the out-of-pocket costs.

Thus, with the inclusion of a reduced rate on a standby basis for the 65 year and over citizens, the otherwise empty seats, would contribute additional income to the airlines that is otherwise lost. The increase in passengers would more than offset any transfer of present passengers from a higher to lower class fare. The simple fact is that senior citizens cannot afford the standard air fare. But, a substantial decrease in the price would enable them the convenience of flying.

The logic behind reduced fares has been recognized by the Civil Aeronautics Board as valid, as such, in 1964, when they established basic guidelines to be followed then reviewing discount rates. These criteria are as follows:

“Discount fares are generally offered for a basic service to improve a carrier’s net income by filling seats that would not otherwise be occupied. Their economic justification is that when they are not fully self-supporting, they can improve net earnings by reducing cost through a more even distribution of traffic, and/or generating traffic, provided the diversion of revenues from existing basic-fare traffic is more than offset by the cost savings and additional revenues. Thus, discount fares should meet direct costs and make some contribution to overhead expenses, maximize revenues, enhance the carrier’s profit position and ultimately afford a basis for reductions in the general fare level.”

Mr. Chairman, the economies are available. It is for us to use them. Thus, it is with complete candor that I submit this bill with the realization, and earnest desire, that the older generation be given every opportunity and consideration for air travel, especially when it is economically feasible.

Senator CANNON. Our next witness is the Honorable Robert 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

Mr. BINDER. Good morning, Mr. Chairman, and members of the committee.

I appreciate this opportunity to appear before you today to discuss the various bills before the committee authorizing free or reduced rate transportation for selected groups (S. 1303, S. 1554, S. 1591, S. 1655, S. 1808, S. 1942, S. 2055, and S. 2061).

Most of the bills address the issue of affording free or reduced-fare air transportation to the elderly and handicapped. Another prevalent provision among the bills would allow common carriers by railroad to afford free or reduced-fare transportation to the elderly.

Other provisions found among the various bills would allow similar privileges on air carrier flights for young people, military personnel on leave, and surviving families of airline personnel who die while employed by an air carrier after serving in the employ of the airline for 25 years or more.

The Department understands the concerns of those who support the various bills now before the committee. The law now contains a number of provisions specifying identifiable groups to whom common carriers may grant free or reduced-rate transportation. These groups include ministers of religion, personnel of the Armed Forces, and blind or disabled persons. In addition, these carriers frequently offer reduced rates to other groups for promotional considerations. Among those who have enjoyed these rates are students, young people, affinity groups, and incentive groups. It is easy to understand why an individual observing this situation would ask why the elderly should not be singled out for preferential treatment. We would certainly think that they may be more deserving or at least equally deserving as some of the other groups I have mentioned.

The administration is very much interested in, and concerned about, the problem of transportation for the aging, and as part of the President's overall initiative with respect to the aging, the Department is intensifying its efforts to address the problem in several ways. The problem of providing adequate public transportation for the Nation's 20 million citizens over 65 has been exacerbated by the gradual erosion of public transportation combined with an ever-increasing fare structure. This poses a severe problem for many of the elderly who live on moderate or inadequate incomes and who, like everyone else, must depend upon the ability to travel to acquire such basic needs as food, clothing, and medical services. Therefore, most of our activities are associated with the Urban Mass Transportation program and include a number of demonstration projects testing new systems, vehicles, and facilities designed especially to increase accessibility to public transportation for the elderly and handicapped. In addition to investigating physical changes to vehicles and stations such as wide doors in vehicles for passengers in wheelchairs, and escalators to improve mobility at stations, we are testing different concepts in demand-responsive transportation, which should be of particular benefit to the elderly and handicapped.

We also have included in our proposed Federal-Aid Highway and Mass Transportation Act of 1972 a provision prohibiting the Secretary from approving a capital assistance project for the construction or acquisition of new urban mass transportation facilities or equipment unless he determines that the project meets standards he prescribes for meeting the special needs of the elderly and handicapped.

We are not unmindful, however, that the elderly and handicapped have a real need to use intercity as well as local transportation. Air and rail transportation are frequently essential to these groups for such purposes as visiting members of the family or seeking special medical aid. Therefore, we expect to devote more attention to problems the elderly and handicapped face in making these longer trips.

We believe that the private sector as well as the Government should play a role in meeting the special transportation needs of the elderly and handicapped. At this juncture, more needs to be done to determine what these needs are and how they can best be met. I might mention in this regard that Arthur Fleming, the President's Special Consultant on Aging, soon will be meeting with representatives of the Air Transport Association to explore various means by which the

resources of the private sector may be brought to bear more fully on this problem.

In our study of the problem of transportation for the aging and handicapped, and particularly in connection with proceedings before the CAB, we have focused upon various proposals to extend special fare treatment to selected groups such as those referred to in the bills now before the committee. Despite the worthy objectives of the legislation, the proposals they contain do present some problems.

The whole approach of discount fares brings into question the general finances of the carriers involved. As this committee knows, the use of discount fares in recent years by IATA carriers has resulted in substantial self-diversion of scheduled passengers from higher fares to lower fares, and has contributed to the financial difficulty of the carriers in the recent past. It is important to note that these complex, economic questions are now before the Civil Aeronautics Board in the domestic passenger fare investigation, and we have submitted extensive testimony directed to these issues. Indeed, I was pleased to hear from Tenney Johnson this morning that the Board's decision on these questions has been made and we will be knowing what it is soon. In addition to that, I will be happy to make available for the record of the committee the testimony of the Department's witness before the Board and the brief we submitted to the Board on the question of discount fares.¹ These, I think, will lay out our views on economics in greater detail than I would attempt to do this morning.

Our basic position with respect to the Board proceeding is that we really should find out what the Board proposes to do on these issues before we would recommend any legislative action in that area.

And I was struck this morning in hearing Tenney Johnson state that in the general passenger fare investigation there has been considerable testimony directed to the fact that if you eliminated the special fare discounts, everyone could have the benefit of a general reduction in fares.

In addition to that type of testimony, we have indicated that we are in favor of reduced fares on a space available basis during offpeak hours or on the lightly traveled days of the week, provided that this reduced rate transportation is made available to all. From the standpoint of the elderly who are likely to be less in need of transportation during peak times, reduced fares during offpeak times should be of real benefit, as they would be to any other travelers able to use such fares at those times.

The basic difficulty with the approach taken by the bills before the committee is that they would result in discrimination against members of the traveling public who do not fall within one of the selected groups. By adding new groups to those already singled out in the statutes for special preference, the bills compound an aggravating problem. As the lists of groups grow, the burden thrust upon other travelers increases, and the discrimination against other identifiable groups such as the poor becomes more unjust. We have faced this problem in the case of discount air fares for students. Why, for example, should a young person who has had to forego an education in order

¹ See page 83.

to work full time pay a fare double that paid by a student his same age sitting in the next seat?

For the foregoing reasons the Department opposes the enactment of the bills before the committee. This is not because we oppose making transportation available to the elderly at reduced fares, since I have discussed ways in which this can appropriately be done. It is rather that we believe the approach taken by the bills is inappropriate.

Before I close, I should point out that we would not place the proposal in S. 1655 in the same category as most of the other bills. S. 1655 permits air carriers to grant free or reduced-rate transportation to surviving family members of an airline employee who dies while employed by the carrier after 25 or more years of such employment. We believe the group identified by this bill should be distinguished from the other groups because the matter of affording them special treatment is a labor-management question that may be left to the parties.

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

Senator CANNON. Thank you very much, Mr. Binder, for your statement. We are advised that because section 403(b) of the act is so specific regarding which airline employees and their family members may receive free or reduced-rate transportation that S. 1655 is necessary if widows and dependent children of deceased airline employees are to enjoy past privileges in the event the employee did not die in the line of duty.

Now, with that interpretation, contrary to your statement, we are told, then, that that is not a matter that may be solved by labor-management negotiations or agreement, but must be recommended by legislative amendment to section 403 of the act.

Mr. BINDER. To the extent that I have been misinformed, Mr. Chairman, and what you have told me is the fact, that would certainly affect our view about it. If that is the case, then that obviously would be a consideration to be taken into account.

Senator PEARSON. How about this for a solution?

Just air carriers granting the authority for reduced rates for everyone on a space available basis?

Mr. BINDER. Well, Eastern Airlines tried something like that when they started the shuttle. They were able to start a regular commuting operation between high population centers and at that time grant very low fares, as I remember, compared to the reservation fares at the time.

Senator PEARSON. They do now, as I understand it, guarantee everyone, and if they are oversold they bring in another aircraft.

Mr. BINDER. I have read that guaranty.

Senator PEARSON. Did they start out that way?

Mr. BINDER. Did they start out with the guaranty?

I believe so. From the earliest time I was aware of it, Eastern said if you found yourself at the airport and the plane was full, they would roll out another plane. I have never had that done for me.

Senator PEARSON. That is the practice; isn't it?

Mr. BINDER. Yes.

Whether the air transportation system throughout the country could be maintained on that basis, I think is not clear. But between high traffic generating centers, I have been puzzled as to why other airlines have not adopted the same approach.

It seems to have been successful for Eastern, and it is not clear to me why it has not been followed by others.

Senator CANNON. PSA has adopted similar policy out in California. Of course, that is an intrastate airline, but I should also point out that the fares on the shuttle here have gone up, almost doubled, in the last 5 years.

Mr. BINDER. Yes; I am aware of that. I have not made an analysis of how they compare to the scheduled fares between those points. I think they are fairly close.

Senator CANNON. They are very close to the scheduled fare now, where they started off substantially lower. That gap has constantly narrowed.

Thank you very much.

Mr. BINDER. It is a pleasure, Mr. Chairman. Thank you.

Senator CANNON. Our next witness is Mr. Thomas G. Walters, president of the National Association of Retired Federal Employees, of Washington, D.C.

STATEMENT OF THOMAS G. WALTERS, PRESIDENT, NATIONAL ASSOCIATION OF RETIRED FEDERAL EMPLOYEES, WASHINGTON, D.C.

Mr. WALTERS. Thank you, Mr. Chairman.

First of all, I would like to associate my thinking and my position with the two Senators, Senator Stevenson and the statement presented by Senator Roth of Delaware.

I am Thomas G. Walters, president of the National Association of Retired Federal Employees, and association with more than 158,000 members throughout the 50 States, the Canal Zone, Puerto Rico and the Philippines, composed exclusively of retirees of the Federal Government and their survivors.

I am appearing here today to voice our association's strong support of S. 1808, introduced by Senator Frank Moss, and cosponsored by you, along with Senators Bible, Church, Cranston, Fong, Hughes, McGovern, Metcalf, Mondale, Montoya, Pell, Thurmond, and Williams.

This bill would greatly benefit senior citizens by amending the Federal Aviation Act in order to authorize certain reduced rate transportation to individuals 65 years of age or older. I believe that the enactment of S. 1808 would be helpful to both senior citizens and the airlines.

I firmly believe that the reason more of the elderly do not presently take advantage of the comfort and speed of air travel is that they simply cannot afford the air fares.

The Senate Special Committee on Aging, along with various other groups and organizations concerned with the aged and aging, has identified the major problem facing the retired and elderly as being "inadequate income."

Citing the particular financial situation of the civil service annuitants and survivors represented by our organization, I should like to call your attention to the gravity of this income problem. The latest statistics available to us show that of an approximate 900,000 civil service retirees and survivors, some 273,000 receive less than \$100 per month; more than 511,000 receive less than \$200 per month; and 698,000, or, more than two-thirds, receive less than \$300 per month, as an annuity from the Federal Government.

No one can argue with the fact that an income of \$3,600 or less per year, is inadequate to meet necessary living costs, and certainly does not provide any extra for travel costs. Even retirees receiving more adequate pensions often cannot afford the costs of air travel.

We have found that, second to inadequate income, the greatest problem and fear facing our senior citizens is "loneliness." Even though they had large families, many of the elderly are now widowed and their families scattered throughout the country.

Now, due to traveling costs, they simply cannot afford to visit sons and daughters or other relatives and friends. A reduction in air fares would greatly aid many of these older persons by putting the cost of air travel within their means and thus also presenting them with the opportunity to occasionally visit family and friends. They would also be able through travel, to visit and view some of the many beautiful sections of our great country.

I would like to add, Mr. Chairman, that our State federation conventions have just been concluded and practically every State in the Union has passed a strong resolution urging some form of reduction in transportation so that those who are mentally and physically able can move around over the country without too much cost.

By providing a fare reduction of perhaps 50 percent on a reserved seat basis from Monday through Thursday, a slack period, the airlines themselves would also benefit, for I firmly believe that more of the elderly would take advantage of the reduced rates and utilize air travel, thereby attracting new riders into the airlines market.

I personally travel a good deal on association business, and I know for a fact that during the week, most flights are not anywhere near filled to capacity. In fact, I have been on several planes recently attending some of these State federation conventions and they were no more than one-third to one-half filled in the coach section and in the first-class section nobody at all, and most of the time only a handful of people in the first-class section.

So obviously the airlines could well benefit by additional riders. I feel that the fact that reduced rates are already available to the "youth" segment of our population is adequate reason alone for similar treatment of be extended to the elderly.

We desire to recognize Senator Percy of Illinois who is sponsoring similar legislation, and we appreciate all of the assistance and help from any and all Senators and Members of the House of Representatives in bringing about a reduction in transportation for senior citizens.

On behalf of the National Association of Retired Federal Employees, and the 20 million senior citizens in this country—and I might add according to our extended life expectancy that number is going to

grow each year and it has been growing quite rapidly in the past few years—I strongly urge that the Subcommittee on Aviation of the Senate Committee on Commerce, favorably report and urge Senate passage of S. 1808, so that our older Americans can enjoy more of the convenience and pleasures of the modern age.

Now our organization, Mr. Chairman, will be happy to furnish any information you desire or attempt to answer any questions this morning that you or members of the committee might have.

Senator CANNON. Thank you, Mr. Walters. What percentage of your members are over 65?

Mr. WALTERS. Practically all of them. I don't know exactly, but you have got to be eligible to retire and be retired to be a member of the organization, so the vast majority of our people are 70, 75, 80, and 85 years of age.

Senator CANNON. Don't you have a lot of them that are between 60 and 65?

Mr. WALTERS. Well, we have a good many, yes, but not compared to the 900,000. The percentage would be quite small because if you are between 60 and 65, you must have retired in the last few years.

Going to conventions and other types of meetings, I would judge that the vast majority of those in attendance are around 70 or more years of age, but that is purely a guess.

Senator CANNON. You indicated that of these civil service retirees and survivors, that 698,000 or more than two-thirds receive less than \$300 per month.

Maybe we ought to make it on an income basis and say that everyone who receives less than a certain amount ought to receive reduced rate transportation.

Mr. WALTERS. We would support that. These figures are from the U.S. Civil Service Commission's latest report.

Senator CANNON. It would appear that might be more equitable than simply an age basis.

Mr. WALTERS. You would not get much of an argument out of me on that approach. Look at that bunch that is getting less than \$100 a month.

Senator CANNON. Do the members of your association take advantage of the special discount fares that are in effect now?

Mr. WALTERS. They do to some extent. Not too much the night flights. Our people like to go to bed early and get up early. They don't frolic around much at night. They don't like the night coach flights. There has been criticism of that at conventions in discussing these resolutions.

They do take advantage of some of the special package deals that go to certain sections of the country, yes, sir, and appreciate that, but the night flights don't appeal to our membership very strongly.

Senator CANNON. As you know, most of these bills provide on a space-available basis.

Mr. WALTERS. We would support that.

Senator CANNON. How attractive is that to the members of your organization?

Mr. WALTERS. Old people, and I can speak, because I am approaching that age, they would prefer not to have to stand by any great length of time, but we would certainly support that approach because

it would be a step in the right direction. It would be better than we have now.

They would prefer it otherwise, but I am sure that we wouldn't get any strong adverse criticism if you put it on a standby basis.

Senator CANNON. I have noted that in talking to some of these young people who have been on standby, particularly during holiday periods, that sometimes they will stand at one of the big hubs as long as 2 days at a time trying to get a ride.

That is quite a burden for a person 65 or over.

Mr. WALTERS. Our people don't have a schedule like some of these young people. If they know it is going to be crowded around holidays, they can go some other time, because that is one thing they have plenty of—time.

Senator CANNON. Senator Pearson?

Senator PEARSON. I don't have any questions. I thank you, sir. It is a helpful statement.

Senator CANNON. Thank you, sir.

Mr. WALTERS. Thank you.

Senator CANNON. The committee will stand in recess until 10 o'clock tomorrow morning.

(Whereupon, at 11:22 a.m. the subcommittee recessed, to reconvene at 10 a.m., Thursday, June 15 1972.)

REDUCED AIR RATES

THURSDAY, JUNE 15, 1972

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

The subcommittee met at 1:35 p.m. in room 5110, New Senate Office Building, Hon. Howard W. Cannon (chairman of the subcommittee) presiding.

Present: Senators Cannon and Pearson.

Senator CANNON. The hearings will come to order.

Our hearings today continue on eight bills providing for free or reduced rate transportation for the elderly, the handicapped, youth, military personnel, and certain dependents of deceased airline employees.

At this point I will insert a statement by Senator Robert P. Griffin.

STATEMENT OF HON. ROBERT P. GRIFFIN, U.S. SENATOR FROM MICHIGAN

Mr. Chairman, I appreciate the opportunity to submit a statement to the Subcommittee on legislation to authorize airlines and other common carriers to offer free or reduced fares for senior citizens.

As you know, one of the bills under consideration by the Committee is S. 2055, which I introduced last year. This bill would amend the Federal Aviation Act of 1958 by permitting air carriers to offer reduced rates for persons who are 65 years of age or older on a space available basis.

In addition, my bill would amend section 22 of the Interstate Commerce Act to the effect that free or reduced rates for the elderly on a space available basis would not be prohibited. This provision also would apply to trains operated by AMTRAK.

Mr. Chairman, it is an unfortunate fact of life that the majority of our senior citizens are virtually imprisoned because economical transportation is not available. For example, in 1970 only one million of our 20 million senior citizens crossed a State line.

Furthermore, persons over 65 account for only 5% of all airline passengers. Certainly, Congress can and should do something to correct this inequitable situation.

To my knowledge, the only reduced rates for the elderly currently offered by any airline, railroad, or interstate bus line, are those offered by the two Hawaiian airlines. However, the Civil Aeronautics Board is investigating these rates as well as other discount fares for students and youth.

