

Y4
. P 96/11
94-66

1024

94-66
P 96/11
9494

TO BROADEN THE POWER OF THE CIVIL AERONAUTICS
BOARD TO GRANT RELIEF BY EXEMPTION IN
CERTAIN CASES

GOVERNMENT
Storage

DOCUMENTS (94-66)

J
1977
E9909L 760663
A11600 009TTV

FARE
KANSAS

LIBRARY
UNIVERSITY

HEARINGS
BEFORE THE
SUBCOMMITTEE ON AVIATION
OF THE

COMMITTEE ON
WORKS AND TRANSPORTATION
HOUSE OF REPRESENTATIVES
NINETY-FOURTH CONGRESS

SECOND SESSION

ON

H.R. 14623

TO AMEND THE FEDERAL AVIATION ACT OF 1958, AS
AMENDED, TO BROADEN THE POWER OF THE CIVIL AERO-
NAUTICS BOARD TO GRANT RELIEF BY EXEMPTION IN
CERTAIN CASES, AND FOR OTHER PURPOSES

AUGUST 31 AND SEPTEMBER 1, 1976

Printed for the use of the Committee on Public Works
and Transportation



U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1976

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

ROBERT E. JONES, Alabama, *Chairman*

JIM WRIGHT, Texas
HAROLD T. JOHNSON, California
DAVID N. HENDERSON, North Carolina
RAY ROBERTS, Texas
JAMES J. HOWARD, New Jersey
GLENN M. ANDERSON, California
ROBERT A. ROE, New Jersey
TENNO RONCALIO, Wyoming
MIKE McCORMACK, Washington
JAMES V. STANTON, Ohio
BELLA S. ABZUG, New York
JOHN B. BREAUX, Louisiana
BO GINN, Georgia
DALE MILFORD, Texas
NORMAN Y. MINETA, California
KENNETH L. HOLLAND, South Carolina
ALLAN T. HOWE, Utah
ELLIOTT H. LEVITAS, Georgia
JAMES L. OBERSTAR, Minnesota
JEROME A. AMBRO, New York
HENRY J. NOWAK, New York
ROBERT W. EDGAR, Pennsylvania
MARILYN LLOYD, Tennessee
JOHN G. FARY, Illinois
W. G. (BILL) HEFNER, North Carolina

WILLIAM H. HARSHA, Ohio
JAMES C. CLEVELAND, New Hampshire
DON H. CLAUSEN, California
GENE SNYDER, Kentucky
JOHN PAUL HAMMERSCHMIDT, Arkansas
BUD SHUSTER, Pennsylvania
WILLIAM F. WALSH, New York
THAD COCHRAN, Mississippi
JAMES D. ABDNOR, South Dakota
GENE TAYLOR, Missouri
BARRY M. GOLDWATER, Jr., California
TOM HAGEDORN, Minnesota
GARY A. MYERS, Pennsylvania

SUBCOMMITTEE ON AVIATION

GLENN M. ANDERSON, California, *Chairman*

DAVID N. HENDERSON, North Carolina
TENNO RONCALIO, Wyoming
JAMES V. STANTON, Ohio
DALE MILFORD, Texas
NORMAN Y. MINETA, California
ALLAN T. HOWE, Utah
ELLIOTT H. LEVITAS, Georgia
JIM WRIGHT, Texas
HAROLD T. JOHNSON, California
BO GINN, Georgia
MARILYN LLOYD, Tennessee
JOHN G. FARY, Illinois
W. G. (BILL) HEFNER, North Carolina

GENE SNYDER, Kentucky
JOHN PAUL HAMMERSCHMIDT, Arkansas
THAD COCHRAN, Mississippi
JAMES D. ABDNOR, South Dakota
GENE TAYLOR, Missouri
BARRY M. GOLDWATER, JR., California

CONTENTS

H.R. 14623: To amend the Federal Aviation Act of 1958, as amended, to broaden the power of the Civil Aeronautics Board to grant relief by exemption in certain cases, and for other purposes-----	Page 1
---	-----------

TESTIMONY

Barnum, John W., Deputy Secretary, U.S. Department of Transportation-----	3
Driscoll, Edward J., president, National Air Carrier Association-----	86
Haffer, Louis P., executive vice president and counsel, Air Freight Forwarders Association of America; accompanied by William J. Dixon-----	177
Krueger, Hon. Robert, a Representative in Congress from the State of Texas-----	83
Prescott, Robert W., president and chief executive officer, The Flying Tiger Line, Inc.; accompanied by Jack Rosenthal, general counsel; and Joseph Healy, vice president and chief operating officer-----	100
Robson, Hon. John E., chairman, Civil Aeronautics Board; accompanied by James C. Schultz, General Counsel-----	20
Schultz, James, General Counsel, Civil Aeronautics Board; accompanied by Gary Eadles, Associate General Counsel-----	191
Seybold, Leo, vice president, Federal affairs, Air Transport Association of America; accompanied by Gerald Godbout, director, Cargo Services, Air Transport Association of America-----	128
Smith, Frederick W., chairman of the board, Federal Express Corp.; accompanied by Arthur C. Bass, president; and Nathaniel P. Breed, counsel-----	44

MATERIAL RECEIVED FOR THE RECORD

Civil Aeronautics Board, docket 28354, order 75-12-38, Federal Express Corp. exemption (Dec. 8, 1975)-----	224
Driscoll, Edward J., president, National Air Carrier Association, statement-----	86
Haffer, Louis P., executive vice-president and counsel, Air Freight Forwarders Association, statement-----	178
Krueger, Hon. Robert, a Representative in Congress from the State of Texas, statement-----	81
National Industrial Traffic League, statement-----	227
Prescott, Robert W., president and chief executive officer, The Flying Tiger Line, Inc., statement presented to Aviation Subcommittee of the Senate Commerce Committee on S. 3684, Aug. 3, 1976-----	197
Seybold, Leo, vice president Federal affairs, Air Transport Association of America:	
Scheduled airlines offer a wide variety of nationwide air freight services, statement-----	134
Listing of participating parties to airlines air taxi interline freight traffic agreement-----	137
Comments on issues raised by Frederick W. Smith, chairman, Federal Express Corp.-----	143
Smith, Frederick W., chairman of the board, Federal Express Corp.:	
Statement and attachments-----	38
Rebuttal to statements made by Air Transport Association-----	203
Smith, James Lawrence, vice president, regulatory affairs, Airlift International, Inc., letter-----	232
Weston, Robert O., president, Air Freight Motor Carriers Conference, statement-----	233

CHAPTER I

The first part of the book is devoted to a general survey of the subject. It begins with a definition of the term and a discussion of its history. The author then proceeds to a detailed examination of the various aspects of the subject, including its scope, its methods, and its applications. The second part of the book is devoted to a detailed study of the subject, and the third part to a discussion of its future prospects.

H. R. 14623

IN THE HOUSE OF REPRESENTATIVES

JUNE 30, 1976

Mr. MILFORD (for himself, Mr. SNYDER, Mr. WRIGHT, Mr. HAMMERSCHMIDT, Mr. GINN, Mrs. LLOYD of Tennessee, Mr. RONCALIO, Mr. ABDNOR, Mr. HOWE, Mr. TAYLOR of Missouri, Mr. HENDERSON, and Mr. LEVITAS) introduced the following bill; which was referred to the Committee on Public Works and Transportation

A BILL

To amend the Federal Aviation Act of 1958, as amended, to broaden the power of the Civil Aeronautics Board to grant relief by exemption in certain cases, 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 SECTION 1. Except as otherwise specified, wherever in
4 this Act an amendment is expressed in terms of an amend-
5 ment to a section or other provision, the reference shall be
6 considered to be made to a section or other provision of the
7 Federal Aviation Act of 1958, as amended.

8 SEC. 2. Section 416 (b) (1) is amended by adding the
9 following at the end thereof: "*Provided, however, That*

1 nothing in this section shall prevent the Board from grant-
2 ing an exemption from the requirements of this title so as to
3 authorize the conduct of all-cargo operations in interstate air
4 transportation, pending consideration of an application for
5 initial certification pursuant to section 401, if the Board finds
6 that the issuance of such exemption is in the public interest.”.

7 SEC. 3. Section 101 is amended by renumbering para-
8 graphs (11) through (38) thereof as paragraphs (12)
9 through (39) and by inserting after paragraph (10) the
10 following new paragraph:

11 “(11) ‘All-cargo air transportation’ means air trans-
12 portation of property, or of property and mail, only.”.

TO BROADEN THE POWER OF THE CIVIL AERONAUTICS BOARD TO GRANT RELIEF BY EXEMPTION IN CERTAIN CASES

TUESDAY, AUGUST 31, 1976

**HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON AVIATION
OF THE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION,
Washington, D.C.**

The subcommittee met at 11:35 a.m., in room 2253, Rayburn House Office Building, Hon. Glenn M. Anderson (chairman of the subcommittee) presiding.

Mr. ANDERSON. At these hearings we are considering H.R. 14623, a bill to facilitate the authorization of all-cargo service by the Civil Aeronautics Board.

Under existing law, there are two means by which the CAB can authorize new air service. The basic means is a certificate of public convenience and necessity which can be awarded only after time-consuming evidentiary hearings. The Board is also permitted to authorize new air service by exemptions awarded without hearings.

However, as the CAB interprets the governing court decisions, it is not authorized to award exemptions for relatively large scale cargo operations with large aircraft.

H.R. 14623 would amend the exemption section of the Federal Aviation Act to permit the Board to authorize all-cargo operations by exemption pending CAB consideration of an application for a certificate to conduct these operations.

Our first witness today is John Barnum, Deputy Secretary of Transportation.

Mr. MILFORD. Mr. Chairman, I would ask unanimous consent that we also consider in this hearing H.R. 15302. As the author of both of these bills, the original version and a second version which has some changes, I would ask we also consider that bill.

Mr. ANDERSON. With no objection, so ordered.

**TESTIMONY OF JOHN W. BARNUM, DEPUTY SECRETARY,
U.S. DEPARTMENT OF TRANSPORTATION**

Mr. BARNUM. Thank you, Mr. Chairman.

Mr. Chairman and members of the subcommittee, thank you for this opportunity to discuss H.R. 14623. This bill would amend the Federal Aviation Act of 1958 to allow the Civil Aeronautics Board to grant an exemption from the requirements of title IV of that act pending consideration of an initial application for all-cargo certification.

Although the bill is written in general terms, it is intended in fact to aid Federal Express in its request to operate larger planes than can now be operated pursuant to the exemption established under section 416 for commuter air carriers.

We have carefully reviewed the bill, and we believe it touches an extremely important area. Although much of our initial efforts to reform aviation economic regulation focused upon passenger transportation, we have always realized that the present regulatory structure creates unnecessary problems for air cargo transportation and that reform is needed in this area.

Air freight in terms of volume may be a small part of the total freight picture, but air cargo is nevertheless a very vital part of the transportation system. Particular industries such as the garment, electronics, and aerospace industries, where speed is of the essence, rely heavily upon air freight. Other industries may ship only a few parts via air transportation, but these parts are often key to their total operations.

We agree with the objectives of H.R. 14623. We believe that Federal Express should be allowed to fly larger planes. Airline management, all management, should be allowed to choose the type of equipment that is most suitable to its operation as long as that equipment is safe and environmentally acceptable.

Once having said this, let me stress, however, that we disagree very strongly with the approach of this particular bill. What you have before you is a private relief bill. The problem, on the other hand, requires a broader based response. We must not choose short-term solutions that attempt to solve one problem only to create other problems and, more important, solutions that do not confront the larger issues.

We think there is another way to address the problem of Federal Express and to avoid the problems and inequities created H.R. 14623, but first I think some background is useful to give perspective to this issue. Federal Express is quite a success story, especially since it is operating in an industry that, in recent times, has not seen much financial success. It started in operation about 4 years ago in competition with some fairly well-known firms. At that point, it served less than two dozen communities, employed a few hundred employees, and operated less than a dozen planes. Today, Federal Express serves over 75 airports, with over 40 aircraft and approximately 2,000 employees. Its rates are, in many instances, lower than those of its competitors, and its planes are flying at load factors approaching 90 percent in terms of weight. Its annual revenue is in the range of \$100 million.

Federal Express has benefited from a fairly unique type of operation. Regardless of the origin or destination of a package, all shipments are collected and first brought to a central point, Memphis, for shipment to their final destination. This centralized shipping system allows Federal Express to maximize its efficiency and reduce its costs. For example, with a central shipping point, the number of backup planes to be used in case of an aircraft mechanical problem is minimized.

Why was Federal Express able to achieve such success? Considering the unique type of system developed by Federal Express, a great

deal of credit must be given to the innovative spirit of the Federal Express management. But that spirit might have been for naught if Federal Express had to work in the usual regulatory environment.

This company, however, was able to work within the limits of the present exemption from economic regulation provided pursuant to section 416 of the act. By using planes with payloads below the limits of the exemption, Federal Express was able to expand its route system without the usual regulatory filings and delays and to offer rates that were very often below the rates of its competitors. Such a course is not open to a certificated carrier.

Federal Express has now grown to a size where it is flying more than one plane a night to many of the cities it serves. It now has the choice to fly multiple flights into the larger cities it serves or to use a larger single plane. For most businessmen, the choice would be clear. One plane saves fuel and costs. But Federal Express cannot follow this course without obtaining a broader exemption than is now allowed.

Of course, there is another course, to seek a certificate, but as Federal Express has testified before the Senate and before this subcommittee, certification with all its delays, uncertainties, costs, and restrictions is not a very attractive course. Federal Express has applied to the Board for the broader exemption. The Board turned it down, claiming, among other things, that it lacked the power to grant such an exemption.

H.R. 14623 would remove any doubts that the Civil Aeronautics Board could grant the exemption and open the way for larger planes. But it is not a course we should take. The rules of the game should apply to all equally. If Federal Express can operate larger planes exempt from economic regulation, then other similarly situated carriers should have those same rights. The other cargo carriers have made a significant investment in the industry, and if the rules are going to be changed, then the rules should be changed for all.

There are many problems with this private bill. If this exemption were granted, Federal Express would be free from the constraints of title IV, at least until its certification was completed, while the other carriers would not. I am sure that the other cargo carriers would like to have the freedom to choose what cities they can best serve and what rates they charge. If such freedom is granted to one, it should be granted to all.

This bill is very narrowly drafted to open the door to a broader exemption only pending an—and this is a quotation from the language of the bill—“initial certification pursuant to section 401.” This language would deny the Board the power to make the bill’s benefits available to existing certificated carriers.

I might point out, however, that even if the word “initial” were removed and the bill provided that Federal Express and the other carriers would all play by the same rules, we would still be greatly troubled by this piece of legislation. The bill does not require an exemption; it only authorizes an exemption. This approach leaves open the possibility that although the present Board may find it in the public interest to grant this exemption to Federal Express, it may choose not to grant a similar exemption to other carriers at a future time. And it leaves Federal Express subject to Board con-

trol should its management decide that even a large plane or a different type of system would produce a more efficient operation.

There are other technical problems. If the Board were to grant a temporary exemption, how would this affect the Board's ultimate decision as to certification. Just from the perspective of Federal Express, this bill may be a very unwise course. I am, of course, not trying to second-guess the management in it, but to anticipate their arguments of equity. In any event, the present proposals leave open the possibility that a temporary certificate will be granted, but a permanent certificate will be denied or perhaps only half the points desired will be granted to Federal Express.

The correct course of action is not to enact this limited bill, but rather to go to the heart of the issue—comprehensive reform of air cargo regulation. It is not just Federal Express that has problems. It is, in fact, the success story of the otherwise undernourished air cargo industry. The existing regulatory system serves poorly the needs of the cargo carrier and shipper. Its emphasis is on restriction and great efforts are spent to construct an intricate labyrinth of where a carrier may and may not fly. The result is inordinate inefficiency for the carriers and confusion and inconvenience for the shipper who may have a thousand shipments and yet cannot deal with one carrier that is able to serve all those points.

It is instructive to compare the successes of the unregulated sector of the airfreight industry with the status of the regulated industry. We have already discussed the success of Federal Express. But while Federal Express is the largest commuter operator, it is certainly not the only one. Indeed, more than 30 commuter carriers handle only cargo and the other commuters, in total, carry three times as much freight as does Federal Express. Still other commuters specialize in cargo, but do not limit their operations exclusively to cargo.

Like Federal Express and the rest of the commuter industry, commuters carrying freight are unregulated and provide scheduled service without subsidy. And for the past 5 years, the amount of freight carried by commuters has been growing at a rate of more than 30 percent annually.

Another area with limited regulation is that of air freight forwarders. The Board permits virtually free entry and relatively complete pricing flexibility. In contrast to the claims of chaos and oligopoly often predicted as a result of regulatory reform, we see a healthy and growing industry of 300 firms. Clearly the unregulated sector is doing well.

But what of the regulated sector? We now have only two all-cargo airlines operating domestically. Flying Tiger, with a proud history and a leader in the industry, has not been profitable domestically for years. Airlift is small, suffers from a severely restricted route system, and has had major financial problems. Clearly the Board policy of holding up freight rates to protect all-cargo carriers has not resulted in their success.

But what of the combination carriers? As for the passenger carriers, the number of all-freighter aircraft operated has shrunk. Largely because of the rates set by the Board in a futile effort to protect freighters, belly space on passenger airliners goes largely unutilized. In the all-cargo industry, we are facing what we already face in the

motor carrier industry: A movement away from common carriage to private and contract carriage because of the increasing inflexibility of the regulatory system.

Indeed, this is already occurring—as several large commercial operators, exempt from Board regulation, operate under contractual arrangements with large shippers. There is, in fact, a major contract between the unregulated sector of the airfreight industry where the forces of the free enterprise are allowed to operate, and the regulated section where those forces are stifled.

We believe that comprehensive reform of air cargo regulation is necessary, both in terms of entry/exit and rates. Several issues are raised by such a policy, and I would like to share some of my thoughts with you on these issues. Should there be any test for entry? Should there be some limits with respect to the pricing flexibility? Should the reform be intricately phased? Since the supplementals are an obvious new entrant to scheduled air cargo service if there were such reform, should the air cargo carriers be allowed easier access to supplemental certificates as a matter of equity?

As far as a “test” for entry, it may be that something less than the existing PC and N test is required. A test limited to “fit, willing, and able” would not cause a great problem, but there would seem to be little need for any test to protect competition as distinguished from competitors.

The Federal Aviation Administration would insure that the planes are safe as they do now, and it might be sufficient to require registration with the Civil Aeronautics Board and authorize the Board to require proof of insurance coverage and similar practical requirements of registration.

Is there a problem of possible discrimination or “predatory conduct?” Would smaller shippers be placed in an inferior position by reform? We believe that with a liberalized system, the threat of entry would police both discrimination and predatory conduct. The theory of predatory conduct is that you charge below-cost rates, drive the competition out, and then reap the benefits of a monopoly. This is the theory, but the theory would not hold if there were empty bellies in the passenger aircraft and free entry for all cargo service. The “predator” might drive out the all-cargo competition with below-cost pricing. But if there were free entry, the competition would return when he raised prices again, and thus he would not be able to recoup his earlier losses.

Much of the same analysis is applicable to the question of discrimination. Discrimination means that a carrier is charging one customer a higher price than another customer for the same service. This may go on in a monopoly situation, but it cannot go on very long in a free entry situation. The high-priced customer will simply take his business elsewhere.

Another course would be to attempt to define what we mean by “predatory” or “discriminatory,” and then to prohibit such conduct. The problem here is the difficulty of allocating costs between passenger and freight traffic. If given this authority, the Board might simply promulgate an arbitrary allocation formula. It is possible that a standard intended to protect against unfair competition might be used to frustrate fair and desirable competition.

As for phasing, there are many approaches. The simplest way would be just to have the revised approach take effect on a certain date in the future. Any other approach might be fairly arbitrary and could make the carriers go through several adjustments unnecessarily.

Finally, what about the relationship between the supplementals and the all-cargo carriers? The supplementals have great flexibility. If there were free entry into cargo carriage, it is possible that the supplementals would be among the first new entrants. Is it fair that the supplementals could enter the all-cargo business but that the all-cargo carriers could not enter the supplemental business?

These are but some of the issues that need to be addressed, Mr. Chairman and members of the subcommittee, and I would hope you would undertake a deliberation of these in the near future. I appreciate the opportunity to discuss these important issues. I do not mean to suggest that I raised them all, but this is the conclusion of my prepared statement, and I would like to answer any questions that you or members of the subcommittee might have.

Mr. ANDERSON. In what way would deregulation lead to improved air cargo service?

Would there be more service? Would there be lower rates and higher load factors?

Mr. BARNUM. I think there should be more service to the extent you could make the available capacity more available as a practical matter.

Some two-thirds of the bellies of the aircraft that the passenger operators are flying are now empty, and if there were more competition, that capacity should be made available. Certainly more entry would suggest that more people could get into the business.

There would be some lower fares, but I cannot suggest that you would necessarily get lower rates across the board. I am impressed with the fact that there is a very much needed service overnight, for example, that a large part of the air cargo market focuses upon. It may very well be that night service should be priced at a different rate than flying in passenger aircraft bellies during the day. With flexibility, you have numerous possibilities to adjust air cargo fares according to the demand and to the availability of aircraft.

Whether you would have more total accommodations available is a function of pricing, and the cost of equipment. Whether you would encourage the industry to go into more convertible service so they would be flying passengers by day and cargo at night, I don't know,

Mr. ANDERSON. Has the Department of Transportation undertaken any studies of the effects of deregulation on air freight service?

Mr. BARNUM. We have many studies of the effects of regulatory reform but there are certain particular problems involved in deregulating just air cargo that we have not yet completed studying. As I expressed to you before, one of the problems of deregulating air cargo is the relationship between the all-cargo carrier and the carrier carrying both passengers and freight. I made reference to the problem of cost allocation. It is a difficult problem. I am told by those knowledgeable in the industry that it is a resolvable problem.

If you were to deregulate air cargo but at the time to leave the air passenger business substantially as regulated as it is today, you would have to divide the cost of operating the aircraft to allocate the total cost between passengers and cargo so that you would not put

all-cargo operators at the disadvantage of having to compete with the cargo space on passenger planes considered a throwaway, with very lost cost.

Unless you were to address the problem across the board, in other words, air deregulation, passenger and cargo simultaneously, you would create a different set of problems than involved with total reform. I think it is important to consider what the impact would be if you approached only the airfreight independently of the passenger side. We have not made that study. We are doing it now.

Mr. ANDERSON. If cargo rates are unregulated, would the CAB be able to prevent combination carriers from using passenger revenues to subsidize belly cargo service?

Mr. BARNUM. Of course the answer is yes, but that would come up in the context of how they would regulate air passenger fares.

That is answered in part by my answer to your earlier question concerning the requirement of allocating the cost of operating the aircraft between the passenger and cargo side.

Every statement made concerning that issue by the hearing examiner in the case that the Board did consider starting in 1971, the Domestic Air Freight Rate Investigation, prepared allocating it basically on a space basis.

But the Board has not made any determination in that case and it obviously is something that they would have to consider before you could protect all-cargo carriers given an unfair allocation of space on the combination carriers.

Mr. ANDERSON. If we decide against enacting deregulation legislation, would it be desirable to enact legislation requiring the Civil Aeronautics Board to decide cargo certification cases in 1 year?

Mr. BARNUM. Yes, it would.

Mr. ANDERSON. The DOT's position is that cargo rates can be fully deregulated and that there is no need for a floor on these rates.

In the case of passenger fares, DOT's proposed legislation requires that the fare cover direct costs. Is there less need for a floor for cargo rates than there is for a floor on passenger rates?

Mr. BARNUM. No; I would say there would be the same need if you were deregulating across the board.

I think there would also be a need to have a direct-cost floor. I do not think that air cargo should be sought at a tariff rate below direct costs.

The more difficult question is, in addition to the direct costs, what other costs over the long term should you include in determining what is an appropriate tariff base?

Mr. ANDERSON. I will withhold the balance of my questions until we get around.

Mr. Snyder?

Mr. SNYDER. Mr. Barnum, you say:

The rules of the game should apply to all equally. If Federal Express can operate larger planes exempt from economic regulation, then other similarly situated carriers should have the same rights.

Would not this bill, H.R. 15302, treat all the same?

Mr. BARNUM. I do not have a copy of H.R. 15302.

Mr. SNYDER. I do not have the other one, H.R. 14623.

Does it specifically name Federal Express?

Mr. BARNUM. No; but it applies only to those carriers who are making an initial application to the Board, so if you leave the word "initial" out, it would apply to any competitor of Federal Express that now has such a certificate.

Mr. SNYDER. I understand this bill, H.R. 15302, does correct that.

Mr. ANDERSON. Takes the initial out.

Mr. SNYDER. Then, would that eliminate the single objection you have; that it should apply to all carriers?

Mr. BARNUM. I shouldn't speak blindly about this bill.

Certainly, the elimination of the word "initial" goes a long way. But to the extent the bill is merely giving the Board authority to grant exemptions and does not compel the granting of an exemption, it still leaves open the possibility that the Board will take different action for different carriers. The bill does not require the CAB to grant to all carriers the same exemptions from route and rate restrictions, that would be available to Federal Express.

I think the intention of this bill is that somebody now applying for this exemption could get it pending consideration of a broader certificate, but unless the bill went on to say that the similar exemptions would be available to all carriers, that have such certification now, it would not be clear that Flying Tiger, for example, could likewise be exempted from route and rate restrictions pending application for permanent relief of those restrictions.

Mr. SNYDER. This bill as I understand it applies only to aircraft size, not to route and rate exemptions.

Mr. BARNUM. That is not expressly clear.

It says an exemption can be granted by the CAB pending certification.

It depends on the exemption. That is what they are talking about, but an exemption from title IV could be much broader than aircraft up to a particular size.

Mr. SNYDER. You obviously are at a disadvantage; I am, too. I don't know that much about it. You do not have the bill before you, but it refers to an application pending pursuant to section 401.

Does section 401 apply only to size, or does it also apply to the other things to which you made reference?

Mr. BARNUM. No.

It applies to all things.

Mr. SNYDER. The way the bill is written, the Board apparently could grant exemptions in the areas of rates and routes?

Mr. BARNUM. It could.

What it is saying is that pending application for full certification, the Board can authorize a carrier as if it had a certificate, and that would seem to exempt the carrier from all kinds of restrictions that might be applicable.

The word "exemption" is very broad.

Mr. MILFORD. May I make a clarification?

It concerns only section 401 which has to do with size of equipment.

Also, the word "initial" has been removed so that it applies to any carrier.

Mr. SNYDER. Do you have a copy of the act?

It would be of benefit if we had a copy of the act.

Mr. BARNUM. I am advised section 401 also applies to routes. I stand corrected. Section 403 is the one that would deal with rates. Section 401 goes to routes.

Mr. MILFORD. Cities involved?

Mr. BARNUM. Yes.

Mr. SNYDER. You said that Flying Tiger had not been profitable, while Federal Express has a good profit picture.

Are they both engaged in the same kind of business?

Mr. BARNUM. That is not my impression.

I have the impression that Flying Tiger is more in the bulk cargo business.

They are both all-cargo operations; that is true.

But Flying Tiger, insofar as its domestic traffic operations—it also has substantial overseas operations—has been operating larger aircraft and focusing more on the bulk, whereas Federal Express is more a small package business. But I don't purport to be an expert in the breakdown of their own incomes.

Mr. SNYDER. Do you have any information which would tell us why one carrier is authorized to engage in this business and another is not?

Mr. BARNUM. Well, the Federal Express operation, of course, is a unique innovation, quite ingenious.

They were able, because of the exemption available to them, to set their tariffs at a compensatory level.

They did not have to go back to the board to obtain tariff increases to cover any increased costs; whereas Flying Tiger did have to do that.

They were able to utilize more aircraft as they were building up their business and, obviously, the businessmen were free as to where their aircraft would fly and the kind of tariff they would charge.

They were in the position in the good old competitive system to earn a profit whereas Flying Tiger has had to come back to the board time and time again to get rate increases.

It has not been able to increase its rates at the same percentage that Federal Express has even over the last 4 or 5 years.

Mr. SNYDER. You deal with the potential problem of predatory conduct in the event of air cargo deregulation and you stated that air carriers currently flying with substantially empty bellies might cut their rates to the point where the all-cargo carriers would leave the market. But you said that would subsequently correct itself, if, in fact, they were to raise their rates because the all-cargo carriers then would move back into the market.

Mr. BARNUM. No; that is not a complete answer because I am concerned about what would happen if there were two separate types of entities, one combination passenger and cargo carriers which would have that capability, and the other the all-cargo specialist which did not have the opportunity to carry passengers and the opportunity to compete on rates with combination carriers.

Mr. SNYDER. Isn't it difficult for your competitor to move back in after he has gone bankrupt?

Mr. BARNUM. That is pretty tough.

Mr. SNYDER. After he has been forced out, he has a hard time getting back into the market.

You do not direct yourself to that problem.

Mr. BARNUM. I do.

If you were going to deregulate in the area of air cargo, you must also consider what the impact would be on air passenger service. I do not think you could cut air cargo loose without tying it in somehow to the air passenger business. For example, I suggest that the supplementals are more likely to go into more cargo business than the scheduled passenger carriers.

Mr. SNYDER. Should you not consider letting all-cargo carriers compete head-to-head with combination passenger and cargo carriers which offer cargo service at competitive rates?

Mr. BARNUM. I think, yes, you ought to permit anybody to be in any business.

[Discussion off the record.]

Mr. SNYDER. Do you anticipate with air cargo deregulation that the combination carriers or others who might enter the cargo field would be in a position to render the same type of service which Federal Express now provides? I am thinking not so much of scheduling as I am of the door-to-door service they provide.

Mr. BARNUM. What if somebody would go in and duplicate Federal Express, picking the hub from which they would spread or try to develop particular markets?

Mr. SNYDER. I am more concerned about the combination passenger and cargo carriers.

Mr. BARNUM. In other words, whether or not you try to duplicate that? This is something which we think the marketplace ought to dictate.

We would like to see such market-determined service, whether it be Federal Express, or Flying Tiger, or anybody else.

We would like to see them in a position to develop door-to-door service and that may mean including other kinds of freight transportation, whether it be truck, rail, water carrier, or otherwise, because that is potentially one of the biggest markets into which airfreight should be expanding.

It is difficult for the airfreight carrier when they have the restrictions which the Board presently imposes on them.

Mr. ANDERSON. Did not the Flying Tiger make an application at some time back for a centralized service with trucks and so on, and were they not turned down?

Mr. BARNUM. I think they did, but I am not clear.

You should ask Mr. Prescott.

Mr. ANDERSON. Go ahead.

Mr. SNYDER. You indicated just now that the competition from rail and barge—

Mr. BARNUM. Conceivably, but more likely motor carriers.

Mr. SNYDER [continuing]. Perhaps might divert some of their freight.

Mr. BARNUM. I would like to see one company in a position to offer all of those services and put them together in a manner most attractive to the shipping public.

Mr. SNYDER. If you do that, then you would have people talking about divestiture.

Mr. BARNUM. I believe the intermodal-service concept has many benefits.

Mr. ANDERSON. Mr. Milford?

Mr. MILFORD. Mr. Barnum, I wanted to make a couple of remarks, but they are directed toward the bill H.R. 15302, instead of the bill that you were discussing in your testimony.

One thing, in your statement you say that:

Although the bill is written in general terms, it is intended, in fact, to aid Federal Express in its request to operate larger planes * * *.

Then, in other places in your statement, you state that what we have before us is a private relief bill.

Correction, inferring again, that it is to the interest only of Federal Express.

As author of this bill, I must disagree with you.

It was not introduced as a special-interest bill on behalf of the Federal Express.

If one will simply read the bill, he will quickly see that its provisions apply to anyone, to any carrier, whether certificated or uncertificated.

Nowhere in this bill, or in the act that the bill is amending, is Federal Express mentioned.

As author of this bill, it was clearly my intention to make available to the public a very innovative, unique, and valuable service; namely, overnight delivery of air parcels to hundreds of cities in this Nation.

This is a service that has not been provided by our certificated air carriers in the past.

Furthermore, none of our certificated air carriers have revealed plans to provide this nationwide service in the future.

I realize that each of our carriers have some type of express package delivery to customers along their operating routes and that they provide good service along that limited route.

However, once that package has to be shuttled to another carrier or to another delivery system in order to reach its destination, the quality of service deteriorates rapidly.

This bill was designed to make possible an expanding nationwide, 24-hour delivery service of small packages and lightweight freight items to hundreds of American cities.

As this bill clearly states, the certification procedures of the CAB have not been waived or bypassed. This bill would simply allow the CAB to grant temporary usage of larger equipment pending approval of an application for certificate.

You will note that no limits of any kind have been placed on applicants.

Federal Express can apply for such a nationwide service, American Airlines can apply, so can Braniff, Eastern Airlines, Pan American, or "Fudpucker World Airway & Storm Door Co."

Each would be heard in normal CAB proceedings.

Any applicant taking advantage of the provisions of this bill would be taking his own chances. Should Federal Express or any other company make application for the usage of larger equipment pending certification, the applicant would have the privilege of eating the large equipment if certification is denied.

Certainly, CAB's granting of such an exemption would in no way bind the Board to a later decision during hearings where other carriers might be competing for the same service.

Do you disagree with any of that?

Mr. BARNUM. No, I applaud the purpose that you stated in your rationale for submitting this bill.

The only question I would ask you in response to your question, do I disagree with what you have just said, is that I do not see anything in H.R. 15302 that would limit the service for which the exemption would be available to the small-package-type service.

Mr. MILFORD. When they make an application before the Board that could be easily specified or it is something the Board would have control over during the certificating process?

Mr. BARNUM. Fair enough. But this bill does not do that. It would permit either Federal Express or "Storm Door Co." to obtain the exemption and then carry air cargo other than the small package.

Mr. MILFORD. But if the exemption so specified what they could carry, then I think that is a matter which the Board could understand.

Mr. BARNUM. I understand, but this bill would authorize them to apply for a broader exemption than packages and would authorize the Board to issue that exemption to them.

Mr. MILFORD. How would you amend the bill then?

Mr. BARNUM. Well, I am not suggesting that you should amend it to apply only to small packages, but I do think that it should be made equally applicable to operators now holding a certificate.

Mr. MILFORD. It is.

Mr. BARNUM. I understand that, but make it very clear that in the event any noncertificated carrier is granted this exemption, any certificated carrier in competition with that noncertificated carrier should be given precisely the same exemption rights with respect to routes or whatever else may be applicable to the now-exempt carrier so that you would not be creating Federal Express that could operate on any route that it chose without regard to Board authorization, whereas a carrier that does have a certificate and is limited to routes that it could operate, could not compete in the markets that Federal Express went into.

Mr. MILFORD. There is nothing to prevent any carrier from obtaining this same exemption. The law covers everyone.

So, you understand by H.R. 15302 that Flying Tiger, for example, could apply to the Board for an exemption from restrictions on the certificate?

Mr. BARNUM. If they wanted to provide 24-hour, door-to-door service, they could. There is no discrimination. It is available to anyone. I agree with you; 24-hour, door-to-door service isn't in here. It depends upon the express application before the Board.

Mr. MILFORD. Or the competing carrier.

Mr. BARNUM. Yes.

Mr. MILFORD. The mandate of the CAB is to look after the public interest.

You would agree 24-hour, door-to-door service is a public service?

Mr. BARNUM. I agree, but it should not be a monopoly.

Mr. MILFORD. Who says it has been?

Mr. BARNUM. As modified, OK.

I will be pleased to provide you with language that would make it clear that this is not only available to one not now having a certificate, but to one who has a certificate.

Mr. MILFORD. How do you read it is available to one not having a certificate?

Mr. BARNUM. I think maybe the legislative history that is being made right now would indicate that it would be available to one that now has a certificate. You should make it clear that the one now having a certificate should be granted that exemption.

Mr. MILFORD. I think my statement made that emphatically clear.

Mr. BARNUM. It has been made clear to me in our dialog. Whether that would be sufficient for the Board to act upon would be something up to the Board.

Mr. MILFORD. If any additional legislative history is needed, if you would draft it, I would be glad to see that it is read into the process along the line.

Mr. ANDERSON. Would the gentleman yield?

Mr. MILFORD. I yield.

Mr. ANDERSON. Take the case of Flying Tiger. It flies to the Far East. On the way, it has to stop at Anchorage to refuel.

My understanding is that they cannot unload or pick up anything because the CAB has refused to give them this authority several times. Would this bill allow them to pick up cargo at Anchorage?

Mr. MILFORD. If they can convince the CAB that it is in the public interest, convenience, and necessity.

Mr. ANDERSON. How would they go about it? Would they make another application?

Mr. MILFORD. Everything goes back to the certificate. We do not waive the Board process other than they can grant a temporary exemption pending the approval of certification.

They still have to fight the full certification proceedings. We are not exempting them.

During the time that you have to wait to hear, 3 years or whatever it is, they can grant a temporary exemption, either to operate a bigger airplane—

Mr. ANDERSON. If they already have a bigger aircraft, would they still be able to get the exemptions for that large aircraft, or would they have to use a smaller aircraft to get the exemption?

Mr. MILFORD. The bill states the Board has authority to grant temporary exemptions to section 401. Whatever section 401 covers, they can grant a temporary exemption pending full certification.

Mr. BARNUM. Does the chairman understand?

Mr. ANDERSON. Yes, I think that clarifies it.

Mr. MILFORD. In Federal Express' recent application to CAB for exemption to section 401, the Department of Transportation was asked to comment on that particular request.

At that time, did the DOT recommend that the CAB grant an exemption to Federal Express?

Mr. BARNUM. Yes, I was informed at that time that we did recommend it.

Mr. MILFORD. Did the Justice Department also recommend the granting of that exemption?

Mr. BARNUM. I am advised that they did.

Mr. MILFORD. How about the Department of Commerce? Did they also?

Mr. BARNUM. I am advised that they did. I will confirm that and advise the subcommittee if there is any difference.

Mr. MILFORD. Did any one of the Federal agencies oppose Federal Express' request for exemptions?

Mr. BARNUM. Not to my knowledge.

Mr. MILFORD. I am also concerned about one other factor in your testimony.

You seemed to prejudice the CAB when you stated that they would grant the temporary exemption permanently at the certification; it would more or less bind them to grant a certificate. I don't follow that.

Mr. BARNUM. It is an equity argument.

I have heard many arguments made that the present posture of regulated industry is a result of what the Board has done. I can see the argument being made if temporary exemption were authorized and if you made an investment in larger aircraft, that it was with full knowledge that the permanent exemption might not be granted; nevertheless, the argument in all likelihood would be made that they did it at least in reliance that they should be allowed to phase out their present business.

Mr. MILFORD. If legislative history has any bearing, let it be fully understood at this time that the bill is in no way intended for that to be a fact; that the person makes application based on merit, that it is judged on the merit and in a competitive field—

Mr. SNYDER. Would you yield?

Mr. MILFORD. Yes.

Mr. SNYDER. I asked the same question of one of the representatives of Federal Express who came by the office. We indicated that it would be the better part of judgment to lease the aircraft instead of purchasing them. With that kind of problem confronting you and that potential in front of you, I think there are very few prudent businessmen who would take a risk which such a purchase would entail. Based on what you have said about the success of Federal Express, they apparently are very prudent in conducting their business.

Mr. MILFORD. Thank you, Mr. Chairman.

Mr. ANDERSON. Mr. Taylor?

Mr. TAYLOR. I have no questions.

Mr. ANDERSON. Mr. Johnson?

Mr. JOHNSON. There's one question here that was just handed to me. It says:

Under the bill H.R. 15302, a company such as Federal Express, could be given authority to operate larger aircraft, as well as operate as a part 298 carrier.

Can a certificated carrier, such as Flying Tiger, which has the authority to operate large aircraft, also operate small aircraft as a part 298 carrier?

Mr. BARNUM. I wouldn't think so, Mr. Chairman.

Mr. JOHNSON. What right does a regular, certificated aircraft carrier such as United, have in carrying small parcels on that aircraft other than regular packages?

Mr. BARNUM. They almost all do exactly that, on their own account or they may make some arrangement with some freight forwarder.

Mr. JOHNSON. Do they have any specialized service to utilize transporting of small packages?

Mr. BARNUM. I believe they do use their belly for that purpose, yes, sir.

I don't understand how it is organized.

Mr. JOHNSON. If I understand, these are not carried in the belly of the aircraft, they are carried in the aircraft itself, or in some specialized compartment where there is a rate charged.

It is not handled in the regular baggage or freight facility.

It is handled on the aircraft with specialized service and also taken off through specialized service.

Do you know what they call that service?

Mr. BARNUM. No.

Mr. JOHNSON. I witnessed one the other day, the first one I have seen. There was a small parcel put on board.

A person came and left the parcel. I don't know what the rate was. It was computed, but it was \$31.50 from Sacramento to Washington. It was guaranteed to be placed on the aircraft, taken off the aircraft, delivered to the ticket counter and called for at the ticket counter.

Do you people—

Mr. BARNUM. I, too, know that exists, because I have used that myself.

Mr. JOHNSON. What do you call it?

Mr. BARNUM. I don't know what the industry calls that.

Mr. JOHNSON. I don't know, either, but we have used the Federal Express service, too, and received small parcels from it in the office here from California, but I have never seen this used before in the airport.

I just happened to be there getting my tickets.

Specialized service. They came aboard flight 50. The charge was \$31.50 for this little box that was delivered here.

Mr. BARNUM. I have used the same service. I have sent something from here to Philadelphia. It cost \$24.

Mr. JOHNSON. Is there a regulated certificate to cover that type of service with a fixed rate by the CAB?

Mr. BARNUM. I don't think they need any certificate independent of the one that they already hold.

Mr. JOHNSON. Who sets the rate?

Mr. BARNUM. The CAB sets the rates on all those things, now.

Mr. JOHNSON. How much different is that from the problem that we are discussing here?

Mr. BARNUM. That is very much the same kind of business that Federal Express is organizing on a nationwide basis, insofar as it is a small parcel business.

Mr. JOHNSON. When did this service come into play?

When was it offered?

Mr. BARNUM. Federal Express is about 4 or 5 years old.

Mr. JOHNSON. I mean this type of service on a regular basis.

Mr. BARNUM. My recollection is that this kind of service has been offered by the air carriers for 10 years or so. It may very well be more. That is my own recollection from my personal experience.

Mr. JOHNSON. The rates are set.

The ability is granted by the CAB. The rates are set by the CAB?

Mr. BARNUM. That is my understanding.

Mr. JOHNSON. The air carrier made special application for the Federal service?

Mr. BARNUM. I think the existing authority covers that.

Mr. JOHNSON. That is all, Mr. Chairman.

Mr. MILFORD. Will the gentleman yield?

Mr. JOHNSON. Yes, sir.

Mr. MILFORD. For the first question that he asked, I am not sure the answer was correct.

Can certified carriers also operate small aircraft?

What was your answer to that?

Mr. BARNUM. They can operate small aircraft, but not under a part 298 exemption.

Mr. MILFORD. Is it not a fact that a certificated carrier can also operate small aircraft under the air taxi provision where they would not be controlled by the CAB?

Mr. BARNUM. I think once they are in one business, that is it; they cannot do both. That has been one of the problems in substituting service. When a larger trunk line carrier wants to get out, it has to make a separate arrangement. Allegheny and Allegheny Commuters is an example.

Mr. MILFORD. They have to form a separate service?

Mr. BARNUM. Yes. It can't do both, operate a service applicable to commuters, at the same time they are operating a trunk line. That is how it has evolved. There are also some union problems.

Mr. ANDERSON. They could use the smaller aircraft on cities they are scheduled to serve, but they could operate under the air taxi regulations?

Mr. BARNUM. Yes.

Choice of aircraft is essentially up to the carrier, but regulation is not.

Mr. MILFORD. They could not operate under the air taxi provision?

Mr. BARNUM. That is correct. They would have to fly whatever small aircraft they have in mind as if they had a DC-9.

Mr. ANDERSON. In your testimony you discuss the problems faced by the Flying Tiger, Seaboard and Airlift.

You go on to refer to the "inflexibility of regulations."

Do you believe that regulatory inflexibility has caused the problems faced by Flying Tiger, Airlift and Seaboard, and if so, could you explain the areas of regulation that you have in mind?

Mr. BARNUM. Inflexibility of regulation as to routes or market has been a good deal of the problem.

In your colloquy with Mr. Milford you made reference to the problem Flying Tiger has had operating into Alaska. That has been the kind of inflexible regulations that I am sure the Flying Tiger people have operated under to their detriment. They are operating their aircraft through Alaska, but they cannot take cargo on in Alaska and they cannot take cargo up to Alaska. Why shouldn't they be able to do so?

The answer is, the CAB has not seen fit to authorize that kind of service.

Mr. ANDERSON. If this bill were passed, would they be allowed to carry cargo to Anchorage pending eventual approval or disapproval of a certificate application?

Mr. BARNUM. That would depend on how you interpreted 15302. I am not quite as sanguine that Flying Tiger would get into that Alaska business were this to become the law.

Mr. ANDERSON. They would be able to immediately start carrying—

Mr. BARNUM. No, they would have to file an application to the Board for another exemption. This would be a different matter than the Federal Express exemption, and the CAB would be treating that as a different exemption. Flying Tiger has made application for that authority under their regular certificate that has been denied. I would assume I would not be given an exemption for something I would not be granted regular authority for.

Mr. ANDERSON. Would they have to make an application for each individual exemption or route?

Mr. BARNUM. I suppose they could make a blanket application for exemption from route certificate and be permitted to fly anywhere. That is the kind of thing Federal Express has in mind.

Mr. ANDERSON. Let us understand it.

Suppose Flying Tiger made an application to get an exemption for all places that they are not allowed to go, pending the decision on that application, would they then be able to fly cargo to any place in the country?

Mr. BARNUM. Only if the temporary exemption were granted. The bill only authorizes air exemption, it does not mandate it.

Mr. ANDERSON. No, pending.

Mr. BARNUM. No, the bill would still require the CAB to approve the temporary exemption. It is not automatic.

Mr. MILFORD. Under these procedures, Flying Tiger could apply for an exemption pending certification.

The exemption applies only until their certification hearing has been decided.

Mr. ANDERSON. There is the approval of the exemption and then the approval of the certificate?

Mr. MILFORD. That is right.

Mr. BARNUM. Pending the consideration of the application for a certificate or for amendment of its certificate, Flying Tiger would be able to apply for an exemption. But it would require Board action. It would be pending Board action, and the Board could refuse to grant the exemption.

Mr. ANDERSON. When you refer to granting air cargo carriers excess to supplemental certificates, are you considering passenger or cargo charter certificates?

Mr. BARNUM. Both.

Mr. ANDERSON. Is it your main objection to H.R. 15302 that leaves the CAB with too much discretion?

Mr. BARNUM. I think it leaves it with too little direction.

What you are suggesting here is if someone comes along, and the colloquy with Mr. Milford would suggest that the purpose here is to accommodate somebody seeking to effect overnight parcel delivery anywhere in the United States, the Congress would look favorably upon that kind of exemption, they might get it and perhaps somebody seeking to compete with them on overnight parcel delivery might likewise get an exemption, but I don't see enough either in the legislation, let alone enough legal authority in our colloquy to insure that result. What the CAB should be doing is opening up the airfreight business to less regulation and more blanket authority to carry air-

freight in whatever aircraft they choose to, whatever destination they choose.

That is what we prefer to see happening.

That is a separate question from whether you should continue CAB rate regulation. This is only types of aircraft and destinations, 401 certificates.

It is not clear to me that adopting this bill would open up that aspect of the airfreight business.

Mr. ANDERSON. Any further questions?

Mr. MILFORD. Would you agree, though, that it would certainly be easing it in that direction?

Mr. BARNUM. It is a step in the right direction and that is why we like to see this subcommittee addressing it seriously. It is a very constructive step, but we think you ought to consider a bill that would have a wider impact, that would make the whole airfreight business more competitive and enable more people to use it.

Mr. MILFORD. I ask unanimous consent that I be allowed to revise and extend my remarks made after the opening statement, which I have read to verify the content involved in the bill itself.

Mr. ANDERSON. If there is no objection, it is so ordered.

Mr. MILFORD. I would welcome any suggestions we could incorporate into the language for purpose of legislative history.

Mr. BARNUM. Thank you very much.

Mr. ANDERSON. We will stand in recess until 2 o'clock.

[Whereupon, a recess was taken at 12:37 p.m. until 2 p.m.]

AFTERNOON SESSION

Mr. ANDERSON. The meeting of the Aviation Subcommittee will come to order.

Our next witness is the Chairman of the Civil Aeronautics Board, John E. Robson.

TESTIMONY OF JOHN E. ROBSON, CHAIRMAN, CIVIL AERONAUTICS BOARD, ACCOMPANIED BY JAMES C. SCHULTZ, GENERAL COUNSEL

Mr. ROBSON. Thank you.

Mr. Chairman and members of the subcommittee, it is my pleasure to appear here today to present the views of the Civil Aeronautics Board with respect to legislation designed to permit the Board to grant a temporary exemption from the certification requirements of the Federal Aviation Act to facilitate the provision of all-cargo air service.

The Board views H.R. 14623 and its companion bill in the Senate, S. 3684, as a positive approach toward giving the Board an additional mechanism with which to encourage competition and the development of new and innovative services in the all-cargo field.

As you know, the Board was recently presented with an application by Federal Express Corporation seeking exemption authority from the statutory certification requirements to enable Federal Express to operate DC-9 jet aircraft in all-cargo scheduled operations. The Board was receptive to Federal Express' proposal but found that our enabling statute did not permit us to extend exemption relief so far. In this connection we stated:

We would stress * * * that it is by no means our intent to discourage the entry or growth of new cargo carriers or to impede the introduction of innovative services in the air transportation system. Our holding here is merely that in the circumstances of this case, the authority requested is more appropriately a matter for exemption under the normal certificate procedures of section 401 of the act. In this regard, the Board stands ready to give prompt and careful consideration to any appropriate application that might be filed by Federal Express pursuant to section 401 of the act.

While the Board possesses tools to bring new all-cargo carriers into the current system, the regulatory licensing requirements contemplate a limited entry regime and extensive administrative proceedings. This necessarily deters applications for new entry. On the other hand, in its recently issued decision in the supplemental renewal proceeding, the Board recommended to the President that a new all-cargo supplemental carrier—Rich Airlines—be given a certificate of public convenience and necessity. The Board currently has other applications for all-cargo certificate authority on its active docket. Clearly, however, the certification procedures take more time since the current law contemplates that the Board will carefully examine the credentials of a new applicant, the need for that applicant's services, and the effect of the entry of new carriers on the financial health of existing airlines. That type of examination cannot realistically be undertaken on the basis of papers submitted in connection with an exemption request.

The Board is sympathetic to innovative proposals. But we find ourselves handcuffed by the restrictive procedural and other requirements which the statute currently imposes. For this reason we support this legislation which would expand the Board's powers to grant authority more easily in the all-cargo arena.

The bill under consideration is consistent with the Board's legislative program presented to this subcommittee on May 13, 1976. We continue to support these recommendations regarding the phased elimination of entry, exit, and pricing regulation of domestic airfreight services and believe they offer the potential for long-run improvements in carrier efficiency and service, as well as the expansion into new markets that are now served primarily by surface transport. While not as comprehensive as our legislative proposal, the current bill is clearly a step in the right direction.

The bill under consideration proposes simple modification of the Board's exemption power. However, it signals and provides means for a substantial relaxation of the regulation of entry for domestic all-cargo carriers. We would certainly construe Congress' favorable action on this legislation as a clear indication by Congress that the Board should not be restrictive in considering requests for all-cargo exemption authority.

As we indicated earlier, we urge that Congress consider two modifications in H.R. 14623. First, as we understand it, this bill is not intended to reach applications for new all-cargo service by existing certificated carriers. This limitation causes us concern. We are not aware of convincing reasons for giving existing carriers less flexibility than the bill grants to new entrants. Absent such reasons, we believe that basic fairness calls for equal treatment, and we support removal of the limitation.

The second modification we suggest arises from the fact that the bill is limited to *pendente lite* exemptions. Since the exemption is not limited to entry and extends to rate flexibility as well, it seems to us incon-

gruous to extend this rate flexibility during exemption status and withdraw it when the exemption authority ripens into a certificate. We believe that this change is necessary and that the incongruity may have been overlooked in the drafting of H.R. 14623. There is no substantial reason to preclude the Board from continuing rate flexibility where it is found to be in the public interest—so long as control over predatory or discriminatory pricing is maintained—and we would suggest the deletion of the pendent lite condition on the exemption.

Our proposed modifications are, we believe, consistent with the objectives of the legislation as introduced, and, in our judgment, improve upon it by enabling the Board to exempt all-cargo carriers from the certification and rate provisions of the act. However, the current statute contemplates a certificated system so the Board would not have unfettered authority to exempt cargo service.

Congress, by enacting this legislation as modified, would be taking a significant step toward a more flexible and competitive domestic cargo system. We encourage you to take this step.

Mr. Chairman, that concludes my prepared testimony.

I am prepared to answer any questions that you or the other members may have.

Mr. ANDERSON. I thank you, Mr. Robson, for a very clear and very brief statement.

You are not aware of a second bill?

Mr. ROBSON. Mr. Chairman, that bill was brought to my attention as I walked into this room.

And, unfortunately, I just have not had time to study it, nor has the staff. I am aware of it, however.

Mr. ANDERSON. Correct me if I am wrong, but this is my understanding of the situation.

Section 416 of the act of 1958 allows the CAB to create classifications of interstate air carriers, and then, exempt that classification from the provisions of the act—such as certification, routes, rates, and the like—if the Board finds that enforcement of such requirements “would be an undue burden . . . by reason of the limited extent of, or unusual circumstances” of the class of carriers.

Under this authority in section 416, the Board created part 298 of the economic regulations which exempts air carriers from certification, routes, and rates, but only if they:

One: Do not have a certificate of public convenience and necessity and,

Two: Only operate small aircraft, in this case, carry less than 7,500 pounds.

Federal Express, along with many, many air taxi operators and commuters, operates under this part 298 exemption.

Flying Tiger, on the other hand, has a certificate and can only operate on those routes authorized by the Board, and can only charge what is permitted by the CAB.

If this bill, H.R. 15302, became law: Federal Express would be permitted to go to the CAB and request an exemption from economic regulation, and from part 298, and then operate large equipment.

Mr. Chairman, if given the exemption, would their routes be governed by the CAB?

Mr. ROBSON. We could condition the exemption, I suppose, on certain routes, Mr. Chairman.

In other words, it may not be a nationwide authority.

Under the scope of the authority, it could be shaped by the Board.

However, to that extent, that answer would be yes, it could be.

Mr. ANDERSON. Would the rates be governed by the CAB?

Mr. ROBSON. Again, that would be a matter of tailoring the exemption—excuse me.

Mr. ANDERSON. Yes.

Go ahead.

Mr. ROBSON. Sure, they could be exempted from all rate control as part 298 carriers are.

Yes, sir, you are talking about H.R. 14623, are you not?

Mr. ANDERSON. I am talking about H.R. 15302.

That is the one that does the most. The objectionable parts have been eliminated from or amended.

Mr. ROBSON. Let me give you an off-the-top-of-the-head idea because we just saw it as we came in here.

As I read it very quickly, and I promised I wouldn't practice law when I came to this job, I do not believe they could be exempted from the rate provisions.

It seems to be limited to section 401 which is our authority.

Mr. ANDERSON. In other words, you feel, then, their rates would be governed by the CAB?

Mr. ROBSON. Under this bill, that would be my impression.

May I make a general statement so we will be able to correct the record on this since we haven't had a chance to look at the bill?

That would be my impression.

Mr. ANDERSON. I think you should because a lot of what you are saying will be important in our consideration of the legislation.

Mr. ROBSON. I am sorry that we did not have a chance.

Mr. SNYDER. Their rates are not regulated now because they are not certificated?

Mr. ROBSON. That is correct.

Mr. SNYDER. I think what the chairman is asking is if they received an exemption from section 401, could you then regulate their rates?

You could, but that would not give you any new authority to regulate their rates. Unless they were to become certificated, they would continue to set them as they do now.

You are not regulating their rates now.

This bill would not confer any new authority on you to regulate their rates, would it?

Mr. ROBSON. The reason they are not now regulated in their rates is that they fall under part 298 so that all of their activities are essentially unregulated.

Mr. ANDERSON. But unless they apply for certification they are still going to under part 298?

Mr. ROBSON. Yes, sir, they would be except to the extent that they no longer qualify under part 298 by reason of their large aircraft operation.

Mr. SNYDER. Is that not what the exemption is?

Mr. ROBSON. If I read the exemption correctly, it authorizes the Board to authorize an exemption from the requirements of section 401, which is our route authority section.

Mr. SNYDER. And size of aircraft?

Mr. ROBSON. That would be embraced with section 401.

Mr. ANDERSON. Part 298 comes from section 401.

Mr. ROBSON. But it does not deal, if I read it correctly, with the question of rate authority which would have to fall under the general exemption powers of the Board; section 416?

Mr. SNYDER. That is right.

It doesn't deal with that. If a carrier is exempt from rate regulation under part 298, the type of exemption which would be authorized under the bill we are considering would not trigger rate regulation—or would it?

Mr. MILFORD. Will the gentleman yield on that?

Mr. ROBSON. Let us get the record straight on the issue.

Mr. MILFORD. This is all based on an application for a certificate. In the application they subject themselves to a full CAB audit. They can't use the provisions of the law until they do apply.

Mr. ANDERSON. What is your answer?

Would their rates be governed by the Civil Aeronautics Board?

You think they would?

Mr. ROBSON. If I read this correctly, I believe they would be, Mr. Chairman.

Mr. ANDERSON. Could they fly large aircraft where they wanted and charge what they want, or would the CAB specify on which routes they could use their larger aircraft?

Mr. ROBSON. That would depend on the scope of the exemptions, Mr. Chairman.

In other words, there is nothing in here to say it is an authorization to grant an exemption.

Mr. ANDERSON. They would be the ones to determine that in their application?

Mr. ROBSON. I assume they would ask for a certain kind of authority and the Board will ultimately have to determine whether it was to grant an exemption as broadly as thought.

Mr. ANDERSON. They could apply to fly large aircraft where they wanted and to charge what they want, and then, you are saying, the CAB could then specify which routes they could use?

Mr. ROBSON. Yes; that is correct.

Mr. ANDERSON. And what rates they would charge?

Mr. ROBSON. That is correct.

Mr. ANDERSON. Now, if the CAB regulated their large aircraft, routes, and rates, would their smaller aircraft be exempt from regulation?

Mr. ROBSON. I suppose they could.

Mr. ANDERSON. So they have two planes going from the same place to the same destination—

Mr. ROBSON. I think my answer to you would be if they were operating totally under exemption in both cases, yes.

If they get a certificate, I am not sure whether a holder of a section 401 certificate can also be an exempt carrier with respect to part of his operations.

May I ask my counsel, Mr. Schultz, whether there are such?

Mr. SCHULTZ. There may be such cases, but I think the circumstances are such that the two operations are in separate corporations and then there are conditions that are applied to avoid any confusion in the public's mind as to which is which, but they are very rare.

Mr. ANDERSON. Then you feel that the company that was flying the large aircraft could also fly small aircraft, and have two different sets of rules and rates and so on?

Mr. ROBSON. May I try to clarify my answer, Mr. Chairman?

Mr. ANDERSON. Yes.

Mr. ROBSON. What I think I said was during the period they were operating solely under exemption, I think they would be exempt with respect to both big and small planes, and the question would come up once they received certification for their larger aircraft operations, as to whether they could run, in essence, a dual operation—half slave, half free, if you will—part exempt, part under the certification.

Mr. ANDERSON. Would all of the small aircraft have to be certified?

Mr. ROBSON. I would like to have an opportunity to respond for the record because it is not clear what the situation would be if they had a dual operation.

I do not recall, frankly, that we ever faced that issue before.

Mr. ANDERSON. But by the very nature of the bill, they are not going to want to give up the unregulated small aircraft authority; are they? And yet they are going to want to use the large aircraft.

You are going to have the two operations going.

Mr. ROBSON. Well, the authority under which they fly their large aircraft may well spring from the certification process of the Board.

The question as to whether they can run a dual operation, that is, whether they are running over the same routes with certificated and uncertificated aircraft—

Mr. ANDERSON. Or separate routes, what difference does it make?

Mr. ROBSON. Or separate routes.

The bill, if I read this correctly, the bill says you can exempt them from the route provisions of the Federal Aviation Act. That is all it says.

And only during—

Mr. ANDERSON. Pending their application?

Mr. ROBSON. Pending their application.

Mr. ANDERSON. Now, suppose they come before the Board.

You made a decision. We have granted them what they want to do for certain large aircraft, so we know those are going to be under control; what about the others?

Mr. ROBSON. I would like to respond for the record, if we may.

Mr. ANDERSON. Could the Flying Tiger operate an air taxi service and be a both regulated and exempt line?

Mr. ROBSON. I think that is the same question.

Mr. ANDERSON. That is the same question?

Mr. ROBSON. Yes.

Mr. ANDERSON. We would like to have that for the record.

It has also been suggested to me to check whether Aspen Airways, were they not allowed to operate as a certificated and noncertificated carrier at the same time?

Mr. SCHULTZ. There are some exceptions, but the part 298 which authorizes the so-called air taxi operations, provides that an air taxi is one which does not have the certificate of public convenience and necessity.

Mr. ROBSON. That is our regulation.

That is not necessarily demanded by law.

I am not sure that that is the case.

Mr. ANDERSON. I have some other questions here, but I think I had better yield.

Mr. Snyder?

Mr. SNYDER. The hearing this morning did not indicate to me that there has been much proclivity at the Board for treating everyone the same.

Mr. ANDERSON. You missed a good show this morning.

Mr. GOLDWATER. It is a matter of perspective, whether it was good or not.

Mr. Chairman, as I understand your testimony for cargo service, the Board favors a shift away from the present certification system to what you might call a licensing system, and this would relieve the Board of the present need to carefully examine the present credentials of the new applicant, the need for that applicant's service and the effect of the entry of new air carriers on the financial health of the existing airlines.

You have stated that the passage of this bill would be a clear signal from Congress that the Board should not be restrictive in considering a request for all cargo exemption authority.

You also indicated in your statement that the Board currently has other applications for all cargo certificate authority on its active docket.

My questions are these:

First: Would this mean that you would be a little less concerned about the applicant's fitness, willingness, and ability?

Mr. ROBSON. No.

Mr. SNYDER. Would this mean that most of the pending requests for exemption would be granted—assuming the applicants to be reasonably fit, willing, and able?

Mr. ROBSON. Congressman Snyder, if I might, I would like to defer answering that since those matters are pending before us, and I hesitate to speak on the matter on which we are going to have to pass in a pending application.

Mr. SNYDER. How many applications are pending at present?

Mr. ROBSON. Oh, I think four or five, to my recollection.

Mr. SNYDER. Is it safe to assume that these are exemption applications?

Mr. ROBSON. I couldn't speculate on whether they would or would not.

They very well might.

Mr. SNYDER. Could we anticipate that a freight forwarder might file an application for an exemption to operate all-cargo service?

Mr. ROBSON. That would raise really a different question, I suppose, as to whether an indirect air carrier and air freight forwarder would be permitted to engage in direct air carriage.

At the moment, I do not believe they are permitted to do so, and I don't see that this bill would direct itself to that question, Mr. Snyder.

Mr. SNYDER. What would be the status of existing all-cargo or combination certificates when and if we have this new group of carriers operating under exemption?

Mr. ROBSON. I don't see that this will affect existing certificates in any way.

Mr. SNYDER. Well—

Mr. ROBSON. That is, it would not enlarge or detract from their present authority.

Mr. SNYDER. So you are saying it would have no effect?

Mr. ROBSON. It would have no effect on them.

Mr. SNYDER. You indicated in your statement that you think this is a great step forward and one without risk and you say:

... the current statute contemplates a certificated system so the Board would not unfettered authority to exempt cargo service.

What does that mean?

Mr. ROBSON. It means that unless—well, we look on this as encouragement and an articulation of Congress of its desire to see entry into the all-cargo area, it does not change or abolish the present system, which is a licensing system as I think we testified in the spring, Congressman Snyder.

We said that the basic structure of the present act is one of limited entry and license system.

That is not abolished by this act.

Mr. SNYDER. Well, if you exempt the all-cargo carriers from certification and other requirements of the act, which you say in your statement is the cornerstone of regulation, what would be left for you to regulate?

Mr. ROBSON. If all air cargo carriers were exempt from route and rate regulation, there would be the centerpiece of the act.

If you will recall, we urged last spring in the Board's general regulatory reform statement, that there be a move toward substantial relaxation in the all-cargo area.

Mr. SNYDER. I know, but if you were to take the two centerpieces out, rate and route regulation, would there be any control at all?

Mr. ROBSON. Well, I think if you took the two centerpieces out, you would have essentially fitness and predatory and discriminatory practices as the primary remaining regulatory responsibilities.

Mr. SNYDER. They would be covered under antitrust statutes, would they not?

Mr. ROBSON. Well, those practices are covered by antitrust. They have not generally been followed where the regulator has a responsibility under a specific statute for that.

These concepts are ones which antitrust is supposed to look after generally in nonregulated industries, though.

Mr. SNYDER. You, and when I say you, I mean the Board; you do not have a reputation for speedy decisions.

Once the Board grants an exemption to operate, would either the applicant or the Board have any real interest in pursuing an application for certification?

Mr. ROBSON. In prosecuting it, you mean?

Mr. SNYDER. Yes. Pursuing it, prosecuting it.

It is like Congress operating under a continuing resolution—you know, the pressure is off.

Mr. ROBSON. Well, it is hard to speculate what the applicants' mental condition would be under these circumstances. I would assume the Board would think it had to come to a decision.

Mr. ANDERSON. Why.

Mr. SCHULTZ. Because the law requires it to.

Mr. ANDERSON. How about 5 years?

Mr. SCHULTZ. I would say no.

Mr. ANDERSON. It took 5 years to get a decision on World.

Mr. SNYDER. I suspect Allegheny's application—Washington to Louisville—has been pending that long. This is reasonable?

Mr. ROBSON. The last time it didn't take that long. The first time, I can't testify to.

Mr. GOLDWATER. Would the gentleman yield?

Mr. SNYDER. Yes.

Mr. GOLDWATER. You say the Board has applications for all-cargo authority on its active docket?

Do you have any idea how many?

Mr. ROBSON. I thought about five.

Mr. GOLDWATER. What is the longest any of them have been pending?

Mr. ROBSON. I can supply it for the record if you would like. I haven't any idea, though.

Mr. GOLDWATER. Do you have any idea—1 year, 2 years, 5 years?

Mr. ROBSON. I hesitate to guess. I can supply it for the record if you would like.

Mr. SNYDER. Would you do that?

Mr. ROBSON. Surely. [See page 234.]

Mr. GOLDWATER. That gives more rationale for this kind of legislation.

When you have this continuing delay, the airlines will look for all kinds of excuses so they can stay in business.

Mr. ROBSON. I am not saying that it happens overnight because I know it does not.

Mr. SNYDER. Now, Federal Express applied for an exemption to operate large aircraft and you said your enabling statute does not permit you to grant such relief.

Mr. ROBSON. Yes, sir.

Mr. SNYDER. What provision of the act precluded the Board from granting the exemption they sought?

Mr. ROBSON. Well, it was the judgment of our counsel that the extent to which the Board was authorized under its exemption powers to authorize what was, in essence, a nationwide, all-cargo service certificate was not within the contemplation of the section 416 exemption authority that we have under the act.

Mr. GOLDWATER. Did they cite any rationale behind that opinion? Was there any legislative history on this to give him guidelines?

Mr. ROBSON. Well, there was a legal opinion offered by our counsel's office to the effect that the exemption authority is an extraordinary power in essentially a licensing system and that its extensiveness is one that does not have boundaries. It is an exemption power.

The basic thrust is one which contemplates licensing and administrative proceedings to authorize people to engage in the carriage of

the property and persons by air and that the exemption authority is one which carries on from that and is, in essence, an exemption.

Mr. GOLDWATER. And that decision tends to be arbitrary?

Mr. ROBSON. Is is a judgment decision.

Mr. GOLDWATER. Clearly, you can interpret that under section 416, it gives you that authority.

Mr. ROBSON. Reasonable lawyers might differ on one view or another and the Board came to a judgment that this is all the law meant and we are supposed to abide by it.

Mr. GOLDWATER. Did you take into consideration convenience and necessity in that decision; in making that decision whether section 416 would apply?

Mr. ROBSON. I am not sure I understand the question. I am sorry.

Mr. GOLDWATER. In making determinations as to regulations, or in this instance exemptions and interpreting the law—

Mr. SNYDER. May I resume?

Mr. GOLDWATER. Go ahead.

Mr. SNYDER. You used the word "extraordinary." The language of the act is: "The Board from time to time and to the extent necessary * * *." You know, from time to time and to the extent necessary, does not connote extraordinary.

Mr. SCHULTZ. Congressman Snyder, there was a legal test of the action on part 298, and the court decision does give guidelines and I think it is fair to say that the essence of what the court talked about when they reviewed the 298 exemption was just what the chairman says, that this is extraordinary, that this statute is a certification statute, and that in limited circumstances, exemption power can be used. (*Hughes Air Corp. v. CAB*, 492 F. 2d 567; D.C. Cir. 1973.)

Mr. SNYDER. I have just one more question.

I have trouble understanding why we are being pressured for this exemption legislation when Federal Express has not even applied for a certificate.

Now, that is a course they could pursue to obtain the result they want; am I correct?

Mr. ROBSON. Yes, we certainly invited them to do so.