In the absence of specific Congressional authority, several courts, as well as the CAB, have raised questions as to the legality of free or reduced fares for certain classes of people. Some have argued that any special rate based on age is discriminatory and unjustified.

However, at present there is age discrimination against the elderly because of their inability to afford the cost of air and other forms of transportation. Until our senior citizens are provided with adequate retirement income, including increased Social Security payments and better private pension security, they should not be denied basic services, such as transportation, which are available to the rest of society.

The importance of transportation for the elderly was emphasized by the 1971 White House Conference on Aging. In its report the Conference stated that "the transportation needs of the elderly cannot wait for more studies. Immediate action is needed."

One of the specific recommendations of the White House Conference dealt with reduced fares. The Conference proposal is quite similar to the provisions of my bill and reads as follows:

"Appropriate legislation at all levels of government should provide that the elderly and handicapped be allowed to travel at half fares or less on a space available basis on all modes of public transportation."

I wholeheartedly concur in this recommendation.

The effectiveness of reduced fares for the elderly is demonstrated by the increased ridership on urban transit systems in several communities, such as New York, where such fares have been introduced.

While my bill and other similar proposals would not mandate reduced fares, I believe the airlines and other transportation modes would respond affirmatively to passage of such legislation. It should be pointed out that several airlines have proposed reduced fares for senior citizens in the past but these fares have been withdrawn after the CAB suspended the rates pending an investigation.

With respect to the public transportation systems covered by these bills, many carriers including the airlines are operating at far less than capacity on many routes during non-peak hours. Offering reduced fares on a space available basis should not impose any undue economic burden on transportation systems. At the same time, the availability of space on many carriers, even during certain periods, provides a fair and reasonable opportunity for the elderly to travel across our great country as well as overseas.

Mr. Chairman, there is widespread support in Congress for this legislation and I have received several hundred letters from constituents in support of my proposal. I urge the Committee to act promptly on these bills so that legislation may be enacted before the end of this year.

Senator CANNON. Our first witness this afternoon is Mr. George Gilbert, State Director of Southern New Jersey for the American Association of Retired Persons, and a member of the Legislative Council for the National Retired Teachers Associations and the American Association of Retired Persons.

You may proceed, sir.

STATEMENT OF GEORGE E. GILBERT, STATE DIRECTOR OF SOUTHERN NEW JERSEY FOR THE AMERICAN ASSOCIATION OF RETIRED PERSONS, AND A MEMBER OF THE LEGISLATIVE COUNCIL FOR THE NATIONAL RETIRED TEACHERS ASSOCIATION AND THE AMERICAN ASSOCIATION OF RETIRED PERSONS; ACCOMPANIED BY PETER HUGHES, LEGISLATIVE REPRESENTATIVE; AND ROBERT UTZINGER, REGIONAL REPRESENTATIVE OF REGION VIII

Mr. GILBERT. Mr. Chairman and members of the subcommittee: I am George Gilbert. I am the State Director of Southern New Jersey for the American Association of Retired Persons, and a member of the Legislative Council for the National Retired Teachers Association and the American Association of Retired Persons. These two associations promoting the interests of older Americans have a combined membership of nearly 4 million members.

Accompanying me today to appear before this distinguished committee are Mr. Peter Hughes, who is a member of our national legislative staff, and Mr. Robert Utzinger, who is a regional representative of area VIII of the NRTA-AARP, which encompasses the States of Montana, Idaho, Wyoming, Utah, and Colorado.

Yesterday, Mr. Chairman, I had the honor of chairing the legislative session of our AARP Biennial National Convention at the Sheraton Park Hotel.

At that session, we asked delegates and attendees to enumerate their priorities for our legislative objectives. I believe it is significant that our convention stressed the importance of improving the access and availability of transportation for older people.

Particular emphasis was placed on the need to reduce fares for all modes of transportation for persons 65 and older so that they would be able on their limited incomes to take advantage of the increased need for mobility in our society.

I am very deeply pleased that I have this opportunity to inform your committee of the emphasis which our members place on the legislation currently before your committee.

A real hardship faced by millions of older Americans and so often cited as one of the major concerns of the elderly, just behind inadequate income and the high cost of health care, is lack of mobility caused by inadequate, inaccessible or expensive transportation.

While our society becomes more mobile with each passing year, the older person becomes less mobile. This transportation crisis results not only in forced isolation of the elderly but intensifies many other problems experienced by older Americans.

In this day and age, grandmothers and grandfathers—most of us in AARP are one of them—do not live with the family as they used to. In millions of cases families are separated by hundreds or thousands of miles. Air travel is virtually the only means by which families can comfortably get to visit one another. And yet, the cost of air fares is beyond the reach of millions of elderly people forced to live on limited, fixed incomes.

Not only does our society coerce the aging into ever-earlier retirement with policies and practices of age discrimination and mandatory retirement, but it awards them with poverty when they get there.

Within the older population, every fourth person lives in poverty and millions more live in near poverty. Moreover, the eroding impact of inflation continues to increase during these ever-longer retirement periods, leaving millions destitute.

The legislation before this Committee, S. 1808, offers limited but important relief to older Americans. Reduced fares would reduce the burden of the high cost of air travel and bring it within the reach of many more older persons.

Large numbers of older persons are isolated and withdrawn, separated by long distances from families and friends. I am certain there is not a member of this subcommittee who would not agree with me that nothing breaks the spell of loneliness more than the smile of a small grandchild to the grandparent who came hundreds of miles to visit.

Exorbitant air fares deny this happy experience to many older persons. In fact, according to the best data we could find, persons over 65 make up only 5 percent of all airline passengers. Compare this with the statistic that older Americans are over 20 million strong in our Nation.

There are a number of members of this subcommittee who might ask, "Why do older Americans have to travel on airplanes? Why not trains and buses as a mode of interstate commerce?"

Although we are also working to lower fares for older persons on all transportation, we sincerely feel that lower fares for air transit is a most important issue. Air transit offers the greatest opportunity for older Americans to travel over long distances, without enduring the weariness and discomfort caused by long, arduous trips on less convenient forms of transportation.

Our two associations do not believe that it is discriminatory to give special rates to older persons in order that they can take full advantage of mobility within our society.

In the words of President Nixon in his message on aging:

"We all grow old; the younger generation today will be the older generation tomorrow. As we address the needs of older Americans, therefore, we are truly acting in the best interest of all Americans."

Passage of S. 1808 is a step toward recognizing the special needs of older Americans and meeting them in a manner that does not place the rest of society at a disadvantage.

Reduced fares and discounts would help generate new passengers through greater utilization by the elderly of air transportation.

Rather than cause financial strains on the airlines, the increased ridership from elderly passengers should offer economic gains to the ailing air transportation industry.

Certainly, the empty seats all of us have noticed during nonpeak flying times are not the best utilization of America's airplanes.

It is our understanding, Mr. Chairman, that members of this subcommittee have questioned whether there is a need for legislation to grant the Civil Aeronautics Board additional authority to grant reduced fares for older persons. We believe that it is important for the Congress to clarify the legislative authority of the CAB to grant such discounts and we vigorously urge this subcommittee to report favorably S. 1808.

In conclusion, Mr. Chairman, allow me to emphasize that our two associations believe that the legislation before this committee is an important step forward in meeting the transportation needs of older persons.

We ask the members of this committee to consider the social, economic, and transportation needs of older persons when voting on this legislation.

We hope that this committee will exercise its authority to provide reduced-fare transportation to the elderly and to emphasize that the decision be made on both transit and social consideration.

Moreover, Mr. Chairman, we ask that the members of this distinguished committee take time to reflect on the importance of increased mobility for older persons and recognize the chance that they have to make air transportation more available to the elderly.

Thank you, Mr. Chairman.

Senator CANNON. Thank you, Mr. Gilbert. Do you think that this is going to create a lot of problems if reduced rate transportation is made available on a standby basis, in view of the fact that many of the elderly are not in too good health and would have difficulty sitting out a period of time, perhaps through several airline schedules at a departure time?

Mr. GILBERT. I can understand your idea. But let's consider this: Assume that somebody has a sick, or a dying son out in the Midwest, and they want to make a hurried call.

Even with a full hour's standby or 3 or 4 hours standby, it is a lot easier and a lot more reasonable for them to get out there by air than by bus or some other mode of transportation that might be available, or that they might better afford.

So, I believe although you are a hundred percent right, that waiting on a standby basis might produce a small problem, I think in the overall picture, it would be less of a problem than they are facing today trying to get out there under the strain that they are under with some degree of speed.

Senator CANNON. Senator Pearson?

Senator PEARSON. I have no questions. Thank you.

I was very interested in your response about the space available problem.

Senator CANNON. Thank you very much, sir.

The next witness is Mr. John F. Nagle, chief, Washington office, National Federation of the Blind.

**STATEMENT OF JOHN F. NAGLE, CHIEF, WASHINGTON OFFICE,
NATIONAL FEDERATION OF THE BLIND, WASHINGTON, D.C.**

Mr. NAGLE. Mr. Chairman and members of the committee:

My name is John F. Nagle. I am chief of the Washington office of the National Federation of the Blind. My address is 1346 Connecticut Avenue NW., Washington, D.C. 20036.

Mr. Chairman, when the National Federation of the Blind met for its 24th annual national convention in Phoenix, Ariz., in 1964, with more than 600 blind men and women in attendance from all parts of the Nation, the following resolution was considered and approved by the resolutions committee, it was thoroughly discussed and debated on the convention floor during a business session and was approved overwhelmingly by the voting delegates:

"Whereas, certain measures have been introduced in Congress to allow airlines to provide transportation to a blind person and his sighted guide for only one fare; and

"Whereas, these measures were considered in public hearings conducted by the Subcommittee on Transportation and Aeronautics of the Committee on Interstate and Foreign Commerce, House of Representatives, and in such public hearings were supported by representatives of organizations and agencies for the blind; and

"Whereas, airlines provide adequately, both in airports and on planes, for the safe and convenient travel of blind persons traveling alone, thus making it unnecessary that they be accompanied by a sighted companion; and

"Whereas, since the 'two for one' plane fare proposals are not justified by necessity, and therefore amount to proposals to grant blind persons special and privileged status based upon the existence of blindness and not upon need; and

"Whereas, such legislation would serve to perpetuate the stereotype concept of blind people as helpless and dependent and thus such proposals are detrimental to the best interests of blind people; and

"Whereas, since the National Federation of the Blind has as its cornerstone objective the repudiation and discrediting of such discriminatory and disadvantageous concepts, and has only sought since its founding, and does only seek now, equal and fair treatment for blind persons when such treatment is denied them by law, practice, or circumstances, and therefore the 'two for one' plane fare proposals are contrary to the purposes and philosophy of the organized blind, now, therefore, be it

Resolved, by the National Federation of the Blind in Convention assembled, this 3d day of July 1964, in the city of Phoenix, Ariz.:

That this organization condemns and rejects the "two for one" plane fare proposals now pending before Congress, and deplors their endorsement and support in congressional hearings by representatives of organizations and agencies for the blind, and it orders and directs its officers and staff to oppose such proposals by the presentation of testimony in Congressional hearings and all other ways possible and feasible.

Mr. Chairman, it is in furtherance of the spirit of this resolution and the expressed policy of the National Federation of the Blind that I am appearing here, today, in opposition to S. 1303, and similar bills that would grant persons and other physically handicapped persons "bargain price" fare concessions on airlines.

The National Federation of the Blind is a nationwide organization with a membership primarily of blind men and women, with affiliated organizations in 44 States and the District of Columbia, with 500 local chapters, with more than 40,000 blind members.

Representative of every background, activity and area of the nation, the members of the National Federation of the Blind are rank and file Americans, a cross section of America's adult population.

By our individual example and organized efforts, we of the organized blind movement seek to translate shared hopes and agreed-upon objectives into improved conditions and equalized opportunities in the lives of all blind persons.

When functioning in the National Federation of the Blind—when going to and from conventions or when carrying out particular duties and assignments for our organization—

When traveling for jobs or traveling just for pleasure—

Many of our blind members travel by air and they travel alone—

And they travel safely and conveniently because of the fine quality of help provided by the airlines to blind persons traveling alone, or provided to any handicapped person traveling alone, or provided to any air passenger who might be in need of special consideration and help.

All of the major airlines and some of the smaller ones have designated personnel—ground hostesses, passenger service representatives, and others with similar titles—whose sole function is to aid and assist the air traveler with travel problems that could occur from airport to airport, from point of origin to point of destination.

And many of our blind members can vouch for the constant courtesy and always willing help given to them as they fly about the Nation, blind and alone.

Because of this experience, no blind person needs to be fearful of solitary air travel.

Nor does a blind person who travels by plane, alone, ever need to feel dependent upon airline benevolence for the special help he receives, for such help is given as an established right of the passenger; it is given as his due as a fare-paying traveler.

I, a totally blind person, can speak with much authority about the kind and quality of assistance provided by airlines to passengers having need of special help, for, during the course of a year, I travel many thousands of miles in my job for the federation, and I always travel alone.

And I always travel without worry or difficulty, thanks to the always available and courteously given assistance of airline personnel, and this is so, whether the help is given by specially designated for passenger problems personnel that one finds at the large airports, or by the passenger agent on the counter at smaller airports.

And in the fall of 1970, I had the opportunity of learning the extent to which assistance is given by airlines to the wheelchair traveling passenger.

In July, I fell and broke several bones in my knee. Finally, after weeks of traction, my leg was cast—encased from toe to hip—and I was mobile again—by the use of a collapsible wheelchair.

One function of my work for the federation is to attend meetings and conventions of our State and local organizations, and, because no passenger problem seems to daunt the airlines, I was able to fly about the country on the "convention circuit" that fall, even though I was operating in and from a wheelchair.

Wheeled to the foot of the plane's steps by an airline employee, I would be transferred from my wheelchair to an "invalid chair," strapped in, two airline men would carry me aboard, and, arrived at my destination, I would be carried off, and my own chair would be waiting for me at the foot of the plane's stairs—and all this would be performed pleasantly, willingly, without complaint, as though it were all in the usual day's work when you work for an airline.

In support of the legislation to grant blind and other handicapped persons free or reduced transportation on airlines, it is argued that blind persons for the past 30 years have been allowed to travel with a sighted guide for one fare on railroads and buses.

And, it is contended, the proposed measures would only extend this existing concession to airlines; they would not create something new and different.

But, Mr. Chairman, there is no analogy here, for the railroads and buslines provide no specially assigned personnel to aid and assist all-alone blind and other handicapped travelers, while the airlines to have such personnel.

The blind person traveling alone on a train or a bus must rely for help on the thoughtfulness and voluntarily-given aid of rail or bus employees.

He must depend upon help given from kindness, but on the airlines, the lone blind traveler can expect and will receive help rightfully his by specific policy of the airlines.

Of course, it is true, Mr. Chairman, that however considerate and helpful airline people may be toward their blind and otherwise handicapped all-alone travelling passengers from airport to airport, some of these passengers do and will need the assistance of guides and companions once they leave the airport, since they are unable to manage unaided and alone.

We, of the National Federation of the Blind, think, however, such after-leaving-airport problems are not and should not be made the problems or the responsibilities of the airlines.

To require airlines which already provide maximum help to blind travelers from the time they arrive at the airport until they leave the airport at the end of their journey to grant free or reduced rate transportation to them that they may be accompanied by a sighted guide because such sighted guide will be needed by the blind person when the blind person reaches the airport of destination;

To burden the airlines with this unjustified expense would seem to us of the National Federation of the Blind most unfair and unreasonable treatment for the airlines.

Mr. Chairman, we oppose the free or reduced plane transportation bills for another reason, a philosophic reason that is most realistic in the lives of blind men and women.

These bills assume that blind people cannot travel alone, that they cannot manage alone, and, we believe, enactment of this proposed legislation would serve only to reinforce and strengthen this assumption.

This is a most erroneous assumption, for many blind people can and do travel alone; they can and do manage alone.

But if the free or reduced rate air transportation proposals receive congressional approval, airline personnel will, no doubt, adopt a practice too often encountered by blind persons in their dealings with rail and bus companies.

Ticket agents and other employees for these companies far too often seem to believe that since guides for blind persons may travel on their facilities for free or at reduced rates, this means that blind persons need and must have a sighted guide when they travel.

The result of this too frequently encountered practice is that a blind person, able and wanting to travel alone on a train or a bus, is refused the sale of a ticket.

And he is told: "The special two-for-one fares for the blind mean that you must have a sighted guide any time you travel. You just can't travel without one."

And the lone blind traveler is often denied the chance to purchase a train or bus ticket because of this completely wrong understanding of the purpose of the ticket concession for the blind.

But wrong or not, it is firmly believed by many train and bus employees and acted upon by them as though it were true, oftentimes, to the great inconvenience and embarrassment of blind people who are not allowed the freedom to travel alone.

These bills also assume that to be blind is to be innately dependent, to be naturally helpless and to require the constant companionship of a sighted person.

This assumption, too, is most erroneous.

Today, thousands of blind men and women are functioning self-sufficiently and independently.

The are adept in the skills and techniques of blindness.

They are well-educated, hold positions of trust and responsibility—with the various levels of government, in the professions, and in business and industry.

Many blind persons earn an excellent living, competing successfully without sight surrounded by sight.

Many blind persons are citizens of acknowledged value, participating fully in community activities, contributing to the strength and stability and enrichment of the Nation.

Mr. Chairman, today's blind people are a total refutation of the stereotyped blind person of the past—helpless, hopeless, fumbling, stumbling, begging for the charity of others;

And the plane fare concession to the blind legislation would give renewed vitality to this stereotype.

That is why this legislation is rejected by the overwhelming majority of blind people!

Mr. Chairman, members of the committee, blind people do not need or want charity, they want and demand opportunity!

The need and demand of the great mass of blind Americans is not for special subsidies that perpetuate second-class lives, but equal opportunity into all fields of employment that will enable them to pay full fare for whatever they want and choose to do in their lives.

Free or reduced plane fares may be a temptation to some blind persons who have grown to accept inferiority of status and have been defeated into dependency, but to the overwhelming majority of blind persons—men and women who have learned to have a new belief in themselves, men and women who have earned a pride from their accomplishments—free or reduced plane rides are a temptation easily resisted, for to these people, such an offered benevolence would only lead them back into captivity when complete freedom is their attainable goal and possibility.

For these reasons, Mr. Chairman, members of the committee, the National Federation of the Blind urges you to reject the free or reduced plane transportation bills for the blind and handicapped.

I thank you.

Senator CANNON. Thank you for a very fine statement, Mr. Nagle.

The way you pat the airlines on the back, some of the carriers represented here may be looking to you as a PR man. You give them certainly a very fine recommendation for the help that they have been, and we know that they traditionally do a fine job.

I would take it that while you would oppose the singling out of the blind and handicapped for special fares, you would have no objection to the special fares being granted, reduced rate fares for the elderly as is proposed in some of the bills?

Mr. NAGLE. That is right, Senator. We have no expertise on that. We are experts on blindness, and that is all.

Senator CANNON. Thank you very much. Senator Pearson?

Senator PEARSON. I have no questions.

Senator CANNON. Thank you. We appreciate your very fine statement today.

The next witness is Mr. Irvin P. Schloss, legislative analyst, American Foundation for the Blind.

STATEMENT OF IRVIN P. SCHLOSS, LEGISLATIVE ANALYST, AMERICAN FOUNDATION FOR THE BLIND, AMERICAN ASSOCIATION OF WORKERS FOR THE BLIND, AND BLINDED VETERANS ASSOCIATION

Mr. SCHLOSS. Thank you, Mr. Chairman.

I have submitted a written statement which I would appreciate having included in the record of the hearing.

Senator CANNON. It will be made a part of the record in full.

Mr. SCHLOSS. I will proceed to summarize it briefly.

In addition to representing the American Foundation for the Blind, I am also representing the American Association of Workers for the Blind, and Blinded Veterans Association. All three of these organizations endorse the concept contained in S. 1303 which would amend the Federal Aviation Act to authorize free or reduced fares for blind and other handicapped individuals.

The problem of adequate independent mobility, that is, the ability to walk around safely is one of the major handicapping defects of blindness. Some blind people using a cane, and with proper training, get around very well, very safely, and efficiently. Others choose to use a dog. But by far, the vast majority of blind people in this country have to depend on the assistance of a sighted person as a guide.

Most of the blind people in this country are past middle age—half are over 65, another quarter are over 40. Most blindness in this country occurs in middle age or later life. And these individuals, as things stand now, have very little opportunity to get training which will make them independent in their travel and do have to depend heavily on the assistance of another sighted person. The deaf-blind individual, in particular, invariably has to have with him a companion-guide who can also serve as an interpreter. Thus, when the average blind person or deaf-blind person has to make a trip, he invariably has to take a sighted guide along with him; and if he travels by air, he is faced with the problem of the financial burden of cost for the guide.

To most blind people, the amendments proposed in S. 1303 to the Federal Aviation Act are a logical extension of the amendments enacted in 1927 to the Interstate Commerce Act which authorized surface carriers to transport a blind person accompanied by a guide at a reduced fare.

The American Foundation for the Blind since 1927 has assisted railroads and bus carriers to implement those provisions by issuing for a nominal cost identification cards and coupon books, which blind persons and the individuals who are going to be traveling with them present to ticket agents at the time they are purchasing the tickets. Most of the railroads and buslines in the United States and Canada have implemented those provisions, and they have been generally working very satisfactorily.

Our experience is that between 20,000 and 30,000 blind persons a year actually apply for these coupon books. That is less than 8 percent of the approximately 450,000 blind persons estimated to be

in this country. Even fewer, in fact, actually use them for more than one trip a year.

In summary, Mr. Chairman, I would say again that we endorse enactment of S. 1303. It would be helpful to those blind persons who do have to use the help of a sighted guide in traveling if they were not burdened by the cost of an extra ticket.

Frequently, especially among the elderly blind persons who do not have family members, they have to take a friend with them and are unable to take advantage of the family plan rates that the airlines now have.

The American Foundation for the Blind, if this legislation is enacted and implemented by the airlines, would be glad to issue coupon books in the same manner that it is now doing for railroad and bus travel; and we have no doubt that a small minority of the blind population of the country would, in fact, be in a position to take advantage of that privilege.

That concludes my remarks, Mr. Chairman.

Senator CANNON. Thank you, Mr. Schloss.

How big a membership does your organization have?

Mr. SCHLOSS. The American Foundation for the Blind is not a membership organization in the same sense that the others are. It is the national voluntary research and consultant organization in the field. The American Association of Workers for the Blind has approximately 3,000 members. These are professional workers who work in various agencies serving blind persons. The Blinded Veterans Association has approximately 1,500 members who were blinded in the service of the country.

Senator CANNON. I was amazed at this one statistic that you quoted, where you said that more than half of the 450,000 blind persons in the United States are over 65.

Is that verifiable statistic?

Mr. SCHLOSS. Yes, that is true.

And we think that the 450,000 figure is rather conservative. It is probable that the number of blind people is closer to a million in this country, and most do lose their sight in middle age and later life. The four leading causes of blindness in this country do affect people in middle age and later life. So far no prevention or cure, with the exception of surgery for cataracts is in sight.

Senator CANNON. Is that the basic reason that more than half of them are over 65, because these for the most part are the result of eye disease that occur later in life?

Mr. SCHLOSS. Yes, sir.

Glaucoma, for example, is one of the four leading causes of blindness in this country. That largely occurs among people past 40. Senile cataracts, which are a very common condition, occur mostly among people in late middle age and old age. Macular degeneration, this is a condition which affects the central vision principally, is a condition also occurring in middle age and later life. The leading causes of blindness do largely affect older persons in our society. This is true in the Western World generally.

Senator CANNON. Thank you very much.

Senator PEARSON. Thank you very much, Mr. Schloss.

(The statement follows:)

STATEMENT OF IRVIN P. SCHLOSS, LEGISLATIVE ANALYST, AMERICAN FOUNDATION FOR THE BLIND

Mr. Chairman and members of the Subcommittee, I appreciate this opportunity to testify in support of S. 1303 and similar bills to amend the Federal Aviation Act to authorize air carriers to transport blind or other handicapped individuals accompanied by a guide or attendant at free or reduced fares.

In addition to representing the American Foundation for the Blind, the national voluntary research and consultant agency in the field of service to blind persons of all ages, I am also speaking for the American Association of Workers for the Blind, the national professional membership organization in our field, and the Blinded Veterans Association, the Congressionally chartered organization of the nation's warblinded. All three of these organizations have had considerable experience in the development of programs designed to meet the special needs of blind persons, and all three endorse enactment of S. 1303.

Lack of adequate mobility is one of the major handicapping effects of blindness. Some blind persons learn to get around efficiently using a cane as a mobility tool. Others prefer to use a trained dog guide. But by far the largest number of blind people in the United States cannot use a cane or a dog guide safely and effectively and must depend exclusively on assistance from a sighted person, especially in a strange area. Since more than half of the 450,000 blind persons in the United States are over 65, comparatively few of this elderly group will be in a position to use either a dog guide or a cane for safe and independent mobility outside of their homes or their own neighborhood. Most deaf-blind persons, in particular, find it necessary to travel with a companion who can also serve as an interpreter.

From the standpoint of blind persons, S. 1303 is a logical extension of earlier Federal laws concerning blind persons who use dog guides or sighted human guides to assist them in getting around. Similar provisions of the Interstate Commerce Act have been in effect since 1927, and railroad and bus lines have granted fare concessions to blind persons accompanied by a sighted guide since then.

Public Law 655, 69th Congress, approved February 26, 1927, amended the Interstate Commerce Act to make it possible for railroad and bus companies to transport blind persons accompanied by a guide for one fare. Ten years later, the Congress enacted Public Law 184, 75th Congress, approved July 5, 1937, which amended the Interstate Commerce Act to include dog guides as well as sighted human guides.

Virtually every railroad and bus company operating in interstate commerce in the United States and Canada has granted this reduced fare concession to a blind person traveling with a guide. The American Foundation for the Blind has assisted the railroads and bus companies to implement this concession by issuing special identification cards and coupon books at a nominal charge to eligible blind persons who request them. The Foundation issues between 20,000 and 30,000 coupon books a year. A blind person and his guide must present the coupon book to a ticket agent when purchasing railroad or bus tickets. I have submitted several samples of identification cards, coupon books, and informational leaflets on travel concessions for the blind. The Foundation will be glad to cooperate with the airlines in the same way by issuing air travel coupon books to blind persons if legislation similar to S. 1303 becomes law and air lines agree to grant a reduced fare concession for a blind person accompanied by a guide.

At this point in history, it must be recognized that railroad passenger service, particularly sleeping car service, has been drastically curtailed. Blind persons who must travel with a sighted guide are finding it increasingly necessary to travel by air and are penalized financially unless their guide happens to be their spouse or child under 21 years of age.

We would also respectfully suggest inclusion in the report accompanying legislation approved by the Committee of language pointing out that it is not the intent of the legislation to require a blind person who chooses to travel alone to be accompanied by a sighted guide. We are aware of instances where air line personnel have refused to permit blind persons unaccompanied by a companion to board the aircraft. We believe that a blind person should be allowed to determine whether he needs a sighted guide in accordance with the circumstances of the specific trip he is making.

In conclusion, Mr. Chairman, the three organizations I am representing here today urge favorable action on S. 1303. The legislation is permissive and amends the Federal Aviation Act in the same way the Interstate Commerce Act was

amended 45 years ago. Based on our experience in issuing coupon books for the use of blind persons traveling with a guide on surface transportation, we know that less than eight percent of the eligible blind persons in the United States have applied for these books and that a smaller percentage use them. We do not believe that the experience of air lines granting similar fare concessions to a blind person accompanied by a sighted guide would be any different, while it would relieve blind persons who must use a sighted guide other than an individual currently eligible for air line family plan fare concessions of unfair and burdensome financial discrimination.

Senator CANNON. The next witness is Mr. Garland Dowling, American Council of the Blind.

STATEMENT OF GARLAND DOWLEY, AMERICAN COUNCIL OF THE BLIND

Mr. DOWLING. Mr. Chairman, the American Council has submitted a written statement which we would like to be made a part of the record.

Senator CANNON. It will be made a part of the record.

Mr. DOWLING. The American Council of the Blind supports S. 1303. We find that the surface carriers have granted this benefit, it has worked, it has been of no economic burden to the carriers.

We don't see that it would be an economic burden to the airlines. In fact, the latest statistic that I have from the airlines as of May 31, seats are plentiful. The trunk airlines and Pan American airlines have, on an industrywide basis, failed to meet the break-even point in the sale of seats. We are primarily concerned about the provision pertaining to space availability. This condition we oppose because we do not think it would work out if the airlines had to be concerned about a blind person or a severely handicapped individual on a standby basis.

In fact, we would suspect that the airlines would not grant the concession if they had to cope with this. Such a provision could result in the airlines having to be concerned with taking care of a blind person or a physically handicapped person for several hours.

We are also concerned about the implication if this concession were granted, that the blind or severely handicapped people could not travel alone. Experience has taught us that this will happen, for it has been incorrectly assumed that if some blind people need a sighted assistant, all blind people do. We have suggested that a simple statement be included in the bill to clear up this matter. This has been experienced on occasion with the railroads.

It has been assumed that if the two-for-one tickets are available, that every blind person who appears at a counter to purchase a ticket must have a sighted guide.

These two items are all we are concerned about in the bill. We have no objection to S. 1554 and S. 1942.

We believe that the benefits granted by those bills are equally supported in the same manner as the concession for the family plan, youth, ministers, and other people who are granted these reduced fares.

That is all I have to say.

Senator CANNON. Thank you very much, Mr. Dowling. We appreciate your statement. Senator Pearson?

Senator PEARSON. No questions.

Senator CANNON. Thank you, sir.

(The statement follows:)

STATEMENT OF THE AMERICAN COUNCIL OF THE BLIND, INC., WASHINGTON, D.C.

SUMMARY

The American Council of the Blind:

1. Favors the enactment of S. 1303, with a clarifying amendment.
2. Opposes the restricting of authorization to grant free or reduced fare concessions to a "space available" condition.

STATEMENT

In 1927 Congress amended the Interstate Commerce Act to permit bus and rail carriers to grant free or reduced fares to a blind passenger traveling with a sighted attendant. Fare concessions were granted by all of the rail and bus carriers, and the arrangement has worked satisfactorily for the blind passengers and the carriers. The American Foundation for the Blind has at all times acted as the certifying agency to establish the eligibility of blind passengers for the authorized fare concessions. The Foundation's service has been provided without cost to the carriers and has been an accurate and convenient means of establishing eligibility, based upon the findings of ophthalmologists and optometrists. The Foundation still provides this service and issues identification cards and books of travel certificates to eligible blind persons for their use when bus or rail tickets are purchased.

The American Foundation for the Blind is willing to add to the existing service a similar function for the convenience of air lines at any time when free or reduced fare concessions are authorized and established.

The reasons which brought about the legislation pertaining to surface carriers were: to facilitate travel by blind persons; to relieve transportation employees of the necessity of assisting blind passengers; and to permit the blind passenger to have the assistance of a sighted person after reaching his destination. The concession generally granted by surface carriers was free transportation for the sighted attendant, but with no reduction in the fare of the blind passenger. Thus the blind passenger was spared the double expense to which he would have been subjected if the existing law had not been enacted.

It is quite true that many blind persons travel by trains and buses without the assistance of sighted attendants, and the law does not require that blind passengers have sighted assistants when traveling. Nevertheless, many blind persons lack the experience, confidence or ability to travel comfortably and efficiently alone either during the actual travel or upon arrival at a destination. Approximately $\frac{2}{3}$ of those who come within the legal definition of blindness lost their sight after the age of 60 years. While some of these persons adjust very well to traveling with impaired vision, many do not. We are pleased to report that younger blind persons in increasing numbers are becoming more efficient in traveling and have demonstrated their abilities; but we cannot forget those who want assistance for reasons of necessity or convenience.

The rationale for free or reduced fare concessions on surface carriers is equally applicable in the case of airlines. Generally, airline employees are quite helpful, but the fact remains that the assistance rendered by airline personnel for severely handicapped passengers is requiring an increasing amount of their time. More and more blind and other physically impaired persons (many of them with more than one impairment) are finding it necessary or desirable to travel by air. It is only equitable that handicapped passengers who need or want the assistance of an attendant should be spared the double cost which will continue to be imposed unless this legislation is enacted.

This kind of legislation imposed no economic hardship upon surface carriers, and it will not be costly for airlines. None of the surface or air carriers consistently sells all available seats. This legislation will increase the use of airlines by handicapped passengers. It is well understood that this legislation is permissive and that no airline will be required by these provisions to grant free or reduced fare concessions. We do not contend that mandatory legislation should be enacted, but we do point out to the Subcommittee and to any airlines which may oppose this legislation that citizens and taxpayers do have a vested interest in air transportation through the investment of tax dollars in municipally constructed airports and direct subsidies paid to airlines by the Civil Aeronautics Board.

With particular respect to blind passengers, the Civil Aeronautics Board and the airlines will have no difficulty in determining who is "blind." The Social Security Act and the Internal Revenue Act both define the term, and it would probably be desirable to include that definition in this legislation. Sight loss is objectively measurable by ophthalmologists and optometrists, and such findings, when processed through the procedures employed by the American Foundation for the Blind, provide an orderly and accurate determination of eligibility without expense or inconvenience to the airlines.

Some blind persons have expressed the concern that the language of the pending legislation might be interpreted in a way to preclude a blind passenger from traveling alone on an airline. We suggest that such a risk can be avoided by the addition of a simple clarifying sentence.

We have no objection to S. 1554 or to S. 1942. We suggest that the equities involved in those bills are as valid as the fare concessions permitted and established for families, youth, ministers and others. The equities referred to are equally valid for blind and other handicapped passengers who travel alone.

It may be contended by some that such concessions should be granted on a "space available" basis only. The uncertainties which "space available" would create for the blind passenger and for the airlines would be so undesirable that no concessions would ever be granted. Consider, for instance, the confusion and inconvenience which would exist in a busy airport where the passenger and his guide are waiting at the departure gate on a "stand by" basis, with their luggage, which cannot be checked until the passenger has a seat on the plane. No airline will want to face the inevitable consequence of having a blind passenger stranded in a strange airport because there is no available space on a flight. The surface carriers recognized from the first that such an uncertainty would make problems for them and therefore never used a "space available" rule. While airline travel is greatly curtailed at this time, and seats are available, it is neither practical nor desirable to base the granting of free or reduced fare concessions on the availability of space. We know that such concessions will not have an adverse economic effect, but it is imperative that their use be trouble-free for the airlines.

Senator CANNON. The committee will stand in recess subject to the call of the Chair.

(Whereupon, at 2:15, the hearing was adjourned, subject to call of the Chair.)

(The following material was referred to on p.62.)

OFFICE OF THE SECRETARY OF TRANSPORTATION BEFORE THE CIVIL AERONAUTICS BOARD, ON DOMESTIC PASSENGER FARE INVESTIGATION, JUNE 18, 1970

TESTIMONY OF JAMES C. MILLER III

My name is James C. Miller III. I am Senior Aviation Economist in the Office of Policy Review and Coordination, United States Department of Transportation. I appear in this proceeding as a witness for the Department of Transportation. A resume of my qualifications appears in Appendix C of this testimony.

INTRODUCTION

This testimony discusses the proper costing of discount fares. We believe that this issue encompasses two related questions: (1) how, and to what extent should discount fares be related to cost, and (2) what is an appropriate methodology for estimating these costs. Thus, this testimony should be interpreted primarily as an effort to delineate the principles which we believe are relevant for addressing these two questions. For reasons that should become apparent later on, it was felt that the cost data provided by the carriers did not necessarily correspond to what we believe to be an appropriate conceptual measure of cost, and thus no reference to it is made.

The Department recognizes that the question of discount fares encompasses issues other than purely economic considerations. For example, military discounts have been justified by the Board and by the Courts on grounds of military morale, as contributing to the national defense. Similarly, the Board has noted that youth discount fares have introduced air travel to a large segment of the public that could not otherwise afford to fly. Furthermore, excursion-type fares, such as the Discover America fare, are apparently intended to promote vacation travel. In

our opinion, it is important that these considerations be evaluated in this proceeding (although we express no opinion on how they should be quantified or addressed at this time). This testimony, however, separates out for thorough analysis only the *economic* issues in this proceeding and thus develops the *economic criteria* we believe are relevant for assessing the reasonable levels of discount fares.

From an economic standpoint, reasonableness in the level of discount fares should be determined by considerations of economic efficiency and economic welfare. If discount fares result in the efficient utilization of resources in air passenger service, then they are reasonable. If, on the other hand, particular discount fares are shown to foster a misallocation of resources, then they are not reasonable and should be modified accordingly.