Mr. SNYDER. Why does the Board support legislation which would authorize an exemption rather than saying: "Hey, file for a certificate?"

Mr. ROBSON. Well, we invited them to file a certificate in turning down their exemption. We did not propose the legislation.

Mr. SNYDER. But you support it?

Mr. ROBSON. Sir?

Mr. SNYDER. But you support it?

Mr. ROBSON. Yes, sir. We think we fit it in our comprehensive regulatory reform program that our all-cargo area is one that can usefully have the entry-and-exit provision—

Mr. SNYDER. Do you have any idea what kind of a certificate they will apply for, if they do?

Mr. ROBSON. No, sir.

Mr. ANDERSON. Mr. Milford?

Mr. MILFORD. Some have called this bill a piece of special-interest legislation—specifically for the benefit of Federal Express.

As author of this bill, let me say this simply is not the case.

To carry the point further, would you agree that many small commuter-type operators are engaged in air cargo operations, flying mail and other types of cargo under the air taxi provision; and, further, that many of these small operators are serving mostly small cities, and are growing to the point that the size of aircraft allowed to operate under the air taxi provisions are no longer adequate?

Under the provisions of the bill before us, wouldn't these small operators be able to apply to CAB for exemptions that would allow them to continue normal growth in a noncompetitive situation?

Mr. ROBSON. If I understand the provisions of the bill, it would certainly not preclude any of them from filing.

Mr. MILFORD. Further, this type of growth would also be providing service to smaller cities that now receive either no service from certified carriers or unsatisfactory service from certified carriers; would that be correct?

Mr. ROBSON. It could be.

Mr. MILFORD. Would you agree that the exemptions specified in H.R. 15302 would apply to all persons, whether operating under CAB certificates or outside CAB certificates; in other words, it is not discretionary to certificated air carriers?

Mr. ROBSON. I believe that is correct.

Mr. ANDERSON. He is going to get that information for us.

Mr. ROBSON. I believe it is correct.

Mr. MILFORD. Under the provisions of the exemptions allowed by H.R. 15302, would it be possible for the Board to limit an exemption to certain types of operations?

For example, suppose a new and innovative type service is proposed that is not presently being provided by existing carriers, but in order to carry it out, the applicant would have to fly into cities now served by certified carriers. Could the Board grant an exemption and limit the applicant's certificate to the new and innovative service?

Mr. ROBSON. I think we could tailor an exemption to do that, Congressman Milford.

Mr. MILFORD. You criticize the bill for being limited to pendent lite exemptions.

I wrote the bill, but I don't remember any lite being in this.

Mr. ROBSON. Pardon my Latin.

Mr. MILFORD. If we are to be fair to existing, certificated carriers and give them a chance to be heard, I think it is necessary to grant an exemption only pending full CAB certification.

Otherwise, we would be offering different sets of rules to different operators? Or did I misunderstand what you were trying to say in your statement?

Mr. ROBSON. The point we raise, Congressman Milford, was that, under H.R. 14623, if we understood it, the Board might exempt a carrier from the provision of the act, both rate and authority, during the period of time the certificate was in process, and then, at the time the certificate was issued, you would then no longer be able to exempt them.

The point we made was, was it a good idea to have the flexibility during the time you were prosecuting your certificates, and then lose it when you found a certificate.

Mr. MILFORD. Wouldn't that be a matter of judgment for the applicant?

Wouldn't he know that he is taking his chances?

Mr. ROBSON. I would certainly know that would be the consequences of certification, one of them.

Mr. MILFORD. In fact, one of the persons testified that he didn't like the bill because he figured that once the CAB granted such an exemption, that CAB would be more or less compelled to go on and grant the certificate.

As Chairman of the Civil Aeronautics Board, would you feel that the fact that you have granted, at the request of the applicant, this exemption, that that compelled you then to go on and fully certificate it?

Mr. ROBSON. I don't think it would compel us to.

Mr. ANDERSON. Would it influence you if a man put in installations and advertised and built up a clientele and leased airplanes—wouldn't it influence you if they had a big investment and a successful operation?

Mr. ROBSON. I suppose that it would, and in those cases it would be in the public interest to continue such authority.

Mr. MILFORD. In making a judgment on any exemption that the Board is empowered to do, are these exemptions ever granted without first carefully examining whether they are in the public interest or whether they are a public convenience and necessity?

You wouldn't automatically grant an exemption because somebody applied for it.

Mr. ROBSON. No.

It must be acted upon by the Board.

Obviously, the dimension of the application would affect the amount of examination that it received.

Mr. MILFORD. I wouldn't think that the Board would just carte blanche grant exemption to anything without first at least initially appraising its impact on existing carriers, or on route structures.

Wouldn't that be done as a matter of course?

Mr. ROBSON. Yes, and I expect it would be.

Mr. MILFORD. Thank you, Mr. Chairman.

Mr. ANDERSON. Mr. Goldwater?

Mr. GOLDWATER. Mr. Robson, as I understand this piece of legislation, it would basically allow elimination of certain CAB certification processes.

It would allow a new all-cargo carrier to get an exemption until the certification is over with.

That is essentially how you interpret it?

Mr. ROBSON. Yes.

Mr. GOLDWATER. So, in other words, the bill allows the purchase of aircraft, and after the purchase is made, and the aircraft is in service, then the CAB will hold a hearing and go through the process of making a final determination.

My interpretation of the process being advocated by this legislation is that it would really increase the regulatory delay, just from the standpoint of first granting a temporary waiver of exemption; and then holding the investigation and hearing. Thus, the pressures are

off the CAB to act swiftly and, on top of that, should the answer to the final interpretation to be a negative one, the applicant has, therefore, spent that kind of money unnecessarily.

Mr. ROBSON. Yes.

Your colleague, Mr. Snyder, raised the same issue, comparing it to your operation on a continuing resolution and so the heat was off.

He asked me how I would assess the vigor with which the applicant would pursue this application, and I said it was hard for me to speculate on that and what the Board's view of it would be.

I think we felt we would go forward with the decision and have no reason to extend the delay and, indeed, under law, we are required to make decisions.

I cannot always say they are as prompt as all of us would like.

Mr. GOLDWATER. Are we presented with this because of the age-old problem of long and unnecessarily delayed decisions by the Civil Aeronautics Board in giving the final determination of the process?

Mr. ROBSON. I cannot say that isn't part of it, Mr. Goldwater.

I really think this particular issue came up with perhaps a different foundation to it, and that is the question of whether certain kinds of services were wrapped within the regulatory arms, if you will, of the Board.

In this case, large aircraft service in all-cargo activities.

Mr. GOLDWATER. Going back to Mr. Snyder's line of questioning, and I guess I was involved in it also—

Mr. SNYDER. You certainly were.

Mr. GOLDWATER. I yield to the gentleman—discussing whether under your interpretation of section 416, whether you have authority or not.

As you stated, reasonable lawyers might disagree.

Is it possible to see the statement by the legal counsel, to view their rationale behind this?

Mr. ROBSON. Surely.

Mr. GOLDWATER. Is it possible to see that?

Mr. ROBSON. Yes; we will give you the materials we had on it and submit it for the record.

We told Congressman Snyder we would give him the legal precedent.

Mr. GOLDWATER. It seems to me there has been an arbitrary decision made, and that you are interpreting as narrowly as possible. That may be the intelligent way to do it, but there could be other circumstances which could justify the exemption.

You have a carrier performing these services. It is doing well. It is new. It is innovative, it is creative, and they are expanding and, by your mere actions, you are preventing them from expanding and improving and increasing that service they are providing.

Under those circumstances, that could be a push to make you grant the exemption under section 416.

Mr. ROBSON. As I said to Congressman Snyder, we interpret the law which Congress has presented us with as faithfully as we can.

I think we made it very clear in that particular instance that we were not inimical to the innovative services that this particular carrier was offering.

And as we said last spring, we can relieve all of us of the responsibility of interpreting those provisions by a broader approach to the all-cargo carrier which is to essentially remove the limitations.

Mr. GOLDWATER. This morning we heard from Mr. Barnum who advocated that.

You are saying as chairman of this, CAB supports the phased elimination?

Mr. ROBSON. Yes, sir.

Mr. GOLDWATER. You apply that to all cargo operations?

Mr. ROBSON. Yes.

Mr. GOLDWATER. Just following on, would you agree that a single common carrier should be allowed to offer freight services or various other modes also?

Would you go that far?

Mr. ROBSON. To have a combined transportation company, if you will?

Mr. GOLDWATER. Yes.

Mr. ROBSON. I can only speak for myself on that issue and not for the Board because I cannot speak for them.

There are, in my judgment, there can be some efficiencies and that kind of combination.

Mr. GOLDWATER. You have no personal problems with that?

Mr. ROBSON. No.

Mr. GOLDWATER. I yield.

Mr. MILFORD. Haven't there been several court rulings which have rather narrowed what you can or cannot exempt under the existing exemption rules?

Mr. ROBSON. I think in such court rulings as we have had, as I mentioned, the exemption power has been treated as an exemption to assist a system which requires licensing, limited entry, public convenience and necessity and administrative proceeding attached to entry into the system and the exemption power to the extent that it has been construed, has been viewed as something that is not to be used in an unfettered way.

It is an exemption to a system of limited entry.

Mr. MILFORD. Which is the very reason why the bill was introduced, because it is restrictive.

Mr. GOLDWATER. One last question, Mr. Chairman.

We are talking about all-cargo. But part 298 applies to air taxi.

Are they not running into the same problem of wanting to go to a little larger aircraft?

Mr. ROBSON. Generally that has—generally that has not been the case. Indeed, they have been pretty good about tailoring their aircraft to their markets and not having larger planes than they could make a buck within their markets.

In some cases, there have been requests and people are perhaps bumping up against the need for larger aircraft in their markets.

Again, if I may—

Mr. GOLDWATER. How does the Board view that?

Mr. ROBSON. Again, if I can make reference to our regulatory reform proposal one of the features was the enlargement of the air taxi exemption to 56-seat aircraft, below 55.

Mr. GOLDWATER. Thank you.

Mr. ANDERSON. Mr. Mineta?

Mr. MINETA. Thank you, Mr. Chairman.

I apologize for not having been here earlier.

Is there anything preventing the CAB from leaving a case pending indefinitely?

Mr. ROBSON. As a matter of general proposition, I suppose some would view the answer to that to be no.

Yet, the law requires us to dispose of the cases and we try to do so within the boundaries of the resources.

We do not do it quickly.

Mr. MINETA. The problem is that there is no period. "Indefinite period" goes on and on and on.

Mr. ROBSON. There is no fixed date by which a decision must be rendered.

That is correct.

Members of this subcommittee and, indeed, the Board have advanced the notion that we ought to set dates for our various decisions.

There is some disagreement as to whether they ought to be statutorily imposed as opposed to being set by regulation.

The concept does not bother me.

We have done so in the case of one category—in rulemaking.

Mr. MINETA. I have no further questions, then.

Mr. ANDERSON. I will go back to my initial questioning.

The advance testimony we have received for this hearing indicates a great diversity of opinion about the present state of air cargo service. Some witnesses believe that this service has been deteriorating drastically in recent years while other witnesses appear to believe that service to shippers has never been better.

Could you give us the Board's evaluation of the current state of air-freight service?

Mr. ROBSON. I don't—I think the statistics will indicate that freight air service has declined in the past few years; that is, all-cargo freight air service.

In respect to the shipper's opportunity to get the service he needs and I am not aware of any great problem of complaints that shippers are not getting their needs met through one device or another within the air transportation system.

Mr. MILFORD. What kind of a system?

Mr. ROBSON. Just as a general proposition, Congressman Milford.

I do not have a sense of a great unhappiness by the shipping public, and I am using that as a general sense, that they cannot find what they need within the air transportation system to meet their air transport needs.

Mr. ANDERSON. One of the main arguments which has been advanced in support of H.R. 14623 is that it takes the CAB 2 to 10 years to complete action on an application for an all-cargo certificate, and that the public should not be required to wait this long. I have several questions on this point.

Suppose Federal Express were to file a certificate application similar to its previously filed exemption application. How long would it take for the Board to complete action on this application?

Mr. ROBSON. I guess a year to 18 months.

Mr. ANDERSON. Has the Board taken all the possible steps to have the cases decided promptly.

Have you considered putting time limits on the law judge and the Board?

Mr. ROBSON. The answer to your first question is, I think we can take more.

The answer to your second one is that yes, we have implemented a time limit on one category of the case and I am hopeful we will be able to do that to additional categories.

Mr. ANDERSON. What are your views on legislation which would require the Board to decide its certification cases in a year?

Mr. ROBSON. I admit having no view on the question as to whether there ought to be a statutory limitation as opposed to a statutory requirement which obligates the Board to set time limits on various kinds of work that it has.

I think the concept is one on which we are in agreement.

I think the technique by which you do is one in which you have some differences.

Mr. ANDERSON. As I understand your legislative proposal, you believe that the Board should be given discretion to exempt cargo rates from regulation. Would you anticipate that in the exercise of this power the Board would treat all competitors equally, so that a carrier with regulated rates would not be competing with a carrier with exempt rates?

Mr. ROBSON. I think that is one of the points we raised.

It shouldn't be limited to the new applicants for initial certification, that those who are existing certificate holders are not to be treated differently than the new guy on the block.

Mr. ANDERSON. As I understand it, in recent years domestic all-cargo service has been unprofitable despite high-load factors and reductions in the more unprofitable service. Does the Board have any views on the causes of this unprofitability? Do you think that deregulation would cure these problems?

Mr. ROBSON. I am not sure I would be prepared to agree that there has been all high-load factor operations, particularly in combination carriers, Mr. Chairman—

Mr. ANDERSON. All cargo—

Mr. ROBSON. In freight air service.

Mr. ANDERSON. Domestic all-cargo service.

Mr. ROBSON. The reasons for unprofitability are difficult for me to enumerate.

I think part of it is price—part of it—one of the inherent problems in that kind of service is its directional feature; that is, there is an east to west directional feature, and you have got to get the airplane back to where the stuff is made and that is one of the inherent problems of all-cargo service which, no doubt, has had an influence on its profitability.

Mr. ANDERSON. Do you think that deregulation would cure these problems?

Mr. ROBSON. Cure them?

I would say that the prospects of arriving at pricing levels that are adequate to provide the service that people want and to permit those operating the service to make a return and to have an efficient all-cargo system would be better under such a regime; yes.

Mr. ANDERSON. You may have answered this one partly before.

If cargo rates are unregulated, and passenger rates are regulated, would the Board be able to prevent the combination carriers from using passenger revenues to subsidize belly cargo service?

Mr. ROBSON. I think the answer to that is yes.

We have under the ratemaking formula now, there is a deduction, so to speak, in fixing passenger rates, and I would see no reason why that would necessarily be the case, that we would be precluded or unable to make that.

Mr. ANDERSON. Would you?

Mr. ROBSON. I would think we would.

Mr. ANDERSON. In other words, you would not allow them to reduce the prices, for example?

Mr. ROBSON. No; I think the Board is sensitive to the fact that one service ought to subsidize another.

Mr. MILFORD. Would the chairman yield?

Don't you already set both the passenger rates and the cargo rates?

Mr. ROBSON. Yes.

Mr. ANDERSON. But you do one in connection with the other?

Mr. ROBSON. Well—in setting past rates, there are certain offsets that I made that take into account revenues from cargo service for the purpose of trying to get each service to bear its own load, if you will.

Mr. ANDERSON. So, in other words, somebody wanted to reduce that cargo rate to what they considered to be a competitive level and perhaps raise the passenger rates to make up for it, you would say no, they cannot do this?

Mr. ROBSON. No.

We wouldn't want to find ourselves in a situation where we were burdening our service by another's losses.

Mr. ANDERSON. There have been substantial delays in several major freight cases pending before the Board.

Before asking specifically about these cases. I would like to know whether the Board, as a result of its regulations for deregulation of airfreight, has taken steps internally to switch resources from airfreight into other regulatory areas?

Mr. ROBSON. The answer is no.

Mr. ANDERSON. I would like a comment on the time taken to decide the domestic airfreight investigation.

The proceeding began in December of 1970. The law judge's decision was issued in April of 1975. Why did the Board take from April of 1975 to December of 1975 to schedule an oral argument in the case? Why hasn't the Board issued a decision in the 8 months since oral argument?

Mr. ROBSON. It is a very complicated case. It is the counterpart of the passenger investigation which resulted in the domestic fare investigation standards, and I think most would agree it is one of the most complicated cases that has been before the Board.

Mr. ANDERSON. But they had 5 years to decide, to the law judge, and then the law judge made the decision.

Why does it take you from April to December to act upon your own law judge's decision?

Mr. ROBSON. It is, as I say, a complicated case, an enormous record, and one in which a lot of people have different views.

Mr. ANDERSON. I have a similar question—

Mr. SNYDER. Does the Board want or need as much time to review the case as the law judge took to render his decision?

Mr. ROBSON. I do not think we need that.

Mr. SNYDER. We need some time limit then.

Mr. ANDERSON. I have a similar question about airfreight forwarder charter case.

The initial decision was issued in July 1975, oral argument before the Board was held in December 1975, and no decision has yet been issued.

Why has it taken so long to decide this case?

Mr. ROBSON. Well, again, it is a complex case. It is one of a great many that we have, and the allocation of the Board's resources, we just do not get everything out as fast as we would like to. And the big cases take more time.

Mr. ANDERSON. In this case, the initial decision was made by the law judge in July of 1975?

Mr. ROBSON. Right.

Mr. ANDERSON. You could not get oral argument until December of 1975?

That is 6 months later.

Mr. ROBSON. I cannot say.

Mr. ANDERSON. You are not making a decision there?

Mr. ROBSON. No, but I cannot say to what extent the parties themselves were part of scheduling the oral argument in that case, Mr. Chairman.

I can give you the procedural—be happy to supply you with the procedure.

But, very often, the scheduling of oral argument is not—that comes after briefing, and that is a matter in which the parties are a factor in setting those dates. So I think it is usually mutually arrived at time.

Mr. ANDERSON. Any further questions?

Mr. SNYDER. Off the record.

[Discussion off the record.]

Mr. ANDERSON. Earlier I asked some questions in which you said you wanted to get some answers for.

Could we possibly have that tomorrow afternoon?

Could we get it quickly?

I know when you send it to us in a letter, we do not even get it into our discussion.

Mr. ROBSON. I think those questions—may I just refresh my memory on the ones you need by tomorrow afternoon?

One of them, if I recall correctly, was whether we would have rate exemptive powers.

Mr. ANDERSON. I said:

If given an exemption under H.R. 14623, would a carrier's routes be governed by the CAB? Would their rates be governed by the CAB? Could they fly large aircraft where they wanted and charge what they want, or would the CAB specify on which routes they could use their large aircraft? If the CAB regulated their large aircraft, would their small aircraft remain exempt from regulation?

And the last one was, "Could Flying Tigers operate an air taxi and set up the same kind of system, be both regulated and exempt?"

If you want, we can give you a copy of them. I would like that tomorrow after, perhaps, the other people have testified.

Mr. ROBSON. Yes, sir.

Mr. MILFORD. One final question on the record.

You had stated that should, for example, Federal Express apply for CAB certificate, that you would stay away for about 18 months.

And your testimony here has been that also in very complicated cases it goes considerably longer than that.

Would you not think this type of application might be somewhat complicated?

Mr. ROBSON. I do not think it would be as complicated, Congressman Milford, as a case such as a domestic airfreight investigation.

Essentially, it involves fundamental questions of the whole air cargo capability.

Mr. MILFORD. In this instance, there apparently would be flights into cities by every air carriers in existence?

Mr. ROBSON. Well, I think—

Mr. MILFORD. Domestic air carriers.

Mr. ROBSON. One might distinguish between a case, the complexity of a case and its controversial character, and they are not necessarily related.

Mr. MILFORD. You hold to the 18 months?

Mr. ROBSON. I said 18 months, and I have four other men involved in this business.

Mr. MILFORD. Thank you, Mr. Chairman.

Mr. ANDERSON. Thank you, Mr. Robson.

Our final witness today is Frederick W. Smith, chairman of the board of the Federal Express Corp.

Mr. Smith, the full text of your prepared statement will appear in the record at this point.

[Statement referred to follows:]

STATEMENT OF FREDERICK W. SMITH, CHAIRMAN OF THE BOARD, FEDERAL EXPRESS CORP.

Mr. Chairman, on behalf of the employees of Federal Express, thank you for giving us the opportunity to present our views on this progressive piece of aviation legislation.

It would appear to me that the Congress has basically three legislative functions: To have the wisdom to leave those functions adequately and fairly regulated by the free market to the aggregate genius of the American free enterprise system; to move decisively to regulate those areas of our national life which require oversight to insure the common good and the equitable treatment of all citizens; and finally, and perhaps most importantly, to have the courage to modify and modernize the law when it becomes obvious that time and technology have rendered statutes obsolete or even repressive.

In our rapidly changing society, the success of the Congress in this latter regard may well be the test of whether our system continues on the remarkable course of the preceding two hundred years. These actions will not be easy, nor without controversy, for the history of mankind is literally a chronicle of the battle of progressive thought and action against entrenched and vested interests which have been established under the old order.

This Committee faces such a test on the legislation at hand. For months, the Congress has examined in detail our air transport system. Competing views

and theories have had their chance to be heard. We have learned that our passenger transport system is by far the finest in the world, but even so, there are those who think it could be even better. The forecast results of major changes continue to be hotly debated.

Within the record, however, is one type of service within our domestic air transport system which has incontrovertibly been reduced—all cargo service. Official records verify that all cargo flights have both been reduced and further concentrated in but a few major markets. I would like to reiterate that the above statement is not speculative—it is a matter of uncontested fact.

It would appear then that there are two questions which this Committee must then answer. Is there a need for more all cargo service, is this in the public interest? And, second, if so, what should Congress do to encourage the providing of such service?

In previous testimony, a compendium of which is attached for the record, we have shown why people need and use air cargo services; the physical characteristics of the traffic moving in this type of commerce; and the services which have and are being offered. The major points we believe are as follows:

The movement of goods by air, due to inherently different requirements than those of air passengers, is a totally different business than passenger carriage.

Outdated, passenger oriented, regulations and CAB doctrine, have restricted the development of all cargo services really needed by air shippers and have simultaneously reduced potential demand for such services and forced traffic into the passenger-designed system.

The air cargo system is a supplementary, rather than primary, transport mode, and as such, heavy-handed regulation is inappropriate and regressive.

Federal Express' remarkable growth is living proof that such services are needed by the public.

The goods which move by air, although a small percentage of the total volume of activity commerce, are inherently the most critical and valuable items moved in this nation.

We, and thousands of shippers, have contacted members of Congress imploring that you move promptly to liberalize Federal law to permit rapid improvement in all-cargo services. The opponents of this Bill, the ATA and the Flying Tiger Line, have countered with the arguments that the system as currently structured to meet the public need is perfectly adequate and, secondly, that diversion of traffic from the combination system is an evil of and by itself.

The first argument is belied on every front. For instance, the Air Freight Forwarders Association (whose members tender over 40% of all shipments to the airlines!) testified in the Senate on August 3, that "*adequate overnight all-cargo airline freight lift*" is for the forwarders "*an over-riding fact of economic life, and indeed, economic survival*". Moreover, "*the massive erosion of overnight all-cargo service by the scheduled certificated carriers . . . has become so serious and threatens to become even so much more critical, that an expedited grant through the exemption process, pending a hearing on a certificate application, may be the order of the day.*"

Emery Air Freight, the largest and most prosperous of the air forwarders, has even felt compelled to organize its own all-cargo airline on a charter basis to overcome this service deficiency.

The appendices to this testimony bear overwhelming evidence to the reduction in service which has occurred and, more importantly, attest to the almost desperate public need for this type of service.

Federal Express has suggested several modifications to this Bill which, if enacted, would further broaden the CAB's scope in authorizing more all-cargo service, and which would assure equitable treatment to all qualified carriers in terms of tariff filing and reporting procedures. It should be pointed out that those who oppose this legislation would have exactly the same rights as Federal Express in applying for expanded authority. Under this regime, the answer as to what the public did and did not need would be provided, as it should be, in

the acid test of commercial competition. If combination service is really adequate for air shippers needs, despite this overwhelming evidence to the contrary, expanded all-cargo service will be rejected by the marketplace.

As to the argument of diversion, we would point out three basic facts:

Air cargo revenues account for a relatively small share of the certificated industry's total revenues.

With less than 1% of all inter-city freight ton miles moving by air, healthy competition and increased service could almost not help but expand the total market available to all carriers. Significantly, one of the major points of debate as to major regulatory reform of air passenger travel centers on whether there is a finite or expansible demand for air travel. In this case there is absolutely no argument that significant inroads can be made in developing air cargo if there is the opportunity to do so.

Lastly, the airlines' diversion argument has no validity as to public need. If this country were governed by such a theory of entitlements, the airline industry should be forced to "give back" all of the passengers to the railroads for by becoming the predominate common carrier mode of inter-city travel, the air transport industry surely "diverted" many rail passengers and eventually led to the demise of most rail travel. In this case, as in the above, the activities of Federal Express and other carriers' activities under this new legislation would be a system *improvement* which had been dictated by the public need.

In this regard, the true issue comes back to my opening remarks. Faced with an unmet public demand and minimal dangers in authorizing energetic companies to try and meet that need, what will you, our elected leaders, do about it? Will you in fact listen to the voices of thousands of individual shippers, or will you succumb to those few who would preserve the status quo—regardless of its clear failure to meet the public need? Will you allow this basic fact to be distorted by obtuse and self-serving arguments that attempt to divert your attention from the true issue at hand—the best interest of the American Public? In this regard, Mr. Hoffman, Chairman of the Flying Tiger Line, at earlier hearings before this same Committee, probably stated it best when he said: "The only legitimate aim of regulatory change in air cargo is to improve service to the shipper".

Who can argue that this Bill with perhaps slight modifications, can do anything but just that?

We at Federal Express believe that passage of this legislation would clearly be in the public interest and in our own interests as well. We further believe that those who oppose it seek refuge in the current regulatory environment not only because it serves their private interests, but also because it is a powerful weapon, of and by itself, in preventing the open competition which has served the American Public so well.

The will to change that which is out of date and not in keeping with the public good, in spite of strong and entrenched interests, has been brought to the test many times before. It is not a light nor easy task. A paraphrase of one of Thomas Jefferson's more telling remarks focuses on this issue:

"Prudence, indeed, will dictate that (laws) long established should not be changed for light or transient causes, and accordingly all experience hath shewn that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed."

In this regard, the change you deliberate today, while not a burning issue of interest to the general public, and the way in which you decide, may speak volumes on this nation's ability to adapt to the future by the progressive actions of its leadership.

With confidence that your decision as to which course of action to take will be an easy one, we look forward to the prompt passage of HR 14623.

Thank you.

APPENDIX I.—THE STATED NEED FOR ALL-CARGO AIR SERVICE

STUDY BY CLIFF COURIER, PRESIDENT, CARGO ECONOMICS PREPARED 5/1/76, TITLED:
DOMESTIC AIR FORWARDER GROWTH AND COMPETITION

Pages 3 and 4

Overnight airline cargo service continues to deteriorate at an alarming rate. There are two major factors contributing to the deterioration: a) the poor economics of the scheduled airline fleet for night time cargo use; and b) increased environmentalists' attacks on night time large aircraft operations.

Pages 4 and 5

The airline all-cargo service cutbacks of recent years have substantially altered the quality of the domestic air flight service available nationally. The percentage of total domestic air freight moving on all-cargo service has declined from 65% in 1970 to only 46% in 1975.

Pages 6 and 7

The wide-body freighters coming into service do not appear to have short-haul characteristics. Therefore, the services of these aircraft will be limited to the long-haul/high volume domestic and international traffic lanes.

ROBINSON HUMPHREY REPORT—THE AIR FREIGHT DUAL ENTRY—JULY 1976, BY
BOB LAFLEUR, VICE PRESIDENT

Page 8

While most service cuts have affected the smaller markets and thus been less critical, many major markets have been impacted. Probably the most noticeable have been North-South markets along the East Coast due to Delta's and Eastern's all-cargo reductions. This has forced the forwarders to seek alternative methods for assuring prompt service. For example: Emery Air Freight charts two planes daily to fly to southeast markets in order to provide next day service. Also, Airborne Freight operates two charters from the Midwest and East Coast to the Southeast. As another example of cargo cutbacks, Emery now pays 25% of its total airline transportation bill to third-level air carriers, versus only 3% four years ago. Airborne now pays about 10% to the air-taxis. Thus, Emery and Airborne have been forced to adapt to reduced all-cargo service and, due to their flexibility, have been able to shift volume to the best carrier available.

ROBINSON HUMPHREY PROGRESS REPORT ON EMERY AIR FREIGHT CORPORATION, BY
BOB LAFLEUR, VICE PRESIDENT—AUGUST 12, 1976

Page 4

Emery's goal is to provide its own capacity where a shortage of airline service exists. While it has attempted to get the airlines to offer service, all attempts have failed to date.

1973 EMERY AIR FREIGHT CORPORATION ANNUAL REPORT

Page 2

To offset the serious lack of adequate air freight space in the Midwest-Eastern-Southeastern quadrant, for the first time Emery has had to charter aircraft on a daily basis. This new lift is being supplemented by sky-van, air-taxi, and commuter airline operators as we do all in our power to insure an adequate supply of overnight air freight service of the type upon which we have built our business from the start.

1974 EMERY AIR FREIGHT ANNUAL REPORT

Page 5

In the last year or so the airlines, on most of which we are the principal air freight customer, cut back their all-freight flights; in some areas so severely that

we, who are dedicated to staying out of the airline business, found ourselves in it. In 1973 and through most of last year, we found that the only way to provide our customers overnight air freight service to the Eastern and Central areas of the U.S. was to charter four Electra airplanes to serve the freight running from Ohio to New England, and to the South Central states.

1975 EMERY AIR FREIGHT ANNUAL REPORT

From 1946, when the company began doing business, until 1973, we relied almost exclusively on the major airlines for moving freight. As the carriers grew in size and stature, we prospered along with them. The transition to the jumbo jets, however, could well prove to be the turning point in our relationship with the major carriers. While the 747, the DC-10, and the L-1011 added dramatically to both passenger and freight capacity, they contributed indirectly to a sharp deterioration in service during evening and night hours—the time most critical to the air freight industry. In order to insure continuity of service to our customers, we had to re-direct our activities, resulting in a sharp increase in the use of charter aircraft, commuter and air-taxi carriers, at the expense of major airlines.

As we look ahead and evaluate the major airlines future plans, it seems clear to us that greater utilization of the air-taxi and commuter carrier will be needed to maintain a high quality of service. It is even conceivable the roles of the scheduled airlines and the commuter lines will be reversed unless the major air carriers become more responsive to the air freight side of this business.

1973 AIRBORNE FREIGHT CORPORATION ANNUAL REPORT—MR. BRAZIER, EXECUTIVE VICE PRESIDENT AND CHIEF OPERATING OFFICER

Page 6

So far we haven't seen a great deal of impact on our trucking operation. Of course, the real factor has been the cutbacks on the airlines and also in reducing freighter operations. They've done the same thing with freight that they've done with passengers, and it's created chaos in certain areas, primarily because the people expected a 10 p.m. flight that would get into San Francisco with delivery to follow the next morning. That flight no longer exists. People have either had to adjust their shipping schedule to ship at 3 or 4 in the afternoon to get a 7 p.m. flight, or to accept one-and-a-half day service or possibly two-day service, as opposed to the one-day service most people are accustomed to in this business. That's been the primary impact we've felt.

1975 AIRBORNE FREIGHT CORPORATION ANNUAL REPORT—TEXT BY HOLT WEBSTER, DESCRIBING COMPETITIVE ENVIRONMENT

Page 10

Third is Federal Express, a company which, more than anything else, has taken advantage of the airlines' service cutbacks and inconsistencies. Federal provides strong competition for small shipments, largely because it can avoid the situation Airborne must continue to face as it works around the problems created by airline service failures.

THE FUTURE OF AIR FREIGHT—COMMENT BY RICHARD H. STEINER, VICE PRESIDENT MARKETING, THE FLYING TIGER LINE, INC., BEFORE THE NEW YORK CHAPTER, TRANSPORTATION RESEARCH FORUM, NEW YORK, NEW YORK—NOVEMBER 5, 1975

Page 5

As we have seen, the primary reason for using air freight is its availability for prime-time departure. This means late-in-the-day pick-up, air shipment the same night, and delivery early the next day. Such door-to-door transit time is primarily provided by all-cargo aircraft service.

Page 17

In the United States there has been a continuing trend toward decentralization of population, as well as manufacturing. This has created a need for supplementary or high-quality distribution service for those hinterland markets, because the surface modes, being the "batch" operators they are, tend not to provide as good a service to those areas as they do the major markets.

The profitability of Emery Air Freight and the rapid, though as yet un-profitable growth of Federal Express, both of which serve these secondary markets, attest to the need for such a service.

APPENDIX II

SCHEDULED AIRLINES' SUPPLY OF DOMESTIC ALL-CARGO SERVICE—ALL-CARGO FLIGHTS: 48 CONTIGUOUS STATES PLUS DISTRICT OF COLUMBIA

Airport receiving certificated all-cargo flights	12 mo, ended June 30—					Notes
	1971	1972	1973	1974	1975	
1. Huntsville	162					(1)
Percent increase (decrease)		(100.0)			(100.0)	
71 to 75 percent increase (decrease)						
2. Los Angeles	7,186	8,806	9,143	8,921	7,800	
Percent increase (decrease)		22.5	3.8	(2.5)	(12.6)	
71 to 75 percent increase (decrease)						8.5
3. San Francisco	8,722	7,416	6,835	7,019	6,087	
Percent increase (decrease)		(15.0)	(7.8)	2.7	(13.3)	
71 to 75 percent increase (decrease)						(30.3)
4. Denver	1,990	1,564	999	634	471	
Percent increase (decrease)		(21.4)	(36.1)	(35.6)	(25.7)	
71 to 75 percent increase (decrease)						(76.3)
5. Hartford	1,091	875	756	401	251	
Percent increase (decrease)		(19.8)	(13.6)	(47.6)	(37.4)	
71 to 75 percent increase (decrease)						(78.0)
6. Washington		1,068				(1)
Percent increase (decrease)			(100.0)		(100.0)	
71 to 75 percent increase (decrease)						
7. Miami	1,841	2,077	1,595	1,028	534	
Percent increase (decrease)		9.0	(23.2)	(35.5)	(66.0)	
71 to 75 percent increase (decrease)						(70.5)
8. Orlando	349	251	156	323	212	(1)
Percent increase (decrease)		(28.1)	(37.8)	107.7	(34.6)	
71 to 75 percent increase (decrease)						(39.3)
9. Tampa	158					(1)
Percent increase (decrease)		(100.0)			(100.0)	
71 to 75 percent increase (decrease)						
10. Atlanta	4,095	4,380	3,892	3,137	2,121	
Percent increase (decrease)		7.0	(11.1)	(19.4)	(32.4)	
71 to 75 percent increase (decrease)						(48.2)
11. Chicago	14,607	16,555	14,257	12,101	11,632	
Percent increase (decrease)		13.3	(13.9)	(15.1)	(3.9)	
71 to 75 percent increase (decrease)						(20.4)
12. Indianapolis	800	511	517	497	534	
Percent increase (decrease)		36.6	1.1	(3.9)	7.4	
71 to 75 percent increase (decrease)						(33.7)
13. Louisville	250	253	246			(1)
Percent increase (decrease)		1.2	(2.8)	(100.0)	(100.0)	
71 to 75 percent increase (decrease)						
14. New Orleans	909	884	742	286	194	(1)
Percent increase (decrease)		(2.8)	(16.1)	(61.5)	(32.2)	
71 to 75 percent increase (decrease)						(78.7)
15. Baltimore	897	900	904	649	547	
Percent increase (decrease)		0.3	0.4	(28.2)	(15.7)	
71 to 75 percent increase (decrease)						(39.0)
16. Boston	2,372	2,272	2,011	1,903	1,753	
Percent increase (decreases)		(4.2)	(11.5)	(5.4)	(7.9)	
71 to 75 percent increase (decrease)						(26.1)
17. Detroit	4,291	3,764	2,938	1,960	2,215	
Percent increase (decrease)		(12.3)	(21.9)	(33.3)	13.0	
71 to 75 percent increase (decrease)						(48.4)
18. Minneapolis	866	1,287	644	678	541	
Percent increase (decrease)		48.6	(50.0)	5.3	(20.2)	
71 to 75 percent increase (decrease)						(37.5)
19. Kansas City	1,022	882	963	514	552	
Percent increase (decrease)		(13.7)	9.2	(46.6)	7.4	
71 to 75 percent increase (decrease)						(46.0)
20. St. Louis	1,322	1,213	1,125	756	722	
Percent increase (decrease)		(8.2)	(7.3)	(32.8)	(4.5)	
71 to 75 percent increase (decrease)						(45.4)
21. Omaha	402	261	260	136		(1)
Percent increase (decrease)		(35.1)	0	(47.7)	(100.0)	
71 to 75 percent increase (decrease)						(100.0)
22. Newark	3,669	3,958	3,509	2,512	1,750	
Percent increase (decrease)		7.9	(13.9)	(26.3)	(30.3)	
71 to 75 percent increase (decrease)						(52.3)
23. Buffalo	483	408	261	257	266	(2)
Percent increase (decrease)		(15.5)	(36.0)	(1.5)	(12.1)	
71 to 75 percent increase (decrease)						(53.2)
24. New York	9,542	10,483	9,922	8,583	7,475	
Percent increase (decrease)		9.9	(5.4)	(13.5)	(12.9)	
71 to 75 percent increase (decrease)						(21.7)
25. Syracuse	242	254	253	247	250	(2)
Percent increase (decrease)		5.0	(0.4)	(2.4)	1.2	
71 to 75 percent increase (decrease)						3.3

APPENDIX II—Continued

SCHEDULED AIRLINES' SUPPLY OF DOMESTIC ALL-CARGO SERVICE—ALL-CARGO FLIGHTS: 48 CONTIGUOUS STATES PLUS DISTRICT OF COLUMBIA

Airport receiving certificated all-cargo flights	12 mo, ended June 30—					Notes
	1971	1972	1973	1974	1975	
26. Charlotte	1,689	1,750	1,491	671	107	(1)
Percent increase (decrease)		3.6	(14.8)	(55.0)	(84.1)	
71 to 75 percent (decrease)					(93.7)	
27. Greensboro	221	(100.0)				(1)
Percent increase (decrease)		(100.0)				
71 to 75 percent increase (decrease)					(100.0)	
28. Cincinnati	547	567	357			(1)
Percent increase (decrease)		3.7	(37.0)	(100.0)		
71 to 75 percent increase (decrease)	(100.0)					
29. Cleveland	2,670	2,266	1,382	912	1,179	
Percent increase (decrease)		(15.1)	(39.0)	(39.0)	29.3	
71 to 75 percent increase (decrease)					(55.8)	
30. Dayton	508	520	516	462	512	
Percent increase (decrease)		2.4	(0.8)	(10.5)	10.8	
71 to 75 percent increase (decrease)					(6.1)	
31. Portland	545	375	344	305	302	
Percent increase (decrease)		(31.2)	(8.3)	(11.3)	(1.0)	
71 to 75 percent increase (decrease)					(44.6)	
32. Philadelphia	2,976	2,939	2,503	2,404	2,592	
Percent increase (decrease)		(1.2)	(14.8)	(4.0)	7.8	
71 to 75 percent increase (decrease)					(12.9)	
33. Pittsburgh	468	510	352	139		(1)
Percent increase (decrease)		8.9	(31.0)	(60.5)	(100.0)	
71 to 75 percent increase (decrease)					(100.0)	
34. Memphis	1,593	892	746	107		(2)
Percent increase (decrease)		(44.0)	(16.4)		(100.0)	
71 to 75 percent increase (decrease)					(100.0)	
35. Nashville	299	255	129			(1)
Percent increase (decrease)		(14.7)	(49.4)	(100.0)		
71 to 75 percent increase (decrease)					(100.0)	
36. Dallas	3,005	11,626	2,967	2,620	2,632	
Percent increase (decrease)		286.9	(74.5)	(11.7)	0.6	
71 to 75 percent increase (decrease)					(12.2)	
37. Houston	802	3,357	1,160	903	913	
Percent increase (decrease)		318.6	(65.4)	(22.2)	1.1	
71 to 75 percent increase (decrease)					13.8	
38. San Antonio		2,333	248	248	246	(1)
Percent increase (decrease)			(89.4)	0	(0.8)	
71 to 75 percent increase (decrease)					(89.5)	
39. Salt Lake City	528	505	529	394	283	(1)
Percent increase (decrease)		(4.4)	4.8	(25.5)	(28.2)	
71 to 75 percent increase (decrease)					(46.4)	
40. Seattle	1,582	2,108	1,680	2,102	1,703	
Percent increase (decrease)		33.2	(20.3)	25.1	(19.0)	
71 to 75 percent increase (decrease)					7.6	
41. Milwaukee	666	412	358	494	327	
Percent increase (decrease)		(38.1)	(13.1)	38.0	(33.8)	
71 to 75 percent increase (decrease)					(50.9)	
Total flights	85,373	100,737	76,590	64,298	56,677	
Percent increase (decrease)		18.0	(24.0)	(16.0)	(11.9)	
71 to 75 percent increase (decrease)					(33.6)	
Total cities	39	38	37	34	31	24
Percent increase (decrease)		(2.6)	(2.6)	(8.1)	(8.8)	(22.5)
71 to 75 percent increase (decrease)						(38.5)

¹ All-cargo service discontinued, substitute truck service provided through another airport.

² Truck service available to other airports.

³ American Airlines instituted midday service between Philadelphia, Memphis, Los Angeles—August 1976.

*Source: Civil Aeronautics Board Airport Activities Statistics—Table 7.

**TESTIMONY OF FREDERICK W. SMITH, CHAIRMAN OF THE BOARD,
FEDERAL EXPRESS CORP., ACCOMPANIED BY ARTHUR C. BASS,
PRESIDENT, AND NATHANIAL P. BREED, COUNSEL**

Mr. SMITH. My name is Fred W. Smith, and I am the chairman of the board of Federal Express. I would like to introduce first the two other gentlemen that I have here at the table.

Mr. Arthur Bass, our president and chief operating officer, and our company is not much different than any other company. There is one guy that tries to get all the credit. That is me. And one guy who does all the work, and that is him. So I thought it would be instructive to introduce him to the subcommittee.

Also, Mr. Nathaniel Breed who is our counsel in the Washington CAB matters.

One thing I would like to ask, out of ignorance, Mr. Chairman, is there any way that I could be sworn in and be subject to the rules of perjury?

Mr. MILFORD. Mr. Chairman, I ask that this witness be sworn.

Mr. ANDERSON. Any objection?

Why do I not let our judge to the left swear him in.

Mr. SNYDER. Do you swear that the testimony you are about to give in this proceeding will be the truth, the whole truth and nothing but the truth, so help you, God?

Mr. SMITH. I do.

The reason I asked for that, Mr. Chairman, is over the past few weeks in the Senate testimony, basically we have been accused of lying, obfuscating, and stating facts which are not true. So, now the way I understand the law, being under oath, if I tell you something I know not to be a fact, and I do not speculate as opinion, and somebody can come in and subject me to legal prosecution, and that is the way I would like it, because we stand very strongly by everything that we have said in the proceedings that have taken place today. And, quite frankly, we are getting a little bit tired of having these epitaphs thrown at us.

I would like to start off with a couple of extemporaneous remarks and then move into my formal testimony and open the floor up for any questions that you might have.

The first thing, it seems to me, that the subcommittee should decide is do you have a problem?

We brought along here a few, and I want to point out it is just a small percentage of the letters that have been sent to the Congress of the United States testifying to the inadequacy of the service that is now being rendered, or their support of Federal Express and their desire for additional services to be offered.

Last night, in reviewing these—I would like to make a part of the record here—I will have Mr. Bass read it—is a representative letter from a gentleman, American Standard in New Brunswick, N.J., and the gentleman's name is E. R. Nagle, who is a transportation analyst. And to my knowledge I do not know of anyone from Federal Express that has directly spoken to Mr. Nagle or has prompted this letter, which is addressed to Senators Case and Williams and Congressman Fenwick.

I would just like for Mr. Bass to read this letter in the record if he might. We have some copies of this if you want to pass them out. You could follow along. Do we not—sorry.

Mr. Bass. The letter is in reference to H.R. 14623 and S. 3684, and Mr. Nagle says:

I strongly support and recommend that you endorse the adoption of the above-referenced bill.

My concern and opinion regarding this matter is based upon the knowledge developed through my education and experience in the transportation industry. As a user of all modes of transport, I have experienced and dealt directly with the services, problems and regulations characteristic of each mode. I am taking the time to contact you directly concerning this matter because I feel this bill, if enacted, has the potential to complement and revitalize the role air transportation fulfills within our national distribution system, which serves the public interest. This bill will certainly promote a cure for the ills and inadequacies which are fostered and directly related to the rules and regulations adopted years ago, and allowed to remain governing today's completely changed, highly sophisticated and complex air transport system. The role and goal of air freight within our national distribution network should be to provide a unique and useful service which will promote and benefit commerce in America. A constant development of this role is necessary if the public is to benefit and realize maximum efficiency and economy from its distribution systems. The public interest will best be served by a distribution system, which is properly managed and regulated. Our nation's transportation policies should reflect an understanding of the economies and roles of all modes of transport combined.

Air freight can and should provide a unique invaluable link which supplements surface transportation. This unique method of movement must be properly dealt with and developed. H.R. 14623 will provide the CAB with an opportunity to properly develop the air freight industry separately and distinctly from the air passenger industry, which has different priorities and needs. The requirements mandated by each—passenger versus freight—transportation consumer is separate and unique. To try to accommodate each user with a single system does injustice to both users of the system. Today's inadequate air freight system has grown up in the shadow of the air passenger transportation business. The demand or need for a separate system devoted exclusively to air freight movements is great; witness the demand which has been accommodated and developed by the Federal Express Corp. outside of current regulations. The adoption of H.R. 14623 would give the CAB the authority and the opportunity to both stimulate and promote the development of our nation's air freight industry by providing "all cargo air transportation" with an exemption of current CAB certification requirements when the Board finds such exemption is in the public interest. In other words, "all cargo air freight" will be given, for the first time, the attention and emphasis it rightly deserves by allowing new and existing carriers an equal opportunity to compete effectively and economically in the service intensive, unique air freight industry.

I sincerely hope that you recognize the inadequacies of today's regulatory scheme and strongly urge you to support the above-referenced action as it is a much needed step in the right direction.

Very truly yours, E. R. Nagle.

This was only one of all the letters that mentioned Federal Express.

Mr. SMITH. I think two other extemporaneous remarks are in order. The first, which is the history in very concise form of Federal Express.

The basic reason we went into business is that we felt that the U.S. air transportation system, as it was currently constituted, did not meet the needs of a great majority of the air shipping public, and that the reason that it did not meet that need was primarily because the regulations were anachronistic and prevented carriers from corresponding to really what the public need was, and that this had been further demonstrated by the tremendous growth of the air-freight forwarders who, in turn, were able to configure a system that did correspond to what the shipper needs.

Now, as long as the system had a plethora of flights from the certificated industry at convenient times and places, there was not a great deal of outcry as to the inadequacy of that. But with the late 1960's introduction of wide-bodied jets and the commensurate reduction in passenger service and, remember, most of the traffic since air cargo began has been a byproduct moved in the underbelly, there began to be a very serious service deficiency there.

The only thing the oil crisis did was accentuate that.

On this basic premise, we went out and did probably the most comprehensive market studies ever done in the Government by air. One was done by A. T. Carney & Co., a very prestigious consultant, and another by a smaller group known as Aerospace Advanced Planning.

Both of these studies, which consisted of literally thousands and thousands of questionnaires and direct interviews with air shippers, incontrovertibly showed that the public was not getting the type of service they wanted.

It was on those documents that we went out and raised almost \$75 million.

Now, in these hearings, I know you gentlemen have heard before that the airline industries face a capital shortage, one thing or another. But if you think it is tough to raise money by American Airlines, as Mr. Casey has testified, you ought to do it when you have not even developed a dollar of revenue.

This documentation was so overwhelming that we were able to attract private capital into our business. Once launching that business, it became apparent to us that the name of the game was credibility; that the goods that were being moved by air, although they constituted a very tiny percentage of the total ton-miles moved in this country, were, by definition, the most critical items in the Nation's commerce—blood, serum. Actually, it meant the ability of a lot of small firms to compete.

Now, just imagine if you are the traffic manager for a company and your largest single customer has a severe problem in a small town, and you are delegated the responsibility by your boss to ship a critical part to that shipper, the failure of which to arrive there will cause egregious consequences on that shipper.

The next day the shipment does not arrive for whatever reason, and if the demand was created in the mid to late afternoon, it is practically impossible to achieve overnight, early morning delivery between the vast majority city pairs in the United States. It cannot be done.

Your boss comes and asks, "Why did it not get there?"

Are you going to tell him that you sent it by the Acey Ducie Air Freight Co.—and the answer to that question is clearly no, because without the credibility of the name and image, it is very, very difficult to get a foot in this business.

So the second point that I would commend to your attention, based on that fact which is pretty indisputable, if the system is so adequate and corresponds to the public needs the way it has been alleged in a number of the documents that have been bicycled around, how did Federal Express, from a standing start, with no constituency, no image, no name, take \$105 million, which is what we project—and at this point in time we are very much on target—\$105 million out of this marketplace?

To my knowledge, there is no other company that, save those that perhaps might have struck oil, in 3 years have gone from a standing start, and have developed that amount of money.

That is a very telling remark on the adequacy of the existing system, and again I want to reiterate I am not speaking against Flying Tiger or Airlift or any of those people. I believe that those carriers,

had they not been constrained by the regulatory system, could very well have been occupying a place that Federal Express is today.

But that leads me to the third point I want to make extemporaneously, and I will turn part of this over to Mr. Breed.

There is a basic flaw in the Federal Aviation regulations. You have got to remember that the reason that the airline was regulated to begin with was because of a chaotic condition that existed, and the Congress gave the Civil Aeronautics Board a dual mandate, the first of which was to promote aviation services in the public interest and, at the same time, to protect the carriers from each other.

So, in each case, when a new entrant wanted to go into the business, the CAB was always faced with this dilemma of having competing carriers already with a franchise to operate, saying that if this revenue is diverted from me, it will be contrary to the public image and, as a consequence, there has been virtually no new entries in the transport field.

Now, this becomes a very telling remark today in the situation you have in the deregulation or regulatory reform of passenger travel because, in essence, the essential argument that differentiates that situation from what we are engaged in, is whether there is a finite number of air passengers that can be enticed into the air by lowering of prices and, in turn, can make a number of carriers in the market and improve the public image.

From my personal opinion, that is not the case, that there is fair number. When it comes to the movement of goods by air, however, I commend to your attention that less than 1 percent of all transportation revenues expended in the United States are expended on air transportation, and that the largest single inhibitor toward development of a more industrial air cargo system has been archaic regulations, and that if carriers were given the freedom to correspond to this type of need, they would engender substantially greater revenues.

Now, in the hearings today, there has been a lot of misinformation. One, for instance, on the subject of section 401.

Our research indicates that an exemption from section 401 exempts Federal Express or any other carrier from one requirement and one requirement only, and that is to hold a certificate of public convenience and necessity.

If we were to apply under H.R. 15302, we would be required, commensurate with the granting of that exemption, to file tariffs for our entire system, not just for the large aircraft version at all. We would be exempted, however, from the three points of the existing passenger regulations.

One is routing restrictions, which clearly are not the interest of cargo shippers, and it is exactly why the airfreight forwarders have been able to prosper when domestic direct carriers have floundered in making a profit.

The second of which is the points served limitations that the CAB would impose upon us.

And the third of which we would be exempt from certain marginal requirements elsewhere in the act that are not significant.

That one point has clouded the issue here, and I think it is strong. There is another one that you (Mr. Breed) wanted to address.

Mr. BREED. Mr. Chairman, there was some uncertainty developed this morning with respect to what the Board's powers are.

What I would like to do is see if I can dispel that confusion by reiterating briefly what H.R. 15302 or Congressman Milford's bill would do.

That is the morning after that bill, either one becomes law, Federal Express will have no authority that it does not now hold. Not any.

The CAB will have slightly broader exemption authority to grant to an all-cargo operator, which would include Federal Express or any other one, relief pending the certification process. And it is just as vital to stress to you that the objective of this bill is not a special favor for Federal Express. It is not even any special favor for all-cargo operators. It is a means to permit the CAB to have an orderly process in certification while the business is not forced to shut down or be artificially repressed during a 2- to 6-year interval while that process is underway.

The chairman indicated, in response to Congressman Milford's question, that he thought he would complete our case in 1 year to 18 months, and I would add that we would fervently hope so. But your record is, Mr. Chairman, that they have taken 5 years or longer on two cargo cases which he noted were of vast significance.

The usual CAB case involves anywhere from 1 market to 23 markets. Our case will involve 6,700 markets approximately. It is going to be an enormous case.

Mr. GOLDWATER. How many?

Mr. BREED. 6,700 markets. Every carrier that now provides certificated service in the country will, in one way, be affected by the Federal Express certification case, and my guess is it will take a while for the CAB to sort that out.

The other point, in the interest of clarification before returning it to Mr. Smith for his direct testimony, is the point that Mr. Smith addressed, and that is it is vital that you understand that under Mr. Milford's bill Federal Express can only get exemption from the certification requirements but not from all of the other requirements about which Congress and this subcommittee is properly concerned, such as tariff filing, fitness, all the rest of that, the company continues to be subject to.

On that point, I would rest, and we would respond to any questions the subcommittee may have.

Mr. SMITH. I would like to read now my prepared statement. I will cut it as quickly as possible.

I would just point out, Mr. Chairman, and this is my personal opinion, it appears to me that the Congress has three legislative functions.

The first is to have the wisdom to leave those functions adequately and fairly regulated by the free market to the aggregate genius of the American free enterprise system.

To move decisively to regulate those areas of our national life which require oversight to insure the common good and the equitable treatment of all citizens.

I might point out that nothing we have seen would lend credence to the thought that the air cargo market or the movement of goods by air meets any of those two tests.

The third, finally, and perhaps most important, is to have the courage to modify and modernize the law when it becomes obvious that time and technology have rendered statutes obsolete or even repressive.

In our rapidly changing society, the success of the Congress in this latter regard may well be the test of whether our system continues on the remarkable course of the preceding 200 years. These actions will not be easy, nor without controversy, for the history of mankind is literally a chronicle of the battle of progressive thought and action against entrenched and vested interests which have been established under the old order.

This subcommittee faces such a test on the legislation at hand. For months, the Congress has examined in detail our air transport system. Competing views and theories have had their chance to be heard. We have learned that our passenger transport system is by far the finest in the world but, even so, there are those who think it could be even better. The forecast results of major changes continue to be hotly debated.

Within the record, however, is one type of service within our domestic air transport system which has incontrovertibly been reduced—all-cargo service. Official records verify that all-cargo flights have both been reduced and further concentrated in but a few major markets.

There is attached to this an appendix which gives for the past 5 years the record of all of the all-cargo services provided on a scheduled basis by the scheduled certificated trunk and regional service carriers.

I would like to reiterate that the above statement is not speculative—it is a matter of uncontested fact.

It would appear then that there are two questions which this subcommittee must then answer. Is there a need for more all-cargo service; is this in the public interest?

And, second, if so, what should Congress do to encourage the providing of such service?

In previous testimony, a compendium of which is attached for the record, we have shown why people need and use air cargo services; the physical characteristics of the traffic moving in this type of commerce; and the services which have and are being offered.

The major points, we believe, are as follows:

One: The movement of goods by air, due to inherently different requirements than those of air passengers, is a totally different business than passenger carriage.

And therein is the basic failure of existing aviation law.

Two: Outdated, passenger-oriented, regulations and CAB doctrine, have restricted the development of all-cargo services really needed by air shippers and have simultaneously reduced potential demand for such services and forced traffic into the passenger-designed system.

Three: The air cargo system is a supplementary, rather than primary, transport mode and as such, heavy-handed regulation is inappropriate and regressive.

The reason the CAB has not been able to decide on the domestic air freight investigation is because the incentives for people to move goods by air are so complex and so value-of-service oriented, that there literally is not any standard that the CAB can rationally apply without prejudicing against one shipper or the other. And I commend to your attention—and when you talk about the consistency of the CAB, 2 days ago, the Flying Tiger Line was turned down in a rate request, which was basically operationally motivated as being discriminatory, and yet the CAB, on a daily basis, allows the over-the-counter markets, the Delta services to be priced on a strictly value-of-service basis.

There is no way you can justify being paid \$25 for a 1-pound package on a combination aircraft. It denies Board logic in passenger or Board regulation, but there it is for all to see as the inconsistency.

Four: Federal Express' remarkable growth is living proof that such services are needed by the public.

Five: The goods which move by air, although a small percentage of the total volume of activity commerce, are inherently the most critical and valuable items moved in this Nation.

We, and thousands of shippers, have contacted Members of Congress, imploring that you move promptly to liberalize Federal law to permit rapid improvement in all-cargo services. The opponents of this bill, the ATA and the Flying Tiger Line, have countered with the arguments that the system, as currently structured to meet the public need, is perfectly adequate and, second, that diversion of traffic from the combination system is an evil of and by itself.

The first argument is belied on every front.

For instance, the Air Freight Forwarders Association—and I would like to point out that their members tender to the airlines over 40 percent of all shipments to the airlines—testified in the Senate on August 3, that “adequate overnight all-cargo airline freight lift” is for the forwarders “an overriding fact of economic life and, indeed, economic survival.” Moreover:

* * * the massive erosion of overnight all-cargo service by the scheduled certificated carriers * * * has become so serious and threatens to become even so much more critical, that an expedited grant through the exemption process, pending a hearing on a certificate application, may be the order of the day.

Emery Air Freight—and this probably upsets Federal Express more than anything else—the largest and most prosperous of the air forwarders, has even felt compelled to organize its own all-cargo airline on a charter basis to overcome this service deficiency.

To our knowledge, Mr. Chairman, Emery Air Freight, prohibited from operating airfreight directly, will within the next 6 days put in a system exactly of a type that Federal Express requested to the Civil Aeronautics Board more than a year ago.

Mr. ANDERSON. Mr. Smith, I hate to interrupt, but we are in the middle of a quorum call. We have 6 or 8 minutes to go.

So we will recess at this point and pick you up where you left off. [Short recess.]

Mr. ANDERSON. The meeting of the subcommittee will come to order.

Mr. SMITH. I was speaking about Emery Air Freight having announced that they were going to put in a hub-and-spoke transport system, which is patented almost identically to that of Federal Express, and chartering on a daily basis, which is, in essence, the exact

same operation, subject to the legal differences that I have just described, that Federal Express requested in its application for five DC-9-15 aircraft over a year ago.

The appendices to my statement bear overwhelming evidence to the reduction in service which has occurred and, more importantly, attest to the almost desperate public need for this type of service. One, a random sampling by experts and people in the airfreight forwarding business as to the quality of the service is now available, and the second of which is a record taken from the official Federal statistics about the supply of all-cargo service.

Federal Express has suggested several modifications to this bill which, if enacted, would further broaden the CAB's scope in authorizing more all-cargo service, and which would assure equitable treatment to all qualified carriers in terms of tariff filing and reporting procedures.

It should be pointed out that those who oppose this legislation would have exactly the same rights as Federal Express in applying for expanded authority.

Under this regime, the answer as to what the public did and did not need would be provided, as it should be, in the acid test of commercial competition. If combination service is really adequate for air shippers' needs, despite this overwhelming evidence to the contrary, expanded all-cargo service will be rejected by the marketplace.

As to the argument of diversion, we would point out three basic facts:

Air cargo revenues account for a relatively small share of the certificated industry's total revenues.

With less than 1 percent of all intercity freight-ton-miles moving by air, healthy competition and increased service could not help but expand the total market available to all carriers. Significantly, one of the major points of debate as to major regulatory reform of air passenger travel centers on whether there is a finite or expansible demand for air travel. In this case there is absolutely no question that significant inroads can be made in developing air cargo if there is the opportunity to do so.

Lastly, the airlines' diversion argument has no validity as to public need. If this country were governed by such a theory of entitlements, the airline industry should be forced to "give back" all of the passengers to the railroads for, by becoming the most predominant common carrier mode of intercity travel, the air transport industry surely "diverted" many rail passengers and eventually led to the demise of most rail travel.

In this case, as in the above, the activities of Federal Express and other carriers' activities under this new legislation would be a system improvement which had been dictated by the public need.

In this regard, the true issue comes back to my opening remarks. Faced with an unmet public demand and minimal dangers in authorizing energetic companies to try and meet that need, what will you, our elected leaders, do about it?

Will you, in fact, listen to the voices of thousands of individual shippers, or will you succumb to those few who would preserve the status quo—regardless of its clear failure to meet the public need?

Will you allow this basic fact to be distorted by obtuse and self-serving arguments that attempt to divert your attention from the true issue at hand—the best interest of the American public?

In this regard, Mr. Hoffman, chairman of the Flying Tiger Line, at earlier hearings before this same subcommittee, probably stated it best when he said, and this is, of course, what you should make your decision on, “The only legitimate aim of regulatory change in air cargo is to improve service to the shipper.”

Who can argue that this bill, with perhaps slight modifications, can do anything but just that?

We at Federal Express believe that passage of this legislation would clearly be in the public interest and in our own interests as well. We further believe that those who oppose it seek refuge in the current regulatory environment, not only because it serves their private interests, but also because it is a powerful weapon, of and by itself, in preventing the open competition which has served the American public so well.

The will to change that which is out of date and not in keeping with the public good, in spite of strong and entrenched interests, has been brought to the test many times before. It is not a light nor easy task. A paraphrase of one of Thomas Jefferson’s more telling remarks focuses on this issue:

Prudence, indeed, will dictate that (laws) long established should not be changed for light or transient causes and, accordingly, all experience hath shewn that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed.

In this regard, the change you deliberate today, while not a burning issue of interest to the general public, and the way in which you decide, may speak volumes on this Nation’s ability to adapt to the future by the progressive actions of its leadership.

With confidence that your decision as to which course of action to take will be an easy one, we look forward to the prompt passage of H.R. 14623, or any other legislation which makes the Federal Aviation regulations correspond more to what the basic needs of the shippers of the United States are.

I finally would like to point out, Mr. Chairman, that we at Federal Express, for the record, do not wish to inhibit, limit, or have any unfair advantage over any other carrier.

Quite the contrary, we encourage any and everything that you can do to develop more competition under appropriate regulatory regimes for the movement of goods by air.

In fact, in meeting previously this spring, we have even acknowledged the fact that because of our unregulated environment, we have been able to do things that other carriers perhaps might have wanted to do, although I seriously doubt that, in my own opinion, because I do not think they proceed in the market the way we did, and we would even be willing to go in the penalty box while they catch up. That is a profound statement from a company that has a very small net worth.

It took us a lot of money to get where we are, because we had to put a system in place to meet the true needs of the airfreight shippers. But something has to be done, Mr. Chairman, and we urge you to carefully review this legislation or similar type of legislation to correct a legal impediment to the providing of service which we think is very much in the public interest.

Thank you.

Mr. ANDERSON. Thank you, Mr. Smith, Mr. Bass, and Mr. Breed, for a very fine presentation.

There was one point I was not exactly clear on, and maybe you can help me. That was your problem with the Emery Freight situation. You say they are going to do what you were refused the right to do.

Would you go over that a little bit?

Mr. SMITH. Mr. Chairman, Emery Air Freight is an indirect air carrier under the law, commonly referred to as an airfreight forwarder. As such, they have a legal prohibition against engaging in direct air transportation or operating aircraft and, at the same time, which is indisputable under the law, they have the right to charter aircraft.

Now, for years, the word "charter" generally connoted an ad hoc or an irregular type of service. But over the past few years, the airfreight forwarders have begun to charter, on an exclusive basis for their own use, aircraft that run on a regular schedule every day bringing somewhat into question, are the forwarders, in fact, engaging in direct air transport, or are they not?

Now, the administrative law judge, in the domestic airfreight forwarder charter investigation, recommended that the forwarders have eclectic authority to charter when and where they want.

Responding to the reduction in overnight air transportation which Emery believes, contrary, perhaps, to the Air Transport Association, very strongly is what the public is really buying primarily when they buy air cargo services, faced with this reduction in service by the certificated, scheduled carriers, has announced that they will put in a hub-and-spoke system, using a variety of different aircraft sizes up to the same size as the DC-8. This is much beyond the point that we requested previously in the DC-9 or 727. They will put in place a system virtually identical to Federal Express except they will be using third parties to fly the aircraft. They will have third-party overhead-and-profit margin, and be doing exactly the same thing that we want to do.

Mr. ANDERSON. Will they have the pickup and delivery service?

Mr. SMITH. Yes, sir.

Mr. ANDERSON. And they can legally do that?

Mr. SMITH. What? Emery Freight does? They have pickup and delivery services?

Mr. ANDERSON. Will they have pickup and delivery service?

Mr. SMITH. Sure, they will.

Mr. BREED. Mr. Chairman, your question was can they legally do it. We think there may be—

Mr. SMITH. No.

The chairman's question was can they offer pickup and delivery service.

Mr. ANDERSON. Can they do this under the present law?

Mr. SMITH. Mr. Chairman, we have reviewed this question at some great depth, and we believe, in fact, they can do it.

The Emery Air Freight has made the statement that one of the overriding reasons that they are confident that they can do it is that they have in their possession, and this is hearsay, reported to us, letters from the certificated scheduled air carriers where they have requested

nighttime lift for their customers' needs. And it has been denied from the other carriers by saying that they will not put it in place.

It is our opinion, yes, sir, that they probably will be able to do it. And to our knowledge, they are moving full bore ahead in putting that system in.

Mr. ANDERSON. When you commenced operations in 1973 as an air taxi operator, did you envision need for large aircraft in the future?

Mr. SMITH. Mr. Chairman, in 1973, when we first went into business, the circumstances were substantially different, due to one basic reason, and that was the price of fuel.

The market at that time was growing at a compounded growth rate of 17 percent compounded annually, and I commend to your attention that the airfreight markets today, in terms of number of shipments, is just approaching the same level that it was in 1974.

We believed at that point in time that we would eventually get into large aircraft operations on a selected basis, but due to the economics that were available at the time, we would have a much longer period of time to prosecute any type of regulatory application than had been currently the case, because we are faced with the same proposition that any other transport company faces today, and that is that with the high cost of energy you simply have got to put the maximum amount of payload per trip carried, or keep the energy intensity per unit carried commensurate with the maximum efficiency and still retain the service that the company is buying.

Mr. ANDERSON. When did you realize that large aircraft would be needed to improve your operations?

Mr. SMITH. We realized that, Mr. Chairman, beginning in the first part of 1974, and watched the situation become more inefficient as we went forward, and we applied to the Civil Aeronautics Board in September 1974 for an exemption to the title.

I think—September 1975, I am sorry.

Now, I think it is significant to the state of mind that we had at the time. We felt two things very strongly. One, the Congress had intended that the CAB mandate was to promote air transportation in the public good, and that because we had obviously shown that there was some public good, or we would not be getting all the traffic that we did, and, two, that the CAB did have the power to grant such an exemption.

In fact, in our own mind we were flying those airplanes, but since that time we have become a little more sophisticated.

Mr. ANDERSON. When you saw the need for large aircraft, why did you not apply for a certificate at that time?

Mr. SMITH. Mr. Chairman, the Federal aviation regulations in this country are basically deficient in two primary areas as it applies to all-cargo transportation. The first of which is that Board precedent, and section 401 (e) (1), the main point requirement, prohibits an all-cargo carrier or direct carrier, from operating the same way the airfreight forwarders do, which is nationwide, contiguous authority.

The routing restrictions commonly used by passenger transportation, and the diversion theories that have been used so successfully in the past to defeat new entry applications are simply at odds with what the consumer needs, and there is a living example of that, again, as I said, in the airfreight forwarders.

The second thing that is a very real impediment to a certificate application, in our mind, is as is generally agreed by Flying Tigers, and the experts, and there are many comments in the back that you can reference this material and read it. Airfreight is a supplementary system and is primarily service oriented, it is value of service that determines whether consumers will use the service or not, and as such it absolutely does not lend itself to heavyhanded rate regulation.

It is for those two reasons, I think, that if you look at the record of domestic all-cargo operations, you will find they have been unsuccessful.

So with Federal Express, looking at a certificate, as a very small carrier, how could we expect to go in and get the type of authority that we know that our shippers actually require under the existing law?

That is the awful "Catch 22" of the current situation.

Mr. ANDERSON. When the CAB denied your application for an exemption in December 1975, the Board stated that: "The Board stands ready to give prompt and careful consideration to any appropriate application that might be filed by Federal Express" for a certificate.

As I understand it, Federal Express has not yet filed a certificate application.

Can you explain why you have failed to do so?

Mr. SMITH. I think you answered the question better than I could, Mr. Chairman, by the question that you asked.

The Civil Aeronautics Board has been sitting on some applications for 5 years up there, and as best we can tell, we see no particular evidence that an expeditious hearing would be held on certification, and more importantly, the length of time involved in the certification is not the heart of the matter.

The heart of the matter is the deficiency of the Federal aviation regulations in failing to recognize that the movement of goods by air is a totally different public demand than the movement of people.

So even if you applied under those regulations, and even if you got a certificate in a short period of time, it is very, very likely that the Civil Aeronautics Board would impose the diversion theories, the routing restrictions, and the unrealistic pricing constraints that have led to the poor record of all-cargo service in this country.