Other phases of this investigation will be concerned with certain "quality" aspects of air passenger service. For example, phase six will consider the adoption of standards for load factors and seating configurations, and at issue in phase seven is the appropriate level of expenses for air travel amenities. Thus, we shall assume for the purposes of this testimony that all service is appropriate in terms of its quality (as distinguished from its quantity or price).¹ Furthermore, we shall assume that carriers achieve "technical efficiency"—that the average cost of service is at the lowest possible level commensurate with honest, economical and efficient management. In short, we shall not in this testimony question the ability of management to lower average costs, but shall assume that actual costs are at the lowest level already.

In light of these qualifications, this testimony will deal with *economic efficiency*. We define this term to mean the degree to which any particular set of economic arrangements results in the maximization of economic welfare. As discussed in Appendix A, this definition incorporates the welfare of both the traveling public and the carriers which provide the service. Of particular importance in this phase, of course, is the overall economic impact of discount fares, and we shall show in this testimony that decisions with regard to the pricing of air passenger service affects resource allocation and essentially determine the economic efficiency of the industry and its contribution to economic welfare.

Because discount fares may be closely related to what economists term "third-degree price discrimination" (hereafter, simply "price discrimination"),² we shall examine the effects of such a pricing policy on the allocation of resources to air transportation. We shall conclude that such discount fares as can be shown to be price discriminatory have economic welfare costs and on economic grounds are not justified.

In sum, our plan for this testimony is to develop a framework for analyzing the contribution of discount fares to economic efficiency and economic welfare. Accordingly, we shall develop concepts which prescribe economic efficiency and shall relate these criteria to discount fares and the possible existence of price discrimination. We shall conclude that when discount fares are not related to costs, there exists a loss in economic welfare that could be avoided by adjusting them to a reasonable level. But we reiterate that such a cost may be justified if other considerations are overriding.

The first section of this testimony presents a discussion of economic efficiency and shows how price and its relation to cost affects the allocation of scarce resources. Next, there is an analysis of the effect of price discrimination on economic efficiency, and certain conclusions are drawn regarding the effects of differential tariffs on economic welfare. Third, the economic efficiency criteria developed in the first sections are applied directly to the question of air passenger discount fares. The fourth section summarizes our conclusions. Further elaboration of points raised in this testimony is found in the appendices which are attached.

ECONOMIC EFFICIENCY³

In a market-oriented economy such as ours, the majority of goods and services are allocated by the price mechanism. Consumers demonstrate their preferences

¹ We are aware that the level and structure of fares may have an effect on the quality of service. We plan to discuss this issue in later phases of the investigation.

² Third-degree price discrimination obtains if consumers are classified into separate markets and are charged prices which do not reflect the cost of providing the service. The classical exposition of the three degrees of price discrimination is contained in A. C. Pigou, *Wealth and Welfare* (London: MacMillan & Co., 1912), Part II, Chapter XII. A contemporary analysis is provided by R. A. Bilas, *Microeconomic Theory: A Graphical Analysis* (New York: McGraw-Hill Book Co., 1967), pp. 195-201. Thus, "discrimination" as used in this testimony refers to *economic* discrimination as distinguished from *legal* discrimination.

³ Throughout this testimony we assume that for the relevant range of service average cost and marginal cost are equal (i.e., there are constant returns to scale). Phase seven is the cost phase of this investigation, and we shall present our analysis and conclusions in appropriate exhibits and testimony at that time. However, in a later section of this testimony we present an outline of our costing methodology as it relates to discount traffic and give reasons for assuming constant returns to scale.

by the prices they are willing to pay, and producers respond to the extent that these prices cover production costs, including a reasonable rate of return on investment. If for any reason artificial barriers are raised between producers and consumers, then resources will not be allocated efficiently and economic welfare will not be maximized.

To illustrate with a hypothetical example,⁴ suppose that for some reason the Civil Aeronautics Board were to instruct the carriers to accommodate (collectively) no more than 50 billion revenue-passenger-miles per year, keeping load factors at the same level they are now.⁵ (The current rate of service is approximately 100 billion per year.)⁶ If the Board then regulated fares at the level of costs of production, then a great portion of potential traffic would go unsatisfied. People would queue up for service, but less than half would be accommodated. This would represent an inefficient utilization of resources, since many people would be willing to pay a fare which reflected the cost of providing the service, and the contrived scarcity in supply would prevent their demands from being satisfied.

Another possibility in this same hypothetical example would be for the Board to allow the fare to rise substantially, to discourage air travel, thereby rationing the limited supply of service. This too would be inefficient, despite the fact that carriers would realize revenues much in excess of costs. People would be willing to pay the cost of additional service, but because of the artificial, contrived scarcity, their demands would go unfilled. Furthermore, it can be shown quite easily that the economic gain in the form of profits would be more than offset by the economic welfare loss of the traveling public (see Appendix A). Clearly, in such a case of contrived scarcity owing to a price artificially maintained above the level of cost, the provision of service would be suboptimal and the allocation of resources must be judged inefficient.

On the other extreme, consider another hypothetical example,⁷ where the Board were (able somehow) to require air carriers to provide a rate of air service which at existing load factor levels⁸ would accommodate 200 billion revenue-passenger-miles per year—regardless of cost. Again, two allocative schemes may be identified. If the Board continued to enforce fares at a level equivalent to the average (and marginal) cost of providing service, then much of the increased capacity would go unutilized. Load factors would fall below the break-even level, and the carriers would realize substantial losses. By comparison, any gains to the traveling public would be minimal.

The other alternative would be for the Board to reduce fares, to increase revenue-passenger-miles up to the 200 billion level. However, with reduced fares, the carriers would realize substantial losses and it can be shown easily that these losses would far outweigh the economic welfare gains of the traveling public (see Appendix A). Clearly, in either case (unused capacity or reduced fares), the provision of service would be too great, and resource allocation would not be efficient. To the traveling public, the extent of service would be so great as not to warrant its cost.⁹

To elaborate on this principle in general terms, the cost of producing any product or service reflects the value to society of the resources used in its production. This is true because if resources were not utilized in the production of the product or service in question, they could be used elsewhere in the economy. Thus, whenever the price of a service exceeds the (marginal) cost of production, this means that overall, resources are being misallocated. Purchasers of the service are willing to pay more than the cost of production, but they are prevented from having their demands fulfilled. At the same time, resources are being overutilized in other segments of the economy, where their value is less. Thus, in general, whenever the price paid for a product or service exceeds the cost of production, insufficient resources are being devoted to its provision; conversely, whenever price is less than production cost, the level of production is too great. Only when price and production cost are brought into alignment and there are no artificially contrived scarcities or surpluses can it be said that economic efficiency obtains.

⁴ This hypothetical example is set out in Appendix A.

⁵ We are not suggesting that the Board has such authority.

⁶ *Aviation Forecasts: Fiscal Years 1970-1981* (Washington: Department of Transportation, Federal Aviation Administration, Office of Aviation Economics, Jan. 1970), p. 28.

⁷ This hypothetical example also is set out in Appendix A.

⁸ E.g., if current load factors are 50 percent, then this would mean an expansion of seat-miles from 200 billion per year to 400 billion.

⁹ Of course, one would not expect the Board to endorse any such irrational schemes. We cite these two extreme examples merely to illustrate the issues which are involved in assessing the efficiency of resource allocation.

In specific terms, this discussion of economic efficiency suggests that the Board should encourage an optimal utilization of resources in air passenger service by approving fares which duly reflect the cost of providing the service. Not only should this concept be the standard for determining the reasonable level of fares, but the principle takes on added importance when it comes to an analysis of fare structure, of which discount fares are an important element. As we develop in the following section, this basic concept of economic efficiency may be logically extended to an analysis of any system of differential tariffs, including (and especially) discount fares.

THE ECONOMICS OF PRICE DISCRIMINATION

Price discrimination exists whenever service is provided at different prices to separable groups and the price differential is not soundly based on differences in cost. Thus, differential pricing according to "value of service" (or elasticity of demand) is discriminatory (in economic terms) unless based on differences in the cost of providing the service. Two extreme examples of such price discrimination are (1) providing the same service at different prices, and (2) providing services with different costs at the same price. Basically, then, price discrimination exists whenever prices and costs are unequal. A corollary to this definition is that where price differentials are predicated on differences in costs, price discrimination does not prevail.

Ordinarily, price discrimination is discussed within the framework of a monopoly firm which uses the technique to increase profits. However, another way in which price discrimination can be utilized is where a group of reasonably competitive firms tacitly collude on a specific, discriminatory price structure in an effort to reduce uncertainty, solidify their market position, "meet competition," increase sales, gain short-run advantage over close competitors, remove "destructive competition," or whatever. But what we want to stress here is that price discrimination requires the presence of some monopoly power (either natural, as in the case of a public utility where there are greatly increasing returns to scale, or contrived, as in a regime of tacit collusion such as that mentioned above), else it cannot be effective. Since monopoly power is a necessary, pre-condition, the very existence of price discrimination is *prima facie* evidence of monopoly, collusion, or otherwise anti-competitive behavior. In the case of the airline industry, to the extent it is shown that certain types of discount fares are discriminatory, this serves as an index of the degree to which competition in the area of pricing is (artificially) restrained.¹⁰

To expand on this thesis, a firm in competition with other firms cannot successfully charge two (different) prices for the same product (even assuming that the firm has no problem in distinguishing between members of the two groups, and members of one group cannot buy and resell to members of the other). Clearly, members of the group discriminated against simply would purchase from a different source of supply and the discriminating firm would lose business. Thus, discriminatory pricing can prevail only when the producer is able to persuade all other firms to follow suit in adopting the discriminatory pricing program (and further, some means is provided for keeping out of the industry any potential, new competitors).¹¹

We shall accept for the purpose of this discussion the proposition that since the airlines are regulated with respect to their (average) rate of return, any price discrimination which might exist does not result in excess profits. However, if price discrimination does exist, even though profits are "reasonable," this still is an instance of resource misallocation. If profits are normal and price discrimination prevails, this amounts to saying that some customers are paying more than the cost of providing service whereas others are paying less.¹² Note the dual character of this: *because* some groups get preferential treatment, others must pay more than they would have otherwise. This is not only a question of equity, but also of economic efficiency. That is, under such circumstances the provision of service to the low-priced group will be too great, whereas the service provided to the group discriminated against (i.e., the "standard" passenger) will be in too short supply. Thus, we conclude that even in a case where profits are regulated, price discrimination results in a misallocation of resources. Even though revenue covers cost and

¹⁰ We recognize that the Board has authority to regulate this type of competition.

¹¹ One way in which a discriminatory pricing scheme may become adopted is where one firm in an industry offers a special discount to a particular subset of consumers and other firms follow suit in order to "meet competition."

¹² As mentioned before and outlined briefly in the next section of this testimony, we believe that throughout the relevant range of service marginal and average costs are equal.

therefore "average price" equals average costs, there is a misallocation of resources within the various groups. Furthermore, depending on the shapes of the relevant demand curves, price discrimination may result in a misallocation of resources to the air transport industry from other segments of the economy (either too much or too little).¹³

In the above discussion we mentioned that differential pricing is not discriminatory *per se*: provided the price differential can be attributed to differences in cost, pricing is efficient and the allocation of resources is optimal in terms of economic warfare. Recall the earlier discussion of efficient pricing. Whenever price is equal to the cost of production, resource allocation is optimal. Thus, if a firm sells two different products at two (different) prices and these prices are equal to the relevant (separable) costs of production, then resources are allocated optimally. Another way of saying this is that where a firm produces two or more products at unequal costs, then efficient resource allocation requires a policy of differential pricing.

Perhaps examples would serve to illustrate the case where differential pricing would not be inherently discriminatory. Many (if not most) manufacturers produce a "line" of products, some of high quality (cost and price), and some of low. Thus, General Electric markets color portable television receiving sets at a price which is higher than that charged for black-and-white. However, one would expect the relative costs to be unequal and thus a difference in price is not necessarily indicative of price discrimination. To take another example, consider a local seafood restaurant which specializes in lobster Newburg and fillet of sole. One would not consider paying a higher price for lobster as being (necessarily) a case of price discrimination, since this dish usually costs more in terms of ingredients and time spent in preparation. A third example involves the difference between coach and first-class accommodations in airline service. The coach fare is lower, but so are costs (i.e., seating densities are higher, and more modest amenities are provided), and thus a fare differential does not necessarily imply price discrimination.¹⁴ Still other examples could be cited, but the general point of emphasis is that where price differentials duly reflect differences in costs, price discrimination does not obtain.

But one point needs to be stressed most strongly: for differential pricing to be truly nondiscriminatory, the separate markets must be "determined" by the nature of the product (cost and price), not on the basis of any characteristics of the consumers themselves. That is, the groups must be self-selecting. To members of one group, the high-priced product is the better choice; to members of the other group, the lower-priced product is preferred. Eligibility should not be determined by some arbitrary decision on "value of service." If there are eligibility requirements, then some people who might wish to purchase a product or service would be restrained from doing so.¹⁵ The extent to which this situation exists is one measure of the misallocation of resources.

Artificial barriers must not be placed between producers and the desire of consumers to purchase goods or services at prices equivalent to the costs of production. Of course, the only way to insure that this does not happen where differential rates are available is to require that any discounts be *generalized* for all "classes" of customers. That is, customers must be made eligible to purchase any product or service, depending on their preferences and the cost of production. In such manner, "value of service" will be determined by the consumer himself, and only he is in a position to make that judgment. Therefore, provided that differential rates are generalized, consumers, by making choices depending on their personal preferences, and producers, by charging differential prices related to differences in costs, cause a situation to obtain where in each market value of service (at the margin) is equal to the cost of production. Any other determination would result in a misallocation of scarce resources and a reduction in economic welfare.

AIR PASSENGER DISCOUNT FARES

It is our conclusion, based on the above discussion, that any discount fares which are not related to differences in the cost of providing such service are inefficient in terms of the optimal use of the scarce resources devoted to commercial aviation.

¹³ See footnote 3 at page 26 *infra*.

¹⁴ The proper relationship between coach and first-class fares is being considered in other phases of this investigation.

¹⁵ Imagine, for example, the inefficiencies that would arise from limiting first-class accommodations to people with incomes over \$20,000 per year, and coach space to those with incomes under \$20,000.

We recognize that discount fares are one method of achieving flexibility in pricing: further, they can have significant marketing and diverse promotional implications. We feel, however, that these issues are more properly a question of fare level and fare structure and should be discussed in those phases of the case.

From the onset let us speak in terms of specific discount fares, and, for our purposes we may classify these into three basic groups:¹⁶

<i>Group 1</i>	<i>Group 2</i>	<i>Group 3</i>
Discover America	Family fare	Youth standby
Youth reservation	Group fare	Military standby
Military reservation		
Children's fares		

It is our contention that the fares listed in Group 1 may be unreasonable, since we find little or no basis for a discount in terms of differentially lower cost. It does not appear, for example, that the cost of transporting a youth or a soldier on reserved discount status is any less than the cost of transporting the standard (full-fare) passenger. Such costs do not appear to differ to any substantial degree; if anything, the cost of providing service to youths and military personnel on reserved status may be higher because of the necessity of identification at the time the ticket is purchased. Likewise, special reduced fares for children and Discover America travelers appear to be unrelated to cost and thus may be price discriminatory. Thus, we are concerned about the reasonableness of discounts listed in Group 1.

Listed in Group 2 are two classes of discount fares which seem to have some justification in terms of lower cost. Family-fare discounts allow the carriers to write one ticket instead of two (or more) separate ones, and a family may carry less baggage per person than the typical full-fare passenger. Economies also may be realized by writing group-fare tickets. However, we are uncertain whether the cost savings involved in Group 2 tariffs justify the discount offered, even considering certain restrictions on the time of travel.

The question of standby fares is a perplexing one, and a resolution of this issue is not altogether clear. However, our feeling at this point is that in the *absence* of greater flexibility in peak-load pricing through the daily, weekly, and seasonal cycles, standby discounts may be warranted in terms of lower costs, and thus a discount for this type of travel is not discriminatory *per se*.¹⁷ We may later question the reasonableness of this discount, but at the present time we are not in a position to say how closely this reduction in fare corresponds to the differential in cost.

However, one thing we do conclude, based on our efficiency and price discrimination discussions, is that predicated eligibility on the basis of any characteristics of the customer (youth or military) is discriminatory, in an economic sense, even though it may be argued that such favored treatment is justified in terms of other considerations. The only way to avoid this discrimination is to *generalize* standby discounts, making everyone eligible for standby status. Furthermore, by generalizing discounts, the likelihood of the discount's getting out of line with cost (and thus becoming unreasonable) is greatly reduced.

Some may argue that a generalization of standby discounts would cause a precipitous fall in yields, since "everyone would want to fly standby." We do not believe that this would be the case. However, there is little doubt that standby traffic would increase and average yield per passenger would fall (whether total yield would fall is not certain, depending on the relative magnitudes of full-fare diversion and the net response of traffic to reduced-fare eligibility). However, in case standby traffic did grow substantially as a result of diversion from full-fare status, this would be an indication that the standby discount fare is too low in relation to cost and thus should be raised. Hence, if we accept the proposition that the standby discount is reasonable now, then to generalize standbys might result in their no longer being reasonable. This seeming paradox is soundly based on economic principles, however, and we can say that the generalization of standby fares may require some adjustment in the discount, even though now it *may* adequately reflect the differential in cost.

¹⁶ Military discounts, children's fares, and group fares are not at issue in this proceeding. However, our economic analysis pertains to this type of discount fare as well and thus we have included mention of this classification in the groups listed on the next page.

¹⁷ Economic efficiency would require a peak-load pricing structure which would accomplish in an efficient manner what certain discount fares with time restrictions are alleged to do (in an imperfect way). We shall present our analysis of this issue in phase nine.

A major consideration in this discussion of efficient pricing is the question of costs. Our feeling at this time is that the cost of transport does not vary significantly from one (reserved-status) passenger to another. We fully realize that some have argued that when extra traffic is generated through the application of promotional fares, standard, full-fare passengers are not penalized in any way. In fact, the argument goes, to the extent that discount-fare passengers pay anything in excess of their incremental costs, they contribute toward overhead and thus reduce the "burden" on the standard-fare passenger. We believe, however, that this approach focuses on the wrong time period as far as pricing is concerned and thus represents an invalid application of what economists refer to as "marginal cost pricing." Although we plan on submitting the major portion of our cost analysis (both theoretical and empirical) in phase seven, we shall, in this testimony, briefly outline our objections to the costing and revenue methodology implied by those who would base discount fares on "incremental return."