Mr. ANDERSON. But does not the bill that we talked about imply that you are going to be operating under the certificate at some time?

Mr. SMITH. Mr. Chairman, it does, but I would hark back to the same point I made to the Senate.

The bill that we are supporting here today is an utter compromise on the part of Federal Express' belief.

In late spring we attended a meeting with all of the all-cargo carriers, right here in Washington, and at that point we urged that legislation be introduced that would solve those two basic problems that I just mentioned to you there. The area type of authority, and the heavyhanded regulation.

We could get no support, whatsoever. We talked to every air carrier. We talked to the Air Transport Association. We could not get any support for it.

In fact, the reason that the word "initial" was in the first bill, which, of course, we tried very hard to move, was in response to what was—

what we believed was a major objection on the part of the ATA, that if we would scale this down so as not to be an all-pervasive change, that perhaps they would not be as vocal in their opposition.

As it turned out, either our communications were misunderstood, or whatever the reason, there was some considerable vocal opposition.

Now, if this bill were passed, we would, in fact, apply for a certificate. Our board of directors voted and gave the authority to apply for a certificate, assuming that this legislation passes, approximately 10 days ago.

But at the same time we would either use the certification process, or we would try to talk the Congress into recognizing that those two basic deficiencies in the law should be changed for future good of the American shipping public.

Mr. ANDERSON. The main problem which H.R. 14623 deals with is the slowness of CAB proceedings.

Would it not solve the problem to pass legislation requiring the CAB to decide certification cases, say in 1 year?

Mr. SMITH. Well, Mr. Chairman, that would be obviously a help. No question about that.

But again, it does not go to the basic heart of the regulatory deficiency, which is the type of routing and area authority needed by direct all-cargo carriers, which is proven by the success of the air-freight forwarders who had that type of authority.

Mr. ANDERSON. Neither does the bill we are talking about.

Mr. SMITH. I understand that, sir, but obviously we have 3 weeks left in this congressional session.

It is just like I told Mr. Barnum, I walked out there and I said, I agree with everything that you said. But I also realize that the chances of legislation are that pervasive, which truly ought to be done, passing in this session of Congress are nil.

Mr. MILFORD. Will the chairman yield on that point?

Mr. ANDERSON. Yes.

Mr. MILFORD. This limiting for 1 year gives me some concern, because it would also limit the right of others to question during a hearing process, particularly in a complicated case, it would be a danger here.

In this case, rightfully, it should be heard, and it was intended by CAB that they would be heard.

In counterlegislation, I fear you would inhibit some carrier interests.

Mr. ANDERSON. I have some more questions, but I will hold them until we go around the room.

Mr. Hammerschmidt?

Mr. HAMMERSCHMIDT. I would like to yield to Mr. Goldwater. I yield my time to Mr. Goldwater.

Mr. ANDERSON. Mr. Goldwater?

Mr. GOLDWATER. Thank you, Mr. Chairman.

Mr. Smith, are you a publicly held corporation?

Mr. SMITH. We are not, sir.

Mr. GOLDWATER. You are a closed corporation?

Mr. SMITH. We are privately owned. We have a number of different shareholders, but it is simply not listed on the stock exchange.

Mr. GOLDWATER. Are there foreign investments?

Mr. SMITH. There is a very small foreign group—

Mr. GOLDWATER. I understand this piece of legislation would allow you to purchase aircraft, and then after you purchase those aircraft, the CAB would then hold hearings and make final determination.

If they make a negative determination, are you telling us that you are willing to take that kind of financial risk?

Mr. SMITH. Certainly, and the risk is not that great.

Mr. GOLDWATER. The failure of all-cargo service in the United States has basically made a plethora of relatively small cargo jets available on any type of lease basis you want?

Mr. SMITH. Month, 6 months, 1 year, what have you; 727-100 aircraft, which are all being phased out in favor of 727-200 aircraft, which have a better seating capability, but the same operating costs.

Braniff has 4 for sale, Northwest has 1 dozen for sale; Eastern has offered to us 3 immediately, and 32 others, you know, as rapidly as the time goes. If the CAB turned down our request, what difference would it make?

But I think if I might, sir, there is a very interesting thing here.

It is my understanding that the Flying Tiger Line has been requesting, for some time, to be able to get fill-up rights when they stop in Anchorage, and they run a flight through there every single day.

To me, this is the same thing, I am sure, of the Flying Tiger management, that this would drive me insane.

Let us say that H.R. 15302 did pass, and the Flying Tigers did apply for an exemption for fill-up rights through Anchorage. They would still be subject to the tariff, because they are exempt only from section 401, which is the certificate—let us say the Flying Tigers got out of the market, and they made more money, and traffic was generated, would the public interest be shown, or would it not?

Obviously they have done something, or people would not be shipping on them. They have done something in the public interest.

Mr. GOLDWATER. If you acquire these aircraft, and I understand you are talking about DC-9's, larger capacity—

Mr. SMITH. Or 727's.

Mr. GOLDWATER. How do you plan to use those? How do those fit into the scheme of your schedule?

Mr. SMITH. Well, Mr. Goldwater, as we supply for you, and I commend to your attention, on June 9, in testimony before, I believe it was the, no, it was this subcommittee, not the joint hearings, in this document it gives, basically, an idea of how we use the aircraft, but, specifically, we would take those routes wherein we are flying wingtip to wingtip, part 298, eligible aircraft, and we would replace those aircraft on those routes by larger, more unit-cost-efficient aircraft, such as the DC-9's or the 727.

Then if the exemption permitted it, we would take our small part 298 aircraft, and we would add additional service to small cities, because we believe very strongly that the backbone of our business is being able to offer nondiscriminatory, or exactly identical service between, for instance, Jacksonville and Moline, as we offer between Los Angeles and New York. That is the reason that we have flown to the points that we have.

Mr. GOLDWATER. Would you utilize these aircraft bypassing Memphis?

Mr. SMITH. No, we would not. They would go right through Memphis.

Mr. HAMMERSCHMIDT. Would the gentleman yield on that point?

Mr. GOLDWATER. Yes.

Mr. HAMMERSCHMIDT. Mr. Smith, in previous testimony before this subcommittee, I believe you said that 80 percent of all air shipments are originated and destined to cities other than the top 25 markets. ATA does not agree with that. Would you comment as to how you developed your information?

Mr. SMITH. Mr. Hammerschmidt, I would be delighted to comment on that.

I believe that you are referring to a letter that the ATA wrote, which we have seen. It was addressed to Chairman Anderson. Specifically, the ATA, which I have very vehemently disagreed with because it is journalistic license of the worst sort, put in the quotes a number of issues, some of which were exact quotes, and some of which were never uttered by me.

Now, specifically what I said in that particular case was that our records indicate that 80 percent of Federal Express' traffic is either originated outside of, or in destined to a point other than the top 25 markets, and that those 25 markets are the only markets which receive any certificated all-cargo service.

Now, our traffic statistics will, I will be happy to submit to you, and I would like to reiterate again, that I am under oath, indicates that 85 percent of the enplanements that we make from the airports, are either originated at airports on our system, other than those top 25 markets, or they are destined to points other than those 25 markets.

Far more importantly to that, a little over 15 percent of all the volume that Federal Express carries to those airports, because we cannot expand any further in the small cities, are then trucked by cartage agents to another point.

At least 15 percent of the business that we enplane in our total system is brought in by truck from a point 75 to 100 miles away, which we would like to serve by air. So well over 80 percent of our traffic is originated, or destined to points outside of the top 25 markets.

Now, in response to the ATA, if the only way to get across the Atlantic Ocean was to have one *Queen Mary* going across the thing, you would have 100 percent of all the traffic traveling on the *Queen Mary*.

So, in our opinion, the fact that all-cargo service takes place between the top 25 markets, and 60 percent of all combination services takes place through there, the fact that 70 percent of the ATA traffic goes to those 25 markets, does not prove a doggone thing, except that is where they have offered the service.

Mr. HAMMERSCHMIDT. I thank you for clarifying the record.

Mr. GOLDWATER. Mr. Smith, you seem to advocate freedom of entry in pricing as the ultimate solution to this dilemma.

How would you avoid cutthroat competition?

Mr. SMITH. Predatory pricing. I would—you could keep two limitations, predatory pricing and discriminatory pricing, but you ought to have the ability within certain regimes to price your service.

In the case of cargo, you see, there are a lot of different decisions that go into the purchase decision that does not go into the decision that a passenger makes.

For instance, you and I, if we want to go back to your home district in Los Angeles, unless we are on some leisurely vacation, there is not much discussion whether we are going to go by bus or airplane. It is the primary transportation system.

But unless you talk to somebody about his distribution needs, there is a real set of alternatives that he can use.

One, he can simply inventory all the parts and pieces that he needs in Los Angeles, and not ever have to ship by air.

Two, he might have truck service, or combination service, whatever the case may be.

So the ability to eclectically offset different types of expenses for the airfreight shipper is a real key to the business, and again it is so ridiculous to me, is that you have, on the one hand, the airfreight forwarders—OK, which really interphase with the customer in 50 percent of the cases with virtual rate freedom.

There are very few examples of an airfreight forwarder being turned down, but many cases of an airfreight forwarder coming in for pricing and being denied by the Board, as was Flying Tigers, as reported in the Daily a couple of days ago.

That inconsistency in applying standards on capacity cost, and what have you, to me, are somewhat dichotomous, to say the least.

Mr. GOLDWATER. I have one last question.

If you flew up to this high capacity aircraft, and you are granted this exemption, under FAA regulations, you would have to move up from parts 135 to 121.

Are you prepared to do that?

Mr. SMITH. Mr. Goldwater, we already operate under part 121. There is a difference, there are different stratas of part 135. Part 135.1 applies to aircraft that weigh less than 12,500 pounds, and aircraft above that size follow under FAR 135.2.

All FAR part 135.2 does is refer you over to part 121 as they apply to supplemental air carriers.

The only difference between supplemental air carriers and the certificated trunk is that the trunk carriers use dispatchers, and the others use flight followers. We already operate under part 121, and just, I might add, I just got a SWAPS inspection by the FAA, and got tremendously high marks.

Mr. GOLDWATER. Thank you very much.

Mr. ANDERSON. Mr. Milford?

Mr. MILFORD. Mr. Smith, there has been a lot of testimony from previous witnesses concerning steps to prevent competition with existing certificated air carriers.

The story goes that:

It is not in the public interest to dilute the meager profits of existing air carriers by allowing additional competition when there is already excess capacity in existing aircraft holds.

Now, generally, I agree with this concern.

As the author of this bill, my intentions were to establish a mechanism to allow small carriers to continue normal growth, serving small cities that are not normally served by certificated air carriers.

Further, I was attempting to establish a mechanism that would allow new and innovative services that were not previously being per-

formed by any certificated air carrier, and where the public interest itself was involved.

Now, in this regard, let me ask you a few questions.

While I do not want to dilute markets already served by certificated carriers, I would like to see additional services being provided the shipping public.

I happen to believe that we are not even touching it yet, as far as what capabilities we have in air cargo.

How much of your present business would be "new" business?

In other words, how much of your business has been generated as a result of serving shippers that were not using air cargo before?

Mr. SMITH. Mr. Milford, it is our opinion, based on indepth research with our customers and interviews and focus group sessions, that approximately 30 percent of the volume that Federal Express carries, and this year it will be about 5 million packages, has been put into the air, where heretofore it would have been inventoried at a branch location by a company at tremendous carrying cost expense.

We know from many of our customers that they save literally millions of dollars, because for the first time they are able to get total nondiscriminatory overnight service between any point in the Federal Express system.

Again, that is our opinion, in what we believe to be the facts, from what our shippers have told us.

Mr. MILFORD. Are you now serving cities that either have no certificated air carrier service, or that are served by less than two certificated air carrier flights per day?

Mr. SMITH. We are serving—I do not know about the two flights per day. I can answer to the fact that we serve 73 airports, and that the record appended to our testimony shows that there are currently 25 airports in the United States receiving certificated all-cargo service.

Now, I would like to expand, if I might, Mr. Milford, on a couple of your points.

On the subject of diversion, the major thing I tried to get across is that the needs of the airfreight shippers, as to time of flight departure, handling discipline, are wholly different than the disciplines required for passenger operations.

So to me the argument that we are diverting traffic from the scheduled carriers is very much akin to that pocketful of examples that I just gave you vis-a-vis what I feel the airlines ought to do on that argument to the railroads.

They ought to give all the traffic back, because they diverted that traffic away from the railroads and the question is why? Because the air transport industry was offering the shipper an improvement, or something better than what he perceived to be available in rail transportation.

We have never made any bones about the fact that a great percentage of our traffic has been taken away from the airlines, either directly or from the forwarders, or from REA Express. But I assure one comment that has been made against us, our success has been because of REA's demise, is totally incorrect. It was locked in a long time ago, by poor management, by a decision to seek airfreight forwarder rights,

and by the inability for them to get the type of service from the certificated carriers.

So we know for a fact, in the vast majority of traffic lanes, Federal Express offers door-to-door delivery of packages, there is no way to duplicate that service.

Mr. MILFORD. If an exemption, such as proposed in H.R. 15302, were to be granted, would that allow you to serve additional cities under your setup?

Mr. SMITH. We would certainly move forthwith to serve additional small cities, yes, sir.

Mr. MILFORD. Would these cities normally have certificated service?

Mr. SMITH. Again, the majority of them would have certificated air service. None of them would have certificated all-cargo service.

Mr. MILFORD. Does Federal Express carry all types and weights of air cargo?

Mr. SMITH. No, sir, we do not. We will carry only pieces that weigh up to 70 pounds, and the shipment may be heavier than that, but no individual piece is greater than 70 pounds.

Mr. MILFORD. Does Federal Express plan to extend its service into carrying heavier types of cargo?

Mr. SMITH. Not on my watch, it will not. It is against the principles of business.

Mr. MILFORD. The certificated air carriers are rightfully concerned with the thought that Federal Express might apply for an exemption under the provisions of H.R. 15302, to carry small packages to all points in the Nation, using larger aircraft.

Then, after having received such an exemption, they fear that Federal Express would then begin carrying all categories of air cargo, which would then bleed off business from their freighters and passenger holds.

In your opinion, and your legal counsel's opinion, does CAB have the legal authority to grant an exemption for you to operate over the Nation, and at the same time limit the type of service you could provide under that exemption?

Mr. SMITH. I will let Mr. Breed answer that.

Mr. BREED. Mr. Milford, I was interested in your exchange with the CAB on that point, because the Chairman seemed to be not responding to you, that he has the power, or his Board has the power, under section 416(b), to restrict the grant of that discriminatory authority in any way that they see fit.

He can impose rate restrictions, route restrictions, he can limit the traffic availability, he can do anything he wants to, and he can, of course, ultimately deny it. That point is central to an understanding that the CAB retains the power to control the impact of the use of this new law if it passes on the rest of the industry.

It is a very important point.

Mr. SMITH. I would say one thing that might be more instructive.

In Federal Express' draft application for a certificate, we asked for that particular limitation.

Mr. MILFORD. In other words, Federal Express would be willing to legally commit itself to operating under a minimum weight limitation, the same limitations that your company now has, if given an exemption, and CAB certificate?

Mr. SMITH. We would request for a limitation in our certificate, so that no individual piece of any shipment could weigh in excess of 70 pounds, a maximum.

But I would like to point out, Mr. Milford, as is also in this testimony, to be fair, we believe that the vast majority of all airfreight shipments are of that small physical characteristic.

Mr. MILFORD. If you take them in total, yes. But if you were to take the load that Tigers would carry, I do not think you would find many of them to be small packages.

Mr. SMITH. That I cannot speak to, Mr. Milford.

I know they carry many, many things that exceed that limitation. Many things.

Mr. ANDERSON. Perhaps we ought to break here. We have a vote on the floor.

Mr. MILFORD. I am finished, Mr. Chairman.

Mr. ANDERSON. We will come back in 10 minutes, 10 after 5 we will convene.

[Short recess.]

Mr. ANDERSON. The meeting of the subcommittee will come to order.

Mr. Milford, had you finished?

Mr. MILFORD. Yes, sir, Mr. Chairman, I have no further questions.

Mr. ANDERSON. Mr. Mineta?

Mr. MINETA. Thank you, Mr. Chairman.

Mr. Smith, I am just wondering, we spent a great deal of time here concerning deregulation, or regulatory reform. You have been very, very successful in your endeavor operating under the air taxi exemption.

I am just wondering, would you advocate deregulation of the industry?

Mr. SMITH. In my opinion, Mr. Mineta, let me comment first on what is just, as a student with no expertise whatsoever.

As a student of the passenger business, no, sir, I would not advocate deregulation of that business at all, because as a primary transportation system it does not lend itself to the vicissitudes of free and open competition. It is just too vital for the public.

It would seem to me what would be in the best interest of the air carriers and consumers, there is some rate flexibility, because obviously the inadequate ROI of the carriers, and they do have inadequate ROI to replenish their equipment, is a serious problem.

Those aspects of air transportation that are supplementary systems—for instance, I believe that the differentiation between supplementary and primary, in this case, is distance, not size of aircraft, because you are competing with an automobile, which is obviously cheaper than air transportation. Supplementary systems do lend themselves to deregulation or freedom of entry and freedom of pricing, because again you have a value of service.

There are *x* number of people that fly from Wisconsin to—which is a successful commuter run, and if the certificates are there, DC-9, I do not see why that carrier should be able to get Federal aid.

But Los Angeles to New York or Dallas, that is one thing. Now, in the area of all-cargo carriage, the market, as it has responded to the

forwarders, for example, and as it has responded to Federal Express from a basic economic theory standpoint, in my opinion, should be an open marketplace with the subject of entry, some sort of fit, willing, and ableness test.

Maybe the limitation of a reasonable number of competing carriers, or what have you, and I think that that is what the market is telling these people.

Now, there are two very real concerns on the part of the other all-cargo carriers to that type of thing, which we do not share.

The first of which is how do you handle the necessary regulated tariffs of an international movement—which we do not engage in, obviously, except to a couple of points in Canada, which are virtually the same as in the United States, but let us say the Flying Tigers in the Seaboard does—as to a through rate.

You know, how do you handle one in the free market environment, and how do you handle one in the regulated market.

The second is, how do you handle the tendering of cargo to combination carriers in the underbellies, and across subsidization of passengers, one way or the other?

Those are two very real questions.

My personal predilection on that, again, going back to the testimony which I presented on the 9th of June, if you look in the exhibit there, there are a number of exhibits that show, for instance the United Airlines testimony before the Postal Committee, on what kinds of load factors they get, depending on the time of day they depart, since air pieces are small pieces, and the handling costs.

If you had a combination carrier that tried to compete in that mode, they could give the air transportation away, and if they could not provide that type of service that was being provided by an all-cargo carrier, such as Federal Express, or Flying Tigers, the all-cargo carrier would win because the customer would buy the service, and not the cheap rate in the vast majority of cases. But that is their concern, and I cannot say that is not a legitimate one.

It is just one that we do not happen to share.

Mr. MINETA. If you were granted an exemption while operating larger jets, you would be operating the larger jets as unregulated carriers.

In effect, in competition with regulated carriers. Is that discriminatory?

Mr. SMITH. Well, under the provision of H.R. 15302, as it has been introduced, the exemption for us to fly large aircraft would entail us immediately billing tariffs on a systemwide basis.

Now, if that is discriminatory, I do not think that is discriminatory.

Now, depending on how the exemption read, I would say probably that the Board would restrict the points that we could serve with those large aircraft, or they might put further restrictions. They could certainly requires us to report in a more detailed fashion than we do now, which we have no objection to, in all of the other requirements of title 4.

Now, the one advantage that we might have that a certificated carrier would not have, is that we could then go and add additional points with our small aircraft, at will. The certificated carriers would have to come in and ask for an exemption to do the same thing, and it would

appear to me that the Board should, as a matter of equality, give them that right to do so.

I think it is one of the telling remarks of Mr. Barnum's testimony, which I certainly do not have the experience of some of their other noted persons in this industry, the inconsistencies of the Civil Aeronautics Board, they might give this carrier one thing, and this carrier another thing.

But I did think it was significant in the Senate testimony that Chairman Robson gave, that he said if this bill is passed we will take this as a mandate from Congress that we should encourage all-cargo transportation.

We certainly did not feel that that just applied to us, and we would support any type of additional language in either the bill or the legislative history that made it clear that this should be available to not just Federal Express, but all types of carriers.

That to me would then be the only advantage that I know that we would have, and I think I am right, is that we could add additional points freely, without having to go back and get the authority to do so.

Mr. MINETA. Just out of curiosity, is Airborne Freight a freight forwarder?

Mr. SMITH. They are an indirect air carrier.

Mr. MINETA. Now, do they charter?

Mr. SMITH. They do.

Mr. MINETA. Just as Emery Air Freight?

Mr. SMITH. Emery Air Freight, and I believe Schullman Air Freight, and Burlington Northern, have all chartered aircraft in the past, that operate on a regular schedule as per their wishes.

No one has done it to the extent that Emery is proposing in their operation, that they are launching on September the 15th, if their announcement is correct. It has been two or three aircraft, or what have you.

But again, that system is exactly duplicative of the system that Federal Express would desire to operate, given whatever the individual management decided the points, and what have you.

The one basic difference is that we do not desire to have the simultaneous authority to fly big aircraft, and then tender to the certificated carriers on a consolidated basis, which Emery would have in both cases.

Mr. MINETA. Well, thank you very, very much, Mr. Smith, for your very fine testimony, and for your effective planning and efforts in this business.

Thank you, Mr. Chairman.

Mr. ANDERSON. Mr. Fary?

Mr. FARY. Thank you, Mr. Chairman.

Mr. Smith, does Federal Express plan to expand into international transportation?

Mr. SMITH. Mr. Fary, we would like to fly to some points in Canada, and have an application on file there, and we would—might consider in doing the same thing in Mexico. But we have no desire to fly in the Pacific, South America, or Europe, and the reason we do not is very simple.

The reason Federal Express has grown to what we believe will be \$105 million in revenue, is that the kind of service, and the service

pattern that we offer, gives the shipper a system which has been practically impossible to duplicate.

Now, once you start talking about international air cargo, either in the combination, or in all cargo, those same advantages do not apply. We have very much looked at the possibility of tendering, on a joint tariff basis with international carriers, traffic that we may pick up in San Antonio, for instance, or Fresno, whatever the case may be, and sending it to Hong Kong. But we absolutely do not have any business looking into that at the current time.

We can barely carry what is being handled, tendered to us today, and we cannot carry what will be tendered to us in November or December.

Mr. FARY. If you were awarded in exemption, but your rates were regulated, are you concerned as to whether CAB would allow you to continue to operate under your present rate structure?

Mr. SMITH. We have some concerns in that regard, Mr. Fary.

We think that one of the things that we do, which would be very difficult, what is called an aggregate tendered discount, where we give the shipper a discount based on number of pieces that he gives us.

The second thing that we think would be difficult to get through, would be the door-to-door rates, which are a great advantage to us, and with that, I would like to append to the record something that Senator Moss sent to the CAB, and it extolls the virtue of this simplified understandable rate structure that Federal Express has.

So we are concerned about those two aspects of it. But we believe that we could file tariffs with rates substantially in accordance with the Board.

And as to aggregate tendered discount, I would point out to you that Federal Express, in flying up to approximately 20 pounds, in most cases, on a door-to-door basis, is cheaper than what the direct airlines offer on an equivalent basis.

Once you get beyond that, from 20 pounds on up, the inefficiencies of nationwide small aircraft operation on traffic lanes that suit themselves to better, more efficient aircraft, would bring those rates down.

So we would not lose a great deal by using the aggregate tendered discount.

Mr. FARY. Thank you very much.

Thank you, Mr. Chairman.

Mr. ANDERSON. Mr. Smith, I have some questions here that we would like to clarify for the record.

I would like to clarify the exact exemption authority Federal Express would like.

One: For large aircraft, would the exemption limit the cities which could be served?

If so, how many cities would be involved?

Mr. SMITH. Mr. Chairman, we would certainly, in our application for the exemptions, specify the cities in which we anticipated operating the large aircraft, and/or the points, bearing in mind again, sir, that our—the fact that an aircraft comes from Los Angeles to Memphis, there is traffic bound for the other 73 cities, and 10,000 communities we serve, so it is not just Los Angeles to Memphis traffic, and we would expect that the Board would impose restrictions on us to that effect.

We would volunteer those restrictions, because it would make the Board's decision easier to grant us such an exemption.

Now, in the case of those aircraft, as I mentioned just a moment ago to Mr. Mineta, those airports that we're serving with small aircraft, we would certainly have no objections to a restriction on us, that we could not delete service to any points currently served, but we would very much feel we would desire to have the ability to add additional small points with the small aircraft that have been released from the major traffic runs by the larger aircraft.

Mr. ANDERSON. For small aircraft, would there be limits on the cities to be served, or would you retain freedom of entry and exit under part 298?

Mr. SMITH. We would anticipate that we would, and again, going back to the one advantage I know we would have over certificated carriers, is that we would very much like to retain the freedom to expand to additional points.

But if that were a restriction imposed by the Board, as Mr. Breed has pointed out, the Board has a perfect right to do so.

Mr. ANDERSON. Would both large aircraft and small aircraft rates be regulated?

Mr. SMITH. Yes, they would, sir.

Mr. ANDERSON. How many flights do you have out of Los Angeles daily?

Mr. SMITH. Our records in June indicate that we have, from the Long Beach and Burbank Airports—let me confirm with our—six total at the current time, Mr. Chairman. We will be adding the seventh again, as we had to in May—during the month of September, to reflect the additional volume.

Mr. ANDERSON. How much freight is each of those planes carrying, on an average?

Mr. SMITH. Each of our aircraft carries approximately 5,600 pounds when fully loaded, which is about an 85 percent load factor by weight carrying capability, and it is 100 percent load factor generally as to cubic space available.

Mr. ANDERSON. Capacity then is what, about 5,600 pounds?

Mr. SMITH. The capacity, absolute weight carrying capacity of the airplane, is about 6,100, or 6,200 pounds. We are only able to get about 5,600 pounds onboard.

Mr. ANDERSON. So you have six flights from Los Angeles now. What routes do each of those aircraft follow?

Mr. SMITH. One of them goes from—again, we serve both Burbank and Long Beach, and each of those makes an intermediate stop.

One of them makes an intermediate stop at El Paso, I believe, or Albuquerque—

Mr. BASS. Phoenix, Albuquerque, Oklahoma City and Memphis, generally speaking. Their combination would touch all of those cities.

Mr. ANDERSON. If you had the authority to fly a 727, what route would it follow?

What would happen to those other points that were served?

Mr. SMITH. Well, we would put a large aircraft, let us say a 727, and we would eliminate flying into the Burbank and the Long Beach airports.

We would put one 727 in the Los Angeles airport.

Now, there is a very significant thing that happens with that, because our aircraft do not have nonstop capability, to fly from the west coast to Memphis. We could actually depart the Los Angeles area, 2

to 2½ hours later than we currently can. We would have plenty of time to get all of the traffic that we currently get in the Los Angeles area into the Los Angeles airport, facilitated by the fact that the traffic is moving contrary to the rush hour traffic—going out of the center of Los Angeles, and we would have—we anticipate four or five ground stations there to facilitate our pickup and delivery operation.

The additional points that we serve by intermediate service, would continue to have the Falcon service.

Mr. ANDERSON. You would continue to have the Falcon service hitting Albuquerque and Phoenix, paralleling what your 727's would be doing direct?

Mr. SMITH. Except for the fact that they would not go any further west than Phoenix.

Mr. ANDERSON. How would they get things from Los Angeles to Phoenix?

Mr. SMITH. They would simply go back through the Memphis terminal, and be rerouted that way.

Mr. ANDERSON. They would be from Memphis to—

Mr. SMITH. Just like a telephone system, where you make a call to me in Memphis, and the call may go through Seattle, based on the most efficient use of the system.

Mr. ANDERSON. As you know, part 298 permits you to use aircraft with a maximum payload capacity of 7,500 pounds.

Under several of the proposals before this subcommittee, the maximum payload capacity would be increased to 16,000 pounds for part 298 operators.

Do you have any comments on this proposal?

Mr. SMITH. Yes, sir, a couple of comments.

One, any relaxation of the part 298 regulations would be a help for Federal Express.

Primarily in the use of turboprop equipment in the large eastern markets in which we are flying multiple small aircraft operations, like Chicago, and perhaps even New York, although that distance is so great.

There are no efficient jet-speed aircraft produced in the world today that carry a payload between 6,000 pounds and 16,000 pounds. They do not exist.

The second thing I would point out is, it is our pretty firm opinion that based upon the legislative history of the act of 1938, and the Federal Aviation Act, as amended in 1958, and based upon the court test which was made when the part 298 regulations were relaxed from 12,500 pounds to their current 30-passenger or 7,500-passenger limitation, we very much believe that the Board lacks the authority to raise that exemption, unless you did it again by legislative action.

That is where it would have to come from.

Mr. ANDERSON. If you had authority to operate five 727's, where would they originate?

Mr. SMITH. One would originate in the Los Angeles area, and one flight would serve Minneapolis-Chicago into Memphis, another flight from the Boston area into Memphis. Two flights would originate from the New York markets. All would go to Memphis.

Mr. ANDERSON. How many aircraft do you presently have on each of those routes?

Mr. SMITH. Mr. Chairman, in June the company had from Los Angeles into Memphis six aircraft. This is May 1976—I am sorry. Six flights a day to or from Los Angeles to Memphis; from Minneapolis and Chicago, four flights a day to or from those markets. These are aggregate flights both ways.

From Boston, three flights per day; from Philadelphia and New York area, eight flights per day both ways.

I think it is important to realize that in December we are projecting the Los Angeles area to grow to seven flights.

I left out one, sir. I gave you only four of the routes. The other one would be San Francisco.

Mr. ANDERSON. Where do these aircraft stop en route to Memphis?

Mr. SMITH. At various points, Mr. Chairman.

Again I think we gave you the Los Angeles route. Where would these aircraft stop?

Mr. ANDERSON. I am talking about how many aircraft you have in each of these routes and where do they stop en route to Memphis?

Mr. SMITH. Well, in Los Angeles, Mr. Chairman, the intermediate stops are in Phoenix, Albuquerque, El Paso, Oklahoma City.

From the San Francisco-San Jose area, the stop in Salt Lake City, Denver, Wichita, and Tulsa. And the Chicago area and/or Minneapolis area, a number of different points depending on the month.

Mr. ANDERSON. What percentage of the freight do they carry out of the point of origin?

Mr. SMITH. Are these aircraft flying out of the point of origin?

Mr. ANDERSON. Yes.

Mr. SMITH. Basically, these flights are almost 100 percent filled at the point of origin.

Mr. ANDERSON. So the stops along the way, they pick up very little?

Mr. BASS. They are fueling stops.

Mr. SMITH. Basically from the west coast they are fueling stops.

Bear in mind, Mr. Chairman, we do not have routes structured the way a line carrier does, because none of the points on our system have any particular affinity for each other, other than they make a connection at that central redistribution point in Memphis.

One month, it may be routed via Lexington, Memphis, and the next month with a totally different set of cities on one connecting route. It is like a local trucking company operates, and not as an airline. And this is what the basic secret of the business is.

I would like to say one other thing, Mr. Chairman.

One of the things that is ironic about the situation here, there has been a lot of controversy or rumor to the effect that Federal Express in a very un-American way is going to go out and buy a bunch of Brazilian aircraft. We went down and looked at a Brazilian aircraft, of which there is no competing U.S. type made. I might point out also that neither Beech nor Cessna, nor any of those chaps have ever tried to sell us any of their aircraft.

Despite that fact, if there is no relief available under which Federal Express can apply to the CAB under a legitimate basis, and if we take the advice of a number of people, we say we will just continue to be a part 298 carrier, albeit inefficiently, it will push us in the direction of flying more part 298 aircraft.

Despite that, I wrote the Brazilians 2 weeks ago and told them that we could not, in good conscience, do anything with them as long

as they had a discriminatory embargo against U.S. products into that market.

It has been rumored up here that we are buying some Brazilian aircraft, and I just wanted to set the record straight. It is untrue.

Mr. ANDERSON. This is the Embraer?

Mr. SMITH. Embraer.

Mr. ANDERSON. Your intention is not to buy those unless you cannot get the law changed or something.

You have to get a smaller plane, is that the idea?

Mr. SMITH. Well, if we are forced to operate as a part 298 carrier—and I would like to remind you again—

Mr. ANDERSON. How much bigger is the Embraer than the Falcon?

Mr. SMITH. It is not bigger. It is smaller.

The way we have been able to meet the traffic demands today, Mr. Chairman, are to sublease DC-3's, Twin Beech's, and Learjets, which literally duplicate service in a number of our points that bleed that traffic off into a regional system that we have developed up in the Northeast.

So we would be forced into trying to do that again, just simply to meet the demands of our customers.

Mr. ANDERSON. The Embraer airplane is much cheaper than the American plane, the local plane?

Mr. SMITH. It is a turboprop and there is no American turboprop that is in that category. There is not one built.

Mr. MINETA. The Falcon is not an Embraer plane?

Mr. SMITH. No. Nor is there an American small aircraft that will do the same mission as the Falcon.

It is one thing in letters and local conversation, that I have talked to Mr. Milford about. It is a tragedy that we are losing this aviation leadership. But, in both cases, there is no equivalent American aircraft in that category.

There are smaller aircraft that are built by Beech and Cessna, and bigger aircraft, but literally nothing in that category.

Mr. MINETA. Why are there no American manufacturers in that market?

Mr. SMITH. I suppose that they see that there is not a sufficient market for it.

I think the biggest reason for it, Mr. Mineta, is that, similar to the airline industry in this country, the manufacturers have an insufficient return and, as a consequence, they cannot meet their shareholders' expectations and their return on capital and, consequently, are not developing new aircraft programs.

Mr. MINETA. What about Lear as a plane?

Mr. SMITH. Very inefficient aircraft compared to what the Falcon can do for us.

Mr. MINETA. Is that 12,500 limitation a barrier against companies doing anything?

Mr. SMITH. You mean the part 135 certification?

Mr. MINETA. Yes.

Mr. SMITH. I do not think so, sir, not really.

I really do not think so. The later Learjets, as you may know, are in excess of 12,500 pounds.

Mr. MINETA. Thank you, Mr. Chairman.

Mr. ANDERSON. Under H.R. 14623, the Board would issue an exemption authorizing all-cargo service, and then the Board would hold a hearing to decide whether to issue a certificate for these services.

I wonder whether the certificate hearings would be meaningful in this connection?

I would like you to comment on the following discussion by the U.S. Court of Appeals in the case of *Kodiak Airways v. Civil Aeronautics Board*.

The court was explaining why it is difficult for an administrative body to be impartial when deciding whether to give a temporary operator permanent authority. And this is the quote:

The "temporary" operator may have spent a large amount of money constructing and operating the necessary facilities and the individuals passing on the applications for license or certification authority will undoubtedly realize that he may suffer substantial losses if he is not the successful applicant and is forced to sell "on a distress market." These individuals will also be aware of the "temporary" operator's "demonstrated past performance" and of the likelihood that earlier judgments have been made in his favor on issues the same as or similar to those involved in their decision. Try as they might, and undoubtedly will, the triers of fact may in some cases be unable to ignore the "temporary" operator's investment, his "track record," and/or the earlier determinations made pursuant to the grant of temporary authority. This is not a challenge to their good faith or integrity. It is a recognition that they are mortal men.

Do you think this analysis applies to CAB and H.R. 14623?

Mr. SMITH. I think I will let Mr. Breed answer that, if you do not mind, Mr. Chairman.

Mr. BREED. Mr. Chairman, this comment by the court in *Kodiak* speaks to two points.

One is the investment argument that the Chairman of the CAB addressed today in response to questions that you and others put to him, and he said that the CAB would not feel moved to grant a certificate solely that the carriers can take exception.

We noted in our testimony that one way that we can mitigate that risk is by leasing the aircraft, particularly on a short term basis.

It is the second argument that the *Kodiak* court was particularly concerned with, and that was the prejudgment argument as against other applicants. And we would be prepared to concede that in a case which is the usual case where you have A, B, and C applying for certain route authority, and you give A the right to fly the route, the chances are very good that you have preferred A at the outset and have prejudiced B and C.

In our case, that is really why the word "initial" was in our version of the bill. The idea of the exemption is to deal with the problem that the administrative process, if conducted properly, with adequate protection of imposing parties, takes time. It allows the carrier to operate efficiently while the administrative mill grinds away. And at the end of that time, the only prejudgment, in a sense, is that which Chairman Robson also addressed, and that is if the carrier has done a good job, as we have under part 298, that presumably will be taken into account as a measure of whether there is a public need for the service.

Mr. ANDERSON. I think we ought to recess for 10 minutes and take our vote and come back. I have some more questions.

So we will recess, say, until 10 minutes to 6.

[Short recess.]

Mr. ANDERSON. The subcommittee will come to order.

Let us see. Do I correctly understand that in supporting legislation for an exemption, you are not asking that Federal Express operate under different regulations than certified carriers, but only that Federal Express be allowed to begin operations promptly?

Is it fair for Federal Express to receive authority without a hearing when its competitors have been required to undergo hearings before obtaining their authority?

Mr. SMITH. Previously, Mr. Chairman?

We think it is not in the public interest for the promulgation of all-cargo service to restrict it by hearings under the present law in any case.

Because as in the Tiger case, in 1971, the expanded points system, and that you can be sure to correct me if I am wrong, it is my understanding that the reason the Board turned it down was on the basis that there was adequate route authority and combination service that was available there.

Mr. ANDERSON. I suppose the question is that other companies have had to go through the hearing process to get theirs and under this bill you would not have to.

Mr. SMITH. But neither would any other applicant under this law, the new law that the CAB chose to grant them too.

Mr. BREED. Mr. Chairman, one other point on that.

It is important to remember that all Federal Express' competitors were issued authority under that. That would be true, for example, of American Airlines, United Airlines, all of whom had existing systems in place at the time that the 1938 act came into being.

Federal Express is in a situation of having developed a system under, in effect, an operation beneath the reach.

Mr. ANDERSON. I think the all-cargo carriers would have to have help.

Mr. BREED. They might have. I defer to Mr. Rosenthal and his client tomorrow on that point.

But, if they did, the point is they do not need it now.

One other point which is vital to understand is that Tiger can apply for additional authority tomorrow and continue to operate as a certificated carrier without any risk as to that, other than the normal business risk, the maintenance of its present system.

When we go into a certification case, we put every market at risk, and these people can come in, and these hearings have provided some measure of their antagonism toward Federal Express. And we fully expect that they are going to be at us hammer and tong, saber and claw, and the entire system is up for grabs. It is going to be a very, very risky process.

Mr. ANDERSON. H.R. 15302 differs from H.R. 14623 by removing the limitation to applicants for initial certification, and by limiting the permissible exemption to an exemption from section 401 of the Federal Aviation Act.

Do you believe that these changes are desirable?

Mr. SMITH. Well, we certainly believe that the change of the word "initial," the striking of that is desirable since it opens up the authority under this act to anyone that wants to—or any carrier, be they exempt or certificated, if they want to expand all-cargo service.

Bear in mind again, Mr. Chairman, in talking a little bit about the history of how this legislation evolved, we never wanted the word "initial" in there anyway. It was an answer to try to get a compromise in which coengender, if not support, at least not make it as controversial.

So we certainly think that is in the right interest.

As far as section 401 exemption only, what that means, that the Board can exempt us only from the requirement of having a certificate, and we would then be subject to the rate regulation, the reporting requirement and what have you. On that basis, we think, as a general rule, that that is not a step in the right direction. We agree with Mr. Robson that basically air cargo rates within the constraints of predatory pricing and discriminatory pricing should be a function of the carrier's management because of the value-of-service considerations in the air cargo marketplace.

Mr. ANDERSON. I have four short questions. They are merely clarifications.

Earlier I think you said that your packages that you had were limited to 70 pounds?

Mr. SMITH. Yes, sir.

Mr. ANDERSON. Then in your analysis that you said, but that did not include shipments.

What is the difference between a package and a shipment?

Can a shipment be many times that or what?

Mr. SMITH. A shipment might be composed of more than one package.

Mr. ANDERSON. And each package could be, say, 70 pounds apiece?

Could you have a 700-pound shipment then?

Mr. SMITH. Yes, hypothetically, you could.

The way we in our exempted status now, we limit the amount of total poundage that can be tendered to us on our standard air service to 300 pounds from one shipper to one consignee per day.

Mr. ANDERSON. But those would be all in one shipment then?

Mr. SMITH. They would be in one shipment but they must be composed of packages of 70 pounds or less.

Mr. ANDERSON. And you intend to maintain that?

Mr. SMITH. Absolutely.

I think it is important to point out to this subcommittee, Mr. Chairman, that Federal Express' average package size is 14 pounds, and that 54 percent of our traffic is less than 10 pounds.

Mr. ANDERSON. Another one was if you apply for an exemption to the CAB, and the CAB grants you that exemption, are all of your planes then under regulation immediately, or—just the large ones?

Mr. SMITH. As to rates, if H.R. 15302 were passed, they would be uniformly under regulations as to rates.

Mr. ANDERSON. Rates.

How about entry?

There would be freedom of entry.

The only regulation then would be the rate and your small planes—

Mr. BREED. Mr. Chairman, there is another important point.

The company would be prepared to be subject to all regulation with the sole exception of route regulation, and that only weighed in the

conclusion of its certificate. Everything that Tiger is subject to, Federal Express would be subject to, if the CAB so ordered under Congressman Milford's bill.

The distinction stated precisely is that our bill would permit the bill to exempt an all-cargo carrier from title IV, which is the certification, and all other regulations applicable to a carrier.

Congressman Milford's bill would exempt a carrier only from section 401 and section 401 deals with only one requirement, and that is that you hold a certificate in order to engage in air transportation, of just that one.

Mr. ANDERSON. Why would not the rates for your small planes continue to be exempt under part 298?

Mr. BREED. If the CAB in its wisdom chose to do that, they could. But we would not seek that.

Incidentally, Mr. Smith had testified earlier one of the reasons we would tend to support that, we believe just as much in competitive parity as anyone else.

Mr. SMITH. In Senate testimony, we testified, knowing that the airfreight forwarders very much support this bill. Its primary objection is that one set of carriers could be free from rate regulation and one would not.

We stated very clearly that the rate regulation uniformly throughout our system was perfectly acceptable to us.

In this situation we do not think it is right. In a general sense, we think the whole air cargo market ought to have freedom of pricing within those limits but, in order to seek parity or not to get undue advantage, we said rate regulation uniformly throughout our system would be acceptable to Federal Express.

Mr. BREED. Mr. Chairman, not to double-team you, but perhaps the main virtue of Congressman Milford's bill is it permits the CAB to maintain a condition of comparative parity, and again—the point is without portraying us too much as wearing white hats—we are willing to accept a restriction. I see the interference of the setting of our rates as the necessary authority that we feel is a necessary business necessity, which is operating larger equipment.

Federal Express' points consistently state throughout all of these hearings, and in the prior testimony, that Federal Express seeks no advantage over any competitor.

Mr. ANDERSON. Legally, under H.R. 15302, the small plane rates could be exempt, but you are willing to accept a regulation that they be under a rate control?

Mr. BREED. Precisely. Precisely correct.

Mr. ANDERSON. I think I have two more clarification points here.

From your earlier testimony, my inquiry on your flights to Los Angeles, do you operate six departures from Los Angeles or three flights in and three flights out?

Mr. SMITH. Three flights in and three flights out.

Mr. ANDERSON. And did you—

Mr. SMITH. And it is not Los Angeles. It is Burbank and Long Beach serving the Los Angeles metropolitan area.

Mr. ANDERSON. Did your reference to fueling stops mean that you do not actually provide service at some of your 70 cities?

You stop there just for fueling?

Mr. SMITH. We provide service, but we may have more than one airplane transient at that point.

In fact, Denver looks like a separate Federal Express terminal. We have so many airplanes a night going through there, both fueling and picking up Denver traffic and dropping it off.

Mr. ANDERSON. But you do pick up packages and deliver at any one of the fueling stops?

Mr. SMITH. Yes, sir, we do.

Mr. ANDERSON. Mr. Milford?

Mr. MILFORD. Thank you, Mr. Chairman.

I wanted to clear up one point in the discussion you had with Mr. Mineta that gives me some concern.

I believe you stated that if given an exemption here, you would have an advantage over certificated air carriers, in that you could immediately take the smaller aircraft that had been relieved by the line that used the larger airplanes, and then put them into service in additional cities without regulatory control by the CAB, is that correct?

Did I understand you correctly?

Mr. BREED. Congressman Milford, the answer to that is a two-part answer.

First, I insist on reemphasizing to the subcommittee that any air carrier applicant would have the same right to proceed under this new expansion of the Board's exemption power.

The second is that the Board has already determined that Federal Express and other part 298 operators will not be subject to geographic restrictions. They can expand as management judgment indicates.

Mr. MILFORD. Part 298 is the air taxi provision?

Mr. BREED. Yes, sir, it is, and that authority would continue in the case of Federal Express, and would allow the company to take a Falcon, which is released from its obligation, to serve Los Angeles by introduction of the large jet, and to be placed in Minot, N. Dak., or some other place where the service is not presently provided.

The other aspect of that, which I think would be of particular public significance, is that those points would be what you would call distinctly off-line points.

Mr. MILFORD. What I am trying to say, is it not a fact that the certificated carrier operating under CAB regulations is prohibited from operating under part 298?

Mr. BREED. That is a fact.

Mr. MILFORD. Then, the point I am trying to make, once you apply for this exemption, which can only be applied pending the certification, does that not immediately place you then under CAB, as opposed to being under part 298?

Mr. BREED. To be perfectly honest with you, Congressman Milford, that has been my interpretation of how we would proceed under this law.

We would simultaneously file the day this become law.

Mr. MILFORD. So if you are operating under certificate, or pending certificate, then you cannot operate under part 298? You could not take your problems and discriminately apply them.

Mr. BREED. We could not surrender the part 298 authority without having a certificate.

Mr. BASS. Also, one other point here, and that is when we talk about open, additional cities, you are running a risk of market penetration.

Once you get beyond the top 75 cities in this country, which we are currently serving, all you are doing is promoting the public convenience to the community that would not be that economically viable.

Mr. MILFORD. Mr. Bass, I am not arguing it. I am for it.

The greatest thing you are doing is you are getting into areas that do not have active service.

My question here is, again, one of maintaining fairness throughout the system because I contended all along, and still contend, that I do not want to give you any advantage, and it would appear that, first of all, it is my opinion, that once you accepted an exemption, that your entire system—I do not understand why you would come under rate regulation, reporting requirements, and other provisions, and not also be subject to this provision.

Mr. SMITH. Under H.R. 15302, sir, the CAB specifically is precluded in that from imposing route restrictions on the exempted carrier.

They may impose that as far as large aircraft in the process of giving the exemption, is that not correct?

Mr. BREED. Let us see if we cannot track through this, and keep it clear.

Under part 298, the company has unrestricted geographic authority as to traffic, and as to operations. The price that it pays for that is a limitation on the upper end of the aircraft size, that is a maximum payload of 7,500 pounds, and for this company it works out at 6,400 pounds.

Under your bill, and the H.R. 14623, the CAB would be permitted to grant an exemption over and above part 298, to permit—well, for example, we would use it to operate larger aircraft in certain markets.

Tigers might use it, and I recognize this is speculative, but they might use it to expand the scope of their system.

So I think it is a fair answer to your question about the fairness of the geographical expandability of Federal Express' system pursuant to this new bill that—it would not be different from what another carrier would have the opportunity to seek if he generally files, and as Fred said, an hour or so ago, that he would think—which was the testimony before the Senate—that he would view this as a mandate to promote all-cargo operations, that he could not possibly grant our bill and turn down the Tiger.

Mr. MILFORD. It would appear to me that the intent, that if you are going to apply for an exemption to utilize heavier aircraft, or a larger aircraft, that in that same application you would then state that the aircraft would then be placed into service, and name the cities where it is all within the ballgame, because eventually when you go into certification, you are not going to be able to operate "fish" and "fowl."

You are going to have to be either "fish" or "fowl."

Mr. BREED. Congressman Goldwater made the point that if you all pass this bill, we will have an exemption. That is not quite right.

What we will have is an opportunity to seek one, an item of the public interest that we would present to them, is that we would take the

released Falcons, and place them in a place that does not have all-cargo service.

Mr. MILFORD. Would those places be named?

Mr. BREED. Yes.

Mr. MILFORD. Because you could not receive a certificate for these new places?

Mr. BREED. That is right.

Mr. MILFORD. Therefore, I do not see where you would particularly have an advantage.

Mr. SMITH. One of the things that I think is getting a little different here, if Flying Tiger, for instance, applies under H.R. 15302 for an exemption to conduct all-cargo service to Anchorage, Alaska, the way they had a certificate application pending, or if they applied to do that and the Civil Aeronautics Board, having taken the passage of this legislation as Chairman Robson said they would, and I realize he cannot speak for the whole Board, and then grant Flying Tiger exemption authority to fly that point, the Flying Tiger is by definition flying as "fish" and "fowl," because they have certificated route systems, and they are operating pursuant to an exemption.

In Anchorage, now, during that interim period of time they have to prove to the Board that this authority which they have on a temporary basis is in fact in the public interest.

Mr. MILFORD. What I am talking about when I say "fish" and "fowl," is operating under part 298, and operating under certificate.

Mr. SMITH. The difference between operating under part 298 and certificate, and remember the aircraft size is a mechanism that the Board chose to use, is basically that the exempted carrier has freedom of routes, and freedom of the rates, and freedom of entry and exit, right, sir. Am I not correct?

Mr. BREED. Yes.

Mr. SMITH. The certificated carrier, on the other hand, is regulated in all three areas.

If your bill were to pass, the exempted carrier that made use of this, as opposed to the certificated carrier, would not be exempt from rate regulations, but he would be exempt from routing regulations and entry regulations.

Mr. MILFORD. That is the point where we are hung up, and I am not sure that we still have answered it, because everything you are doing under this exemption is pending certification, and when you become certificated, you cannot be "fish" and "fowl."

Mr. SMITH. But we are not certified.

Mr. BREED. Congressman Milford, we are not conceding that point just yet.

The CAB has two instances of what it calls dual authority, which is, it has allowed a person to——

Mr. MILFORD. That has to be spelled out in the exemption then.

Mr. BREED. Yes, it would.

The fact of the matter, as a matter of policy, the CAB disfavors the notion that it can hold a certificate and continue to operate under part 298.

As I think Mr. Schultz indicated, where they have allowed that to occur, they have done so under limiting restrictions.

Mr. MILFORD. The point that I am trying to get to here is, I do not really see that this would have an advantage over certificated carriers,

because the practice, over everything else, is that you would have to declare additional routes before you could be—

Mr. BREED. That was the point I understood you to be driving at, and the point is there would be no advantage.

Mr. SMITH. In the esoterics of the law—and remember I am under oath here—that appears to us to be a slight advantage to the exempted carrier, rather than to the certificated carrier.

But if Flying Tiger, or Airlift seeks an exemption from the Civil Aeronautics Board to provide all-cargo service to virtually any market other than the top 25, which as I pointed out in my testimony, are the only markets in the United States that get certificated all-cargo service, and the CAB has taken this as a mandate, on what basis are they going to turn them down?

Mr. MILFORD. Thank you, Mr. Chairman.

Mr. ANDERSON. Would the bill permit Flying Tiger to obtain a limit of authority under part 298?

Mr. SMITH. Well, if Flying Tiger were to come in, under H.R. 15302, and ask the Civil Aeronautics Board for an exemption, to operate all-cargo service, between—

Mr. ANDERSON. I am talking about the air taxi, the small ones.

Mr. SMITH. Well, Flying Tiger is a certificated carrier. They may operate any size aircraft they desire to, from a Piper Cub to a 747, and they operate 747's successfully.

Mr. ANDERSON. I am wondering if they can get into the same area that you can now, where you have freedom of entry, and they would not, and freedom of route.

Mr. SMITH. The Board would, under this act, have the authority to grant the Flying Tiger identical authority as to what we would have after we had applied and gotten some aircraft, and we would support that, Mr. Chairman.

Flying Tiger, wanted to ask, on an exempted basis, for an exact duplicate of Federal Express' system—we would support it, because we do not believe that the system should be regulated as to—in the way I have testified earlier, to begin with.

Mr. ANDERSON. Does the bill provide a reversal of that—I see shaking of heads outside, and I see a nodding here. I was wondering.

Mr. SMITH. Well, I think that the definitions are being clouded here, Mr. Chairman.

You have two possible circumstances. You have an unregulated, exempt carrier going in and asking the Civil Aeronautics Board for a temporary exemption which would allow use of large aircraft.

You would have a certificated carrier going in primarily and asking them for route expansion.

Mr. ANDERSON. They could have the smaller aircraft but not under the same exemptions from the limitations that you will be having?

Mr. SMITH. They could ask for them.

Mr. BREED. Just in the interest of clarity here on this point will undoubtedly occur tomorrow. It would seem to me that for two reasons Tiger could not use this bill if it becomes law to obtain part 298 authority.

The first reason is that it would be legally obliged under the law to define, as a certificated applicant, what it was seeking.

The second reason is just as compelling that the CAB has an unyielding policy against certificated carriers holding basically unrestricted part 298 rights.

So, as a practical matter, they could not get it, and as a legal matter they could not even get it.

Mr. SMITH. There is nothing to prevent Flying Tiger from applying to the Civil Aeronautics Board for the right under an exempted basis to serve an exactly duplicative route system to Federal Express.

The only difference is that they would be certificated, and we would not. And they would name the points in their application, which is a requirement of section 401(e) (1). And if the Board found that it was in the public interest.

Mr. ANDERSON. But you would have the right to keep adding and they would not. They would have to come in each time.

Would you have freedom of entry—

Mr. SMITH. Sure, and we would be perfectly willing to waive that right.

Again we do not—

Mr. MILFORD. I am not sure that you have that right after you accept an exemption.

I think under CAB this is exactly the point that I was trying to get to, that you cannot be "fish" and "fowl"; that you surrender your prerogatives under part 298 the minute you accept an exemption.

Mr. BREED. For 2 years we will be "fish" while we are waiting to become "fowl," or 2 to 6 years.

For the period of time that we are waiting for conversion to certificated status.

Mr. MILFORD. Is that not dependent upon how CAB wrote that exemption?

Mr. BREED. Yes, sir.

Mr. MILFORD. Do you think for 1 minute they are going to give you an exemption that allows you to be fish and fowl and compete against the statute carriers?

Mr. BREED. No.

Mr. MILFORD. So, in effect, I am saying here the minute you accept an exemption, then you are either a fish or fowl, but not both.

Mr. SMITH. From a practical standpoint, that is true.

Mr. ANDERSON. But you do not have any intentions of giving up under part 298, do you?

I thought you said that awhile ago.

Mr. SMITH. Mr. Chairman, again the basic things that part 298 or an exemption gives you under part 298 is rate freedom. We have already said we will give that up.

Routing restrictions, all right, sir, which we say we will never give up. We will go to our grave on the routing restrictions because it is totally contrary to what our market desires.

The third is entry and exit. That is the only—that is the essential difference. We give up the rights.

As far as routing, if you take away the routing that the company has—in other words, if you close-door us out of Moline and we cannot pick up anything that is going to Chicago, but we can go to our other 72 points, the way they do in the passenger carriers, you might as well just put Federal Express right down the tube, because that one

central element is the reason the forwarders have grown so successfully and the airlines have not.

Now, if it comes to the third point, as far as entry and exit provisions, we do not have any particular predilection one way or the other. We would be happy to go back in and file with the CAB every time we wanted to add an additional point, and we would be perfectly willing to take the restriction from the CAB that we might not eliminate service from any point currently served without Civil Aeronautics Board permission or hearing. But, as a practical matter, the second and third points are not addressed specifically in the bill at hand.

Mr. MILFORD. No further questions.

Mr. ANDERSON. Mr. Fary, any more questions?

Mr. FARY. No more questions.

Mr. ANDERSON. I think this is a good time to recess until tomorrow morning.

So we will stand adjourned at the present time. I think we are all through with you. We have heard enough.

We will stand in recess until tomorrow morning at 10 o'clock, same place.

[Whereupon, at 6:25 p.m. the subcommittee recessed, to reconvene at 10 a.m., Wednesday, September 1, 1976.]

TO BROADEN THE POWER OF THE CIVIL AERONAUTICS BOARD TO GRANT RELIEF BY EXEMPTION IN CERTAIN CASES

WEDNESDAY, SEPTEMBER 1, 1976

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON AVIATION
OF THE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION,
Washington, D.C.

The subcommittee met at 10:05 a.m., in room 2253 Rayburn House Office Building, Hon. Harold T. Johnson, presiding.

Mr. JOHNSON. The subcommittee on Aviation will come to order.

The first witness this morning will be our colleague, Hon. Robert Krueger of Texas on H.R. 14623.

Mr. Krueger, you may proceed.

There will be other members coming, but like all closing sessions of Congress, we have nine different places to be. We will be glad to take your testimony for the record.

I know you have a very fine statement, and are a very able Congressman, so please feel free to give us your testimony.

The full text of your prepared statement will appear in the record at this point.

[Statement referred to follows:]

STATEMENT OF HON. ROBERT KRUEGER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. Chairman and other Members of the Aviation Subcommittee, I appreciate the opportunity to testify today on behalf of H.R. 15320, introduced by my colleague, Mr. Milford. The bill is general in nature, but it is designed to give the Civil Aeronautics Board the authority to grant the Federal Express Company an exemption allowing it to operate larger aircraft. Passage of H.R. 15302 does *not* guarantee the issuance of such an exemption; it simply allows the CAB to take such action if it chooses to do so. Of course, the CAB will issue such an exemption only if it concludes that such action is in the public interest. I believe that the granting of an exemption would be in the public interest, and I think that the CAB should be given the authority to consider the following facts, which have led me to my decision to support this bill and to testify here before you today.

For those of you who are not familiar with the activities of Federal Express, I will briefly summarize its operations. Federal Express is an air-freight concern currently serving 130 cities and 10,000 small communities. Federal Express carries only small packages which must be moved rapidly to their destinations; it performs its job well. In a recent survey conducted by Opinion Research Corporation of Princeton, New Jersey, Federal Express successfully provided overnight service in 93% of the cases studied.

Although I believe that Federal Express is a dynamic company providing an important service to domestic businesses, I do not wish to limit my remarks to a request that Federal Express be granted permission to fly larger jets. Instead, I would like to discuss the larger issues of public policy which are raised by H.R. 15320.

First, this matter involves the larger question of more versus less federal regulation. My recent efforts to decontrol oil and natural gas prices testify to my belief that regulation of business enterprises should be kept to the necessary minimum. I know that many of my colleagues agree with this position, and would like to point out that we have a new and significant supporter. In his acceptance speech before the Democratic Convention Jimmy Carter expressed his preference for a minimum of federal regulation when he declared: "We Democrats believe in competition, not regulation."

The Federal Express Company has grown and prospered in an atmosphere largely free from governmental interference. In fact, its very prosperity brings it before the Congress today. Federal Express can no longer meet the needs of its 32,000 customers with its fleet of Dassault Fanjet Falcon Aircraft. The company estimates that its inability to utilize aircraft with larger cargo capacities is costing it over \$9 million per year. Unfortunately, these unnecessary expenses must be passed on to the consumer. The simple remedy to this problem is to permit Federal Express to fly the DC-9 or the 727.

Equally as significant as the debate over competition versus regulation is the debate over national energy policy. I believe that expanded energy production is necessary to meet our future needs and to end our dependence upon foreign oil supplies. At the same time, if we are to cope with our energy situation we must recognize that our resources are not infinite: we must eliminate wasteful consumption and conserve wherever possible. With this idea in mind, let us examine H.R. 15302.

Federal Express' plan to operate larger aircraft will result in a savings of 30,000 gallons of flight fuel per day! This translates into 7,920,000 gallons per year. We in the Congress can take the lead in furthering energy conservation by approving such legislation as H.R. 15302. Many people object to the Concorde plane because that particular plane is a highly inefficient consumer of flight fuel. Limited operation of the Concorde in the United States will not greatly affect our energy supplies, but some have seized upon this as an issue to demonstrate our concern over the need for increased energy conservation and to indicate our desire for sound management of our energy resources. We can support H.R. 15302 for the same good reasons.

The third issue before us concerns the extent of our commitment to better service for the small cities of our nation. The Federal Express Company has instituted a policy of non-discriminatory service which accords equal treatment and status to the large city and to the intermediate-sized or small city. A package shipped from Moline, Illinois is handled in precisely the same manner and with the same speed as one shipped from Los Angeles, California. Federal Express is able to do this because its system is designed exclusively to transport small packages. The demand for this service is spread throughout the country and is not concentrated in a small number of urban areas. The passenger airlines cannot provide equivalent air-freight service because their schedules are based upon air travelers patterns which focus on the daylight hours and on the nation's large urban areas. Therefore, the passenger carriers are simply not geared to meet the air-freight requirements of businessmen in our nation's smaller communities.

If the Civil Aeronautics Board eventually allows Federal Express to use larger jets on its more heavily-trafficked routes, the Falcons freed from these flights will be used to open up new markets. In other words, more of our smaller cities will be added to an already efficient air-freight network. In Texas alone, Federal Express plans to provide service to San Angelo, Amarillo, Corpus Christi, Lubbock, Temple and Waco. In at least some of these communities into which Federal Express proposes to expand its operations, the new service will provide a measure of competition in the air-freight business. Many smaller communities are currently served by only one passenger airline. In such cases the passenger carrier has been able to dictate its terms of operation. Entrance of Federal Express into these markets could give businessmen a genuine alternative in air transportation.

Lastly, I know that this legislation has attracted some opposition. Potential competitors with Federal Express for air-freight markets contend that their carriers serve roughly the same areas as does Federal Express and yet do not operate at full capacity. They claim that there is no pressing national interest requiring the granting of an exemption to Federal Express to allow it to fly larger jets and carry freight which has never graced their holds. These concerns ask that the market not be enlarged until the cargo-carrying capacities of their planes are fully utilized. I sympathize with this argument, for I want all participants in the air-freight business to have a shot at establishing reason-

able profitability; nevertheless, I disagree with the conclusion. To analyze properly this situation, one should seek to learn why the Federal Express system is bursting at the seams when regulated passenger airlines cannot fill their cargo holds. The answer, in my opinion, lies in the fact that Federal Express has been free to develop its methods and schedules in an atmosphere largely unregulated. Because of this fact, many American businessmen have decided that Federal Express provides a flexible, efficient and cost-effective method of air-freight transport. I can see no logical reason to restrict new opportunities for the growth of this air-freight carrier which has held its own in its present limited environment.

The issues I have touched upon today may not be readily apparent in a quick reading of H.R. 15302, and this is why I asked for the opportunity to appear before you today. Again, although these facts seem compelling to me, H.R. 15302 merely allows the CAB to consider them in deciding whether to grant Federal Express the requested exemption. Although final deliberation on these matters must be conducted by the Civil Aeronautics Board, I believe that the Congress must be cognizant of them in order to make the best possible decision on the merits of H.R. 15302. Thank you for your kind attention to my remarks.

TESTIMONY OF HON. ROBERT KRUEGER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

MR. KRUEGER. Thank you, Mr. Chairman, for the chance to be with you this morning, and if I see more than one individual present for the start of the hearing I would suppose I was on the wrong sort of committee, because I am well aware of the varied duties of your members.

I do appreciate the opportunity to be here today to testify in behalf of a bill introduced by my colleague Mr. Milford.

I understand that there have now been some revisions in that bill, but the intent of my testimony I think remains none-the-less the same.

The bill in general is designed to give the Civil Aeronautics Board the authority to grant the Federal Express Co. an exemption allowing it to operate a larger aircraft.

Passage of H.R. 15302 does not guarantee the issuance of such an exemption, and as I understand it, it simply allows the CAB to take such action, if it chooses to do so.

Of course, the CAB will issue such an exemption only if it concludes that such action is in the public interest. I believe that the granting of an exemption would be in the public interest, and I think that the CAB should be given the authority to consider the following facts, which have led me to my decision to support this bill, and to testify here before you today.

For those of you who are familiar with the activities of Federal Express, I will briefly summarize its operations.

Federal Express is an airfreight concern currently serving 130 cities and 10,000 small communities. Federal Express carries only small packages, which must be moved rapidly to their destination; it performs its job well.

Although I believe that Federal Express is a dynamic company providing an important service to domestic businesses, I do not wish to limit my remarks to a request that Federal Express be granted permission to fly larger jets.

Instead, I would like to discuss the larger issues of public policy which are raised by H.R. 15302.

First: Consideration of this matter involves the larger question of more versus less Federal regulation. My recent efforts to decontrol

oil and natural gas prices testifies to my belief that regulation of business enterprises should be kept to the necessary minimum.

I know that many of my colleagues agree with this opinion, and would like to point out that we have a new, and I think significant, supporter.

In his acceptance speech before the Democratic Convention, Jimmy Carter expressed his preference for a minimum of Federal regulations when he declared "we Democrats believe in competition, not regulation."

The Federal Express Co. has grown and prospered in an atmosphere largely free from governmental interference. In fact, its very prosperity brings it before the Congress today.

Federal Express can no longer meet the needs of its 32,000 customers with its fleet of Dassault fan-jet Falcon aircraft.

The company estimates that its inability to utilize aircraft with larger cargo capacity is costing it over \$9 million per year.

Unfortunately, these unnecessary expenses must be passed on to the consumer. The simple remedy to this problem is to permit Federal Express to fly the DC-9 or the 727.

I might add, if it were allowed to do so, we would find that this company would be purchasing American made aircraft rather than foreign aircraft.

Equally as significant as the debate over competition versus regulation is the debate over national energy policy. I believe that expanded energy production is necessary to meet our future needs and to end our dependence on foreign oil supplies.

At the same time, if we are to cope with our energy situation we must recognize that our resources are not infinite, we must eliminate wasteful consumption, and conserve wherever possible.

With this in mind, let us examine H.R. 15302.

Mr. Chairman, I have included some information on savings that would result as a result of a changeover in the aircraft, and since the full statement is going to be included in the record, I shall simply summarize some of the points from here on.

Federal Express' plan to operate larger aircraft will result in a savings of 30,000 gallons of flight fuel per day—a very substantial amount, and at a time when we are importing 41 percent of our oil from overseas.

I think that it is important that we look at both ends of the energy equation, both the need for additional production, and also the need for additional conservation.

In this regard it seems extremely unfortunate, if a company capable of both saving energy and reducing expenses is required by outmoded regulations to continue with its present fleet of planes simply because of regulations that no longer really apply in a sensible fashion.

Second: It is very important that we recognize that here is a company that is anxious to serve a large number of cities across the USA, and intends to serve those cities at the same price for small cities as well as for large ones.

This is a Nation that, after all, has built much of its economic strength through the fine transportation system that our country has built up over the last century.

We have all seen what has happened to railroads, and some of us feel that the railroads are in their present position, partly because of faulty management, and because also, partly, because some of the regulations perhaps that apply to them are no longer relevant to current times.

That seems also to be the case with regard to aviation. And if America is to get the full potential of its economies, I think we must be able to continue to move our goods by the most efficient, fastest, and economical possible means.

It seems to me that if we were to allow Federal Express to purchase the most economical airplanes we would be moving in that direction.

I might, in conclusion, mention that I am in a potential conflict-of-interest situation here today because I own a little bit of stock in Continental and Braniff, and I expect they will suffer if this legislation goes through, because they do not seem to be able to keep up with the competition, but I am prepared to take those kinds of losses, for the general gain. Perhaps it will make a couple of companies I own a little bit of stock in, a bit more alert and more competitive, and I will not be sorry if it prompts them to improve some of their services, as well as improving services to cities some of which I serve—a number of which are in our State. I think all of us have to be concerned about this if we are concerned about medium and large cities, and the possibility of getting freight from one place to another overnight. It is a sad day when our military requires, as it does, the use of something like Federal Express to get goods from one point to the next by the next day, but evidently our military uses them quite frequently, perhaps because they find them even faster than our Post Office, or some other sources of transportation.

And so I would certainly urge that this subcommittee consider the legislation that Mr. Milford has introduced, because from the information available to me, I think it is well deserving of your consideration, and I appreciate very much the opportunity to be here this morning to testify before you.

Thank you.

MR. JOHNSON. We thank you for a very well prepared statement, that I have gone through rather hurriedly.

I think you covered the matters very well.

Thank you for bringing it to our attention.

The gentleman from Kentucky?

MR. SNYDER. Thank you, Mr. Chairman.

I want to compliment our colleague for his statement and also for the leadership he has provided here in Congress—even though he is a new Member. I think he has stood head and shoulders above most of the others who were elected when he was, and I say that sincerely.

In your statement you quote Jimmy Carter as saying: "We Democrats believe in competition, not regulation." I would say that this is consistent with your leadership in the deregulation of oil prices, but you have had difficulty in convincing some of your colleagues to go along with that idea on your side of the aisle.

MR. KRUEGER. Sometimes there are problems, and I concur in that.

I am simply pointing to someone who now bears the standard for the party, and I hope that I am quoting him exactly, and I believe that I am.

Mr. SNYDER. Would you want to elaborate just a little further on some of his quotations? How about the plank in your platform regarding divestiture?

Mr. KRUEGER. I would be delighted to elaborate on them at the end.

I suppose that as a member of the church, one never figures he has to accept all of the catechism in his church, and I suppose as a member of a party one does not necessarily have to agree about all of the planks of that particular platform; but I believe in the process of human reasoning and enlightenment, and I am sure that some of those things have been said perhaps when the platform was put together in greater haste than it might have been, will perhaps be subject to further exploration and discussion.

Mr. SNYDER. I would state to the gentleman, since he made reference to the church, that the church is for sinners, as well as for saints. I hope you take to preaching because you have many sinners to reach.

I thank you for being with us.

Mr. KRUEGER. Thank you, Mr. Snyder.

I have not yet come to refer to Mr. Carter as His Holiness.

Mr. JOHNSON. The gentleman from Texas, Mr. Milford.

Mr. MILFORD. No questions, Mr. Chairman.

Mr. JOHNSON. The gentleman from Illinois.

Mr. FARY. No questions, Mr. Chairman.

Mr. JOHNSON. We want to thank you, Mr. Krueger, for appearing here, and giving us the benefit of your statement for the record, and your oral presentation, and responses to the questions that have been put to you.

Mr. KRUEGER. Thank you so much, and I have enjoyed being with you.

Mr. JOHNSON. The next witness scheduled to come before us this morning is Mr. Edward J. Driscoll, president, National Air Carrier Association.

Mr. Milford, would you take over here?

Mr. MILFORD [presiding]. Thank you.

Would you proceed?

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

Mr. DRISCOLL. Mr. Chairman, I would just like to comment that that is a pretty hard witness to follow.

We do appreciate the opportunity to appear here today, and I would ask the Chair if we might submit our testimony for the record, and I might then go ahead and summarize it briefly.

Mr. MILFORD. Mr. Driscoll, without objection, your entire statement will be accepted and will appear at this point in the record, and you may summarize or present your testimony as you see fit.

[The following was received for the record:]

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

We appreciate the opportunity to appear before your Subcommittee to discuss cargo matters in general and to recommend specific legislation which we believe is essential in order to provide shippers the real opportunity to take advantage of low-cost cargo charter transportation. As you know, I am speaking on behalf of the supplemental industry—members of the National Air Carrier Association.

While we strongly support the objectives of the legislation before you today, H.R. 14623 and H.R. 15302; namely, to increase the availability of needed air cargo services to the public, we cannot support the specific bills for two reasons:

1. They are entirely too broad in one respect; but
2. They are too narrow in another, in that they do not cover split cargo charter authority or international air cargo charter authority.

Mr. Chairman, development of air cargo services in the United States has not kept pace with passenger development. While great strides have been made and while new modern turbine-powered cargo equipment has been made available to serve the public; while oversized and wide-bodied aircraft have been manufactured, such as the L-100, 747 and DC-10; the industry, as a whole, has been unable to make the needed breakthrough to permit full development of our cargo potential.

The natural question that arises is why? We can ascribe two reasons for this:

1. The regulatory climate to which cargo has heretofore been subjected and
2. The lack of specific authorization by the Board to permit low-cost cargo charter systems to be tailored to public need.

You will recall, Mr. Chairman, that at one time it was essential to contract or charter the entire capacity of an airplane in order to obtain low-cost transportation for the movement of passengers. However, the Board gradually altered this requirement and established groups of 40 as the basic charter element. The Board first permitted the industry to charter up to two groups, then to three, and later up to the number of groups of 40 the capacity permitted. We all know what transpired as a result of these forward steps by the Board. In the North Atlantic alone passenger charter traffic multiplied more than tenfold in a ten-year span, 1963 to 1973—from 241,268 in 1963 to 2,785,657 in 1973.

During this same period, however, the supplemental carriers were restricted to offering full paneload cargo service to shippers, so that only the very large shippers could take advantage of this low-cost system. In the North Atlantic the supplemental carriers were precluded from engaging in cargo charter service except by specific exemption from the Board—this, notwithstanding the fact that foreign charter companies were given some cargo authority across the North Atlantic.

The legislation before you and before the other body has been prompted by the sponsors to overcome and correct a deficiency in our regulatory system and we commend these sponsors for their forward thinking; but much more is needed, as I said before.

You will recall, Mr. Chairman, that in the early 1960's the Department of Defense adopted a policy of awarding contracts for the movement of military traffic to those carriers that would commit themselves and equip themselves with modern turbine-powered cargo equipment. That program ushered in the 707-320C's and the DC-SF freighters. Many new pieces of equipment were added to the U.S. inventory. This military program was designed to overcome the shortage of civil cargo capability available to the military in time of emergency. While mammoth strides were made during 1963 through 1973 in adding new equipment to the inventory, including the Lockheed 100, the Boeing 707 and 747 and the Douglas DC-8 and DC-10, there still remains a tremendous shortage of cargo capacity to satisfy military requirements in the event of an airlift emergency. Peacetime requirements have declined substantially and there is little likelihood, as things stand now, that the cargo being made available to civil carriers by the Department of Defense will stimulate the development of air cargo service or air cargo capability. Unfortunately as it may appear, the regulatory regime for civil cargo development did not parallel the military program. As I stated, restrictive rules and regulations were in effect which retarded the development of the movement of air cargo by low-cost charters. These restrictions continue.

I have cited this background only for the purpose of laying a predicate for the proposal we advance: namely, legislation that would authorize (a) air taxi operators who have demonstrated over a three-year period their ability to develop the cargo market, to use aircraft with a structural payload capacity not to exceed 50,000 pounds; whereas, today they are restricted to a structural payload capacity of 7,500 pounds; and (b) split cargo charters on the same basis as split passenger charters are permitted; and (c) the supplemental carriers to perform cargo service coextensive with their passenger authority.

With regard to (a) the Federal Express has developed a unique system within the United States which is providing a valuable service to shippers, and yet the Civil Aeronautics Board has failed to permit the use of larger aircraft that

the 7,500-pound payload currently authorized. This, as I understand it, has forced Federal Express to fly two or more aircraft, wingtip to wingtip, between points in order to satisfy the demand at a much higher cost than could be achieved by using larger aircraft. We see no valid reason why Federal Express should be denied this opportunity to demonstrate what can be achieved; but more importantly, we see no reason why the shipping public should be denied the economies of the lowest cost transportation that can be made available on an economic basis by an air carrier. Use of aircraft with the structural payload capacity of up to 50,000 pounds will permit further development of this system with the potential of reduced costs because of using more efficient aircraft.

With regard to (b) we fail to see the distinction between passengers and cargo where passengers can move in groups of 40 while movement of things by shippers must be restricted to full-plane capacity. Surely, if one is to develop a service to the public—a service which we believe is vitally needed, a service which could aid in developing additional capacity which would be available to the Department of Defense in times of emergency—such should be authorized. The Board, however, has repeatedly deemed our request for this authority. Therefore, legislation appears our only recourse.

With regard to (c) we see no valid reason why the supplemental carriers' authority for movement of cargo should not be coextensive with their passenger authorizations. While there may have been reason during the developmental days of Seaboard World to restrict the supplementals in the North Atlantic, such is not the case today; and yet the Board in its recommended position to the President only three weeks ago has failed again to consider cargo and award cargo authority to the supplementals. A substantial record was made during that proceeding; but more importantly, the record of exemptions which the Board has granted on an individual basis at substantial administrative cost to the industry, which is in turn passed on to the shipping public, was available to it. For example, across the North Atlantic, which includes Africa and the Middle East, individual exemptions and waivers totaled 261 during the first seven months of 1976—more than one a day. During the same period of 1975, 101 exemptions and waivers were granted. This record clearly demonstrates the need for additional cargo capacity across the North Atlantic. We see no valid reason why the industry should be subjected to what appears to be excessive administrative requirements.

While we support the concept of H.R. 14623 and H.R. 15302, we feel that as presently drafted, they are too broad. They contain virtually no restrictions upon eligibility for exemption. Further, they permit exemption from all the requirements of Title IV of the Act. They should, we think, contain some controls. We suggest that this blanket exemption should be granted to carriers which have proved themselves over a period of time by effective public operations. Thus, it should be available only to air taxi operators; that is, carriers operating pursuant to Part 298 of the Board's economic regulations—which have been in operation for at least three years and which, during the 12 months preceding their application for certificate authority, have operated at least 35 million revenue ton miles of interstate cargo carriage. Secondly, we think that the carrier should be required during the exemption period to operate the same type of service it has previously operated. It should not be permitted to expand, either in terms of service or of points served, except pursuant to certification or under its existing authority. In the case of Federal Express it would thus be allowed, under the interim exemption, to operate its existing small package service (up to 70 pounds apiece with a combined girth and length of 108 inches) with large aircraft to and from the points it has been serving. We suggest that the exempted carrier should be subject to all the requirements of Title IV of the Act except the certificate requirement. A carrier should not obtain all the benefits of certification without being subject to its responsibilities. Finally, we believe there should be a limitation on the size of aircraft which may be operated during the exemption period. The applicant should not, in the interim before the Board acts on its application, be permitted to operate with an aircraft whose large size has the potential of disrupting the competitive scheme which has been established in prior Board proceedings. We think that a reasonable limitation for the applicant during the exemption period is an aircraft with a maximum payload not exceeding 50,000 pounds.

We have incorporated the foregoing suggestions in our legislative proposal. With these suggestions, we believe that the legislation will give some impetus to the proper development of air cargo services.

Along with this, we urge that the supplemental carriers be given the same type of interim blanket exemption as is being proposed in H.R. 14623 and H.R.

15302. I have described our inability to obtain transatlantic cargo authority. At best, it appears that final administrative action on our certification is years away. Therefore, our legislative proposal calls for the Board to grant an interim air cargo exemption, coextensive with the carrier's passenger authority, to any supplemental carrier which has applied for an air cargo certificate. As in the case of the exemption accorded air taxis, a supplemental carrier would not be eligible for an interim exemption unless it had conducted certificated supplemental cargo charter operations for a period of at least three years.

Also, specific legislative authority should be given to the Board empowering it to allow split cargo charters. The Board's failure to grant this authority in the past is, we think, an anomaly. We see no legal impediment to such a grant under existing law; however, the Board has questioned its own authority. We therefore propose legislation which would clearly authorize split charters for the certificated industry. We suggest that the minimum split-cargo shipment be fixed at the lesser of 20,000 pounds or one-half the cargo capacity of the aircraft, whichever is less. This alternative phrasing would permit existing air carriers to utilize currently-owned aircraft, some of which have a capacity of less than 40,000 pounds.

Such a provision would, we think, make available low-cost air transportation to shippers who now use surface transportation and would thus give much-needed stimulation in the cargo charter area.

Mr. Chairman, this concludes my prepared statement. I will be pleased to answer questions.

A BILL To amend the Federal Aviation Act of 1958, as amended, to broaden the power of the Civil Aeronautics Board to grant relief by exemption in certain cases, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. Except as otherwise specified, wherever in this Act an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of the Federal Aviation Act of 1958, as amended.

SEC. 2. Section 416 is amended by adding the following new section 416(c) :

"(1) The Board may grant exemption from the requirements of section 401 to any carrier which is an applicant for a certificate to perform all-cargo air transportation under section 401 and which has been authorized by the Board for a period of at least three years to perform without certification direct air transportation utilizing aircraft with a minimum payload capacity of not more than 7,500 pounds, such exemption to authorize operations of the same type as it conducted, and to and from the same points as it served during the 12 months immediately preceding such carrier's application for a certificate utilizing aircraft with a maximum payload capacity not exceeding 50,000 pounds, where such carrier has demonstrated the public need for such authority by the operation of 35 million revenue ton miles of cargo carriage in interstate air transportation in the 12 month period immediately preceding such carrier's application for a certificate.

(2) The Board may grant exemption from the requirements of section 401 to any carrier which has been authorized by the Board pursuant to Section 401(d)

(3) for a period of three years to perform civil cargo charter transportation between any pair of points or geographic areas where the public interest has been demonstrated by such carrier's performance of air transportation between such points or areas for a period of at least three years immediately preceding such carrier's application for a certificate of public convenience and necessity to perform cargo charter air transportation, such exemption to authorize such air carrier to operate cargo charter air transportation coextensive with such carrier's certificated passenger charter authority pending final certification by the Board.

(3) Nothing contained in this subsection shall limit the power granted to the Board under subsection (b) hereof."

SEC. 3. Section 101 is amended by renumbering paragraphs (11) through (38) thereof as paragraphs (12) through (39) and by inserting after paragraph (10) the following new paragraph :

"(11) 'All-cargo air transportation' means air transportation of property, or of property and mail, only."

SEC. 4. Section 401 (e) is amended by adding the following new section 401 (e)

(7) :
 "(7) Any certificate issued under this section or any exemption granted therefrom which authorizes the carriage of property on charter trips in air trans-

portation shall be deemed to authorize air transportation performed for a shipper (including an air freight forwarder) where less than the entire capacity of an aircraft has been engaged for the movement of property *provided however* that any such shipper must block and pay for not less than 20,000 pounds of capacity or one-half the payload capacity of the aircraft, whichever is the lesser, and *provided further* that the entire payload capacity of the aircraft is contracted to one or more such shippers."

Mr. DRISCOLL. Thank you.

As I said, we do appreciate the opportunity to appear before this subcommittee, and not only to address the specific bills, H.R. 14623 and H.R. 15302, but to suggest some legislative changes for your consideration which we feel are needed in order to take and better adapt the bill to the needs of the air transport industry.

We do believe, and do support the objectives of the legislation as contained in both of those bills, but we believe it is too broad in one respect, but too narrow in another.

Narrow in the sense that it pertains only to the domestic, and does not pertain to international cargo, nor does it pertain to split cargo authority.

I would like to try to draw an analogy, if I could, for the then—

Mr. SNYDER. Would you define what you mean by split cargo?

Mr. DRISCOLL. Split cargo would be where one or more shippers, two or more shippers, let me say, could contract for the capacity of a chartered airplane, and thereby move their goods, and that is precluded today. One shipper alone has to contract for the entire capacity, or a freight forwarder has to contract for the entire capacity.

Mr. SNYDER. If Dale and I were to put together a shipment, that would be two separate shippers; that would be a split cargo?

Mr. DRISCOLL. That would be a split, sir.

Mr. SNYDER. Suppose we could not do that, so I chartered the entire aircraft, knowing I could use only half of its capacity for my shipment, and then I said to Dale, "Hey, Dale, I have chartered a plane."

Could I make a deal with him? Would that be covered under the regulations?

Mr. DRISCOLL. That would not, per se. You can get into some offshoots of it, a joint loading arrangement, and so forth, but basically that would be, in my judgment, a split, which is precluded by the regulations today.

Mr. SNYDER. What could they do to me?

Mr. DRISCOLL. Well, they could fine you. If you were in the business as a freight forwarder, or anything else, they could suspend your license. They could take action.

Mr. MILFORD. The deal's off.

Mr. DRISCOLL. That contrasts with the passenger side, if you will, where the Board has permitted splits of passengers. They established a group of 40 as the basic element for the charter. First they came out and said you could have two splits. Then they went to three splits. And now you can have as many splits, and divide it into the number of seats aboard your airplane.

Mr. MILFORD. Does the Board—does the law prohibit this, or does the Board have it within its power to grant this?

Mr. DRISCOLL. The Board has within its power the right to grant it, but the Board has not granted it, neither has the Board taken and gone ahead and given the supplemental industry that I represent cargo

authority coextensive with its passenger authority. They have done that probably 99 percent, but in one area of the North Atlantic we only have passenger authority, not cargo authority.

Now, at the time that we originally received our authority, the denial of cargo authority in the North Atlantic probably made sense, because we had then an all-cargo carrier that was in the embryonic stages of development, but that has been over 10 years ago.

Now, the carrier is fully developed. We are required to seek exemption authority from the Board on an individual flight basis, or flights at substantial cost—\$300, probably, per exemption.

We have to pay the Board a \$110 fee, plus you have got a legal fee involved in filing these, and so far this year the Board has granted, over the 7 months through July, 261 exemptions to carriers to fly cargo across the North Atlantic, and a lot of it into the Mideast.

Now, we think this is sort of ridiculous, and therefore we are suggesting that your bill, Mr. Milford, could be broadened so that it not only covers the case of Federal Express, but it also covers the operation of the supplemental carriers, and we want to say, specifically, that we do endorse the Federal Express operation.

We feel that they are fully entitled to be able to operate with larger equipment than they are permitted under the Board exemption today.

We think the Board has not looked at the shippers' requirements, and that is something that they should, the same as they have looked at the passenger—they have looked on the public's requirements for passenger lift. They should look at cargo the same way.

We have attached to our statement some suggested changes to your bill, which we understand is acceptable to Federal Express, and which we believe will take, and should protect the interests of those companies that are already in existence today, but permit the public to be served by Federal Express in the manner that they are presently serving, but with larger equipment to make it more economical, and to permit that company to render the public service that it is trying to do, but at the same time we feel that the public is being denied the same advantage in the cargo area that they are enjoying in the passenger area, and that is split cargo authority.

We have repeatedly asked the Board for this authority. The Board has denied it, and we feel that there is not sufficient justification for their denial, therefore, that is why we are suggesting to you some legislative changes to your bill that would authorize that, and would authorize the supplemental carriers to perform cargo service coextensive with the passenger authority that they hold. We see no valid reason.

I think we could suggest that there are two ways—you can go before the Board, and prove public need and necessity, and we think we have done that, and we have demonstrated the need of it, but the other thing is you can do it by de facto P.C. & N., and we think the Federal Express has demonstrated the P.C. & N., and we believe we have through the exemption process.

More than one exemption a day has been issued by the Board for trans-Atlantic cargo authority charter, and we believe that we should not be in a position of having to go in each and every time a requirement comes up, and ask for a specific exemption.

We believe we should have blanket exemption authority pending certification.

Now, we have demonstrated in the recent trans-Atlantic renewal case, and establish quite a record to the need for additional cargo-passenger across the North Atlantic.

The Board in recommending that case, to the present remanded the cargo considerations to another hearing, which again may take 2 to 3 years to finalize and, in the meantime, we are having to ask for individual exemptions.

Therefore, we would earnestly suggest and recommend to this subcommittee consideration of amending the bills that you have now before you, and to enlarge it to cover not only the Federal Express, but the supplementals, and to authorize split cargo authority.

Thank you for hearing me, and I will be pleased to answer any questions that you may have.

Mr. ANDERSON [presiding]. Thank you, Mr. Driscoll.

In your remarks you comment that you recommend that H.R. 14623 and H.R. 15302 be limited to air taxi operators.

Would this mean that Federal Express could obtain new authority by exemption while its competitors, such as Flying Tiger, could not obtain exemption authority?

Mr. DRISCOLL. We looked at the questions, I guess, in that light the answer is yes. We looked at it on the basis of again demonstrated P.C. & N.—the de facto P.C. & N., and we looked here at Federal Express and the air taxi operator, in our judgment, has demonstrated a de facto P.C. & N., and has existed, and therefore we recommended legislation along those specific lines.

Mr. ANDERSON. Would your recommended limitation exclude contract carriers and intrastate carriers, such as Zantop and Alaska International?

And if so, what is your rationale for excluding these carriers?

Mr. DRISCOLL. It would exclude them as we have proposed it, and the rationale is basically this, that we do not see where there has been any demonstrated P.C. & N. on a de facto basis. We do see that in the Federal Express case.

We believe that it has to be narrowed here, but we have a particular case in mind, Federal Express. We have the supplementals.

We believe we have demonstrated in both cases that P.C. & N. does exist, and therefore there should be exemption pending certification.

In the other case, we fail to see that that has been demonstrated to any degree at all.

Certainly, they have been—Zantop and others, performing private carriage, they have not been providing it to the public to the degree that they have proved P.C. & N., and we believe that that is a necessary ingredient that should be there prior to the Board granting a blanket exemption pending certification.

Mr. ANDERSON. In your testimony you state:

During the first 7 months of 1976 the CAB issued 261 exemptions and waivers for individual charter flights across the North Atlantic.

It seems to me, authorizing these operations on a flight-by-flight basis is a wasteful procedure.

Do you agree, and would you describe the procedures which are followed before the CAB authorizes a flight?

Mr. DRISCOLL. Yes, sir.

We agree with you that it is a wasteful procedure. It is not only wasteful, it is costly.

As I indicated, each individual exemption that is filed, there is a fee you pay the Civil Aeronautics Board of \$110. In addition to that, most of the companies have to have an attorney file it.

So that, in gross we are talking about \$200 to \$300 per flight as far as total fees are concerned.

The manner in which the exemption is granted is that a company who has a requirement seeks bids or proposals from air transport companies to perform the service. The fact that they come out and ask the supplementals and others to perform it indicates that the service is not available to them by the regular scheduled carriers across the North Atlantic.

Once that requirement is known we file an application with the Civil Aeronautics Board requesting the specific authorization for a flight or flights.

The Board then looks at it to see whether there is opposition to it from any of the carriers that may have preemptive rights in that area, such as across the North Atlantic to Europe. You would find that Pan American, TWA, or Seaboard would have preemptive rights.

If they have no objection to it, the Board will go ahead and grant exemption.

Now, in the Middle East, the same rule does not apply, Seaboard does not have preemptive rights, so therefore the Board has been normally granting the requested exemption, because the requirements are beyond the capacity of the present certificated carriers.

Mr. ANDERSON. Secretary Barnum suggested yesterday that if there is free entry for supplementals into all-cargo service, it may be desirable to give the all cargo carriers improved opportunities to provide supplemental service.

Do you have any comments on this suggestion?

Mr. DRISCOLL. Sir, I think that I am disturbed by their words, "free entry"—free entry into any type of service.

When I appeared before the subcommittee before on regulatory reform and, also, before the Senate Aviation Subcommittee, I had taken the position that there has to be a P.C. & N. standard to govern entry into any business.

Now, the P.C. & N. standard does not have to be the one we know today. It can be a modified version, but whatever P.C. & N. standard you have has to apply to scheduled as well as to supplemental carriers.

You cannot say that you can have free entry into the supplemental ranks, but not free entry into the scheduled ranks.

So that I have to take objection to any type of free entry. We believe it has to be a controlled entry, but rather it could be a system where the burden could be on the Board to substantiate that P.C. & N. does not exist.

Today it is on the carrier to prove P.C. & N. So you could have a presumption that P.C. & N. does exist, and it is up to the Board to rebut that in a particular case that P.C. & N. does not exist.

So I would feel that there has to be a regulated climate, after all, because we are talking about a public utility service, and air transportation, in my judgment, should not be wide open to anybody that just wants to walk into it.

We have had the history, not only prior to the Civil Aeronautics Act of 1938, but we had the history of the large irregular carriers, the nonscheduled, as they were involved in air transportation prior to the certification of the supplemental carriers and the action of the Congress in certifying the legislation for the Board to grant P.C. & N. to the supplemental carriers.

So, therefore, we do not believe that a free entry system is in the public interest.

Mr. ANDERSON. Let us assume that there was a limited free entry system, and that the P.C. & N. requirements were met, and that in the process supplementals would be allowed to go into all cargo service.

Would you feel then that it would equally be fair to allow the all-cargo carriers to get into the supplemental service?

Mr. DRISCOLL. Really, I really have a difficult situation here. The all-cargo carriers today are able to engage in charter service. The scheduled carriers, as a whole, are able to engage in charter service.

We, as supplemental carriers, are restricted to charter service. The all-cargo carriers, however, are not permitted to engage in passenger operations, as that is considered off-route, and requires a specific authorization from the Civil Aeronautics Board, so I would assume what Secretary Barnum was suggesting in light of allowing the all-cargo carrier to enter the supplemental business was again to suggest they could go into the passenger operation.

Now, I do not believe that again you can treat it on a broad basis, and say that they should be entitled to go into the supplemental business. They do have charter authority.

Again, looking at it from how well is the public served, if we look at the passenger side today, the public is served very well. There is excessive competition, and we, as supplemental carriers, vis-a-vis the scheduled carriers, are involved in mammoth charter operations, and that does not mean that the cargo carriers are excluded from the passenger operation today, but they have to have specific authorization from the Board to get into it.

So I still believe I would favor a regulated climate, not just a free entry system, that we being permitted to go into operations, we would probably still have to take and obtain specific authority from the Board, but to trade that for all-cargo carriers or others just to engage in charter service on a wide open basis, I do not think is in the public interest, sir.

Mr. ANDERSON. Thank you.

Mr. Snyder?

Mr. SNYDER. Thank you, Mr. Chairman.

You said a few minutes ago, Mr. Driscoll, that air transportation should not be open to everyone who wants to come in.

Mr. DRISCOLL. Yes, sir.

Mr. SNYDER. Were you speaking of entering the air transportation business itself? Or something else?

Mr. DRISCOLL. I think I am talking in the broadest possible sense, Mr. Snyder. I think that in my judgment, and I have been on both sides, both in Government and in the industry, that you have to have some standard, that you have to have a need to enter this air transport business, and prove that need, that you just do not go out and pick up an airplane and say, "I am going to perform air transport services," and start flying, because that is destructive.

The history has proven that has been a very destructive system.

We believe that there has to be some degree of regulation, and as far as routes are concerned, we believe that you have to have some regulation to enter into routes, also.

Now, basically, under the regulatory reform proposals of allowing a carrier to expand, and some of the administration proposals, I think some of those do have merit to a degree, but has to be a parameter to surround it.

Mr. SNYDER. Well, now, I think it would be stretching things a bit to deny that someone under our system could assemble the necessary resources and enter the air transportation business.

It is difficult, but it can happen. I thought the testimony yesterday by Mr. Smith, of Federal Express, indicated that he and his associates found a market where they could make money and do a job—and they went into the business. This was a classic free enterprise approach; they went out and built a successful business. I think that your approach might preclude people from taking this sort of initiative.

Mr. DRISCOLL. No, sir. They have an exemption with part 298 operators from the Civil Aeronautics Board. The reason they are before this subcommittee asking for additional legislation is because of the restrictions that the Board has placed on them, that they cannot use a more efficient airplane, they are restricted to 7,500-capacity airplanes.

And let me just make it clear that we do support Federal Express; we believe in their system.

Our group of carriers has been the same type of developing and serving of the public, but again we have had to do it under some type of authorization, and Mr. Snyder, I might suggest to you that you do have some carriers today that spring up overnight, licensed by the FAA only, not subject to economic regulations of the Board, and they are what are known as 121 carriers, and you could have any number of those, they are here today, and some are gone tomorrow.

Mr. SNYDER. Under our free enterprise system in this country, do we not have both the right to succeed and the right to fail?

Mr. DRISCOLL. We do have the right to succeed and the right to fail, sir, and we fully support a free enterprise system, but again, when you are dealing in an air transport system, any public utility, we do believe that there should be some basis of demonstrating the need to enter the business, that you just do not go out, and air transportation is affected with the public interest.

We want a sound system. It is committed to the national defense, committed to the Postal Service, and so forth. You cannot have a system that has to serve the public that, again, is subject to just anybody waltzing in now at any time and saying: "I am going to fly, and if I do not make it I will fold up. If I do make it maybe I will take my profits and fold up anyway," and just walk out, and in the meantime some harm has been caused to other existing air transport companies.

Mr. SNYDER. Is there any prohibition under existing law or regulations which prevent any of your members, or any air carriers, from ceasing operations, taking their profits and/or losses, and going out of business?

Mr. DRISCOLL. No; there is not, sir, any of them.

Mr. SNYDER. You are saying there would be a prohibition?

Mr. DRISCOLL. No, sir. I am saying that as the basis of entry, and the investment one makes in establishing an air transport company, is something—

Mr. SNYDER. Would not anyone going into that business have to make the same investment?

Mr. DRISCOLL. Some may have to make an investment, some may not, sir. They can go out and lease a couple of airplanes, and just start an operation.

We have had a list of that over the years, and this is why the Congress, in Public Law 87-528 came out and focused on this, and authorized the Board to certificate the supplemental carriers, but there were 150 at one time of large irregulars.

When the Board finally came out in their interim certificate, 35 met the fitness standard, that on the final P.C. & N. requirement ended up as 15.

So that somebody looked at it to see whether those were serving a public need and public interest, and this is all I am saying, is that somebody still should be in that business of looking at it.

Mr. SNYDER. I cannot disagree when you narrow it down to that.

Let us take a look at your testimony, the last two pages of your prepared statement.

Section 2, subsection (1) is extremely restrictive; is it not?

Mr. DRISCOLL. Yes, sir, it is.

Mr. SNYDER. Who would be covered by that provision?

Mr. DRISCOLL. Federal Express would, and we do not know whether there are any others that would or would not, sir, and it was specifically designed, I might add—

Mr. SNYDER. To qualify for that exemption, they would have to have been in business for—

Mr. DRISCOLL. Three years.

Mr. SNYDER. Three years, and Federal Express has been in business for about 4?

Mr. DRISCOLL. I think they have been in a little longer than that, but at least 4.

Mr. SNYDER. It was designed to cover them and no one else. It would keep anyone else from qualifying for that exemption.

Mr. DRISCOLL. It was definitely designed to meet the specific requirements of Federal Express. I will not deny that.

Mr. SNYDER. I can understand that Federal Express may not want competition, but why should someone else who can raise the necessary investment not have the same opportunity to make a success that they have had?

Mr. DRISCOLL. I would agree with you, except that we set a 3-year period, because that gets down to our theory that you will have demonstrated during that period a de facto P.C. & N., that the public need exists.

Mr. SNYDER. Why pick 3 years?

Mr. DRISCOLL. We did it arbitrarily, sir, and I agree it is very arbitrary. It could be 4 years, could be 5, could be 10, could be 1 year.

Mr. SNYDER. It was convenient.

Mr. DRISCOLL. It was our suggestion.

Mr. SNYDER. I see.

They must have been operating for 3 years without certification—utilizing aircraft with a maximum payload of 7,500 pounds. The exemption would authorize operations of the same type and to and from the same airports as during the 12 months immediately preceding the application. If granted, the exemption would permit the carrier to operate aircraft with a maximum payload of 50,000 pounds.

Why did you choose 12 months on routes when you have 3 years on operations?

Mr. DRISCOLL. Well, again, it gets into a judgment area, and we looked at it with our judgment, and without taking and trying to hoodwink the subcommittee at all, we looked at the Milford bill as being a bill designed to aid Federal Express, while it is broad, and would have covered other carriers.

Mr. SNYDER. That is not responsive to the question.

Mr. DRISCOLL. No, but what I am trying to say is we then looked at specifically what is Federal Express—what do they want to achieve.

We then designed this bill to meet their requirements.

Mr. SNYDER. They must demonstrate the public need for such authority by carrying 35 million revenue ton-miles of cargo—at least 35 million revenue ton-miles of interstate cargo carriage during the 12 months preceding their application.

This would not let anyone else in—regardless of whether they could raise \$100 million, \$200 million, or \$1 billion—

Mr. DRISCOLL. I do not think that—

Mr. SNYDER. Or whether they could buy every airplane in the United States.

Mr. DRISCOLL. No, what we were trying to do here was to recognize what has been demonstrated, Mr. Snyder, and we felt that Federal Express had demonstrated a de facto P.C. & N. and, therefore, a specific piece of legislation was required.

Mr. SNYDER. What is the next subsection? Grant exemption from the requirements of section 401 to any carrier—

Mr. DRISCOLL. This would be the one that would grant the supplemental carriers, section 401(d)(3), is where you get your basic authority, and it would require you also to have had 3 years' history, and you would be able to—

Mr. SNYDER. Well, now why do you not make it necessary for the supplementals to have carried a certain amount of cargo during the past year—the same thing you are suggesting for Federal Express? Why do you not include that as well? Is it because they do not have the history?

Mr. DRISCOLL. No; we do have a history, and we do not have ton-miles, because they are two different types of operations, one is operated on a regular scheduled basis as Federal Express does—

Mr. SNYDER. But, Mr. Driscoll, you want to treat everyone alike. Would you want the supplementals to meet the same requirements as the cargo people to go into business?

Mr. DRISCOLL. That is why we put that in.

Mr. SNYDER. Why do you not include the same requirements for them to qualify for an exemption?

Mr. DRISCOLL. The size of the airplane, sir, we already have. We have airplanes that go to the 747 type, which are substantially in excess.

What we were looking at was a specific requirement, from the Federal Express standpoint, versus the overall charter-type arrangement.

Now, maybe our bill is deficient. We have made it as a suggestion to the subcommittee, to try to point up some of the deficiencies that do exist, if you will, in the overall transport industry.

Mr. SNYDER. Let me say this, and I do not say it to be critical, but this Federal Express bill does not impress me at all. I speak only for myself, but I am not convinced when people come in wanting relief—and do not want anyone else to have the same relief.

We had a hearing just yesterday on the subsidy refund proposal. I know where I stand on that; I am for it. I will vote for it because it is a question of treating everyone alike. I do not think we do justice when we pass legislation which does nothing more than isolate a situation—and guarantee that no one will be required to compete.

I fall on the side, generally, of not being in favor of the deregulation proposals the Administration has advanced. But I tell you, when you hear this kind of testimony and see this kind of bill, it is a most convincing argument for the Administration position. It dents my armor, and I say this in all sincerity, not in criticism.

Mr. DRISCOLL. Let me explain this other provision, that when we talk about supplemental carriers across the North Atlantic, there are presently five that have been found by the Board to be needed in the passenger side across the North Atlantic.

They have certificates issued by the President. Those five carriers today are precluded from operating cargo charters, except by exemption.

We looked at it from the basis of what are the supplementals, and this provision, item 2, that you are commenting on would not take and limit competition, but it would broaden competition, and it would put five more carriers with blanket authority to perform charters across the North Atlantic.

So we are not trying to limit, but we are trying, and we did try specifically to put some parameters because, again, you get the system, if you open it up all the way, then you may not get any relief whatsoever.

We are trying to get relief for the supplemental carriers. We have been trying for 10 years to get relief in this one area, and that is why we suggested that there has to be a 3-year history.

We cited in our testimony the specific individual exemptions that have been granted, 261 during the first 7 months of this year, and we feel that there is again a demonstrated de facto P.C. & N. existent.

Now, it was not our purpose in coming out and trying to submit a bill that we did not know what the end result might produce.

We could tell from this one what the end result would be, and that was the only reason we got as specific as we did, sir.

Mr. SNYDER. Well, thank you.

Mr. ANDERSON. Mr. Milford?

Mr. MILFORD. Thank you, Mr. Chairman.

Mr. Driscoll, you mentioned in your testimony that you want to make amendments to my bill.

I would point out, first of all, that there are some 12 or more co-sponsors.

Mr. DRISCOLL. Yes, I recognize that.

Mr. MILFORD. As such. They were all involved with this particular piece of legislation.

The recommended changes that you have suggested go into really another area that could substantially change air cargo operations, and affect many air cargo operations.

We would need really to hold rather lengthy, additional hearings before being able to consider amendments of the type you have suggested.

As a general rule, I, personally, am reluctant to sponsor legislation that would mandate specific decisions upon the Civil Aeronautics Board when they involve judgmental matters, because neither I nor the Congress really have the facility to examine all competitive factors which involve specific carriers or air cargo modes which should be selected to operate over which routes, whether domestic or international. It is a little beyond our ability.

I really feel our job is to maintain all the basic laws that allow an atmosphere or fair competition to all operators, and that the factor of public interest is really what the Board should be seeking.

While I seriously doubt that the remaining time during this Congress would allow for additional hearings on the amendments you recommend, I will nonetheless be glad to meet with you, or members of your industry, to study your proposals, and if present laws are defective or damaging to the public interest, I will be glad to sponsor some legislation in the next Congress along that line.

The bill before us at this time does not mandate decision by the CAB, but simply permits the CAB to grant temporary exemptions in a very narrow area, pending certification when such exemptions are in the public interest, and as such do not become directive in any way.

Mr. DRISCOLL. We would like to take advantage of your offer, and meet with you, Mr. Milford, and further justify our position.

We would, however, suggest that if the Congress does report out your bill along with all the other cosponsors you have on it, we would respectfully request possibly it be broadened to cover international as well as domestic, and we notice that you have already amended it, so that is not just the initial certification, it can cover anyone that is certificated that has another certificate pending before the Board, so we welcome that change, but we would only hope that it could be broadened to the degree that it would not forestall the Board granting blanket exemptions initially, as well as domestically.

Mr. MILFORD. Thank you, Mr. Chairman.

Mr. ANDERSON. Any further questions?

If not, thank you, Mr. Driscoll, for your statement.

Mr. DRISCOLL. Thank you, sir.

Mr. ANDERSON. Our next witness will be Mr. Robert W. Prescott, president, the Flying Tiger Line. Mr. Prescott, we have your prepared statement before us and we have made it a matter of the record. You can read it, or extemporize it, or present it any way you wish.

TESTIMONY OF ROBERT W. PRESCOTT, PRESIDENT AND CHIEF EXECUTIVE OFFICER, THE FLYING TIGER LINE, INC., ACCOMPANIED BY JACK ROSENTHAL, GENERAL COUNSEL, AND JOSEPH HEALY, VICE PRESIDENT-CHIEF OPERATING OFFICER

Mr. PRESCOTT. Mr. Chairman, I have with me Mr. Jack Rosenthal, aviation counsel for our company, and Mr. Joe Healy, who is our vice president and chief operating officer of the company.

I have a voice constraint, brought on by radiation treatment in the recent past, and we would like to read our statement, because we have added a considerable amount to the testimony that we heard yesterday, and we would like to have the benefit of our thoughts on the record.

I would ask your appreciation, and permission to have Mr. Rosenthal read this prepared statement, and I will be able to answer any questions.

Mr. ANDERSON. Proceed, Mr. Rosenthal.

Mr. ROSENTHAL. Mr. Chairman and members of the Aviation Subcommittee, I would like to thank you for the opportunity to testify on the question of the need for immediate legislative relief for the Federal Express Co.

I have already testified before the Aviation Subcommittee of the Senate Commerce Committee on the provisions of S. 3684 which are identical to H.R. 14623.

With your permission, I would prefer at this time to merely submit for the record my earlier written testimony. [See appendix p. 197.]

In my previously submitted written testimony, I focused on the positions taken by Federal Express and by the Civil Aeronautics Board on the Senate hearings. I would like today to amplify these comments to take into account what we learned in yesterday's hearings.

At the conclusion of yesterday's hearings, Congressman Milford was engaged in a discussion with Mr. Smith and his counsel about the implications of H.R. 15302.

As we understand it, the Congressman was of the view that, after enactment, Federal Express' competitive position would not be superior to that of the presently certificated all cargo carriers since, if it received a large aircraft exemption, Federal Express' entire operations would be subject to title IV of the act.

But Mr. Smith and his counsel, in our judgment, correctly pointed out that this would not necessarily be the case. The legislation would, in fact, permit the Board to grant Federal Express an exemption to operate large aircraft, which the Board would probably do for a defined group of markets, while at the same time permitting Federal Express to continue to operate the rest of its services under part 298. And both Mr. Smith and his counsel made it plain that it was their intention to ask for such authority.

Now, Mr. Smith also stated that Federal Express would accept rate regulations over its entire system. Of course, that proposal would not be required by the proposed legislation and Mr. Smith would probably feel free to change his mind if circumstances changed; for example, if some other third level cargo carrier applied for large aircraft authority and successfully sought to continue to operate small aircraft under part 298 without acceding to rate controls for these operations. And it is plain from Chairman Robson's testimony that he would not be ill-disposed to dispensing with freight rate regulations.

In any event, we believe that irrespective of Mr. Smith's commitments to accept less—and we are not challenging his present sincerity—we must look at this legislation on the basis of what it authorizes.

And as drafted, it would continue, as did H.R. 14623, to authorize a dual regime in which carriers, which had devoted the time and resources necessary to obtain certificates of public convenience and necessity, could be left in an inferior competitive position to those which had not done so.

We do not think that it is fair—and we do not believe that you will either.

You did ask Mr. Smith about whether he would support legislation which would place time limits on the Board in disposing of an application for a certificate of public convenience and necessity to engage in domestic all-cargo services.

He said he would support such legislation—although it was plain that it was not his first choice. Chairman Robson and Under Secretary Barnum also stated that they would support such legislation. So would we.

Indeed, we would strongly support such legislation. For contrary to Chairman Robson's view, we share the forwarders and Federal Express' view about the need for expanded freighter services.

And we are concerned that, despite the Board's apparent willingness to consider promptly applications by the combination carriers for competitive domestic passenger services, with its total failure to hear comparable applications for all-cargo authority in the face of overwhelming evidence of reductions and withdrawals of freighter services by the combination carriers.

I would like to call to your attention that the two domestic all-cargo carriers are the only two certified carriers which are authorized to serve fewer points today than they were at the time of their original certification more than 25 years ago.

The Board has, in recent years, denied efforts on their part to expand potential domestic airfreight markets. In Tiger's case, for example, we have on several occasions been denied even the opportunity for hearing on an application for a lower-48 States to Anchorage freighter service which we are uniquely able to provide.

And the Board has, to date, not set for hearing an application of Flying Tiger which, if granted, would restore freighter services to significant markets which currently have none.

Such treatment of Flying Tiger's service expansion requests becomes all the more disturbing in the face of the Board's singular promise to Federal Express that it would receive expedited consideration of a certificate application for nationwide all-cargo authority.

Mr. SNYDER. Excuse me. Is this in your statement?

Mr. ROSENTHAL. No, sir.

Mr. SNYDER. But you do have an application pending?

Mr. ROSENTHAL. Yes, sir.

Mr. SNYDER. Thank you.

Mr. ROSENTHAL. We think that congressional pressure on the Board to devote more resources and focus increased attention of airfreight matters would serve to restore a better balance between the Board's present dominant concern with passenger matters—a point on which Federal Express shares our view—and the Board's statutory obligation to provide for expanding freighter services within the certificated system.

This brings me to the Board's position as expressed by Chairman Robson before the Senate Aviation Subcommittee on August 3, 1976, and repeated here yesterday.

Chairman Robson, in effect, endorsed enactment of legislation which would give the Board plenary power to deregulate airfreight—as the Board saw fit to do. But the Chairman gave the Congress no clear insight as to just how the Board would administer any such powers granted to it.

For example, the Chairman said, on the one hand, that the legislation would enable “* * * the Board to exempt all-cargo carriers from the certification and rate provisions of the act.”

He went on to state, however, that since “* * * the current statute contemplates a certified system * * * the Board would not have unfettered authority to exempt cargo service.”

There was no further elaboration about how the Board would administer such legislation, if enacted either in the Chairman's prepared testimony or in his response to Chairman Anderson's specific question.

Consequently, our concern runs not only as to how the present Board might interpret its authority, but how some future Board might act under this board discretionary power. This was also a concern, which you will recall, was expressed by Secretary Barnum.

Why is Flying Tiger concerned?

Mr. Chairman, you are familiar with our history. You know that we are one of almost 300 carriers that after World War II began commercial operations with high hopes of developing a new industry—airfreight services—and prospering.

Of the less than handful of survivors of that era, it is clear that we are the most successful. By every conceivable indicator, in fact, Flying Tiger is the most efficient and profitable all-cargo carrier in the world.

We provide the largest amount of freighter capacity of any air carrier and have the most modern jet freighter fleet. We operate today three 747 freighters, and have largely completed the financing of three more 747's, which when they are added to our system in 1977, will make us the largest operator of wide-body freighters in the world.

We have spent, and are continuing to spend, at an unprecedented rate for the necessary market research to operate airfreight services which meet and develop market demand profitably.

Our organization and our investment in facilities and equipment have been necessarily shaped by the requirement of living within a system of Government regulation.

For example, we are a regulated carrier limited to serving major city pairs. We are required to serve all of the market, not just the high-rated small parcel, small shipment service. This in turn rules out the use of small aircraft.

Further, we are inhibited in extending our market coverage by Federal Aviation Act and Interstate Commerce Act entry and acquisition restrictions. This has led to an increasing dependence upon large shippers and forwarders for the revenues and traffic necessary for our operations.

We could not overnight change the structure of our organization, our equipment, or our services. Therefore, even were fundamental changes in airfreight regulation deemed to be in the public interest—

a position which has not yet been documented—such changes would have to be staged over a considerable timeframe.

To do otherwise would have a serious disruptive effect on a system which we have spent years and millions of dollars to develop. And, of course, the immediate impact on our shareholders would be substantial.

But, of course, that is not all. If the further milking of high-yield traffic from the certificated system leads to additional contractions in that system, there are countless numbers of shippers who will be hurt. They are the shippers who have large shipments which do not fit into small airplanes, and which Mr. Smith took pains to say yesterday, his company does not want to carry.

We recognize that there are weaknesses within the current regulatory system and there is need for change. However, we do not believe that a public interest case has yet been made for wholesale changes of the scope which the deregulators would like to see accomplished. Nor do we believe that a case has been made for an immediate and partial deregulation limited to domestic airfreight.

Mr. SNYDER. Excuse me.

Where are we in your statement?

Mr. ROSENTHAL. You do not have that.

Mr. SNYDER. Thank you.

Mr. ROSENTHAL. We are even more troubled by the Board's current proposal that with its original broader one. And Secretary Barnum's thoughtful testimony suggested that he, too, was troubled by this new proposal.

At least under the Board's original legislative proposal passenger charter services would be deregulated at the same time as airfreighter services. Under its present proposal, the charter carriers could successfully apply for authority for scheduled freighter services and in combination with airfreight forwarders establish outside of the certificated system any competitive scheduled services they might see fit to provide.

Certainly, this would create an additional opportunity for the supplemental carriers to utilize capacity, especially in off-peak periods. But it would deny the all-cargo carriers a reciprocal opportunity to employ off-peak capacity.

It would also, in the short run, seriously disrupt any plans for expanded freighter services by the scheduled carriers.

I can tell you that the basic problem in airfreight is not too little competition or too few competitors.

Mr. Chairman, sometime ago we recognized that if certificated airfreighter services were to expand in the domestic market to meet the public demand, then there were certain actions which had to be taken by the Civil Aeronautics Board. The basic problem was that the domestic airfreight rate structure had gotten out of whack. Rates for large shipments tendered principally to the freighters were below the carriers' costs.

While compensatory rates from direct shippers were obtainable for small shipments, these shipments were not directly tendered for carriage on freighters, but were handled through airfreight forwarders.

Flying Tiger pressed the Board to institute two proceedings which the Board undertook about 6 years ago. The first was the domestic air-

freight investigation, the first formal review in more than 25 years of the domestic airfreight rate structure.

The administrative law judge's decision, which was issued more than 16 months ago, found a need for domestic freight rate increases of almost 40 percent, largely in short haul markets, in order to permit profitable domestic freighter operations. The Board has yet to reach a decision in the case.

The second proceeding is the airfreight forwarders' charters investigation. In this case, Flying Tiger and a number of other domestic freighter operators challenged on legal and policy ground agreements between an airfreight forwarder and an air carrier to provide scheduled freighter services in markets already adequately served with freighters. This case was also argued in December 1975, and the Board has yet to reach a decision.

I am not going to use this forum as a means of further arguing our substantive positions in these proceedings. We have every confidence in the records which we developed and in the legal procedures available to us to vindicate our contentions. We recognize that these cases involve complex and difficult issues. And we believe that their resolution consistent with the records may cut across the Board's views on the deregulation of airfreight. However, neither of these reasons rationally explain why the Board is taking so much time to reach a decision.

There are other matters—long delays, for example, in issuing Board decisions on international airfreight matters—on which we take issue with the regulation of airfreight. But we hardly believe that the only cure for regulatory deficiencies is major surgery.

I said that I would not comment substantively on the issues pending before the Board, and I do not intend to do so. But Secretary Barnum incorrectly suggested that “* * * because of the rates set by the Board in a futile effort to protect freighters, belly space in passenger airliners goes largely unutilized.” It is essential that this error be corrected.

I recognize that the Department of Transportation did not participate in the domestic airfreight rate investigation, although it had participated in the general passenger fare investigation.

Consequently, his staff was not as informed as I know he would like them to be. The fact is that the Board has permitted combination carriers to price belly freight far below prime time rates, despite the fact that the Board's staff has agreed that it costs the carriers more to carry freight in passenger bellies than it does in freighters.

Moreover, the Board has continued to allow discounted belly freight rates despite the administrative law judge's decision in DAFRI that such rates were unlawful.

There is one further point which should be made.

Chairman Robson said that, under the Board's present system of ratemaking, passenger fares do not subsidize freight services. Whether you conclude that belly freight service is or is not subsidized depends upon how you allocate combination aircraft costs.

If you assume that freight should not be charged with any of the unused belly space—that all of that empty space should be charged to passengers—even if the space was excess to that necessary to carry baggage with every seat occupied—then you can say that passenger

fares are not subsidizing belly freight. But I submit that this is a highly unrealistic assumption, especially when it is clear that some carriers have specifically configured their combination aircraft to increase their belly freight capacity.

Mr. Smith also makes the point that Emery is planning a service concept similar to Federal Express' using charter service, and he further states that such service is entirely legal.

We happen to disagree with Mr. Smith. We think that the establishment of scheduled services by agreement between a forwarder and a supplemental carrier is clearly illegal. We do not question Emery's bona fides.

In fact, they are one of our largest accounts, and we value their business. But if not Emery, then some other forwarder could use such private system, if not subject to prior Board approval and continuing jurisdiction, competitively to obtain unfair advantage over smaller forwarders and other direct carriers.

We intend to use every means at our disposal to secure a resolution of this legal issue, although we are not opposed in principal to the Board obtaining statutory authority to approve temporarily contract service between a forwarder and a direct carrier when it finds that adequate freighter services are not otherwise available.

I sincerely believe that the Federal Aviation Act of 1958 and its predecessor, the Civil Aeronautics Act of 1938, provided a sound public mandate for the regulation of air transportation.

The act embodies a balance between encouragement of competition to provide improved public services and the provision of regulatory power to protect the public from some of the potentially adverse consequences of a solely profit-motivated operation.

Mr. SNYDER. Would you go back and read that again?

Mr. ROSENTHAL. The——

Mr. SYNDER. Would you read that? I did not catch it.

Mr. ROSENTHAL. Yes, sir.

Mr. Smith also makes the point that Emery is planning a service concept similar to Federal Express' using charter service, and he further states that such service is entirely legal.

We happen to disagree with Mr. Smith. We think that the establishment of scheduled services by agreement between a forwarder and a supplemental carrier is clearly illegal. We do not question Emery's bona fides. In fact, they are one of our largest accounts, and we value their business. But if not Emery, then some other forwarder could use such private system, if not subject to prior Board approval and continuing jurisdiction, competitively to obtain unfair advantage over smaller forwarders and other direct carriers.

We intend to use every means at our disposal to secure a resolution of this legal issue, although we are not opposed in principal to the Board obtaining statutory authority to approve temporarily contract service between a forwarder and a direct carrier when it finds that adequate freighter services are not otherwise available.

I sincerely believe that the Federal Aviation Act of 1958 and its predecessor, the Civil Aeronautics Act of 1938, provided a sound public mandate for the regulation of air transportation. The act embodies a balance between encouragement of competition to provide improved public services and the provision of regulatory power to protect the

public from some of the potentially adverse consequences of a solely profit-motivated operation.

And overall we believe that the Civil Aeronautics Board has effectively carried out its congressional delegated responsibilities. Certainly, at various times in its history, critics of the regulatory process have claimed that the Board has either inadequately responded to its competitive mandate or overaggressively activated its regulatory powers.

It would be unusual if any agency clothed with the Board's discretion had always maintained in the eye of all beholders the correct balance. However, it is far easier for the Congress, when it perceives a need therefor to nudge the Board to restore the regulatory balance, as Congress has from time to time, than it is to prove that the public would be equally well served by a totally different regime in which the so-called free market and other regulatory agencies with less knowledge and experience undertook the public protective functions of the Board.

Thank you.

Mr. PRESCOTT. Thank you, Mr. Chairman.

I apologize for having him read this. In view of the developments that happened in this hearing yesterday, we felt it was necessary to revise our prepared statement. We did not have time to prepare copies for you.

Mr. ANDERSON. If you have a copy, we would appreciate having it.

Mr. PRESCOTT. I can give you mine, if you like.

I would like to add a couple of remarks to the prepared statement.

I would like to stress to this subcommittee that, first of all, airfreight is essentially a small package business.

Mr. MILFORD. Did you say all airfreight?

Mr. PRESCOTT. Ninety-one percent of our packages are less than 100 pounds. Our average weight, our pieces, within a shipment, is 26 pounds.

So not all airfreight is designed to ship anchors and IBM machines.

There is no question about airfreight being a small package business.

Only 10 percent of our pieces weigh more than 100 pounds.

So all airfreight is essentially small package business. We are stressing this point because the people from Federal Air Express seemed to indicate there has been something new in airfreight, and it just is not so.

Mr. ANDERSON. What was the 26 pounds?

Mr. PRESCOTT. Our average piece within our shipments in our experience weighs 26.2 pounds.

So we are in the small package business and have been since we have been in business.

We would like to say one other thing about our contribution to the airfreight business. We do more business in 1 day than Federal Air Express does in a month. So we know a little bit about the airfreight business as we bring these opinions to you.

Mr. SNYDER. That certainly does not square with Mr. Hoffman's testimony here in June.

I will get into it in a few minutes. That concerns me.

Mr. PRESCOTT. One more thing we would like to stress to all of you is we have not ever raised a voice in objection to Federal Express' cur-

rent business. We regard them as a special delivery service. They are serving off-line points, such as Reno to Little Rock, Moline to Texarkana.

They do not need to prove anything. They can buy their airplanes, go out and service these places. We have no objection to that. We do not object to it in this hearing.

What we are objecting to is their using that as a tool to elevate themselves into the airfreight business that we are in, that we worked 31 years to develop, and we have spent more than a third of a billion dollars in equipment and have gone through all the processes under the Civil Aeronautics Act to obtain the routes we are flying. We do not believe they should get a free ride in there because they are riding some Falcons around the country.

That is our position.

Now, we are ready for some questions.

MR. ANDERSON. Mr. Prescott, in your judgment, has Federal Express developed new traffic for air, or has Federal Express only diverted traffic which would have moved on the certificated system in any event?

MR. PRESCOTT. Well, we were asked that same question by Senator Cannon.

The only thing I can answer you is we have no access to the traffic figures. It is their own statement that 70 percent of their traffic has been derived from the certificated business.

As they said to you yesterday, 30 percent they created.

We are not able to get at them to find out what they are doing. This is why we want them referred to the CAB so we can examine some of the statements they made.

MR. ANDERSON. To what extent are Flying Tiger and Federal Express competitive?

I have heard it suggested that you are not competitive because you carry large shipments and they carry small shipments.

MR. PRESCOTT. We are not competitive between Reno and Little Rock. There is no question about that.

Now, before Federal Express came into business, I am sure that business was flowing between Reno and Little Rock. In that area we are not competing with them, and we have no objection there to their continuing this business.

I may add parenthetically that every common carrier in the country, whether by air or by service, or any other means, is regulated. Why they should go totally unregulated, we do not understand, but that is not our business. That is the Board's business. They will not allow that. Congress wants to allow it to continue.

I do not see why even your taxicab that you get into and ride from here down to the hotel is regulated. His rates are regulated. Why these people are not who only fly 7,500 pounds capacity airfreight, I do not know.

We are competitive between the points we serve. They want to serve those points with large airplanes. We say, fine, come in and prove your case the way we proved ours. This is our answer.

MR. ANDERSON. To what extent have CAB policies prevented Flying Tiger and other certificated carriers from establishing services similar to those provided by Federal Express?

MR. PRESCOTT. We have never tried to provide the small type. That Federal Air Express appears to be and is in.

I would not say that the Board has ever prevented us from doing it.
Mr. ANDERSON. Your testimony indicates that you feel that CAB has been restrictive in letting you add new cities and adjust your fares.

Would you not do better in a system where you could change service and fares without regulatory agency approval?

Mr. PRESCOTT. Well, we would not, because we believe transportation must be regulated. It is regulated in every place in the world, and every form of transportation is regulated. Regulation goes as much to protect the public as it does the carriers.

We think sometimes regulation is a drag. There is no question about it. It is not administered always the way we would like to have it administered.

To say, OK, let us deregulate the whole field and let everybody charge what they want, you would destroy the industry. You would have a jungle, in our opinion.

Mr. ANDERSON. What is your position on legislation which would require CAB to decide cargo certification cases in a year?

Mr. PRESCOTT. We stated our opinion on that in our prepared testimony.

We think that that may be the proper kind of nudge that Congress can give to the CAB to stop these long, long delays.

You heard Chairman Robson yesterday try to define for you what reasonable was. Reasonable could be 1 year to, he said, 5 or 7 years. And, believe me, it could be 20 years. There is no restriction on the CAB. If they do want to make a decision in a case, they can put it on the table and say we will never make a decision on this, and there is no law that says they have to do it.

Mr. ANDERSON. On legislation to permit air taxis to operate aircraft of up to 16,000 pounds capacity?

Mr. PRESCOTT. Again you have a totally unregulated, totally uncontrolled air system that can file any kind of rates, treat the public in any manner it pleases, and now they are flying larger airplanes.

What is magic about 16,000 pounds?

They can do the same amount of damage.

The air taxi concept, Mr. Chairman, was originated because of small communities or larger communities needing commuter service. It is called air taxi. It is called commuter.

I will repeat, we do not object to this. It was never contemplated, in my opinion, by the Civil Aeronautics Board when they created these two classes of carriers that somebody would stitch together a national system. I just do not believe it was.

But, now, let us not compound the sin by saying, OK, 7,500 pounds is fine, we will go to 50,000 pounds and, in a few years, we will be to 100,000 pounds.

Mr. ANDERSON. In your testimony, you suggest that Federal Express' rates are discriminatory.

Could you elaborate on this?

Mr. PRESCOTT. Discriminatory. Did we say "discriminatory" or did we say: "It could be discriminatory"?

I will let Mr. Rosenthal answer that.

Mr. ROSENTHAL. As Mr. Smith indicated yesterday, they have aggregate weight tenders, and the Civil Aeronautics Board, as a matter of fact, nearly every transportation regulatory commission has found

that that type of tender is unjustly discriminatory because it provides a lower charge for a similar size package moving at the same time.

In other words, if I am a small shipper and I ship one package of 20 pounds, the rate would be \$10. If I am a large shipper and I send 10 packages a week, I get a discount to \$8 for that package. So you have the two packages moving in the same airplane getting exactly the same service, one paying \$10, one paying \$8, and there is a long history of transportation regulation which says that such ratemaking is unjustly discriminatory.

Mr. PRESCOTT. This would give General Motors quite an advantage.

Mr. ANDERSON. Can Flying Tiger operate as a part 298 carrier as well as operate as a certificated carrier under present law, or if H.R. 15302 is passed?

Mr. PRESCOTT. That is a legal question.

Mr. ROSENTHAL. The answer is negative, Chairman Anderson.

The Board has, on several occasions, turned down applications of a carrier to operate under a certificate and as an air taxi. Its grants of authority have been very, very limited in that area and never in a situation where you are conducting the same kind of a business, one is an air taxi and another is a certificated carrier.

Mr. ANDERSON. In other words, if H.R. 15302 is passed, Federal Express could operate as a part 298 carrier and, thus, unregulated, and with large aircraft, which would be regulated, while Flying Tiger could not; is that right?

Mr. ROSENTHAL. Pending certification, that would be correct.

Mr. ANDERSON. After certification?

Mr. ROSENTHAL. After certification, they would be in the same position as Flying Tiger.

Mr. ANDERSON. Everything.

Mr. ROSENTHAL. That is right.

That is one of the reasons we prefer to see legislation which would require the Board to speed up the certification process so there would not be that kind of an interim economic advantage for Federal Express.

Mr. MILFORD. Would the chairman yield on that point?

Mr. ANDERSON. Yes.

Mr. MILFORD. Following up further, is it not also, as a practical matter, a very slight chance that the Board would grant an exemption, that it would allow a dual mode of operation, as a practical matter?

Mr. PRESCOTT. You cannot tell what the CAB is going to do. There is no way to predict the CAB's action.

Mr. MILFORD. Since your testimony is that they have never done it in the past, what makes you think they are going to suddenly change?

Mr. ROSENTHAL. I am not saying they are going to change. I specifically said that after certification they would be treated the same as us.

Let us take a look at the practical situation.

The Board would want to be in a position, and you have indicated to them that you would want them to be in the position, to render a decision after the conclusion of the proceeding, which would be objective.

In other words, the granting of the exemption is not supposed to be a prejudgment of the certificate application.

In order to put Federal Express in a position where they could revert to their prior operation, they would have to let them continue to operate under part 298, and the chairman specifically said it does not make sense to grant him an exemption and put him under rate regulation and then, later on, take them off of rate regulation.

Mr. MILFORD. If they are applying for a certificate, it would not make any difference. Certainly, the Board, who is charged by Congress in protecting the public interest, would not allow the public interest, represented by the certificated carriers, to be harmed.

You are suggesting here that the Board is going to violate its main mandate that Congress has placed on it, that of protecting the public interest by allowing this dual operation.

Mr. ROSENTHAL. I am suggesting you are giving them a new mandate, and how they administer that new mandate consistent with all the legislative history that is being created is to leave Federal Express in a position where they could easily revert to the exempt status under part 298 were the certificate to be denied.

They ought to be regulated as if they had the certificate from the beginning.

Mr. MILFORD. Thank you.

Mr. ANDERSON. Suppose that H.R. 15302 was amended to provide that a carrier receiving an exemption would not be permitted to continue to operate as an unregulated carrier under part 298.

In other words, there would be regulation of the cities served and the rates charged for all operations, those with small aircraft and those with large aircraft.

Would Flying Tiger still oppose the bill?

Mr. PRESCOTT. Would we still oppose this bill?

Yes, sir, for the reasons we have outlined.

This particular argument is one that stands out, but we still oppose this certification by legislation.

Mr. ANDERSON. Mr. Snyder?

Mr. SNYDER. Thank you, Mr. Chairman.

I will make two observations before I ask some questions.

One is I appreciate your support of legislation to require the CAB to move more expeditiously.

Over the past months, we have received testimony on a great many bills, and I know of nobody who opposes such legislation.

The chairman and I are cosponsors of such a bill. I am ready to report it and I hope we will do so in the near future. We could use your considerable influence to this end.

Mr. PRESCOTT. We will certainly use all the persuasion we have.

Mr. SNYDER. Thank you.

Secondly, in your statement, Mr. Prescott, you stated that all transportation, most transportation, is regulated.

I call your attention to the barge industry which operates about 90-percent unregulated, and they are confined to specific routes. They all operate about the same.

Mr. PRESCOTT. Sir, may I interrupt?

I do not know about barges, but I know ocean transportation is regulated. At least I am told that.

Mr. SNYDER. I represent eight river counties on the Ohio River, and I am fairly familiar with that situation. I was advised by Amer-

ican Commercial Barge Lines last week that they are largely unregulated.

I am confused about the competition between your company and Federal Express.

Your testimony today was that 91 percent of your business is composed of shipments of less than 100 pounds; the average piece is 26.2 pounds.

Do you have a breakdown at the 70-pound level—which, as I understand it, is Federal Express' maximum?

Mr. PRESCOTT. No sir, we do not have that type of breakdown.

Mr. SNYDER. Your testimony today indicates that it is a competing business—your business with Federal Express.

Mr. PRESCOTT. Yes, it is.

Mr. SNYDER. In June, Mr. Hoffman, who I believe is or was the chairman of the board—

Mr. PRESCOTT. Right.

Mr. SNYDER [continuing]. Testified before this subcommittee. He said, and I quote, beginning on line 23 at page 93 of those hearings:

Flying Tiger service is different from Federal Express business. They are not directly comparable. We put pieces of freight in our airplane as big as Federal Express' entire airplane. We have many customers who could not live with a 70-pound limit which is Federal Express' limit, or a DC-9 or a 727. We carry pieces of freight that would easily fit into a 747 around the world.

Mr. PRESCOTT. I believe that statement was made by Mr. Hoffman in April before Chairman Anderson's subcommittee, not in June.

Let me clarify that statement. It has been brought to my attention before.

When Mr. Hoffman says we are not in the same business as Federal Express, we are not in the business of flying between Reno and Little Rock, Ark. We are in the airfreight business and we happen to be in a position so we can serve the whole public, not just those who have 70 pounds. We do not ignore the men with the 75-pound shipment. We are a more complete freight carrier than Federal Express holds itself out to be.

What was the rest of Mr. Hoffman's statement?

Again, let me repeat to you, we are not objecting to Federal Air Express doing what they are doing. They are doing a fine job, apparently, and have attracted a lot of attention. We never raised a voice about them. We just do not want them to take a free ride into the large air business that we are in.

They can tell you they are going to limit their business to 70 pounds, but you are not a certifying agent here. They can change their mind when they walk out of this room and say, well, we decided to go to 105 pounds or 2,000 pounds.

The only reason they limit the package is they cannot get it through the door of their little airplane. If they had bigger airplanes, if someone were offering 200-pound pieces, I think they would be tempted to take them.

Mr. SNYDER. Well, you are a good businessman, and if you were flying five or six Falcons a night from the west coast to Memphis, and you could put all of those shipments on one large aircraft and save \$25,000 or \$30,000 a day in the process, what would you do?

Mr. PRESCOTT. Well, I would go to the CAB and ask for certification to do that, and not go to the Congress and try to shortcut circuit the system.

Mr. SNYDER. You also would make an effort to put it all on one aircraft, would you not?

Mr. PRESCOTT. Let me say this, you would make an effort, but I think the testimony yesterday was a little bit misleading.

We have heard that they fly five or six airplanes a night from Los Angeles. They told you yesterday they had five or six operations. An operation is a landing and a takeoff, so six operations are three departures. They are not six airplanes flying. As he said, wingtip to wingtip.

Mr. ROSENTHAL. That was clarified at the very end of the session yesterday, Congressman Snyder. They have three departures from the west coast and three arrivals. So it is only three airplanes, wingtip to wingtip.

Mr. PRESCOTT. Besides that, they would destroy the flexibility of their service, which they claim is their virtue in this business.

They depart from Burbank, Long Beach, and other neighboring towns.

Mr. SNYDER. What you are saying is that you are afraid they will start hauling larger pieces of freight and you do not want competition.

Mr. PRESCOTT. Wait 1 minute.

We have a lot of competition in the airfreight business.

Mr. SNYDER. You say they are in your business?

Mr. PRESCOTT. Yes, sir, there is no question about it.

We are not inviting more competition. I would like to tell you that we have enough competition in the airfreight business on our routes. We have American, TWA, Northwest, Delta, National Airlines. If you had the same number of airlines competing for the airfreight on our routes that you have passenger carriers, you would have 120 passenger airlines competing for the passenger business.

We have all the competition we can stand.

Mr. SNYDER. I cannot say that I blame you for not wanting competition.

Mr. PRESCOTT. I think it is an important point.

We do not want to be defensive and say we want it all for ourselves, sir. You have to realize that.

Mr. SNYDER. I do not blame you for wanting it all for yourselves.

If I were sitting there, I would want it all for myself, too.

But I am not so sure that it would be in the public interest.

Mr. PRESCOTT. I would be honest and admit we would like to have it all to ourselves, but we do not have it to ourselves.

One of the reasons we have had difficulty making a profit is there is too much competition on our routes. It is one of the reasons we cannot get a decent amount of freight to carry on the routes that we have. We have too much competition. We cannot do anything about that.

Mr. SNYDER. How much of your fleet is composed of small aircraft as opposed to large aircraft?

Mr. PRESCOTT. We only have two types of airplanes. One is a DC-8 with a payload capacity of about 110,000 pounds. The other is a 747 with payload capacity of 215,000 pounds.

Mr. SNYDER. Mr. Rosenthal, in his additional testimony, not in the prepared statement, indicated that you have some sort of an application pending before CAB which they have not yet scheduled.

I did not catch the purpose for which the application was filed.

Mr. PRESCOTT. I will let Mr. Rosenthal answer that.

Mr. ROSENTHAL. Provide additional freighter services along the southern tier of the United States.

Mr. SNYDER. What is the long-range plan which Flying Tiger may have for development of a small-package business?

Is that involved in this application?

Mr. PRESCOTT. Let me repeat that, as we said before, airfreight is a small-package business.

Mr. SNYDER. Your average is 26 pounds; 91 percent is under 100 pounds. You have some sort of an application pending.

I want to know what your long-range plan is.

Mr. ROSENTHAL. The application is for a broader range of geographical areas to serve.

We would like to go into Houston, Dallas, Atlanta, perhaps Miami, to many other points that we now cannot serve.

Mr. SNYDER. This application would cover that?

Mr. PRESCOTT. Yes, sir.

We have been turned down once.

Mr. SNYDER. Is there, in your opinion, enough business in those markets to justify the large aircraft you are flying?

Mr. PRESCOTT. We believe so, yes. We believe we can prove that to the CAB.

Mr. ANDERSON. Would the gentleman yield?

Mr. SNYDER. Yes.

Mr. ANDERSON. How many cities are you actually allowed to go into now?

Mr. PRESCOTT. Domestically, 11. Fourteen, I am sorry.

Mr. ANDERSON. Fourteen in the continental United States?

Mr. PRESCOTT. Right.

Mr. ANDERSON. Thank you.

Mr. SNYDER. If the CAB had broader exemption authority applicable to all-cargo carriers, including certificated carriers, to what extent could Flying Tiger utilize such authority and petition the CAB for more all-cargo service flexibility?

Mr. PRESCOTT. I hate to ask you to repeat that question.

Mr. SNYDER. That is all right. It is written out for me.

If the CAB had broader exemption authority applicable to all-cargo carriers, including certificated carriers, to what extent could Flying Tiger utilize such authority and petition the CAB for more all-cargo service flexibility?

Mr. PRESCOTT. Well, the point has been made here—and some of the people who testified before you have sort of indicated that this exemption authority is going to open the gates for Flying Tiger to go in. This is an authority you are giving the CAB, to grant the authority, without any hearing of fitness, ability, need, or anything else, but it does not say if you pass this, and we go to the CAB tomorrow and ask them for authority to serve Atlanta, they are going to say fine. They are not going to do it. They have turned us down in evidentiary hearings, so why should they give it to us without a hearing?