Economists speak of costs in terms of the relevant time period of analysis. The common distinction is between the "short run" and the "long run." If a decision on price and output is to be made applicable to a short period of time, then the appropriate concept for analysis is "short-run cost." If on the other hand a commitment is to be made on prices and outputs far into the future, the appropriate concept is "long-run cost." The fundamental principle is that the choice of "runs" is determined by the time dimension of the pricing and output decision. In short, the pricing and output objective determines the choice of cost concepts.

In commercial aviation, we may distinguish as many as four "runs," or time periods, and under greatly varying circumstances each of these may be an appropriate frame of reference. First, there is the "immediate run." This has to do with a flight which has been scheduled already, and its costs are virtually "sunk." In such a case marginal (i.e., incremental) cost is below average cost (up to the capacity of the aircraft). If this were the relevant concept of cost, then under certain circumstances, price discrimination might be justified. Secondly, there is the "short run." This assumes that both the fleet of aircraft and investment in ground facilities are fixed, but that the carrier may vary its schedules. Under such circumstances costs appear to be constant short of absolute capacity (i.e., marginal cost equals average cost), when the appropriate "opportunity-cost" concepts are given necessary emphasis.¹⁸

The "long run" is a period of time sufficient for the carrier to make changes in its fleet of aircraft and to alter its investment in ground facilities. Here, too, we have reason to believe that costs are constant. Finally, we may identify a "long, long-run," where the carrier is able to replace its aircraft fleet with technologically superior equipment. Provided that the old aircraft (which are made in part obsolete) are valued at their economic cost (as opposed to their accounting cost), we see constant returns in this "run" as well.

Only two of these four "runs" are really appropriate for decisions regarding the level and structure of air fares. Following the preliminary discussion outlined above, which "runs" are relevant depends on how often fares are changed (i.e., the time periods during which fares are in effect). For the most part, we can rule out the long, long run, since the wholesale introduction of technologically superior equipment has been (and should be) a time of changes in fare level and fare structure.¹⁹ Also to be ruled out is the immediate run, since carriers do not make pricing decisions and alter published rates on a day-to-day, hour-to-hour basis.

Thus, for the determination of fare level and fare structure the relevant time periods of analysis are the short run and perhaps the long run, and as indicated before, we believe that for the relevant range of service, costs are constant. Those who focus on immediate-run "incremental cost" thus have in mind the wrong time dimension of analysis. The immediate run concept would be appropriate if fares were varied on a flight-by-flight basis, but the public convenience and necessity requires the publication of reasonably consistent, constant rates. In summary, it is our view that the appropriate frame of reference for fare level and fare structure decisions is one in which marginal cost and average cost are equal.²⁰

¹⁸ Any flight will have accounting cost, but aside from this, the real, economic cost of a flight is the revenue that might have been generated if the aircraft had been assigned to another task (i.e., some other schedule).

¹⁹ For example, the introduction of jet aircraft brought about lower fares in the early 1960's. We note that with the introduction of wide-bodied jets, such a long, long-run change is taking place today.

²⁰ In the past, the Board has used the "profit impact test" to determine whether a proposed discount fare would cover marginal cost. This test does not necessarily provide, however, a measure of marginal cost in the relevant frame of reference. Instead, it may measure the feasibility of price discrimination as a mean for increasing carrier net revenue.

Another way of evaluating the cost of discount-fare traffic is to ask whether such traffic does, in fact, have an effect on scheduling, equipment acquisition plans, and total investment. If so, then such evidence is further indication that the immediate-run cost concept is not the appropriate one for decisions with regard to the structure of discount fares.

First, let us explore briefly and accept the proposition that whatever the structure of discount fares average revenue will cover average cost. This is fundamental to the notion that in the aggregate revenues will cover total costs and will provide a reasonable rate of return. (As we shall show in later phases of this investigation, if this condition does not hold, then carriers will be prompted to alter their fare or scheduling policy until revenues do cover costs.) It follows from this that the revenue on a typical, or representative, flight covers the cost of making that flight. If so, then the standard-fare passenger pays greater than the average fare, while the discount-fare passenger pays less.

Assume for the moment that we apply the incremental approach in reverse. That is, suppose that discount fares were discontinued. Some discount traffic (that which had been diverted) would travel anyway, at the standard fare, whereas other traffic would be lost entirely. Clearly, unless the extent of diversion had been truly significant, revenues at this new, reduced level of traffic would be insufficient to cover the cost of that rate of service (in terms of seat-miles flown). However, the resulting situation may be examined from two points of view. First, given a level of fares (and thus traffic), the problem is not one of a need to offer discounts, but one of "excess capacity." The excess capacity problem may be solved simply by reducing the rate of scheduling (or reducing the extent of "overscheduling").

We would suggest, however, that a preferred way of increasing traffic would be to reduce the standard fare to the point where revenues covered the costs of operation. Fortunately, there is some evidence on the probable effect of such a policy (and the record in this investigation should provide even more). An unofficial study completed by staff members of the Board's Bureau of Economics found that the demand for air travel is elastic.²¹ Another study, prepared for the Federal Aviation Administration, came to the same conclusion.²² This means that a reduction in fares would increase traffic relatively more than the decrease in price and thus total revenues would rise. The essential question, of course, is whether at the margin this increase in revenue would more than offset the increase in cost. But since many have argued that the incremental (i.e., immediate-run marginal) cost is very low, there is some presumption in the affirmative.²³

Looked at in still another way, suppose that flights were scheduled to accommodate standard-fare passengers and revenues covered costs. Consider now the introduction of discount fares and assume that diversion would be sufficiently low that net revenues would increase. In such circumstances it is important to determine whether the frequency of scheduling and the stock of equipment would change. If not, then carriers would earn excess profits and the Board would be obliged to have the overall level of fares revised downwards, or, alternatively (and most likely), the carriers, in competition with each other, would increase the extent and variety of their flights until the increased costs were exactly offset by passenger revenues. Of course, as outlined above, if demand is elastic, then one solution might be a reduction of the standard fare, instead of the introduction of discount fares. But clearly, if increased capacity did result, then this would be a cost attributable directly to the discount traffic.

Consider, for example, the case where a carrier is making a decision whether to make adjustments in schedules (or equipment) to accommodate certain discount traffic. (Assume for simplicity that diversion from full-fare traffic is zero.) The limit to which the carrier may be expected to go in trying to accommodate these discount passengers is measured by their fare. That is, if it costs the carrier less (in terms of outlay and/or lost traffic revenue from some other source) than the discount fare paid, then the carrier may be expected to make such an attempt.

²¹ Samuel Lovitt Brown and Wayne S. Watkins, "The Demand for Air Travel: A Regression Study of Time-Series and Cross-Sectional Data in the U.S. Domestic Market" (Paper given at the 47th annual meeting of the Highway Research Board; National Research Council, Washington, D.C., Jan. 16, 1968).

²² Norman J. Asher et al., *Demand Analysis for Air Travel by Supersonic Transport* (Washington: Institute for Defense Analysis, December 1966), Appendix A.

²³ It is open to question whether such a fare reduction would yield greater traffic or less than under a system of discount fares. This has to do with the convexity of the relevant demand curves, not the elasticity of demand. Also, showing that the introduction of discount fares increases net yield does not prove that there has been positive net traffic response. C.f., Joan Robinson, *The Economics of Imperfect Competition* (London: MacMillan & Co. Ltd., 1933), pp. 190-5.

Therefore, the cost to the carrier of accommodating discount traffic is measured by, and determined by, the discount fare charged.

Unfortunately, this problem is an example of the "fallacy of composition."²⁴ Whereas to each carrier the cost of transporting a discount-fare passenger is measured by the discount fare (in light of diversion from its *own* full-fare passengers), to the industry and to society as a whole, the real, economic cost may be different. Thus, the level at which discount fares are regulated has an effect on the reported cost of providing the service. If the discount fare is not set equal to the real, economic cost, the result is a misallocation of the resources devoted to the provision of air transport services. Viewed in this context, it should be of little surprise to find individual carriers reporting that the cost of transporting discount traffic is less than or equal to the fare charged.

In short, the very existence of discount fares may make it all but impossible to segregate out from reported data the real costs of accommodating discount traffic. When costs are viewed in terms of the relevant time frame of reference (i.e., the short run and perhaps the long run) it appears that the costs of transporting discount traffic (on a reserved basis) may be very close to the cost of accommodating full-fare, reserved passengers. And unless discount fares can be related to costs in the relevant meaning of the term, they are an instance of price discrimination, which in turn misallocates resources. In such a case, justification of discount fares must be in terms of noneconomic considerations.

CONCLUSION

As mentioned in the introductory remarks, noneconomic criteria may play an important role in determining the appropriate level and structure of discount fares. However, based on the economic analysis just presented, we may draw the following conclusions:

1. Economic efficiency and "reasonableness" require that fares be adjusted to the level of costs.
2. Discount fares which are not based on differentially lower costs are price-discriminatory and thus have economic welfare costs.
3. Discount fares which are shown to be price-discriminatory may be justified, but only on noneconomic grounds.
4. In analyzing airline costs and their relation to particular fares, two points need to be stressed:
 - (a) Conceptually, the appropriate time period of analysis for rate-making purposes is not the immediate run, but some longer run (where in our judgment average costs are constant).
 - (b) Empirically, carrier costs may be affected *by* fares and thus economic cost may be difficult to determine.

THE ECONOMIC WELFARE COST OF RESOURCE MISALLOCATION

The preceding testimony discussed economic efficiency in the allocation of resources and postulated a hypothetical airline example to illustrate the underlying principles. This appendix sets forth this example in greater detail and using a simple graph describes the loss in economic welfare which results when resources are not allocated efficiently—that is, when price is not adjusted to the level of cost.¹

Figure 1 depicts the hypothetical situation described in the testimony. Assume for the sake of exposition that the current rate of service (approximately 100 billion revenue-passenger-miles per year) is optimal (i.e., at that rate of service average fare equals average and marginal cost). Assume further that no discounts are offered, so we may presume a single fare for the service.²

If the Board were to constrict service to a rate of 50 billion RPM's per year, keeping load factors the same as they are now, demand price would be at level C. If the Board were to continue to regulate fares at the level of average and marginal cost (B), then 100 billion RPM's would be demanded; but since only 50 billion RPM's would be provided, 50 billion RPM's would go unserved. In such a case the allocation of resources to air passenger service would be suboptimal, since many people willing to pay the fare would not receive the service.

²⁴ A standard example serves to illustrate: by standing, one person may see better at a football game, but if all spectators rise to their feet, total viewing may not change.

¹ As in the testimony, we assume here that for the relevant range of service marginal cost and average cost are equal.

² The effect of discount fares is analyzed in detail in Appendix B.

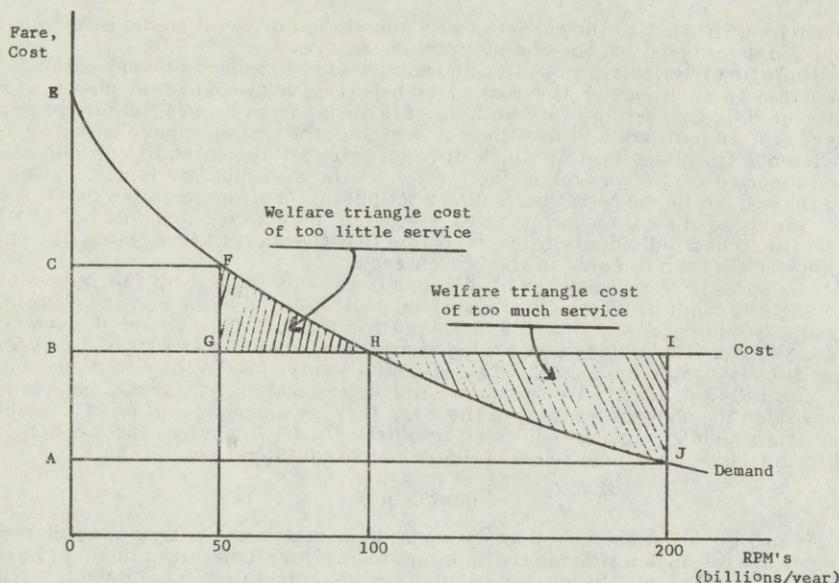


Figure 1

On the other hand, if the Board were to allow the fare to rise to limit the quantity demanded, then the carriers would realize excess profits (i.e., profits in excess of "normal" or "reasonable" return on investment), measured by area BCFG. Resources would be allocated inefficiently, since by expanding service, the gain to consumers (measured in monetary terms) would outweigh the loss of excess profits. This point is explained below.

For any given rate of service provided, the height of the demand curve represents the value of extra service. That is, consumers will continue to increase their purchases of air service so long as they value additional service more than the money they pay. At the margin, of course, some consumers are all but indifferent between paying for air service and doing something else with the money. But given a level of fares and consequent set and pattern of air travelers, then if fares were to fall, these travelers would pay less than the maximum fare they would be willing to pay. Sometimes this difference between actual price and (maximum) demand price is called the consumer's "surplus". Such surpluses, aggregated for all consumers of the product or service, is called "consumers' surplus" and is a (monetary) measure of consumer welfare. Producers' "surplus" can be measured also, and this is their (economic) profit or loss (i.e., revenue in excess of or below total cost, including a "reasonable" rate of return on investment). Since producers and consumers are component parts of society (many persons are both), we may define economic welfare for any industry in question (e.g., the airlines) as the sum of consumers' surplus and producers' surplus. Where this sum is maximized, economic efficiency obtains.

Returning to the figure, at a 50 billion RPM rate of service and a price of C, consumers' surplus is measured by area CEF (i.e., the area under the demand curve minus total revenues paid to producers). Producers' surplus (i.e., excess, economic profit) is measured by area BCFG. Consider now an increase in service from 50 billion RPM's to 100 billion, brought about by a decrease in fare from level C to level B. In this case producers' surplus would fall to zero (i.e., rate of return would be reduced to a "reasonable" level). However, consumers' surplus would increase from DEF to BEH. Comparing the areas, we perceive an increase in total welfare (i.e., consumers' surplus plus producers' surplus) in the amount GFH. Alternatively, GFH measures the economic welfare cost of artificially constricting service by pricing it above cost. This is sometimes referred to as the "welfare triangle" loss of resource misallocation.³ Thus, we see that if resources are con-

³ Cf., Arnold C. Harberger, "Monopoly and Resource Allocation," *American Economic Review*, Vol. XLIV, No. 2, May 1954, pp. 77-87.

stricted artificially and service falls short of a rate where price equals cost, there is an economic welfare loss which could have been avoided.

On the other extreme, consider the case where, regardless of cost, service output were expanded to a rate equivalent to 200 billion RPM's per year (at current load factor levels). If fare continued to be regulated at the level of average and marginal cost (B), then too much capacity would be provided, as only 100 billion RPM's actually would be carried. Under such conditions the extent of service provided must be considered too great.

If, as an alternative, the Board were to depress fares to level A (to utilize capacity), then although RPM's would increase to the 200 billion rate, the carriers would realize an economic loss measured by area ABIJ. Thus, producers' surplus would be a negative ABIJ and consumers' surplus would be AEJ. Consider now a reduction in service from 200 billion RPM's to 100 billion and a rise in fare from level A to level B. Consumers' surplus would fall to BEH, but producers' surplus would rise from a negative ABIJ to zero. The difference, of course, is that area HIJ represents a net gain in welfare, realized by raising price to the level of cost and returning to the 100 billion RPM level. *Alternatively*, triangle HIJ is the welfare cost of expanding output too far. By this measure, 200 billion RPM's is a rate of service which must be considered too great.

In conclusion, this analysis has shown that when fare (or demand price) does not equal cost, the allocation of resources is not optimal and such inefficiency can be measured by a loss in economic welfare.

THE ECONOMIC WELFARE COSTS OF PRICE DISCRIMINATION

In the preceding testimony we showed that where differential pricing is present and resource allocation is not efficient. The purpose of this appendix is to analyze this problem using two simple graphs and to show that price discrimination reduces economic welfare and the loss is analogous to the case described in Appendix A.

We shall assume for the purpose of this appendix that the carriers realize a reasonable rate of return on investment and thus *average* fare (i.e., total revenue divided by total traffic) just covers average (and marginal) cost. Assume also for purposes of discussion that two types of fares are offered: (1) a standard fare, above cost, and (2) a discount fare, below cost.¹ Let the costs of service be measured by distances OA in Figure 2(a), and OK in Figure 2(b).² Finally, assume that the standard fare is OB, and the discount fare is OJ. Thus, price discrimination is present: OB exceeds OA, and OJ is less than OK. Since we have assumed that

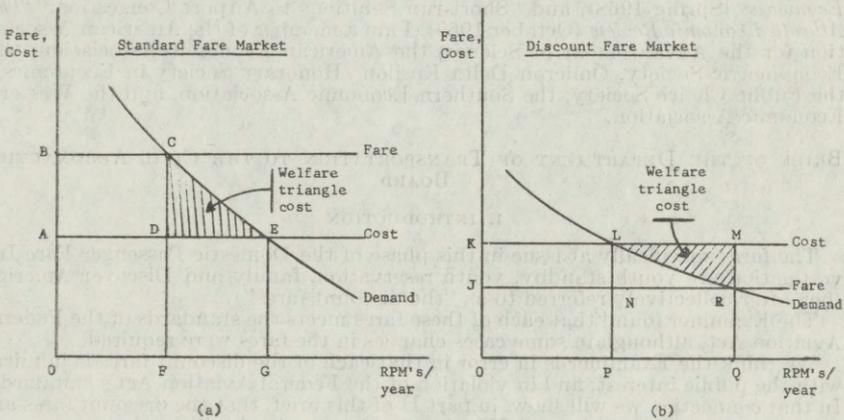


Figure 2

¹ The analysis presented here is applicable to any number of discount fares where the discount exceeds the differential in cost. Although it is possible to analyze all types of discount fares simultaneously (e.g., through the use of mathematical equations), the results are the same as those outlined here, and there is little need to complicate the exposition.

² As in the testimony and in Appendix A, we assume here that for the relevant range of service average cost equals marginal cost.

average fare is equal to average cost, it follows that area ABCD is equal to area JKMR (i.e., the "profit" on standard-fare service offsets exactly the "loss" on discount-fare service).