We tried for 10 years to get into Anchorage, as you heard yesterday. We go to Anchorage every day on the way to the Orient. We have 60,000 to 100,000 pounds of wasted space between Chicago, Seattle, and Anchorage which needs the service very badly.

They have heard our case three times, three times turned us down, and practically told us not to apply again.

What makes you think tomorrow they are going to say we will give it to you by exemption on account of we have new authority?

I think if we applied for Atlanta and Dallas the same way, they would say this is a case for an evidentiary hearing. Why should we give you an exemption?

Mr. SNYDER. If this bill were amended to include a weight limit—

Mr. MILFORD. Would the gentleman yield?

Mr. SNYDER. Yes.

Mr. MILFORD. Let me follow up on that.

If that is the case, why, all of a sudden, are you so excited and have such a great fear that the CAB is going to, all of a sudden, furnish this to this carrier?

Mr. PRESCOTT. I know your feeling about this.

We regard this as a one-airline piece of legislation. I know your feelings, but we regard this, and everyone else regards this as a one-airline legislation.

We heard the Chairman say twice he would take this as a directive from Congress to allow these people to fly.

We are not talking about ABC airlines. We are talking about Federal Air Express.

Mr. MILFORD. But if it is as you have stated, the wording of the law is very specific, and the law covers everybody.

Mr. PRESCOTT. I know it does.

Mr. MILFORD. If you prejudge the CAB on one side of this thing, I do not understand how you could prejudge it in the opposite when it is applied to you when you are covered under the law the same as anybody else.

Mr. PRESCOTT. I am telling you our experience with CAB through the years.

Let me give another example.

You heard a man say today he is totally free to raid our routes. He is mad because he cannot do it on the Atlantic. We feel the same way. Seaboard and Pan-American are protected on the Atlantic from these chartered carriers, but we have no protection at all.

What is the consistency in that?

You are talking about a body of men whose minds can change with the wind. You cannot predict them.

Mr. ROSENTHAL. Essentially, Congressman Milford, the bill currently pending before the subcommittee would grant power to the Board, new legal power, to issue exemptions. It is not a directive, as I understand it, for them to issue exemptions, and the Board can be as protective under that legislation as they are under existing legislation.

If they were to feel that the Flying Tiger Line's application would have a greater impact, for example, on the combination carriers than would the application of Federal Express or some other current third level carrier, they could turn down our application for services and

grant the other application for services, and that is exactly what we are concerned about.

You are not attempting to impose upon the Board a nondiscretionary authority. You are still giving them discretionary authority and there still are considerations which could lead the Board to grant one applicant's route application by exemption and then deny another's.

In light of the fact we have been turned down so many times, it would be very easy for the Board to reference those earlier cases and say we have found that the combination carriers can handle this fine, and there is no need for an all-cargo specialist, and we will deny your exemption application.

Mr. SNYDER. Would you agree that Federal Express is currently filling a public need?

Mr. PRESCOTT. Yes, sir.

Mr. SNYDER. Well, why should not the Congress help them and Flying Tiger and everyone else in the business to better serve the public?

Mr. PRESCOTT. I note I am the questionee and you are the questioner, but what is it you want to do for Flying Tiger?

Mr. SNYDER. That is a good question.

Mr. PRESCOTT. Would you like to come down here and sit?

Mr. SNYDER. I think I could handle it.

Mr. GOLDWATER. That is a subject of next month's hearing.

Mr. SNYDER. I think, Mr. Prescott, that we are interested in seeing the public need served and if, in fact, we can help Federal Express better serve the public need, or Flying Tiger better serve the public need, then that is our responsibility.

If I were representing Flying Tiger, I would do just exactly what you are doing. I would try to keep the competition out. I do not blame you; I want you to understand that.

On the other hand, not being privy to the operation of Flying Tiger, I cannot tell you what I would do to help Flying Tiger. But if you are flying 60-percent empty from Chicago to Anchorage and are not able to pick up any freight there, I suspect I would look at the size of my aircraft. I suspect that has something to do—and it is all suspicion on my part—with Federal Express' good profit margin.

If you are flying around this country 60-percent empty, then something has to be done. I am not privy to the information which would be necessary to answer specifically what it might be in your case.

If you were to put me in charge of the company for a year, I suspect I could do something.

Mr. PRESCOTT. Let me explain.

Mr. SNYDER. Answer my question.

Mr. PRESCOTT. Congress created a machinery to handle these problems. They created the Civil Aeronautics Board.

Now, you are going to wipe out the Civil Aeronautics Act as far as all cargo is concerned. We do not know why you want to just make a mockery of the act by just wiping out the requirements that we have had to fulfill.

Mr. SNYDER. I do not want to wipe it out.

Mr. PRESCOTT. You are going to wipe out the Civil Aeronautics Act if you give the authority to say, all right, Federal Express, go where you want to.

You do not know who owns Federal Express. The man yesterday said some foreigner owns a piece of it. He did not tell you how much.

We have no knowledge about these people. We have heard rumors they are going to be the biggest airfreight carrier in the world, and they had money galore behind them.

We think it is in the public interest to investigate this. You do, too. The Congress does because you set up the act to do these things.

We are not trying to keep anybody out of business. We are trying to live within the law, and we lived within it when we went into business. We did not ask you for special permission to bypass your laws.

Mr. SNYDER. Maybe you should have.

Mr. PRESCOTT. Maybe we should have.

Mr. SNYDER. Sure.

Mr. PRESCOTT. Why do you not just wipe out the Civil Aeronautics Act then for everybody?

Mr. SNYDER. Are you testifying for complete deregulation of the airlines now?

Mr. PRESCOTT. If the Congress wants to do that, we will go along with it, but we do not want to be singled out.

Mr. SNYDER. I thought your testimony earlier today was contrary to that.

Mr. PRESCOTT. I think you would have a jungle. We think it would be very unwise.

If you want to do it, we will find a way to live with it. But do not, as you are doing with this law, just pick out the cargo. What have we done to be singled out?

Let me answer also on Anchorage.

You are saying it is bad management to fly with 60,000 pounds to Anchorage. We are flying on our way to Tokyo. The leg from Seattle to Anchorage is a short leg. We can carry a full capacity airplane. In the case of the 747, it is 215,000 pounds. The mileage from Anchorage to Tokyo is about 4,000 miles, and our total payload can be 180,000 pounds. Therefore, we are wasting our space.

We have all the freight we can carry on the critical leg, but on the leg between Seattle and Anchorage we are carrying empty space because the CAB will not give us rights.

Is that clear?

Mr. SNYDER. That is clear.

Mr. PRESCOTT. That is not good management, is it?

Mr. SNYDER. It could be.

Mr. PRESCOTT. It is bad.

Mr. SNYDER. You could go nonstop to Anchorage.

Mr. PRESCOTT. We do go nonstop.

Mr. SNYDER. I meant to Tokyo.

Mr. PRESCOTT. We have plenty of fuel to go to Tokyo. In fact, we fly nonstop many times.

Mr. SNYDER. I thought you stopped at Anchorage for fuel.

Mr. PRESCOTT. We do both. We have both services. The DC-8 will not go nonstop.

Mr. SNYDER. I thought you were stopping for fuel and could not pick up freight there.

Mr. PRESCOTT. We cannot carry freight between Seattle and Anchorage where we have space on the airplane due to the limitations of the Anchorage-Tokyo leg.

I want to get this clear to you.

Maybe you should pass a law making CAB give it to us if you are going to give everybody else everything they want. We cannot get it out of CAB. I guarantee you that.

We have an airplane that can carry 215,000 pounds, but it will only carry it a certain distance. It will not carry it nonstop to Tokyo. It will carry it to Anchorage.

Now, it will not carry enough fuel to get to Tokyo and carry more than 180,000 pounds of cargo.

Do you understand?

Mr. SNYDER. Well, I thought I did, but I am not so sure I do now.

Mr. PRESCOTT. Joe, can you help me?

Mr. GINN. I think the record is clear on what the man has stated.

Mr. PRESCOTT. In other words, the critical leg limits our payload.

Mr. HEALY. If I can take it, if I may, to the other direction, you want to go nonstop and add more fuel.

Well, when you go nonstop, you have taken all the fuel you need. All you are doing is cutting back the public service now to 120,000 pounds to go nonstop.

So the longer you make the airplane travel, the less service you can give the public.

So we go to Anchorage, we refuel and go to Tokyo to carry the maximum amount of freight. We would stop en route from Anchorage to Tokyo if there was an airport that was feasible for us to stop at to carry the maximum amount of common carriage of freight from the United States.

Mr. SNYDER. If H.R. 15302 were amended to impose a weight limitation on the size of aircraft which Federal Express or any other carrier could use, would that be enough to end your opposition to the bill?

Mr. PRESCOTT. Nothing would eliminate our opposition to giving anybody routes on our routes that we have had to go through the procedures to get. We just do not believe anybody should get that. You are either going to wipe out the act or not wipe it out, in our opinion. There is nothing that will make us for the bill in that regard.

Mr. SNYDER. I think Mr. Rosenthal answered this next one, but I want to be sure.

When I asked him to reread a portion of his testimony, I thought I understood that you would like to be in the position where Federal Express is flying so many Falcons back and forth from the west coast to Memphis or other places that it would be more economical for them to say to you, OK, we will hire you to take this big load for us from the west coast to Memphis, and we will help you get the authority, if you do not have it.

Would you agree with that interpretation?

Mr. PRESCOTT. No, we did not have that in mind in what Mr. Rosenthal was explaining.

Mr. SNYDER. Now that it has been suggested, how does it sound to you?

Mr. PRESCOTT. We suggested that informally to Federal Air Express.

Mr. SNYDER. You did have it in mind at some point then, if you suggested it to them.

Mr. PRESCOTT. Well, we said we could do it for you, if that is their problem. They did not take too kindly to that.

Mr. SNYDER. I can understand their position.

Thank you very much.

Mr. ANDERSON. Mr. Milford?

Mr. MILFORD. Thank you, Mr. Chairman.

Mr. Prescott, you have stated two or three times that H.R. 15302 gives direction and gives mandates or other actions on the part of the CAB.

You have also stated that H.R. 15302 wipes out the Federal Aviation Act.

I do not know whether we are talking about the same bill or not, but let me read you the complete text of H.R. 15302.

Provided, however, that nothing in this section shall prevent the Board from granting an exemption from the requirements of section 401 so as to authorize the conduct of all-cargo operations in interstate air transportation pending consideration of application for certification pursuant to section 401 if the Board finds that the issuance of such exemption is in the public interest.

Mr. PRESCOTT. Yes.

Mr. MILFORD. Now, this provision pertains only to section 401 of the act.

How could you seriously make a statement that the exemption or the provision will wipe out the other 1,503 sections of the act?

Mr. PRESCOTT. Well, the original bill that you proposed, Mr. Milford, did wipe out title IV totally. It has now been changed.

This bill you are speaking of, we never saw before. It appeared here yesterday morning coming out of the woodwork. We did not have a chance to look at it.

Now, you say it is restricted to section 401. It wipes out that part of the act, as far as all-cargo is concerned. CAB should never have to hold an evidentiary hearing ever again. They have total legal authority to grant.

Mr. MILFORD. We are talking about a temporary exemption pending certification, and then only if the Board is convinced it is in the public interest.

Mr. PRESCOTT. Yes, sir.

May I read to you the Chairman's response to this bill and what he said?

May I read it to you?

Mr. MILFORD. Sure.

Mr. PRESCOTT. It says:

We would certainly construe Congress' favorable action on this legislation as a clear indication by Congress the Board should not be restricted in considering requests to an all-cargo exemption authority.

He was talking about Federal Air Express. Everybody that has been in front of this subcommittee has been talking about Federal Air Express.

Mr. MILFORD. No, sir.

Mr. PRESCOTT. You say they have not, but I say they have. It is just a question of opinion.

You say your bill is an omnibus bill, but it reminds me of an insurance policy that covered a man only if he was riding a one-eyed buffalo over the Brooklyn Bridge at high noon on the Fourth of July.

Mr. MILFORD. You show me where it says anything about Fedreal Express, anything about certificated carriers or uncertificated carriers, or anything else.

Mr. PRESCOTT. It does not. I agree with you.

Mr. MILFORD. How can you say it is special interest legislation?

Mr. PRESCOTT. That is my opinion.

Mr. MILFORD. If I understand the Constitution, it clearly mandates our laws apply to everyone.

Mr. PRESCOTT. Yes, sir.

If you are killed on a one-eyed buffalo going over the Brooklyn Bridge at high noon on the 4th of July.

Mr. MILFORD. Would you point to me where it talks about a one-eyed buffalo?

Mr. PRESCOTT. Sir, I do not mean to argue with you, but in everybody's opinion this is the Federal Express relief bill. It is everybody's opinion that I have ever talked to.

Mr. MILFORD. Then I challenge you to show me the provisions in the bill that pertain only to Federal Express.

Mr. PRESCOTT. You won that argument.

Mr. MILFORD. Well, then—

Mr. PRESCOTT. You think I should quit saying it?

No, sir. It gives me the right to say it.

Mr. MILFORD. Let me ask you this question.

The primary mandate Congress placed in the Civil Aeronautics Board was to conduct their action first in the public interest to see that air service is serving the public interest, not to serve Flying Tiger, not to serve American Airlines or Federal Express, but to serve the public interest.

Now, the basic thing involved here is an innovative service. If hundreds of American cities, many of them small and receiving no air service at all right now, if hundreds of American cities could suddenly have 24-hour delivery services, door-to-door, would you consider that to be in the public interest?

Mr. PRESCOTT. Well, I am going to say to you what you said to me.

I do not see that in your bill. I do not see anything about going out and serving 100 cities.

Mr. MILFORD. I am talking about service.

Mr. PRESCOTT. Well, I tell you before, Mr. Milford, we do not object to what they are doing at the present time.

Yes, it is in the public interest. If that is the question you want me to answer, it is.

Mr. MILFORD. Does Flying Tiger provide such a service?

Mr. PRESCOTT. No, sir.

Mr. MILFORD. To your knowledge, does any certificated air carrier provide such a service?

Mr. PRESCOTT. I am sorry, sir.

Mr. MILFORD. I will repeat the question.

To your knowledge, does any certificated air carrier provide such a service?

Mr. PRESCOTT. Not directly.

The cities, with very few exceptions, are being served by air transportation, probably through innerline carriers, but it is not the case where one carrier is flying Falcons around the country.

Mr. MILFORD. Collectively can the certificated air carrier provide 24-hour door-to-door delivery service to hundreds of cities?

Mr. PRESCOTT. You say 24 hours. The thousands of shippers we have talked to say airfreight is second day delivery. Second day delivery is airfreight when you get into the real business of airfreight.

The customers of Federal Express are people like us. We use them to send documents to Washington. They are sort of a courier service. We would trust Federal Express and pay an exorbitant rate for this service. We are not objecting to that.

We are not objecting to them serving Pine Bluff to Moline, Ill. We are not objecting to what they are doing.

We are saying we are not even objecting, Mr. Snyder, to anybody else being in the business.

We want them to go through the stresses and strains of certification the same as the rest of us. We do not believe they are privileged characters straight out of Heaven.

That is what they are trying to do. They are trying to short circuit the system you set up for examining these people.

Mr. MILFORD. Under the provisions of H.R. 15302, if the Board should grant an exemption, is there any rationale or legal reason you can give me why CAB could not place limitations on this exemption, place provisions in order to gain the exemption, that would limit an exempted carrier's service or weight limits or could make provisions that, for example, it could only operate fish or fowl, that is to say under certification rules or under air taxi rules?

Mr. PRESCOTT. If I understand your question correctly, you are going into terms and conditions under which they can operate, and these terms and conditions can only be met after a hearing of some kind, and a hearing of some kind is the one we referred to as a certification hearing.

Now, CAB need not take 5 years to decide a case. They could decide, if they had to, in 6 or 7 months.

You are talking about is there any rationale?

No. They can impose any restrictions they want. But they should do it after some kind of a hearing, do you not believe so?

Mr. MILFORD. I would presume—

Mr. PRESCOTT. Your bill does not call for it. Your bill says they can leave their name and address.

Mr. MILFORD. My bill very clearly calls for the decision to be made only if "the Board finds that the issuance of such exemption is in the public interest."

Mr. PRESCOTT. How do you suppose they arrive at that decision?

Mr. MILFORD. It is a judgmental matter.

Mr. PRESCOTT. They make a judgment without any evidence of any kind.

Mr. MILFORD. They have to be able to come back and explain to an oversight hearing what they did was clearly in the public interest.

Mr. PRESCOTT. While they are back explaining to you, we are dying on the vine.

Mr. MILFORD. Let me ask one final question.

Is it your testimony here that the position of Flying Tiger is they are against the deregulation of the air cargo?

Mr. PRESCOTT. Yes, sir, we are against being deregulated piecemeal.

We know deregulation is in the air. It is the in thing these days. All the politicians are for it. Everybody else is for it.

They changed the word from deregulated because it sounded bad. They changed it to reform. Reform indicates there is something wrong with the regulation. There is something wrong with it. It is slow and it is dragging, but apparently it gets the job done eventually.

To answer your question, if you want to deregulate the whole industry, the whole transportation industry, let us not just stick to air. Let us go to the whole bit. Let us go to some truck lines, some forwarders, railroads. If you want to do that, we can talk to you. We think we can make a lot of money at it. We think you will have a jungle in your transportation field, but we will go for it.

Mr. MILFORD. You know, your chairman of the Board, in his testimony, stated:

Flying Tiger has already publicly taken the position in preference to any of the regulatory reform we prefer total immediate deregulation of air cargo and related motor transport.

Mr. PRESCOTT. Is that not what I said?

I said let us buy a truck line.

The chairman and I are not in disagreement. If you will let us get into the service transportation business, we will give the best business you can dream of. But you would not let us do it.

Mr. MILFORD. I can only point out that the same exemptions available to Federal Express or anybody else would also be available to Flying Tiger.

Mr. PRESCOTT. To buy a truck line?

Mr. MILFORD. No.

We have before us H.R. 15302.

Mr. PRESCOTT. You have to understand we have been turned down at so many evidentiary hearings on the place we would like to go. What makes you think under any circumstances they are going to do it with an exemption?

Mr. MILFORD. Let me turn the question around.

What makes you think they are going to do it for somebody else?

Mr. PRESCOTT. Because they said so right in the testimony. I read it to you a while ago. I do not want to fill the record by reading it again.

He said he considered it almost a directive from the Congress.

Mr. MILFORD. Thank you, Mr. Chairman.

Mr. ANDERSON. Mr. Goldwater?

Mr. GOLDWATER. Thank you.

Mr. Prescott, do you not operate trucks?

Mr. PRESCOTT. We have local pickup and delivery trucks that we do not own ourselves. We contract with local people.

Mr. Healy could possibly give you a better picture of our truck operations.

Mr. HEALY. We have truck operations, Mr. Goldwater, in two different ways.

They operate within the pickup and delivery zone as defined by the Civil Aeronautics Board. Those trucks are operated by others other than Flying Tiger Lines, some of them on a lease basis, where we contract for the full use of the truck during the contract period of 2 years.

In other cases, it is through Air Cargo, Inc., an industry and pickup and delivery organization who performs their services on a shipment basis, or what they call a per hundredweight basis.

Mr. GOLDWATER. Do you have your Flying Tiger name on the trucks?

Mr. PRESCOTT. Yes.

In Los Angeles, the leased trucks have our own name on them, yes.

Mr. GOLDWATER. Do I understand that what bothers you in the cargo business is the difference in regulations that prevail for various types of cargo operations?

Mr. PRESCOTT. Well, I do not quite understand what you mean.

Mr. GOLDWATER. Does it bother you to be certificated under section 401, and Air Express, as an example, can operate under section 416?

Mr. PRESCOTT. It does not bother us for Federal Air Express to continue the present operations they are in, Mr. Goldwater.

Mr. GOLDWATER. But they are basically unregulated and you are regulated.

Does that bother you?

Mr. PRESCOTT. It does in a way.

We think a common carrier should be regulated. If he is going to hold himself out to the public, the public should be protected. He should be regulated. He should not be able to give discriminatory rates.

Mr. GOLDWATER. Does that put you at a competitive disadvantage?

Mr. PRESCOTT. Yes.

Mr. GOLDWATER. In what respect?

Mr. PRESCOTT. They can go to any customer and quote any rate they want to get. We can charge a customer \$10 a hundred or \$200 a hundred to go from Los Angeles to New York, and he has to come in on Saturday with an empty airplane, and he can say I will take it for \$5, and he can take it for \$5. He can take any piece of traffic we have if the price will do it. He can carry it for a nickel. We do not think that is right.

Mr. GOLDWATER. What is the difference in the rate as you see it, of the 75 package?

Mr. PRESCOTT. Well, there is not a large amount of difference.

Mr. GOLDWATER. I have read the record of Federal Express since they began. They have increased their rates tremendously.

Mr. PRESCOTT. Well, they have.

Mr. GOLDWATER. But you say they are still undercutting in some areas?

Mr. PRESCOTT. No. They still have the ability.

You asked me what I objected to about them not being regulated.

Mr. GOLDWATER. From an economic standpoint, the businessman is not going to stay in business long if he continually undercuts the market and pushes up against his own costs.

Mr. PRESCOTT. There is something that should be understood about transportation.

An empty seat or an empty airplane when it leaves Los Angeles is like yesterday's newspaper. You cannot sell it for a nickel. You cannot get anything for it. It is a perishable commodity. If you cannot get the business at the going rate, you have the ability to cut the rate to fill the airplane that is otherwise going empty. We see it all the time.

We were in the biggest mess in the Pacific because they went wild bidding for the business. We ended up in the Federal Court in San Francisco to get it stopped. We were losing 20 percent of our

revenue on the bottom line because people were competing for our business.

We are competing for ourselves. We are just as guilty as the rest of them. But you cannot run transportation on that kind of an open rate business.

Mr. GOLDWATER. Now, you answered my question that having a difference between sections 416 and 401 does put you at a competitive disadvantage to some extent.

But are you not at a competitive advantage over, say, someone operating under section 416 because you can fly the large aircraft?

Mr. PRESCOTT. Section 416, they can fly any size they want.

You are talking about part 298 perhaps?

Mr. GOLDWATER. I am sorry, part 298.

Mr. PRESCOTT. Part 298, yes.

That again is the taxi, air taxi exemption.

When you say we have an advantage, I guess it is an advantage. It is a certificate we applied for and got under the laws of our country.

Mr. GOLDWATER. You have an advantage if they can fly only the maximum of 7,500 pounds because you can fly the larger aircraft and carry more.

Mr. PRESCOTT. No question about that.

Mr. GOLDWATER. So, in essence, the way it sits now, you could say that you would be in a competitive advantage over someone who is limited to part 298.

Mr. PRESCOTT. I do not think we would be at a competitive advantage.

Mr. GOLDWATER. Well, you would be if, in fact, you were serving the same points.

Mr. PRESCOTT. Well, I am sorry. Part 298 is an air taxi operator. They have stitched together a transport system out of it. I do not see where we have the advantage over a taxi operator.

Mr. GOLDWATER. The advantage is you operate larger aircraft.

Mr. PRESCOTT. That is right.

Mr. GOLDWATER. Now, Federal Express comes in and say they want to operate a larger aircraft, but they cannot and, in turn, they have been denied by the CAB, and the CAB says it is not provided under section 416, so they cannot do it.

Thus, you still have an advantage over them. If their market dictates they need a larger aircraft and they cannot get it, then you clearly have an advantage.

Mr. PRESCOTT. They clearly have the right to come in and apply.

Mr. GOLDWATER. No question about that.

Mr. PRESCOTT. And to enlarge the capacity of an airplane would put them into the common carrier business totally unregulated, totally free to do as they please, which we do not think you can do in transportation.

Mr. GOLDWATER. Mr. Prescott, you testified that Federal Express wanted to serve points that you serve.

They testified yesterday, and I asked them the question of what they planned to do with the DC-9's or 727's. In essence, they said they are going to do precisely what they are now.

Mr. PRESCOTT. Los Angeles to Memphis and Los Angeles to New York.

I believe they have authority for Los Angeles to New York.

Mr. GOLDWATER. With a stopoff in Memphis for a cup of coffee?

Mr. PRESCOTT. Yes.

Mr. ANDERSON. Gentleman, we are going to stop here because we do have a rollcall.

I know some of the other members want to ask questions.

We will recess for lunch until 2:15.

Can you be back at 2:15, Mr. Prescott?

Mr. PRESCOTT. Yes, sir.

Mr. ANDERSON. We will pick up with Mr. Goldwater.

We will stand in recess until 2:15 p.m.

[Whereupon, at 12:15 p.m., the subcommittee recessed, to reconvene at 2:15 p.m., the same day.]

AFTERNOON SESSION

[Whereupon, at 2:23 p.m., the subcommittee reconvened, Hon. Glenn M. Anderson (chairman of the subcommittee) presiding.]

Mr. ANDERSON. The meeting will come to order.

Mr. Goldwater was in the process of questioning Mr. Prescott and he is on his way. But, in the meantime, Mr. Johnson has a couple of questions.

Mr. JOHNSON. Thank you, Mr. Chairman.

I am sorry I was not here. I was over at another committee.

Mr. Prescott, there seems to be some concern here, and I would like to know what the difference is between section 401 certification and section 416 exemptions, as far as the process is concerned, the hearings, the appeals, et cetera?

Mr. PRESCOTT. I would like to have Mr. Rosenthal address that question. He was formerly with the CAB and is also an attorney. He knows it eminently.

Mr. ROSENTHAL. Under section 416 exemption, especially the one that has been proposed, the only standard that the Board would have to meet in the finding is the public interest standing.

Under section 401 certification, they would have to find a public convenience and necessity for the service. That is in terms of standards.

There is a difference in the standards applied. But, entirely apart from that, more significantly it is the procedures for obtaining the authority which is different.

Under 416 exemption, the Board can decide the case merely on the basis of pleadings, application, and answers, and then the Board decision.

Under a section 401 proceeding, there would have to be a hearing at which the testimony submitted would be subject to cross-examination and rebuttal testimony. You would have an administrative law judge who would hear the witnesses, examine the evidence, and reach a decision.

So that the quality of the evidence on which the Board would rely should have substantially greater reliability through a section 401 procedure than under a section 416 exemption.

Mr. JOHNSON. Now, that pretty much clears that matter up.

As I understand, in your statement here you claim that Federal Express sometime ago made an application that a hearing would have been considered at that time?

Mr. PRESCOTT. No, sir.

To our knowledge, Federal Express only applied to the CAB, and I think this is accurate, the people are here—they can correct me if I am wrong—they applied to the CAB to raise the weight limits on their air taxi exemption airplanes. They never applied for a certification of public convenience and necessity.

Mr. ROSENTHAL. In September 1975, I believe Federal Express applied for an exemption which would authorize them to operate large aircraft under part 298.

The Board turned down that exemption, saying it was beyond its legal power to do so, Nos. 1 and 2, that the issues that were raised by that application were too complex and too difficult to be resolved on the basis of ex parte pleadings, they should be resolved in a certification proceeding, and invited Federal Express to file an application for certificate of public necessity and convenience, and promised if the application were filed, it would give it prompt and expedited consideration.

Mr. JOHNSON. That is all, Mr. Chairman.

Mr. ANDERSON. Mr. Goldwater, we are in the middle of your questions.

Mr. GOLDWATER. I just have one or two more, Mr. Chairman.

Mr. ANDERSON. All right.

Mr. GOLDWATER. I was wondering if Federal Express made a formal application for certification before the CAB, would Flying Tiger support or oppose it?

Mr. PRESCOTT. We would participate in the proceedings and normally we would say, you know, why are you needed, are we not giving adequate service?

We would say that to the CAB. Every carrier who has a route says, such as we have, would protect his interests. A certificate is a very valuable commodity to a common carrier and you are trying to protect it.

That is the purpose of our being here today, it is trying to protect the integrity of the certificate. If everyone and his dog can have one, they are not worth much.

Mr. GOLDWATER. You filed, I think, with the CAB something called the Domestic Air Freight Rate Investigation?

Mr. PRESCOTT. Yes.

Mr. GOLDWATER. For zones of reasonableness?

Mr. PRESCOTT. Yes, sir.

Mr. GOLDWATER. In the rates, what is the status of that?

Mr. PRESCOTT. Would you like to answer that, Mr. Rosenthal?

Mr. ROSENTHAL. Yes, sir.

The request that we made of the Board in establishing freight rates is that there will be a zone of reasonableness in which the lowest rate would be the cost of the most efficient freighter operator and where the ceiling would be the average cost of the industry in freighter operations.

That case was argued before the Board in December 1975, and a decision has not yet been reached. And if I recall Chairman Robson's answers yesterday, he gave no commitment as to when a decision would be reached.

Mr. GOLDWATER. So we are almost 2 years on that, are we not?

Mr. ROSENTHAL. It is not quite 1 year since.

Mr. PRESCOTT. The investigation is 5 years old though.

Mr. ROSENTHAL. It took considerable effort on our part to get that investigation started, and it was the first investigation which the Board has had in 25 years of the freight rate structure.

Mr. GOLDWATER. Do I understand that you do support a proposal similar to that offered by Mr. Barnum when he testified?

Mr. PRESCOTT. Which proposal, Mr. Goldwater?

Mr. GOLDWATER. For total deregulation. Put everybody on the same footing.

Mr. PRESCOTT. Certainly we would be very much for everybody on the same footing, and let us be careful when we say total deregulation.

Mr. GOLDWATER. Total deregulation, freedom of entry and rate.

Mr. PRESCOTT. Of the whole transport industry or the whole cargo transportation industry?

Mr. GOLDWATER. Cargo.

Mr. PRESCOTT. We are not for total deregulation or partial deregulation—

Mr. GOLDWATER. I assume you want some deregulation.

Mr. PRESCOTT. No. We never advocated deregulation of the cargo industry.

Mr. GOLDWATER. I understand the chairman of the board did.

Mr. PRESCOTT. No, sir.

I would like to have the quote that you are referring to.

Mr. GOLDWATER. From the April 28 hearings:

We prefer total immediate deregulation of air cargo and related motor transport * * *

Mr. PRESCOTT. Did you catch that? Motor transport?

That is what we are talking about.

If you will give us the right to own motor transports and surface freight forwarders and everything else, yes, we would be for it, and also Mr. Hoffman says Flying Tiger has taken the position that in preference to any of the regulatory proposals we would like total deregulation. So we want to be very careful that we are not misunderstood on this question.

What we would like if we can wave our wishing wand would be the right to own surface transportation and combine it with an air transportation system.

We believe we could offer a greater service to the public, and we would make a lot of money out of it. And it would be great. We do not see any chance in the immediate future of getting that.

Mr. GOLDWATER. I think we went over that this morning, did we not?

Mr. PRESCOTT. Right.

Mr. GOLDWATER. Testimony by the chairman of the board.

Mr. PRESCOTT. Right.

Mr. GOLDWATER. Just one other thing.

Are you satisfied then with the process of establishing rates?

You would not want to see more freedom there?

Mr. PRESCOTT. Well, if we had our wishes, we would like to see the Domestic Air Freight Rate case come to a conclusion along the lines of what do you call it, the judge proposed?

That is usually cost, and this investigation has been very thorough. It has been over a 5-year period.

Reduce the cost of the all-cargo operator because his costs are not allocable as a base, and give the carriers freedom to go above that rate. And we would like to see that.

Mr. GOLDWATER. You would oppose any kind of proposal that would free up entry and exit then?

Mr. PRESCOTT. We certainly would.

Mr. ANDERSON. Would the gentlemen yield?

He did earlier say that he would favor a 1-year limitation on the time CAB had to approve—

Mr. GOLDWATER. Yes, I recall, and that would be a great improvement, but I was just sort of interested in your attitude toward this thing called deregulation and how far you would go or would not go.

Mr. PRESCOTT. Well, am I clear?

Mr. GOLDWATER. Yes, I think so.

Just one last question.

The airfreight forwarders have indicated that overnight all-cargo services by scheduled certificated has greatly eroded.

To what extent do you agree with this, and if there has been an erosion, why?

Mr. PRESCOTT. There are less all-cargo schedules now than there were 2 or 3 years ago, particularly before the oil crunch. Those scheduled have been reduced by combination carriers and not by Flying Tiger.

One of the reasons is that the CAB held down the short-haul rates and they tried to get increases and could not. Therefore, they made the short-haul operations uneconomical, and they stopped those.

Another reason is they are tending more and more to try to entice the freight into the bellies of the 747's and DC-10's and Lockheed 211's. Those, as far as we know, are the principal reasons for the service decline.

Mr. GOLDWATER. I am not quite clear, but there has been some reference to your domestic operation over the past couple of years.

Have you actually met loss in your domestic operations?

Mr. PRESCOTT. We have had losses in the domestic airfreight portion of our business for almost every year since we have been in it.

We have been able to make up those losses in other ways over the years.

Our international operation is profitable. We would not be as profitable if we did not have the domestic operation. And the reason we show a loss, one of the reasons we show a loss in the domestic operation is the CAB method of allocation.

The contribution to our overseas route, the domestic operation is not measured in the terms of the dollars we have spent, but we are showing a loss, yes, sir.

Mr. GOLDWATER. Thank you very much, Mr. Chairman.

Mr. ANDERSON. Mr. Fary?

Mr. FARY. No questions, Mr. Chairman.

Mr. ANDERSON. Mr. Milford?

Mr. MILFORD. Thank you, Mr. Chairman.

Mr. Rosenthal, did I understand you to say to Mr. Johnson that an exemption granted under the provisions of H.R. 15302 would allow CAB to grant certification without going through the same full certification procedures that would be required by any other applicant that did not apply for the exemption?

Mr. ROSENTHAL. No, Congressman Milford.

If you got that impression, I misspoke myself.

I was distinguishing between the circumstances when you apply for an exemption under section 416, and the differences when you apply for a certificate. There would be two steps.

One would be the obtaining of the exemption, and the second step would be the obtaining of the certificate. The procedures for the obtaining of the exemption would be, as I stated, to Congressman Johnson, and the procedures for obtaining the certificate would be as I stated to Congressman Johnson.

Mr. MILFORD. Maybe I misunderstood you, but I wanted to make clear for the record that a person being exempted is exempted pending only going through the full steps of certification.

Mr. PRESCOTT. That is correct.

And for that exemption all he would have to do is go through a paper record which he filed an application, and which somebody filed, and answer in opposition, and then the Board would decide on whether or not the exemption would be issued.

Mr. ANDERSON. Mr. Snyder?

Mr. SNYDER. Since you have a certificate, would you be eligible for subsidy?

Mr. PRESCOTT. No, we would not under present law be eligible for subsidy.

We never were eligible for subsidy since we were certificated.

Mr. SNYDER. Does the law not provide it?

Mr. PRESCOTT. No, the law provided for carriers to be subsidized, but we had to disclaim any attempt at subsidy authorization when we accepted our certification.

Mr. SNYDER. It was a condition?

Mr. PRESCOTT. Yes, it was imposed by the CAB in 1948.

Mr. SNYDER. Thank you.

Mr. ANDERSON. If there are no further questions, I thank you, Mr. Prescott and Mr. Rosenthal and Mr. Healy, for your presentation.

Mr. ANDERSON. The next witness is Mr. Leo Seybold, vice president, Air Transport Association of America.

Mr. Seybold.

**TESTIMONY OF LEO SEYBOLD, VICE PRESIDENT, FEDERAL AFFAIRS,
AIR TRANSPORT ASSOCIATION OF AMERICA, ACCOMPANIED BY
G. J. GODBOUT, DIRECTOR, CARGO SERVICES, AIR TRANSPORT
ASSOCIATION OF AMERICA**

Mr. SEYBOLD. Thank you, Mr. Chairman.

I have with me Mr. Gerald Godbout of the Air Transport Association.

This little-bitty old bill has caused a lot of waves and I believe I would prefer, with your permission, to read the statement which has been submitted to you, which is based on H.R. 14623.

I am aware of the differences in H.R. 15302, and I am prepared to comment on them as we go along.

My name is Leo Seybold. I am vice president for Federal Affairs of the Air Transport Association of America, which represents most of the Nation's scheduled certificated airlines. These airlines have a deep

interest in legislation affecting the air transportation of cargo. They have developed and offer an extensive variety of nationwide cargo services reaching virtually every community. These services include priority airfreight, regular airfreight, small-pacakage-counter service, and pickup and delivery service.

A summary of the cargo services provided by the scheduled airlines is contained in attachment A, and more fully described in the attached brochure "Air Cargo on the Move."

The airlines strongly oppose H.R. 14623:

(1) It is special interest legislation; (2) it is discriminatory and destroys sound regulatory policies; (3) it permits circumvention of public protection standards; (4) it creates undue influence on the Civil Aeronautics Board; (5) it increases regulatory lag; and (6) it is inconsistent with the proponents' objection to certification.

This legislation is primarily a private relief bill for one concern which does not wish to conform to existing laws and regulations. Detailed examination of the issues it raises and their impact on both established legislative and regulatory principles makes it clear that it creates problems of such magnitude that they far outweigh any benefit which the bill would confer.

Federal Express Corp. is the proponent of this legislation, which it says is of "vital interest" to its company, its employees, and its shippers. The legislation is also of "vital interest" to all shippers, all airlines, all airline employees, all airfreight forwarders, all airfreight motor carriers, all air taxi operators, the U. S. Postal Service and millions of postal patrons. They want to know what impact on them the special treatment for Federal Express would or could have.

It is no secret that H.R. 14623 was introduced as special-interest legislation because of the denial by the Civil Aeronautics Board of the application of one all-cargo carrier, operating under a general exemption for small aircraft, for an exemption to operate extensive services with large aircraft without obtaining certification. Legislation of narrow scope enacted in response to a special problem would transform a logically framed and workable statute into one with exceptions, ambiguities, and internal inconsistencies. The act should not be permitted to become an illogical patchwork of exceptions at the behest of private special interests.

In its advocacy Federal Express sometimes make incorrect, misleading or irrelevant allegations. Such statements were contained in their earlier testimony before this subcommittee in the hearings on regulatory reform. Comments by the Air Transport Association on some of these statements are contained in attachment C. I strongly urge you to read them.

In addition to benefiting one special interest, H.R. 14623 would create two classes of all-cargo operators: those which are regulated, that is, certificated; and those which are not regulated, that is, exempted pending consideration of certification. This would clearly be discriminatory.

The Board apparently would have authority under section 416 to subject unregulated operators to the same public protection standards and requirements that regulated operators must meet, such as requirements to file tariffs, offer satisfactory service, maintain minimum insurance, file traffic, financial, and other reports.

However, since the Board has not always imposed such requirements when granting exemptions, and in view of the Board's embracement and advocacy of the concept of deregulation of cargo service, it is highly doubtful that the Board would impose such requirements. Thus, the bill creates the probability of discrimination between regulated and unregulated all-cargo operations, with the former governed by public protection provisions not applicable to their competition.

The bill affords special treatment only to new applicants for all-cargo operations. Therefore, another question raised is whether new applicants for all-cargo services should be treated differently than present operators of all-cargo services or cargo services provided in combination aircraft.

Will the Board now shed all responsibility for cargo, as it has proposed? If so, would it no longer receive information on the costs or revenues from cargo service in combination aircraft?

How would it then be qualified to determine costs of providing passenger service in such aircraft for purposes of regulating passenger rates or determining rate of return on investment? This significant question has also not been examined and must be carefully considered before this proposal is cast into legislation.

In addition, the bill has the effect of regulating cargo and passenger services differently. Unquestionably, there are differences between cargo and passenger operations. The question that has not been addressed is whether those differences are of a type and magnitude to justify or require such major differences of treatment under the act.

If there is justification for different regulatory standards, it is highly questionable whether the concept embodied in H.R. 14623 represents the proper method of adjusting the legislative framework to provide for such differences.

To meet some of these issues, Federal Express in essence suggests that all carriers could apply for an exemption. It does seem somewhat curious to suggest that carriers holding a certificate may apply for an exemption pending consideration of their existing certificate. This would lead to an utterly chaotic regulatory situation for cargo service which could also affect passenger service.

It becomes obvious that the bill opens a Pandora's box of problems which far outweigh the special benefit it would confer on Federal Express.

The bill provides little protection for shipper rights and needs. It permits special applicants to circumvent the normal certification procedures and the public protection requirements which certificated carriers have to meet.

The certification process in title IV of the Federal Aviation Act is intended to assure the public that all of the elements of public convenience and necessity are met, and that those who provide air transportation are fit, willing, and able to do so. The determinations necessary to provide these assurances cannot be effectively made without examining pertinent facts and circumstances in a true evidentiary hearing where there is an opportunity for cross-examination by opposing parties.

H.R. 14623 undermines the validity of the certification process. The intent of the bill is to permit the Board to confer immediately the benefits of certification to an applicant for an all-cargo certificate,

pending certification, before subjecting the applicant to the searching scrutiny of the certification process.

As we pointed out, the Board would apparently retain the discretion under the bill to determine what, if any, of the obligations normally associated with certification would be imposed on the applicant pending consideration of the certificate application.

However, the Board would be precluded from imposing on the applicant at least one key obligation which is essential in order to assure that all of the public interest provisions of title IV of the act will be satisfied; that is, the obligation to show that (a) the public convenience and necessity require the certification, and (b) that the applicant is fit, willing, and able to perform the transportation authorized.

These and the other public protection features were regarded by Congress as so essential that the Board's ability to bypass them through use of a section 416 exemption was narrowly confined. The broadening of section 416 should not be considered lightly. It should not now be amended to permit one certificate applicant or an entire class of applicants to effectively circumvent the basic certification requirements of the act by obtaining summary Board approval to provide air transportation pending "consideration" of certification. There is no justification for such a major deviation from the guiding purposes and standards of the act.

Grant of the authority proposed in the bill would constitute a significant weakening of the act by prejudicing and subordinating basic certification principles. The Board recognized the essentially of the certification process when it denied the application of Federal Express for a permanent exemption from certification requirements. The Board found that such an exemption would be contrary to the broader purposes and standards of the act, but promised prompt and careful consideration of any appropriate application filed by Federal Express.

A portion of the Board's decision of December 8, 1975, of special pertinence to this issue—I will read only those portions that are underlined, but the whole section is worth reading:

Upon consideration of the pleadings and all the relevant facts, we have concluded that Federal Express' proposal is not appropriate for grant under the exemption provisions of section 416 of the Act. It is well established that the Act contemplates a basic framework of certificated air service. Federal Express' proposal involves the use of five DC-9-15 aircraft, each having a maximum payload of over 24,000 pounds, to be operated on routings serving 10 major airports across the country and transporting freight in numerous major markets now served by certificated air carriers. The large traffic growth which has been experienced by the carrier is a result of its marketing efforts and expanded service, and it appears that such growth trends are likely to continue so that the carrier's operations will expand even further in the future. In our view, the certification process is the only appropriate means of appraising the type of long-term authorization of large-scale jet cargo operations in major markets which Federal Express contemplates. Under these circumstances, we cannot find that enforcement of the provisions of section 401 of the Act would be contrary to the public interest.

We would stress, in this regard, that it is by no means our intent to discourage the entry or growth of new cargo carriers or to impede the introduction of innovative services in the air transportation system. Our holding here is merely that *in the circumstances of this case, the authority requested is more appropriately a matter for examination under the normal certification procedures of section 401 of the Act.* In this regard the Board stands ready to give prompt and careful consideration to any appropriate application that might be filed by Federal Express pursuant to section 401 of the Act. (Italic supplied.)

In a certificate proceeding an applicant must demonstrate that it is "fit, willing, and able" to perform the air transportation proposed. This is one of several steps in the certification process designed to protect the public interest. H.R. 14623 provides for no such test. We do not suggest that the Board would fail to apply, in some manner, a test to determine whether the applicant is "fit, willing, and able." But, by suggesting that something less than the full certification process is in order, the bill would restrict the Board's consideration of this issue normally given by the Board in a certification proceeding. Finally, in juxtaposition with section 401, a court might conclude that section 415, as amended by the bill, would preclude the application of the "fit, willing, and able" test.

H.R. 14623 permits the Board to initially bypass normal fact-finding procedures. The problem this creates goes to the heart of the certification requirement itself since an applicant obtaining an exemption to operate while awaiting certification would undoubtedly make financial commitments for the purpose of exercising such an exemption. Such financial commitments made in expectation of ultimate certification could result in tremendous losses to the applicant if certification were ultimately denied and the exemption authority terminated. As a result, the Board would, consciously or unconsciously, be influenced by a desire not to render a decision ruining an applicant which has made such commitments.

While the Board must properly consider the factors enumerated in sections 102 and 401 in determining whether ultimately to certify the applicant receiving the exemption, the Board could be influenced improperly by a real and immediate financial investment consideration which bears no logical relation to the purposes of the act. Clearly, this would have the practical effect of permitting any applicant which gets its "foot in the door" to open the door all the way.

Thus, legislation such as H.R. 14623 would undermine the basic purpose of the act by effectively permitting certification on improper grounds and without a full determination of the issues.

Proponents of the bill complain about delay in the certification process at the Board. This was the justification given for broadening the Board's power to bypass certification.

Most would agree that one of the major problems inherent in regulation is the delay which attends so many Board activities and decisions. We have advocated the imposition of specific regulatory time limits to reduce delay. We believe this approach is the only effective way to reduce regulatory lag and resolve certification delay questions.

However, the solution proposed in this bill would increase, rather than decrease, regulatory lag. Once the summary exemption is granted, neither the applicant nor the Board would have a real incentive to expedite the certification process. No legislative modification which would increase regulatory lag should be considered unless it also secures a clear and necessary public benefit otherwise unobtainable. No such benefit is evident.

We find it perplexing that the proponent of this bill has not yet filed an application for a certificate although almost 8 months have passed since the Board's denial of the exemption authority sought, and almost a year since the exemption was sought.

One must wonder why Congress is now being requested to pass special legislation when the normal procedure available to all applicants has not been pursued.

The provisions of the Federal Express bill, H.R. 14623, are inconsistent with Federal Express' stated opposition to certification and its refusal to even file an application for a certificate.

In previous testimony, Federal Express has stated flatly :

... the basic reason we have not taken this step (of applying for a Certificate) is that it is totally against our beliefs as to what should be the regulatory framework for air cargo ... open entry and pricing freedom.

Elsewhere, it was stated that :

... the public interest is best served by a simple licensing procedure, which has only fitness as the determinant of entry and with freedom of pricing with only basic protection against predatory rates as a limit.

Thus, Federal Express opposes the very certification on which the proposed exemption authority depends. When this situation is combined with the company's failure to even file an application for a certificate, one begins to wonder what the true goal of Federal Express really is.

Is it not obvious, based on the record, that, once the exemption is obtained, there will be no interest on the part of the applicant, or the Board, in pursuing the certificate? Let none be confused into thinking that the phrase "pending consideration of the certificate" has any significance. Its meaning is unclear and it is unlikely to be observed at all.

The more the ramifications of this bill are explored, the more widespread and disturbing they become. The Board supports the bill because it is consistent with its proposal to completely deregulate cargo service. That may well be the real reason: "Does the bill lead immediately to cargo deregulation and should such a step be taken?" The answer is obvious: "That is clearly backdoor deregulation and is contrary to the best interest of shippers, the Postal Service, and the public."

Where do you wind up once you start down this road?

[Attachments referred to follow:]

Scheduled Airlines Offer a Wide Variety
of Nationwide Air Freight Services

The U. S. airlines operate 12,000 scheduled flights daily in interstate air transportation. Virtually, all of these flights carry air freight. In 1975, the nation's airlines transported over 45 million shipments of domestic freight weighing over 2 million tons, and producing over \$750 million in revenue.

As a result of 50 years of air freight experience, combined with an \$18 billion investment in aircraft and ground facilities, the scheduled airlines offer a wide range of air freight services to meet the needs of the occasional customer, the shipper of small packages, the air freight forwarder, the industrial community and the shipper who must move highway-size containers.

Because of the vast range of service needs, it is necessary for the scheduled airline industry to offer a "super market" of cargo services. Such offerings afford the customer the opportunity to select the service that fully meets his needs.

These services are offered through 600 U. S. airports, and extend to more than 10,000 other communities as a result of combined use of 630 air freight trucking specialists of Air Cargo, Inc. (ACI). ACI is the airline ground service organization through which pick-up and delivery service is arranged, and through which is offered full "door-to-door" air freight services nationwide.

With the demise of REA Air Express most of the scheduled airlines instituted new priority air freight services. They offer reserved space, guaranteed on-line flights designated by the shipper. This service is available for shipments of any size, weight or number of pieces (within aircraft limitations). Service can be arranged by contacting the airline directly. This is a door-to-door service under which delivery normally is made the next morning. Same day service is provided depending upon time of day and length of flight.

To meet the additional needs of priority service for small packages, the airlines also offer, usually at a flat rate, "over-the-counter" small package service. Shipments can be brought to the airport ticket counter up to 30 minutes before flight departure and picked up at destination 30 minutes after flight time. This provides a "same day"

service. This service is limited to packages weighing up to 50 lbs. and measuring up to 90 inches in outside dimension. In 1975, the airlines carried 1.3 million shipments in this over-the-counter small package service.

Building upon the success of small package service, some airlines have begun giving shippers the option of pick-up and delivery for complete door-to-door service. Such pick-up and delivery service is accomplished up to 90 minutes before departure and after arrival.

Despite the rapid growth in "priority" type services, most air cargo continues to move in regular air freight -- as bulk freight or in containers--in the bellies of combination aircraft, as well as in freighters. Regular air freight service which costs less than priority air freight is a nationwide interline service accommodating shipments from small package to full container loads. Complete door-to-door service is available and a single phone call to any airline can accomplish shippers needs.

The nation's airlines offer many additional shipper services including:

- (1) Containerization, which includes container incentive rates, intermodal programs, and shipper use of airline units;
- (2) Specific Commodity Ratings;
- (3) Accessorial Services, which includes signature service, assembly and distribution, and protection services for high value shipments.

To facilitate these services the scheduled airlines function under uniform industry handling procedures and documents. They make use of computer-backed information systems for improved monitoring and tracing of shipments.

Today's fleet of aircraft numbers over 2,000 airplanes including 75 all-cargo aircraft with a payload capacity ranging from 26,000 lbs. to 200,000 lbs. and accounting for 969 flight departures per week.

Further enhancing cargo airlift capacity are 293 wide-body aircraft (747's, DC-10's and L-1011's) which can accommodate about two-thirds of the cargo load of a conventional jet freighter even when carrying a full load of passengers and baggage.

The scheduled airline fleet continues to make prime cargo time departures at night. For example, there are approximately 7,500 scheduled departures per week between the hours of 8:00 p.m. and 3:30 a.m.

To fill the need of the smaller communities not served directly by the scheduled airline network, the airlines work jointly with air commuters and air taxi operators. Through the standard Airline Air Taxi Interline Air Freight Traffic Agreement (which is open to any air taxi operator conducting operations under Part 298 of Economic Regulations of the Civil Aeronautics Board), the airlines offer any community access to the nationwide air freight system, through direct interline exchange of traffic. Attached to my testimony is a list of participating parties to this agreement as of December 1, 1975. (Attachment B)

Thus it is clear that the scheduled airlines have developed a nationwide network of cargo services designed to meet the needs of shippers in communities large and small.

LISTING OF PARTICIPATING PARTIES TO
AIRLINES AIR TAXI INTERLINE AIR FREIGHT TRAFFIC AGREEMENT

<u>PARTY TO AGREEMENT</u>	<u>PARTY CODE</u>	<u>NON PARTICIPATING MEMBER</u>
AIR CHARTER WEST (ZOOM ZOOM) P. O. Box 2446 Airport Station Oakland, Calif. 94614 *1/22/75	(ZO)	AA, TW
AIR IDAHO P. O. Box 64 Joslin Field Twin Falls, Idaho 83301 *9/18/70	(TJ)	AA, BN, NA
AIR KENTUCKY Owensboro Aviation Box 901 Owensboro, Kentucky 43201 *11/26/74	(KN)	NA, UA, WA
AIR NEW ENGLAND Post Office Box 270 Logan International Airport East Boston, Mass. 02128 *7/5/70	(NE)	4, BN, WA
AIR TRANS AIRLINES Lang Freight Terminal Logan International Airport East Boston, Mass. 02128 *4/15/74		NE, AA, BN, TW
AIR WISCONSIN, INC. Outagamie Airport Appleton, Wisconsin 54911 *5/6/60	(ZW)	NA
ALLEGHENY AIRLINES, INC. National Airport Washington, D. C. 20001 *9/18/70	(AL)	DQ
ALPINE AIRCRAFT CHARTERS, INC. dba/Alpine Air Freight P. O. Box 7191 Park Hill Station Denver, Colorado 80207 *9/30/74	(7)	AA, BN, NA, TW
ALTAIR AIRLINES, INC. Post Office Box 5346 Philadelphia International Airport Philadelphia, Penna. 19153 *5/6/70	(AK)	BN, WA
AMERICAN AIRLINES, INC. 633 Third Avenue New York, N. Y. 10017 *6/21/70	(AA)	ZO, TJ, 4, 7, DQ, DE, 3, HG, ZQ, 1, ZJ, 6, 5, YR, ZY, SL, XU, FW, JV
APOLLO AIRWAYS, INC. 404 William Moffett Rd. Goleta, Calif. 93017 *11/3/75	(ID)	TW
ASTRO AIRWAYS CORP. Grider Field P. O. Box 7007 Pine Bluff, Ark. 71601 *12/30/75	(JW)	

*Date entered Agreement
Issued - December 1, 1975

<u>PARTY TO AGREEMENT</u>	<u>PARTY CODE</u>	<u>NON PARTICIPATING MEMBER</u>
BRANIFF INTERNATIONAL P. O. Box 35001 Dallas, Texas 75235 *4/12/71	(BN)	TJ, NE, 4, 7, AK, DE, GS, 1, MB, 6, YR, ZY, FS, XU, HX, CG
COCHISE AIRLINES Tucson International Airport Tucson, Arizona 85706 *3/20/72	(DP)	EA, WA
DAVIS AIRLINES, INC. P. O. Box 3968 Bryan, Texas 77801 *9/18/70	(ZK)	WA
DELTA AIRLINES, INC. Continental Colony Parkway Atlanta, Ga. 30320 *5/6/70	(DL)	- - -
DOWNEAST AIRLINES P. O. Box "C" Rockland, Maine 94841 *5/6/70	(DE)	AA, BN, WA
EASTERN AIRLINES, INC. Miami International Airport Miami, Florida 33148 *5/6/70	(EA)	DP, XJ, IU, YR, GM, ZY, FW
THE FLYING TIGER LINE, INC. 7401 World Way West International Airport Los Angeles, Calif. 90009 *5/6/70	(FT)	- - -
GEORGIA AIR FREIGHT Atlanta International Airport AMF P. O. Box 45143 Atlanta, Ga. 30320 *10/27/75	(GS)	BN
GOLDEN WEST AIRLINES, INC. P. O. Box 1877 Newport Beach, Calif. 92663 *11/11/74	(GW)	- - -
GREAT WESTERN AIRLINES, INC. Division of Ross Aviation Route 5, Riverside Airport Tulsa, Oklahoma 74107 *7/8/74	(DQ)	AA, AL, NA, TW
GULF COAST AVIATION, INC. Municipal Airport Gulfport, Mississippi 39501 *3/20/72		AA, TW, WA
HARBOR AIRLINES, INC. Post Office Box 775 Oak Harbor, Wash. 98277 *7/5/71	(HG)	AA, NA, TW, WA
LAWRENCE AVIATION, INC. Lawrence Municipal Airport RFD No. 3 Lawrence, Kansas *9/16/74	(ZQ)	AA, NA

*Date entered Agreement
Issued - December 1, 1975

<u>PARTY TO AGREEMENT</u>	<u>PARTY CODE</u>	<u>NON PARTICIPATING MEMBER</u>
LOMPOC FLIGHT SERVICE, INC. P. O. Box 998 Lompoc, Calif. 93436 *6/21/70	(1)	AA, BN, TW
LOS ANGELES HELICOPTER AIRLINES 5436 West Imperial Highway Los Angeles, Calif. 71601 *1/9/76	(QW)	
MESABA AVIATION Division of Halvorson of Duluth, Inc. 2002 Airport Road Grand Rapids, Minn. 55744 *12/29/73	(XJ)	AA, EA, NA, TW
METRO AIRLINES P. O. Box 58608 Houston, Texas 77058 *5/6/70	(HY)	WA
METRO FLIGHT P. O. Box 58608 Houston, Texas 77058 *5/6/70	(FY)	WA
MIDSTATE AIR COMMUTER Box 277 Marshfield, Wisconsin 544449 *5/6/70	(IU)	EA, NA
MISSISSIPPI VALLEY AIRWAYS, INC. 2809 Fanta Reed Road La Crosse, Wisconsin 54601 *12/25/70	(XV)	NA, WA
MOUNTAIN AIR TRANSPORT, INC. Old Pan Am Building Post Office Box 2504 San Francisco International Airport South San Francisco, Calif. 94080 *8/26/74	(MB)	BN, WA, TW
NATIONAL AIRLINES, INC. Box 2055 Airport Mail Facility Miami, Fla. 33159 *12/1/75	(NA)	TJ, KN, ZW, 7, DQ, HG, ZQ, XJ, IU, XV, 6, JV, 2, PP, GM, MJ, DN, FS, XU, FW
NEW BORN WINGS Sarasota-Bradenton Airport P. O. Box 13061 Sarasota, Fla. 33578 *5/16/75	(5)	AA, TW, WA
NEW ULM FLIGHT SERVICE, INC. Route #1 New Ulm, Minnesota 56073 *9/15/72	(6)	AA, BN, NA, TW
NORTH CAY AIRWAYS, INC. International Airport San Juan, Puerto Rico 00913 *6/14/73	(JV)	AA, NA, WA
NORTH CENTRAL AIRLINES, INC. 7500 Northliner Drive Minneapolis, Minn. 55450 *5/6/70	(NC)	- - -

*Date entered Agreement
Issued - December 1, 1975

<u>PARTY TO AGREEMENT</u>	<u>PARTY CODE</u>	<u>NON PARTICIPATING MEMBER</u>
NORTHWEST AIRLINES, INC. Minneapolis-St. Paul International Airport St. Paul, Minnesota 55111 *5/6/70	(NW)	ZY
ORTNER AIR SERVICE, INC. R. D. #1 Wakemen, Ohio 44889 *4/12/71	(2)	NA, TW, UA, WA
PHILLIPS AIRLINES, INC. Joe Phillips Michigan City Airport Michigan City, Indiana 46360 *4/4/74	(PF)	NA, UA
PIEDMONT AVIATION Smith Reynolds Airport Winston-Salem, N. C. 27102 *1/5/74	(PI)	- - -
PILGRIM AVIATION & AIRLINES, INC. dba/Pilgrim Airlines P. O. Box 1743 New London, Conn. 06320 *4/28/75	(PM)	WA
PINEHURST AIRLINES, INC. P. O. Box 911 Pinehurst, N. C. 28374 *3/25/74	(MQ)	AA, BN, TW
RIO AIRWAYS, INC. Post Office Box 636 Killeen, Texas 76541 *9/18/70 *	(XO)	WA
ROYALE AIRLINES, INC. Shreveport Regional Airport Shreveport, La. 71109 *3/6/73	(OQ)	WA
SCENIC AIRLINES, INC. McCarran International Post Office Box 11227 Las Vegas, Nevada 89111 *9/24/73	(YR)	AA, BN, EA
SCHEDULED SKYWAYS, INC. Post Office Box 1344 Drake Field Fayetteville, Ark. 72701 *2/17/73	(GM)	EA, NA, WA
SEDALIA MARSHALL BOONVILLE STAGE LINE, INC. (S.M.B.) 5805 Fleur Drive Des Moines, Iowa 50321 *5/6/70	(MJ)	NA, WA
SKYSTREAM AIRLINES, INC. Plymouth Municipal Airport Plymouth, Indiana 46563 *9/18/70	(DN)	NA
SKYWAY AIRLINES, A Division of Skyway Aviation, Inc. Post Office Box 67 Fort Leonard Wood, Missouri 65473 *5/6/70	(ZY)	AA, BN, EA, NW, WA

*Date entered Agreement
Issued - December 1, 1975

<u>PARTY TO AGREEMENT</u>	<u>PARTY CODE</u>	<u>NON PARTICIPATING MEMBER</u>
SOUTH CENTRAL AIR TRANSPORT 127 South Commerce Street Post Office Box 567 Natchez, Mississippi 39120 *8/26/74	(CG)	BN, WA
SOUTHEAST AIRLINES, INC. Post Office Box 592498 A.M.F. Miami, Florida 33159 *4/12/71	(SL)	AA, WA
SUMMIT AIRLINES, INC. International Airport Philadelphia, Penna. 19153 *6/20/72	(DU)	WA
SUN VALLEY KEY AIRLINES AMF Box 22065 Salt Lake City, Utah 80217 *5/6/70	(FS)	BN, NA
TRANS MO AIRLINES Post Office Box 831 Memorial Airport Jefferson City, Mo. 65101 *5/6/70	(XU)	AA, BN, NA, UA, WA
TRANS WORLD AIRLINES, INC. 605 Third Avenue New York, N. Y. 10016 *4/14/75	(TW)	ZO, 4, 7, ID, DQ, 3, HG, 1, XJ, MB, 5, 6, 2, FW
UNITED AIRLINES, INC. Post Office Box 66100 Chicago, Illinois 60666 *5/6/70	(UA)	2, PP, XU, KN
VIRGINIA AIR CARGO CO., INC. Post Office Box 5492 Charlottesville, Va. 22902 *9/18/70	(HX)	BN, WA
WESTERN AIR LINES, INC. Post Office Box 92005 World Way Postal Center Los Angeles, Calif. 90009 *6/21/70	(WA)	NE, AK, DP, ZK, DE, 3, HG, HY, FY, MB, 5, JV, 2, PM, XO, OQ, GM, MJ, ZY, SL, XU, DU, HX, XV, KN, CG
WRIGHT AIR LINES, INC. Burke Lakefront Airport Cleveland, Ohio 44114 *12/25/70	(FW)	AA, EA, NA, TW
ZOCM ZOOM	(ZO)	See Air Charter West

DECODING OF PARTICIPATING MEMBERS

AA - American Airlines, Inc.	NC - North Central Airlines, Inc.
AK - Altair Airlines, Inc.	NE - Air New England
AL - Allegheny Airlines, Inc.	NW - Northwest Air Lines, Inc.
BN - Braniff International	OQ - Royale Airlines, Inc.
CG - South Central Air Transport	PI - Piedmont Aviation
DE - Downeast Airlines	PM - Pilgrim Aviation & Airlines, Inc.
DL - Delta Air Lines, Inc.	PP - Phillips Airlines, Inc.
DN - Skystream Airlines, Inc.	QW - Los Angeles Helicopter Airlines
DP - Cochise Airlines	SL - Southeast Airlines, Inc.
DO - Great Western Airlines, Inc.	TJ - Air Idaho
DU - Summit Airlines, Inc.	TW - Trans World Airlines, Inc.
EA - Eastern Air Lines, Inc.	UA - United Airlines, Inc.
FS - Sun Valley Key Airlines	WA - Western Air Lines, Inc.
FT - The Flying Tiger Line, Inc.	XJ - Mesaba Aviation
FW - Wright Air Lines, Inc.	XO - Rio Airways, Inc.
FY - Metro Flight Airlines	XU - Trans Mo Airlines
GM - Scheduled Skyways, Inc.	XV - Mississippi Valley Airways, Inc.
GS - Georgia Air Freight	YR - Scenic Airlines, Inc.
GW - Golden West Airlines, Inc.	ZK - Davis Airlines, Inc.
HG - Harbor Airlines, Inc.	ZO - Air Charter West (Zoom Zoom)
HX - Virginia Air Cargo Company	ZQ - Lawrence Aviation, Inc.
HY - Metro Airlines (Houston)	ZW - Air Wisconsin, Inc.
ID - Apollo Airways	ZY - Skyway Aviation
IU - Midstate Air Commuter	1 - Lompoc Flight
JV - North Cay Airways	2 - Ortner Air Service, Inc.
JW - Astro Airways Corp.	3 - Gulf Coast Aviation, Inc.
KN - Air Kentucky	4 - Air Trans Airlines
ME - Mountain Air Transport	5 - New Born Wings
MJ - Sedalia-Marshall-Boonville Stage Line	6 - New Ulm Flight Service, Inc.
MQ - Pinehurst Airlines, Inc.	7 - Alpine Aircraft Charters, Inc.
NA - National Airlines	

*Date entered Agreement
 Issued - December 1, 1975

COMMENTS OF THE AIR TRANSPORT ASSOCIATION
ON ISSUES RAISED BY THE STATEMENTS AND DATA
PRESENTED BY FREDERICK W. SMITH, CHAIRMAN OF THE BOARD,
FEDERAL EXPRESS CORPORATION
BEFORE THE SENATE AND HOUSE AVIATION SUBCOMMITTEES
1976

1. ISSUE - "The issue at hand, broadening Federal Aviation Regulations in the neglected area of air cargo..."

ANSWER - The "issue" is whether special interest legislation should be passed by Congress to change existing law and Civil Aeronautics Board regulations to meet the special pleadings of one company even though special interest legislation creates discrimination and raises many unanswered questions about regulation policy.

2. ISSUE - "The issue...is of vital interest to our company, our employees and our shippers." (underscoring supplied)

ANSWER - The issue is also of "vital interest" to all shippers, all airlines, all air freight forwarders, all air taxi operators, all air cargo commuters, all air freight motor carriers and to the millions of postal patrons. They want to know what impact the special treatment proposed to be extended to Federal Express would have on them.

3. ISSUE - "...neglected area of air cargo."

ANSWER - This uninformed and inaccurate comment is belied by the very fact of the nationwide network of 32 scheduled air carriers, hundreds of commuter airlines and air taxi operators, over 300 air freight forwarders, and hundreds of supporting air freight motor carriers furnishing a variety of priority and non-priority air cargo services, day and night, seven days a week to large and small shippers at more than 13,000 points served by interline and intermodal agreements.

3. (cont'd.) In 1975 over 250,000 shippers used this system to deliver over 50,000,000 shipments consisting of more than 150,000,000 pieces. In addition, this system was used by the U. S. Postal Service to deliver more than 200,000,000 priority air parcel post packages, 57% of which receive overnight delivery.

4. ISSUE - "Services these shippers need: door-to-door service; late afternoon pickup; overnight transportation to all points with next morning delivery; documented and controlled movement of the goods shipped."

ANSWER - This statement is inaccurate. Some shippers want such service but many shippers have other needs. The statement is belied by extensive shipper usage of the large variety of cargo services available nationwide from the scheduled carriers. Consider the following:

- (a) Shippers have varying needs - some want same day delivery, some next morning delivery and, for some, 48 hour delivery is all that is required.
- (b) The scheduled airlines' over-the-counter small package service moves over a million shipments a year on shipper-designated flights, mostly in the daytime, with service measured in terms of hours.
- (c) The scheduled airlines offer rate incentives for tender of freight in containers during daylight hours and many shippers satisfy their needs with this type of service.
- (d) United Parcel Service--The world's largest private handler of packages has an expedited service with 48 hour delivery which handles 25,000 daily shipments. This is about 1% of its annual total of 900,000,000 shipments which move primarily by surface carriers, apparently satisfying these shippers needs.
- (e) Federal Express itself offers second day delivery for its standard service.

4. (cont'd.) (f) One critical requirement for any transportation company to provide overnight service is timely tender of the shipment to meet available transportation schedules. For example, Federal Express has strict time limits for tender of shipments and recommends calls for pick-up be made before noon.
- (g) Although the scheduled air carriers have offered pick-up and delivery service for over 30 years, the percentage of shipments utilizing this service is only about 30%. Shippers like the option of pick-up and/or delivery with a separate charge. (Federal Express offers only a small discount for self delivery.)
- (h) All shipments of cargo anywhere in the world on scheduled airlines are documented and controlled by uniform and standard forms and procedures. Regular air freight shipments can be made to any destination in the world on one bill of lading.

5. ISSUE - "80% of all air shipments are originated from and/or are destined to cities other than the top twenty-five markets."

ANSWER - The opposite is true of the total airfreight picture since the top twenty-five airfreight markets generate more than 80% of the traffic.

The statement is also incorrect according to Federal Express' own submitted data.

An analysis of Federal Express' computer data contained in its testimony indicates that, in the February-March 1976 period, 46% of its average daily number of packages were from or to 23 major markets (see Attachment D). These 23 Federal Express origin and destination major market points are included in the scheduled airlines top twenty-five major markets.

5. (cont'd.) Attachment E is a list of top 25 airports ranked in order of freight ton miles enplaned by the scheduled airlines in 1975.

There is no question of scheduled airlines ability to satisfy shipper requirements between these major points.

Also using Federal Express data, 26 origin cities originate 10 or more pieces a day to 36 destination cities. (Attachment F) In 90% of these markets the scheduled airlines have equal or better service with departures after 8:00 p.m. The remaining 10% of these volume markets can be served by the scheduled airlines overnight with departures between 5:50 p.m. and 8:00 p.m. (Forty of Federal Express' 77 cities have departure times before 10:00 p.m. and seventeen have departure times before 8:00 p.m.)

6. ISSUE - "Airfreight service provided by combination flights is not in the public interest."

ANSWER - The statement reflects incredible absurdity, 51% of the almost six billion revenue ton miles of air cargo (freight, express and mail) carried by the U. S. scheduled airlines in 1975 was carried in combination aircraft. This service, plus the all-cargo service, affords shippers and postal patrons the convenience and timeliness of around-the-clock, seven days a week cargo service. (See Attachment G)

7. ISSUE - Reference was made to the special characteristics of many air cargo shipments "such as hazardous materials and drugs." "The U. S. airline system has utterly failed to adequately meet this critical market--caused by the incompatibility of passenger operations with shipper's basic needs."

ANSWER - The statement is also erroneous and misleading.

- (a) The scheduled air carriers offer air transportation service for all kinds and sizes of cargo including hazardous materials, drugs, live animals, fresh fruits, vegetables, flowers, seafood, printed matter, auto parts, electrical equipment, wearing apparel, machinery, and others of endless variety.

7. (cont'd.) (b) Scheduled air freight services carry many categories of air freight and many heavy items of a type which Federal Express will not accept.
- (c) Federal Express alleges that it is the largest carrier of hazardous materials. There is no evidence to support such a statement. All scheduled airlines carry hazardous materials including eteological agents, drugs and radioactive materials under federal regulation.
8. ISSUE - "We recently have had to discontinue live animal service...This is truly unfortunate since our main deck pressurization and climate control...is significantly better for animals than the lower baggage holds of passenger aircraft."
- ANSWER - The scheduled airlines have transported live animals for many years. In 1975 they safely carried over 1,500,000 live animal shipments.
9. ISSUE - "Almost 90% of the total U. S. certificated airline fleet is not flying between the hours of 9:00 p.m. and 7:00 a.m."
- ANSWER - The statement is erroneous and misleading.
- (a) Many scheduled flights originating earlier do not terminate until after 9:00 p.m. Perhaps the statement was intended to say that almost 90% of scheduled departures occur before 9:00 p.m. and after 7:00 a.m.
- (b) Federal Express is to be thanked for pointing out that about 1,000 of the scheduled airlines daily departures occur after 9:00 p.m. All of the more than 200 aircraft which scheduled airlines operate after 9:00 p.m. offer cargo service to and from various cities. Many such flights are all-cargo, but some are in combination aircraft.
10. ISSUE - "Federal Express wastes \$25,000 per day because it must fly multiple small aircraft over certain lanes where one large aircraft could fulfill the same requirement."

10. ANSWER - (a) If shipments between small cities constitute 80% of its business as Federal Express says, exactly how will larger planes serve the small cities better? Or does Federal Express plan a major shift of operations into the larger cities? Has Federal Express furnished information on the additional cost effect of operating larger aircraft on short hauls to small cities? Rather than Congress assuming the responsibility, based on unsubstantiated statements, of evaluating such factors, this type of information should be brought out in an evidentiary hearing before the Civil Aeronautics Board--the regulatory agency established by Congress for this purpose.

(b) Federal Express incurs fuel waste by circuitous routing of its shipments since all parcels must go to Memphis for transshipment. For example, a parcel going 955 miles from Seattle to Los Angeles must travel 3,491 miles to get there via Memphis. There would be less waste if the parcel were flown straight to Los Angeles as the scheduled airlines do!

11. ISSUE - "All-cargo service has been disastrously reduced."
"Archaic regulations have been the major cause of the dismal record of all-cargo operations in this country."

ANSWER - (a) These statements are erroneous and misleading in every respect. The question should be "what has happened to air cargo service?" not "what has happened to all-cargo operations?"

(b) Scheduled carriers growth in available ton miles of air cargo service over the last 12 years has been dramatic with volume increases in virtually every year except for slight dips in 1974 and 1975. (See Attachment H) This cargo capacity of almost 18 billion available ton miles continues its growth in 1976.

(c) Expanded cargo capability, resulting from the addition of widebody air freighters and other aircraft, has offset reduction in the number of QC, or quick change, aircraft which some carriers

11. (cont'd.) operated in volume a few years ago on an experimental basis.
- (d) While the airlines move less than 1% of the total tonnage of U. S. freight, the goods transported in air freight represent 25% of the total value of all shipments. This represents a substantial contribution to U. S. commerce.
12. ISSUE - "From a high of some 50 points receiving all-cargo service shortly after World War II... only 21 domestic airports receive all-cargo service."
- ANSWER - Wrong--forty-seven (47) airports are served by the scheduled airlines with all-cargo service today; 653 airports are served with all-cargo and combination aircraft.
13. ISSUE - "Federal Express services are cheaper than competitors."
- ANSWER - This is incorrect. Air parcel post rates are much lower than Federal Express. Airport to airport small package over-the-counter rates of the scheduled airlines for shipments in the 30 to 50 pound range are lower than Federal Express. Airline priority air freight and regular air freight rates for all shipments above 30 pounds are lower. Some freight forwarder rates are lower. See Attachment I for a table for "Rate Comparison" for a 30 pound shipment.
14. ISSUE - "Federal Express Public Service Goals"--"hold or reduce rates."
- ANSWER - A little-discussed fact about Federal Express growth (aside from its coincidence with the demise of Railway Express Agency) is its history of attracting business with exceptionally low non-competitive rates followed by a succession of rate increases. Since 1973 when Federal Express began, its rates on its prime service "Priority One" have doubled.
15. ISSUE - Diversion - "Over 30% of its traffic has been generated by virtue of its unique service."
- ANSWER - This means 70% of Federal Express traffic, representing millions of dollars of revenue, has been diverted from the scheduled carriers.

15. (cont'd.) Such diversion weakens the capability of the scheduled air carriers to maintain and expand their fleet of passenger and cargo aircraft dedicated to military call-up as part of the Civil Reserve Air Fleet.

Such aircraft, particularly all-cargo or convertible aircraft, provide an emergency cargo capability heavily depended upon by the military according to General Paul K. Carlton, Commander of the Military Airlift Command, in testimony before the House Armed Services Committee earlier this year.

Attachment D

Federal Express data shows that at least 46% of its shipments were to or from 23 major markets.

FEDERAL EXPRESS

AVERAGE DAILY # OF PACKAGES

FEBRUARY - MARCH, 1976

<u>CITY</u>	<u>FROM</u>	<u>TO</u>	<u>TOTAL</u>
Atlanta	131.6	270.8	402.4
Boston	735.0	400.6	1,135.6
Seattle	626.1	128.1	754.2
Los Angeles/BUR/LGB	947.2	690.8	1,638.0
Cleveland	263.9	244.7	508.6
Dallas	526.1	368.7	894.8
Denver	157.3	202.2	359.5
Detroit	257.3	285.1	542.4
Newark	668.9	423.8	1,092.7
Houston	188.2	266.0	454.2
Washington, D. C.	237.0	351.2	588.2
New York City	715.2	760.8	1,476.0
Miami	186.6	296.8	483.4
Kansas City	69.4	177.3	246.7
Minneapolis	335.6	220.6	556.2
New Orleans	54.4	123.8	178.2
Oakland	212.7	251.0	463.7
Chicago	837.7	625.9	1,463.6
Philadelphia	396.5	348.9	745.4
Phoenix	97.1	168.0	265.1
Pittsburgh	157.2	145.4	302.6
St. Louis	232.6	228.8	461.4
Tampa	51.8	108.8	160.6
TOTAL	8,085.4	7,088.1	15,173.5
Percentage based on average of 16,500 packages daily	43%	49%*	46%*

Federal Express top 23 markets are included in the following list of scheduled airlines 125 major cargo markets.

Attachment E

TOP 25 AIRPORTS
RANKED IN ORDER OF
FREIGHT TONS ENPLANED
(DOMESTIC & INTERNATIONAL)
1975

	<u>Freight Tons Enplaned</u>	<u>Aircraft Departures</u>
Chicago	348,594	276,723
John F. Kennedy	344,813	97,394
Los Angeles	312,927	134,119
San Francisco	194,882	107,233
Atlanta	114,631	197,347
Miami	112,586	76,671
Seattle-Tacoma	97,521	50,006
Detroit	87,226	78,217
Boston	74,198	87,161
Dallas-Fort Worth	70,282	136,737
Honolulu	67,345	38,157
Philadelphia	60,857	69,404
Newark	56,213	62,924
Denver	52,861	98,179
Cleveland	51,173	57,283
Minneapolis	47,337	62,277
Houston	39,783	52,918
La Guardia	32,013	118,341
St. Louis	29,187	85,512
Pittsburgh	22,344	87,132
Washington National	21,682	96,677
Kansas City	19,545	51,867
New Orleans	16,026	40,519
Tampa	13,921	45,851
Phoenix	11,559	42,956

FEDERAL EXPRESS ORIGIN & DESTINATION FOR TEN OR MORE PACKAGES

FROM ATLANTA TO:	Ft. Lauderdale Chicago Philadelphia	
FROM HARTFORD TO:	Los Angeles Cleveland	
FROM BOSTON TO:	Baltimore Los Angeles Cleveland Dallas Denver Detroit Newark Houston Washington, D. C. Indianapolis New York City Little Rock Memphis	Miami Kansas City Minneapolis San Francisco Chicago Philadelphia Phoenix Raleigh-Durham San Antonio San Jose Salt Lake City St. Louis
FROM NASHVILLE TO:	New York City	
FROM BURBANK/ LOS ANGELES TO:	Boston Dallas Denver Detroit Newark Houston	New York City Miami Oakland/San Francisco Chicago Philadelphia
FROM CLEVELAND TO:	New York City Los Angeles Miami Philadelphia	
FROM CINCINNATI TO:	New York City San Jose/San Francisco	

FROM DALLAS TO:	Newark New York City Memphis Oakland/San Francisco Chicago Philadelphia San Jose/San Francisco	
FROM DENVER TO:	New York City	
FROM DETROIT TO:	New York City Chicago	
FROM NEWARK TO:	Atlanta Boston Burbank/Los Angeles Dallas Detroit Houston Washington, D. C. Indianapolis Memphis	Kansas City Minneapolis Oakland/San Francisco Chicago Phoenix San Antonio St. Louis
FROM HOUSTON TO:	New York City Los Angeles	
FROM WASHINGTON, D. C. TO:	Boston Houston New York City Los Angeles Chicago	
FROM MEMPHIS TO:	Chicago New York City	
FROM MIAMI:	New York City Chicago	

FROM NEW YORK
CITY TO:

Atlanta
Boston
Los Angeles
Cleveland
Charlotte
Cincinnati
Dallas
Denver
Des Moines
Detroit
Houston
Washington, D. C.
Indianapolis
Los Angeles

Memphis
Miami
Kansas City
Milwaukee
Minneapolis
Oakland/San Francisco
Chicago
Philadelphia
Phoenix
Pittsburgh
Louisville
San Jose/San Francisco
St. Louis

FROM LONG BEACH/
LOS ANGELES TO:

Atlanta
Boston
Cleveland
Dallas
Denver
Detroit
Newark

Houston
Washington, D. C.
New York City
Miami
Chicago
Philadelphia
St. Louis

FROM KANSAS CITY
TO:

Chicago

FROM OAKLAND TO:

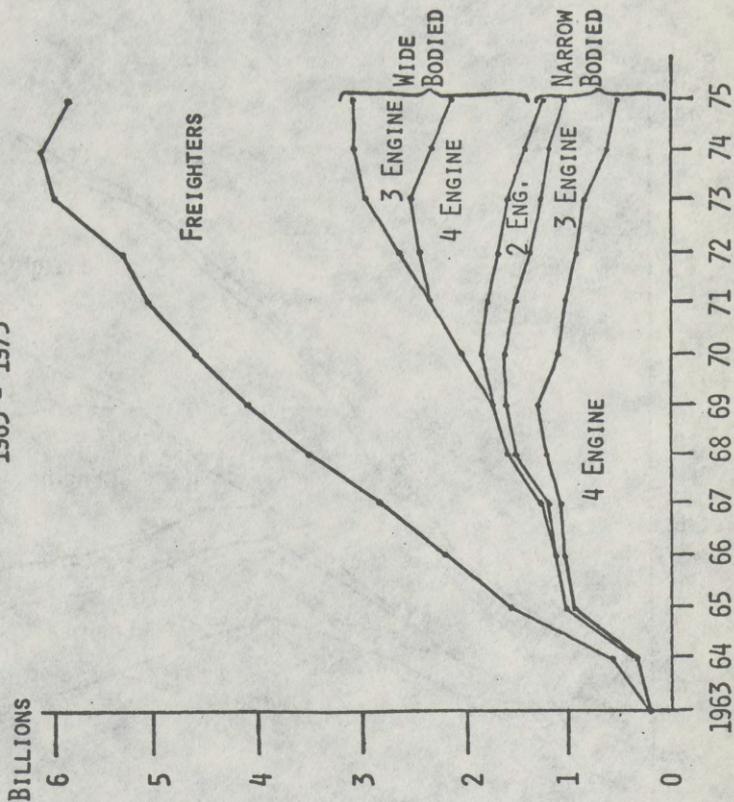
New York City
Newark
New York

FROM MINNEAPOLIS
TO:

Boston
Los Angeles
Dallas
Detroit
Newark
New York
Chicago

FROM CHICAGO TO:	Atlanta Baltimore Hartford Boston Seattle Los Angeles Cleveland Columbus Cincinnati Dallas Dayton Denver Detroit Newark	Houston Washington, D. C. New York City Los Angeles Memphis Miami Minneapolis Kansas City Oakland Philadelphia Pittsburgh San Jose/San Francisco St. Louis
FROM PHILADELPHIA TO:	Atlanta Boston Los Angeles Cleveland Dallas Houston	New York City Los Angeles Little Rock Miami Minneapolis Chicago
FROM PITTSBURGH TO:	New York City Chicago	
FROM ROCHESTER TO:	Los Angeles Dallas Newark Washington, D. C. New York City Chicago	
FROM ST. LOUIS TO:	New York City Chicago	
FROM SAN JOSE TO:	Boston Dallas Newark Washington, D. C.	New York City Pittsburgh Chicago

REVENUE TON MILES - CARGO SERVICE
 JET EQUIPMENT
 U.S. SCHEDULED AIRLINES
 1963 - 1975



RATE COMPARISON
30 POUND SHIPMENT (TAX INCLUDED)

FROM WASHINGTON, D. C.		FEDERAL EXPRESS SERVICES			U. S. SCHEDULED AIRLINE SERVICES		
TO:	Priority One	Standard Air	Courier Pak	Priority Air Freight (Air Express)	Regular Air Freight	Small Package Over-Counter	
DALLAS/FT. WORTH	\$41.21	25.08	<u>1/</u> N/A	21.85	16.80	29.40	
ATLANTA	37.10	23.59	<u>1/</u> N/A	17.75	13.65	26.00	
SEATTLE	44.80	26.21	<u>1/</u> N/A	24.57	19.53	36.75	
SHIPMENT SIZE & WEIGHT LIMITS	1 Piece 70 lbs. 70 incs.	Total Max 300 lbs. Per Piece 70 lbs. 70 incs.	1 Piece 2 lbs.	2/ NONE	2/ NONE	1 Piece 50 lbs. 90 incs.	
PICKUP SERVICE	Price Included Same Day	Price Included Same Day	Conditioned "	<u>3/</u> Regular/Special \$5.00/\$15.00 Same Day/ 2 Hrs.	<u>3/</u> Regular/Special \$5.00/\$15.00 Same Day/ 2 Hrs.	<u>4/</u> Special \$18.00 90 minutes of flight departure	
DELIVERY SERVICE	Price Included 12 Noon Next Business Day	Price Included 24 - 48 Hrs.	Included 12 Noon Next Business Day	<u>1/</u> Regular/Special \$5.00/\$15.00 24 / 2 Hrs. Hrs./ (Ft. Arr.)	<u>1/</u> Regular/Special \$5.00/\$15.00 24-36 / 2 Hrs. Hrs./ (Ft. Arr.)	<u>1/</u> Special \$18.00 90 minutes of flight departure	
SAME DAY SERVICE AVAILABLE	NO	NO	NO	YES	Conditional	YES	

Attachment I

1/ Flat rate of \$12.00 - 2lb. limit 2/ Aircraft limitations 3/ National average rates 4/ Pickup & delivery not applicable to all carriers

Mr. SEYBOLD. Now, I would like to add one further thought. The chairman has asked a number of people about the regulatory lag question.

In our testimony in the bill sponsored by Chairman Anderson and Congressman Snyder, to establish a timeframe for regulatory lag, we endorsed the concept, but had some questions about the language in the provision. We do feel that is the true answer to the problem, not to have people who want—who are dissatisfied with the certification process or a decision come in and ask for the law to be changed.

If the Board were put under a timetable, that would be rigid and that would set out a schedule that it would have to adhere to, or where decisions would follow immediately from their failure to take action; then I think we would get some action that would cure the regulatory lag problem.

That is the true problem.

Thank you, Mr. Chairman.

Mr. ANDERSON. Thank you, Mr. Seybold.

We are going to reverse our procedure here this afternoon and start with the members who are farthest from the Chair, so our first questions will be from Mr. Fary.

Mr. FARY. Thank you, Mr. Chairman.

Mr. Seybold, do you believe that it would be in the public interest for Federal Express to operate large aircraft if they obtained this authority to operate aircraft by obtaining a certificate of public necessity and convenience?

Mr. SEYBOLD. Yes, if they went through the certificate process.

Mr. FARY. Do you agree with the following statement in the testimony that Air Freight Forwarders Association, overnight airline cargo service has substantially diminished in the last several years and is continuing to deteriorate at a rapid rate?

Mr. SEYBOLD. I understand you to say overnight cargo service, and not all-cargo service; is that correct?

Mr. FARY. Overnight airline cargo service.

Mr. SEYBOLD. Well, I am not sure whether you mean all-cargo service in freighters, or whether you mean total air cargo capacity?

If you mean there has been a decline, has there been a decline in the all-cargo operations, over several years ago, the answer is yes.

If you mean there has been a decline in the total availability of cargo, overnight cargo service, I think the answer is probably no.

Mr. FARY. Would you care to expound on that in any way?

Mr. SEYBOLD. Well, we know that there is a substantial amount of cargo space that is not being used in combination aircraft.

For example, we find that there are 16 million available ton-miles provided by the scheduled carriers in cargo service in 1975, and only about half of that, or less than half of that is being used and much of that is at night, and there is plenty of space in many areas at night.

I am not saying that there is not some deficiency here, or they're in overnight cargo service. I would not pretend that.

Mr. FARY. OK. Thank you, Mr. Seybold.

Mr. ANDERSON. Mr. Goldwater?

Mr. GOLDWATER. Thank you, Mr. Chairman.

Mr. Seybold, are you not actually speculating when, here in your testimony, you make statements like "clearly this would have a prac-

tical effect of permitting an applicant to get its foot in the door and open the door all the way."

What facts do you have to support that?

Do you know that for a fact, that that will happen?

Mr. SEYBOLD. That is based on experience on what has happened with exemption awards.

Mr. GOLDWATER. Could you give me an example?

Mr. SEYBOLD. Well, you would start with the—going back in the late forties and early fifties, with the supplemental carriers, where the Board attempted to put them into scheduled service or partly limited scheduled service, and they constantly expanded, until finally we got up to 1961 and they had to pass legislation to establish the supplementals on a statutory basis, but that was the consequence of it. And the same is true of almost any person that has an exemption. He continues to expand, that is his natural desire, to expand the service.

Mr. GOLDWATER. But are not you really speculating that this is going to happen.

Mr. SEYBOLD. I do not think there is any doubt about it.

Mr. GOLDWATER. You mean you are actually predicting that this will happen?

Mr. SEYBOLD. I certainly am.

Mr. GOLDWATER. And you stake your reputation on it?

Mr. SEYBOLD. I will.

Mr. GOLDWATER. And your experience?

Mr. SEYBOLD. Yes, sir.

Mr. GOLDWATER. We may find out.

As I understand this piece of legislation, you called it special interest legislation. I guess I would have to agree. It was generated by the interest of Federal Express.

But all air taxis operate under section 416 of the CAB, and part 298 of the FAA.

It has been my observation that in some markets, where these air taxis operate, passenger air taxis, there has been a lot of growth, and there is a tremendous desire to expand into larger aircraft. I am more familiar with Golden West in my area, and they have been struggling to try to go to higher capacity aircraft, and, in fact, they are; and they have to go overseas to get that aircraft.

If this legislation passed, would they not be eligible to make an application?

Mr. SEYBOLD. For what?

Mr. GOLDWATER. To operate DC-9's?

Mr. SEYBOLD. Well, anyone can come in if this legislation is passed. Anyone who desires to engage in all-cargo services with large aircraft. Anyone can come in and apply for an exemption and file an application for certificate; and if the Board so decides, to award the exemption to operate, all-cargo services, pending consideration, whatever consideration means of their certificate application—that would include Golden West or anyone else.

Mr. GOLDWATER. May I ask the author of the legislation, Mr. Milford, does this—Dale, does this piece of legislation only apply to air cargo, or would it apply to air taxi?

Mr. MILFORD. No, only air cargo.

Mr. GOLDWATER. So I can see some justification.

Mr. MILFORD. It would apply if many of them were mixed carriers. They, too, carry cargo and in fact they are limited, as you know, to a certain weight aircraft. Their combination passenger/cargo often exceeds the airplane they are allowed to use.

Mr. GOLDWATER. Golden West carries cargo, not very much cargo, because they do not have much space, but they told me that they carry cargo.

Would they be eligible?

Mr. MILFORD. Well, you would have many carriers operating under part 298 that carry strictly cargo, mail contracts, and all types of air cargo.

It would affect these cargo carriers that are now operating their part 298, and this would allow them also to expand there and go into a larger aircraft pending certification.

Mr. GOLDWATER. Is there any justification to include all air taxis under this? For example, Golden West needs bigger airplanes.

Mr. MILFORD. As the author of the thing, I felt, trying to get into the field would be perhaps beyond the scope of our time limitations and other factors, where this one problem could be tackled within the time limitations of this Congress.

Mr. GOLDWATER. Well, it seems to me that it is only fair if you are going to provide exemption for air cargo that operates under section 416, there is a desperate need for the commuter air taxi operator, and there is more than just Golden West, I know, who have these expansion pains, and in need of higher capacity aircraft; so if you are going to provide an exemption in this instance for cargo, it seems to me that it is compatible, because you are still talking about section 416, to make it apply to those who carry passengers; but that is something that I guess we can talk about at a later time.

Mr. SEYBOLD. May I comment on that?

Mr. GOLDWATER. Yes.

Mr. SEYBOLD. I recall your questioning and your discussion that you had with Golden West in the earlier hearings, and, of course, the Board has the power to increase those exemption levels, either for cargo or passengers, if they wish. No one under the act can engage in the business of air transportation for hire, for compensation, unless they have a certificate from the board or the Board has given them an exemption.

Now, the Board has set these ceilings, where they decide that it is in the public interest to have people to operate under the exemption, both in passengers and in cargo, and the Board could raise its ceiling in either category if they thought it was in the public interest.

Mr. GOLDWATER. I understand that.

One last question, Mr. Seybold, do you disagree with Federal Express' philosophy here, involving being totally against their belief as to what should be the regulatory framework for air cargo, open entry and pricing freedom?

Mr. SEYBOLD. I certainly do.

Mr. GOLDWATER. Do you speak for ATA or yourself?

Mr. SEYBOLD. I am speaking for all the members of the Air Transport Association, which includes practically all the certificated scheduled airlines.

Mr. GOLDWATER. So they are flatly opposing this as it applies to cargo operations?

Mr. SEYBOLD. Correct.

Mr. GOLDWATER. They would be opposed to open entries, pricing freedom?

Mr. SEYBOLD. Well, yes, as a matter of fact, yesterday Mr. Smith said that he thought that there should be deregulation of entry and preferably deregulation of pricing, but he thought, and I quote, "there should be a reasonable number of competing carriers."

Now, that is not open entry. He wants it limited, opened up a little bit, but limited.

Mr. GOLDWATER. It is somewhat amusing to me that Federal Express, operating under that philosophy, enabled to with the exemptions provided in the act, have been very prosperous and whereas I do not think you can totally say that for the members of your organization who operate under tremendous regulation restrictions. It seems to me that you are beating a dead horse, or you are on the wrong horse, and one is making a lot of money and providing a service unregulated, and leaving you people in the dust. It seems to me that you are operating in the stone ages.

Mr. SEYBOLD. Well, first of all, I know they said they make money, and undoubtedly they do. But they do not file those reports with the Board or with anyone else.

Presumably they are audited sometime by someone, but the public does not have access to all that information and—

Mr. GOLDWATER. Why is that necessary?

Mr. SEYBOLD. I do not know whether it is necessary or not. I am just saying that if you are comparing the two, you ought to know what the facts are.

Mr. GOLDWATER. I understand, that is what I am saying. You are operating under some very strict regulations and guidelines.

Mr. SEYBOLD. Right.

Mr. GOLDWATER. And yet you come here and defend that, and we hear it from Mr. Prescott. He defends that, and yet everybody, the members of your organization are not faring too well in that market under those conditions, and yet Federal Express comes along and they see an opening, they take advantage of that opening and they analyze the market, and they are doing quite well unregulated.

It just seems to me that you ought to be on the bandwagon to free up your operations, so that perhaps you could be making money, too.

Mr. SEYBOLD. It makes you wonder why they want to get in our business, does it not?

Mr. GOLDWATER. Thank you, Mr. Chairman.

Mr. ANDERSON. Mr. Johnson?

Mr. JOHNSON. I do not have too much to say, not knowing too much about this subject, but in your statement, Mr. Seybold, you are very much in opposition of H.R. 14623. You list 8 or 10 different items, special interest legislation.

If this were to be passed by Congress, would the constitutionality be questioned by the industry?

Mr. SEYBOLD. I do not see any basis for questioning its constitutionality at all, no.

I see no reason why Congress cannot pass a bill like that. Because it is a bill, in fairness, if I may follow up the question, I think in fair-

ness to Mr. Milford and the other sponsors of the bill, and the amended bill, it is of general application. There is no question about that.

But I do not think we would be sitting here today if it had not been for the Federal Express case, and if they had not been asking for legislation of this type.

Now, it does apply to anyone else who comes along, and I think that, from the Federal Express' standpoint, 5 years from now we will find that they opened a Pandora's box, but I do not quarrel with their right to try to get Congress to do that, to pass special legislation to open that door.

But I do not see any question about the constitutionality of a bill like this, no.

Mr. JOHNSON. You think that they should abide by the same rules and regulations; but under the same restrictions?

Mr. SEYBOLD. Well, the amended bill, which has been introduced and which I did not comment on, H.R. 15302 is narrower than the present bill, and it would, of course, permit, in a somewhat limited fashion, our members or anyone else who has a certificate to come in and ask for the same type of authority. But whether the Board would consider that on the same basis or not would remain to be seen.

Mr. JOHNSON. Following up on Mr. Goldwater's questions, I presume that the ATA opposed the provision in many of the bills that are before us here, as they increase the size of part 298 of the air taxi aircraft from 16,000 pounds and 55 passengers?

Mr. SEYBOLD. The association has never taken any position on that. I do not know whether our individual members have or not.

Mr. JOHNSON. You have not?

Mr. SEYBOLD. I do not think the association has.

Mr. GODBOUT. No, not as an association.

Mr. JOHNSON. That is all, Mr. Chairman.

Mr. ANDERSON. Mr. Taylor?

Mr. TAYLOR. Thank you, Mr. Chairman.

Mr. Seybold, do you feel that there is a substantial void that exists in service now as a result of a lack of this legislation?

Mr. SEYBOLD. I do not think there is any substantial void.

I know there is testimony to the contrary, and certainly the support that Federal Express is getting would indicate they are fulfilling a need that somebody else either is or is not fulfilling, or they are meeting, providing a service better than somebody else. I would not argue that.

But basically I think there is a tremendous amount of available cargo capacity that is not being used, and I am not saying that every shipper's need is being met immediately and promptly, but I am saying that our industry offers a tremendous variety of cargo services from the small package to the largest thing that can be moved by air and they offer same-day service. They offer overnight service. They offer priority service.

So, by an large, I think the shipper's needs are being met.

Now, I know that the shippers always want more competition, lower prices, and so forth.

But the function of the Board is to establish whether the overall needs of the shipping public and the traveling public, as well as the people that provide that service, are in balance.

I think that should be left with the Board.

Mr. TAYLOR. As I understand this legislation, once the carrier applies for an exemption, then he would automatically be authorized to begin service while this is being considered, is this your interpretation?

Mr. SEYBOLD. Once the Board says yes, you can have exemption.

Mr. TAYLOR. Once the Board says you can have exemption?

Mr. SEYBOLD. Right.

Mr. TAYLOR. For how long would that continue?

Mr. SEYBOLD. Well, it says: "pending consideration of the certificate application."

Mr. TAYLOR. How long would it take for the certificate application to be—

Mr. SEYBOLD. That is a good question.

Does that mean when the Board starts considering it or finally decides it? That is why I am questioning whether there is any real incentive on the part of the Board or the applicant to see that they ever reach a decision on that application.

So it could be 1, 2, 5, or 10 years.

Mr. TAYLOR. Do you think it would be appropriate if this legislation were passed to have some kind of limitation passed on them?

Mr. SEYBOLD. What would be the action that would be triggered at that point?

The question would be: Would you then get a certificate or would you then have to lose the exemption authority without the certificate?

Mr. TAYLOR. One of the criticisms that we have repeatedly heard in this subcommittee is the time lag, tardiness of CAB in acting on anything.

Mr. SEYBOLD. That is correct.

Mr. TAYLOR. Sometimes you wonder what they do down there. They start a case, and the Commissioner's term expires before they vote on it. Sometimes there is a turnover of three or four teams down there before they ever act on one single request.

In your opinion, there is not—or does not, at the present time, afford, exist any substantial void in cargo, air cargo transportation?

Mr. SEYBOLD. I think not.

Mr. TAYLOR. Well, the testimony, of course, has been from the Federal Express, who has, as you know, grown very quickly, about \$100 million worth of business, an average of 18,000 to, I believe, 200,000 packages daily.

Then is this in areas where ATA members are operating, or is it in other areas?

Mr. SEYBOLD. I gather some of it is and some of it is not.

We used to have an air express company, REA. They were the only express company in the business. They decided that they wanted to be a freight forwarder, too, and they wanted to be able to operate both as a freight forwarder and express company, and the Board decided that that was not in the public interest and they should get out of the express business.

Now, whether that was the principal reason for the opportunity that was provided to Federal Express or not, I do not know. They contend that it was not.

But I feel that was a major factor.

Mr. TAYLOR. Let me ask you this, Mr. Seybold: How significant is the air cargo business to the members of ATA?

Mr. SEYBOLD. Well, it is very significant, and it is not significant, not only because of the fact of the dollars that it brings in; but it is significant because of the support that it gives to the aircraft or the passenger operation. About 11 percent of the total revenues of the industry are in cargo.

But to the extent that the cargo in the hold of a combination aircraft helps pay the cost of that aircraft, it obviously is making a contribution toward holding down passenger cost.

I should point out that 50 percent of all the cargo ton-miles that are moved domestically, move in combination aircraft. And for someone to say that it is against the public interest for that to happen, it does not make sense.

Mr. TAYLOR. Thank you.

Mr. ANDERSON. Mr. Milford?

Mr. MILFORD. Thank you, Mr. Chairman.

Mr. Seybold, you gave six reasons for opposing this bill.

I direct your attention to H.R. 15302. The total text of that amendment consists of 64 words, and it is printed on page 2 of the bill. The very heart of our political system hinges on the fact that we are a nation of laws, and that all governing actions within the CAB or any other Government agency is based on specific guidelines and statutes.

With that in mind, I would like to discuss some of the specific concerns your six stated objections to the amendment before us in this discussion.

I would ask that we stay strictly to the provisions of law.

First, you state that the bill before us is a special-interest legislation. Special-interest legislation would mean that the provisions in the law would pertain to only certain segments or persons at the expense of others.

I would like for you to please, sir, identify the word or words in H.R. 15302 that constitute special-interest legislation.

Also, point out by specific word or words in this statute the special interest that is identified there in this proposed amendment.

Mr. SEYBOLD. Well, I cannot say that there is any word or words that could effectively label this as special-interest legislation. I think we have to go back to your introductory remarks, when you introduced H.R. 14623 and what was, as someone said, generally known about the reason for the bill—

Mr. MILFORD. Sir, excuse me for interrupting. Generally known has nothing to do with what is in the law. We are dealing with the law. The law is specific.

Mr. SEYBOLD. As I said, I do not think we would be here if it were not for the Federal Express case. I doubt if we would be.

To that extent, I think it is a special interest legislation. The language of the bill is—applies to anyone, as I said, anyone can come in. I expect a lot of people to come in under this bill and seek to use this authority.

Mr. MILFORD. Your second objection charges that H.R. 15302 is "discriminatory and destroys sound regulatory policies."

Again, sir, please identify by word or paragraph the language in H.R. 15302 that constitutes discrimination.

Mr. SEYBOLD. The language of the bill would permit, and the regulations would permit, the applicant who receives an exemption authority, and presently holds a part 298 authority, to operate in a manner different from anyone else, unless the Board restricts it.

Mr. MILFORD. I do not even see part 298 authority mentioned in this bill.

Mr. SEYBOLD. That is right.

Mr. MILFORD. Then why do you say that it states it would allow somebody—it simply states that an exemption can be granted to section 401 with certain provisos.

It restricts it to no one under part 298, or a certified carrier, or whatever.

Mr. SEYBOLD. I think I have to go back to the testimony of one of the earlier witnesses who said that, on behalf of Federal Express, they would not want the exemption if they had to drop the part 298 authority. I may have misunderstood them.

But I understood that the two had to be concomitant until the certification was decided, and that would be discriminatory, as I understand the situation.

Mr. MILFORD. My reading of this is, it is left up to the Board to grant exemptions.

Mr. SEYBOLD. That is right.

Mr. MILFORD. I do not want to debate with you.

But, No. 3, since the Federal Aviation Act of 1958 clearly spells out the charter, duties, responsibilities, and powers of the CAB, these charter, duties, responsibilities, and powers of the CAB are outlined throughout the various sections of the Federal Aviation Act of 1958.

H.R. 15302 seeks only to amend section 416(b) (1) of that act, leaving intact all other provisions of that law.

Therefore, the only germane item under discussion is the specific provisions and wording of H.R. 15302, which amends only section 416(b) (1) of the act.

With that in mind, let us tackle your third objection to H.R. 15302, wherein you charge that this will "permit circumvention of public protection standards."

Please identify the words or paragraph in H.R. 15302 that contains references or provisions to circumvent public protection standards.

Mr. SEYBOLD. I think I said at the outset, my testimony was directed to the original bill, that H.R. 15302 is different, and that H.R. 15302 only applies to section 401, which is the certification process, and that the Board apparently could not exempt the applicant for an exemption from the other provisions of title IV.

Mr. MILFORD. Then you would withdraw your statement?

Mr. SEYBOLD. I would withdraw it with respect to H.R. 15302, but I understood that H.R. 14623 is still before the subcommittee, and Secretary Barnum has suggested complete deregulation, as has the Board, so I thought, with all the witnesses asking for that, that maybe I should comment on it.

Mr. MILFORD. Then it would negate?

Mr. SEYBOLD. H.R. 15302 is limited to section 401.

Mr. MILFORD. Your fourth objection charges that H.R. 15302 "creates undue influence on the Civil Aeronautics Board."

Again, since the Federal Aviation Act of 1958 specifically outlines the charter, duties, responsibilities, and powers of the CAB—in statutory language—please identify the wording in H.R. 15302 that constitutes undue influence on the CAB.

Mr. SEYBOLD. The grant of an exemption authority under the bill would create an atmosphere, when combined with the Board's predilection of trying to deregulate cargo, to lean toward the certification of an exempt applicant.

Mr. MILFORD. Well, the Chairman of the Board testified directly opposite to that. He stated that granting of the exemption in no way binds the Board in granting certification.

Mr. SEYBOLD. It no way binds them. I am talking of the—

Mr. MILFORD. Your statement here, sir, states that this, "creates undue influence on the Civil Aeronautics Board," and I cannot see where there is this wording.

Mr. SEYBOLD. I contend that the granting of an application does constitute undue influence—

Mr. MILFORD. In your fifth objection, you charge that H.R. 15302, increases regulatory lag. During these hearings, we have heard testimony from the Chairman of CAB that found certification rulings require a time interval of from 1 to 5 years. The specific and sole provision in H.R. 15302 allows CAB to grant a temporary exemption, so that operations that are in the public interest could begin immediately, rather than waiting the 1 to 5 years.

I would like to emphasize that the bill clearly states that an exemption can only be granted "if the Board finds that the issuance of such exemption is in the public interest."

Therefore, if a service or route award should be in the public interest and normal certification procedures would require from 1 to 5 years, how can you charge that H.R. 15302 would increase regulatory lag, when the bill specifically contains a provision to allow immediate operations while the formal regulatory procedures run their course?

Mr. SEYBOLD. We start with the fact that we lost 1 year in this case. Federal Express chose to go the exemption route. They lost 1 year on the processing of their application for certificate. They have not filed yet.

Mr. MILFORD. Excuse me, sir, but my question had nothing to do with Federal Express. It had to do with the provisions of this amendment.

Mr. SEYBOLD. The provision of the amendment, by granting, by the Board implementing it through the grant of an exemption application, as I said in my testimony, tends to reduce the incentive of the Board or the applicant to get a final decision.

If they have operating authority, the Board puts them in business.

Mr. MILFORD. I am sorry, my question had to do with regulatory lag.

Mr. SEYBOLD. That is what I am talking about. There is no incentive, once the applicant has been put in business and the Board has temporarily disposed of the case, to get busy and process the thing. Why bother? They have other applications and other things to do, and neither party has any incentive to eliminate the regulatory lag on the certification. They do not need it.

Mr. MILFORD. Well, I will not debate it.

Finally, I take personal exception to your sixth objection, wherein you state: "It is inconsistent with the proponent's objection to certification."

As author of this bill, I am the chief proponent of this legislation, and several cosponsors are also proponents. None of the proponents, to my knowledge, have objections to certification. In fact, the bill itself clearly states that the exemption procedures may only be applied "pending consideration of an application for certification pursuant to section 401."

Your testimony and argument concerning the views of Federal Express are immaterial in that they may or may not classify the view of only one company. The provisions of this bill will apply to all air cargo carriers, not just to one company.

Mr. SEYBOLD. Well, I think your point is well taken, Mr. Milford, and you are the principal proponent of the bill. I was thinking of others, not sponsors of the bill, who are the principal private proponents of the bill. I apologize for that.

I did not mean to infer that to you, because I know that you do support basically the certification process. I meant to refer to the testimony of the Federal Express people who indicated that they do not believe in the certification process.

I apologize to you for that statement.

Mr. MILFORD. Thank you, Mr. Chairman.

Mr. ANDERSON. Mr. Snyder?

Mr. SNYDER. Thank you, Mr. Chairman.

Mr. Seybold, you have spoken about regulatory lag. Do you not think it is fair to say that a good deal of the regulatory lag results from the fact that ATA members are constantly fighting among themselves?

Mr. SEYBOLD. There is no question that the ATA members and every other party, whether they are the airfreight forwarders, the shippers, the consumer or Federal Express, or any other party, takes whatever action they can at the Civil Aeronautics Board to obtain their particular objective. Whether it means speeding up or delay, and our members are responsible for that, too, no question about that.

Mr. SNYDER. You have indicated that 51 percent of air cargo now moves in combination aircraft.

What percentage of air cargo moved in combination aircraft immediately prior to the entry of Federal Express into the business?

Mr. GODBOUT. It has been approximately the same right along. Prior to this reduction in all-cargo operations, that has been referred to, and, incidentally, on that, the only major aircraft that has been taken out, as from a freighter standpoint, are what we refer to as the QC operation, the quick-change operation which was operated as passenger in the daytime and freighter at night.

It is true that that operation was found to be uneconomical, as pointed out by Mr. Prescott this morning, so the carriers discontinued that. They accounted for the numbers of flights.

However, the critical thing in figuring cargo service is what has happened to your available ton-miles? That is the amount of service that you are holding out to the public, and we have attached to Mr. Seybold's testimony a chart which shows that—just a slight drop in the

2 years, and you will see that slight drop is also in wide-body aircraft, as well as freighters.

One other thing, the reason the ton-miles has been able to stay up is because the aircraft today from a freight standpoint, have much greater capacity.

So, therefore, you can lose a QC operation and lose some numbers of flights, and trips, but your capacity to serve the public has been perhaps increased.

So we have not had that substantial reduction. Just prior to that, the reduction of the QC operation, the cargo aircraft were carrying about 60 percent of the freight. It is now 51 percent, combination, in the combination aircraft, but with the advent now of the 747 freighters, we are going to see now an increase in the all-freight usage.

So you probably get back to that 60 percent.

Mr. SNYDER. Is it a logical conclusion, then, that Federal Express has not cut into the business of your members?

Mr. GODBOUT. I would not say that, because, by their own testimony, they have cut into our business by 70 percent of their revenues; so you are talking about \$70 million which has been taken away from the commercial airlines.

Mr. SNYDER. Do you want to rely on their testimony, or do you want to give us yours? Do you want to accept their figures or do you want to give us your own?

Mr. GODBOUT. In what respect? As to——

Mr. SNYDER. As to how much of what would have been your business which they now have.

Mr. GODBOUT. Well, we have not made any specific studies on that.

The only carrier I have seen that has testified and put in a figure is American Airlines, and theirs was \$1 million a year diversion.

Mr. SEYBOLD. I think we would accept their figure. If they say they took 70 percent of the business away from us, we will accept that.

Mr. SNYDER. If they seem to know what they are talking about and you do not, why do you have eight pages in attachment C, disputing things they say?

Mr. SEYBOLD. That is in connection with the point of how much business they took away from us.

I would be happy to talk about every question on attachment C.

Mr. SNYDER. They are accurate on how much business they took away from you, but not on anything else?

Let us talk about attachment C, because I think we should.

Mr. SEYBOLD. All right, let us do that.

Mr. SNYDER. I will draw your attention to issue 5.

Mr. SEYBOLD. What page?

Mr. SNYDER. It is page 3, issue 5.

You correct me if I am wrong in what I am reading here. They said that about 80 percent of their shipments either originate from or are destined to cities which are not among the top 25 markets. You say that is the opposite of being true.

Mr. SEYBOLD. Well, first of all——

Mr. SNYDER. Would you elaborate on that first?

Mr. SEYBOLD. I took the quote directly from what they said.

Now, if the word "all" should read Federal Express air shipment, I do not quite think that is true, either; but at least it would change the

picture of what we are talking about. The statement is "80 percent of all air shipments are originated from and are destined to cities other than the top 25 markets." So that is not true at all.

Mr. SNYDER. What is true?

Mr. SEYBOLD. Well, the fact is that 25 top cities generate about 80 percent of the market, of the total freight volume.

Now, we have attached a list of the top 25 top cities, attachment C shows the order of freight tons enplaned by cities, 25 cities.

If you will look at attachment D, there is a list of the cities taken from Federal Express data which shows the volumes to or from the major markets that they serve.

Mr. SNYDER. According to your note at the top, 46 percent of Federal Express' shipments go to or from—

Mr. SEYBOLD. To or from those 23 cities, and they happen to be 23 of the same 25 cities that I contend are the over-all major markets for all airfreight.

Mr. SNYDER. Now, are those major markets also your major markets insofar as your combination service is concerned?

Mr. SEYBOLD. I presume so. I have not attempted to break it down. I just go by ton-miles.

Mr. SNYDER. Passengers too, because—

Mr. SEYBOLD. There might be a little variation.

Mr. SNYDER. It would be pretty close.

Mr. SEYBOLD. It would be reasonably close, I presume.

Mr. SNYDER. If we look at your attachment I, which has to do with rate comparisons on a 30-pound shipment, it indicates that the scheduled airlines charge considerably less for carrying the same package between two points.

Now, I understand that Federal Express' price is door-to-door, and your price is airport-to-airport.

Mr. SEYBOLD. That is right. So you have to add the pickup and delivery where there is a pickup and delivery charge.

But what we are trying to show there is that in some markets they are cheaper and primarily under 30 pounds, and maybe less than that.

And in others, with larger shipments, different types of service, we are cheaper. That is what I am trying to show.

Mr. SNYDER. Do you have a breakdown in percentages of the service provided by Federal Express and by the scheduled carriers—the various types of service to which you just referred.

You mentioned different types of service.

Mr. SEYBOLD. I am not sure I exactly understand your question.

Mr. SNYDER. I am not sure that I do, either, but you referred to the fact that Federal Express is cheaper than the scheduled carriers in providing some types of service, and more expensive in others.

I am trying to determine if the economics of the situation results in your obtaining a larger share of certain categories of the cargo business—and the same for Federal Express. If possible, I would like this broken down by the various types of services which both provide.

Mr. SEYBOLD. I think I will ask Mr. Godbout to comment on that. You are getting a little bit out of my line.

Mr. GODBOUT. First, if we go back to the type of air express service that we had with REA Express, we were moving, when it started

downward, when the Board declared it was not in the public interest, we were handling \$100 million worth of business.

Mr. SNYDER. Was that door-to-door?

Mr. GODBOUT. Yes; and we were also handling twice the number of shipments at an average cost of \$10 versus the average cost of Federal Express of \$20 today.

Since that—

Mr. SNYDER. That \$20 is \$10 today because of inflation.

Mr. GODBOUT. Three years, I do not know. But, anyway with the ending of the air express service, the air carriers were told by the Board that they must have a priority type service. So they instituted this type of service, so we have a priority air service. I am sure, that today, it is going to be less than Federal Express is handling in numbers; but it is moving rapidly because it just started this past year, because the air express went out of business.

Over-the-counter, small-package service, we are moving approximately 1 million shipments a year.

In the rest of the traffic, of course, it is in our regular airfreight business.

Mr. SNYDER. I guess, Mr. Godbout, what I am asking is whether you are obtaining a larger share of the market in the case of those particular types of service where the rates charged by the scheduled carriers are cheaper than Federal Express; and, conversely, whether they are benefiting where they are cheaper than the carriers?

Mr. GODBOUT. I really do not know.

Mr. SNYDER. Mr. Fary asked a question which is discussed on page 5 of attachment C, issue 9. I wish you would elaborate on that a bit more—the situation involving overnight airline cargo service.

Now, I have the impression that one of the greatest advantages offered by Federal Express is that they fly at night while the carriers schedule most of their flights in the daytime. Because of this, they are able to provide better service due to the fact that most people wish to ship their packages at the end of the business day. Federal Express moves at night, while most of your aircraft are on the ground. Would you discuss this briefly?

Mr. SEYBOLD. There are several comments.

First of all, we picked that issue because the statement had been made by the Federal Express in some of their testimony that almost 90 percent of the total U.S. certificated airline fleet is not flying between the hours of 9 p.m. and 7 a.m.

Well, it is kind of a backhanded way to say something. I am not quite sure what it says—the point is that there are many flights that continue after 9 p.m. that started earlier. So you get same-day service.

Mr. SNYDER. My Eastern 7:45 p.m. flight hardly ever leaves before 9 p.m.

Mr. SEYBOLD. That is a situation that the Board ought to look into, if that is true.

But the point is that by saying that almost 90 percent is not flying, you are saying that 10 percent is flying. Ten percent is 220 airplanes that are flying at night, between the hours of 9 p.m. and 7 a.m., carrying cargo. Every one of them, and the bulk of them, I mean most of the airfreighters are flying at night. So that you have not only the 75 airfreighters, but you have the wide-body aircraft and you have other

combination aircraft carrying freight at night. Freight does not move just at night.

You remember Congressman Johnson's observation yesterday, about the man that walked up to the counter in the middle of the day with a package and says, "I want this on that flight and I am going to have it picked up at the other end of the line," and they said, "We are glad to have it," and away they went. We have that service. Same-day service. Not just the Federal Express overnight service.

There are some people that want same-day service, and there are some people that want 48-hour service, and want to pay less for it. So it is not just one neat little package as outlined by Federal Express that they are performing just—that just kind of overwhelms the world.

Mr. SNYDER. Is that service referred to on page 9 of this brochure?

Mr. SEYBOLD. Yes, right.

Mr. SNYDER. Now, on your overnight service, I am sure you have seen Federal Express' map where they show their routes running into and out of Memphis?

Mr. SEYBOLD. Yes.

Mr. SNYDER. How much of that market do the scheduled carriers serve with the night flights to which you refer?

Mr. SEYBOLD. Well, it is a little difficult to tell. We analyzed their computer run for the average intercity package for February and March, and we analyzed those cities where more than 10 pieces moved either to or from. I cannot say how—whether we duplicate or to what extent we duplicate. The only thing we did find out was, when we looked at it, this talk about all the freight moving, 80 percent of it moving to small cities, to and from small cities, is not borne out by their own data, and we find that the majority of it, 46 percent of it is moving to and from large cities on their own computer run here.

So I am a little confused about the statement that 80 percent of all freight moves—

Mr. SNYDER. You already answered that question a while ago.

I am talking about the Federal Express map—I do not have one in front of me—which shows their routes running into Memphis and out again.

Mr. SEYBOLD. Let us take the map, all right.

Mr. SNYDER. They talk about providing service overnight to the cities on that map.

I want to know to which of those cities your members provide that same type of service?

Mr. SEYBOLD. In 90 percent of these markets that they selected, the scheduled airlines have equal or better service with departures after 8 p.m. The remaining 10 percent of these volume markets can be served by the scheduled airlines overnight with departures between 5:50 p.m. and 8 p.m. Federal Express in 40 cities have departure times before 10 p.m., and in 17 cities departure times before 8 p.m.

If you ship a package from Los Angeles to New Orleans, it does not go to Memphis.

Mr. SNYDER. I am aware of that.

Now, if you are providing service after 8 p.m. to 90 percent of those markets, and to the other 10 percent after 5 or 5:30 p.m., is it logical to attribute their—and the carriers are doing it at cheaper

rates, that is, airport-to-airport—is it logical to attribute their great growth in volume and success to the door-to-door aspect of their service?

Mr. SEYBOLD. First, let me make sure that you understand that we are talking about cities on Federal Express' route, which originate 10 or more pieces a day.

So, if you have one package, we do not say that we can beat that.

Mr. SNYDER. Do you have any figures on that?

Mr. SEYBOLD. I do not have any information on that. I understood Mr. Smith to say that their maximum is 300 pounds, but the average is less than that.

I do not have any information on that.

Mr. SNYDER. When the carriers go to CAB, what impact does their cargo income have on their passenger fare structure?

Mr. SEYBOLD. As I understand it, the Board considers the total income and tries to make some allocation of costs.

Mr. SNYDER. I am being parochial about this; I do not ship very much, but I fly a lot.

If their cargo business declines, the price of my ticket will go up.

Mr. SEYBOLD. I do not doubt that. The Board takes into consideration the total income from all sources.

Mr. SNYDER. That is the load factor?

Mr. SEYBOLD. Yes, the total load factor. But they are accounted for separately.

Mr. SNYDER. One would subsidize the other?

Mr. GODBOUT. If I might answer that, in determining passenger fares which is your concern, I am sure, the Board whitewashes any cargo revenue from that airplane. To the extent that there is cargo revenue, they subtract it out.

Mr. SNYDER. If you were to increase cargo revenue, you would bring down the per-passenger requirement. It is subtracted out. Am I correct?

Mr. GODBOUT. I am not in a position to say yes or no.

Mr. SNYDER. Is that what you mean by the term "whitewash"?

Mr. GODBOUT. Right.

Mr. SEYBOLD. Both revenue and cost.

Mr. GODBOUT. Yes, revenue and cost.

Mr. SNYDER. That is all. Thank you, Mr. Chairman.

Mr. ANDERSON. Mr. Seybold, I am interested in the term public interest. I have heard it used this afternoon several times, and earlier today in the questions from Mr. Fary to you were asked—do you believe that it would be in the public interest for Federal Express to operate large aircraft if they obtained authority to operate such aircraft by obtaining such a certificate of public convenience and necessity?

You answered yes to the question of Mr. Fary.

By your answer did you mean that ATA would take the position that it would be in the public interest for Federal Express to be awarded a certificate?

Mr. SEYBOLD. No, I did not mean anything of the kind. I meant if the Civil Aeronautics Board set down a proceeding on a Federal Express application, and after considering all of the factors involved in the application—fitness, willingness, and ability, and public con-

venience and necessity, and said Federal Express should have a certificate, I would say that is in the public interest. I would go with the Board's judgment.

Mr. ANDERSON. What determines the public interest? Is it the public who flies the airplane as a passenger, or is it the public who wants something shipped by freight?

What do you construe to be the public interest?

Mr. SEYBOLD. The idea of the public interest is the sound balance of air transportation service providing—meeting the needs of the shipper and the traveler at the most reasonable rates possible within an industry that is viable, and that is what I call the public interest.

Mr. ANDERSON. Do you feel when they determine the public interest in their hearings they take into consideration the shipper of freight as well as the passengers and people who want to ride the airplane?

Mr. SEYBOLD. I certainly do. The shipper organizations are very active, both through the forwarders and through the National Industrial Traffic League, and others in expressing their views at the Board about rates and services.

Mr. ANDERSON. Does the success of Federal Express suggest that they were deficiencies in the cargo services provided by the certificated carriers?

Mr. SEYBOLD. It suggests there must have been some deficiency, or they would not have been able to succeed as they have.

The question goes beyond that at this stage of the game. They knew what the rules were when they started on the exemption.

You asked them yesterday "When did you realize you were going to have to have a bigger airplane?" Why did you not file an application then for a certificate?

I am not quite sure what the answer was, but I thought it was a little bit evasive. But the point is the rules have existed, and when they started out under this exemption they knew what the rules were, and eventually they would have to get a certificate.

Mr. ANDERSON. The basic question of deregulation of air transportation has been highly controversial, and there has been much speculation about the effects which deregulation would have.

Would it be desirable to experiment with the effects of deregulation by deregulating air cargo?

Would not deregulation of cargo be a reversible experiment which would not destroy the basic passenger transportation system?

Mr. SEYBOLD. I think once you start down this road there is no reversing. It is like a broken egg that cannot be put back together. I really do not think you could put it back together.

Mr. ANDERSON. In other words, you feel that the regulations of their cargo is too closely tied in with passengers to do them separately?

Mr. SEYBOLD. I do, unless you want to say you can carry passengers and cannot carry cargo. I do not see how the Board is going to deregulate cargo and ignore the cost and revenue that goes into the combination aircraft operation and figure out accurately the return combination aircraft, and what it should be, and what investment it has in passenger service.

Mr. ANDERSON. I have a question here on your position on the two legislative proposals.

First, I believe you answered "Yes" on legislation to require the CAB to decide cargo certification cases in 1 year. The second one is legislation to authorize air taxis to operate aircraft up to 16,000-pound capacity.

Mr. SEYBOLD. Well, on the first one, I explained that we had had some reservation about the bill that you introduced, but that we were willing to work to develop it into what we thought would be workable, putting the time limit on the regulatory lag situation of the Board, and we would be able to do that, and we are prepared to do that at this time, right now, or any time later.

As to the other question, the association has not taken a position on it. Individual members have taken a position on the increased exemption that you spoke about, but, no, we do not have an industry opinion.

Mr. ANDERSON. Are they for it or opposed to it?

Mr. SEYBOLD. I think most of those who have taken a position are opposed, but some have not taken any position at all.

Mr. ANDERSON. The association, as such, has not.

Are your members satisfied with the policies which the CAB follows in regulating air cargo?

What improvements would you like to see?

Mr. SEYBOLD. I would like to submit an answer to that. They are not completely satisfied, but they are satisfied in general, but I think they feel there should be elimination of the delay in considering applications both for rate adjustments and for additional authority. Those are the primary areas that they think should be looked into.

Mr. ANDERSON. Do you have anything you would like to submit for the record, and we would like to have it, naturally, because we are going to follow up?

Mr. Milford?

Mr. MILFORD. Thank you, Mr. Chairman.

Mr. Seybold, you stated that available capacity in ton-miles offered to the public was the key factor to be considered in discussing this thing.

Would you not agree also that the population served, the geographical area served, quality of service, frequency of service, and times of delivery are just as important as available ton-miles?

Mr. SEYBOLD. Absolutely, no question about it.

Mr. MILFORD. When we are talking about cargo, is not service between city pairs also a key factor? For example, are not a vast majority of certificated combination carriers oriented more to passengers really than air cargo, and do not they provide service primarily, at least, predominantly between major city population centers?

Mr. SEYBOLD. Yes.

Mr. MILFORD. Therefore, it would be possible to see tremendous ton-mile capacity offered to the public, but being confined only to these big centers?

Mr. SEYBOLD. I would, I think, question that because of the fact that the agreements that the scheduled carriers have with the air-freight motor carriers, provide service to 13,000 communities, and they are tied into the scheduled airline service, so the idea that some city is left out in the cold completely I think is a mistake. I do not think that that is true.

Mr. MILFORD. We are talking in light here of all of the factors that I just outlined, geographical area, quality of service, frequency of service, and time of delivery. That is inherent in the question.

Mr. SEYBOLD. I am sure you are familiar with the scheduled airline network and the cities that are served, 635 airports, and as you know, every 2 months there is a directory put out that anyone in the country—in any city in the country can pick up a telephone and call the number that is designated there and get airfreight service of whatever type he wants.

Mr. MILFORD. Let me go at it another way.

Would you agree a 24-hour, door-to-door delivery service between 5,000 city pairs in the United States would be a service that is in the public interest, particularly, when many of the cities have no certificated air service, that is to say, at the airport?

Mr. SEYBOLD. Well, the door-to-door service in 5,000 communities, Federal Express is serving 77 airports, and they are not providing—serving any more door-to-door service to the 5,000 communities than we are.

Mr. MILFORD. The question was a 24-hour, door-to-door delivery service.

Mr. SEYBOLD. Probably would be in the public interest, sure, but I do not accept the idea that our members cannot provide it, either.

Mr. MILFORD. Do any of the certificated air carriers provide a door-to-door, 24-hour delivery service to 5,000 city pairs in the United States?

Mr. SEYBOLD. The certificated carriers will provide service to 58,000 city pairs, and some of it is faster than 24 hours, and some of it is not quite as fast as 24 hours.

Mr. MILFORD. OK.

Thank you, Mr. Chairman.

Mr. ANDERSON. Are there any further questions?

If not, thank you, Mr. Seybold and Mr. Godbout, for your presentation.

Our next witness is Mr. Louis P. Haffer, executive vice president and counsel, Air Freight Forwarders Association of America, accompanied by William J. Dixon, Air Freight Forwarders Association.

**TESTIMONY OF LOUIS P. HAFFER, EXECUTIVE VICE PRESIDENT
AND COUNSEL, AIR FREIGHT FORWARDERS ASSOCIATION OF
AMERICA, ACCOMPANIED BY WILLIAM J. DIXON**

Mr. HAFFER. I am the executive vice president and counsel of the Air Freight Forwarders Association.

I have with me Mr. William J. Dixon, who is associated with me. I believe you know Mr. Dixon.

We represent the national organization of airfreight forwarders.

I should like to read part of my remarks and summarize the rest of it in accordance with your suggestion to previous witnesses, and I should like to have the whole written statement introduced.

Mr. ANDERSON. Your entire remarks will be made a matter of record at this point.

[The statement referred to follows:]

STATEMENT OF LOUIS P. HAFFER, EXECUTIVE VICE-PRESIDENT AND COUNSEL,
AIR FREIGHT FORWARDERS ASSOCIATION

I am Louis P. Haffer, Executive Vice-President and Counsel of the Air Freight Forwarders Association. I am accompanied by William J. Dixon, my associate. We are here to testify for the Association, which is the national organization of air freight forwarders.

Air freight forwarders are indirect air carriers, licensed by the Civil Aeronautics Board to engage in the transportation of property on behalf of shippers. We are air carriers even though we do not own or operate aircraft. We purchase space on the direct air carriers on behalf of our shipper customers, pick up the freight from shippers, deliver it to the airlines, receive it at destination end and deliver it to the consignees. We specialize in door-to-door service. We also perform all the documentation and paper work, bill our customers and alone are responsible to them as common carriers from origin to destination. The only identification our shippers have is with us, the forwarders and not with any of the underlying airlines the forwarders may use.

Our industry generates between 40-45% of the freight volume flown by the scheduled domestic U.S. air carriers. For the transportation we purchase from the airlines, we pay their published tariff rates. We, in turn, are required to file tariffs with the Civil Aeronautics Board for the transportation that we provide on behalf of our shipping customers and to adhere to these tariffs.

Our customers pay our filed tariff rates. Our tariff obligations under Board regulations, and the Board's authority, including its suspension power, are identical with those applicable to the direct carriers, that is, the airlines.

We consider the Bill before you today of major importance, and as warranting the most careful analysis. In addition to our testimony, we would like to submit more detailed information than we can possibly cover today and have it incorporated in the record. I shall refer to this at the end of my remarks.

It has been said that there is some good in the worst of us and some bad in the best of us; and that truism is equally applicable to the Bill before you. If it is to be enacted, we earnestly hope, and indeed are confident, that the good can be retained and even improved upon, and that what is truly bad about it will be given a speedy burial by this Subcommittee.

For the industry I represent, an overriding fact of economic life and, indeed, economic *survival* is this: the forwarder requires *adequate overnight all-cargo airline freight lift* in order to serve the needs of his shipper customers. While passengers may want to travel when they are awake—in the daytime—most air freight needs to travel when people are asleep in order to be there when they wake up. Freight in large part then must travel by night.

Because of this need, the air freight forwarder would support the increased all-cargo lift that this Bill at least gives some promise of generating. It is of no significance to him whether that lift is made available through the *exemption* power granted by the Board to new all-cargo operators or new all-cargo operations, or by *certification*. Indeed, the massive erosion of overnight all-cargo service by the scheduled, certificated carriers on which the forwarder principally depend has become so serious and threatens to become even so much more critical that an expedited grant through the exemption process, pending a hearing on a certificate application, may be an absolute requisite. It may well be the only feasible, and certainly it would be the most expeditious, way of filling the deep void that the scheduled, combination carriers have consciously created in the overnight freight lift.

For the past thirty years the forwarders have built and sold the concept of overnight service as the *norm* for air freight users. In the main, this has required the utilization of nighttime all-cargo or so-called freighter flights, which for freight, as I have indicated, is the prime time.

But overnight airline cargo service has substantially diminished in the last several years and is continuing to deteriorate at a rapid rate. This deterioration invades virtually all air freight markets. In 1972 there were over 7,400 nighttime departures of freighters from the major domestic airport cities. By 1974 this had dropped to 57,000 departures. There are now over 800 hub city pairs that are not provided prime time, that is, overnight freighter service, by the scheduled airlines. In brief, only about one-third of the total air freight market now receives prime-time overnight air service.

Not only has the number of key-time, all-cargo flights declined, but the number of airlines offering all-freighter service at any time of day has declined. In

essence, the combination carriers have steadily downgraded or abandoned their certificate authority to provide all-cargo service. In 1970, *nine* combination carriers provided all-cargo service (AA, BI, CO, DL, EA, NW, TW, UA, and WA.) By 1975, *four* of the nine had eliminated such services entirely (EA, CO, DL and WA).

These service cutbacks have had far-reaching effects on both the quality of the domestic air freight service available nationwide and on the costs to the air freight forwarders and hence to their customers. In many markets, the performance of overnight service has now become extremely difficult for forwarders. It is only through such devices as the use of a combination of air and truck service and expensive chartering of aircraft that they have been able to maintain their traditional *service superiority*. With the further expected diminution of usable lift, their ability to maintain this level of service is doubtful. Moreover, with the cutback in all-cargo service, large container rate economics relied on by many air freight forwarders and by other large shippers using the scheduled service has been able to be preserved in only a few major domestic traffic lanes where some limited nighttime freighter service is still provided.

With such escalating shortages in overnight freighter lift, it is inevitable also that airline *rates* for this overnight service will increase substantially. Convincing evidence of that already occurring is apparent in the so-called priority reserved air freight operations of the airlines. There the Board sometime ago allowed the airlines to charge a 30% premium for nighttime lift where, on a particular flight segment, there was not enough freight lift to meet the requirements of all shippers and forwarders. By artificially inducing shortages through elimination or reduction of nighttime all-cargo service, the carriers have been able to insist on what amounts to a 30% rate increase for what previously had been service performed at regular air freight rates. This is reminiscent of the robber baron period in American history when manufacturers and producers limited production to create a shortage and then raised their prices. They were still able to sell at the inflated prices because demand exceeded the supply. It is the consumer, however, who suffers.

The AFFA therefore would support any reasonable Bill which would offer the possibility of more available all-cargo lift, at least to rectify the deficiencies for which the combination carriers have been responsible in the last several years. Hence, we would endorse the principle of the Bill before you. *However*, without an amendment of the kind I am about to refer to, the Bill as now drafted would certainly have destructive effects upon the air freight forwarder industry.

The present Bill would authorize the Board to grant an exemption from *any and all* requirements of the Federal Aviation Act to permit all-cargo operations in interstate air transportation in any size aircraft where the Board finds that such an exemption is in the public interest. This means that the Board could grant exemptions *not only* from the certificate requirement of section 401, but from sections such as 403 and 404 of the Federal Aviation Act, to which the forwarders are totally subject and which are the tariff filing and adherence requirements, the anti-rebate provisions, and the anti-discrimination provisions of the Federal Aviation Act.

That the Board could and might do this is no idle threat. Federal Express, a supporter of this legislation as drafted, is already expressly exempted from these as well as other sections of the Act, under the Board's Regulations Part 298 governing air taxi operators. Yet Federal Express does, and other carriers that may be granted all-cargo operations using larger aircraft under this section would, *compete directly in their sales, in their marketing and in their advertising, with the air freight forwarders*. All of you are undoubtedly familiar with Federal Express radio, TV, and other advertising which is all forwarder-customer oriented. Indeed, just about a year ago, the President of Federal Express stated in an interview that at least 70% of his freight had been obtained from the customers of air freight forwarders and airlines.

It clearly makes no sense, in justice or in logic, to permit an even larger-scale operation which could be authorized under this amendment to be totally free of the economic regulatory restrictions which are applicable to those whom those carriers deem to be their basic competitors.

Moreover, not only a present air taxi operator but even a present certificated carrier could use this section to obtain an exemption to serve routes now covered by their certificates. Unless it is specifically restricted, the Board could grant for these new routes an exemption from the tariff filing, anti-discrimination and

other requirements while the *certificated* service of these carriers would be subject to such provisions, a truly anomalous result.

The fear we entertain is no idle threat for another reason. In his testimony before the Senate Aviation Subcommittee on the identical Bill on August 3, the Chairman of the Civil Aeronautics Board confirmed our concern that this is just what he wanted and what the Board would do if the Bill in its present form be enacted—give the airline granted all-cargo exemption authority under this proposal complete and total rate flexibility, that is, freedom from tariff filing and adherence requirements of the Act and any other provision of the Act and the Board deems desirable.

I must emphasize that the forwarder is not fearful of competition. There has been totally free entry into this segment of the industry since the forwarding industry's inception; and he has learned to survive, if not live, under it. All he asks is that his competitors, no matter how numerous, be required to play under the same rules that govern him; and that by statute or regulation, his competitors be given no unfair competitive advantage over him.

A ban on the differing treatment of competitors could be handled in one of two ways: by either *freeing the forwarders* of the same regulations that these carriers would be (and now are) relieved of; or by making these carriers *subject to the same economic regulations* as the air freight forwarders. In general our industry would prefer the latter course.

It may be argued that it should be left to the Board's discretion to decide whether to exempt a major all-cargo operator under this amendment from such sections as 403, 404 and related sections and that the Board should not be foreclosed by your writing such a prohibition into the Act. That such discretion should not be remanded to the Board is convincingly demonstrated by a recent Board decision "*Air Chicago Freight Lines, exemption*" (Docket 28353; Order 76-7-97) which merely reaffirms what the Chairman indicated was the Board's intention in his August 3 testimony. The Board had previously denied an application of Air Chicago for an exemption from Section 401 of the Act and Part 298 of the economic regulations to permit it to operate DC-6 aircraft in all-cargo operations between Chicago and Philadelphia. In a Petition for Reconsideration, Air Chicago indicated its willingness to limit its operations to smaller C-46 aircraft on seven roundtrip flights per week in scheduled service for a two-year period in that market on the grounds that there is no certified all-cargo service to Midway Airport in either direction, which Air Chicago intends to serve. The Board issued the grant.

We are not contending that the Board was not right in granting an exemption under these circumstances and that such nighttime all-cargo lift was not necessary. It doubtlessly was. But the Board still continued to exempt Air Chicago from Sections 403, 404 and other sections of the Federal Aviation Act to which forwarders are subject for the new service authorized, even though it would obviously compete in that market with the air freight forwarders. Consequently we repeat that there must be some built-in statutory restriction so that the Board may not similarly exempt any additional all-cargo service it may authorize under the proposed Bill.

We would therefore *urgently* request that if this Bill is to be enacted (and the rationale behind it, that there is substantial need for a radical improvement in the prime time all-cargo service, is uncontroverted), that it be amended *in either one of two ways*:

Alternative 1: Instead of authorizing the Board to grant an exemption "from the requirements of this Title" (meaning *any and all* sections of the Federal Aviation Act), the Board's authority should be limited to granting an exemption "only from the requirements of section 401 of this Title" (meaning the requirement for obtaining a certificate.) As we understand it, this is all that the proponents of this Bill basically seek, even Federal Express, that is, the right to be granted the interim authority to fly larger aircraft in freight service during the possible lengthy period the Board may be holding a hearing on an application for a certificate by the same carrier. Indeed, in its consolidated Answer filed with the C.A.B. dated October 28, 1975, to various objections to FE's application for exemption to use DC-9's, while FE indicated that it saw no need for removing their exemptions from sections which are totally applicable to the forwarders, it indicated it *did not oppose* the application of the same sections to it. And in his August 3 testimony before the Senate Subcommittee the spokesman for Federal Express indicated his willingness to accept our proposed amendments.