Consider now a revision in fare structure which lowers the standard fare from OB to OA and raises the discount fare from OF to OK. Revenue-passenger-miles expand from OF to OG in the standard-fare market and contract from OQ to OP in the discount-fare market.³ The result of the change in fare policy is an increase in economic welfare. To see this, note that in Figure 2(a) consumers' surplus increases by the amount ABCE, whereas producers' surplus falls by the amount ABCD. The net difference is area DCE, a measure of the economic welfare gained by bringing standard fare into alignment with cost. A similar result obtains in the case of the discount-fare market (Figure 2(b)). Consumers' surplus is reduced by an amount JKLR, but producers' surplus is increased from a negative JKMR to zero. The net result is an increase in economic welfare, measured by the triangle LMR. Thus, adjusting both fares to costs increases economic welfare by area DCE, plus area LMR.

QUALIFICATIONS OF JAMES C. MILLER III

I am Senior Aviation Economist in the Office of Policy Review and Coordination, U.S. Department of Transportation.

In 1964 I graduated from the University of Georgia with a major in economics. During the 1964-65 academic year, I pursued graduate study in economics and transportation at the University of Georgia and did research on marginal cost pricing as applied to the airlines.

From 1965 to 1968 I did graduate work in economics at the University of Virginia, and completed work on a linear programming model for aircraft routing. I received my doctorate in economics in June of 1969. The title of my dissertation was *Scheduling and Airline Efficiency*.

From September 1968 to December 1969 I was on the faculty of Georgia State University and taught graduate and undergraduate courses in microeconomic theory and public policy. While at Georgia State, I continued research on the economics of commercial aviation.

In December 1969, I joined the staff of the Office of Policy Review and Coordination, U.S. Department of Transportation. My duties in this capacity include the formulation of aviation policies for the Department and the preparation of exhibits for regulatory proceedings. This is my first appearance before the Board.

My publications cover a range of topics in economic theory and public policy and include, "An Aircraft Routing Model for the Airline Firm," *The American Economist* (Spring 1968), and "Short-run Solutions to Airport Congestion," *The Atlanta Economic Review* (October 1969). I am a member of the American Association for the Advancement of Science, the American Economic Association, the Econometric Society, Omicron Delta Epsilon (Honorary Society in Economics), the Public Choice Society, the Southern Economic Association, and the Western Economic Association.

BRIEF OF THE DEPARTMENT OF TRANSPORTATION TO THE CIVIL AERONAUTICS BOARD

I. INTRODUCTION

The fares specifically at issue in this phase of the Domestic Passenger Fare Investigation are youth standby, youth reservation, family and Discover America (hereafter collectively referred to as "the discount fares").

The Examiner found that each of these fares meets the standards of the Federal Aviation Act, although in some cases changes in the fares were required.

We think the Examiner is in error in that each of the discount fares is inimical with the public interest, and in violation of the Federal Aviation Act's standards. In that connection we will show, in part II of this brief, that the discount fares are unreasonably low, and, in part III, that they are unjustly discriminatory.

In part IV, we will discuss the kinds of discount fares that should be encouraged.

³ As incorporated in Figure 2, we have assumed that for the relevant range of pricing there is "zero diversion." That is, standard-fare demand is unaffected by changes in the discount fare, and discount-fare demand is unaffected by changes in the standard fare. Where there is demand interaction (i.e., diversion), the analysis is more complicated, but the results are the same as those outlined here (i.e., unless fares are adjusted to costs, there is a misallocation of resources which results in a reduction in economic welfare).

II. THE DISCOUNT FARES ARE UNREASONABLE

A. Discount fares that burden normal fare passengers are unreasonable.

Fares set at levels found by the Board to be unreasonably low are unlawful.¹ Over the years, the Board has adopted various standards to determine whether a fare is unreasonably low.² But, in regard to what the Board calls "promotional fares",³ the Board has established at least one clear test: If such a fare "burdens" normal fare passengers, the fare is unreasonable.⁴ "Burden" has never been clearly defined; but logically the Board must mean that normal fare passengers are burdened by discount fares if:

(1) At any given quality of air transportation service, the normal fare is higher than it would be, absent the discount fares; or

(2) At any given normal fare level, the quality of air transportation service is less than it would be, absent the discount fares.

In the following section, we shall show that three of the four discount fares (youth reservation, family, and Discover America), and perhaps all four, burden normal fare passengers in one or both of those ways, with that showing dependent only upon two assumptions: (1) the differences in the levels between normal fares and discount fares are not fully explained by the costs carriers save as a result of the restrictions written into the fares (such as blackout periods); (2) in the long run, the carriers' average costs per seat mile do not decrease as traffic increases. And in sections C and D of this part, we will show that both of those assumptions have been proven valid by the evidence of record in the Domestic Passenger Fare Investigation.

B. The Discount Fares Burden Normal Fare Passengers

The Board recognized the validity of the following two principles of air carrier economics in its decision in the load factor phase of the Domestic Passenger Fare Investigation:⁵

(1) Over a period of several years, industry-wide load factors will equal the industry's break-even load factor level (using "break even" in the sense of inculding a reasonable return on investment).⁶ In other words, over the long term, carriers will adjust their capacity in keeping with changes in traffic in order to attain break-even load factor levels.

(2) Assuming that average seat-mile costs remain constant, the industry's break-even load factor levels will increase as average fares are reduced. They will decrease if average fares increase.⁷

We need add only one other obvious fact in order to show that the discount fares burden normal fare passengers: Load factors affect the convenience, and, consequently, the quality of air transportation service, in that the higher the load factor, the harder it is for a potential passenger to get a seat on the flight of his choice.⁸

Let's apply those principles and facts to the question of whether the discount fares burden normal fare passengers.

First, assume that no discount fares exist. The question is what impact would their introduction have?⁹

One result of the introduction of discount fares is that the average fare level would go down.¹⁰

As we discussed above, since the average fare level would decrease, the industry's break-even load factor level would increase.

¹ Federal Aviation Act § 1002.

² Trans World Airlines: Rates for Phonograph Records, Order E-22935 at 6; Pittsburgh-Philadelphia No Reservation Fare, 34 C.A.B. 508, 515-516 (1961); Air Freight Rate Investigation, 9 C.A.B. 340, 344 (1948).

³ Standby Youth Fares—"Young Adult" Fares, Order 69-8-140; Order 70-2-123; Order 70-2-124.

⁴ Agreements adopted by the Joint Conferences of the International Air Transport Association (IATA) relating to transatlantic fares, Order 70-2-123 at 3; IATA Agreements relating to Transatlantic Fares, Order 70-2-124 at 5.

⁵ Order 71-4-54.

⁶ *Id.* at 21-24. Order 71-4-59 at 47-52. See also Docket 21866-6, DOT-T-1 at 10-12.

⁷ Order 71-4-54 at 23.

⁸ DOT-T-1 at 13-14, Docket 21866-6; DOT-RT-2 at 5, Docket 21866-7.

⁹ As noted earlier, the discussion here will assume that (1) the price differences between normal fares and the discount fares are not entirely explicable by the costs carriers save as a result of the standby, group travel and blackout period requirements written into the discount fares; (2) long-term increases in traffic volume do not decrease the carriers' average costs per seat mile. Those assumptions have been amply proven to be correct, as will be discussed in the following sections.

¹⁰ As of 1969, the result of the discount fares was that the average coach yield per revenue passenger was 17 percent lower than the full fare yield: Initial Decision at Appendix I.

As we also discussed, the increase in the break-even load factor level would cause an increase in actual load factors.

The result: Normal fare passengers would be paying just as much as they did before, but would be getting an inferior product. That is, even though normal fares remained the same, load factors would go up, and as a consequence those normal fare passengers would be inconvenienced by finding it harder to get on the flight of their choice.¹¹

Note especially that the introduction of discount fares would *not* result in lower normal fares—despite claims to the contrary.¹² Nor would they increase the carriers' rate of return (except for a trial period before capacity caught up to the influx of new passengers).¹³

Let's try it the other way around. What would happen to normal fare levels, and the quality of service, if the discount fares were eliminated.¹⁴

First of all, average fares would increase. That would cause a drop in break-even load factors. Actual load factors would follow suit. The result: Normal fare passengers would be paying the same fares they had been, but would be enjoying the convenience of lower load factors.

Now let's add to these considerations the Board's load factor standard of 54.1 percent. As we read the Board's load factor, fare level, and rate of return decisions, industry-wide load factors of less than 54.1 percent over a period of years, with carriers in the meanwhile earning returns of at least 12 percent, for trunklines, and 12.35 percent, for local service carriers, would be "a strong indication"¹⁵ that fare levels were too high, and should be reduced.¹⁶ Similarly, load factors of greater than 54.1 in such circumstances would be an indication that fare levels were too low, and should be increased.¹⁷

In light of those decisions of the Board, assume that it is a few years hence, that the carriers are enjoying the foregoing rates of return while experiencing industry-wide load factors of 54.1 percent, and that the discount fares are still part of the fare structure. What would happen if the discount fares were discontinued (again, assuming discontinuance on a gradual basis, so that carriers would have an opportunity to adjust capacity to the resulting traffic and revenue changes). Break-even load factors would drop, of course, and so would actual load factors—to below 54.1 percent—with carrier rates of return remaining constant. The result, if that situation continued for long: A Board Order requiring a lower fare level, so that load factors would return to the 54.1 percent level. The converse is a situation in which: (1) carriers were earning the Board-established rates of return, (2) load factors were at 54.1 percent, and (3) the fare structure did not include any of the discount fares. What would happen if, in these circumstances, the discount fares then went into effect.

First of all, the average fare level would drop. Breakeven load factors would thereby increase, and so would actual load factors, to above 54.1 percent. (Carrier profits would temporarily increase, but then return to the same level they had been.) The result, a "strong indication" that fare levels should be increased. If the Board acted on that indication, normal fare passengers would thereby be paying higher fares than they had been prior to the introduction of the discount fares without enjoying any commensurate improvement in the quality of air service.

In other words, absent load factor standards, discount fares burden normal fares by lowering the quality of air transportation for normal fare passengers, without causing a commensurate decrease in the level of normal fares. Now that the Board has adopted a load factor standard, discount fares will burden normal fare passengers by causing normal fare levels to be higher than they would be, absent the discount fares, at a given quality of service level.¹⁸

¹¹ Standby fare passengers do not burden normal fare passengers in that way. As a result of the Board's 54.1 percent load factor standard, however, standby fare passengers may increase the cost of a normal fare ticket. We will discuss that on p. 7, *infra*.

¹² E.g. Order 70-2-123 at 3.

¹³ Order 71-4-54, DOT-RT-2 at 7-10.

¹⁴ If the discount fares were eliminated precipitously, without giving carriers a chance to adjust capacity, the carriers would suffer sharp drops in their rate of return. Accordingly, we recommend that the discount fares be ordered ended as of a date reasonably in the future. We discuss this at p. 14, *infra*.

¹⁵ Order 71-4-59 at 73.

¹⁶ Order 71-4-54; Order 71-4-59 at 73-74; Order 71-4-58.

¹⁷ Order 71-4-59 at 73.

¹⁸ It is not entirely clear whether the Board will include standby fare passengers in measuring carrier load factors for fare level purposes. If standby passengers will be included, then, in light of the foregoing discussion, youth standby would burden normal fare passengers by resulting in higher normal fare levels than if there were no youth standby fare. Accordingly, the youth standby fare would be unreasonable. If the Board will not include standby fare passengers in its load factor counts, standby fare passengers who paid the incremental costs of their carriage will not burden normal fare passengers, and we would not argue that the youth standby fare is unreasonable. The fare is unjustly discriminatory, however (see Part III, *infra*), so the point is somewhat academic.

C. The Cost Savings Attributable to the Restrictions Written Into the Discount Fares Are Far Less Than the Fare Discounts

As we discussed earlier, the foregoing discussion is based on two assumptions: (1) the difference between the price of normal fares and discount fares is greater than any cost savings attributable to the discount fares' blackout periods, travel-together requirements, and other such restrictions; (2) over a period of years, the carriers' average seat mile costs do not decrease with increases in traffic volume. In this section, and the following one, we will show that the evidence of record amply supports both of these assumptions.

The discount fares, as approved by the Examiner, differ from normal fares in that they are restricted in a number of ways: All have blackout periods, the family fares impose a travel-together requirement, and the youth standby fares, of course, preclude reservations. If those restrictions resulted in cost savings for the carriers equivalent to, or greater than, the fare discounts, the discount fares would not burden normal fare passengers in any way.¹⁹

The reason is clear. Such fares would still reduce average fare levels. But they would not thereby increase the carriers' breakeven load factor levels, because the carriers' cost savings would match the decrease in the average fare level. Thus cost-based discount fares would result neither in increased reserved seat load factors nor in increased normal fare levels. There would be no burden.

Unfortunately, the discounts enjoyed by discount fare passengers are not cost-based. The evidence makes that clear.

To begin with, the fact that the fares are limited to selected groups (youths members of families able to travel together, persons willing and able to schedule their return trips 7 to 30 days after their departure) is proof that the carriers do not think that the amount of the discount is equaled by the carriers' cost savings. For if the carriers believed that the blackout periods and other restrictions written into the fares resulted in savings equivalent to the discounts, they would not have found it necessary to limit the fares' applicability: passengers using those fares would be every bit as profitable as normal fare passengers. To put it another way, if the cost savings equaled the discounts, carriers would be indifferent about whether a passenger used a discount fare or a normal fare.²⁰ Since the carriers are not indifferent at all (witness the emphasis on generation-diversion ratios), the carriers plainly think that the difference between the level of the discount fares and normal fares is substantially greater than any possible cost savings.

Secondly, the only hard cost evidence shows minimal cost savings relating to the standby aspect of the youth standby fare,²¹ and the cost savings relating to the travel-together aspect of the family fare are considerably less than the family are discounts.²²

Finally, there is the traffic leveling aspect of the discount fares. Blackout restrictions were written into all of the fares by the Examiner. We would agree that those restrictions result in some cost savings for carriers whose peak days coincide with the blackout periods. But it is not at all clear that traffic of all carriers peaks on Fridays and Sundays. And in any event no carrier submitted any hard data on the savings that would result from the blackout periods.

Further we note that carrier traffic apparently peaks by hour of day considerably more than by day of week.²³ Thus a passenger who opts to fly at, say, 5:00 P.M. on a Monday adds far more to carrier traffic peaking problems than a passenger who flies at an off-hour on a Friday or Sunday.²⁴ And discount passengers, of course, can add to the peak hour traffic crush any day but Fridays or Sundays.

We think it clear, then, that the cost savings resulting from the traffic leveling aspects of the discount fares fall far short of the fares' 20 to 32- $\frac{1}{2}$ percent discounts. Indeed, the Examiner found that—

The evidence does not establish that there are significant cost savings ascribable to black-out periods.²⁵

¹⁹ See DOT-T-1 at 13.

²⁰ See DOT-T-1 at 19-20.

²¹ See p. 41, *infra*. The Examiner concluded that "there is no substantial evidence that the cost of a youth standby passenger is less than that of any other passenger." Initial Decision at 70.

²² Such a cost savings run about \$4.00 for two passengers traveling together, \$8.00 for three, and \$12.00 for four. See pp. 33-40, *infra*.

²³ DOT-D-1-5, Docket 21836-5.

²⁴ *Id.* No one contends, of course, that it is cheaper to carry a 20 year old than any other passenger, or that the 7-to-30 day return trip requirement written into Discover America fares results in cost savings to the carriers.

²⁵ Initial Decision at 53.

In sum, the evidence of record shows clearly that the price differentials between normal fares, on the one hand, and the discount fares, on the other, are far greater than any possible savings to the carriers attributable to the restrictions written into the fares.

D. Increased traffic volume does not result in a decrease in average costs per passenger

As we said earlier, in our discussion showing that the discount fares burden normal fare passengers, we made the assumption that carrier seat mile costs do not decrease because of traffic volume increases. Here is the point. If the airline industry were characterized by "increasing returns to scale"—that is, that average costs per seat mile decreased as traffic volume increased—then although discount passengers would decrease the average fare level, since they tend to generate additional traffic, the carriers' per-passenger costs would decrease. If the economies of scale were great enough, the per-passenger cost decrease could match the decrease in average fare level, and breakeven load factors would thus remain constant. As in the case of fares whose lower prices are based on cost savings resulting from restrictions written into the fares, there would thus be no burden on normal fare passengers.

Unrefuted evidence submitted by the Department, however, shows that there are no economies of scale in the airline industry. More specifically, the evidence shows that, all other things remaining equal, an increase in an average trunkline's traffic over a period of years would result in an extremely slight *increase* in average costs.²⁶ Taking all carriers as a whole, local service carriers as well as trunks, an increase in traffic would cause no meaningful change in average costs.²⁷

The Department's conclusion that there are no long-term economies of scale in the airline industry is in accord with past writings on the subject: Richard E. Caves, *Air Transport and its Regulators* (Cambridge: Harvard U. Press, 1962), ch. 3; John B. Crane, "The Economics of Air Transportation," *Harvard Business Review* (Summer 1944), at 495-509; George Eads, Marc Nerlove and William Raduchel, "A Long-Run Cost Function for the Local Service Airline Industry: An Experiment in Non-Linear Estimation," *Rev. of Economics and Statistics* (Aug. 1969), at 258-270; Robert J. Gordon, "Airline Costs and Managerial Efficiency," *Transportation Economics: A Conference* (N.Y.: Nat'l. Bureau of Economic Research 1965), at 61-94; Harold D. Koontz, "Domestic Air Line Self-Sufficiency: A Problem of Route Structure," *American Economic Rev.* (Mar. 1952), at 108-113; also "Economic and Managerial Factors Underlying Subsidy Needs of Domestic Trunk Line Air Carriers," *J. Air L. & Com.* (Spring 1951), at 138-140; Mahlon R. Straszheim, *The Int'l. Airline Industry* (Wash.: The Brookings Institution, 1969), ch. V, app. B; Carl M. Unterman, *An Analysis of Civil Aeronautics Board Policy Concerning Airline Mergers*, (Master's thesis, U. of Tenn., Aug. 1965), Defense Documentation Center, AD 620 433; Stephen Wheatcroft, *The Economics of European Air Transport* (Cambridge: Harvard U. Press, 1956), ch. III. Moreover, as we understand the Board's fare level decision, the Board is in agreement.²⁸

In sum, our discussion that showed that discount fares burdened normal fare passengers was predicated on only two assumptions: (i) that the differentials between the prices of normal fares and discount fares are not fully accounted for by cost savings resulting from the restrictions written into the fares; (ii) there are no long-term economies of scale in the airline industry. As the discussion in the past two sections has shown, the validity of both of those assumptions is amply proven by the facts of record.

E. The discount fares burden normal fare passengers—conclusion

Board approval of the youth reservation, family, and Discover America fares, and perhaps the youth standby fares as well, would be flatly inconsistent with the Board's decision in the load factor phase of the Domestic Passenger Fare Investigation, and with its rulings that "promotional" fares are unreasonably low if they burden normal fare traffic. Both the load factor decision and the "burden" test are clearly correct, and accordingly three, and perhaps all four, of the discount fares must be found to be in violation of the requirements of the Federal Aviation Act.

²⁶ A 10 percent increase in traffic would result in about a 1 percent increase in average costs. Docket 21866-7 DOT-T-1 at 23.

²⁷ A 10 percent increase in traffic would result in a reduction in average costs of less than four one-hundredths of one percent: *Id.*

²⁸ Orde: 71-4-59 at 64-65.

As indicated earlier, however, we do not urge that the discount fares be ended forthwith. Our earlier discussions of the impact of the introduction, or elimination, of discount fares were always predicated on long-term phenomena. (By "long term" we mean a time period long enough for carriers to make any necessary adjustments in capacity; see DOT-T-1 at 22-23.) As we indicated above, if carriers are given an opportunity to alter capacity, the elimination of discount fares will not affect their earnings. If the discount fares are dropped precipitously, however, load factors may temporarily decline too far, and carrier earnings might follow—until the carriers made the appropriate capacity adjustments. That strongly suggests that, in the interests of sections 102(b) and 1002(e)(5), insofar as those sections relate to the maintenance of sound economic conditions in the airline industry, the date for ending the discount fares be fixed at a time far enough in the future for the carriers to be able to make the necessary capacity adjustments. One other factor points in the same direction. Load factors probably would decline if the discount fares were eliminated; but in many markets load factors are already so low that decline would not meaningfully improve the quality of service for normal fare passengers—they already can get on nearly and flight they want.²⁹ Thus, while we think it is clear that at least three of the discount fares are unreasonable under Board standards, and, as we will discuss at pages 19-31, *infra*, all four of the discount fares are unjustly discriminatory, the discount fares should be ordered eliminated at a date sufficiently far ahead so that the carriers will have an opportunity to make any appropriate capacity adjustments.

F. Value of Service Should Play No Role in Pricing Passenger Fares

The Examiner also grounded his approval of the discount fares on value of service considerations.³⁰ Under Board decisions, those considerations can never justify a fare that burdens other traffic.³¹ Since at least three of the four discount fares do burden other traffic, value of service in regard to those fares is beside the point. Nonetheless, we will touch on the matter because we think that for at least three reasons under no circumstance should value of service considerations be used to justify a fare's reasonableness.

1. *The economics of the air passenger industry do not justify value of service pricing.*—The most comprehensive use of value of service pricing has been in the setting of railroad freight rates. The railroad industry is characterized by a unique cost structure that at least arguably makes this form of pricing desirable. In that industry, there are increasing returns to scale brought about by low variable costs and very high fixed costs. Marginal cost (i.e., the change in cost attributable to the additional unit of output) is less than the average cost. Thus, as traffic expands, average cost decreases.

Due to this cost structure, it was early determined that the railroad rate structure should reflect elasticity of demand.³² After the out-of-pocket cost (the cost attributable to extra units of output) is determined, value of service considerations are then used by the Commission and the carriers to fix the appropriate fare level.³³ By reference to the demand curve for transportation of the product, the rate is set at a level which will increase both total traffic and net revenue.

Usually this results in higher value commodities paying a greater proportion of the fixed costs, since their demand is less elastic, transportation charges constituting a lesser percent of the value of the commodity. The I.C.C.'s approach, although grounded in economic considerations, has not gone without criticism.³⁴

But as our earlier discussion shows, the cost characteristics of the airline industry differ substantially from those of the railroad industry. In the aviation industry, unlike the railroads, there are constant returns to scale and, as a consequence, elasticity of demand considerations are irrelevant as regards rates and fares in-

²⁹ That is by no means true in all markets. When load factors are in the mid-50's or higher, changes in them will most certainly affect passenger convenience. See, DOT-T-1 at 13-14, Docket 21866-6; DOT-RT-2 at 5, Docket 21866-7. And evidence in this investigation, as well as various recent carrier submissions to the Board, show that load factors in the high 50's and 60's are not that uncommon. See, DOT-D-7, Docket 21866-6; BE-6503, Docket 21866-6; Appendix to Answer of Pan American World Airways, Inc. in Application of Trans World Airlines, Inc., to engage in capacity reduction discussions, Docket 22908.

³⁰ Initial Decision at 59-63.

³¹ See *e.g.*, Order 70-2-123.

³² I. Sharfman, *The Interstate Commerce Commission*, 425 (1937).

³³ See, generally, Dam, *The Economics and Law of Price Discrimination; Herein of Three Regulatory Schemes*, 31 *U. Chi. L. Rev.* 1 (1963) at 33-37.

³⁴ See, *e.g.*, *New York, New Haven & Hartford Railroad Co. v. United States*, 199 F. Supp. 635, 643 (D.C. Conn., 1961) vacated *I.C.C. v. New York, New Haven & Hartford Railroad Co.*, 372 U.S. 744 (1963).

tended to remain in effect for more than a very short duration.³⁵ Thus the prime justification for value of service pricing has no relevance in pricing anything but the most temporary air passenger fares.

2. *Value of service pricing leads to economic waste.*—As DOT's witness testified "any discount fares which are not related to differences in the cost of providing the service are inefficient in terms of the optimal use of scarce resources. . . ." ³⁶ If passengers using a discount fare of lesser "value" cost a carrier less than normal fare passengers, and the fare discount reflects the cost savings, the fare is justifiable on the basis of cost savings alone, and value of service considerations are irrelevant. If the discount is greater than the cost savings, economic inefficiency results, whatever the value of service related to that fare.³⁷ The result is that any fare dependent upon value of services considerations as a justification will necessarily result in misallocations of resources.

3. *The application of value of service considerations to passenger fares will necessarily be arbitrary.*—Value of service considerations lead to impossible questions, such as: Is the value to a potential passenger of a fare restricted to, say, weekdays, 5 percent less than an unrestricted fare, or 10 percent less? Even assuming that such a question were meaningful, there is no way to answer it, since at any given moment the answer will differ from passenger to passenger, and further will change with any given passenger from one moment to the next. As a result, the amount of any fare discount based on value of service considerations will always be completely arbitrary.

III. DISCRIMINATION

A. Introduction

As we noted earlier, fares that do not reflect costs cause economic inefficiency.

The corollary is that differences in fares that are not based on differences in the cost of providing the services associated with those fares also result in inefficient resource expenditure.

Here is how the Department's witness, an economist, put it:

Price discrimination exists whenever service is provided at different prices to separable groups and the price differential is not soundly based on differences in cost. Thus, differential pricing according to 'value of service' (or elasticity of demand) is discriminatory (in economic terms) unless based on differences in the cost of providing the service. Two extreme examples of such price discrimination are (1) providing the same service at different prices, and (2) providing services with different costs at the same price. Basically, then, price discrimination exists whenever prices and costs are unequal. A corollary to this definition is that where price differentials are predicated on differences in costs, price discrimination does not prevail.

If profits are normal and price discrimination prevails, this amounts to saying that some customers are paying more than the cost of providing service whereas others are paying less.³⁸ Note the dual character of this: because some groups get preferential treatment, others must pay more than they would have otherwise. This is not only a question of equity, but also of economic efficiency. That is, under such circumstances the provision of service to the low-priced group will be too great, whereas the service provided to the group discriminated against (i.e., the "standard" passenger) will be in too short supply. Thus, we conclude that even in the case where profits are regulated, price discrimination results in a misallocation of resources. Even though revenue covers cost and therefore "average price" equals average cost, there is a misallocation of resources within the various groups.³⁹

We urge the Board to incorporate this basic economic principle into the law relating to discrimination under section 404 of the Federal Aviation Act. That is, any fare applicable to a specified group, and any restricted fare set at a level that differs from unrestricted fares by an amount not explicable by the differences in the costs of performing the respective services, should be found to be unjustly discriminatory. That sort of rule would be simple to administer, would promote the "national objective" of "efficient utilization and conservation of the Nation's resources",⁴⁰ would best comport with the standards of section 102 of the Federal Aviation Act, and would harmonize well with the courts' teachings regarding the meaning of section 404.

³⁵ See Order 71-4-59 at 64-65; DOT-T-1 at 27, Docket 21866-7.

³⁶ DOT-T-1 at 16.

³⁷ *Id.* at 15.

³⁸ Footnote omitted.

³⁹ Testimony of James C. Miller III at 11-13 (emphasis in original).

⁴⁰ Department of Transportation Act § 2, 80 Stat. 931 (1966).

Under the approach we propose, all the fares here under consideration would be rejected as unjustly discriminatory.⁴¹ Quite properly. Because as we shall now discuss, as the law now stands those fares run afoul of section 404's prohibitions.

B. The Youth and Family Fares.

In *Transcontinental Bus System, Inc., v. CAB*,⁴² the court held that it is unjustly discriminatory to offer a reduced fare to a limited class of persons unless the selection of that class can be justified by factors "which Congress has by statute deemed material, and those factors which regulatory practice in the transportation industry has, through experience, found relevant".⁴³ *Trailways of New England, Inc. v. CAB*⁴⁴ is very much in accord.⁴⁵

Our point here will be to show that under that standard the youth standby, youth reservation, and family fares are clearly unjustly discriminatory within the meaning of the Federal Aviation Act.

1. *Youth Fares*.—In the *Youth Fares* case,⁴⁶ the Board tentatively found that the discriminatory nature of the youth fares is justified on the grounds that they generate new traffic for the airline industry without undue diversion from other fares, meet the Board's developmental objectives under the Federal Aviation Act, do not burden other traffic, are necessary to the development of the air transport industry and that elimination of these fares would prejudice other farepayers. The Board specified that its tentative finding was to be reviewed in light of the record in this phase.

The Examiner found that "[t]he evidence in this record is consistent with the Board's findings. . . . Accordingly, it is . . . found that the youth fares are not unjustly discriminatory."⁴⁷ As we shall discuss, neither the Board's tentative determinations nor the Examiner's finding can be sustained on the basis of this record.

(a) *The alleged benefits to other passengers resulting from the youth fare discounts*.—As we discussed in Part II, youth reservations fares are very much of a burden, not a benefit to other-passengers. As a result of the youth reservations fares: (1) at any given load factor, the full fare passenger pays more than he would if there were no youth reservation fares; (2) at any given normal fare level, youth reservation fares necessarily increase the carriers' break-even load factors, thereby raising actual load factors, and as a result, makes it more difficult for the full fare passenger to get a seat on the flight he wants.

Apart from that, we fail to understand how the benefit-other-passengers theory justifies either of the youth fares—youth reservation or youth standby—in view of the court's insistence that the selection of the particular class accorded the discount be explained on transportation grounds. In that regard, even assuming that both types of youth fares somehow benefit other passengers, there is nothing in the record to show that granting the same discounts to another group instead (*e.g.*, widows, orphans, candlestick makers), would not confer just as great a "benefit" on normal fare passengers.

(b) *Generation of new traffic*.—The Examiner found that youth standby fares "have an affirmative traffic-generating effect"⁴⁸ and "that the youth reservations fares fulfill the traffic-generation mission."⁴⁹

That is beside the point in view of the test posed by *Transcontinental Bus and Trailways*. As we noted above, those cases require explicit justification for the selection of the particular class for whom the fare is available. There is nothing whatever in the record to show that the discounts offered under the youth fares would generate any less traffic if offered to any other identifiable group in the population.⁵⁰

⁴¹ See, Part II.C., *supra*.

⁴² 383 F. 2d 466 (5th Cir. 1967).

⁴³ *Id.* at 484.

⁴⁴ 412 F. 2d 926 (1st Cir. 1969).

⁴⁵ *Id.* at 934. We recognize that the historical approach to such reduced fares was to treat the charging of different rates for like service as unjust discrimination, and the charging of different rates for different services to a limited class of persons as undue prejudice. See, *e.g.*, 383 F. 2d 482. However, it is clear that although the courts in both *Transcontinental Bus System, Inc. v. CAB*, *supra*, and the *Trailways of New England, Inc. v. CAB*, *supra*, discuss whether the service offered under the fares in issue is "like" or "unlike" service as compared with the service afforded regular fare passengers, the net result of these decisions is that tariffs which charge different rates for the same service or offer an inferior and lower cost service at a reduced fare to only a select group of persons are unjustly discriminatory unless justified by the factors listed above.

⁴⁶ Order 69-8-140.

⁴⁷ Initial Decision at 89.

⁴⁸ Initial Decision at 31.

⁴⁹ Initial Decision at 33.

⁵⁰ See Tr. at 2027-2030.

(c) *Favorable generation-diversion ratios.*—In its *Youth Fares* opinion, the Board suggested that the youth fares had a favorable generation-diversion ratio, and that this was attributable to the fact that the fare was limited to 12–21 year-olds.

There is no evidence to support that view. For all the record shows, discount fares limited to persons aged 65 and over, or practically any other group, would have as good, or better, generation-diversion ratios. The *Trailways* court insisted that justifications for discriminatory fares be firmly grounded on facts, not hypotheses.⁵¹ This justification of the Board fails by a wide margin to meet that requirement.

(d) *Long-term generation of traffic.*—The theory here is that introducing young persons to fly through the use of discount fares will result in increased numbers of full fare passengers as the youngsters who have thereby tasted the sweet fruits of air travel reach majority.

The record is barren of evidence to support that notion. As we noted above, *Trailways* requires facts, not theory, to justify discrimination.

(e) *Filling extra capacity.*—The Board suggested that promotional fares, such as youth fares, generate traffic to fill empty seats. While this justification may have some rational basis in the very short run when carrier equipment is committed to particular schedules and the carriers have a fixed fleet of equipment, as our discussion in Part II indicates, it makes no sense in any longer run period.

In any event, that argument is not a justification for limiting the discounts to 12–21 year-olds. There has been no showing that discount fares available to youths fill up empty seats better than would similar fares available to some other group.

(f) *New route awards and competitive services.*—The Board suggested in its *Youth Fares* opinion that new route awards and competitive services required an expanding traffic base, since it was Board policy to grant new routes and authorize competitive services before existing traffic levels would necessarily justify the awards. We question whether this remains Board policy in light of the present financially troubled condition in the air carrier industry. However, even if it does, for two reasons that still in no way justifies the youth fares: (1) That rationale has no bearing whatever on why the fares should be limited to youths, as opposed to any other group; (2) The youth fares are offered on a system-wide basis, over all routings, on old routes as well as new ones, on routes served by only one carrier, as well as on competitive routes.

(g) *Temporary excess capacity.*—Another justification for the discriminatory nature of the youth fares is that the fares are claimed to be useful in filling up the carriers' temporary excess capacity.

The initial problem here is that, once again, that is no explanation why a discount fare available to youths, rather than to any other group, better fills up otherwise unduly empty aircraft.

Apart from that, the justification does seem valid to us in that there is indeed considerable excess capacity being operated these days. But there are a number of ways of dealing with that problem. For instance, one would be to provide for an expanded peak-off-peak pricing system (see Part IV, *infra*). A second, if discount fares must be used, would be for the Board to impose an expiration date no later than one or two years hence, on those fares, and to put the carriers on notice that the fares will not be extended. That way: (1) the fares would be in effect for the period of excess capacity, but no longer than that; (2) carriers presumably would not base equipment acquisition on traffic predictions that include discount fare travel. That, of course, would be a change from present acquisition procedures.⁵²

(h) *Traffic peak-leveling characteristics.*—The Board gave the traffic peak-leveling characteristics of youth fares as a justification for the discriminatory aspects of the fares.⁵³

The first problem here is that that does not explain why the fares are limited to youths. Presumably standby fares, and fares with the same blackout periods, limited to any other group, would have the same impact on traffic peaking.

The second is that there is a nondiscriminatory alternative that would do the job better: Off-peak discount fares available to everyone.

The third problem is that the characteristics of the youth fares by no means maximize the peak-leveling possibilities of fares. For instance, the limited evidence available on this point in the Domestic Passenger Fare Investigation shows that carrier load factors tend to have far more pronounced peaks and troughs on an

⁵¹ 412 F. 21 at 936.

⁵² See, Initial Decision at 50.

⁵³ Order 67-8-140 at 15-16.

hour-of-the-day basis than in terms of a day-of-the-week basis.⁵⁴ If the point of youth fares is to level traffic peaks, the fares' blockout periods would better be established on hourly terms.

(i) *The impact of eliminating the fares.*—The Board expressed concern in the *Youth Fares* opinion⁵⁵ that the precipitous cancellation of discount fares would have an adverse affect on service. We agree. Consequently, we do not advocate immediate elimination of these fares, but rather, a gradual phase out over a period of time as these fares are replaced by broad-based nondiscriminatory discount fares (see Part IV, *infra*).

(j) *Youth fares—summary.*—None of the justifications for offering discount fares restricted to youths holds water. None are based on facts showing that the fares are better limited to youths than to any other group. And under both *Transcontinental Bus* and *Trailways*, just such facts must be shown in order for fares like the youth fares to escape the unjustly discriminatory label.

Further, most of the justifications for the youth fares do not hold up under examination, even putting aside the fact that there is no basis for limiting the fares to youths rather than to some other group. Clearly the discrimination resulting from the youth fares discounts is not justifiable, and the fares must be found to be in violation of section 404 of the Federal Aviation Act.

2. *Family Fares.* To a large extent, the Examiner sought to justify the discrimination resulting from the family fares on the same grounds that he found youth fares to be nondiscriminatory: family fares generate traffic to fill otherwise empty seats, influence "passengers to try and then continue flying", and so on.⁵⁶ We discussed all of those justifications in the preceding section, and found them badly wanting.