Alternative 2: The serious problem I have mentioned can be handled in another way. Since any carrier authorized under this proposal will undoubtedly be au-

thorized to fly much larger aircraft than is now permitted to a Part 298 air taxi operator, the Board *should be expressly prohibited* from including, in any exemption grant from the certificate requirements, any exemption from any and all other sections of the Act from which air taxis are now exempted under Part 298. This could be accomplished by adding an additional sentence at the end of section 2 of the Bill before you to read as follows:

"But in no event shall the Board exempt such operations from sections 403, 404, and 407 through 415, nor any provision of section 416 other than specified herein." The listed sections are also those to which the air freight forwarder competitors are expressly subject under the Act.

I trust the members of the Subcommittee would agree with us that it would be something less than elementary justice for the smallest air freight forwarder which does not fly aircraft to be subject to all or most of these provisions while a major cargo carrier is free of these requirements. Federal Express, it should be noted, has reported revenues of \$73 million for the last fiscal year, with forecast revenues of at least \$100 million for the next year, and this without the use of larger aircraft.

I should like to attach to this testimony and have made a part of this record the following:

1. The AFFA Answer before the Board to Federal Express' Exemption application to use DC-9's, dated October 14, 1975;

2. Excerpts from Board Regulations Part 296 and 298 showing, respectively, the sections of the Federal Aviation Act from which forwarders and air taxis are currently exempt;

3. A summary of the Board's Regulations from which air taxis are now exempt but to which forwarders are subject.

We appreciate the opportunity to testify before you today.

SUMMARY OF EXEMPTIONS OF AIR TAXI OPERATORS FROM FEDERAL AVIATION ACT PROVISIONS

Under Part 298.11 of the Board's Regulation, air taxi operators like Federal Express are *exempt* from the following provisions of the Act *to which forwarders are subject*:

(1) *Section 403* (except for tariffs for through rates or interline tariffs): Under Subsection (a) among other things, carriers subject thereto are required to observe and charge just and reasonable rates and to observe just and reasonable regulations and practices. It is under this subsection that forwarders and airlines (but not air taxis) are required to file tariffs (under Section 1002 such filed tariffs may be suspended by the Board).

Under Subsection (b), carriers subject thereto are forbidden from charging any more or less than is specified in the tariff on file with the Board for air transportation or for any service in connection therewith; and may *not rebate* any portion of the rates charged or extended to any person any special privileges or facility. Air taxis are *not* bound by these restrictions.

(2) *404(a)*: Those subject to this subsection must establish, observe and enforce just and reasonable individual rates and just and reasonable rules and regulations and practices relating to air transportation. In addition, this section requires the provision of safe and adequate equipment and facilities.

404(b): Those subject thereto are *forbidden* from giving any undue or unreasonable *preference* to any person or description of air traffic or to subject any person or description of traffic to any *unjust discrimination* or any undue or unreasonable prejudice or disadvantage. Air forwarders, but not air taxis are covered by 404(a) and (b).

(3) *Section 407(b)(c)(d)*: Subsection (b) requires at least an annual filing with the Board of a list showing the name or stockholders holding at least 5% of the capital stock or other interests in any air carrier, any person engaged in any phase of aeronautics, or any common carrier. Subsection (d) provides that the Board shall prescribe the accounts and records to be kept by the Board and that it shall be unlawful for a carrier to keep any accounts or records other than those prescribed or approved by the Board.

Forwarders are fully subject to Sections 403, 404 (a) and (b) and 407(b)(c) and (d). They must, for example, maintain a prescribed uniform system of accounts. Air taxis are totally exempt.

(4) *Section 408(a)*: This subsection is a general section making it unlawful without Board approval for an air carrier to consolidate or merge with another air carrier or to control another air carrier by any other common carrier or any

person engaged in any phase of aeronautics. Forwarders are fully subject to this subsection of the Act. In other words, Board approval is required. Air taxis are exempt from any need for obtaining Board approval in any merger or control situation except where they wish to merge with any person who operates large aircraft or who engages in air transportation not covered by the air taxi exemption. Thus, presumably, an unlimited number of air taxis can merge without even seeking Board approval; one or more can be controlled by a company engaged in a phase of aeronautics; and an air taxi no matter how large can acquire or be acquired by any other common carrier not only without Board approval but without even notifying the Board. Forwarders are fully subject to all subsections of 408.

(5) *Section 409*: Air taxis are exempt from 409(a) except where they enter into an interlock arrangement with a larger aircraft company.

(6) *412(a)*: Air taxi operators are *exempt* from Subsection (a) of this Section, which requires the filing (and under subsection [b], Board approval or disapproval) by any air carrier of various agreements with any other air carrier or other common carrier regarding various matters therein listed, including agreements for so-called cooperative working arrangements. *Forwarders are subject fully to the filing requirements of this section and to Board action under this section.* All that air taxis have to do is file with the Board a memo of an agreement affecting air transportation between them and "any person (excluding air carriers) who operates large aircraft for compensation or hire." They are thus totally immune from seeking Board approval and even from filing commission agreements, pickup and delivery agreements and so on to which the forwarders are *totally subject*.

MR. HAFFER. Airfreight forwarders are indirect carriers, licensed by the Civil Aeronautics Board to engage in the transportation of property on behalf of shippers. We are air carriers, even though we do not own or operate aircraft. We purchase space on the direct air carriers on behalf of our shipper customers, pick up the freight from the shippers, deliver to the airlines, receive it at destination, and deliver it to the consignees. We specialize in door-to-door service. We specialize in overnight service, 24-hour service, and in the domestic markets wherever airline service, or a combination of scheduled airline-air taxi and truck service permits, we provide overnight delivery for any weight of traffic.

We are, also, the small shipment specialists in the air transportation field. Of all shipments tendered by the public to forwarders, 76 percent of the shipments tendered were represented by shipments weighing from 1 to 50 pounds. Of the balance, 20 percent weigh between 51 and 500 pounds, and 4 percent over 500 pounds. The average weight of the shipments received by the forwarder from his own shipper varies, depending upon the forwarder and the market. The average weight for the industry is about 109 pounds. This is domestic.

In the international field, the average size of shipment received by the forwarder from a shipper customer would be substantially larger.

As we understand it, and I have just learned from Federal Express, the average size of their shipments received from their shipper customer now is between 13 and 14 pounds.

The forwarder also performs all of the documentation and paperwork, bill their own customers, and alone are responsible to them as common carriers from origin to destination. The only identification our shippers have is with us, and not with any of the underlying airline forwarders we may use.

Our industry generates between 40 and 45 percent of the freight volume flown by scheduled domestic U.S. air carriers.

Of the total air shipments tendered by the public, almost 70 percent—69.1 percent, to be exact, were tendered to the forwarders.

For this transportation that I have referred to that we purchase from the airlines, we pay their published tariff rates just as any shipper does.

However, we in turn are required to file tariffs with the Civil Aeronautics Board for the transportation that we provide on behalf of our shipper customer, and to adhere to these tariffs.

In other words, our customers pay our filed rates. Our tariff obligations under the Board regulations, and under the Board's authority including its suspension power, are identical with those applicable to the direct carriers, that is, to the airlines.

Now, much has been made and said here about the need for overnight all-cargo freight lift, and I will say, although there has been some intimation to the contrary here, that the airfreight forwarder, without reservation, requires on behalf of his shipper customers adequate overnight all-cargo airline freight lift in order to serve their needs.

While passengers may want to travel when they are awake, that is in the daytime for most of us, most airfreight needs to travel when people are asleep, in order to be there when they wake up.

Freight, in large part, then must travel by night. Of course, there is a substantial part which does travel by day, and second day or third day service, where there is a discount rate extended for such secondary service.

Because of this need—impressive need, longstanding need of the forwarder, because he has accustomed his customer, to the concept of overnight delivery in most markets, the airfreight forwarder would support the increased all-cargo lift that this bill at least gives some promise of generating, and I would say it is of no particular significance to us in that aspect whether this lift is made available through the exemption power granted by the Board to new all-cargo operators or new all-cargo operation, or by certification.

What we have called the massive overnight all-cargo service erosion by the scheduled certificated carriers on which the forwarder principally depends for adequate lift in order to serve his shipper customer, has become so serious and it threatens to become so much more critical that an expedited grant through the exemption process pending hearings on a certification application may be an absolute necessity.

It may well be indeed the only feasible—and, certainly it would be the most expeditious way of filling, contrary to some of the views expressed here, the deep void that the scheduled combination carriers have created in the overnight freight lift.

The forwarder's growth, and consequently his service to his shipper customer, to some extent has deteriorated and stagnated since 1973, principally because of this erosion in overnight prime time freight lift.

In 1972 there were over 74,000 nighttime departures of freighters from the major domestic airport cities. In 1974, this had dropped to 57,000 departures. There are now over 800 city pairs that are not provided prime time, that is, overnight freighter service by the scheduled carriers.

Only about one-third of the total airfreight market now receives prime time overnight service. Not only has the number of key time all-cargo flights declined, but the number of airlines offering all-freighter service at any time of the day has declined.

The combination carriers have steadily downgraded or abandoned their certificate authority to provide all-cargo service.

In 1970, nine combination carriers provided such all-cargo service—American Airlines, Braniff, Continental, Delta, Eastern, Northwest, TWA, Western, and United.

By 1975, four of the nine had eliminated such services entirely. These are Eastern, Continental, Delta, and Western.

These service cutbacks have had far reaching effect on both the quality of the domestic airfreight service available nationwide, and on the cost to the airfreight forwarder and, hence, to their customers.

In many markets, the performance of overnight service has now become tremendously and extremely difficult, if not impossible, for freight forwarders. It is only through such devices as the use of a combination of air and truck service and the expensive chartering of aircraft that they have been able to maintain their traditional service superiority.

With the further expected diminution of usable lift, their ability to maintain this level of service is highly doubtful.

The AFFA therefore would support any reasonable bill which would offer the possibility of more available all-cargo lift, at least to rectify the deficiencies for which the combination carriers have been responsible in the last several years.

Hence, we would endorse the principle of the bill before you. Of course, this endorsement is on the assumption that the forwarder would be able to use the additional lift that might be made available through the exemption process.

For example, we would not support any restriction in the bill, and we would oppose any request by a carrier to the Board for exemption under the bill if adopted, that would limit—self-limit the weight of shipment that could be carried or received from the shipper customer by the particular carrier receiving the particular exemption.

I understand that, for example, Federal Express expressed willingness to accept a 70-pound limit on the size of shipment received from its customers. This would be of very little use to the airfreight forwarders because for much of his freight, he could not use Federal Express since, while the average size of his shipment received from his own shipper customer may be 109 pounds, he puts these together into a consolidation, delivers it to a carrier, and the resulting average weight of the shipments tendered to the airline by him is approximately 350 pounds domestically.

Now, I am talking about an average. We, of course, will extend to an air carrier substantially larger shipments in large containers, between the major markets, and in some secondary markets, between secondary and tertiary points, we may give a single small shipment to an air carrier, but any such restriction upon the size of shipment would diminish the usability of such additional freight lift by the airfreight forwarder.

As I have indicated, we would endorse the principle of the bill before you, but not without appropriate amendments in addition to the one I have referred to, that is, in addition to the one that there should be no restriction on the size of shipment.

Mr. ANDERSON. Do you have the amendment in writing so we know what you are talking about?

Mr. HAFFER. The amendment about which we are talking is in writing. It is listed here in my statement.

Without the amendment I am going to refer to, the bill as now drafted would certainly be very damaging, and have destructive effects upon the freight forwarder industry.

The principal bill would authorize the Board to grant an exemption from any and all requirements of the Federal Aviation Act.

Now, I am going to come to Mr. Milford's version in a moment, but the bill that I am talking about is H.R. 14623.

That bill would authorize the Board to grant exemption from any and all requirements of the Federal Aviation Act, to permit all-cargo operations in interstate transportation in any size aircraft where the Board finds such an exemption is in the public interest.

This means that the Board could grant exemptions not only from certain requirements of section 401, but from sections such as 403 and 404 of the Federal Aviation Act, to which the forwarders are totally subject, and which are the tariff filing and adherence requirements, antirebate provisions, and the antidiscrimination provisions of the Federal Aviation Act.

Now, the Board could do that, and might do it, and that is no idle threat, because Federal Express has expressly been exempted from these, as well as other sections of the act, under part 298 of the Board's regulations.

Yet, this carrier admittedly, and any other carrier that might be granted an all-cargo exemption using larger aircraft under this section would, compete directly in their sales and in their marketing, and in their advertising, with the airfreight forwarders.

Moreover, not only are present air taxi operators included, and I believe there has been much discussion about this, but certificated carriers would be able to use the proposed bill to obtain an exemption to serve routes now not covered by their certificate. Unless this is specifically restricted, the Board could grant for the new routes an exemption from the tariff filing, antidiscrimination and other requirements, while the certificated service of these carriers would be subject to such provisions, a truly anomalous result.

The fear we entertain is that those who compete directly with us might also be permitted to use larger aircraft than they are even now using, but without being subject to the same tariff and other regulatory controls, including the antidiscrimination provision of the act that we are subjected to. And this is no idle threat for another reason, because Chairman Robson of the CAB, in his testimony before the Senate Aviation Subcommittee, on this identical bill on August 3, said that is just what he wanted to do.

He wants rate flexibility and certification flexibility. He wants the bill to provide that the Board could grant freedom from the tariff filing requirement and other applicable provisions of the act.

And just yesterday, Chairman Robson repeated that statement to you with a request that the Board be unfettered in its authority to exempt these carriers from both the certificate as well as the rate regulations and provisions of the act.

Maybe I am beating a dead horse even though the Chairman thinks the horses are pretty lively, because apparently Federal Express is willing to accept an amendment to the bill which will provide for their being subject to the tariff filing requirements and the antidiscrimina-

tion provisions of the act, and that is my understanding of yesterday afternoon's testimony from Mr. Smith.

Now, the way to do this is set forth in one alternative in my written testimony. This is to provide—to amend the act proposed so as to add a sentence to the effect, which is the first alternative set forth in my prepared testimony on page 829, that: "The Board should be authorized, however, to grant an exemption only from the requirements of section 401 of this title," the requirements for obtaining a certificate.

As I understand your amendment, Mr. Milford without having seen it, I believe the amendment would take care of this and would do just that, permit the Board to grant an exemption only from section 401.

Mr. MILFORD. That is correct.

Mr. HAFFER. We would, therefore, endorse your amendment. It fits in exactly with what we had in mind and would dispense with, we believe, any treatment of other carriers which would be discriminatory and anticompetitive, vis-a-vis the airfreight forwarders.

We would also suggest a further amendment which was implicit, Mr. Chairman, in your question, I believe, to Mr. Prescott, when you asked if Flying Tiger Line would support this bill if the bill also provided that those carriers receiving an exemption pending the decision on a certificate application, would lose their existing exemption so all of their operations would be subject to the tariff filing and other provisions of the act.

That is, if an air tax operator, for example, a commuter carrier, a carrier like Federal Express, pending an application for section 401 certification and concurrently therewith were to file an application for an exemption to use larger aircraft, we would suggest as a condition to the grant of the exemption the requirement that in the continued use of the smaller aircraft pending a decision on the application, they also be subject to the same regulatory controls to which their larger aircraft are subject, that is the tariff filing, the antidiscrimination provision and so on. And if it was your intention, by your question, to indicate support for such further amendment, we would endorse such an additional amendment.

Let me, in conclusion, state that I trust at this time that the members of the subcommittee would agree with us, that it would be something less than elementary justice for the smallest airfreight forwarder which does not fly aircraft to be subject to all or most of these provisions that I have referred to in sections 403 and 404, the tariff filing requirement, the antidiscrimination provision requirements of the act, while a major cargo carrier is free of these requirements.

And certainly Federal Express, with its projected \$100 million in revenue, is a major cargo carrier. But we not only think of them, we were thinking of all carriers that might be granted an exemption application by the Board under this bill because the Chairman of the Board has indicated, as has been previously mentioned, that he would regard the passage of this bill as a direction to the Board to be liberal in its grant of such operating authority.

I would like to make one comment in conclusion, to refer to the testimony of Mr. Barnum lest it create any misconception on the part of the membership of this subcommittee.

I think either Mr. Barnum has not taken or has failed to take his staff's advice or has been ill served by his staff.

In his testimony, he states as follows:

Another area with limited regulation is that of freight forwarders. The Board permits virtually free entry and relative complete pricing flexibility. In contrast to the claims of chaos and oligopoly often predicted as a result of regulatory reform, we see a healthy and growing industry of 300 firms. Clearly, the unregulated section is doing well.

Now, the only two things that are correct in that paragraph are that the forwardly industry has virtually free entry and, secondly, that there is an industry of over 300 firms. But, basically, of these about 265 to 270 are token firms holding authority only and doing very little business.

The remaining segment of the industry is only in part healthy. Many of the remaining members of the industry are losing money.

And certainly the industry is not unregulated.

As I have indicated, we are totally subject, once we are admitted to the inner sanctum of the airfreight forwarder industry by receiving a piece of paper, to all other provisions of the act, including the tariff filing requirement, the antidiscrimination provisions of the act, and the enforcement provisions of the act.

Thank you.

I will be happy to answer any questions.

Mr. ANDERSON. Thank you, Mr. Haffer.

We have heard testimony that airfreight forwarders are chartering aircraft rather than using scheduled services.

Could you describe the forwarders which now have regular charters and the markets involved?

Mr. HAFFER. I do not have the details of that because we do not keep that as an association. We do not keep records on chartering by the members of this industry.

Emery does have chartering of aircraft in the southeast tier.

Mr. ANDERSON. In the what?

Mr. HAFFER. The southeast tier of the United States.

Mr. ANDERSON. Is that the only area that—

Mr. HAFFER. I believe that is the only area right now in which they currently charter. I believe, that is, aircraft other than the smaller part 298 aircraft. I am not positive of this, but I believe Emery may charter part 298-type aircraft in certain sections of the country for the purpose of offering what you might call extended pickup and delivery.

They are a substitution for truck service and add on to the trunk line service after trunk carriers carry the freight across the country. Air taxi operators will then be used to deliver to the destination city.

Shulman has a New York/Los Angeles charter, I believe, of DC-8's with Seaboard, and WTC has a charter in the same market with Airlift, and I believe these are the only regular charters that are now in existence in the airfreight forwarding industry.

Mr. ANDERSON. Do you know of plans for new charters in the near future?

Mr. HAFFER. Emery has announced, via the press and other releases that it proposes to engage in substantial charters beginning sometime this month in a number of markets based upon the facts that I have indicated here, the inadequacy of existing scheduled prime time all-cargo lift, and only in those markets, I believe, where such lift is inadequate.

Mr. ANDERSON. Now, do you know of plans for new charters, except than by Emery?

Mr. HAFFER. There is talk in the industry of a number of other forwarders chartering in order to take care of the erosion in the lift that I have referred to, and I suspect that there will be some particularly in prime time night lift. And I do not anticipate improvement in the near future.

Mr. ANDERSON. The Board has jurisdiction to regulate forwarder fares, but I would like to know whether, in practice, the Board regulates these rates in detail.

Mr. HAFFER. To a substantial extent, since the forwarder generally has followed the airline rate increases, most on a percentage basis, the Board has allowed forwarder rates to become effective, and while not giving them a free hand, at least has not dealt out the kind of suspension that it would have frequently dealt out to a direct air carrier. However, it has suspended forwarder rates in the past as being too low, and can also suspend them for being too high as well.

Mr. ANDERSON. Does the Board intervene as frequently in forwarder rates as it does in passenger fares?

Mr. HAFFER. You mean does, Mr. Chairman, it suspend or reject?

Mr. ANDERSON. Get involved.

Mr. HAFFER. Yes, it does, very much so.

All forwarders in making a tariff change are required to file the same degree of economic justification for the tariff filing, for the tariff change that the direct air carriers are required to.

In addition to that, the Board frequently rejects forwarder tariffs allegedly because they are in violation of part 221 of the Board's regulation dealing with tariffs.

The Board is intimately involved on a day-to-day basis with forwarder tariff filing.

Mr. ANDERSON. Do the forwarders have a position on whether it would be desirable to deregulate direct air cargo so as to permit free entry and exit and freedom to set rates?

Mr. HAFFER. As an association, we do not, Mr. Chairman.

Mr. ANDERSON. Mr. Snyder?

Mr. SNYDER. I do not know if I understand the thrust of your testimony. You do not mind if Federal Express flies large aircraft—just so long as they raise their rates to approximate those which our members charge?

Mr. HAFFER. That is not what I said, Mr. Snyder.

That is, I did not use the words "to raise rates" because it would be contrary to the facts.

Federal Express' rates are no lower than the forwarders' rates, despite what that carrier has said. We have rates that are just as low as they have in most of the markets, and as far as being higher, our rates are higher than theirs in some markets and lower in others.

Mr. SNYDER. If I understand your testimony, you do not mind if Federal Express flies larger aircraft if their rates are comparable to those of your members?

Mr. HAFFER. No.

Only as long as they are subject to the same regulatory controls and have to meet the same kind of tests that the forwarders and certificated air carriers meet with respect to support for their rates—the economic support for their rates.

Now, it may very well be that Federal Express can justify a lower rate in certain markets than a direct air carrier or forwarder can justify in that market. It may be they can justify a lower rate or a higher rate.

In that case, good luck to them. And I would say that the Board then should allow those rates to go into effect, but I say they should be subject to the regulatory controls, to Board supervision of the economics of their rates. They should be subject to the rate filings and to the same notice requirements as the rest of the regulated industry.

That is all we are asking, equal treatment, not equal rates.

Mr. SNYDER. If everyone were to become involved in the rate filing, redtape, would it not be necessary for them to compensate by filing for higher rates than otherwise would be the case?

Mr. HAFFER. Well, I think in that case, Mr. Snyder, in fairness, it should be dictated that we would be relieved of the rate filing so we could lower our rates.

Mr. SNYDER. That was to be my next question.

Would you drop your proposed amendments if you were not required to file?

Mr. HAFFER. We would prefer to go the route that I have suggested—the jungle has been referred to here before—but we regard total decontrols in this area perhaps more appropriately as a stinking swamp.

Mr. SNYDER. One further question. You may have answered it already.

Is the Federal Express service available to freight forwarders—and do your members ever use it?

Mr. HAFFER. Well, they have a door-to-door service, and we have our own pickup and delivery service. We could use them but we would be paying an additional charge for that service that we do not use.

Mr. SNYDER. Thank you.

Mr. ANDERSON. At this time we are going to recess for about 15 minutes to cast a vote. And before I do that, I would like to make an announcement that I know some of you are interested.

I would like to announce that our hearings, which are scheduled tomorrow on aircraft noise, will be postponed until Thursday, September 9.

We originally scheduled Secretary Coleman to appear tomorrow, but I am informed that the administration has not finalized their program on aircraft noise abatement.

Next week, however, on September 9, we fully expect to hear from our colleague, Mr. Mineta, on his proposal, and from the Secretary on any comments he may have on the imminent bill, and any other proposal.

We will come back at about 4:45, and at this time we will recess.

[Short recess.]

Mr. ANDERSON. The meeting of the subcommittee will come to order.

Mr. Milford?

Mr. MILFORD. Thank you, Mr. Chairman.

Mr. Haffer, you stated that, I believe, if I understood your testimony correctly, that a 70-pound weight limitation placed on cargo air carriers who might be seeking an exemption under the provision of H.R. 15302 would be of little use to you. In other words, I believe you stated you would oppose such limitation.

Did I summarize your testimony correctly?

Mr. HAFFER. It would have—it would not be very much of use to us, that is correct.

Mr. MILFORD. This statement contrasts rather sharply with some testimony we received from the air carriers.

According to them, the small weight package constitutes the major portion of their business.

In fact, I recall the Flying Tiger testified their average package weight was 35 pounds, yet you say you are aware of the major handlers of air cargo, and that a 70-pound weight limitation would be harmful to your business.

Mr. HAFFER. I think we have to distinguish what I believe I attempted to distinguish, Congressman, but was not successful apparently in doing, between the weight of the shipment received from the shipper customer, our shipper customers, and the weight we tender to the air carrier.

For example, take Boston. If we have five shippers there and receive from each of them a shipment, each weighing 50 pounds, or even 25 pounds, and those shipments are all going to Rochester, N. Y., we would put those in a single shipment.

Mr. MILFORD. In other words, you ship by—

Mr. HAFFER. We consolidate.

Mr. MILFORD. Okay. That clears that up.

You mentioned that your members charter air taxi aircraft to haul air cargo.

Do you use these aircraft in competition with certificated air carriers?

Mr. HAFFER. No.

Basically that air taxi service is now used not only on a charter basis but on a regular scheduled basis. It is what I referred to as a kind of extended pickup and delivery, a substitute, but over a longer geographical area for end-on or origin motor carrier transportation.

For example, if the shipment were going from Rochester to Los Angeles, it might be flown from Rochester to New York City in an air taxi because of an inadequacy of scheduled lift by certificated carriers between Rochester and New York City, and then be put by a freight forwarder into a trunk line certificated service from New York City to Los Angeles.

Mr. MILFORD. This is not in competition with certificated air carriers?

Mr. HAFFER. Practically none of it is.

Mr. MILFORD. Let me ask you this.

Have you had occasion to observe in these air taxi cargo operations where the operator was outgrowing the aircraft that he was permitted to operate under the provision of the air taxi law, in other words, I believe he is limited to an aircraft that can carry no more than 7,500 pounds; is that correct?

Mr. HEYMSFELD. Yes.

Mr. MILFORD. Have you had occasion to observe operators whose business has grown to the point where 7,500-pound airplanes really were not sufficient?

Mr. HAFFER. I personally have no evidence of that except for Federal Express' representations. I do not know of any—there is another

air taxi that does a substantial amount of business, but I do not think it is in Federal Express' class, Midwest Air Service, that has a contract with the Federal Reserve System for moving documents between banks in various parts of the Federal Reserve System, and also, at the same time, offers service to the shipping public. It has between 40 and 50 Lear jets and Cessnas. Instead of using the single hub concept via Memphis with a subsidiary, Pittsburgh, which I understand Federal Express uses, it uses between six and eight hubs to transit these aircraft.

But in answer to your question, I do not know of any.

Mr. MILFORD. Thank you, Mr. Chairman.

Mr. ANDERSON. No further questions.

I would like to thank you, Mr. Haffer, for your presentation.

Mr. HAFFER. Thank you.

Mr. ANDERSON. Next, we have Mr. James Schultz, general counsel, CAB, and Gary Edles, associate general counsel, to answer reserved questions from yesterday.

TESTIMONY OF JAMES SCHULTZ, GENERAL COUNSEL, CIVIL AERONAUTICS BOARD, ACCOMPANIED BY GARY EDLES, ASSOCIATE GENERAL COUNSEL

Mr. SCHULTZ. We have prepared a CAB staff response in writing to the questions that were raised with Chairman Robson yesterday. The subcommittee counsel has a copy of that written response, and if you prefer, what I would do is provide that to you, and Mr. Edles and myself are here at the subcommittee's request to provide technical assistance.

Mr. ANDERSON. It is not in question and answer form then, is it?

Mr. SCHULTZ. No, it is in narrative form.

Mr. Chairman, perhaps, if you wish, I could take the specific questions that we received a copy of from you, and just respond directly to those questions.

Mr. ANDERSON. Fine.

Mr. SCHULTZ. Your questions recited a general background of the existing regulatory scheme with which we agreed.

You then directed the following question, you assumed the passage of H.R. 15302, and the question then becomes the extent of Federal Express' ability to operate small aircraft under its part 298 exemption.

Our analysis is the following, and I will just cite a hypothetical—I do not know what kind of an application Federal Express, or any other part 298 carrier would file, but let us take a part 298 carrier who now is operating small aircraft in a number of markets.

Part 298 of the Board's rules exempts that carrier from route regulation, rate regulations, and other sections of the law.

That part 298 carrier now decides that it wants to operate larger aircraft perhaps in selected major markets that it is now operating small aircraft in.

It comes to the Board, H.R. 15302 is law, and it applies for route authority, and identifies the market it is interested in, those markets it wants to fly a large aircraft in. The Board has the power from Congress under H.R. 15302, if it is in the public interest, to allow that

part 298 operator to fly these larger aircraft pending Board hearing and consideration of its application for a permanent certificate.

Let us assume that the Board does find it in the public interest, does authorize that part 298 carrier to fly larger aircraft. Our analysis is at that point that the part 298 carrier, that carrier who is now authorized and would be flying larger aircraft, loses its part 298 exemption.

Mr. ANDERSON. Entirely?

Mr. SCHULTZ. Yes, sir.

Mr. ANDERSON. Rates, routes, everything?

Mr. SCHULTZ. Everything.

Now, I would observe that as to those routes for which that carrier received large aircraft exemption under H.R. 15302, it can fly small aircraft, or whatever it wishes on those routes.

Mr. ANDERSON. But again, if what?

Mr. SCHULTZ. To the extent the Board grants an exemption under H.R. 15302 for markets X, Y and Z, that applicant who now has one exemption can fly any kind of aircraft it wishes in those markets.

Mr. ANDERSON. Under the exemption?

Mr. SCHULTZ. That is right.

Mr. ANDERSON. But after the certificate is granted—

Mr. SCHULTZ. Well, even before the certificate is granted, Mr. Chairman.

In other markets, markets A, B and C, where before he was flying small aircraft under part 298, free, without any regulation, he would lose the ability to fly A, B and C, unless he got further authority from the Board.

Mr. ANDERSON. Supposing he asked for certification on A, B and C, and the Board said they were only going to give it on E and F. He then can only fly E and F, can he not?

Mr. SCHULTZ. Yes, sir.

Mr. ANDERSON. He loses all those others, and he cannot fly his smaller planes on anything to the other places?

Mr. SCHULTZ. Yes, sir.

Mr. ANDERSON. Well now, could the Board restore the part 298 exemption if it wishes to do so?

Mr. SCHULTZ. The Board could restore the part 298 exemption if it made certain findings, and the source of that requirement is found in our existing section 416, the existing exemption section.

In other words, in order for the Board to restore the part 298 exemption it would have to find that there was an undue burden on the carrier which satisfied the terms of section 416.

I would make the further point, though, and it was one made yesterday, that it is not easy to grant an exemption under section 416, and it is not at all clear that the Board could decide to allow him to fly those small aircraft operations—exempt those small aircraft operations.

I am not sure it would survive a court challenge.

Mr. ANDERSON. Supposing the applicant applied for an exemption on A, B, C and D, E and F, and the Board decides to give him the exemption, holding the hearing for certification and they say, "okay, we are only going to let you go on E and F."

The applicant says, "I do not want to do that now."

At what point can he step back after he has made an application for a certificate?

Mr. SCHULTZ. He can step back at any point.

Mr. ANDERSON. At any point, and continue to fly A, B, C and E and F?

Mr. SCHULTZ. He would have to stop flying the large aircraft.

Mr. ANDERSON. Go ahead.

Mr. MILFORD. That was the point I wanted to make clear, that once he starts operating the large aircraft, and then is totally under CAB, if at some point in time he chose to give up this, then he could then revert back to, if you will, part 298 operation?

Mr. SCHULTZ. I would think so, yes, sir. Yes, sir.

The reason he loses his part 298 authority is because he is flying large aircraft.

Mr. MILFORD. But if he gives up that, he can still go back like any other aircraft?

Mr. ANDERSON. Let me restate the question asked. If an exemption is granted, would the routes be governed by the CAB, and the answer is—

Mr. SCHULTZ. Yes.

Mr. ANDERSON. We are talking about the exemption now?

Mr. SCHULTZ. Well, let me say that the Board would decide what routes he could fly pursuant to the exemption.

Mr. ANDERSON. Yes, would their rates be governed by the CAB?

Mr. SCHULTZ. Yes, sir.

Mr. ANDERSON. This is the exemption. Could they fly large aircraft where they wanted, and charge what they wanted, or would the CAB specify on what routes they could use their large aircraft?

Mr. SCHULTZ. The exemption would define the routes on which they could use their large aircraft.

Mr. ANDERSON. If the CAB regulated their large aircraft routes and rates, would their small aircraft remain exempt from regulations, and the answer apparently is yes, during the exemption period, but not during the certification.

Mr. SCHULTZ. No, sir. I think it is "No" in both instances. It is no. It is no in the exemption period, because they are flying large aircraft.

Mr. ANDERSON. If the CAB regulated the large aircraft rates and routes, would their small aircraft remain exempt from regulation?

Mr. SCHULTZ. The answer is no.

Mr. ANDERSON. No?

Mr. SCHULTZ. It would not under part 298. There is a possibility—

Mr. ANDERSON. Even during the exemption period?

Mr. SCHULTZ. That is correct, sir.

Mr. ANDERSON. Now, could Flying Tiger operate an air taxi and set up the same kind of a system, be both regulated and exempt, and apparently you are telling me no, so you are telling me—

Mr. SCHULTZ. I would think not. Now, the point to make is that both—

Mr. ANDERSON. Could it be so drawn up by the Board that they can be "fish" and "fowl"?

Mr. SCHULTZ. I do not think so, especially, let me say, I hate to state to you an absolute legal conclusion, but I take it—

Mr. ANDERSON. We are going to have to vote on it.

Mr. SCHULTZ. In the Flying Tiger case, I am assuming the law written now is amended by H.R. 15302.

I think that the likelihood of a court sustaining the Board's decision to allow Flying Tiger to set up an exempt operation under part 298

is very slim, that the chances are that the Board does not have that authority.

Mr. ANDERSON. So that Federal Express would have to be a one-type operation, and Tiger would have to be the same type, in the sense?

Mr. SCHULTZ. Yes. It is a factual analysis under section 416, and it is arguable that Federal Express, taking a particular carrier, might be able to make the better argument, conceivably could make a better argument that it should be allowed to be "fish" and "fowl" than Flying Tiger could.

Mr. ANDERSON. But if the same case could be taken to court and probably you think would not be upheld in court?

Mr. SCHULTZ. That is right, sir.

Mr. ANDERSON. Has the Board ever previously permitted a carrier to combine certificated operations with unregulated operations under part 298, and under what circumstances?

Mr. SCHULTZ. The general answer is, yes, sir, it has. The circumstances are very unusual ones.

Mr. Edles can perhaps cite a couple of cases, and one that occurs to me was in connection with an Alaskan carrier, and the Board said that there were very unusual circumstances, and in that particular case the Board would allow the mixing of regulated and unregulated, but there is a sentence in there that says that the rationale here has no counterpart in the lower 48 States.

The point is that the circumstances are very unusual, and if you like, Mr. Edles might be able to recite a couple of other examples.

Mr. EDLES. I think, if I can, Mr. Chairman, just make one comment.

The leading case upon which we rely was the *Hughes Air Corporation* case, which was the basic case sustaining the Board's issuance of part 298. The court in that case said that as long as these operators were fundamentally noncompetitive, as long as there was a burden placed on the carriers by the certification process, the court cited dollar figures, for example, how much in counsel fees, things like that, it would require to go through certification, the fact that they were in and out of the market, the fact they fundamentally did things different from certificated carriers, meant that they could qualify for blanket exemption pursuant to part 298.

Once a carrier moves from that kind of specialized, almost non-competitive environment, and moves into what is fundamentally a certificated environment, in those circumstances it is our office's judgment that the courts are likely to say that, now you have outgrown, if you will, the section 416 exemption authority, and you have moved into what Congress fundamentally has established as a certificated system.

One or two other examples, to come back to your question, which come to mind are Wright Airlines, which operates between Cleveland and Detroit, between the downtown airports, got a certificate a number of years ago, it having been an air taxi prior to its receiving that 100-mile route across the lakes.

The Board allowed it a 5-year period to phase out its air taxi operation. It operated other unregulated operations in the general area, Midwestern part of the United States. The Board accorded them 5 years to phase out their other operations, but that was again a highly unique situation.

In one case involving a supplemental airline which was acquired by a company which was going to be both an operator of a supplemental airline, and continue to fly highly specialized contracting-type operations in Alaska, and they said they would not combine their operation.

They were, first of all, geographically completely discrete. There was no possibility of overlap, and they were completely different types of operations.

I will be happy to supply for you the actual Board order which goes into that in much greater detail. As Mr. Schultz has pointed out, those are highly unique, specialized situations, in one of the cases, at least it was just for a kind of phaseout period.

Mr. ANDERSON. Mr. Milford?

Mr. MILFORD. I have a few questions, and most of them are due to my own ignorance, but to be clear on this, let me ask you this.

In granting an exemption under the provision of H.R. 15302, would the applying carrier be required to fly inflexible routes, delivering services, as opposed to being able to provide multiple or flexible routes between named cities?

Mr. SCHULTZ. I think flexibility is very possible, Congressman. It would depend upon the application and the exemption given, but ordinarily I think it is true when the Board awards authority, it is linear authority, and you can go in and around one to the other, skipping back and forth. So it could be flexible.

Mr. MILFORD. You make the grant on the basis of the named cities, as opposed to specific—

Mr. SCHULTZ. As opposed to an area, yes, sir.

Mr. MILFORD. As opposed to a specific route. In other words, you must start at New York and go to Chicago and then on to so and so, and/or where the carrier might choose to start at New York and go to Dallas and come back to Chicago?

Mr. EDLES. Presumably the carrier would come in and request authority to serve between and among cities A, B, and C.

Mr. MILFORD. Named cities?

Mr. EDLES. It would be my guess that the Board, if it were to find that type of operation to be in the public interest, would tend to grant the carrier the authority in the form in which it requested it.

I could not guarantee that to a certainty, but it would seem to be reasonable.

Mr. MILFORD. In other words, the Board could and does have authority to grant certification based on some type of specialized service, for example, as long as that service is in the public interest, and not terribly damaging to existing systems?

Mr. SCHULTZ. They certainly have the authority to grant route authority to carriers with flexibility.

Mr. MILFORD. Well, now let us get back to the equipment again.

You stated in your response to Mr. Anderson, the Chairman that the larger aircraft would be restricted to specified routes.

Mr. SCHULTZ. Yes, but the more complete answer would pick up the kind of points you are making right now, that that does not mean that they would not have flexible authority to use the larger aircraft.

The Board does have the power, and indeed I think exercises it now, the objective being the route authority does provide flexibility.

Mr. MILFORD. Does the Board have authority to restrict the class of service for which an applicant might want to apply?

In other words, in the case of air cargo carrier, could the Board impose a package weight limitation before granting an exemption under the provisions of H.R. 15302?

Mr. SCHULTZ. In my mind it is not a clear question, but I think it is doubtful.

There is the section in the law that restricts the Board's discretion in the area of kinds of aircraft and facilities, and I am not certain, but it seems to me there is a very real likelihood that the restriction of the nature that you were talking about may very well be one that the Board does not have discretion to impose, but I do not think it is clear. I really do not know that that issue has been addressed.

Mr. EDLES. Congressman, may I ask for a clarifying question, are you referring to the interim operation, or the ultimate certificate?

Mr. MILFORD. The interim, which is pending. I do not think you could separate the two, because the interim is contingent upon certification.

Mr. SCHULTZ. This is a question, but not to complicate it, but I would also argue that the Board has greater discretion when it is dealing with an exemption.

The legal restriction Congress has placed on us in the exercise of our discretion in certificates is not necessarily applicable when we are dealing with an exemption and, in fact, I can think of one instance where an exemption was granted, and the Board did limit the type of aircraft that could be used, which was clearly something not permissible when you award a certificate.

Mr. MILFORD. I would like to finish reading your statement.

Mr. ANDERSON. Just a clarification from my previous question, so there is no question about it.

If the CAB issued a decision awarding Federal Express a certificate, and Federal Express felt that the certificate was too restrictive, could Federal Express refuse to accept the certificate and continue to operate under part 298?

Mr. SCHULTZ. The answer is yes.

Mr. ANDERSON. In other words, after they have gone as far as issuing—making a decision of awarding it, then there is—

Mr. SCHULTZ. It becomes perhaps more complicated if abandonment procedures are involved.

When I answered before, I was thinking of this situation, the way you described it, that they were asking for quite a large amount of authority, and the Board decision came out, and they did not get the authority they needed.

At that point they said no, we just do not want to accept this. I do not think there is any problem with that at this point.

Mr. ANDERSON. After they start operation.

Mr. SCHULTZ. Say they have operated 1½ years, 2 years, people are then starting to rely on their service, it is a little different.

Their burden would be tested under the law, and it is not enough that they simply want to get out.

Mr. ANDERSON. Very good.

Thank you very much.

This meeting is adjourned.

[Whereupon, at 5:26 p.m., the subcommittee adjourned.]

APPENDIX

STATEMENT OF ROBERT W. PRESCOTT, PRESIDENT AND CHIEF EXECUTIVE OFFICER,
THE FLYING TIGER LINE, INC.

My name is Robert W. Prescott, I am President and Chief Executive Officer of The Flying Tiger Line Inc.

Mr. Chairman and Members of the Aviation Subcommittee, I would like to thank you for the opportunity to testify on the question of the need for immediate legislative relief for the Federal Express Company. I recognize that proposed bill S-3684, if enacted, would ostensibly provide authorization for the Board to grant exemption authority to any applicant seeking domestic all-cargo authority so long as the applicant hadn't been successful in obtaining a certificate of public convenience and necessity. However, it has been made clear to me and to my staff that the alleged predicament of Federal Express provided the stimulus for this legislation.

I have considerable admiration for the skill with which Federal Express has advanced its claim for legislative relief. However, I seriously question whether the claim can withstand careful analysis.

I hesitate to remind this Committee of the composition of the certificated air freight system. But since my statement will be a part of the official record and reviewed by others with less expertise than the members of this Committee, let me beg your indulgence in a brief description.

The certificated air freight system has two major components which together serve the entire spectrum of air freight demand.

The first of these components—the combination carriers—have authority, in virtually every market of significance in this country, to provide scheduled freight service, utilizing for that service the belly compartment of passenger aircraft, pure freighter aircraft or both. Of the carriers' own choice, most of this service is provided in combination aircraft; wholly domestic freighter services are now being provided by only three combination carriers and only in major air freight markets. The second major component consists of the all-cargo carriers. These specialists are authorized to serve only a limited number of the major air freight markets; and the Board has on various occasions in the past several years largely denied applications by these carriers to expand the area of their domestic freighter operations.

This certificated system provides a full line of services for large as well as small companies, for big as well as small air shipments, for individuals and air freight forwarders alike. Being able to offer freighter aircraft scheduled to meet the needs of the shipper, not the passenger, is, however, soundly acknowledged to be an indispensable element of the system if the shipping public is to be served properly.

Competition is a hallmark of the certificated air freight system. In every major air freight market the number of certificated carriers authorized to provide freighter service exceeds the number of carriers authorized to compete for passenger traffic. This is true though on the average there is four or five times as much passenger traffic as there is freight traffic in these markets.

Under the provisions of Title IV of the Federal Aviation Act of 1958, the certificated carriers operate under a system of tariff filings and rate regulation (a) which places an effective ceiling on prices which can be charged for air freight service; (b) which is intended to inhibit predatory pricing on the low side; and (c) which prevents undue pricing preference or prejudice among areas served and unjust pricing discrimination among shippers.

This system, which we believe to be vital to the national interest, unfortunately has not been profitable for the operators of freighter aircraft. Between 1965 and 1975, the freighter operators accumulated \$210 million in pre-tax losses.

Obviously, an unprofitable domestic freighter industry is in a poor position to make additional investment in modern freighter equipment. And, it has been the three all-cargo carriers which have historically made the major commitment of modern long-range cargo aircraft. This is a serious problem which affects not only the provision of domestic freighter services but which also impacts the availability of long-range freighter aircraft for the Civil Reserve Air Fleet (CRAF). Granting Federal Express exemption authority to permit operation of DC-9s, for example, will not contribute one iota to this essential emergency capability.

As I see it, the basic question before the Congress is whether it should adopt legislation—such as that now under consideration—which would favor one class of freighter aircraft operator over another.

If enacted and implemented by the Board as the Congress would apparently then intend, one class of freighter operator would have unrestricted authority to operate freighters of any size or description in any market or markets of its choice. This class would have complete pricing freedom to charge as much as service value would permit or as low as necessary to attract traffic from other carriers; to discriminate in favor of large and regular shippers as opposed to small and infrequent ones; and to acquire other air-related businesses without **prior Board approval**.

The other class—the members of which would be distinguished from the first one only on the basis that they pioneered air freight service losing millions of dollars in the process, and devoted the personal and economic resources necessary to obtain certificates of public convenience and necessity—would be restricted in the markets which they could serve; subject to the statutory hearing process; rate regulation; the burden and expense of regulatory record keeping and reporting; as well as prior Board approval of acquisitions.

It takes no stretch of the imagination to recognize that the first class would advance in market share and profitability largely at the expense of the second class.

But relative carrier interests aside, what the Congress must decide is whether such a dual regime would best advance the public interest in a sound national air freight system.

I recognize that Congress intends to deal with the general subject of regulatory reform in the next session. But the form of that legislation, much less the fact of enactment, is still open to question. In the meantime, The Flying Tiger Line and its fellow members of the second class would remain under the disabilities referred to while the first class would have been effectively deregulated. Further, it is doubtful that the Board having exempted Federal Express' pending certification would push completion of a certificate proceeding which might be rendered moot by deregulation legislation which the Board itself was advocating.

The proponents of this legislation have failed totally to make a rational case for emergency relief. This is not a situation where an agency is foreclosing the provision of a useful public service. On the contrary, Federal Express' operations are ostensibly being conducted now under exemption authority granted by the Board. Nor is this a case where the burden of administrative action or inaction is forcing a business to operate at a loss. Indeed, Federal Express is projecting a significant operating profit for 1976 on projected revenues of \$86 million, and it's my understanding that Federal Express is the only domestic air freighter operator which will do that well. Flying Tiger has been in the domestic air freight business for over 30 years and has never generated as much as \$96 million in scheduled service revenue. In only two of those 30 years was it able to earn as much as \$6 million on its domestic scheduled services!

Certainly, operation of large aircraft would extend Federal Express' capability and could be of economic benefit to the carrier. But there is no evidence that, without such authority, it could not continue to grow and to operate profitably—at least until Congress has had time to consider broadly the regulatory regime it wishes to provide for domestic freighter services.

The Civil Aeronautics Board expressly invited Federal Express—almost eight months ago—to file an application for a certificate of public convenience and necessity. The Board committed itself “. . . to give prompt and careful consideration to any appropriate application that might be filed by Federal Express pursuant to section 401 of the Act.” Order 75-12-38. If Federal Express had promptly

filed such an application, the decision could have been pending before the Board today. And had Federal Express filed an application eighteen months ago at a time when, by its own account in C.A.B. Docket 38354, it recognized the economic benefits it could achieve with large aircraft, the certification proceeding could have been completed. In short, if Federal Express is being economically disadvantaged by its not now having certificate authority to operate large aircraft, it cannot be attributed solely to the regulatory agency.

As a matter of fact, I believe that there is a considerable misunderstanding of the reasons why the Board did not grant Federal Express' application for an exemption from section 401 of the Act and Part 298 of the Board's Economic Regulations. The format of S. 3684, which broadens the Board's current exemption powers under section 416 of the Federal Aviation Act of 1958, seems to suggest that the Board's action was bottomed solely on lack of legal power. But this is not the case.

The Board made it plain that entirely apart from the "... statutory limitations of the Board's exemption powers, we would not be prepared to conclude on the basis of contested pleadings that Federal Express' operations would not have a significant impact on certificated carriers and air freight forwarders." Order 75-12-38. In short, the Board clearly noted that there were factual issues relevant to a dual standard of regulation for Federal Express and the other competitors for air freight traffic which needed to be resolved before Federal Express could obtain the broad authority it sought for large aircraft operations without entry restrictions.

We do not believe that the Congress is in any better position than was the Board to resolve these issues with only the limited non-adversary type of hearing in which we are now engaged.

Parenthetically, on July 26, 1976, the Board granted Air Chicago, an air taxi operator, authority to operate certain large freighter aircraft in the Chicago-Philadelphia market. The Board noted the inadequacy of nighttime freighter services for which there is a demonstrated need and the disproportionate cost of certification proceedings to the "expected traffic and revenues."

One further observation is appropriate. Unless the legislative draftsmen responsible for the bill now before you regards the draft as a legislative directive to the Board to issue an exemption, it is plain that it would be effective to achieve the authority sought by Federal Express since passage of the legislation would not otherwise be effective to cause the Board "... to conclude on the basis of contested pleadings that Federal Express' operations would not have a significant impact on certificated carriers and air freight forwarders."

However, if the Congress were to identify the legislation as a directive for Board action favoring Federal Express, the legislation would be of doubtful constitutionality. While the Federal Constitution does not specifically preclude special legislation" by the Congress, the Supreme Court has on more than one occasion called into question legislation which does not treat all persons similarly situated on equal terms. See, for example, *Johnson v. Robinson*, 415 U.S. 361, 375, 94 S.Ct. 1160 (1974); *Smith v. Ladner*, 288 F. Supp. 66 (1968).

I have heard the claim that Federal Express is entitled to the relief here proposed because the service it is providing is "unique." I contest that claim. Federal Express competes with the individual direct air carriers and with the air freight forwarders for traffic which because of its time sensitivity is largely air-directed. In fact, in testimony before the House Committee on Public Works and Transportation on June 9, 1976, Federal Express' spokesman conceded that at least 70 percent of its traffic was previously handled by the certificated system either directly or through tenders from the air freight forwarders. And Federal Express' advertising specifically calls attention to its competition with Emery, the largest domestic air freight forwarder which has specialized in expedited small package services, as well as with the direct carriers' expedited small parcel services.

While it is true that Federal Express currently limits its carriage to shipments of under 300 pounds and packages of under 70, this range covers more than 50 percent of all the air freight shipments tendered to the industry today! Small parcel service constitutes the revenue backbone of the scheduled freight system. It includes the total of the expedited package service which the com-

bination carriers sell on their passenger aircraft, and is traffic for which major air freight forwarders have designed their own "express" services.

In fact, as we analyze Federal Express' operations and its own advertising, its only "uniqueness" is the use of small aircraft to expedite its service. And it is this very "uniqueness" which its legislative effort is seeking to dilute.

We have reviewed carefully Federal Express' case for legislative relief as made in Mr. Smith's June 9 testimony. Mr. Smith argues that Federal Express did not respond to the Board's invitation to file a certificate application because:

1. The C.A.B.'s attentions "[are focused] on the much larger issues of passenger transportation."

2. The Board's traditional emphasis on point-to-point certification "... is simply at odds with what air shippers demand and would be contrary to the public interest."

3. In view of the Board's failure to recognize fundamental differences between air freight and passenger travel, "... the propensity for even the most meritorious arguments to be defeated is very real indeed."

4. It has been predicted that the delays inherent in the certification process "... might well result in the demise of our company."

Accordingly, Federal Express urged "... the adoption of legislation permitting and directing the C.A.B. to grant unrestricted area authority—rather than the present mandatory point-to-point authority—to certificated all-cargo operations." (Emphasis added.)

In short, Federal Express' own analysis suggests a dissatisfaction with the statutory scheme as it applies generally to the all-cargo carriers. Federal Express did not urge, nor could it, that the present regulatory scheme was suitable for the all-cargo industry generally but inappropriate for Federal Express. Mr. Smith's recommendations were instead consistent with our position which is—that if the Congress is dissatisfied with the present regulatory scheme either in whole or as applied to air freighter services, then it should not dismantle it piecemeal for the benefit of a particular carrier or a limited class of carriers. It should act at one and the same time for all carriers similarly situated.

Unlike the certificated all-cargo carriers, Federal Express has, under broad exemption authority unavailable to Flying Tiger, been able to fly where it wants and charge what it chooses.¹ Using the freedom from regulation thus afforded it, Federal Express has in less than four years grown to the point where it operates practically nationwide and where it forecasts 1976 revenues greater than the domestic scheduled service revenues of The Flying Tiger Line in any of the more than 30 years it has provided such service. Moreover, although Flying Tiger has tried, via the traditional certificate process, with its attendant expense and delay, to obtain operating rights for a nationwide air freight system, it has been unsuccessful. Consequently, although it is the largest certificated all-cargo specialist, Flying Tiger has authority to provide air freight service in less than ten percent of the markets in which its larger trunkline competitors can provide such services.

With these factors in mind, it is evident that there is absolutely no warrant for granting Federal Express or other non-certificated carriers exclusive access to legislative relief from the strictures of the Federal Aviation Act.

There is one further point which I would like to make. There is the suggestion that since the direct air carriers have unsuccessfully sought higher rates for small shipments, further diversion of this traffic to Federal Express would actually prove to be an economic boom to the certificated system. This is simply not true. In the first place, as I have already noted, the expedited small package services of the combination carriers are an increasing and important revenue source. To date, the Board has permitted the pricing of this part of the business on a value of service basis and this aspect of the air freight business is undoubtedly profitable. But more significantly to the all-cargo sector of the business,

¹ Attached hereto as Appendix A is a history of Federal Express rate actions. Between April 1973 and today, Federal Express doubled the rates for its major service. During the same period, the certificated carriers, although subject to the same cost pressures, were limited to rate increases of approximately 45 percent for their predominant services.

small parcel tenders provide for our largest shippers—the air freight forwarders—a major source of revenues. Small parcels have the highest per ton yield of the freight which the forwarder tenders to the direct air carrier.² Reduction of the relative volume of this traffic carried by the forwarder would reduce his average revenue per ton. The forwarder, therefore, will have less revenue with which to pay the certificated carriers for linehaul service—which will place further downward pressure on the direct carriers rate structure. (Conversely if the forwarder increases his rates to shore up his revenues, this increases his exposure to diversion by the newly enfranchised carriers with the same results to the certificated system. See Appendix C which shows the extent to which Federal Express' rates undercut Emery's in a major freight market.) But that rate structure is already unduly depressed, as the Administrative Law Judge found in the pending *Domestic Air Freight Rate Investigation*.

The fact is that, faced with a practical inability to compete directly with Federal Express for high-yield, small parcel services, and subject to increasing downward pricing pressure on large shipments from the forwarders which are competing with Federal Express, the most likely alternative would be for further withdrawals of freighters from purely domestic services.

Mr. Chairman, very frankly, I can tell you that my company has already invested tens of millions of dollars in developing domestic air freight services. It is not our desire nor intention to withdraw from that service. We have made a very substantial investment and we are prepared to continue our efforts, which we believe serve an important public need. But we also believe that we are entitled, and that you will agree that we are entitled, to at least equal competitive opportunity with carriers not yet in the market or whose entry came just some three years ago.

Before closing, let me state that we have received authorization from Airlift and Seaboard World Airlines, both of whom have reviewed copies of my prepared testimony, to express their concurrence with the position set forth.

APPENDIX A

FEDERAL EXPRESS RATE HISTORY FROM APRIL 1973 WHEN OPERATIONS WERE INAUGURATED³

PRIORITY ONE—FEC'S MAIN PRODUCT

Rates have doubled since April 1973, when FEC began.

In 1973, about 3 increases of about 5 percent each.

In 1974, 3 increases of 8 percent, 12 percent and 13 percent, respectively.

In 1975, 10 percent increase in May and 7 percent in September.

In 1976, 6 percent increase in March, and 6.5 percent average increase in July. The July 1976 increase varied by length of haul and number of packages shipped, the increase being greater for longer hauls and for fewer packages picked up at once. Some services received as low as a 2 percent increase.

STANDARD AIR SERVICE

Present rates are "much lower" than they were in April 1973, when FEC began. In September 1975, these rates were not increased when Priority One rates were. In January 1976, rates were reduced 40 percent on the average (some as much as 60 percent). In July 1976, 8 percent increase on the average.

COURIER PAK

Started at \$7.50, raised 33 percent to \$10.00, and raised an additional 25 percent to \$12.00 in March 1976.

Also have changed pick-up requirements several times (i.e., daily pick-up was required for awhile at \$5.00 per week).

² See Appendix B for a comparison of typical forwarder yields with airline yields for large and for small shipments.

³ Based upon discussions with Federal Express marketing personnel; published data not readily available.

NOTE.—FEC's rates vary by number of pieces per shipment and number of shipments picked up at once. This structure has also changed several times.

APPENDIX B

COMPARISON OF EMERY'S YIELDS WITH AIRLINE YIELDS FOR SMALL AND LARGE SHIPMENTS

Shipment weight (pounds):	Emery charge ¹	Emery rate per 100 lb	Emery rate per ton	Cents per ton-mile			Percentage Emery yield is greater than airline yield
				Emery yield per ton- mile ²	Airline charge per ton- mile ³	Emery yield in excess of airline charge	
1	\$7.07	\$707.00	\$14,140.00	577.61	26.83	550.78	3,053
5	7.47	149.40	2,988.00	122.06	26.83	95.23	355
10	16.96	169.60	3,392.00	138.56	26.83	111.73	416
12	18.43	153.58	3,071.60	125.47	26.83	98.64	368
15	21.25	141.67	2,833.40	115.74	26.83	88.91	331
20	25.06	125.30	2,506.00	102.37	26.83	75.54	282
30	31.00	103.33	2,066.60	84.42	26.83	57.59	215
40	36.20	90.50	1,810.00	73.94	26.83	47.11	176
50	41.77	83.54	1,670.80	68.25	26.83	41.42	154
60	46.85	78.08	1,561.60	63.79	26.83	36.96	138
70	51.98	74.25	1,485.20	60.67	26.83	33.84	126
80	56.94	71.18	1,423.60	58.15	26.83	31.32	117
90	62.53	69.48	1,389.60	56.76	26.83	29.93	112
100	67.09	67.09	1,341.80	54.81	26.83	27.98	104
200	123.48	61.74	1,234.80	50.44	26.83	23.61	88
500	286.50	57.10	1,142.00	46.65	26.83	19.82	74
1,000	492.50	49.25	985.00	40.24	26.83	13.41	50
2,000	971.20	48.56	971.20	39.67	26.83	12.84	48
3,000	1,425.60	47.52	950.40	38.82	26.83	11.99	45
3,200	1,520.64	47.52	950.40	38.82	26.83	11.99	45

¹ Emery Air Freight Corp., airfreight rates tariff No. GC-2, 2d revised p. 88-D and 3d revised p. 88-E.

² NYC-LAX 2,448 miles.

³ CAB No. 227, 36th revised p. 166; FT A-2 container GCR, \$1,051 at 3200 lb pivot weight.

APPENDIX C

COMPARISON OF FEDERAL EXPRESS, EMERY, AND FLYING TIGER'S PRIORITY AND NONPRIORITY RATES

Shipment size (pounds):	Newark to Los Angeles, door-to-door					
	Nonpriority (shipment)			Priority (packages)		
	FTL	Federal Express	Emery	FTL	Federal Express	Emery
1	30.80	6.87	18.07	36.20	17.47	93.07
5	30.80	9.35	18.47	37.20	20.71	93.47
10	30.80	12.47	27.96	36.20	27.99	102.96
12	30.80	13.99	29.43	36.20	31.69	104.43
15	30.80	15.85	32.25	36.20	53.15	107.25
20	30.80	18.98	36.06	36.20	37.94	110.06
30	31.70	25.20	42.00	37.40	43.08	117.00
40	38.00	30.31	47.20	45.60	47.66	122.20
50	44.30	36.26	52.77	53.80	52.25	127.77
60	50.60	42.48	57.85	62.00	56.97	132.85
70	52.05	48.72	62.98	63.85	61.71	137.98
80	52.05	54.31	67.94	63.85	186.11	142.94
90	52.05	58.61	73.53	63.85	195.66	148.53
100	52.05	61.96	78.09	63.85	1100.60	153.09

¹ 2 packages.

COMPARISON OF PRIORITY SERVICES

[Based on a varying number of pieces for a 60-lb shipment, Newark to Los Angeles]

Number of pieces per shipment	FTL	Federal express	Emery
1 piece at 60 lb	\$62	\$56.97	\$132.85
2 pieces at 30 lb	62	82.72	132.85
3 pieces at 20 lb	62	102.45	132.85
4 pieces at 15 lb	62	123.80	132.85
5 pieces at 12 lb	62	136.25	132.85
6 pieces at 10 lb	62	138.90	132.85
12 pieces at 5 lb	62	188.88	132.85

FEDERAL EXPRESS CORP.,
 Memphis, Tenn., September 13, 1976.

Hon. JAMES J. HOWARD,
 U.S. House of Representatives,
 Rayburn House Office Building,
 Washington, D.C.

DEAR CONGRESSMAN HOWARD: The current legislative session is rapidly drawing to a close. Your committee has before it HR 14623 and HR 15302.

The resulting improvement in vital all-cargo service, should either of these bills become law, is an important public issue. The opponents of this legislation, led by the Air Transportation Association of America, recently wrote Congressman Anderson in opposition of this legislation. We felt an item by item rebuttal, combined with your review of our previous testimony before the Aviation Subcommittee, would help you to resolve in your mind that this legislation should be passed before your adjournment in October.

Please note that the ATA, in its letter to Chairman Anderson, accused Federal Express of misrepresenting the facts presented before your Subcommittee. We have no desire to engage in endless charges and counter charges or name calling. However, since the ATA requested that their comments be included in the record, we feel compelled to request that our rebuttal also be made part of the record. Additionally, I would like to emphasize four important points relating to the information presented to you by both parties.

Point 1.—Throughout the proceedings Federal Express has consistently maintained the position that the proposed legislation is in the public interest. To this end, we have cited numerous studies and interviews conducted with shippers in all areas of the country. The fact is that Federal Express is purely and simply a creature of consumer demand. In the past several weeks we have again gone to great expense and effort to demonstrate that what the *shipper* wants is virtually identical to what Federal Express is attempting to offer. The thousands and thousands of replies to this survey have been sent directly to your office by the respondents themselves. Federal Express has had no control over or foreknowledge of the contents of these replies.

In stark contrast to this open approach, we have no evidence whatsoever that the TAT's position has been supported by a single shipper. If "special interest" is at issue, then the only special interest that is visible in the hearings is that of the ATA and its member carriers who are protecting the status quo of an industry that has demonstrated its disregard of shippers' true needs.

Point 2.—In every case, Federal Express has cited references to specific data and sources used in our testimony. In no instance, to our knowledge, has the opposition footnoted its opinions with references to source.

Point 3.—The ATA has used considerable journalistic license by taking many Federal Express quotes out of context or by editing longer passages. The ATA has thus chosen to put these "issues" in focus, when the basic issue remains to determine whether or not the public will be served.

Point 4.—Many ATA statements cannot be substantiated in *any* records. For example, they claim that 47 airports receive scheduled all-cargo service. FAA and CAB records, the Official Airline Guide (Cargo Edition) and two direct surveys by Federal Express with each of the scheduled certificated carriers have verified that there are but 25 airports receiving such service. Similarly, we cannot find substantiation to support statements to the effect that "many" shippers want two days service or that only 30% of shippers want pickup and delivery service.

At the House hearings on August 31, the ATA agreed to retract any statements which were incorrect. To date, they have not done so.

Thank you for reviewing this material. We are hopeful it will enable you to move even more rapidly in passing this vitally needed legislation which is in the best interest of virtually every shipper who requires expeditious movement of priority goods.

Sincerely,

FREDERICK W. SMITH, *Chairman.*

THE BASIC REQUIREMENTS OF THE AIR FREIGHT SHIPPER

During the week of September 3, 1976, Federal Express mailed approximately 43,000 letters asking air freight shippers to inform the House and Senate Aviation Subcommittees of their basic service requirements when using air freight.

In order to make the results useful to the committees, a questionnaire was designed that would point out air shipper needs in relation to:

1. Transit times.
2. Geographic coverage.
3. Ground services: pick-up.
4. Ground services: delivery.

RESULTS: AFTER 5 WORKING DAYS

Questionnaires mailed, 43,000.
 Questionnaires returned, 8,319.
 Percent response to date, 19 percent.

QUESTION 1—TRANSIT TIME

Conclusion: Air freight shippers are demanding an overnight service. Sixty-one percent require next-morning service; 36 percent require next-day service; 3 percent require 2-day service; and .3 percent require 3 or more days service.

QUESTION 2—GEOGRAPHIC COVERAGE

Conclusion: Air freight shippers are demanding service outside the top 25 markets.

Nine percent require service to just the top 25 markets; and 91 percent require service to markets large and small across the United States.

QUESTION 3—GROUND SERVICES: PICKUP

Conclusion: Shippers are demanding a pickup service for their air freight shipments.

Ninety-three percent require pickup service at their shipping location; and 7 percent do not require a pickup service.

QUESTION 4—GROUND SERVICES: DELIVERY

Conclusion: Shippers are demanding a delivery service for their air freight shipments.

Ninety-seven percent require a delivery service at the receiving location; and 3 percent do not require a delivery service.

 FEDERAL EXPRESS CORP.'S REBUTTAL TO STATEMENTS MADE BY THE AIR TRANSPORT ASSOCIATION OF AMERICA

1. *Issue.*—"The issue at hand, broadening Federal Aviation Regulations in the neglected area of air cargo . . ."

Answer.—The "issue" is whether special interest legislation should be passed by Congress to change existing law and Civil Aeronautics Board regulations to meet the special pleadings of one company even though special interest legislation creates discrimination and raises many unanswered questions about regulation policy.

FEDERAL EXPRESS REBUTTAL

This bill is *not* special interest unless one considers the need of tens of thousands of air shippers to be special interest. Thousands of these shipper have written to their Senator and Congressmen in support of liberalized regulations to promote all-cargo service.

The fact that Federal Express has strongly supported this legislation results simply from what the market (the public need) is telling us. Moreover, if amended as suggested before the Senate Subcommittee Aug. 3, certificated carriers would have exactly the same rights as Federal Express to petition the CAB for authority to conduct all-cargo operations.

The thousands of shipper letters and the documented objections to decline in night-time lift of the air freight forwarders, who tender over 40 percent of all ATA members' air freight shipments, also belie the notion that this legislation is only desired by Federal Express.

Moreover, Federal Express' use of larger aircraft on certain routes will not alter what we do in the least. It will only allow us to do it more efficiently.

2. *Issue.*—"The issue . . . is of vital interest to our company, our employees and our shippers."

Answer.—The issue is also of “vital interest” to all shippers, all airlines, all air freight forwarders, all air taxi operators, all air cargo commuters, all air freight motor carriers and to the millions of postal patrons. They want to know what impact the special treatment proposed to be extended to Federal Express would have on them.

FEDERAL EXPRESS REBUTTAL

As in Issue 1, it is somewhat incongruous that the ATA seems to speak for all of the entities since the air freight forwarders support this legislation. The vital issue to them, and to all air shippers including ours, is the serious reduction in all-cargo service. The fact that these service reductions may have been economically justified by the certificated carriers who made them, speaks loudly about the inappropriateness of governing all-cargo operations by a system primarily designed to regulate air passengers.

Finally, what special advantage would Federal Express have under the new law if certificated carriers had equal rights to petition the CAB for new authority?

3. *Issue.*—“... neglected area of air cargo.”

Answer.—This uninformed and inaccurate comment is belied by the very fact of the nationwide network of 32 scheduled air carriers, hundreds of commuter airlines and air taxi operators, over 300 air freight forwarders, and hundreds of supporting air freight motor carriers furnishing a variety of priority and non-priority air cargo services, day and night, seven days a week to large and small shippers at more than 13,000 points served by interline and intermodal agreements. In 1975 over 250,000 shippers used this system to deliver over 50,000,000 pieces. In addition, this system was used by the U.S. Postal Service to deliver more than 200,000,000 priority air parcel post packages, 57 percent of which receive overnight delivery.

FEDERAL EXPRESS REBUTTAL

The semantics of this statement do not obscure the major point—air service which does not correspond to what the user, rather than the supplier, wants is “neglected”.

Simply because we have an excellent passenger air transport system, on which air cargo can move, does not eliminate the vital need for nationwide, non-discriminatory overnight air cargo service. The uniform statement of this need has been made repeatedly by forwarders and shippers and is overwhelmingly affirmed by the acceptance of Federal Express' services.

The fact that millions of shipments use the system is no particular statement on the time need of air shippers. A simple bridge across a river will account for 100 percent of the traffic which moves across that river but a second, better bridge, may encourage more people to use it—especially if it is more conveniently located.

As a small point, the United States Postal Service reports that the average transit time for post office (no pick-up service is provided) priority mail (there is no class called air parcel post) is 1.8 days and 45 percent receives overnight delivery. Is this saying that the other half which did not receive overnight delivery did not deserve this service since they paid equally for it? Is the fact that their parcels, because they were moving between distant, off-line points, cannot receive the same service as major-city-to-major-city shippers not an indictment of the service being extolled?

4. *Issue.*—“Services these shippers need: door-to-door service; late afternoon pick-up; overnight transportation to all points with next morning delivery; documented and controlled movement of the goods shipped.”

Answer.—This statement is inaccurate. Some shippers want such service but many shippers have other needs. The statement is believed by extensive shipper usage of the large variety of cargo services available nationwide from the scheduled carriers. Consider the following:

(a) Shippers have varying needs—some want same day delivery, some next morning delivery and, for some, 48-hour delivery is all that is required.

FEDERAL EXPRESS REBUTTAL

Again, the fact that the U.S. air shipper is using the current system does not prove in any way the desirability of this system. If the only way to travel from Spokane, Washington, to Pensacola, Florida, is by making three interline changes,

one cannot claim that this is what the air traveler wants when the alternative is a three-day bus ride.

The fact is that next-day (or next morning) delivery is the key reason for spending additional money for air freight. This is proved in numerous studies, including studies conducted by Flying Tiger. A Federal Express study among major shippers indicated that nearly 80 percent of major shippers require next day or next morning delivery. An average of only 13 percent require 48-hour delivery, and 4 percent require later than two days.

Federal express offers both a next day and a two-day service. Both services are virtually identical except the two-day service of Federal Express shipments are tendered under this two-day service. (In other words 80 percent of FEC shippers require next day service and are willing to pay a 100 percent premium to do so.)

To put this argument to rest and to demonstrate to the Aviation Subcommittee the force of this contention, Federal Express has mailed the attached letter and cards to thousands of air freight users across the U.S. Approximately half of these shippers are Federal Express customers and half are known users of other services. We will compile the results of this survey and will gladly allow the ATA to inspect our copies of the post cards.

Please note that these replies do not include any endorsement of our service.

4. *Issuc.*—(b) The scheduled airlines' over-the-counter small package service moves over a million shipments a year on shipper-designated flights, mostly in the daytime, with service measured in terms of hours.

FEDERAL EXPRESS REBUTTAL

The over-the-counter small package service approaches two million shipments per year. This service is positive proof that normal air freight services are not adequate to shippers' needs.

The cost of this service approaches \$60.00 for a small package including taxi or messenger to the airport, airline charges and taxi or messenger from the airport.

To the airlines, this service represents almost pure profit since there is virtually no incremental cost of carrying this material which travels as though it were passenger baggage. The only major cost to the airlines is advertising and promotion. This "service" requires that the shipper provide his own pick-up and delivery and causes the shipper the inconvenience of determining which plan to put the shipment on. Most of these "services" are limited to "on-line" routes and should an interline arrangement be available, often the shipper must pay both airlines the full \$25 or \$30 charge, bringing the cost of an interline shipment up to \$80 or \$90, door-to-door. Again, the shipper in an off-line market suffers.

Federal Express has observed that the majority of these shipments are tendered to the airlines in the afternoon and are picked up at destination that evening, often by an employee on his or her way home. The shipment thus arrives at the consignee "next-morning" for use the following business day.

Furthermore, in a recent group of interviews with users of over-the-counter airline small package services, it was determined that a primary reason for the use of this service was dependability. In other words, if a shipper can actually see his important package being routed on the proper flight, and if his consignee goes to the airport, meets the flight, and arranges to pick-up the shipment himself, then the opportunity for loss or misrouting is reduced. Thus, by paying a penalty in both dollars and effort, the shipper assures himself of timely and reliable service which he cannot depend on using normal air freight channels.

4. *Issuc.*—(c) The scheduled airlines offer rate incentives for tender of freight in containers during daylight hours and many shippers satisfy their needs with this type of service.

FEDERAL EXPRESS REBUTTAL

Daylight containers satisfy the needs of a very small percentage of heavy air cargo shippers, primarily in the areas of apparel, produce (fruits and vegetables), bulk shipments of high value, raw or semi-finished materials, appliances and retail merchandise, as well as providing wholesale space purchased by Air Freight Forwarders. Shippers of high priority critical parts, medicine, financial paper, tape and film, electronic and computer replacement parts, etc. have very little need for daylight containers. (Imagine 3200 pounds of blood plasma, TV film or repair parts for a computer moving point-to-point in containers!)

On the other hand, by eliminating prime time night flights, the airlines have forced shippers to pay a 30 percent premium for a guarantee of boarding an after-

noon and evening flights. This offensive practice is similar to creating artificial shortages to increase prices on raw materials.

In other words, these "low-cost" daylight belly container rates are totally at the convenience of the airlines and hold no guarantee that freight will move that day—that guarantee costs 30 percent more.

4. *Issue.*—(d) United Parcel Service—The world's largest private handler of packages has an expedited service with 48-hour delivery which handles 25,000 daily shipments. This is about 1 percent of its annual total of 900,000,000 shipments which move primarily by surface carriers, apparently satisfying these shippers' needs.

FEDERAL EXPRESS REBUTTAL

First, UPS handles about 100,000 Blue Label shipments each day, not 25,000.

In any case, UPS virtually has no bearing on the case at hand as it applies to air freight. Blue Label is a 2-to-4 day service for parcels and UPS surface service is a 3-to-5 day service for parcels.

Secondly, the need for movement of "post" type goods as opposed to the need for "express" movements are different shipper requirements outline in previous Federal Express testimony before the House and Senate. In particular, absolute time constraints, documentation, and tracing services required by express shippers are incompatible with Blue Label service.

Third, Blue Label service is not available to and from all sections of the United States.

On the other hand, UPS is an excellent example of a parallel system to Federal Express. The UPS system is designed specifically to handle the nationwide carriage of small parcels on a door-to-door basis. As a result of customer demand, UPS is by far the largest trucking concern in the U.S. (\$1.5 billion in sales), essentially distributing a class of goods that the long haul motor carriers do not want and cannot handle.

The establishment of UPS and the regulatory precedents set with the Interstate Commerce Commission, establishing a nationwide network of door-to-door surface movement of individual packages (versus the bulk movement of freight and cargo) provide an interesting insight into the present case, whereby Federal Express is attempting to establish a priority air express version of the same concept, i.e.: the expeditious distribution of individual items required for a specific purpose on an irregular basis over an unplanned route network (i.e. broadcast all over the country as demand arises). This is in dramatic contrast to the regular movement of bulk air freight over predictable routes between manufacturers and other manufacturers and/or distributors, prior to final distribution to the ultimate user.

4. *Issue.*—(e) Federal Express itself offers second day delivery for its standard service.

FEDERAL EXPRESS REBUTTAL

Federal Express does offer a second day service at rates which are about 50 percent below other air freight rates, i.e.: \$9.35 for a five-pound package. Los Angeles to New York, including pick-up and delivery. Of course, the customer knows in advance that he is buying two-day delivery. The airline charges for a similar door-to-door shipment are in excess of \$30.00, but when two-day service is rendered, no advance notification is given! (By the ATA's own admission, approximately half of their shipments are delivered in two days or more.)

Since Federal Express offers both services and since there is a dramatic rate reduction in the two-day deferred service, it stands to reason that over 30,000 plus customers would opt for the service which meets their needs in the majority of cases. The fact is that over 80 percent of Federal Express' volume is in the more expensive "next day" service (PI and Courier Pak).

In other words, the very experience of Federal Express indicates that the ATA argument is incorrect.

As a matter of interest, Emery Air Freight attempted to market a deferred, low cost service a number of years ago and dropped the service due to lack of interest.

4. *Issue.*—(f) One critical requirement for any transportation company to provide overnight service is timely tender of the shipment to meet available transportation schedules. For example, Federal Express has strict time limits for tender of shipments and recommends calls for pick-up be made before noon.

FEDERAL EXPRESS REBUTTAL

This statement is misleading since Federal Express has two types of customers—regular and “on-call”. The thousands upon thousands of these regular customers all receive late afternoon or early evening pick-up every day according to a prearranged schedule. “On-call” shippers are encouraged to make requests as early as possible to facilitate scheduling of pick-up routes. Many “on-call” requests are received and pick-ups are made late in the day. Federal Express has spent nearly \$1 million in equipping and maintaining its more than 500 courier vans with two-way radios to meet the needs of its “on-call” shippers.

Any shipment picked up in the evening will go into the Federal Express system that night for delivery the next morning virtually anywhere in the country. All cities on the Federal Express system receive identical service, not just major cities.

4. *Issuc.*—(g) Although the scheduled air carriers have offered pick-up and delivery service for over 30 years, the percentage of shipments utilizing this service is only about 30 percent. Shippers like the option of pick-up and/or delivery with a separate charge. (Federal Express offers only a small discount for self delivery.)

FEDERAL EXPRESS REBUTTAL

The scheduled air carriers do not solicit pick-up and delivery service. In fact nearly all airlines subcontract their pick-up and delivery work to ACI (Air Cargo Inc.) an organization of independent truckers. If the airlines' pick-up and delivery service were more adequate, there would be less need for air freight forwarders who provide this service to a majority of their customers.

Here again, the ATA is confusing what the shipper is willing to accept with what the shipper really wants. Ample research by Federal Express, Flying Tigers, Energy, etc., attests to this fact. The questionnaires referred to above will also give an insight into who is correct on this matter.

The airline's “Small Package Service” is a counter-to-counter service. No provision is made or offered in the airline tariff to include pick-up or delivery.

The airlines treat cargo very much the same as passengers who can get to and from the airport themselves. This is in spite of such statements made by the ATA itself as follows: “We cannot be content with speed in the air. The whole door-to-door system must be expeditious. This includes the surface movement at each end—from the shipper's door to the airport of origin and from the airport of destination to the receiver.”¹

4. *Issuc.*—(h) All shipments of cargo anywhere in the world on scheduled airlines are documented and controlled by uniform and standard forms and procedures. Regular air freight shipments can be made to any destination in the world on one bill of lading.

FEDERAL EXPRESS REBUTTAL

There's no argument, obviously, documentation, billing, etc. is a basic requirement of doing business. However, Federal Express' comment refers to “controlled” documentation as a shipper requirement, which includes tracing and other customer conveniences.

5. *Issuc.*—“Eighty percent of all air shipments are originated from and/or are destined to cities other than the top twenty-five markets.”

Answer.—The opposite is true of the total airfreight picture since the top twenty-five airfreight markets generate more than 80 percent of the traffic.

The statement is also incorrect according to Federal Express' own submitted data.

An analysis of Federal Express' computer data contained in its testimony indicates that, in the February–March 1976 period, 46 percent of its average daily number of packages were from or to 23 major markets (see Attachment A). These 23 Federal Express origin and destination major market points are included in the scheduled airlines top twenty-five major markets.

Attachment B is a list of top 25 airports ranked in order of freight ton miles enplaned by the scheduled airlines in 1975.

There is no question of scheduled airlines ability to satisfy shipper requirements between these major points.

Also using Federal Express data, 26 origin cities originate 10 or more pieces a day to 36 destination cities. (Attachment C) In 90 percent of these markets the scheduled airlines have equal or better service with departures after

¹ Gerald J. Godbout, Director, Cargo Services, ATA, before MIT Flight Technology Laboratory Workshop, Snowmass, Colorado, 10 Aug. 1973.

8:00 p.m. The remaining 10 percent of these volume markets can be served by the scheduled airlines overnight with departures between 5:50 p.m. and 8:00 p.m. (Forty of Federal Express' 77 cities have departure times before 8:00 p.m. and seventeen have departure times before 8:00 p.m.)

FEDERAL EXPRESS REBUTTAL

Federal Express did not make such a comment. What we did say was as follows: "The final crisis and widebody jets have simply exaggerated this dichotomy to the point that over 60 percent of all airline movements occur in the top twenty-five markets . . . over 80 percent of the small critical shipments which Federal Express carriers are either originated in, or destined to, communities smaller than the top twenty-five cities."

More importantly, all scheduled all-cargo flights occur in the top twenty-five markets with 80 percent of these taking place at only five points.

Federal Express' traffic statistics indicate that 58 percent of all shipments are originated in, or destined to, airports other than the top twenty-five markets. Furthermore, advance delivery charges and packages brought to Federal Express airport locations indicate that 25 percent more of the traffic carried by the company is not originated or destined just in or to the top markets.

Again, the fact that the airlines' service is solely concentrated in these markets does not reflect the true needs of the marketplace. The fact that of all airlines and air freight forwarders, Federal Express has a smaller concentration of business in the top ten markets.

However, the very heart of Federal Express' legislative request lies in the expansion of our services to cities outside the top 75 markets, which have little interest (and little volume) to the major trunk carriers.

As to the subject of Federal Express' departure times, they are as late as possible across the country, using small aircraft. The addition of large, non-stop aircraft would allow the company to depart at later times on the West Coast (where an 8:00 p.m. departure is actually 11:00 p.m. in New York).

Of greater significance is the integrated nature of Federal Express' operations. Origination stations do not have to sort by destination and airline packages that have been picked up during the afternoon and evening. And of the 5,000 plus city pair markets served by Federal Express, each gets absolutely identical service. This is a practical impossibility for the vast majority of situations when combination flights, with their requisite interline transfers, are used.

The addition of these larger, non-stop aircraft would improve departure times on the west coast by as much as two hours and up to an hour on other long distance routes.

FEDERAL EXPRESS—AVERAGE DAILY NUMBER OF PACKAGES, FEBRUARY TO MARCH 1976

City	From—	To—	Total
Atlanta	131.6	270.8	402.4
Boston	735.0	400.6	1,135.6
Seattle	626.1	128.1	754.2
Los Angeles/BUR/LGB	947.2	690.8	1,638.0
Cleveland	263.9	244.7	508.6
Dallas	526.1	368.7	894.8
Denver	157.3	202.2	359.5
Detroit	257.3	285.1	542.4
Newark	668.9	423.8	1,092.7
Houston	188.2	266.0	454.2
Washington, D.C.	237.0	351.2	588.2
New York City	715.2	760.8	1,476.0
Miami	186.6	296.8	483.4
Kansas City	69.4	177.3	246.7
Minneapolis	335.6	220.6	556.2
New Orleans	54.4	123.8	178.2
Oakland	212.7	251.0	463.7
Chicago	837.7	625.9	1,463.6
Philadelphia	396.5	348.9	745.4
Phoenix	97.1	168.0	265.1
Pittsburgh	157.2	145.4	302.6
St. Louis	232.6	228.8	461.4
Tampa	51.8	108.8	160.6
Total	8,085.4	7,088.1	15,173.5
Percentage based on average of 16,500 packages daily	43	49	46

TOP 25 AIRPORTS RANKED IN ORDER OF FREIGHT TONS ENPLANED (DOMESTIC AND INTERNATIONAL), 1975

	Freight tons enplaned	Aircraft departures
Chicago.....	348,594	276,723
John F. Kennedy.....	344,813	97,394
Los Angeles.....	312,927	134,119
San Francisco.....	194,882	107,233
Atlanta.....	114,631	197,347
Miami.....	112,586	76,671
Seattle-Tacoma.....	97,521	50,006
Detroit.....	87,226	78,217
Boston.....	74,198	87,161
Dallas-Fort Worth.....	70,282	136,737
Honolulu.....	67,345	38,157
Philadelphia.....	60,857	69,404
Newark.....	56,213	62,924
Denver.....	52,861	98,179
Cleveland.....	51,173	57,283
Minneapolis.....	47,337	62,277
Houston.....	39,783	52,918
La Guardia.....	32,013	118,341
St. Louis.....	29,187	85,512
Pittsburgh.....	22,344	87,132
Washington National.....	21,682	96,677
Kansas City.....	19,545	51,867
New Orleans.....	16,026	40,519
Tampa.....	13,921	45,851
Phoenix.....	11,559	42,956

FEDERAL EXPRESS ORIGIN AND DESTINATION FOR 10 OR MORE PACKAGES

From Atlanta to:

Chicago Philadelphia
Fort Lauderdale

From Hartford to:

Los Angeles Cleveland

From Boston to:

Baltimore Miami
Los Angeles Kansas City
Cleveland Minneapolis
Dallas San Francisco
Denver Chicago
Detroit Philadelphia
Newark Phoenix
Houston Raleigh-Durham
Washington, D.C. San Antonio
Indianapolis San Jose
New York City Salt Lake City
Little Rock St. Louis
Memphis

From Nashville to: New York City

From Burbank/Los Angeles to:

Boston New York City
Dallas Miami
Denver Oakland/San Francisco
Detroit Chicago
Newark Philadelphia
Houston

From Cleveland to:

New York City Miami
Los Angeles Philadelphia

From Cincinnati to :	
New York City	San Jose/San Francisco
From Dallas to :	
Newark	Chicago
New York City	Philadelphia
Memphis	San Jose/San Francisco
Oakland/San Francisco	
From Denver to : New York City	
From Detroit to :	
New York City	Chicago
From Newark to :	
Atlanta	Memphis
Boston	Kansas City
Burbank/Los Angeles	Minneapolis
Dallas	Oakland/San Francisco
Detroit	Chicago
Houston	Phoenix
Washington, D.C.	San Antonio
Indianapolis	St. Louis
From Houston to :	
New York City	Los Angeles
From Washington, D.C., to :	
Boston	New York City
Houston	Chicago
Los Angeles	
From Memphis to :	
Chicago	New York City
From Miami :	
New York City	Chicago
From Hartford to :	
Atlanta	Memphis
Boston	Miami
Los Angeles	Kansas City
Cleveland	Milwaukee
Charlotte	Minneapolis
Cincinnati	Oakland/San Francisco
Dallas	Chicago
Denver	Philadelphia
Des Moines	Phoenix
Detroit	Pittsburgh
Houston	Louisville
Washington, D.C.	San Jose/San Francisco
Indianapolis	St. Louis
Los Angeles	
From Long Beach/Los Angeles to :	
Atlanta	Houston
Boston	Washington, D.C.
Cleveland	New York City
Dallas	Miami
Denver	Chicago
Detroit	Philadelphia
Newark	St. Louis

From Kansas City to: Chicago

From Oakland to:

New York City
Newark

New York

From Minneapolis to:

Boston
Los Angeles
Dallas
Detroit

Newark
New York
Chicago

From Chicago to:

Atlanta
Baltimore
Hartford
Boston
Seattle
Los Angeles
Cleveland
Columbus
Cincinnati
Dallas
Dayton
Denver
Detroit
Newark

Houston
Washington, D.C.
New York City
Los Angeles
Memphis
Miami
Minneapolis
Kansas City
Oakland
Philadelphia
Pittsburgh
San Jose/San Francisco
St. Louis

From Philadelphia to:

Atlanta
Boston
Los Angeles
Cleveland
Dallas
Houston

New York City
Los Angeles
Little Rock
Miami
Minneapolis
Chicago

From Pittsburgh to:

New York City

Chicago

From Rochester to:

Los Angeles
Dallas
Newark

Washington, D.C.
New York City
Chicago

From St. Louis to:

New York City

Chicago

From San Jose to:

Boston
Dallas
Newark
Washington, D.C.

New York City
Pittsburgh
Chicago

6. *Issue.*—"Airfreight service provided by combination flights is not in the public interest."

Answer.—The statement reflects incredible absurdity; 51 percent of the almost six billion revenue ton miles of air cargo (freight, express and mail) carried by the U.S. scheduled airlines in 1975 was carried in combination aircraft. This service, plus the all-cargo service, affords shippers and postal patrons the convenience and timeliness of around-the-clock, seven days a week cargo service. (See Attachment D)

FEDERAL EXPRESS REBUTTAL

The ATA has grossly misconstrued a much larger thought and twisted it to suit their argument. Obviously, air freight service in combination aircraft is in the public interest. The point being made was that the total relegation of all air freight to scheduled passenger combination service is not in the public interest. The maximum service alternatives that can be offered are in the public interest.

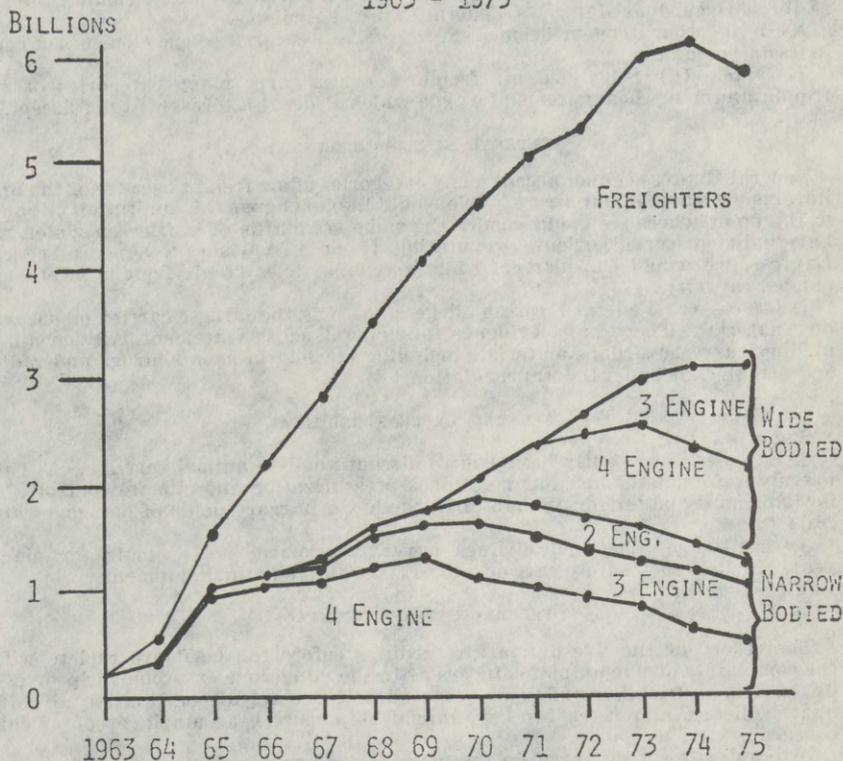
This distorted editorialization by the ATA is believed to have come from Page 3 of Federal Express' testimony before the joint hearings of the House subcommittees on Aviation and Investigations and Review where it was said that:

"Many in the airline industry would point out that with the introduction of the jet aircraft and more recently, with the widebodies' lower deck compartments, bell capacity has increased at an even faster rate than cargo emplanements. As a consequence, they would argue, all-cargo statistics are now meaningless due to these developments, and that in light of the poor historical performance of domestic all-cargo operations, passenger flights, with unused belly space, are the proper focus of all-cargo developments. To this Federal Express would point out this may (due to incremental revenues) or may not (in light of the factors leading to the Law Judge's decision above) be of benefit to the certificated combination carriers. More importantly, however, it is definitely not in the public interest."

It is obvious that Federal Express did not say that cargo service in combination aircraft is not in the public interest—only that it should not supplant totally all-cargo service, which also is in the public interest.

A relevant comment on the total reliance on a by-product such as belly space was recently made by a Senior Vice President of United Airlines who said a "meaningless spin-off of the production process is not a product. A product is only where it meets a specific consumer demand."

REVENUE TON MILES - CARGO SERVICE
JET EQUIPMENT
U.S. SCHEDULED AIRLINES
1963 - 1975



Nowhere has it been shown by the ATA that customers have requested day-time belly freight in combination aircraft. Rather, this capacity arrived "free" with the passenger planes, which according to the laws of physics, had to be built in the shape of a tube. The otherwise "dead" space in the bottom portion of these planes suddenly became a consumer "advantage" allowing the airlines to discontinue unprofitable night-time all-cargo freighters.

Using the demise of REA air express as an excuse (and the contrived shortage of night-time flights as a lever) the airlines now offer priority boarding rights for a surcharge of 30% for "express" service in combination aircraft.

Again, the certificated airlines are confusing supply with demand.

A starving man will eat crow, but his preference may be otherwise.

7. Issue.—Reference was made to the special characteristics of many air cargo shipments "such as hazardous materials and drugs." "The U.S. airline system has utterly failed to adequately meet this critical market—caused by the incompatibility of passenger operations with shipper's basic needs."

Answer.—The statement is also erroneous and misleading.

(a) The scheduled air carriers offer air transportation service for all kinds and sizes of cargo including hazardous materials, drugs, live animals, fresh fruits, vegetables, flowers, seafood, printed matter, auto parts, electrical equipment, wearing apparel, machinery, and others of endless variety.

FEDERAL EXPRESS REBUTTAL

Federal Express, handling more than 700 hazardous materials shipments a night—according to the Department of Transportation—is the largest single air carrier of these commodities by far. Due to the inherent volatility or short "shelf life" of these materials, minimal transport times and thoroughly trained personnel are absolute requirements. Federal Express' integrated system, uniquely suited to such needs, daily carries many items that are refused by the scheduled airlines. For a detailed and voluminous list of these items, please contact the Director of Hazardous Materials, Federal Express, Memphis.

As to the other items mentioned, Federal Express carries some elements of each in its daily traffic.

7. Issue.—(b) Scheduled air freight services carry many categories of air freight and many heavy items of a type which Federal Express will not accept.

FEDERAL EXPRESS REBUTTAL

Federal Express cannot accept many categories of air freight because of the limitations placed upon our aircraft. We would like to change this limitation but only to the point where we could ensure the same standards of service on which we have built our service-oriented reputation. If the ATA wishes to support Federal Express, we would consider carrying heavier articles of air freight in our expanded capacity.

7. Issue.—(c) Federal Express alleges that it is the largest carrier of hazardous materials. There is no evidence to support such a statement. All scheduled airlines carry hazardous materials including eteological agents, drugs and radioactive materials under federal regulation.

FEDERAL EXPRESS REBUTTAL

Same as 7(a).

8. Issue.—"We recently have had to discontinue live animal service . . . This is truly unfortunate since our main deck pressurization and climate control . . . is significantly better for animals than the lower baggage holds of passenger aircraft."

Answer.—The scheduled airlines have transported live animals for many years. In 1975 they safely carried over 1,500,000 live animal shipments.

FEDERAL EXPRESS REBUTTAL

The record of the live animal proceedings before the CAB are replete with the complaints of live animal shippers as to the dangerous environment provided by light pressurization and inadequate climate control of combination aircraft underbellies. Claim rates for live animal shipments bear ample proof of this concern.

Live animals should travel in the main deck cargo compartments of freighter aircraft while inanimate, incompatible items are segregated in lower deck compartments.

Federal Express' concern over the welfare of the animals being shipped contrasts sharply with the claims filed against the scheduled airlines as to their treatment of these shipments.

9. *Issue.*—"Almost 90% of the total U.S. certificated airline fleet is not flying between the hours of 9:00 p.m. and 7:00 a.m."

Answer.—The statement is erroneous and misleading.

(a) Many scheduled flights originating earlier do not terminate until after 9:00 p.m. Perhaps the statement was intended to say that almost 90% of scheduled departures occur before 9:00 p.m. and after 7:00 a.m.

FEDERAL EXPRESS REBUTTAL

How can a shipper make use of an airline flight that has already departed?

Federal Aviation Administration statistics confirm the fact that 90 percent of the airline fleets are on ground from 9 p.m. to 7 a.m.

More importantly, a perusal of the Official Airline Guide will indicate that it is a practical impossibility—considering the time required for interline transfers—to provide late afternoon or early evening departures from most cities and achieve "before business" arrivals in the majority of city pair combinations. Again, the airlines' major market concentration has created this situation.

9. *Issue.*—(b) Federal Express is to be thanked for pointing out that about 1,000 of the scheduled airlines daily departures occur after 9:00 p.m. All of the more than 200 aircraft which scheduled airlines operate after 9:00 p.m. offer cargo service to and from various cities. Many such flights are all-cargo, but some are in combination aircraft.

FEDERAL EXPRESS REBUTTAL

Same as 9(a).

10. *Issue.*—"Federal Express wastes \$25,000 per day because it must fly multiple small aircraft over certain lanes where one large aircraft could fulfill the same requirement."

Answer.—(a) If shipments between small cities constitute 80% of its business as Federal Express says, exactly how will larger planes serve the small cities better? Or does Federal Express plan a major shift of operations into the larger cities? Has Federal Express furnished information on the additional cost effect of operating larger aircraft on short hauls to small cities? Rather than Congress assuming the responsibility, based on unsubstantiated statements, of evaluating such factors, this type of information should be brought out in an evidentiary hearing before the Civil Aeronautics Board—the regulatory agency established by Congress for this purpose.

FEDERAL EXPRESS REBUTTAL

Federal Express does not contemplate a major shift of operations into larger cities. We want to replace existing multiple aircraft flights with more efficient single aircraft flights—and utilize the small aircraft to serve more off-line points which now have inadequate service for shippers' true needs.

Nearly half of Federal Express' current business travels to or from 10 major cities to or from small, off-line points, through our central Memphis hub. In fact, the largest single traffic lane in the Federal Express system is New York-Chicago at 1,000 lbs. a day. There is no justification for putting any airplane, Falcon or DC-9, on any of our direct, major traffic lanes.

Federal Express' utilization of large, efficient aircraft from major markets to Memphis affects all shipments traveling to or from that major point to or from off-line points.

10. *Issue.*—(b) Federal Express incurs fuel waste by circuitous routing of its shipments since all parcels must go to Memphis for transshipment. For example, a parcel going 955 miles from Seattle to Los Angeles must travel 3,491 miles to get there via Memphis. There would be less waste if the parcel were flown straight to Los Angeles as the scheduled airlines do!

FEDERAL EXPRESS REBUTTAL

The total point-to-point mileage in the Federal Express system amounts to some 5 million miles! (Federal Express serves some 6,000 traffic lanes.) Yet using the "circuitous" method of a central interchange hub in Memphis, Federal Express actually flies only some 100 thousand miles each day. This is the key to the Federal Express system and it is no surprise that the ATA cannot understand the incredible leverage it offers Federal Express.

Were Federal Express to attempt to link 77 airports overnight on a point-to-point system, a la' the passenger airlines, the company would doubtlessly need at least a thousand airplanes, all flying with 10 or 20 shipments on board, making 8 or 10 stops per night. This system, obviously, would be financially impossible and the fuel cost would be astronomical.

Perhaps the ATA should ask the Bell Telephone System why they don't run wires between every telephone in the U.S., instead of using a central switchboard. Just imagine, when Mr. Seybold calls his next door neighbor on the phone, his voice travels all the way to a central switchboard miles away in another county before returning to the neighbor's phone 100 feet away. What a waste of copper wire!

A parcel going from Seattle to Los Angeles travels on a Federal Express plane carrying 300 parcels going from Seattle to 73 airports all across the U.S. via Memphis. Does the ATA suggest we could save fuel by operating 73 airplanes out of Seattle?

11. *Issue.*—"All-cargo service has been disastrously reduced." "Archaic regulations have been the major cause of the dismal record of all-cargo operations in this country."

Answer.—(a) These statements are erroneous and misleading in every respect. The question should be "what has happened to air cargo service?" not "what has happened to all-cargo operations?"

FEDERAL EXPRESS REBUTTAL

The statement refers to the dismal financial record of all-cargo operations which have been hamstrung by the very regulations which the ATA seeks to uphold. As a very minimum example, Flying Tiger has consistently been denied additional domestic points by the CAB and as a result has a disastrous record of financial losses in domestic air cargo operations.

As to the Air Cargo Service, the statement of the Air Freight Forwarders Association, the largest air freight customer, proves the point.

"Our industry generates between 40-45 percent of the freight volume flown by the scheduled domestic U.S. air carriers.

"For the industry I represent, an overriding fact of economic life and, indeed, economic survival is this: the forwarder requires adequate overnight all-cargo airline freight lift in order to serve the needs of his shipper customers. While passengers may want to travel when they are awake—in the daytime—most air freight needs to travel when people are asleep in order to be there when they wake up. Freight in large part then must travel by night.

"Indeed, the massive erosion of overnight all-cargo service by the scheduled, certificated carriers on which the forwarder principally depends has become so serious and threatens to become even so much more critical than an expedited grant through the exemption process, pending a hearing on a certificate application, may be an absolute requisite. It may well be the only feasible, and certainly it would be the most expeditious, way of filling the deep void that the scheduled, combination carriers have consciously created in the overnight freight life. Mr. Louis P. Haffer, Executive Vice President and Counsel—Air Freight Forwarders Association."

11. *Issue.*—(b) Scheduled carriers growth in available ton miles of air cargo service over the last 12 years has been dramatic with volume increases in virtually every year except for slight dips in 1974 and 1975. (See Attachment E) This cargo capacity of almost 18 billion available ton miles continues its growth in 1976.

FEDERAL EXPRESS REBUTTAL

The issue is not available ton miles which have grown dramatically due to the introduction of large capacity belly bins in widebody aircraft (which are currently operating at very low load factors).

The issue should be available cargo capacity at prime time in markets throughout the country.

The fact is that the availability of cargo service when and where the market demands has actually been reduced in the last 12 years.

Since 1972, all airline departures have declined marginally. However, all cargo flights have declined dramatically, from 84,751 in 1972 to 66,664 in 1974.

Of course, the all-cargo capacity lost in prime time night flights has been exceeded in volume by addition of wide bodies in daytime combination flights.

In 1975, the airlines carried 2.68 billion revenue ton miles. The 18 billion available ton miles quoted by the ATA results in a load factor of just 15 percent.

11. *Issue.*—(c) Expanded cargo capability, resulting from the addition of widebody air freighters and other aircraft, has offset reduction in the number of QC, or quick change, aircraft which some carriers operated in volume a few years ago on an experimental basis.

FEDERAL EXPRESS REBUTTAL

Again, the issue is not available capacity in total, but rather capacity available in line with shipper's needs.

The Q.C. aircraft was an attempt to provide greater utilization for night-time freighters by enabling them to operate during the day as passenger aircraft.

The advent of the wide body aircraft killed the Q.C. experiment, not the lack of need for night-time lift.

11. *Issue.*—(d) While the airlines move less than 1 percent of the total tonnage of U.S. freight, the goods transported in air freight represent 25 percent of the total value of all shipments. This represents a substantial contribution to U.S. commerce.

FEDERAL EXPRESS REBUTTAL

Federal Express would certainly agree with this contention.

It is all the more reason for the Congress to move quickly and positively to enable this important sector of the economy to enjoy improved service.

12. *Issue.*—"From a high of some 50 points receiving all-cargo service shortly after World War II . . . only 21 domestic airports receive all-cargo service."

Answer.—Wrong—forty-seven (47) airports are served by the scheduled airlines with all-cargo service today; 653 airports are served with all-cargo and combination aircraft.

FEDERAL EXPRESS REBUTTAL

In reviewing Civil Aeronautics Board statistics (Airport Activity Statistics) from 1972 through 1975 for all cargo departures in the United States, some very distressing trends have appeared. First, all-cargo service is no longer available to or from nine airport cities: Washington, D.C., Pittsburgh, Louisville, Cincinnati, Nashville, Greensboro, Tampa, Huntsville, and Omaha.

Service to Memphis was recently reinstated during August of this year.

Secondly, there are numerous cities such as Miami, Hartford, Denver, New Orleans, Newark, Cleveland, Charlotte, that have had their all-cargo scheduled departures decreased by 50 percent, or greater.

Lastly, and more importantly, the number of airports receiving all-cargo service has decreased from 39 in 1971 to 24 in 1976, or a 38.5 percent decrease in service. This clearly points out that there are not 47 airports receiving all-cargo service as stated by the ATA.

13. *Issue.*—"Federal Express services are cheaper than competitors."

Answer.—This is incorrect. Air parcel post rates are much lower than Federal Express. Airport-to-airport small package over-the-counter rates of the scheduled airlines for shipments in the 30-to-50-pound range are lower than Federal Express. Airline priority air freight and regular air freight rates for all shipments above 30 pounds are lower. Some freight forwarder rates are lower. See Attachment F for a table for "Rate Comparison" for a 30-pound shipment.

FEDERAL EXPRESS REBUTTAL

This ATA contention is simply a gross misrepresentation of the facts.

Air Parcel Post is not air freight and does not provide the service level required by air freight shippers.

Over-the-counter airline small parcel services do not include pick-up and delivery.

The cost of moving a 30-lb. package door-to-door from Los Angeles to New York: FEC-PI, \$43.08; FEC-SAS, \$25.20; Airline counter-to-counter, \$49.15.

In any case, Federal Express' traffic averages only 14 lbs. per shipment. Comparisons at heavier weights are misleading.

14. *Issue.*—"Federal Express Public Service Goals"—"hold or reduce rates."

Answer.—A little-discussed fact about Federal Express growth (aside from its coincidence with the demise of Railway Express Agency) is its history of

attracting business with exceptionally low non-competitive rates followed by a succession of rate increases. Since 1973 when Federal Express began, its rates on its prime service "Priority One" have doubled.

FEDERAL EXPRESS REBUTTAL

From 1970 to 1975 the airlines increased their rates by 26.5% and the forwarders increased theirs by 85.4%.

Recently the airlines have filed for even larger increases. United has raised prices 24 percent in the last 16 months and has recently filed for another increase of 10 percent, citing the DAFRI case, where the administrative law judge recommended airline increases of 38.8 percent.

15. *Issue.*—Diversion—"Over 30 percent of its traffic has been generated by virtue of its unique service."

Answer.—This means 70 percent of Federal Express traffic, representing millions of dollars of revenue, has been diverted from the scheduled carriers.

Such diversion weakens the capability of the scheduled air carriers to maintain and expand their fleet of passenger and cargo aircraft dedicated to military call-up as part of the Civil Reserve Air Fleet.

Such aircraft, particularly all-cargo or convertible aircraft, provide an emergency cargo capability heavily depended upon by the military according to General Paul K. Carlton, Commander of the Military Airlift Command, in testimony before the House Armed Services Committee earlier this year.

FEDERAL EXPRESS REBUTTAL

The ATA shows its true purpose in opposing beneficial legislation in this statement.

The protection of the public appears to be of no consequence to ATA.

The concept of free enterprise and American competition has no place in this world of protected revenue, lack of price competition, and where the very word "competition" has been replaced with the evil-sounding euphemism "diversion".

The 30 percent of traffic we claim to have generated was diverted from other carriers, or warehouse operations, as well.

Every day the airlines attempt to divert traffic from the railroads.

Does the cataclysmic failure of the railroad industry owe its demise to the airline industry? If so, perhaps the airlines should be forced to give up this business and return it to its rightful owners.

The logo for Federal Express, featuring the words "FEDERAL" and "EXPRESS" in a bold, italicized, sans-serif font. The letters are white with a black outline, set against a dark background that tapers to the right.

Federal Express Corporation
AMF Box 30167
Memphis, Tennessee 38130
901 365-3600

Dear Air Freight Customer:

As you probably know, Federal Express has been fighting for nearly a year to win government approval to operate larger, more productive, airline type jets. We have asked many of you to support us in this effort to create a more efficient air express system. At the risk of wearing out your patience in this final letter, we are asking you to help us once more, and to spend one or two minutes of your time in the interests of improving priority air service to shippers and consignees across the U. S.

Let me explain. As an "air taxi", Federal Express is limited to small jets carrying a maximum of 7,500 lbs of freight. In many of our larger markets customer demand exceeds this limitation many times over. The result is that in cities like Los Angeles, Chicago, New York, Boston and many others, we are flying as many as five of our small airplanes each day, virtually in formation, to carry the freight. Replacing these multiple flights with single flights of larger airline cargo jets (like DC-9's or Boeing 727's) we could save millions of gallons of fuel, thousands of manhours and millions of dollars each year.

These savings would be passed on to our customers, and the smaller airplanes released from these markets would be used to open dozens of cities across the U. S. which now receive little or no scheduled all cargo service.

This simple action, which would benefit both Federal Express and tens of thousands of air shippers and consignees, is meeting total opposition from the established air carriers, whose Washington lobbyists are telling Congress that the current airline air freight system is perfectly adequate to serve the needs of the country's shippers. Yet hundreds of shippers have told us that the airlines are not meeting their needs, that flights have been cut back, that night time all cargo service has been severely curtailed and that many smaller communities across the U. S. are no longer receiving adequate air freight service.

Even the air freight forwarders have supported Federal Express, claiming the airlines are no longer supplying adequate overnight service to satisfy their customers.

We believe Federal Express has filled a gap in the air freight system by providing low cost, door-to-door, air express service across the country. Yet the established airlines are telling Congress that their customers are perfectly satisfied with the status quo....that shippers are indeed content to live with daytime belly space in

passenger airplanes, that many shippers can wait 48 hours or more for delivery, that the majority of air shippers do not need pick up and delivery service, and that the vast majority of shipments are moving between the top 25 markets where the airline's heavy passenger routes are concentrated.

We disagree!

And we believe you do, too!

But we have to convince Congress. The legislators in Washington want to help Federal Express, and other airlines with similar desires, but only if this action is in the public interest. We believe your needs are consistent with the services we are offering. And most importantly, we believe the planned expansion and cost reductions in our system are in the public interest as well as our own.

If you agree, please spend just three minutes and fill out the very brief questionnaire attached to this letter. Please note that this questionnaire does not require you to vote for or against Federal Express. The purpose of the questionnaire is simply to inform Congress of your needs as an air freight shipper.

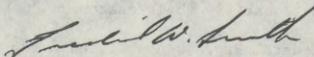
You will note there are three copies of the questionnaire. One is addressed to the Chairman of the House Aviation Subcommittee, another is addressed to the Chairman of the Senate Aviation Subcommittee and the third is addressed to Federal Express for our files. Just fill out the post paid questionnaires and drop in the mail.

We hope you will find the time and patience to complete and mail these surveys. Your opinion will be highly useful to the House and Senate in deciding the public benefits of encouraging the further development of new and innovative air express services.

And we want to thank you for standing up and making your opinions a matter of record.

We deeply appreciate your interest.

Sincerely,



Frederick W. Smith
Chairman

enclosures

P. S. The current session of Congress is rapidly drawing to a close. May I urge you to get your questionnaires in the return mail, today if possible. Thank you.



Congressman Glenn M. Anderson
Chairman, House Aviation Subcommittee
1230 Longworth House Office Building
Washington, D. C. 20515

Dear Congressman Anderson:

Adequate air freight service is a necessary part of my company's business. As such, my requirements are as follows:

1. For the majority of my air freight shipments I want:

- Next morning delivery.
 Next day delivery.
 Two day delivery.
 Three or more day delivery.

2. For the majority of my air freight shipments I want:

- Service to just the top 25 markets.
 Service to many markets, large and small, across the U. S.

3. For the majority of my air freight shipments I want pick up service at the shipping location:

Yes _____ No _____

4. For the majority of my air freight shipments I want delivery service at the receiving location.

Yes _____ No _____

Name _____

Title _____

Company _____

City _____ State _____

Additional Comments: _____



**Senator Howard W. Cannon
Chairman, Senate Aviation Subcommittee
259 Russell Senate Office Building
Washington, D. C. 20510**

Dear Senator Cannon,

Adequate air freight service is a necessary part of my company's business. As such, my requirements are as follows:

1. For the majority of my air freight shipments I want:
 - Next morning delivery.
 - Next day delivery.
 - Two day delivery.
 - Three or more day delivery.
2. For the majority of my air freight shipments I want:
 - Service to just the top 25 markets.
 - Service to many markets, large and small, across the U. S.
3. For the majority of my air freight shipments I want pick up service at the shipping location:
 Yes _____ No _____
4. For the majority of my air freight shipments I want delivery service at the receiving location.
 Yes _____ No _____

Name _____

Title _____

Company _____

City _____ State _____

Additional Comments: _____

First Class
Permit No. 895
Memphis, TN

Business Reply Mail No postage stamp necessary if mailed in the United States

Postage will be paid by

Frederick W. Smith
Chairman
Federal Express Corporation
P. O. Box 30167
Memphis, TN 38130

Dear Mr. Smith:

Adequate air freight service is a necessary part of my company's business. As such, my requirements are as follows:

1. For the majority of my air freight shipments I want:
 - Next morning delivery.
 - Next day delivery.
 - Two day delivery.
 - Three or more day delivery.
2. For the majority of my air freight shipments I want:
 - Service to just the top 25 markets.
 - Service to many markets, large and small, across the U. S.
3. For the majority of my air freight shipments I want pick up service at the shipping location:
Yes _____ No _____
4. For the majority of my air freight shipments I want delivery service at the receiving location.
Yes _____ No _____

Name _____

Title _____

Company _____

City _____ State _____

Additional Comments: _____

DOCKET 28354

ORDER 75-12-38



UNITED STATES OF AMERICA
 CIVIL AERONAUTICS BOARD
 WASHINGTON, D.C.

FEDERAL EXPRESS CORPORATION,
 EXEMPTION

DOCKET 28354

Order 75-12-38
 Adopted by the Civil Aeronautics Board
 at its office in Washington, D.C.
 on the 8th day of December, 1975

Application of Federal Express Corporation for an exemption from section 401 of the Federal Aviation Act of 1958, as amended, and Part 298 of the Economic Regulations

ORDER DENYING EXEMPTION

On September 26, 1975, Federal Express Corporation filed an application for an exemption from section 401 of the Federal Aviation Act of 1958, as amended, and Part 298 of the Board's Economic Regulations to the extent necessary to permit Federal Express to operate five DC-9-15 all-cargo aircraft in scheduled operations.¹ In support of its application, Federal Express alleges, *inter alia*: that its operations are limited in extent by reason of its highly specialized transportation service and its size measured in revenues or tonnage; that its operations are affected by unusual circumstances by reason of its unique radial hub-and-spokes operation, its unusually rapid traffic growth, and its cargo-only specialization as a Part 298 carrier; and that a certificate proceeding would be an undue burden because of the lengthy time required for certification proceedings, the disproportionate cost compared to the revenue potential, and the financial jeopardy it would cause Federal Express. The carrier further contends that grant of the requested exemption is in the public interest (1) to avoid the excessive fuel consumption required by multiple wing-to-wing small-aircraft operations necessary to accommodate present and projected package volumes; (2) to permit greater cost efficiency; (3) to avoid air traffic congestion and environmental impact; and (4) to permit service improvements.

The U.S. Departments of Commerce, Justice, and Transportation filed answers in support of the application, citing the significant public benefits to be derived by the further development of Federal Express' innovative, high-quality service and the minimal adverse impact grant of the exemption would have on other carriers and forwarders.

Answers in opposition were filed by 16 certificated carriers,² the

¹ On Oct. 2, 1975, the carrier filed amendment no. 1 adding an "Environmental Representation" to the application. Subsequently, the carrier was requested by the Director, Bureau of Operating Rights, in a letter dated Oct. 10, 1975, to furnish data from a Noise Screening Test and Pollutants Screening Test for operations at Memphis, Tenn. The carrier complied with this request in a letter dated Oct. 29, 1975.

² Airlift International, Inc., Allegheny Airlines, Inc., American Airlines, Inc., Braniff Airways, Inc., Delta Air Lines, Inc., Eastern Air Lines, Inc., Flying Tiger Line Inc., Frontier Airlines, Inc., North Central Airlines, Inc., Northwest Airlines, Inc., Ozark Air Lines, Inc., Saturn Airways, Inc., Seaboard World Airlines, Inc., Southern Airways, Inc., Trans World Airlines, Inc., and United Air Lines, Inc.

Railway and Airlines Clerks Association, the Creditors Committee of REA Express, Inc., REA Express,³ and the Air Freight Forwarders Association. The opposition of these parties generally follows one or more of the following lines: (1) that the Board cannot legally grant the relief sought under section 416(b) of the Act because Federal Express' operations are neither limited in extent nor affected by unusual circumstances and because a certificate proceeding would not be an undue burden upon a carrier the size of Federal Express; (2) that a request for operating authority of this magnitude requires the full evidentiary hearing of a certificate proceeding; (3) that Federal Express, as a Part 298 carrier not subject to tariff filings, would be in direct competition with carriers and air freight forwarders subject to rate regulations; and (4) that grant of the exemption would result in substantial diversion from other carriers and air freight forwarders.

Emery Air Freight Corporation filed an answer not in opposition to the application but requesting the Board to impose certain restrictions if it grants the exemption.

Federal Express filed a consolidated reply to the answers.

Upon consideration of the pleadings and all the relevant facts, we have concluded that Federal Express' proposal is not appropriate for grant under the exemption provisions of section 416 of the Act. It is well established that the Act contemplates a basic framework of certificated air service. Federal Express' proposal involves the use of five DC-9-15 aircraft, each having a maximum payload of over 24,000 pounds, to be operated on routings serving 10 major airports across the country and transporting freight in numerous major markets now served by certificated air carriers.⁴ The large traffic growth which has been experienced by the carrier is a result of its marketing efforts and expanded service, and it appears that such growth trends are likely to continue so that the carrier's operations will expand even further in the future. In our view, the certification process is the only appropriate means of appraising the type of long-term authorization of large-scale jet cargo

³ In addition to requesting denial of the exemption application, REA Express and the Creditors Committee of REA Express both urge that in the alternative, the Board consolidate Federal Express' application with, *inter alia*, docket 26238 (Inter-Carrier Discussions Concerning Priority Air Cargo Service). On Nov. 6, 1975, REA Express filed a motion for cross-examination with respect to certain matters set forth in the Federal Express application. Federal Express has filed a contingent answer to the REA motion. In view of our disposition of the exemption application, these various motions will be dismissed as moot.

⁴ In granting large-aircraft exemptions to air taxi operators, the Board has been careful to insure that such exempted operations would not be likely to have a significant impact on certificated carriers in the market. Indeed, the Board has often refused to grant exemptions in markets served by certificated carriers even though the proposed operations were much more limited than those envisioned here. See, *e.g.*, orders 74-2-44, Feb. 13, 1974; 74-7-107, July 24, 1974; 74-7-142, July 30, 1974; 75-4-61, Apr. 11, 1975; and 75-7-1, July 1, 1975. Thus, aside from the statutory limitations of the Board's exemption powers, we would not be prepared to conclude on the basis of contested pleadings that Federal Express' operations would not have a significant impact on certificated carriers and air freight forwarders.

operations in major markets which Federal Express contemplates.⁵ Under these circumstances, we cannot find that enforcement of the provisions of section 401 of the Act would be contrary to the public interest.

We would stress, in this regard, that it is by no means our intent to discourage the entry or growth of new cargo carriers or to impede the introduction of innovative services in the air transportation system. Our holding here is merely that in the circumstances of this case, the authority requested is more appropriately a matter for examination under the normal certification procedures of section 401 of the Act. In this regard, the Board stands ready to give prompt and careful consideration to any appropriate application that might be filed by Federal Express pursuant to section 401 of the Act.⁶

ACCORDINGLY, IT IS ORDERED THAT:

1. The application of Federal Express Corporation in docket 28354 be and it hereby is denied;

2. The motions of REA Express, Inc., and the Creditors Committee of REA Express for consolidation of the application in docket 28354 with various other dockets be and they hereby are dismissed; and

3. The motions of REA Express, Inc., for leave to file an unauthorized document and for cross-examination be and they hereby are dismissed.

By the Civil Aeronautics Board:

EDWIN Z. HOLLAND

Secretary

(SEAL)

⁵ We have considered the contention of the Department of Commerce that the weight limitations of Part 298 of the Board's Regulations were intended primarily for passenger rather than freight operations. However, Part 298 contains no such distinction, and we are not prepared in this proceeding to establish exceptions to the weight limitations for small-package freight operations, particularly on the basis of contested pleadings.

⁶ In its reply, Federal Express has proposed an alternative procedure whereby the Board would institute an investigation into this matter, granting an interim large-aircraft exemption *pendente lite*. In view of our conclusion that exemption authority would be inappropriate in this instance, we would not be predisposed to grant such authority even on an interim basis. However, in any future certification proceedings involving Federal Express, the carrier would not be foreclosed from presenting evidence and arguing on the basis of an evidentiary record that exemption relief is more appropriate.

STATEMENT
OF
THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE
TO THE
SUBCOMMITTEE ON AVIATION OF THE
HOUSE PUBLIC WORKS COMMITTEE
U. S. HOUSE OF REPRESENTATIVES
ON
H.R. 14623, AND PROPOSALS TO
CHANGE CIVIL AERONAUTICS BOARD POWERS
WITH RESPECT TO AIR FREIGHT

SEPTEMBER 1, 1976

The National Industrial Traffic League submits this statement with respect to H.R. 14623, to broaden the power of the Civil Aeronautics Board to grant relief by exemption from the certification requirements of the Federal Aviation Act to facilitate the provision of all-cargo air service, and with respect to proposals to change the CAB powers with respect to air freight.

The National Industrial Traffic League is the only national shipper organization consisting of all types of shippers geographically, large, medium and small, using all modes of transportation and shipping all types of commodities. Included in the League's 1800 members are chambers of commerce, boards of trade, ports, shippers associations, and other entities concerned with rates, traffic and transportation services of all modes. Carriers are not eligible for membership in the League.

The League's primary concern is to provide for the nation and all its shippers a sound, efficient, well-managed transportation system, privately owned and operated.

On July 19, 1976, the League issued its statement urging Congress to promptly enact legislation to provide regulatory reform for air transportation.

The League urged Congress to give recognition to the principle that air freight has reached a state in its growth which requires that it be recognized and regulated separate and apart from the passenger mode.

The League noted that under the present system the public is not well-served:

- when regulation impedes competition among existing carriers,
- when innovations in rate making are discouraged or prevented,
- when freight rates of individual carriers are required to be held at "industry" levels which have been established by regulatory fiat,
- when freight rates are required to be maintained at levels necessary to satisfy the economic requirements of the less efficient carriers,
- when regulators substitute their judgment for that of carriers in competitive situations requiring management decisions,
- when regulatory determinations are long delayed and litigation is extended indefinitely,
- when shippers and passengers are denied the opportunity to participate in the formulation of tariff provisions which thereafter by action of the law become inviolate terms of their contracts of carriage, and
- when access to regulatory agencies is made difficult or economically impractical due to costly and time-consuming procedural requirements.

The League urged the enactment of the following changes, which would be applicable to air freight transportation:

relax, liberalize and speed up certification of entry, and the removal of restrictions on existing carriers;

freedom to experiment with rate and service innovations; reduce time-lag; and to allow greater pricing flexibility;

a new Declaration of Policy to "encourage competition" and "reduce economic regulation of transportation industry to the minimum consistent with the public interest"; and

procedural changes to expedite hearings and decision-making; place greater reliance on rulemaking; and give shippers the opportunity to more fully participate and contribute to the regulatory process, and obtain timely redress for grievances

The League statement made clear that while the League favors the placement of greater reliance on competition among carriers, it does not favor relaxation of regulatory control to the point where shippers are without a forum other than judicial to which they can look for relief and redress of their grievances

League members do not support no-suspend zones; the scrapping of the existing air transportation regulatory system; or the continuation of antitrust immunity for collective ratemaking without provision for shipper participation.

At the 1972 Annual Meeting of the League, the members approved a statement of views with respect to improvements in air transportation, stating that *"unless there is a radical revision of thinking and philosophies as to the proper role of shippers in these areas, the full potential of air cargo and the benefits of shippers therefrom will not be realized."*

H.R. 14623 would amend Section 416 of the Federal Aviation Act 1958, to add a further proviso that nothing in that section shall prevent the Board from granting an exemption so as to authorize the conduct of all-cargo operations in interstate air transportation, pending consideration of an application for initial certification, if the Board finds that the issuance of such exemption "is in the public interest."

During the Senate hearings on a similar bill, S. 3684, CAB Chairman, John E. Robson, supported the bill as "a step in the right direction"; but urged Congress to consider two modifications. The first modification was to extend the exemption section to applications for new all-cargo service by existing certificated air carriers as well as by new entrants. The second modification was to delete the *pendente lite* condition on the exemption. Chairman Robson's statement noted that these modifications would improve the bill: "by enabling the Board to exempt all-cargo carriers from certification and rate provisions of the Act. However, the current statute contemplates a certificated system so the Board would not have unfettered authority to exempt cargo service."

The CAB modifications, and H.R. 14623 raise three questions:

- (1) Should the CAB be granted authority to permit the conduct of all-cargo operations, pending consideration of an application by a new entrant or existing certificated carrier if the Board finds it in the public interest;
- (2) Should the CAB be granted broader exemption powers over all-cargo entry and rates under Section 416, and if so, under what conditions, standards, and procedures; and
- (3) Should the CAB be granted authority to exempt all air-cargo regulation, and if so, under what conditions, standards, and procedures.

The League supports the liberalization of entry into all-cargo operations, and the reduction of time-lag in proceedings. Under League Policy E-1, the League specifically favors legislative time limits being established on applications for operating authority, and 60 days after close of hearings, applicant being allowed to haul pending a decision, and to use the fact of satisfactory performance in the interim as evidence in an appeal from any adverse decision rendered later. League policies previously mentioned support liberalization of entry for all carriers, both new entrants and existing certificated carriers seeking extensions or additional authority.

Thus, the League supports H.R. 14623, with the first modification suggested by the Board, that the Board be authorized to exempt both new entrants and existing certificated air carriers, pending application for certification.

Second, for a number of years the League members have voted to support comparable legislation to amend the Interstate Commerce Act to authorize the ICC to exempt certain segments of surface transportation from all or part of the regulatory requirements of the Interstate Commerce Act, after notice and reasonable opportunity for hearing, in accordance with the National Transportation Policy and where such exemption serves the public interest.

In the present Congress, such a bill was introduced at the request of the ICC as S. 2456.

The Railroad Revitalization and Regulatory Reform Act of 1976, P. L. 94-210, which was the subject of extensive hearings and consideration contains the following provision in Section 207:

EXEMPTIONS FROM INTERSTATE COMMERCE ACT

Sec. 207. Paragraph (1) of section 12 of the Interstate Commerce Act (49 U.S.C. 12(1)) is amended by inserting "(a)" immediately before "The Commission" and by adding at the end thereof the following new subdivision:

"(b) Whenever the Commission determines, upon petition by the Secretary or an interested party or upon its own initiative, in matter relating to a common carrier by railroad subject to this part, after notice and reasonable opportunity for a hearing, that the application of the provisions of this part (i) to any person or class of persons, or (ii) to any services or transactions by reason of the limited scope of such services or transactions, is not necessary to effectuate the national transportation policy declared in this Act, would be an undue burden on such person or class of persons or on interstate and foreign commerce, and would serve little or no useful public purpose, it shall, by order, exempt such persons, class of persons, services, or transactions from such provisions to the extent and for such period of time as may be specified in such order. The Commission may, by order, revoke any such exemption whenever it finds, after notice and reasonable opportunity for a hearing, that the application of the provisions of this part to the exempted person, class of persons, services, or transactions, to the extent specified in such order, is necessary to effectuate the national transportation policy declared in this Act and to achieve effective regulation by the Commission, and would serve a useful public purpose."

The League strongly supported this provision, and agrees with the following statement contained in the Report of the Senate Commerce Committee on this bill (S. 2718, Report No. 94-499, November 26, 1975), page 53:

"... the power to exempt from regulation in whole or in part will enable the Commission to commit its limited resources in areas where they are most needed, by enabling it to deregulate those areas which have no significant bearing on the overall regulatory scheme."

The ICC request bill, S. 2456, and Section 207 of P. L. 94-210, both contain limitations on the exemption power, including notice and a reasonable opportunity for a hearing; a consideration of the national transportation policy (declaration of policy); and whether the exemption would serve the public interest. The League supports such conditions, standards, and procedures on the exemption power, with the understanding that the League favors a change in the Declaration of Policy as stated above.

Thus, the League supports the second Board modification that it be granted a *broader* exemption power with respect to air-cargo carriers, by the elimination of the *pendente lite* restriction. However, the League supports the conditions, standards, and procedural requirements on such broader exemption similar to those incorporated in the grant of authority to the ICC. The League does not support Congress granting unfettered authority in the Board to exempt air-cargo service.

Third, the League supports the enactment by Congress of legislation to relax, liberalize, and speed up certification of air-cargo operations; to liberalize restrictions on air cargo and small aircraft operations; and to place greater reliance on competitive market forces. But, the League does not favor Congress enacting a relaxation of regulatory control of air cargo to the point where shippers are without a forum other than judicial to which they can look for relief and redress of their grievances.

In conclusion, the League supports enactment of H.R. 14523, and the CAB modifications to the extent they treat new entrants and existing certificated carriers alike under exemption powers, and eliminate the *pendente lite* restriction. The League does not support the grant by Congress of unfettered authority in the Board to exempt air-cargo service. Instead, the League urges Congress to promptly enact regulatory reforms for air cargo, including relaxation and liberalization of entry and restrictions on existing carriers and small aircraft operations.

Washington, D.C.

AIRLIFT INTERNATIONAL, INC.,
Miami, Fla., August 31, 1976.

Re H.R. 14623.

Hon. GLENN M. ANDERSON,
Chairman, Aviation Subcommittee, U.S. House of Representatives, Washington,
D.C.

DEAR CONGRESSMAN ANDERSON: Heretofore on August 3, 1976, Mr. Robert W. Prescott, President and Chief Executive Officer of The Flying Tigers, testified before the Aviation Subcommittee on the Commerce Committee of the U.S. Senate. In his statement before the Senate subcommittee, Mr. Prescott was authorized to and did indicate the concurrence therein by Airlift International, Inc., a certificated scheduled all-cargo carrier.

In his statement to be presented to your committee on September 1, 1976, there is much with which we agree, but in order to give you and your committee a broader view of the U.S. domestic all-cargo industry, I feel the necessity for submitting this letter supplementing the statements of Mr. Prescott.

Airlift is, of the three currently certificated all-cargo carriers, the smallest, most financially vulnerable and most adversely affected by the proposed legislation. For all of its existence, Airlift has, with the exception of a route to Puerto Rico, been confined to a totally domestic operation. Such operations have been rendered unprofitable largely by an antiquated rate structure and related regulations harking back to and adequate only (if ever) for the pioneer days of the DC-3.

For example, all-cargo carriers are required to provide service to all points on their systems or seek Board approval to suspend such service. The combination carriers may provide all-cargo service in any markets on their system, but such operations are permissive. Thus, the combination carriers float in and out of markets as management discretion, equipment availability and passenger service trends dictate. In most cases where all-cargo carriers seek to initiate new service to meet a proven market need, the Board has refused on the basis that one or more combination carriers are capable of providing the service under their existing authority. The Board has ignored the fact that such capability is often not used or is used only during the pendency of hearings looking toward the entry of an all-cargo carrier.

With reference to the Board's rate making policy, it should be noted that only in air transportation has the regulator steadfastly refused to allow vehicle load rates and discounts for high volume movements. Thus, today a shipper has available for use rates for varying size containers, but the cost to him is the same if he fills one or a thousand.

It should also be mentioned as a further example of regulatory inequity that of the scheduled carriers, only the all-cargo carriers are without a procedure for expeditious processing of applications for route flexibility modifications.

In this regulatory environment, all domestic all-cargo operations have been marginal. However, the international operations of Flying Tiger and Seaboard World and the passenger operations of the combination carriers have in effect subsidized the all-cargo operations of these carriers. Airlift, on the other hand, without benefit of either has had to make its way on its domestic operations alone. This lack of international operations accounts for its relatively smaller size and extreme vulnerability. In effect, it has no protected markets. Thus, the entry of an affluent, unregulated competitor with free access to all of its markets will of necessity impose upon Airlift economic burdens beyond its power to withstand.

In the past, the regulatory policy of the Board toward all-cargo carriers has been one of "benign neglect." In its seeming rush to deregulation, it would appear that the Congress is adopting a similar policy in that it would use the all-cargo industry as a testing ground for marketing theories based on studies of passenger service only. Not a single reason heretofore advanced for deregulation of the air transportation industry would be applicable to the all-cargo industry, yet without benefit of any in depth studies, it appears to have been selected as the first area for experimentation.

Airlift, for all of the reasons set forth herein, opposes adoption of S. 3684 and H.R. 14623 and respectfully requests that before any action is taken, the Congress consider an approach less discriminatory in its impact on existing certificated carriers.

Sincerely yours,

JAMES LAWRENCE SMITH,
Vice President, Regulatory Affairs.

STATEMENT OF ROBERT O. WESTON, PRESIDENT, AIR FREIGHT MOTOR CARRIERS
CONFERENCE

My name is Robert O. Weston. I am President of Weston Trucking Co., Encinitas, California, and also President of the Air Freight Motor Carriers Conference of Washington, D.C., hereinafter referred to as AFMCC. My statement is on behalf of AFMCC.

The Conference is a national trade association. Its membership is composed of motor carriers who specialize in the handling of air freight for the certificated air carriers, both combination (passenger/cargo), and all cargo carriers. We also perform a similar service for air freight forwarders and air commuters, including Federal Express. Our operation consists basically of three functions:

(1) Within the air terminal zone, an area roughly within 25 miles of the airport or airport city limits, under an exemption from the Interstate Commerce Act for traffic defined as "incidental to air";

(2) Beyond the air terminal area under certificates of public convenience and necessity as granted by the Interstate Commerce Commission, which in most cases specifically restrict the transportation to that freight having a prior or subsequent movement by air; and

(3) Between airports in substitute for air service, in instances where for specific reasons shipments are routed via truck in lieu of adequate airlift.

The air freight motor carrier specialist is an integral part of the national air freight network. He provides service within the air terminal area pursuant to contracts with Air Cargo, Inc., the airlines' subsidiary responsible for arranging ground service for the airlines; and beyond this area has established interline agreements with the airlines. We participate in the airlines' tariffs filed with the Civil Aeronautics Board and the Interstate Commerce Commission for joint rates and liability on door to door traffic. We also have equipment interchange agreements with the airlines. All in all, the air freight motor carrier is a totally intermodal, integrated partnership on a nationwide basis.

Any legislation that will tend to weaken the total air freight network will harm the air freight motor carrier. The certificated air carriers, as represented by the Air Transport Association of America, have expressed their concern with H.R. 14623 through the statement of Mr. Leo Seybold, Vice President of Federal Affairs. The members of AFMCC support his statement. The all cargo carrier, Flying Tiger, has also expressed its concern with H.R. 14623 through the statement of Mr. Robert Prescott, President, Flying Tiger. AFMCC wholeheartedly supports his position.

We are very much concerned that the granting of an exemption as proposed by this Bill, in allowing for new operations both in size of aircraft and market areas by Federal Express, or any other party interested in getting into the air freight business, will dilute traffic of the certificated air carriers, both combination and all cargo; and concomitantly reduce the volume of freight available for pickup and delivery by the motor carriers serving the certificated air carriers. Neither the airlines nor the trucking companies can afford any reduction in their revenues. Adequate income is required to continue to provide a level of service consistent with the demands of the shipping and receiving public—both in the large cities and in the small communities.

In addition, we interpret this specific legislation as a method of providing open free entry. Such a move will only eliminate the value of the operating certificates now in use . . . both by the airlines and the trucking companies certificated by the Interstate Commerce Commission. Any dilution of revenue resulting from non-competitive diversion of traffic enjoyed by the certificated airlines and motor carriers will reflect substantially in the investment, not only in our certificates, but in rolling stock, material handling equipment, terminal facilities and last, but not least, our labor obligations.

The members of AFMCC who have been granted certificates from the Interstate Commerce Commission are well aware of the efforts involved in obtaining operating authority, but recognize the need for this procedure in order to maintain a well balanced transportation system. It is our position if any carrier feels there is a need for a service accommodation by the public that they be required to follow the existing procedures and prove there is a need for public convenience and necessity just as we have been required to do.

In conclusion, I would like to express my appreciation to the Committee for allowing us the opportunity to express our feelings.

CAB RESPONSE TO REPRESENTATIVE GOLDWATER REGARDING
STATUS OF APPLICATIONS FOR ALL-CARGO AUTHORITY

DOCKET 29237—AIA

Order 76-5-30—10 May 76 instituting the case and consolidating the following:
Alaska—Dockets 25295—Mar. 8, 73; 25296—Mar. 8, 73; 28587—Dec. 8, 75;
28588—Dec. 8, 75.

Saturn—Dockets 28730 and 28731—Jan. 7, 76.

Overseas—Dockets 28983 and 28984—Mar. 12, 76.

Other carriers request for consolidation:

TIA—Dockets 29337 and 29338—June 1, 76.

Southern—Docket 29332—May 28, 76.

Evergreen Int'l—Dockets 29342 and 29343—June 1, 76.

World—Dockets 29344 and 29345—June 1, 76.

Zantop—Dockets 29244 and 29243—May 11, 76.

McCulloch—Docket 29523—June 15, 76.

Prehearing conference report released—Sept. 7, 1976.

Hearing has been postponed pending final action in the proposed merger between Overseas National and Alaska International.

DOCKET 28656—FLYING TIGER TRANSPACIFIC RENEWAL CASE FILED; DEC. 18, 75

Other dockets consolidated into this case:

FTL—Dockets 24760—Sept. 15, 72; 24986—Dec. 7, 72; 25172—Jan. 30, 72.

Pan Am—Docket 28733—Jan. 7, 76.

Hearing 13-19 July 1976.

RD November 24, 1976.

DOCKET 29295—U.S.-LATIN AMERICAN ALL-CARGO SERVICE INVESTIGATION

Order 76-5-92—May 21, 1976 instituting the case.

Request for consolidation:

Airlift Int'l—Docket 26324—Jan. 17, 74.

American—Docket 29392—June 14, 76.

Southern—Docket 29397—June 14, 76.

Prehearing conference report released 13 October 1976.

Hearing scheduled for 8 March 1977.

DOCKET 23944—SUPPLEMENTAL RENEWAL PROCEEDING

Order 71-10-126—27 Oct. 1971 instituting the case and consolidating the following:

Capitol Int'l Airways—Dockets 22643—Oct. 12, 70; 23373—May 6, 71;
23374—May 6, 71.

Johnson Flying Svs—Dockets 22752—Nov. 13, 70; 23420—May 20, 71.

McCulloch Int'l—Dockets 22756—Nov. 13, 70; 23367—May 4, 71.

Modern Air Transport—Dockets, 22711—Nov. 4, 70; 23365—May 4, 71.

Overseas National—Dockets 22722—Nov. 6, 70; 23435—May 25, 71.

Purdue Airlines—Dockets 19549—Feb. 2, 68; 22757—Nov. 13, 70; 23667—
July 28, 71.

Saturn Airways—Dockets 22744—Nov. 12, 70; 23388—May 11, 71.

Southern Air Trans.—Dockets 22728—Nov. 9, 70; 23439—May 25, 71.

Standard—Dockets 22753—Nov. 13, 70; 23384—May 11, 71.

Trans Int'l Airlines—Dockets 22759—Nov. 13, 70; 23383—May 11, 71.

Universal Airlines—Dockets 22739—Nov. 10, 70; 23453—May 28, 70.

World Airways—Dockets 22723—Nov. 6, 70; 23425—May 21, 71.

Overseas National—Docket 24041—Dec. 6, 71.

Air Transport—Docket 23796—Sept. 3, 71.

Basler—Dockets 23806 and 23807—Sept. 8, 71.

Purdue—Docket 24009—Nov. 23, 71.

Rich—Docket 23817—Sept. 10, 71.

RD sent to the President—June 1976.

DOCKET 29408—PACIFIC AMERICAN AIRLINES ; FILED 6-15-76

Pending—no action taken.
(App. for cert. to engage in interstate air transportation of persons and property between the 50 states.)

DOCKET 30110—EVERGREEN INTERNATIONAL ; FILED 11-23-76

Pending.

DOCKET 30111—RICH INTERNATIONAL ; FILED 11-23-76

Pending.