The Examiner also went on to find that there were two reasons that specifically justified the selection of family members as recipients of a discount fare.

a. "Family fares are directed to some extent at influencing a person taking a trip to bring one or more members of the family with him."⁵⁷

We fail to understand how that represents a justification by a factor "which Congress has deemed material" or one "which regulatory practice in the transportation industry has, through experience, found relevant."⁵⁸ Discounts of 25 or 33½ percent will, of course, generate additional traffic. And apart from certain cost savings resulting from group travel that will ordinarily be far less than the discount,⁵⁹ it remains unclear to us why an air line, or the Board, should prefer that that additional, discount traffic is made up of family members accompanying their spouses or parents.

b. The family fare "is aimed at stimulating the family as a group to forsake the family automobile and employ air transportation in its travels."⁶⁰

The logic of this second argument is no better than that of the first. To begin with, the record contains no hard data that shows that families are more likely to switch from automobiles to airlines than any other small group. More importantly, that approach assumes that we should compare families to other groups in justifying the family fare. That simply is not so. The point is that family fares result in certain persons getting discounts that others do not. The apparent thrust of the justification is that the recipients of the discount, and perhaps accompanying full fare passengers, would not have flown but for the fare. For our purposes here, therefore, in order to justify those discounts it would be necessary to show that such persons are better persons to offer the discount to, in terms of a generation-diversion ratio, than any other class of persons. Of course, the record shows no such thing.

Family fares, as well as youth fares, fail by a wide margin to pass muster under the standards of *Trailways* and *Transcontinental Bus*. Accordingly, the fares must be found to be unjustly discriminatory in violation of section 404 of the Federal Aviation Act.

C. *The Discover America Fares*

The Discover America fares, as approved by the Examiner, offer up to a 20 percent discount to any passenger able and willing to return to his point of origin between 7 and 30 days after departure. The select group to whom this fare applies

⁵⁴ DOT-D-6, Docket 21866-6; DOT-D-1-66, Docket 21866-9.

⁵⁵ Order 69-8-140 at 11.

⁵⁶ Initial Decision at 90.

⁵⁷ Initial Decision at 91-92.

⁵⁸ *Transcontinental Bus*, *supra*, 383 F. 2d at 484.

⁵⁹ See section IV, *infra*, and p. 9, *supra*.

⁶⁰ Initial Decision at 92.

thus is not based on status (i.e., a member of a family) or age (i.e., between 12 and 21 years old), but upon the ability and willingness of the passenger to fit travel plans into the 7-to-30-day requirement. While neither the *Transcontinental Bus* nor *Trailways* courts addressed themselves to precisely this form of discrimination, the rationale of those cases applies here with equal force. That is, that the selection of the group receiving the advantageous fare must be justified on the basis of hard, transportation-related facts, or by reference to the policies set forth in the Federal Aviation Act.

Neither the Act nor the facts provide that justification. The most that can be said about the 7-to-30-day rule is that it reduces diversion. But there has been no showing that the 7-to-30-day requirement reduces diversion better than say, a fare limited to welfare recipients, or a fare that uses a 10-to-50-day requirement. Thus, the traveler who must remain away no more than 6 days or more than 30 days is being arbitrarily discriminated against in favor of the traveler who can return during the 7-to-30-day period.

Both *Trailways* and *Transcontinental Bus* make it clear that arbitrary discrimination is forbidden by section 404 of the Federal Aviation Act. Under that standard, the Discover America fares must be found unlawful as unjustly discriminatory.

IV. ALTERNATIVES TO THE DISCOUNT FARES

As we discussed in Parts II and III, the discount fares lead to misallocation of resources, are unreasonable under the Board's own standards, and are unjustly discriminatory. That need not be the case for all discount fares. Indeed, there are several types of discount fares that would promote more efficient resource use as well as comport fully with the requirements of the Federal Aviation Act. In this section of the brief we will discuss those fares.

A. Off-Peak Fares

Fares that flatten a carrier's traffic peaks and troughs obviously reduce carrier costs: A carrier with a relatively constant demand can serve more passengers with less aircraft and ground facilities capacity than can a carrier whose traffic volume varies widely.⁶¹

Accordingly we urge the adoption of a system of off-peak discount fares in which the discount is equivalent to the costs saved by the carrier as a result of the better utilization of equipment and facilities. Such off-peak discount fares:

- (1) Would not be limited to select groups, such as youths or family members;
- (2) Would enable many persons otherwise unable or unwilling to pay normal fares (and who happen not to be members of the groups entitled to discounts under the discount fares here under consideration), to use air transportation;
- (3) Would in no way burden normal fare passengers, as we discussed on p. 8, *supra*.

Certain types of off-peak fares are now in effect. Carriers should be encouraged to focus more on this form of discount pricing. The Board can give that encouragement in two ways: (1) it can here find that off-peak fares affording cost-based discounts meet the standards of the Federal Aviation Act; (2) it can find that family fares, as presently constituted, the two types of youth fares, and Discover America fares are unlawful. For as long as there exist fares offering large discounts not related to cost savings, the drawing power of cost-related off-peak fares must necessarily be diminished.

B. Small Group Discounts.

The carriers were asked to submit information on the savings resulting from the family fares' restrictions. Many did. That evidence shows that small group travel results in savings to the carriers in terms of passenger handling costs.

Three trunk carriers and one local service carrier submitted detailed cost exhibits, describing the cost savings as a result of joint ticketing. (A table based on these exhibits showing cost savings per passenger for each of the four carriers is set out on page 38, *infra*.)

American Airlines showed that the total passenger handling costs for a single passenger is \$4.83.⁶² The total handling cost for two passengers ticketing together

⁶¹ Evidence of load factor peaking is already part of the record in the Domestic Passenger Fare Investigation: Docket 21866-6, DOT-D. In phase 9, the Department has submitted extensive information on peaking in terms of numbers of passengers. Docket 21866-9, DOT-D-1 through 88. That information has not yet been introduced into evidence. See, NAL-IR-15, Docket 21866-5.

⁶² AA-120.

is \$5.92; for three passengers, \$7.01; for four passengers \$8.11. The cost savings as a result of group ticketing can be calculated by subtracting the handling cost for two passengers ticketing together (\$5.92) from the cost for two passengers ticketing individually (\$4.83+\$4.83). A similar technique can be used for three or four passengers. Thus, American saves \$3.74 when two passengers are ticketed together; \$7.48 in the case of three passengers; and \$11.21 for four passengers. It would appear that this cost savings is realized only if the passengers travel together.⁶³

Delta submitted an exhibit "based on judgment only"⁶⁴ which indicated that considering the traffic handling and reservations expense, a single passenger costs \$4.78; two passengers ticketing together cost \$5.80; three passengers cost \$6.78; and four passengers cost \$7.88. Using the same methodology as described above, that amounts to a cost savings of \$3.76 for two passengers, \$7.56 for three passengers, and \$11.24 for four passengers.

Eastern Airlines stated that "if passengers are handled on a group basis the unit cost per passenger decreases as a result of the behavior of ticketing and reservation costs which remain basically constant for a transaction irrespective of the number in a group. This cost behavior is especially observed when the group in question does not exceed four (4) and the members of the group are a family."⁶⁵ Thus for two passengers the savings is \$4.76; for three passengers, \$9.52; for four passengers, \$14.28. In short, Eastern says that passenger handling costs are no higher for a number of passengers traveling together than for one passenger.

Hawaiian Airlines indicates that the cost for reservations, ticketing and passenger handling for one passenger is \$2.58.⁶⁶ For passengers traveling as a group, the cost per passenger decreases as the group increases in size. For two passengers, the savings would be \$2.23; for three passengers the savings would be \$4.45; for four passengers the savings would be \$6.49.

Three other local service carriers were convinced that there were cost savings but had no detailed exhibits to offer. Thus North Central indicated there may be a savings as between multiple single passengers and groups of 2, 3, or 4. "Only one ticket is required, fewer bags may be carried and less reservation time per person is needed. Since family plan passengers amount to 10.2 percent of 1969 volume, a slight decrease in unit costs for these passengers is possible, with a corresponding slight increase in other passengers' unit costs. NCA is not able . . . to assess the exact effect of the time and effort saved."⁶⁷ The North Central witness indicated that the saving exists only if the passengers travel together.⁶⁸ Piedmont indicated that there would be some cost saving if the group traveled together.⁶⁹ Southern offered no evidence on the cost savings; however it indicated there might be substantial savings when passengers travel together as a group.⁷⁰ Southern's witness indicated that this savings would be principally in the reservation expense.⁷¹

As for other carriers, Pan American estimated savings on a per passenger basis for 10 percent for two passengers, 12 percent for three passengers, and 15 percent for four passengers. National offered no studies, but expressed the view that the savings would be insignificant.⁷² Air West,⁷³ Allegheny,⁷⁴ Braniff,⁷⁵ Continental,⁷⁶

⁶³ Tr. 482. Passengers who reserve space further in advance of departure probably also result in a cost savings to the carrier since the carrier has more opportunity to adjust variables for the flight such as food service. A witness for American Airlines testified that when families travel, there is usually more planning. However, this witness indicated that length of the trip was the primary determinant in how far in advance any passenger makes a reservation. Tr. 417-418.

⁶⁴ DL-1R-20.

⁶⁵ EA-107 at 1.

⁶⁶ HAL-750, Tr. 869.

⁶⁷ NCA-15, note B.

⁶⁸ Tr. 1508-09; see also Tr. 1513.

⁶⁹ Tr. 1617.

⁷⁰ SO-8.

⁷¹ Tr. 1846-47.

⁷² Tr. 1445-46. Pan American's cost savings are shown in PA-103.

⁷³ AW-12, Docket 21866-5.

⁷⁴ Tr. 332.

⁷⁵ BI-2 at 5, Docket 21866-5.

⁷⁶ CO-67, Tr. 892-93, 906.

Frontier,⁷⁷ Mohawk,⁷⁸ Ozark,⁷⁹ Northeast,⁸⁰ TWA⁸¹ and Western,⁸² had not been able to determine the unit costs per passenger for ticketing, reservations and passenger handling.

United submitted no exhibit on cost savings but referred the parties to Exhibit U-201 submitted in Phase 4 of this proceeding.⁸³ U-201 sets out costs relevant to passenger departures but does not offer a direct method for computing the savings (if any) from group travel. Exhibit U-201 shows that the reservation costs for a United local passenger is \$1.10. The reservation costs for a United local passenger connection to another carrier is \$1.21. Thus, while two reservations are involved, the cost does not double, but goes up by only \$.11. The ticketing column shows similar results. The local ticketing cost is \$1.63. The interline costs is \$1.71. Thus, multiple tickets and reservations handled at the same time appear to result in cost savings over individual tickets and reservations.

Continental found cost savings attributable to interline travel in Phase 4, but offered no studies in this phase. An analysis of the Phase 4 material similar to that discussed above with respect to United shows cost savings in the ticketing and reservation area.⁸⁴

The important point here is that the carriers that presented detailed information all found a cost saving attributable to the traffic. The remaining carriers made no studies which could be regarded as conclusive. However, they did not dispute the possibility that there might be a measurable savings associated with group travel.

The record therefore supports the view that small group travel represents a cost savings compared to passengers traveling individually. Assuming that the costs discussed above are representative of the industry's experience, and the record offers no evidence to dispute this assumption, the averages set out in the table below may be used in determining a figure to represent the average savings accruing to a carrier for transporting a small group.

Carrier	Savings—group over individual passengers		
	2	3	4
American.....	\$3.74	\$7.48	\$11.21
Delta.....	3.76	7.56	1.24
Eastern.....	4.76	9.52	14.28
Hawaiian.....	2.23	4.45	6.49
Totals.....	14.49	29.01	43.22
Average.....	3.26	7.25	10.81
Totals*.....	12.26	24.56	36.73
Average*.....	4.90	8.19	12.24

*Hawaiian excluded.

It should be noted, however, that the above cost savings may only show up *if the group actually travels together* on the same ticket on all legs of their journey.⁸⁵ Since the discount is designed to reflect cost savings, and since this discount will encourage group travel, such a restriction is reasonable.⁸⁶

The foregoing evidence shows that discounts for small group travel are justified to the extent that they do not exceed \$4 for two person groups; \$8 for three person groups; and \$12 for four person groups. In our brief to the Examiner we urged that

⁷⁷ FL-10.

⁷⁸ MO-IR-TR-1.

⁷⁹ OZA-9, Tr. 2285.

⁸⁰ NW-115, Tr. 1677.

⁸¹ TW-5080. The TWA cost witness, however, indicated that there is a cost savings in transporting a family group as compared to an equivalent number of full-fare passengers. Tr. 2145. TW-5060 at 3 suggests that this cost savings is in the reservation and sales area as a result of group ticketing. This point was confirmed by the witness sponsoring the exhibit. Tr. 2146. Baggage handling is also an area of cost savings. Tr. 2137. A family group apparently has less baggage than a comparable number of individual passengers. The cost saving described by the witness is only realized if the group travels together. Tr. 2146.

⁸² Tr. 268-69.

⁸³ Tr. 2457.

⁸⁴ CO-7, Docket 21866-4.

⁸⁵ Tr. 482, 1508-09, 2146.

⁸⁶ The Examiner found that this restriction was appropriate even for non-cost based family fares. Initial Decision at 79.

small group discounts to that extent—but only to that extent—be authorized. The Examiner declined, on the ground that a discount so limited would endanger “the generative capabilities of the [family] fare”.⁸⁷

There are two problems with that reasoning. To begin with the existing family fares are unlawful and thus are not an alternative to the system we propose. Secondly, the “generative capabilities” of a discount fare are hardly an advantage if normal fare passengers suffer either inconvenience or higher fares as a result of family fare discounts. And as we showed in Part II of this brief, that is very much the case with regard to family fares as presently constituted.

The Department therefore requests that the Board reverse the Examiner’s findings, and allow the carriers to offer a cost related discount for small group travel to the extent set out above.

Since it appears that the savings do not increase proportionately beyond the four passenger point,⁸⁸ we suggest that comparable discounts for larger groups not be published until there is more complete evidence on this point.

We note that the small discounts we propose will have the ir greatest impact on short haul segments where the discount will be proportionately greater than on long haul routes. This is particularly significant in view of the fact that short haul routes are the routes most subject to competitive diversion from other transportation modes.

C. Standby Discounts May be Justified. However the Discount Offered Now is Too Deep.

The record shows that standby fares result in two types of cost savings: (1) savings associated with reservation costs, ticket lift, costs and so on; (2) savings stemming from the traffic peak leveling characteristics of standby fares.

In regard to the first of savings, a standby passenger makes no reservation, and thus the reservations expense is saved. (On the other hand, standby passengers may generate approximately the same 6500 account expense as other passengers since they do make telephone calls to inquire about flights and availability of space. Thus, American assigned full reservation costs to the standby passengers.)⁸⁹

If a savings exists in the reservations area, it could be calculated from the break-out of unit costs supplied in connection with the group ticketing exhibits. American calculates that the reservations expense is \$1.65 for a single passenger,⁹⁰ Delta’s suggested figure is \$2.56,⁹¹ and Eastern’s figure is \$2.90.⁹²

Further, there may be a small cost savings associated with the ticket lift and ramp services item. This is because there has to be a standard complement of personnel at the gate to handle a particular size of aircraft.⁹³ This does not vary with the traffic. Hence, at least arguably, a standby passenger should not be assessed this expense.⁹⁴

On the basis of the record, it would appear that a very modest discount for standby passage is justified on the basis of lower reservation, ticket lift, and ramp services expense.

As noted above, standby fares also appear to reduce carrier costs because such fares tend to level traffic peaks.⁹⁵ However, no carrier submitted cost exhibits on this point. As a result, a reasonable discount for standby fares cannot be determined on the basis of this record—although, as we discussed earlier (on pp. 8–11 *supra*), a 33½ discount, as now offered under youth standby fares, is undoubtedly too great.

As indicated above, standby fares would appear unwarranted if the carriers use off-peak discount fares to a greater extent. However, should the Board reflect off-peak discount fares, we would urge that standby discount fares, available to all, be authorized, with the extent of the discounts dependent largely upon a showing of the cost savings attributable to the traffic leveling quality of such fares.

⁸⁷ Initial Decision at 76.

⁸⁸ EA-107, Docket 21866-5 at 2.

⁸⁹ AA-116, at 8 of 11. Tr. 538. TWA also assigned account 6500 expense to their passengers.

⁹⁰ AA-120.

⁹¹ DL-IR-20.

⁹² EA-107.

⁹³ AA-116, at 8 of 11. Tr. 538.

⁹⁴ On the other hand, since carriers often consider *all* traffic and *all* revenues in scheduling, it could be argued that it is not appropriate to eliminate this expense.

⁹⁵ DOT-T-1 at 18.

D. Promotional Fares

The purpose of a promotional fare in the airline industry should be much the same as the purpose of promotional sales in other industries.⁶⁶ That is, promotional fares should be used to develop traffic on particular routes, introduce service to the public on new routes and solve short-term marketing problems. Promotional fares also offer the opportunity for experimentation.⁶⁷ Availability should be restricted to particular days, seasons, directions, and markets. Such fares should be considered proper regardless of whether they cover costs since they are a form of a "loss leader". A carrier offering such a fare would expect a short-term decline in its profits over a particular segment or route in order to achieve longer term benefits. These fares should be offered without discrimination to the public as a whole. Only under extremely unusual and rare circumstances should they ever be system-wide for a carrier.⁶⁸

True promotional fares make good business sense, and carriers ought to be permitted to experiment with them.

In this connection, we note that the discount fares, on the other hand, are not promotional fares, in the sense used above, and should not—indeed, may not—be authorized on that ground. The discount fares would be valid in all markets no matter how dense the traffic is, would presumably be a permanent part of the fare structure, and could be used in all seasons of the year. As discussed earlier, fares of that sort, since the differential between them and normal fares is not based on cost differences, inevitably have an untoward effect on normal fares, or on the quality of services offered to normal fare passengers.

V. CONCLUSION

The discount fares are in violation of the requirements of the Federal Aviation Act. They cause misallocations of resources and consequent economic inefficiency. And their existence militates against the adoption by the carriers of non-discriminatory costbased discount fares. Accordingly, we urge that the discount fares be ended. However, in order to prevent any possible untoward impact on the carriers' financial health, termination of the discount fares should be ordered as of a date sufficiently far in the future to enable carriers to make the appropriate capacity changes.

Respectfully submitted.

J. THOMAS TIDD,
Acting General Counsel.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing brief upon all parties to this proceeding.

STEPHEN J. GROSS.

⁶⁶ Tr. 2824.

⁶⁷ Continental, for example, has filed a short duration experimental fare designed to encourage the public to try air transportation. We think this fare meets the test of a truly promotional fare.

⁶⁸ DOT-T-1 at 10.